

PARTIES

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

And

Silver Pond Investments Pty Ltd ATF Silver Pond
Unit Trust ABN 50 755 014 415

Draft Planning Agreement

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

Contents

1	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	6
1.3	Compliance with New Laws	7
2	Planning Agreement under the Act	7
3	Application of this Agreement	7
4	Operation of this Agreement	8
5	Condition Precedent	8
6	Development Contribution to be made under this Agreement	8
6.1	Provision of Development Contribution	8
6.2	Indexation	8
7	Monetary Contribution	9
7.1	S1 Development Contribution & S2 Development Contribution	9
7.2	Calculation of Adjusted S1 Contribution Amount	9
7.3	Calculation of Adjusted S2 Contribution	10
7.4	Monetary Contribution figures in Schedule 4	10
8	Holdsworth Works	10
8.1	Definitions	10
8.2	Development Approval for Holdsworth Works	10
8.3	Timing for Holdsworth Works	11
8.4	Additional Holdsworth Works	11
8.5	Council may request Alterations to Holdsworth Scope of Works	12
8.6	Council's requests after commencement of Holdsworth Scope of Works	12
8.7	Election to not complete Holdsworth Works	12
8.8	Variations	12
9	Canberra Works	13
9.1	Definitions	13
9.2	Development Approval for Canberra Works	13
9.3	Timing for Canberra Works	13
9.4	Additional Canberra Works	13
9.5	Council may request Alterations to Canberra Scope of Works	14
9.6	Council's requests after commencement of Canberra Scope of Works	14
9.7	Election to not complete Canberra Works	15
9.8	Variations	15
10	Construction of Works under VPA	15
10.1	Delivery of Works under VPA	15
10.2	Failure to deliver Works under VPA	16
10.3	Deferral of Work	16

10.4	Council's obligations	17
11	Application of the Development Contributions	17
12	Access to land by Land Owner	17
13	Application of sections 7.11, 7.12 and 7.24 of the Act to the Development	18
14	Registration of this Agreement	18
14.2	Holdsworth Deposit	20
14.3	Canberra Deposit	21
15	Default	21
15.1	Notice	21
15.2	Reasonable Time	21
15.3	Suspension of time-dispute	21
16	Dispute Resolution	22
16.1	Reference to dispute	22
16.2	Notice of dispute	22
16.3	Representatives of parties to meet	22
16.4	Parties may not constrain	22
16.5	Disputes for expert determination	22
16.6	Expert determination	23
16.7	Directions to expert	23
17	Security and Enforcement	24
17.1	Land Owner to provide security	24
17.2	Enforcement by any party	24
18	Notices	25
18.1	Delivery	25
18.2	Change of details	25
18.3	Giving of notice	25
18.4	Delivery outside of business hours	26
19	Approvals and consent	26
20	Assignment and dealings	26
20.1	Assignment	26
20.2	Transfer dealings	26
21	GST	26
21.1	Construction	26
21.2	Intention of the Parties	26
21.3	Consideration GST exclusive	27
21.4	Payment of GST – additional payment required	27
21.5	Valuation of non-monetary consideration	28
21.6	Tax invoice	28
21.7	Adjustment event	28

21.8	Reimbursements	28
21.9	No Merger	28
22	Costs	28
23	Entire agreement	29
24	Further acts	29
25	Governing law and jurisdiction	29
26	Joint and individual liability and benefits	29
27	No fetter	29
28	Representations and warranties	29
29	Severability	30
30	Waiver	30
31	Effect of Schedules	30
32	Relationship of parties	30
33	Further steps	30
34	Counterparts	30
35	Rights cumulative	31
36	Confidentiality	31
37	Force Majeure	31
38	Explanatory Note	31
39	Modification	31
40	Requirement to provide works specified in Development Control Plan for Locality 8	31
41	Modification of Development Contributions Plan	32
	Schedule 2 Explanatory Note	35
	Schedule 3 Land	39
	Schedule 4 Development Contribution Schedule	40
	Schedule 5 Works under VPA Schedule	1
	Execution	2

Annexure A – Novation Deed	3
Annexure B – Extract of Development Control Plan – Locality 8 Requirements	7
Annexure C - Map	8
Annexure D – Ministerial Direction	9
Annexure E – Canberra Land & Holdsworth Land	10

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

Silver Pond Investments Pty Ltd ATF Silver Pond Unit Trust ABN 50 755 014 415 of Level 2, 201 Elizabeth Street, Sydney, New South Wales

(the **Land Owner**)

Background

- A The Land Owner owns the Land.
- B A Development Application for the development of the Land has been lodged on behalf of the Land Owner.
- C The Development Application for the Development is accompanied by an offer by the Land Owner to enter into this Agreement providing for the Land Owner to make Development Contributions for the Development which are to be applied towards the Agreed Public Purpose.
- D Subject to the grant of Development Consent for the Development, the Land Owner will provide the Development Contributions to the Council in accordance with this Agreement.
- E As contemplated by section 7.4 of the Act, the parties wish to enter into an Agreement in connection with the carrying out of the Development, 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).
Adjusted S1 Contribution	has the meaning ascribed in clause 7.2.
Adjusted S2 Contribution	has the meaning ascribed in clause 7.2(c).

Agreed Public Purposes	means the provision of new and upgraded local infrastructure and other public purposes including new and upgraded roads and stormwater drainage facilities, open space and recreation facilities, community facilities, and affordable housing.
Agreement	means this voluntary planning agreement including any schedules and annexures.
Area	means an area in Locality 8 – St Leonards South Precinct specified in the Lane Cove Development Control Plan.
Authority	means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Business Day	means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Canberra Land	means the land owned by Council land owned by Council being the approximate area hatched in green and labelled as “Newlands Park Avenue” in Annexure E. The boundaries, extent and location of the Canberra Land have not been surveyed and therefore are indicative only.
Canberra Project	means the development of the Canberra Land to expand Newlands Park and includes the closure and landscaping of southern portion of Canberra Ave adjoining Newlands Park. It will comprise the Canberra Scope of Works and Additional Canberra Works (where applicable).
Canberra Scope of Works	means the scope of works set out in Appendix B of the Development Contributions Plan on page 5 of attachment 1 of the report prepared by Mitchell Brandtman dated 19 March 2021 under the heading “Newlands Park Expansion” together with other allowances for design and contingency as the Development Contributions Plan provides.
Canberra Sunset Date	means 12 months from the date that a Construction Certificate is issued for Stage 1.
Canberra Works Amount	has the meaning ascribed in clause 7.2(c).
Canberra Works	means all the works required to complete the Canberra Project.
Certificate of Practical Completion	means the certificate in writing confirming that the Works under VPA or any part of them have reached Practical Completion.
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 6.4 of the Act, but excludes any construction certificate issued for early works.
CPI	means the All Groups Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.
Development	means the proposed development of the Land.
Development Application	has the meaning given to it in the Act lodged with the Consent Authority.
Development Approval	has the meaning ascribed in the Act.
Development Consent	means the consent (if any) 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 4.55 Modification.
Development Contributions Plan	means the St Leonards South Precinct Section 7.11 development contributions plan dated March 2021 as in force and applicable to the Land providing for the payment of Development Contributions to the Council under s.7.11 of the Act in respect of the residential development of the Land having regard for Part 7 of the LCLEP 2009.
Development Control Plan	means the Lane Cove Development Control Plan adopted on the 22 February 2010 and amended on 22 October 2020 and referred to in Part 7 of the LCLEP 2009, an extract of which as applicable to locality 8 is annexed hereto as the Annexure marked with the Letter “B”.
Holdsworth Land	means the land owned by Council the land owned by Council being the approximate area highlighted in yellow and labelled “Holdsworth Ave Pocket Park” in Annexure E . The boundaries, extent and location of the Holdsworth Land have not been surveyed and therefore are indicative only.
Holdsworth Project	means the development of Holdsworth Land into a pocket park. It will comprise the Holdsworth Scope of Works and Additional Holdsworth Works (where applicable).
Holdsworth Scope of Works	means the scope of works set out in Appendix B of the Development Contributions Plan on page 4 of attachment 1 of the report prepared by Mitchell Brandtman dated 19 March 2021 under the heading “Pocket Park 2 – Holdsworth Avenue” together with other allowances for design and

	contingency as the Development Contributions Plan provides.
Holdsworth Sunset Date	means 15 months from the date that a Construction Certificate is issued for Stage 1.
Holdsworth Works	means all the works required to complete the Holdsworth Project.
Holdsworth Works Amount	has the meaning ascribed in clause 7.2(c).
Map	means the document attached as Annexure C .
Ministerial Direction	means the document attached as Annexure D .
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.
IPART	means the Independent Pricing and Regulatory Tribunal being the body responsible for approving the Development Contributions Plan.
Land	means the land comprising the folio identifiers listed in Part A of Schedule 3 .
Land Owner	means the owner of the Land.
Law	means: (a) the common law including principles of equity, and (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority, that presently apply or as they may apply in the future.
LCLEP	means the <i>Lane Cove Local Environmental Plan 2009</i> .
Lot	means a lot in a registered deposited plan that forms part of the Land and Council's Land.
Locality 8	means Locality 8 referred to in the Development Control Plan.

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 Land Owner to the Council which shall be calculated in accordance with the formula specified in Item 1(a) of Column 1 of Schedule 4 as applicable to the Development in an Area .
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.
Practical Completion	means in relation to the Holdsworth Works and Canberra Works, the point of time at which the Works under VPA 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.
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 Date	means the date on which a Strata Plan is registered for Stage 1.
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 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	means the part of the Development to be constructed on the portion of the Land identified on the Map as Areas 9, 10 and 11.
Stage 2	means the part of the Development to be constructed on the portion of the Land identified on the Map as Areas 7 and 8.
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 under VPA 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 subject only to adjustments in accordance with CPI under clause 6.2 and under clauses 9.4 (Canberra Works) and 8.4 (Holdsworth Works).
Transferee	has the meaning given to it under clause 20.2(a) .
Transfer Lands	Means any land (including a stratum lot) that is to be dedicated to Council where specified in Column 1 of clause 1 of Schedule 5 .
Quantity Surveyor	means an independent quantity surveyor appointed by the Land Owner.
Works under VPA	means the Holdsworth Works and the Canberra Works as the context applies.

