

PARTIES

The Council of the Municipality of Lane Cove trading
as Lane Cove Council ABN 42 062 211 626

And

Arrow Capital Partners ACN 627 350 798 and
Starwood Capital Australia Pty Ltd trading as
Starwood Capital Group ACN 109 243 754

Draft Planning Agreement

Section 7.4 of the Environmental
Planning and Assessment Act, 1979
(NSW)

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Dated

Parties

The Council of the Municipality of Lane Cove trading as Lane Cove Council ABN 42 062 211 626 of 48 Longueville Road, Lane Cove, New South Wales (**Council**)

and

Arrow Capital Partners ACN 627 350 798 of Level 6/44 Pitt Street, Sydney, New South Wales and **Starwood Capital Australia Pty Ltd trading as Starwood Capital Group ACN 109 243 754** of Level 32, Suite 2334/200 George Street, Sydney, New South Wales

(together, the **Developer**)

Background

- A The Land Owner owns the Land.
- B The Developer seeks Development Consent to carry out the Stage 1 Development and the Stage 2 Development on the Land and has lodged the Concept Development Application and the Stage 1 Development Application for the Stage 1 Development..
- C The Concept Development Application for the Development is accompanied by an offer by the Developer to enter into this Agreement providing for the Developer to make Development Contributions for the Stage 1 Development and the Stage 2 Development which are to be applied towards the Agreed Public Purpose.
- D Subject to the grant of Development Consent for the Stage 1 Development, the Developer will provide the Development Contributions and the Council will perform its obligations under this Agreement.
- E As contemplated by section 7.4 of the Act, the parties wish to enter into an Agreement in connection with the Concept Development Application, Stage 1 Development Application and Stage 2 Development Application on the terms and conditions of this Agreement.

Operative provisions

It is agreed:

1 Definitions and interpretation

1.1 Definitions

In this Agreement these terms have the following meanings:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
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Agreed Public Purposes	<p>means the enhancement of the public domain for visitors to the St Leonards commercial precinct, through the provision of:</p> <ul style="list-style-type: none"> (a) an enhanced pedestrian network through the provision of two through-site links and footpaths; (b) construction of a larger publicly accessible open space; (c) provision of toilet facilities.
Agreement	means this voluntary planning agreement including any schedules and annexures.
Authority	means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Bond	<p>means a documentary performance bond which must be denominated in Australian dollars and include an unconditional undertaking which is:</p> <ul style="list-style-type: none"> (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.
Business Day	means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Certificate of Practical Completion	means the certificate in writing confirming that the Works in Kind or any part of them have reached Practical Completion.

Concept Development Application	means Development Application No. 175/2020 lodged with Council on 18 November 2020 under s.4.22 of the Act for three building envelopes to be developed in two stages comprising 8 storeys (Building A), 12 storeys (Building B) and 16 storeys (Building C) with a total floor space of 57,267sqm.
Concept Plan	means the Design Statement Drawing No. 11 Issue C dated 10 September 2020 which forms Annexure A to this Agreement.
Consent Authority	means an Authority having the function to determine the Concept Development Application and/or any Detailed Development Application under the Act.
Construction Certificate	has the same meaning as under section 6.4 of the Act, but excludes any construction certificate issued for early works.
Council's Obligation	means the obligations of Council (if any) in regard to the Development Contribution as outlined in Column 2 of clause 1 of Schedule 5 .
CPI	means the All Groups Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.
Detailed Design	means the final specification and finishes for the Works in Kind prepared in accordance with Schedule 6 and will include the design of those Works in Kind, the location for those Works in Kind and the installation specifications for those Works in Kind.
Development	means the proposed redevelopment of the Land pursuant to the Concept Development Application comprising the Stage 1 Development and the Stage 2 Development.
Development Application	has the meaning given to it in the Act.
Development Consent	means the consent (if any) granted by the Consent Authority to the Concept Development Application, the Stage 1 Development Application and the Stage 2 Development Application and has the same meaning as in the Act and includes any amendment or modification of the Development Consent, including a Section 4.55 Modification.
Development Contribution	means the total quantum and value of the Works In Kind
Development Contribution Value	means the value of the Development Contribution comprising the Works in Kind specified in Item 1(a) 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.
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.
Item	means an item referred to in the applicable Schedule.
Land	means the land located at 29-57 Christie Street, St Leonards comprising the folio identifiers listed in Part A of Schedule 3 .
Land Owner	means the owner of the Land which at the time of this Agreement is The Trust Company (Australia) Pty Limited ACN 000 000 993 as trustee for Christie Street Property Trust.
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 and Council's Land.
LRS	means the Land Registry Services New South Wales or any other Authority replacing it.
Monetary Contribution	means the total of any monetary contribution to be paid by the Developer to the Council calculated in accordance with the formula specified in Item 1(b) of Column 1 of Schedule 4 .
Novation Deed	means the draft deed generally in the form set out in Annexure A .
Occupation Certificate	has the same meaning as under section 6.4 of the Act.

Party	a party to this Agreement, including their successors and assigns.
Positive Covenant	means the Positive Covenant (Registered No. Z488639) registered on the title to the Land.
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 (except for minor defects), and are capable of being used and occupied for their intended purpose as set out in the Development Consent for the Stage 1 Development.
Public Open Space Upgrade Works	means that part of the Works-in-Kind comprising Item 2 in Column 1 of Clause 1 of Schedule 5.
Public Purpose	has the same meaning as in section 7.4 (2) of the Act.
Quantity Surveyor	means a qualified independent and practising quantity surveyor with at least 5 years' experience in the assessment of building and construction costs.
Real Property Act	means the <i>Real Property Act 1900</i> (NSW).
Registration on Title	means the registration of this Agreement under section 7.6 of the Act in the folio of the register kept under the Real Property Act in relation to the Land and the Council 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.
Section 4.55 Modification	means any modification of the Development Consent pursuant to section 4.55 of the Act.
Subdivision Certificate	has the same meaning as under section 6.4 of the Act.
Stage 1 Development	means the proposed redevelopment of the Land pursuant to the Stage 1 Development Application comprising the demolition of the existing building located on the southern portion of the Land, retention of the northern commercial building and construction of two commercial buildings, identified as Building A and Building B including public domain and landscape works and alterations to the existing basement carpark.
Stage 1 Development Application	means the detailed Development Application No. 175/2020 lodged with Council on 18 November

	2020 seeking approval for the Stage 1 Development.
Stage 2 Development	means the proposed redevelopment of the Land pursuant to the Stage 2 Development Application comprising the construction of Building C.
Stage 2 Development Application	means the detailed Development Application to be lodged with Council seeking approval for the Stage 2 Development.
Standard Requirements	means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard required by a governmental entity or any other applicable requirement of a State governmental entity.
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 (Freehold Development) Act 1973</i> (NSW) or any other legislation replacing it.
Target Works Value	means the estimated value for each item of the Works in Kind as stated in column 4 of clause 1 of Schedule 5 which the parties have agreed is a suitable amount to apply as a maximum expenditure amount for each item in reaching agreement on the Detailed Design of that item in accordance with Schedule 6 .
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 and 3 in 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 7.1 of Part 7 of the Act.
- (b) **Schedule 1** of this Agreement sets out the mandatory requirements of section 7.4 of the Act and the corresponding provisions of this Agreement.

3 Application of this Agreement

This Agreement applies to:

- (a) the Land; and

- (b) the Development.

4 Operation of this Agreement

- (a) This Agreement is entered into on and from the date that this Agreement is signed by all the parties 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 Development Consent for the Stage 1 Development or the Stage 2 Development 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 4.15(1)(a)(iia) of the Act) to take this Agreement into consideration.

5 Condition Precedent

Subject to **clause 4(c)**, the obligations and covenants of the Developer under this Agreement are conditional on:

- (a) the grant of Development Consent for the Stage 1 Development; and
- (b) 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

the Developer must carry-out and deliver the Works in Kind 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.

6.2 Capped Development Contribution

The Parties agree that the overriding principle of this Agreement is that the Development Contribution Value 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 6.3**.

6.3 Indexation

- (a) 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** provided always that the value of the Works In Kind for **Item 2 of Column 1 of Schedule 5** shall not be less than the initial amount stated in **Item 2 of Column 1 of Schedule 5**.

6.4 Delivery of Development Contributions

The Development Contribution is made for the purposes of this Agreement when the Works in Kind achieve Practical Completion.

6.5 Construction of Works in Kind

The Developer must carry out the Works in Kind in accordance with this Agreement, any relevant Approvals and the construction procedure set out in **Schedule 6**.

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) If the Developer is required to provide additional information or address any matter under **clause 6.6(c)**, the Developer will provide that information to the Council or address those matters within a reasonable period of time agreed between the Parties and will then make a further request under **clause 6.6(b)** of this Agreement for written certification that the Works in Kind or relevant part has reached Practical Completion.
- (e) Practical Completion will be achieved in relation to the Works in Kind or any relevant part of them when a Certificate of Practical Completion has been issued for those works by the Council (acting reasonably).
- (f) If there is a dispute between the Parties as to Practical Completion, then it is to be referred for expert determination in accordance with **clause 12.6** of the Agreement and Council must promptly issue a Certificate of Practical Completion consistent with the determination.