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

If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Land Owner 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.

- (a) 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 Development by a third-party results in it being rendered invalid or unenforceable, then the Land Owner 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)(iii)(a) of the Act to take this Agreement into consideration.

5 Condition Precedent

Subject to **clause 4(c)**, the obligations and covenants of the Land Owner under this Agreement are conditional on the grant of Development Consent for the Development.

6 Development Contribution to be made under this Agreement

6.1 Provision of Development Contribution

Subject to this Agreement

- (a) the Land Owner must carry-out and deliver the Works under VPA in accordance with this Agreement; and
- (b) nothing in this Agreement precludes the Land Owner from electing to make a Monetary Contribution earlier than it is required to do so.

6.2 Indexation

- (a) The Adjusted S1 Contribution and Adjusted S2 Contribution shall be indexed in accordance with any movement in the CPI calculated in the manner specified in **Item 2 of Column 1 of Schedule 4 (CPI)** .

- (b) The CPI on the Adjusted S1 Contribution and Adjusted S2 Contribution shall be calculated from and including the date this Agreement is signed up until and including the date that payment is made.
- (c) The CPI on the Adjusted S1 Contribution and Adjusted S2 Contribution shall compound annually in arrears.

7 Monetary Contribution

7.1 S1 Development Contribution & S2 Development Contribution

- (a) In consideration of the Council granting to the Land Owner a Development Consent, the Land Owner agrees to pay Council a monetary contribution comprised of the Adjusted S1 Contribution and Adjusted S2 Contribution.
- (b) Subject to subclause 7.1(c), the monetary contributions will be payable in accordance with the Ministerial Direction as follows:
 - (i) Adjusted S1 Contribution shall be within 7 business days of an Occupation Certificate being issued for Stage 1; and
 - (ii) Adjusted S2 Contribution shall be payable within 7 business days of an Occupation Certificate being issued for Stage 2.
- (c) If the Ministerial Direction is revoked or amended such that monetary contributions would otherwise be payable at an earlier point in time to that specified in clause 7.1(b), the payments will become payable within 60 days of the amended / revoked Ministerial Direction but in any event no later than prescribed in clause 7.1(b)(i) and (ii).

7.2 Calculation of Adjusted S1 Contribution Amount

- (a) **Adjusted S1 Contribution** shall be calculated in accordance with the following formula:

$\text{Adjusted S1 Contribution} = \text{S1 Development Contribution} - (\text{Holdsworth Works Amount} + \text{S1 Existing Dwelling Contribution})$
--

where,

- **S1 Development Contribution** means the sum calculated in accordance with the formula specified in Item 1(a) of Column 1 of Schedule 4 based on the number of R1, R2 and R3 dwellings which are to be constructed as part of Stage 1;
 - **Holdsworth Works Amount** means \$718,377 except if the Land Owner elects under clause 8.7 to not carry out the works in which event this amount will be NIL;
 - **S1 Existing Dwelling Contribution** means the figure calculated in accordance with the formula specified in Item 1(a) of Column 1 of Schedule 4 based on 13 x R3 dwellings.
- (b) If the Adjusted S1 Contribution is negative, the amount by which the Adjusted S1 Contribution is negative will be deducted from the Adjusted S2 Contribution.

- (c) The Adjusted S1 Contribution may be further reduced in accordance with clause **8.4(h)(i)** and/or **9.4(h)(i)**.

7.3 Calculation of Adjusted S2 Contribution

- (a) **Adjusted S2 Contribution** shall be calculated in accordance with the following formula

$\text{Adjusted S2 Contribution} = \text{S2 Development Contribution} - (\text{Canberra Works Amount} + \text{S2 Existing Dwelling Contribution})$
--

where,

- **S2 Development Contribution** means a portion of the Monetary Contribution which shall be calculated in accordance with the formula specified in **Item 1(a)** of **Column 1** of **Schedule 4** as applicable to the Development in an Area based on the number of R1, R2 and R3 dwellings which are to be constructed as part of Stage 2;
- **Canberra Works Amount** means \$1,795,619 except if the Land Owner elects under clause 9.7 to not carry out these works in which event this amount will be NIL; and

S2 Existing Dwelling Contribution means the figure calculated in accordance with the formula specified in **Item 1(a)** of **Column 1** of **Schedule 4** based on 7 x R3 dwellings.

- (b) The Adjusted S2 Contribution may be further reduced in accordance with clause **8.4(h)(i)** and/or **9.4(h)(i)**.

7.4 Monetary Contribution figures in Schedule 4

The parties acknowledge that the figures in Schedule 4 are indicative only as at the date of signing. The actual figures that will apply to Schedule 4 will be the figures specified in the Development Contributions Plan for R1, R2 and R3 dwellings as at the date of payment subject only to adjustments for CPI in accordance with **clause 6.2** and approvals by IPART in accordance with **clause 41**.

8 Holdsworth Works

8.1 Definitions

The Land Owner agrees, at its own cost, to complete the Holdsworth Scope of Works on behalf of Council in accordance with this clause.

8.2 Development Approval for Holdsworth Works

- (a) The Council must, at its own cost, obtain a Development Approval (if applicable) to complete the Holdsworth Project (**DA for Holdsworth**) on or prior to the date that is 15 months from the date that a Construction Certificate is issued for Stage 1 (**Holdsworth Sunset Date**).
- (b) If Council is unable to obtain DA for the Holdsworth Project by the Holdsworth Sunset Date, the Land Owner may, at its election, serve on Council notice in writing advising that it will no longer be completing the Holdsworth Scope of Works.

- (c) Upon service of the notice under subclause (b), the Land Owner shall be released from all obligations under this Agreement to deliver the Holdsworth Works.

8.3 Timing for Holdsworth Works

- (a) The Land Owner must complete the Holdsworth Scope of Works within 30 months of a Construction Certificate being issued for Stage 2 (**Holdsworth Works Sunset Date**).
- (b) If the Land Owner fails to complete the Holdsworth Scope of Works by the Holdsworth Works Sunset Date, Council may step in and complete the Holdsworth Works whereupon **clause 10.2** shall apply.

8.4 Additional Holdsworth Works

- (a) The Land Owner shall pay for all costs in carrying out the Holdsworth Scope of Works.
- (b) If, in order to complete the Holdsworth Project, works are required which:
 - (i) are not included in the scope of works specified in the Holdsworth Scope of Works; and / or
 - (ii) exceed the quantity allowed for that work component specified in the Holdsworth Scope of Works; and / or
 - (iii) are the result of a latent condition,

(Additional Holdsworth Works)

then the following applies:

- (c) Subject to **clause 8.4(d)**, the Land Owner will provide an estimate of the cost to complete the Additional Holdsworth Works 14 days prior to commencing the works (**Estimate**).
- (d) The Land Owner is not required to provide 14 days' notice if the Additional Holdsworth Works are the result of a latent condition in which case the Land owner may proceed with the works for the latent condition and provide Council with an Estimate at the earliest practicable time.
- (e) The Estimate must detail the quantities and cost of the Additional Holdsworth Works and include any details of scheduling or status changes in so far as they relate to this Agreement as a result of the works.
- (f) The Estimate must be accompanied by a Quantity Surveyor's review confirming that the quantities and rates specified in the Estimate are reasonable.
- (g) Council shall be responsible for the costs associated with the Additional Holdsworth Works (**Additional Holdsworth Works Cost**) subject to any offset in accordance with **clause 8.5(c)**.
- (h) The Land Owner shall complete the Additional Holdsworth Works on behalf of Council and the following shall apply:
 - (i) if the Land Owner has not yet paid the Adjusted S1 Contribution and/or the Adjusted S2 Contribution, the Additional Holdsworth Works Costs shall be deducted from either one of these payments;

- (ii) if the Land Owner has paid both the Adjusted S1 Contribution and the Adjusted S2 Contribution, the Land Owner shall be entitled to recover the Additional Holdsworth Works Costs from Council.

8.5 Council may request Alterations to Holdsworth Scope of Works

- (a) Council may by notice in writing to the Land Owner request additions and/ or reductions to the Holdsworth Scope of Works at any time prior the specified work having commenced (**Request**).
- (b) If Council makes a Request, the Land Owner will provide Council with an indicative cost change (which may be either an increase or a decrease) to the Holdsworth Works Amount (**Cost Change**). The Cost Change must be accompanied by a Quantity Surveyor's review confirming that the amount specified in the Cost Change is reasonable and include details of any scheduling or status changes in so far as they relate to this Agreement as a result of the works.
- (c) In the event that the Holdsworth Works Amount decreases as a result of the Cost Change, Council shall be entitled to offset this amount against any Additional Holdsworth Works Cost.
- (d) In the event that the Holdsworth Works Amount increases as a result of the Cost Change, Council shall be responsible for the cost of the increase.
- (e) The Land Owner shall be entitled to a reasonable extension of time to complete the works if required.

8.6 Council's requests after commencement of Holdsworth Scope of Works

Council may by notice in writing to the Land Owner request additions and/ or reductions to the Holdsworth Scope of Works after the works for that particular component of work have commenced in which event the Land Owner will by notice in writing advise Council:

- (a) that the change can be accommodated and implemented in which event the procedures set out in **clauses 8.5(b) to 8.5(d)** will apply; or
- (b) that the change cannot be accommodated due to the scheduling/status of the work or any other reason in which event the Land Owner shall not be required to implement the change.

8.7 Election to not complete Holdsworth Works

The Land Owner may, at any time up until the date that a Construction Certificate is issued for Stage 1, serve on Council notice in writing advising that it will not be completing the Holdsworth Works in which event the Land Owner shall be released from its obligations under this Agreement to complete the Holdsworth Works. If this clause is triggered, the amount for the Holdsworth Works specified in **clause 7.2** shall be NIL.

8.8 Variations

The Holdsworth Scope of Works that are required to be carried out by the Land Owner under this Agreement may be varied by agreement in writing between the parties, acting reasonably, without the necessity for an amendment to this

Agreement and the parties agree to act promptly and in good faith to consult in relation to changes in the Holdsworth Scope of Works.