6.7 Failure to deliver Works in Kind

- (a) This **clause 6.7** applies only if the Council has first complied **with clause 11** of this Agreement.
- (b) Subject to **clause 6.8**, 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.
- (c) If **clause 6.7(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 Works 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 (acting reasonably), 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) under this Agreement specified 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 6.8(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 6.8(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 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 6.8(a)**, then the Developer will be taken to have completed that part of the Work for the purposes of this Agreement.

6.9 Council's obligations

- (a) The Council must perform the obligations specified in **Column 2** of **Clause 1** of **Schedule 5** by the times specified.
- (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

Not Applicable

8 Access to land by Developer

The Council authorises the Developer:

- (a) to enter, occupy and use any land, that is owned or controlled by the Council that is required for the carrying out of the Works in Kind; and
- (b) with the agreement of the Council in writing (such agreement not to be unreasonably withheld), to prevent access to such land by third parties where in the opinion of the Developer it is necessary to do so having regard to the nature of the activities being carried out on the land.

9 Application of sections 7.11, 7.12 and 7.24 of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) sections 7.11, 7.12 and 7.24 of the Act; or
 - (ii) any other monetary contributions required under the Act,
 in connection with any Development Consent (including any Section 4.55 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 7.11 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) Until such time as this Agreement is Registered on Title the Developer warrants that the Land Owner agrees that the Council may lodge a caveat to prevent the transfer of the Land to any party other than to the Land Owner 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 the registration of this Agreement in accordance with **clause 10(a)**.
- (f) Despite **clause 10(d)**, the Council as caveator must promptly consent to the registration of:
 - (i) a transfer of the Land to the Land Owner;
 - (ii) a transfer of any part of the Land from the Land Owner 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**;
 - (iii) any surrender of lease;
 - (iv) any discharge of mortgage;

- (v) any other dealing which effects any dealing listed in the certificates of title for the Land;
- (vi) any mortgage(s) on the title.
- (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 Land Owner 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 or the Land Owner, acting reasonably.
- (h) If the Land Owner 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 and the Developer agrees to indemnify the Council against all costs or losses or damage howsoever arising as a consequence of being unable to enforce its caveat or the terms of this Agreement including, without limitation, the costs or losses arising in relation to or in connection with any failure by the Developer to provide the Development Contribution.
- (i) The Council must promptly do all things reasonably required by the Developer and/or the Land Owner to release and discharge this Agreement with respect to any Lot or Lots forming part of 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 the Works in Kind and any land dedications in **Schedule 5** relevant to the Development.

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.

12.5 Disputes for expert determination

If the parties agree that the dispute is to be determined by expert evaluation, the matter will be determined in accordance with **clause 12.6**.

12.6 Expert determination

- (a) A dispute to be determined in accordance with **clause 12.5** must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement within 14 days after the date of the notice under **clause 12.5**, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- (b) If the Parties fail to agree as to the relevant field within 14 days after the date of the notice under **clause 12.5**, either party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.
- (c) The expert appointed to determine a dispute:
 - (i) must have a technical understanding of the issues in dispute;
 - (ii) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (iii) must inform the Parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (d) The parties must promptly enter into an agreement with the expert appointed under this **clause 12.6** setting out the terms of the expert's determination and the fees payable to the expert.

12.7 Directions to expert

- (a) In reaching a determination in respect of a dispute under **clause 12.5**, the independent expert must give effect to the intent of the parties entering into this Agreement and the purposes of this Agreement.
- (b) The expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;

- (iii) not accept verbal submissions unless both Parties are present;
 - (iv) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other Party;
 - (v) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (vi) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (vii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each Party 10 Business Days to make further submissions;
 - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
 - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
- (c) The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
- (i) a short statement of facts;
 - (ii) a description of the dispute; and
 - (iii) any other documents, records or information which the expert requests.

13 Security and Enforcement

13.1 Developer to provide security

The Developer has agreed to provide the following security to the Council for the performance of the Developer's obligations under this Agreement in satisfaction of section 7.4(3)(g) of the Act:

- (a) **clause 10** through the registration of this Agreement on the title of the Land; and
- (b) registration of a caveat over the Land by the Council pending Registration on Title of this Agreement; and
- (c) the provision of a Bond in accordance with the terms and procedures set out **Schedule 7**.

13.2 Enforcement by any party

- (a) Subject to firstly complying with **clauses 11** and **12** and 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

Arrow Capital Partners

Attention: Kurt Wilkinson
Address: Level 6/44 Pitt Street, Sydney, NSW 2000
Email: kurt.wilkinson@arrowcapital.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) The Land Owner 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 Land Owner.
- (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 Land Owner.
- (c) Once the Novation Deed is executed by the Council, the Developer is released from its obligations under this Agreement.