9 Canberra Works

9.1 Definitions

The Land Owner agrees, at its own cost, to complete the Canberra Scope of Works on behalf of Council in accordance with this clause.

9.2 Development Approval for Canberra Works

- (a) The Council must, at its own cost, obtain a Development Approval (if applicable) to complete the Canberra Project (**DA for Canberra**) on or prior to the date that is 12 months from the date that a Construction Certificate is issued for Stage 1 (**Canberra Sunset Date**).
- (b) If Council is unable to obtain DA for the Canberra Project by the Canberra Sunset Date, the Land Owner may, at its election, serve on Council notice in writing advising that it will no longer be completing the Canberra Scope of Works.
- (c) Upon service of the notice under subclause (b), the Land Owner shall be released from all obligations under this Agreement to deliver the Canberra Works.

9.3 Timing for Canberra Works

- (a) The Land Owner must complete the Canberra Scope of Works within 30 months of a Construction Certificate being issued for Stage 2 (**Canberra Works Sunset Date**).
- (b) If the Land Owner fails to complete the Canberra Scope of Works by the Canberra Works Sunset Date, Council may step in and complete the Canberra Works whereupon **clause 10.2** shall apply.

9.4 Additional Canberra Works

- (a) The Land Owner shall pay for all costs in carrying out the Canberra Scope of Works.
- (b) If, in order to complete the Canberra Project, works are required which:
 - (i) are not included in the scope of works specified in the Canberra Scope of Works; and / or
 - (ii) exceed the quantity allowed for that work component specified in the Canberra Scope of Works; and / or
 - (iii) is the result of a latent condition,**(Additional Canberra Works)**
then the following applies:
 - (c) Subject to **clause 9.4(d)**, the Land Owner will provide an estimate of the cost to complete the Additional Canberra Works 14 days prior to commencing the works (**Estimate**).

- (d) The Land Owner is not required to provide 14 days' notice if the Additional Canberra Works are the result of a latent condition in which case the Land owner may proceed with the works for the latent condition and provide Council with an Estimate at the earliest practicable time.
- (e) The Estimate must detail the quantities and cost of the Additional Canberra Works and include any details of scheduling or status changes in so far as they relate to this Agreement as a result of the works.
- (f) The Estimate must be accompanied by a Quantity Surveyor's review confirming that the quantities and rates specified in the Estimate are reasonable.
- (g) Council shall be responsible for the costs associated with the Additional Canberra Works (**Additional Canberra Works Cost**) subject to any offset in accordance with **clause 9.5(c)**.
- (h) The Land Owner shall complete the Additional Canberra Works on behalf of Council and the following shall apply:
 - (i) if the Land Owner has not yet paid the Adjusted S1 Contribution and/or the Adjusted S2 Contribution, the Additional Canberra Works Costs shall be deducted from either one of these payments;
 - (ii) if the Land Owner has paid both the Adjusted S1 Contribution and the Adjusted S2 Contribution, the Land Owner shall be entitled to recover the Additional Canberra Works Costs from Council.

9.5 Council may request Alterations to Canberra Scope of Works

- (a) Council may by notice in writing to the Land Owner request additions and/ or reductions to the Canberra Scope of Works at any time prior the specified work having commenced (**Request**).
- (b) If Council makes a Request, the Land Owner will provide Council with an indicative cost change (which may be either an increase or a decrease) to the Canberra Works Amount (**Cost Change**). The Cost Change must be accompanied by a Quantity Surveyor's review confirming that the amount specified in the Cost Change is reasonable and include details of any scheduling or status changes in so far as they relate to this Agreement as a result of the works.
- (c) In the event that the Canberra Works Amount decreases as a result of the Cost Change, Council shall be entitled to offset this amount against any Additional Canberra Works Cost.
- (d) In the event that the Canberra Works Amount increases as a result of the Cost Change, Council shall be responsible for the cost of the increase.
- (e) The Land Owner shall be entitled to a reasonable extension of time to complete the works if required.

9.6 Council's requests after commencement of Canberra Scope of Works

Council may by notice in writing to the Land Owner request additions and/ or reductions to the Canberra Scope of Works after the works for that particular

component of work have commenced in which event the Land Owner will by notice in writing advise Council:

- (a) that the change can be accommodated and implemented in which event the procedures set out in **clauses 9.5(b) to 9.5(d)** will apply; or
- (b) that the change cannot be accommodated due to the scheduling/status of the work or any other reason in which event the Land Owner shall not be required to implement the change.

9.7 Election to not complete Canberra Works

The Land Owner may, at any time up until the date that a Construction Certificate is issued for Stage 2, serve on Council notice in writing advising that it will not be completing the Canberra Works in which event the Land Owner shall be released from its obligations under this Agreement to complete the Canberra Works. If this clause is triggered, the amount for the Canberra Works specified in **clause 7.2(c)** shall be NIL.

9.8 Variations

The Canberra Scope of Works that are required to be carried out by the Land Owner under this Agreement may be varied by agreement in writing between the parties, acting reasonably, without the necessity for an amendment to this Agreement and the parties agree to act promptly and in good faith to consult in relation to changes in the Canberra Scope of Works.

10 Construction of Works under VPA

The Land Owner must carry out the Works under VPA in accordance with this Agreement (unless the Land Owner has advised the Council of its intention not to undertake the relevant works as specified in **clauses 8.5 and 9.5**), and any relevant Approvals.

10.1 Delivery of Works under VPA

- (a) The Land Owner will give Council 10 Business Days' notice of the date upon which the Land Owner anticipates that Practical Completion comprising a Work under VPA under **Schedule 5** will be reached.
- (b) When the Land Owner is of the reasonable opinion that Practical Completion has been reached, the Land Owner 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 (acting reasonably), it must provide the Land Owner with notice in writing, within 10 Business Days after the date nominated by the Land Owner 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 Land Owner is required to provide additional information or address any matter under **clause 10.1(c)**, the Land Owner 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 10.1(b)** of this Agreement for written certification that the Works under VPA or relevant part has reached Practical Completion.

- (e) Practical Completion will be achieved in relation to the Works under VPA 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 16.6** of the Agreement and Council must promptly issue a Certificate of Practical Completion consistent with the determination.

10.2 Failure to deliver Works under VPA

- (a) This **clause 10.2** applies only if the Council has first complied with **clause 15** of this Agreement.
- (b) Subject to **clause 10.3**, if the Land Owner fails to complete the Canberra Works by the Canberra Works Sunset Date or the Holdsworth Works by the Holdsworth Works Sunset Date, the Council may elect to complete that item or such part or parts as are outstanding as at those dates or otherwise as agreed, or appoint a contractor to carry out these works on the Council's behalf.
- (c) If **clause 10.2(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 under VPA; and
 - (ii) the costs which the Council incurs in completing the relevant Works under VPA will be a debt due and payable by the Land Owner 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 or applied as an additional amount due as the Monetary Contribution. The maximum amount recoverable by Council from the Land Owner will be the Canberra Works Amount in respect of the Canberra Works and the Holdsworth Works Amount in respect of the Holdsworth Works.

10.3 Deferral of Work

- (a) Notwithstanding any other provision of this Agreement, if the Land Owner forms the view at any time, that it is unable to complete a Works by the Canberra Works Sunset Date and/or the Holdsworth Sunset Date (as the case may be) , then:
 - (i) the Land Owner must provide written notice to the Council to that effect and, if only part of the Works under VPA is to be made, the notice must identify the relevant part of the Works under VPA that is proposed to be deferred;
 - (ii) the Land Owner must provide to Council, for Council's approval (acting reasonably), a revised completion date for the relevant Works under VPA (or part of the Works under VPA);
 - (iii) Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Land

Owner's revised completion date for the Works under VPA (or part of the Works under VPA), the Council and Land Owner must negotiate in good faith and agree upon a revised completion date for the Works under VPA (or part of the Works under VPA); and

- (iv) the time for completion of the Works under VPA (or part of the Works under VPA) under this Agreement will be taken to be the revised completion date approved by the Council or as agreed between the parties under **clause 10.3(a)(iii)** and nothing prevents the issuing of a Subdivision Certificate or Occupation Certificate that may be issued before that time.
- (b) If the Land Owner complies with **clause 10.3(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 under VPA by the time Canberra Works Sunset Date and/or the Holdsworth Sunset Date (as the case may be);
 - (ii) if applicable, any relevant Subdivision Certificate or Occupation Certificate may be issued with the consent of the Council if the time for compliance for the completion of a Work under VPA is required prior to the issue of a Subdivision Certificate or Occupation Certificate in Canberra Works Sunset Date and/or the Holdsworth Sunset Date (as the case may be) notwithstanding that the requirement has not been satisfied; and
 - (iii) in the event that only part of the Work under VPA has been completed and the balance remains to be completed as agreed with Council in **clause 10.3(a)**, then the Land Owner will be taken to have completed that part of the Work for the purposes of this Agreement.

10.4 Council's obligations

Subject to **clause 27**, Council must do all things reasonably necessary to obtain all approvals and give all consents to enable the Land Owner to carry out the Works under the VPA including by Council authorising the Land Owner 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).

11 Application of the Development Contributions

Not Applicable

12 Access to land by Land Owner

The Council authorises the Land Owner, its agents, contractors, employees, advisors and other persons nominated by the Land Owner:

- (a) to, at any time, enter, occupy and use any land, that is owned or controlled by the Council (including the Holdsworth Land and Canberra Land) for the purpose of carrying out of the Works under VPA (**Access Rights**); 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 Land Owner it is necessary to do so having regard to the nature of the activities being carried out on the land.
- (c) The Land Owner must ensure when exercising its Access Rights that all its contractors:
 - (i) hold the appropriate and usual insurances and in a sum that a contractor in the same sector of industry would usually hold; and
 - (ii) are qualified to complete the works they have been engaged to complete.
- (d) The Land Owner must also ensure, while exercising its Access Rights, that it maintains the appropriate and usual insurances typical for a developer of land including public liability insurance for a sum not less than \$20 million.
- (e) The Land Owner indemnifies Council for any claim against Council in relation to any matter arising as a result of the Land Owner's Access Rights except:
 - (i) in so far as the claim relates to Council's negligence, act of omission or breach of this Agreement; and/ or
 - (ii) in so far the claim relates to noise and disturbance caused by the Land Owner carrying out the Works under VPA.

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

The Monetary Contribution payable by the Land Owner under this Agreement is made in substitution of the payments which the Land Owner would otherwise be liable to pay under the Development Contributions Plan. For the avoidance of doubt, the Monetary Contribution payable under this Agreement shall constitute the payments the Land Owner would otherwise be liable to pay under the Development Contributions Plan and the not in addition.

14 Registration of this Agreement

- (a) The Land Owner 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 Land Owner 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 deed of novation 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;
 - (vii) any plan of subdivision;
 - (viii) any other request made the Land Owner which will not have an adverse effect on Council's interest under this Agreement.
- (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 plan of subdivision;
 - (ii) any Strata Plan consistent with the Development Consent;
 - (iii) 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

- (iv) any other dealing deemed necessary by the Land Owner or the Land Owner, acting reasonably.
- (v) any other request made the Land Owner which will not have an adverse effect on Council's interest under this Agreement.
- (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 Land Owner 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 Land Owner 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 Land Owner to provide the Development Contribution.
 - (i) The Council must promptly do all things required by the Land Owner to release and discharge this Agreement upon the earlier of: the date on which the Land Owner has complied with all its obligations under this Agreement: and
 - (ii) subject to the Land Owner complying with the provisions of clauses 14.2 and 14.3 by the Registration Date.

14.2 Holdsworth Deposit

- (a) If the Holdsworth Works have not been completed as at the Registration Date, the Land Owner must pay a cash deposit into Council's solicitor's trust account in a sum equal to the greater of:
 - (i) Holdsworth Works Cost less the amount paid by the Land Owner to the builder up until the Registration Date to complete Holdsworth Works; and
 - (ii) 15% of the Holdsworth Works Cost,**(Holdsworth Deposit).**
- (b) If Council exercises its step-in rights pursuant to **clause 10.2**, Council may draw down on the Holdsworth Deposit to fund construction costs for the Holdsworth Works.
- (c) The Land Owner shall be entitled to draw down on the Holdsworth Deposit as and when required in order to fund the costs to complete the Holdsworth Works except if a draw down would result in the Holdsworth Deposit being a sum equivalent to or less than 15% of the Holdsworth Works Cost **(Balance of Holdsworth Deposit)**.
- (d) Council shall be entitled to retain the Balance of Holdsworth Deposit until Practical Completion of the Holdsworth Works is achieved.
- (e) Council must refund to the Land Owner the Balance of the Holdsworth Deposit within the latter of 30 business days of Practical Completion of the Holdsworth Works and the date that all minor defects are rectified to the Council's reasonable satisfaction.

14.3 Canberra Deposit

- (a) If the Canberra Works have not been completed as at the Registration Date, the Land Owner must pay a cash deposit into Council's solicitor's trust account in a sum equal to the greater of:
 - (i) Canberra Works Cost less the amount paid by the Land Owner to the builder up until the Registration Date to complete Canberra Works; and
 - (ii) 15% of the Canberra Works Cost,
(Canberra Deposit).
- (b) If Council exercises its step-in rights pursuant to **clause 10.2**, Council may draw down on the Canberra Deposit to fund construction costs for the Canberra Works.
- (c) The Land Owner shall be entitled to draw down on the Canberra Deposit as and when required in order to fund the costs to complete the Canberra Works except if a draw down would result in the Canberra Deposit being a sum equivalent to or less than 15% of the Canberra Works Cost (**Balance of Canberra Deposit**).
- (d) Council shall be entitled to retain the Balance of Canberra Deposit until Practical Completion of the Canberra Works is achieved.
- (e) Council must refund to the Land Owner the Balance of the Canberra Deposit within the latter of 30business days of Practical Completion of the Canberra Works and the date that all minor defects are rectified to the Council's reasonable satisfaction.

15 Default

15.1 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.

15.2 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.

15.3 Suspension of time-dispute

If a Party disputes the Default Notice it may refer that dispute to dispute resolution under **clause16** of this Agreement.

16 Dispute Resolution

16.1 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.

16.2 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).

16.3 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 16.2**), 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.

16.4 Parties may not constrain

If:

- (a) at least one meeting has been held in accordance with **clause 16.3**;
- (b) the Parties have been unable to reach an outcome identified in **clauses 16.3(b)(i) to 16.3(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 16.3**,

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.

16.5 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 16.6**.

16.6 Expert determination

- (a) A dispute to be determined in accordance with **clause 16.5** 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 16.5**, 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 16.5**, 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 16.6** setting out the terms of the expert's determination and the fees payable to the expert.

16.7 Directions to expert

- (a) In reaching a determination in respect of a dispute under **clause 16.5**, 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.

17 Security and Enforcement

17.1 Land Owner to provide security

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

- (a) **clause 14** 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 the Holdsworth Deposit and Canberra Deposit if required to be provided.

17.2 Enforcement by any party

- (a) Subject to firstly complying with **clauses 15** and **16** 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.

18 Notices

18.1 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

Land Owner:

Attention: The Directors
Address: Level 21, 201 Elizabeth Street Sydney NSW 2000
Fax: Not applicable
Email: Sydneyma@topspring.com.au
Samsirdah@topspring.com.au
CC
Leon.Sakaris@sparke.com.au
Alinta.Briggs@sparke.com.au

18.2 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.

18.3 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.

18.4 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.

19 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.

20 Assignment and dealings

20.1 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 20** is of no effect.

20.2 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 20.2(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 Land Owner is released from its obligations under this Agreement.

21 GST

21.1 Construction

In this **clause 21** 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.

21.2 Intention of the Parties

Without limiting the operation of this **clause 21**, 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 21.6** no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 21.4** below) on account of GST.

21.3 Consideration GST exclusive

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

21.4 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 21.4(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 21.4(b)** or **21.4(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 21.4(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 21.4(a)**:
 - (i) subject to **clause 21.4(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 21.4(b)** or **21.4(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 21**, 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 21.5**.

- (e) The recipient will pay the GST Amount referred to in this **clause 21.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

21.5 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 21.4**. 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.

21.6 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 21.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

21.7 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 21.4** 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.

21.8 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 21.4** in respect of that reimbursement.

21.9 No Merger

This **clause 21** 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.

22 Costs

The Land Owner must pay Council its reasonable legal and other costs and expenses of negotiating, preparing, executing, stamping and registering this Agreement up to a maximum of \$20,000 plus GST. 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.

23 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.

24 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.

25 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.

26 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.

27 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.

28 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.

29 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.

30 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.

31 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.

32 Relationship of parties

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

33 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.

34 Counterparts

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

35 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.

36 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.

37 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.

38 Explanatory Note

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

39 Modification

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

40 Requirement to provide works specified in Development Control Plan for Locality 8

The Land Owner acknowledges and agrees that it is required to provide in accordance with the Development Control Plan as applicable to Locality 8, a 6 metre wide pedestrian link through the Land to connect Holdsworth Avenue and Canberra Avenue for Area 11. This will be structured in the form of an easement for right of footway in favour of Council.

41 Modification of Development Contributions Plan

The Parties acknowledge and agree that any Monetary Contribution calculated under this Agreement and the value apportioned to any Works under VPA in Schedule 5 must be varied as a result of any variation in the applicable contribution rates specified in the Development Contributions Plan once adopted and approved by IPART.

If there is a variation in rates specified in the Development Contributions Plan as a result of an approval granted by IPART and the Adjusted S1 Contributions and/ or the Adjusted S2 Contribution has or have already been paid, the parties shall make the necessary adjustment on the basis rates specified in Column 1 of Schedule 4 shall be replaced with the applicable contribution rates specified in the Development Contributions Plan after the IPART approval.

Schedule 1

Section 7.4 Requirements

Provision of the Act	This Agreement
Under section 7.4(1), the Land Owner has:	
(a) sought a change to an environmental planning instrument.	☐ Yes ☒ No
(b) made, or proposes to make, a development application.	☒ Yes ☐ No
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	☒ Yes ☐ 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 Monetary Contribution required by this Agreement - (Section 7.4(3)(c))	See clause 7.
Applicability of Section 7.11 of the Act - (Section 7.4 (3)(d))	The application of section 7.11 of the Act is 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 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 excluded by this Agreement.
Benefits to be taken into account (Section 7.4 (3)(e))	The benefits under the Agreement are 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 16.
Enforcement of this Agreement - (Section 7.4 (3)(g))	See clause 17.
Registration of this Agreement (Section 7.6)	See clause 14.
No obligation to grant consent or exercise functions - (Section 7.4 (9))	See clause 14.

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)	No.
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)	No.
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 South Precinct Planning Agreement,

Clause 25E

Environmental Planning and Assessment Regulations 2000

Explanatory Note for Draft Voluntary Planning Agreement

21-41 Canberra Avenue & 18-32 Holdsworth Avenue
St Leonards NSW

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 Silver Pond Investments Pty Ltd ATF Silver Pond Unit Trust ABN 50 755 014 415

Description of subject land

The various parcels of land as set out in Schedule 3 of the Planning Agreement known as Canberra Avenue & Holdsworth Avenue, 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(s).

Description of the Development to which the Planning Agreement applies

1. The “**Development**” on the Land comprises a Multi-Story Residential Flat Building that is compliant with the Lane Cove LEP 2010 and Lane Cove Development Control Plan, Part C – Residential Localities - Locality 8. The Development utilises, Part 7 Additional local provisions—St Leonards South Area under Lane Cove LEP 2010. No amendments to these development standards are provided by this agreement.

Summary of Objectives, Nature and Effect of the Planning Agreement

Subject to the granting of development consent for the Development, the Planning Agreement provides for:-

1. the payment of monetary contributions equivalent to the section 7.11 Development Contributions proposed for the St Leonards South Precinct in the Draft Lane Cove Council, St Leonards South Contributions Plan, pending its approval by the Independent Pricing and Regulatory Tribunal; and
2. the construction and dedication to Council of Infrastructure supporting the St Leonards South Precinct as noted in Schedule 5 of the VPA for which a 7.11 Contribution offset is available .