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 fixed amount of **\$3,000**. 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 Representations and warranties

- (a) The Land Owner has agreed, promptly upon request, to lodge at the LRS the relevant certificates of title to enable the registration of the Agreement in the relevant folios of the Land titles.
- (b) 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.

25 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

26 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

27 Effect of Schedules

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

28 Relationship of parties

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

29 Further steps

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

30 Counterparts

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

31 Rights cumulative

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

32 Confidentiality

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

33 Force Majeure

- (a) If a Party is unable by reason of Force Majeure to carry out wholly or in part its obligations under the Agreement, it must give to the other 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.

34 Explanatory Note

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

35 Modification

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

Schedule 1

Section 7.4 Requirements

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(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 7.4(3)(a))	The Land
Description of the development to which this Agreement applies- (Section 7.4(3)(b)(ii))	The Development.
The scope, timing and manner of delivery of Development Contribution required by this Agreement - (Section 7.4(3)(c))	See clause 6 .
Applicability of Section 7.11 of the Act - (Section 7.4 (3)(d))	The application of section 7.11 of the Act is not excluded by this Agreement.
Applicability of Section 7.12 of the Act - (Section 7.4 (3)(d))	The application of sections 7.12 of the Act is not excluded by this Agreement.
Applicability of Section 7.24 of the Act - (Section 7.4 (3)(d))	The application of section 7.24 of the Act is not excluded by this Agreement.
Benefits to be taken into account (Section 7.4 (3)(e))	Except to the extent specified 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 7.11 of the Act.
Mechanism for Dispute resolution - (Section 7.4 (3)(f))	See clause 12 .
Enforcement of this Agreement - (Section 7.4 (3)(g))	See clauses 10, 13 and Schedule 7 .
Registration of this Agreement (Section 7.6)	See clause 10 .
No obligation to grant consent or exercise functions - (Section 7.4 (9))	See clause 23 .

TABLE 2 – OTHER MATTERS

REQUIREMENT UNDER THE ACT	THIS DEED
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see Schedule 5)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see Schedule 5)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Explanatory Note – St Leonards Planning Agreement, Northern Terrace

Clause 25E

Environmental Planning and Assessment Regulations 2000

Explanatory Note for Draft Voluntary Planning Agreement

29-57 Christie Street, St Leonards

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 7.4 of the *Environmental Planning and Assessment Act 1979* (“**the Act**”) and Environmental Planning and Assessment Regulation 2000 (Clause 25E) (“**the Regulation**”). This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

Parties

The parties to this planning agreement are:

Lane Cove Council as the planning authority; and

Arrow Capital Partners and Starwood Capital Group as the developer. Note The Trust Company (Australia) Ltd ATF Christie Street Property Trust is the owner of the Land.

Description of subject land

Lot 1 in DP 773862 known as 29-57 Christie Street, St Leonards (“**the Land**”), depicted in the map attached as **AT-1** to this explanatory note.

This planning agreement will be registered on the subject land title.

Description of the Development to which the Planning Agreement applies

1. The “**Development**” comprises:-
 - (a) concept plan approval for three building envelopes to be developed in two stages comprising 8 storeys (Building A), 12 storeys (Building B) and 16 storeys (Building C) with a total floor space of 57,267sqm (**Concept Plan**);
 - (b) Stage 1 DA for the demolition of the existing building located on the southern portion of the Land, retention of the northern commercial building and construction of two commercial buildings, identified as Building A and Building B (which will be designed to achieve a 5 star Green Star Rating, minimum 5 Star NABERS energy and water rating, and a PCA Grade A office building rating or equivalent), public domain and landscape works and alterations to the existing basement carpark,
2. The Planning Agreement will apply to development of the Land in accordance with any development consent granted in respect of the Development, as modified from time to time.
3. This offer comprises the total offer for the provision of works for public

purposes for the development under the Concept Plan, including for the detailed DA that will be lodged separately for the construction of Building C.

Summary of Objectives, Nature and Effect of the Planning Agreement

The prime objective of the Planning Agreement is to enhance the public domain for visitors to the St Leonards commercial precinct, through the provision of an enhanced pedestrian network, a larger publicly accessible open space, and the provision of toilet facilities for users of the space.