Note: The Development on this site will be undertaken in compliance with Part 7 of Lane Cove Local Environmental Plan 2010. This will require specific additional infrastructure to be provided by the Development as outlined in the Lane Cove Development Control Plan, Part C, Residential Localities, Locality 8, Table 7.1 – Requirements to be entitled to Incentives. No offset for the payment of monetary contributions is available to the Land Owner for such infrastructure.

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, and*
- (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 Lane Cove LEP 2010 and Lane Cove Development Control Plan, Part C – Residential Localities - Locality 8.

The Planning Agreement does not provide for any variation to the development standards outlined in Lane Cove LEP 2010 and Lane Cove Development Control Plan, Part C – Residential Localities - Locality 8, and therefore will have no additional impact on the public.

(b) How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by making monetary contributions (equivalent to s7.11 Land Owner Contributions) and where applicable provide Infrastructure to support the future population of the St Leonards South Precinct, as determined by Council in the St Leonards South Masterplan. The making of monetary contributions will also provide for infrastructure and facilities appropriate to the current and future needs of the wider community.

(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 Land Owner to Council by way of registration on title, and requirements for performance before occupation of the new buildings proposed in the Development.

(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 Land Owner in perpetuity.

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

This agreement conforms with the Capital Works contemplated in Lane Cove Development Control Plan, Part C – Residential Localities - Locality 8 and the Draft St Leonards South Precinct Development Contribution Plan Schedule of Works

(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 Land Owner obtaining development consent for the Development, the Voluntary Planning Agreement requires that all contributions must be provided to Council in accordance with clauses 7.

Schedule 3

Land

Address	Lot	DP
21 Canberra Avenue, St Leonards	15	7259
23 Canberra Avenue, St Leonards	2	105732
25 Canberra Avenue, St Leonards	17	7259
27 Canberra Avenue, St Leonards	B	345135
27A Canberra Avenue, St Leonards	A	345135
29 Canberra Avenue, St Leonards	20	7259
31 Canberra Avenue, St Leonards	21	7259
33 Canberra Avenue, St Leonards	22	7259
35 Canberra Avenue, St Leonards	23	7259
37 Canberra Avenue, St Leonards	24	7259
39 Canberra Avenue, St Leonards	B	411375
41 Canberra Avenue, St Leonards	A	411375
18 Holdsworth Avenue, St Leonards	34	7259
20 Holdsworth Avenue, St Leonards	33	7259
22 Holdsworth Avenue, St Leonards	32	7259
24 Holdsworth Avenue, St Leonards	31	7259
26 Holdsworth Avenue, St Leonards	30	7259
28 Holdsworth Avenue, St Leonards	29	7259
30 Holdsworth Avenue, St Leonards	28	7259
32 Holdsworth Avenue, St Leonards	27	7259

Schedule 4 Development Contribution Schedule

The Land Owner undertakes to provide the following Monetary Contribution as set out and provided for in the Table below.

Column 1		Column 3
Development Contribution		Timing
Total Development Contribution		
Item 1	<u>Monetary Contribution</u>	Time for payment
(a).	The Land Owner must make a Monetary Contribution to Lane Cove Council estimated in the amount of for Stage 1 \$6,565,855 and for Stage 2 \$3,815,637 for the purposes of the Local Infrastructure identified in the Development Contributions Plan comprising the following Amounts calculated in accordance with the Formula subject to the <u>Indexation</u> noted in Item 2 and <u>any variation in rates specified in the Development Contributions Plan once approved by IPART</u>. The rates specified in the Development Contributions Plan that shall apply to this VPA will be the rates which are applicable at the time of payment of the Monetary Contribution subject to any adjustment in accordance with clause 41. Contribution Amount per Studio or 1 bedroom Dwelling (1BRD): \$20,745 Contribution Amount per 2 bedroom Dwelling (2BRD): \$29,636 Contribution Amount per 3 or more bedroom Dwelling (3BRD): \$45,936 <u>Formula:</u> Calculated by multiplying the number of 1, 2 and 3 bedroom dwellings by the amounts specified above for 1BRD, 2BRD and 3BRD and as noted in	The Monetary Contribution is to be paid in accordance with clause 7.

Column 1		Column 3
Development Contribution		Timing
the Formula below: MC = (1BRD x R1) plus (2BR x R2) plus (3BR x R3) Where: 1BRD means the applicable contribution rate for a Studio or 1 Bedroom dwelling; 2BRD means the applicable contribution rate for a 2 Bedroom dwelling; 3BRD means the applicable contribution rate for a 3 Bedroom dwelling; R1 means the number of studio or 1 bedroom dwellings in the proposed Development for that Stage equivalent to for Stage 1 – 47 and for Stage 2 - 25 R2 means the number of 2 bedroom dwellings in the proposed Development for that Stage equivalent to for Stage 1 – 122 and for Stage 2 - 57 R3 means the number of 3 bedroom dwellings in the proposed Development for that Stage equivalent to for Stage 1 – 43 and for Stage 2 - 35 Note: If the rates set out above are varied under the Development Contributions Plan following assessment by IPART, then the contribution rates set out in the Development Contributions Plan are to be applied as amended in accordance with clause 7.4 of this Agreement.		

Indexation

Item 2. Indexation:

The Monetary Contribution must be indexed between the date of this Agreement and the date of payment in accordance with the following formula:

$$\frac{\$C_c \times CPI_p}{CPI_c}$$

Where:

\$C_c is the contribution amount shown in this Agreement expressed in dollars

CPI_p is the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Statistician at the time of the payment of the contribution

CPI_c is the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Statistician which applied at the time of the issue of this Agreement.

Note: The contribution payable will not be less than the contribution specified in this Agreement.

Works under VPA agreement

This condition does not need to be complied with to the extent specified in any planning agreement for Works under VPA entered into between the Land Owner and the Council where the Works under VPA as specified as an agreed value which is to be offset against any Monetary Contribution payable under this Agreement (as Indexed)

Schedule 5

Works under VPA Schedule

The Land Owner undertakes to provide the following Works under VPA for which an offset is to be applied against the payment of the Monetary Contribution in accordance with this Agreement.

Item	Column 1	Column 2	Column 3	Column 4
	Works under VPA Contribution	Council's Obligations	Timing	Target Works Value (Capped)
☒ Areas 7, 8, 9, 10 and 11				
☒	Canberra Scope of Works	See clause 9.2.	See clause 9.3.	\$1,795,619
☒	Holdsworth Scope of Works	See clause 8.2	See clause 8.3.	\$718,377

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

.....
Attorneys Signature

CRAIG ANTHONY WRIGHTSON

.....
Name of Witness (print)

.....
Name of Attorney (print)

Executed by **Silver Pond Investments**)
Pty Ltd ATF Silver Pond Unit Trust)
ABN 50 755 014 415 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 **Silver Pond Investments Pty Ltd ATF Silver Pond Unit Trust ABN 50 755 014 415 (Land Owner)**

Dated

[Date]

Lane Cove Council

Silver Pond Investments Pty Ltd ATF Silver Pond
Unit Trust ABN 50 755 014 415

[<<INSERT DETAILS OF New Developer>>]

Deed of Novation for Voluntary Planning Agreement

Contents

1	Definitions	1
2	Novation	2
2.1	Original Agreement	2
2.2	Reference in Original Agreement	2
2.3	Address for notices	2
3	Affirmation of the Original Agreement	2
4	Indemnities	2
5	Warranties and representations	3
5.1	Warranties	3
5.2	Survival of warranties	3
6	GST	3
7	Stamp duty and costs	3
8	Further acts	3
9	Amendment	4
10	Governing law and jurisdiction	4
11	Counterparts	4
12	General	4
12.1	Construction	4
12.2	Headings	5
	Execution	6

Date

Parties

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

Silver Pond Investments Pty Ltd ATF Silver Pond Unit Trust ABN 50 755 014 415 of Level 2, 201 Elizabeth Street, Sydney, New South Wales (**Original Land Owner**)

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

Background

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

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 Land Owner.
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 Land Owner is substituted for the Original Land Owner as a Party to the Original Agreement;
- (b) the New Land Owner will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Land Owner was a Party to the Original Agreement instead of the Original Land Owner; and
- (c) the Original Land Owner 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 Land Owner in the Original Agreement are to be construed as references to the New Land Owner.

[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 Land Owner under the Original Agreement to the following address:

New Land Owner:

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 Land Owner indemnifies the Original Land Owner on demand against all liabilities, claims, damages and loss which the Original Land Owner 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 Land Owner 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 Silver Pond Investments)
Pty Ltd ATF Silver Pond Unit Trust)
ABN 50 755 014 415 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 Land Owner] 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)

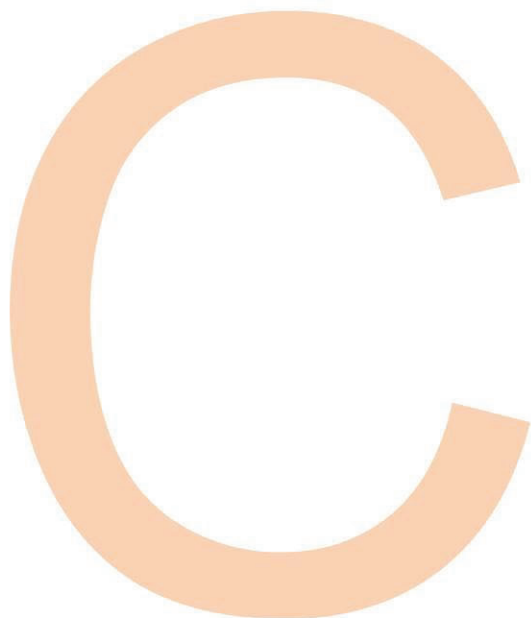
Annexure B – Extract of Development Control Plan – Locality 8 Requirements

This is **Annexure B** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **Silver Pond Investments Pty Ltd ATF Silver Pond Unit Trust ABN 50 755 014 415 (Land Owner)**

Dated

Part C

Residential Localities



SPECIAL RESIDENTIAL AREAS:

Locality 1	Burns Bay Rd
Locality 2	Finlayson St
Locality 3	Longueville Precinct
Locality 4	Mafeking Precinct
Locality 5	Greenwich Heritage Conservation Area
Locality 6	Mowbray Precinct
Locality 7	266 Longueville Road
Locality 8	St Leonards South Precinct

Locality 8 – St Leonards South Precinct

1 Introduction

This Part provides a framework to guide future development in the St Leonards South Transit-Oriented Development Precinct. It sets in place Urban Design Guidelines to facilitate the Vision for St Leonards South.

Relationship with other documents

This Development Control Plan Part must be read in conjunction with Clause 4.6 (8)(cb) and Part 7 of the *Lane Cove Local Environmental Plan* and the *St Leonards South Landscape Master Plan (LMP)*.

It supplements the Lane Cove Local Environmental Plan (LEP) by providing detailed development principles, controls and guidelines. This Development Control Plan (DCP) was brought into effect on 19 October 2020 to support planning incentives contained in the Lane Cove LEP.

In addition, SEPP No 65 – Design Quality of Residential Development, Apartment Design Guide (ADG) and other relevant State Policies shall be taken into account.

This section of the DCP must be read in conjunction with all other parts of the DCP. Site specific clauses in this section of this DCP (Locality 8 St Leonards South) prevail over general clauses elsewhere in the DCP, unless stated otherwise.

Land covered by this DCP – Locality 8

The DCP applies to the Area shown in Figure 1 which is located immediately south-west of the St Leonards Railway Station. It is bounded by Marshall Avenue, Canberra Avenue, Park Road and River Road.



Figure 1: St Leonards South DCP Area

2 Vision

The desired future character of the St Leonards South Precinct is for a liveable, walkable, connected, safe, Precinct which builds upon the transit and land use opportunities of St Leonards and Metro Stations and commercial centre.

3 Overall Objectives

The overall objectives are:

- 1 To create a highly liveable transit-orientated residential precinct that integrates with St Leonards Station and proposed over-rail public plaza that encourages community interaction, walking, cycling and use of public transport.
- 2 To ensure that all new development will achieve design excellence, as well as providing suitable transition and interfaces to adjoining zones and open space.
- 3 To provide a variety of housing (including affordable housing) that is sustainable, provides housing choice and that meet the needs of residents including access to community facilities.
- 4 To minimise traffic impacts within the precinct and to and from Pacific Highway and River Road.
- 5 To facilitate a new, accessible network for pedestrians, cyclists and families that integrate and connect to functional community infrastructure and open space.
- 6 To create an accessible, well-designed public open space network that provides a variety of recreation spaces (active and passive) and communal open space that is functional and shared by residents.
- 7 To create a Low Carbon Precinct that delivers sustainable and efficient buildings that provide energy, water and waste efficiency.

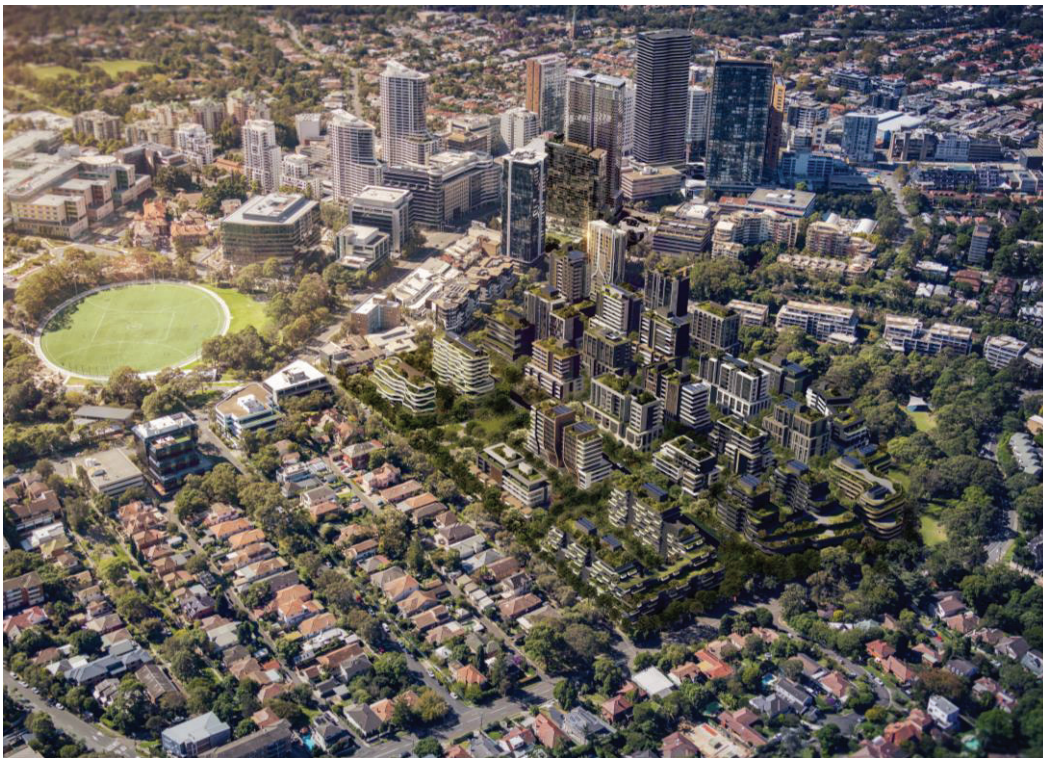


Figure 2: Vision

4 Structure Plan

The Structure Plan sets the broad framework for development within the St Leonards South Precinct in close proximity to the St Leonards Railway Station (the Station) and the St Leonards mixed-use/commercial centre.

The Urban Structure Plan builds on the existing urban framework, dramatically increases density around the Station and improves East-West connectivity and walkability to the Station.

The “perimeter block” building form is supported by communal open space (green spines) running North-South in the centre of each block.

Community infrastructure is also proposed along the East-West (E-W) links.

CONTROL	PROVISION	NOTES/LOCATION
Land Use	- Land Use shall be in accordance with the Structure Plan in Figure 3. - Small scale retail (convenience store, coffee shop restaurant etc) may be considered on major E-W pedestrian and bicycle link where it can serve the parks, community facilities, and the pedestrian (E-W) links.	
Heritage	- Development shall not have an adverse impact on the Heritage significance of Heritage Items in the vicinity of the development. - Significant streetscape elements, including street trees and sandstone walls, shall be retained and conserved where possible. When items cannot be retained a photographic record shall be provided to Council's library.	



Figure 3: Structure Plan

5 Access

Objectives

The objectives for Access are:

- 1 To provide improved access and circulation (vehicular, pedestrian and bicycle) within the Precinct, whilst not facilitating through vehicle traffic.
- 2 To improve connectivity within the Precinct and to the external context pedestrian and bicycle linkages to St Leonards and Wollstonecraft Railway Stations, St Leonard's Commercial Centre and the Lane Cove River.

CONTROL	PROVISION	NOTES/LOCATION
Access Network	Provide new public roads and pedestrian and bicycle links in accordance with Figure 4 Access Network.	Refer to Table 7.1
Roads	• Create new road/lane between Berry and Park Roads to improve traffic circulation and access to southern end of Berry Road and Holdsworth Avenue, as shown in Figure 5 (a) in accordance with the "Specifications for Infrastructure in the St Leonards South Precinct" • Close Berry Lane and incorporate into development sites, with equivalent land area dedicated to Council along the Park Road frontage.	Refer to Table 7.1 Provide interim connections to maintain function of Berry Lane in a coordinated manner until fully redeveloped.
Pedestrian and Bicycle Links	• Create E-W pedestrian and bicycle links as indicated in Figures 4 and 5 (b) with associated stairs/ramps and lifts to optimise accessibility. • Ensure "Green Spines" connect/ integrate with E-W pedestrian and bicycle links, where applicable. • Make provision for potential connection of Canberra Avenue to the south, across River Road via traffic lights, to extend bicycle link from St Leonards Station to Wollstonecraft Station and beyond to the Lane Cove River.	Refer to Table 7.1
Sustainable Transport	Provide infrastructure for potential to provide electric charging points to every car space within the internal parking basements for hybrid and electric vehicles.	Part R of Council's Development Control Plan applies, where relevant. All technical requirements for electric charging points must be submitted with the Sustainable Travel and Access Plan in accordance with Part R of Council's DCP.