Specifically, subject to the granting of development consent for the Development, this Planning Agreement will require the Developer to provide the following:-

Contribution	Details	Timing	Value (excl GST), including cost of works and costs/losses to Developer
ITEM 1: Provision of two through-site links and Council footpaths	Provision of two through-site links between Oxley Street and Nicholson Street to Christie Street Reserve and embellishment of footpaths within Council reserves to Oxley, Christie, and Nicholson Streets. The through-site links will offer publicly accessible landscaped connections through the site and allow opportunities for lighting and artistic displays. The through-site links are detailed in Design Statement Drawing No. 11 Issue C dated 10 September 2020.	Prior to any occupation certificate being issued for Building A or Building B.	\$3,428,402 for the works comprising Item 1.
ITEM 2: Public Open Space Upgrades	Upgrade and embellishment of an existing public open space known as Christie Street Reserve and embellish a new publicly accessible open space (referred to as the "civic green") adjacent to the Christie Street Reserve. The embellishment of the Christie Street Reserve and the Civic Green will provide opportunities for passive recreation with the provision of terraced lawns, a plaza space, and breakout seating areas.	Prior to any occupation certificate being issued for Building A or Building B.	\$5,573,884 for the works comprising Item 2. \$2,012,793 for maintenance in perpetuity of Item 2.

ITEM 3: Provision of public toilets	Provision of new public toilets accessible from Christie Street.	Prior to any occupation certificate being issued for Building B.	\$250,000 for the works. \$2,470,003 for cleaning in perpetuity for Item 3. \$961,668 for loss of revenue for Item 3.
s7.11 Contributions	This agreement does not offset the payment of a monetary contribution under s7.11 of the <i>Environmental Planning and Assessment Act 1979</i> - Contribution towards provision or improvement of amenities or services, under the Act, estimated at \$5,051,237.	As required by the Development consent.	
TOTAL:			\$14,696,750

Assessment of the Merits of the Planning Agreement

(a) How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement promotes the following objectives of the Environmental Planning and Assessment Act 1979:

- (a) *the facilitation of ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;*
- (b) *the promotion and co-ordination of the orderly and economic use and development of land,*
- (c) *the promotion of good design and amenity of the built environment.*

The Planning Agreement promotes the objects of the Act set out above by facilitating development of the Land in accordance with the Planning Agreement.

The Planning Agreement is consistent with Council's role under the *Local Government Act 1993* to provide facilities, appropriate to the current and future needs of local communities and the wider public by the enhancement of the public domain – Christie Street, Oxley Street, Nicholson Street St Leonards.

The Planning Agreement also makes provision for the removal by Council from the Title of the Land, the Positive Covenant requiring the provision of a 40 place Long Day Care Centre, Gymnasium, 20m heated Swimming Pool, Tennis Court and Community Centre. Historically, the facilities provided for under the covenant have not been available to a vast majority of the public as they are subject to membership. The enhanced pedestrian

network, a larger publicly accessible open space, and the provision of toilet facilities for users of the space (which will be maintained in perpetuity by the Developer) are more suitable public benefits than the commercially run items required under the covenant as they are freely available to the public to use at all times. The release of the Positive Covenant by Council will be done within 14 days of the terms of the Positive Covenant no longer being able to be provided.

(b) How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by committing the Developer to provide the agreed contributions that will increase useable public open space accessible to the whole community which will contribute to greater amenity in this area.

(c) How the Planning Agreement promotes the objects of the *Local Government Act, 1993*

The Planning Agreement promotes the objects of the *Local Government Act 1993* by facilitating engagement with the local community by the Council and demonstrating and giving effect to a system of local government that is accountable to the community and that is sustainable, flexible and effective.

(d) The Planning Purposes served by the Planning Agreement and whether the Planning Agreement provides a reasonable means of achieving those purposes

The Planning Agreement provides for the following public purposes, in accordance with section 7.4 of the Act:

- i. the provision of (or the recoupment of the cost of providing) public amenities or public services;
- ii. the provision of (or the recoupment of the cost of providing) infrastructure relating to land.

It is considered that the Planning Agreement provides for a reasonable means by which to achieve these planning purposes as it secures the provision of the agreed contributions by the Developer to Council by way of registration on title, the provision of a bond to secure the Item 2 works and requirements for performance before occupation of the new buildings.

(e) Whether the Planning Agreement promotes the elements of the Council's Charter

The Planning Agreement promotes Council's charter under section 8 of the *Local Government Act 1993* as it provides adequate, equitable and appropriate services and facilities for the community and ensures that those services and facilities will be managed efficiently and effectively by the Developer in perpetuity.

(f) **Whether the Planning Agreement Conforms with the Council's Capital Works Program**

The proposed works are not part of a capitalworks program for the area. Council acknowledges and agrees the area requires upgrading.

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

In the event of the Developer obtaining development consent for the Development, the Voluntary Planning Agreement requires that the works be completed prior to the issue of any Occupation Certificate.