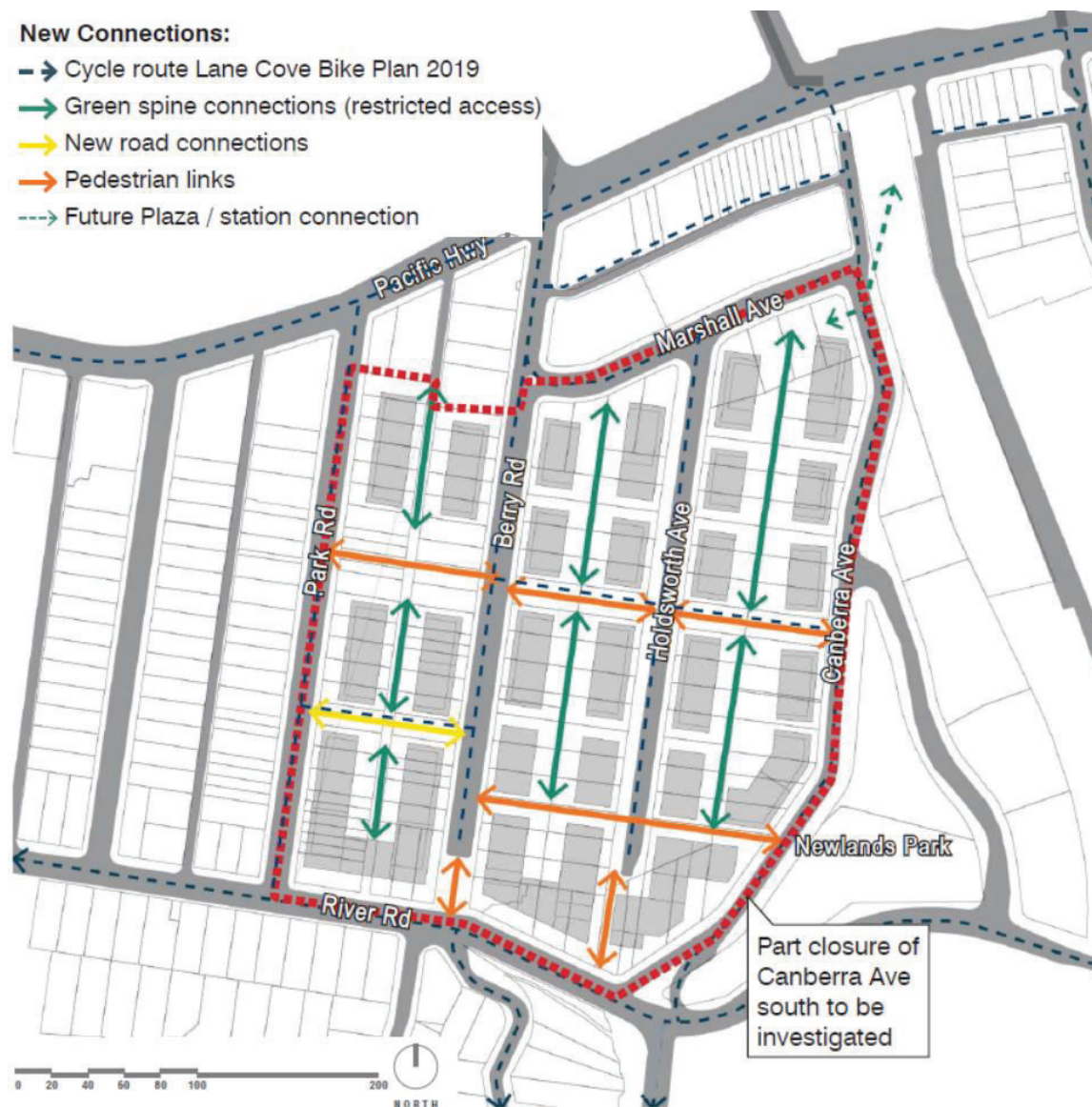


Figure 4: Access Network

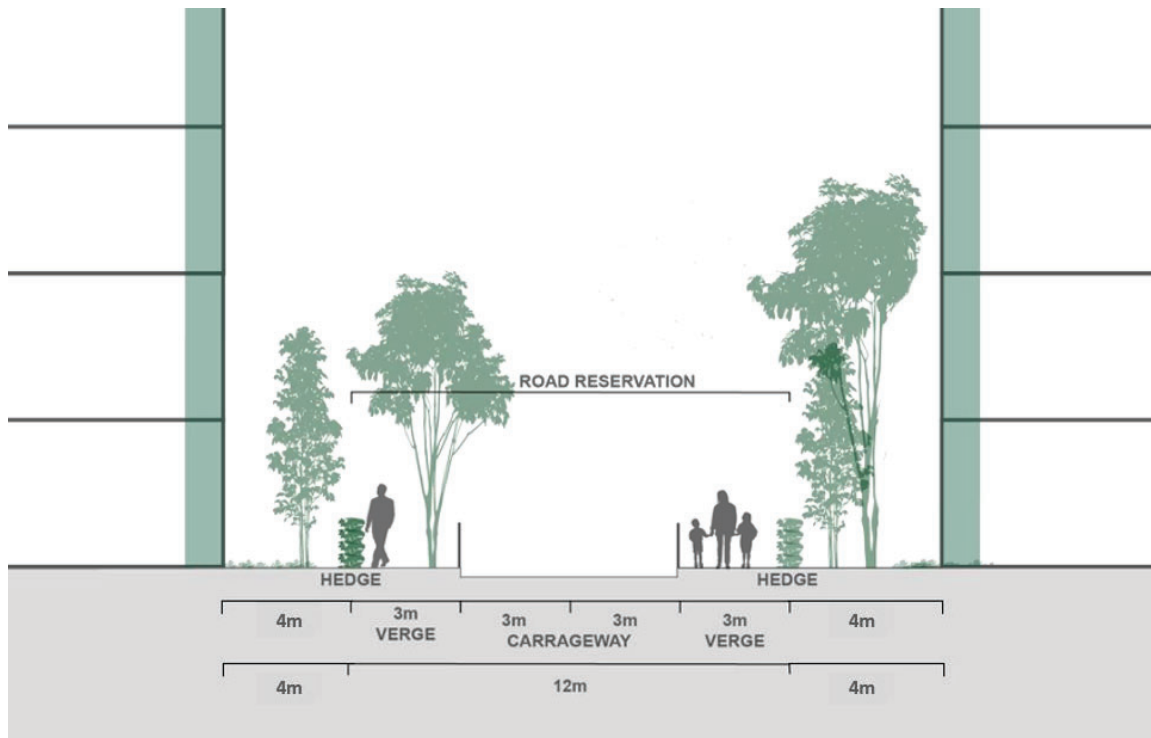


Figure 5 (a): Section - New Road (between Berry – Park Road)

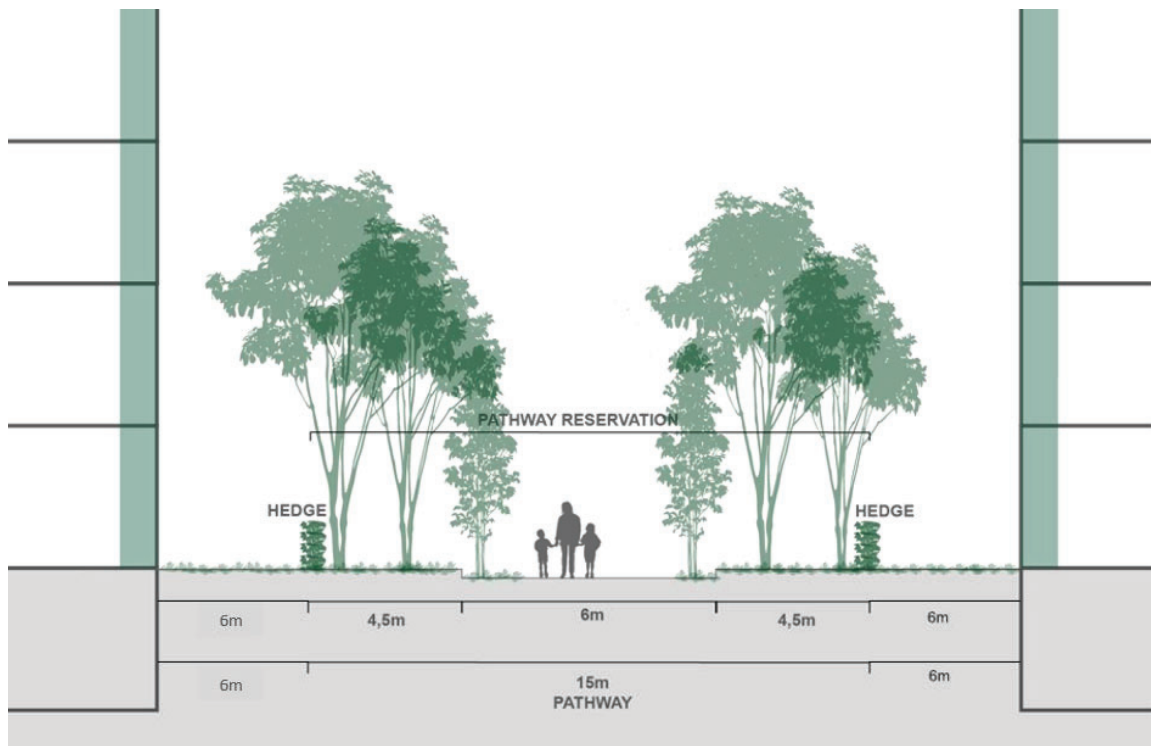


Figure 5 (b): Section - New E-W Path

6 Infrastructure

Objectives

The objectives for Infrastructure are to identify and provide opportunities for additional public infrastructure including:

- Recreation Areas (Public Open Space)
- Community facilities that are multi-purpose
- Affordable housing
- Undergrounding of services

CONTROL	PROVISION	NOTES/LOCATION
Recreation Areas (Public Open Space)	- Create Recreation areas as indicated in Figure 6. - Locate driveways to maximise opportunity to convert the southern end of Berry Road and Holdsworth Avenue to a Recreation Area.	Refer to Table 7.1



Figure 6: Public Infrastructure

CONTROL	PROVISION	NOTES/LOCATION
Community facilities	Provide Community facilities including a multi-purpose facility of 600 sqm, comprising a child care centre (450sqm), community hall (150sqm) and an adjacent Recreation Area of 450sqm, as indicated in Figure 6.	Refer to Table 7.1
Affordable Housing	Affordable Housing shall be provided as indicated in Figure 7. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct"	Refer to Table 7.1
Utility Services	• All utility services within a public road reserve are to be placed underground for the total frontage of each site. • All utility services within each site are to be placed underground or within the building. • Design and construction of these works is to be at the cost of the developer. • Light poles are to be designed and provided as specified by Council. • All utility infrastructure, including electricity kiosks, hydrants, and meters shall be screened from the public domain.	This should be consistent with the "Street Tree Masterplan" and "Public Open Space Typologies – Street". See text and streetscape section in LMP.