Schedule 3

Land

Part A title details

Lot/DP	Address
Lot 1 in DP 773862	29-57 Christie 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 (a). The Development Contribution Value (DCV) calculated by applying the following formula subject to the Indexation noted in Item 2 in respect of the cost of works specified for Item 2 of schedule 5:</p> <p>DCV = total value of the Works In Kind specified in Column 4 of Schedule 5 indexed as required by clause 2 of this schedule 4 in respect of the cost of works specified for Item 2 of schedule 5.</p> <p>Where:</p> <p>DCV means the total Development Contribution Value.</p>		<p>The DCV is to be calculated prior to the issue of the first Construction Certificate for the Development.</p>

Indexation

2. The value of the Works in Kind for Item 2 in Column 4 of Schedule 5 (**AFW**) which is identified as **\$5,573,884 at the commencement of this Agreement** will be adjusted in accordance with any movement in the CPI as applied to the AFW and calculated as follows:

The AFW is to be reviewed on each Review Date in accordance with any movement in the CPI calculated as follows;

to an amount represented by A in the following formula:

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

Where:

B = the AFW calculated immediately before the Review Date

C = the Consumer Price Index ("the Index") (Sydney – All Groups) Number ("the CPI Number") as issued by the Australian Bureau of Statistics ("ABS") for the last quarter before the Review Date; and

D = the CPI Number for the same quarter ending twelve (12) months before the Review Date.

If the Index is discontinued then, for the purposes of this clause, the CPI Number is to be the CPI Number of the price index which replaces the Index or, if there is no substitute then of any price index kept by the ABS which the Lessor may select at its absolute discretion ("the New Index") to which the Lessor may make the appropriate arithmetical adjustment for differences between the Index and the New Index, if required.

In this clause **Review Date** means the date falling twelve months after the date of this Agreement and annually thereafter on the same day and where the final Review Date shall be the day that a Construction Certificate is issued for the Development.

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 in the manner set out in the table below.

Item	Column 1	Column 2	Column 3	Column 4
	Works in Kind Contribution	Council's Obligations	Timing	Target Works Value
1 Provision of two through-site links and Council footpaths	<p>Provision of two through-site links between Oxley Street and Nicholson Street to Christie Street Reserve and embellishment of footpaths within Council reserves to Oxley, Christie, and Nicholson Streets.</p> <p>The through-site links will offer publicly accessible landscaped connections through the site and allow opportunities for lighting and artistic displays. The through-site links and footpaths are detailed in the Concept Plan.</p>	N/A	Prior to any occupation certificate being issued for Building A or Building B.	\$3,428,402 for the works comprising Item 1.

Item	Column 1	Column 2	Column 3	Column 4
	Works in Kind Contribution	Council's Obligations	Timing	Target Works Value
2 Public Open Space Upgrades	<p>Upgrade and embellishment of an existing public open space known as Christie Street Reserve and embellish a new publicly accessible open space (referred to as the "civic green") adjacent to the Christie Street Reserve.</p> <p>The embellishment of the Christie Street Reserve and the Civic Green will provide opportunities for passive recreation with the provision of terraced lawns, a plaza space, and breakout seating areas. Other embellishment works include new tree plantings along the Christie Street verge, and upgrades to existing pathways.</p> <p>These works are detailed on the Concept Plan.</p> <p>The total overall publicly accessible open space that will be provided by this contribution is 4,100 sqm (comprising 2,100 sqm within the subject site and 2,000 sqm within the existing Christie Street reserve) and will be maintained by the Developer in perpetuity.</p> <p>Ongoing maintenance of the Christie Street Reserve and the Civic Green will be managed through an enduring obligation covenant registered on the title of the Land. The total costs for the maintenance of Item 2 in perpetuity is estimated to be \$2,012,793.</p>	<p>The Council shall remove from the Title of the Land the Positive Covenant (Registered No. Z488639 registered on 31 December 1991) requiring the provision of a 40 place Long Day Care Centre, Gymnasium, 20m heated Swimming Pool, Tennis Court and Community Centre within 14 days of the terms of the Positive Covenant no longer being able to be provided.</p>	<p>Prior to the final occupation certificate being issued for Building A or Building B.</p>	<p>\$5,573,884 for the works comprising Item 2, as adjusted under schedule 4.</p>

Item	Column 1	Column 2	Column 3	Column 4
	Works in Kind Contribution	Council's Obligations	Timing	Target Works Value
3 Provision of public toilets	<p>Provision of new public toilets accessible from Christie Street which will be maintained by the Developer in perpetuity.</p> <p>These works are detailed on the Concept Plan.</p> <p>Ongoing maintenance of the public toilets will be managed through an enduring obligation covenant registered on the title of the Land.</p> <p>The total value for the cleaning of Item 3 in perpetuity is estimated to be \$2,470,003 and the total loss of revenue referable to the loss in GFA for Item 3 is estimated to be \$961,668.</p>	N/A	Prior to the final occupation certificate being issued for Building B.	\$250,000 for the works .

Schedule 6

Construction Works Procedure (clause 6.5)

1 Design, development and approval

1.1 Concept Design

The Council agrees that the Concept Plan will form the basis for the Detailed Design.

1.2 Detailed Design

- (a) The Developer must provide a copy of the Detailed Design to the Council for its approval prior to the issue of the Construction Certificate for the relevant item of the Works in Kind.
- (b) The Council may request the Developer to provide Council with a report on the relevant cost of the item of the Works in Kind prepared by an independent Quantity Surveyor, as agreed by the parties, to ascertain that the costs of that relevant item is generally in accordance with the Target Works Value for that item. The cost of the independent Quantity Surveyor under this clause 1.2(b) are to be shared equally between the parties.
- (c) Subject to clause 1.2(e), the Council must provide a response to the Developer within 20 Business Days of receiving the Detailed Design and:
 - i. Council may, by notice in writing and acting reasonably, approve, vary or direct a variation to the Detailed Design to reflect the Standard Requirements provided regard is had to the Target Works Value for that item; and
 - ii. the Developer must comply with any direction given by Council under this clause to the extent that this does not, in the Developer's opinion, cause the cost of the relevant item to exceed the relevant Target Works Value for that item (as adjusted in accordance with Schedule 4).
- (d) If the Developer considers that the change will cause the cost of the relevant item of the Works in Kind to exceed the relevant Target Works Value for that item:
 - i. the Developer is to:
 - A. notify the Council in writing of the relevant circumstances; and
 - B. provide the Council with a report on the cost of the relevant item prepared by an independent Quantity Surveyor agreed by the parties unless the cost is for a tangible item that is evidenced by a quote for that item in which case the quote must be provided; and
 - ii. the parties are to negotiate in good faith and use best endeavours to finalise a design for the relevant item within the Target Works Value for that item that is acceptable to the Council, failing which the matter is taken to be a dispute under which clause 12.6 of the Agreement applies.

- (e) If Council requires more than 20 Business Days to provide a written response to the Developer after receiving the Detailed Design in accordance with clause 1.2(c), the Council must provide notice in writing to the Developer within 10 Business Days of receiving the Detailed Design as follows:
 - i. if clause 1.2(b) is triggered, that Council requires additional time of no more than 10 Business Day to provide a response to the Developer from receipt of the report from the independent Quantity Surveyor; or
 - ii. if clause 1.2(b) is not triggered, that Council requires additional time of no more than 10 Business Days to provide a response to the Developer.
- (f) If Council does not provide a written notice to the Developer in accordance with:
 - i. Clause 1.2(c), being within 20 Business Days of receiving the Detailed Design; or
 - ii. Clause 1.2(e)(i), being within 10 Business Days of receiving the report from the independent Quantity Surveyor; or
 - iii. Clause 1.2(e)(ii), being within 30 Business Days of receiving the Detailed Design,

(whichever applies), the Detailed Design is deemed to have been approved by Council for the purposes of this Agreement.
- (g) Any acceptance or deemed acceptance by Council of the Detailed Design under this clause 1.2 of this Schedule 6 is not to be taken as approval of any Construction Certificate for the Works in Kind or any part of them.

1.3 Variations

- (a) The design or specification of the Works in Kind (or any part of it) that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the parties, acting reasonably, without the necessity for an amendment to this Agreement.
- (b) Without limiting clause 1.3(a), the Developer may make a written request to the Council to approve a variation to the design or specification of the Works in Kind (or any part of it) in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Works in Kind.
- (c) Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 1.3(b).
- (d) Subject to clause 1.3(e), Council is to provide a written response to the request for a variation within 20 Business Days of the Developer's submission in writing being received.
- (e) If Council requires more than 20 Business Days to provide a written response to the request for variation, Council is to provide a notice in writing to the Developer within 10 Business Days of receiving the Developer's request for variation, that Council requires additional time of no

more than 10 additional Business Days to provide a response to the request.

- (f) For the avoidance of doubt, if additional time is requested by Council in accordance with clause 1.3(e), Council must provide a response to the request for variation no later than 30 Business Days after receiving the Developer's request for variation.
- (g) If a written response to a request for variation is not be provided by Council to the Developer:
 - i. within 20 Business Days in accordance with clause 1.3(d); or
 - ii. within 30 Business Days in accordance with clause 1.3(e);

(whichever applies) the variation request is deemed to have been approved by Council for the purpose of this Deed.

1.4 **Good faith**

The Parties must act promptly and in good faith to consult in relation to the Detailed Design.

2 **Conduct of the Works in Kind**

2.1 **Communication**

The Developer must:

- (a) keep the Council reasonably informed of progress of the Works in Kind; and
- (b) provide to the Council such information about the Works in Kind as the Council reasonably requests.

2.2 **Standard of Works in Kind**

The qualitative standard of the design and finishes for the Works in Kind must be no less than those described in the specifications and finishes contained in the Concept Plan.

3 **Risk and insurance**

- (a) Prior to the commencement of the Works in Kind or any part of them, the Developer or its contractors must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
 - i. construction works insurance for the value of the Works in Kind;
 - ii. public risk insurance for at least \$20 million;
 - iii. workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 3(a) of this Schedule 6 upon request by the Council, acting reasonably, throughout the term of this Agreement.

4 Intellectual property rights

- (a) The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works in Kind.
- (b) To the extent the Developer has or receives intellectual property rights for the Works in Kind, and the Developer has the written consent and/or written agreement of the owner of the intellectual property rights to assign to Council or provide an irrevocable licence to Council to use the intellectual property rights, the Developer shall:
 - i. assign those intellectual property rights to Council; or
 - ii. grant Council an irrevocable licence to use the intellectual property rights in perpetuity for no fee.

5 Contamination risk

- (a) The Council agrees to disclose all information within its knowledge in relation to the Contamination status of any land owned by Council on which the Works in Kind are to be carried out.
- (b) If there is no information available in relation to the Contamination status of any land owned by Council on which the Works in Kind are to be carried out, the Developer may, at the Council's cost, carry out testing of the relevant land to ascertain the Contamination status of that land.
- (c) The Council acknowledges and agrees:
 - i. that it is responsible for the management and remediation of any Contamination of any land owned by Council on which the Works in Kind are to be carried out; and
 - ii. at the Council's Cost, the Developer will do all things necessary to manage any Contamination of any land owned by Council on which the Works in Kind are to be carried out so as to make the Works in Kind suitable for use.

For the purposes of this clause, **Contamination** has the meaning given to it in the *Contaminated Land Management Act, 1997*.

Schedule 7

Bond (clause 13.1)

1 Bond

1.1 Developer to Provide

- (a) Clauses 1.1 to 1.5 of this Schedule 7 applies in relation to the Public Open Space Upgrade Works.
- (b) The Developer must provide a Bond to the Council (in the relevant Bond Amount) on or before the time set out in the Bond Schedule in clause 1.4 of this Schedule 7.

1.2 Claims under the Bond

- (a) Subject to the Council firstly complying with clause 11 of the Agreement, the Council may:
 - i. call upon the Bond for any breach of the Deed by the Developer to which the Bond relates;
 - ii. retain and apply such monies towards rectifying any breach by the Developer under this Deed to which the Bond relates.
- (b) Prior to calling upon the Bond, the Council must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Bond.
- (c) If the Council:
 - i. calls upon the Bond; and
 - ii. applies all or part of such monies towards the Target Works Value for the Public Open Space Upgrade Works, or any Costs incurred by the Council in rectifying any default by the Developer under this Deed to which the Bond relates; and
 - iii. has notified the Developer of the call upon the Bond in accordance with clause 1.2(b) of Schedule 7,

then the Developer must provide to the Council a replacement Bond to ensure that until the date that the Bond is released in accordance with clause 1.3 of this Schedule 7, the Council is in possession of Bond for a face value equivalent to the Bond Amount.

1.3 Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bond; and
- (b) the whole of the monies secured by the Bond has not been expended and the monies accounted for in accordance with clause 1.2 of this Schedule 7,

then the Council must return the Bond, or the remainder of the monies secured by the Bond (as the case may be), to the Developer in accordance with the date for return of the Bond set out in the Bond Schedule in clause 1.4 of this Schedule 7.

1.4 Bond Schedule

The parties agree that the table below is the Bond Schedule setting out:

- (a) the Bond Amount;
- (b) when the Bond must be provided to Council; and
- (c) when the Bond must be returned by Council.

Bond Amount	Date for delivery	Date for return
\$5,573,884	The date of any Construction Certificate that authorises the carrying out of the Public Open Space Upgrade Works.	Within 10 Business Days of the date of the Certificate of Practical Completion in respect of the Public Open Space Upgrade Works.

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 Arrow Capital Partners)
in accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)
)
)

.....
Signature of Director / Secretary

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

.....
Signature of Director / Secretary

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

Executed by Starwood Capital)
Australia Pty Ltd trading as)
Starwood Capital Group in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Signature of Director / Secretary

.....
Signature of Director / Secretary

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

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

Annexure A – Novation Deed

This is **Annexure A** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **Arrow Capital Partners (Developer)**

Dated

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	means the date that this document is signed by all of the Parties.
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.

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)