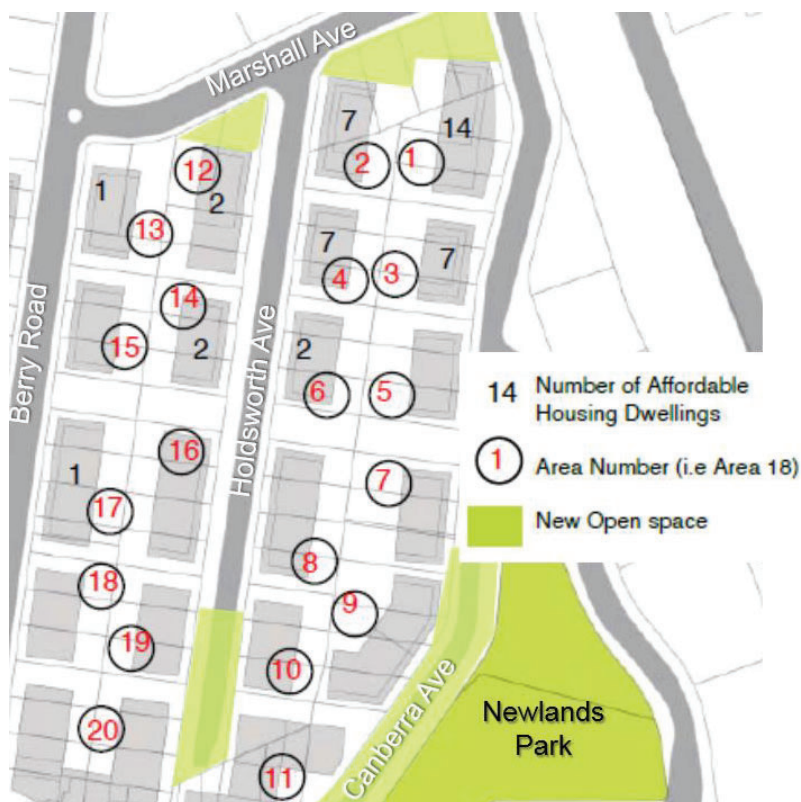


Figure 7: Number of Affordable housing dwellings to be provided by each Area

7 Built Form

Objectives

The objectives for Built Form are to:

- 1 Facilitate amalgamation opportunities that allow for economic and aesthetic redevelopment while preventing land fragmentation or isolation that detracts from the desired future character of the precinct.
- 2 Step the heights from tallest adjacent to the Railway Station, reducing with distance to the south and west (River Road and Park Road).
- 3 Provide transitional built form at edges of the precinct.
- 4 Locate building as “perimeter block” development fronting N-S streets in order to maximise solar access to building facades and open spaces.
- 5 Limit the length of façade of buildings, to provide appropriate levels of articulation, and to use a complementary palette of materials which will relate positively to the streetscape and enhance the public domain.
- 6 Encourage a stepped-back building form in order to reduce building bulk and scale to the street. To facilitate street and front setback (deep soil) tree planting to further reduce apparent bulk and scale.
- 7 Ensure that parking basements are located beneath perimeter building footprints, wherever possible, in order to protect ‘central’ deep soil zones (Green Spines).
- 8 Optimise solar access to all buildings, public domain and private open space.
- 9 Activate and engage with the public domain in a manner which optimises public interaction and public safety.
- 10 Encourage a mix and diversity of housing types within the precinct.

CONTROL	PROVISION	NOTES/LOCATION
Amalgamation	- Sites are to be amalgamated as per Figure 8 to comply with LEP minimum lot size. - Alternative amalgamation patterns will only be considered if it can be demonstrated that all outcomes and objectives for this Locality can be delivered by the subject and other Areas.	



Figure 8: Required Amalgamations

Building Envelope			
No.	CONTROL	PROVISION	NOTES/LOCATION
1	Front Building Setbacks A (Refer to Figure 9)	4m at street level + 3m at and above Level 6	To Canberra, Marshall, Holdsworth & Berry (1-19) + east (21-23)
	Building Setbacks B (Refer to Figure 9)	4m at street level + 3m at and above Level 3 + 3m at and above Level 6	To Park Road (south) (23)
	Building Setbacks C (Refer to Figure 9)	10m at street level + 3m at and above Level 3 + 3m at and above Level 6	To Park Road (north) (21 & 22)
	Building Setbacks D (Refer to Figure 9)	10m at street level + 7m at and above Level 4 + 7m at and above Level 6	To River Road (20, 23 and 11)
	Building Setbacks E (Refer to Figure 9)	6m at park level + 3m at and above Level 3	To Local Park (western buildings of Areas 21 and 22).

Building Envelope			
No.	CONTROL	PROVISION	NOTES/LOCATION
1	Building Setbacks F (Refer to Figure 9)	6m at park level + 3m at and above Level 5	To Local Park (eastern buildings of Areas 21 and 22).
2	Rear Building Setback	Minimum 12m setback to rear boundary of an Area.	
3	Building Separation	As per ADG / SEPP 65	
4	Building Depth	Maximum depth 18-22m	As per Figure 9
5	Building Orientation/Length	- Create north-south perimeter block buildings oriented to address N-S streets as shown in Figure 9. - Maximum building length shall not be greater than 35m unless strongly articulated. - River Road (lower levels) may be longer than 35m, but only with strong articulation to lower levels of River Road.	Optimise solar access to buildings and open space areas. Strongly articulated means for example a major indentation of 3-6m x 3m wide for the full height of the building.
6	Building Articulation	- A high degree of articulation is mandatory for the front façade and include balconies, overhangs, blades and other architectural features. - Articulation elements shall not utilise contrasting 'bright' colours to emphasise the articulation.	
7	Height in Storeys	- Height of development in number of Storeys shall be as per Figure 10. - Part storeys resulting from excavation of steep slopes or semi basement parking will not count as a storey.	Refer to Clause 4.6 (8)(cb) and Part 7 of Lane Cove LEP.
8	Solar Access	- Compliance with ADG solar access requirements. - Building design must ensure that overshadowing of public (i.e. Newlands Park and Local Park) and private open spaces (Green Spines) is minimised.	
9	Building Floor Levels	Building floor levels shall have regard to Figure 18, to facilitate the creation and access to "Green Spines".	



Figure 9: Building Setbacks / Building Depth

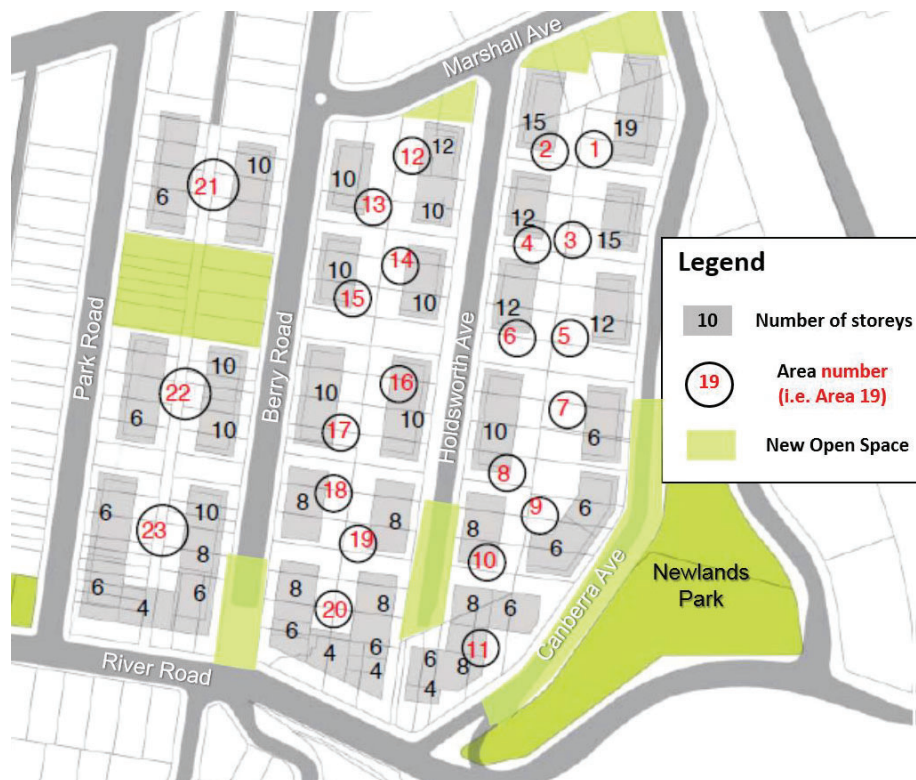


Figure 10: Height of Buildings (in storeys)

Incentives

The following table (Table 7.1) summarises the Built form controls and the required outcomes which must be delivered in order to qualify for the incentives.

Table 7.1 – Requirements to be entitled to Incentives				
LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
Area 1	65 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	3.85:1	19 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 3,000m² b) Approximately 900sqm of public open space embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct" and dedicated to Council in perpetuity (Marshall Avenue); c) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); d) 14 affordable housing dwellings dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct"; e) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; f) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and g) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 2	53 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	3.55:1	15 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 2,000m² b) Approximately 400sqm of public open space embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct" and dedicated to Council in perpetuity (Marshall Avenue); c) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); d) 7 affordable housing dwellings dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct"; e) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; f) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and

Table 7.1 – Requirements to be entitled to Incentives

LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
				g) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 3	53 metres & 2.5 metres - As shown in LEP Incentive Height of Buildings map	3.55:1	15 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 1,600m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) 7 affordable housing dwellings dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct"; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 4	44 metres and 2.5 metres - As shown in LEP Incentive Height of Buildings map	3.55:1	12 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 1,500m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) 7 affordable housing dwellings dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct"; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 5	44 metres and 2.5 metres - As shown in LEP Incentive Height of Buildings map	3.7:1	12 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 2,200m² b) A multi-purpose (child care centre and community hall) facility of 600sqm with direct connection to an outdoor play space of 450sqm provided in accordance with the "Specifications for Community Facilities in the St Leonards South Precinct" and dedicated to Council in perpetuity; c) Public lifts associated with multi-purpose facility, to provide accessibility; d) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys);

Table 7.1 – Requirements to be entitled to Incentives

LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
				e) A 15m wide pedestrian and bicycle link connecting Canberra Avenue and Holdsworth Avenue embellished in accordance with the “Specifications for Public Open Space in the St Leonards South Precinct” and dedicated to Council in perpetuity; f) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the “Specifications for Private Open Space in the St Leonards South Precinct” with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; g) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and h) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 6	44 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	3.65:1	12 As shown in Figure 10 (consider ‘Building Envelope – Height in Storeys’)	a) Minimum site area of 2,200m² b) 2 affordable housing dwellings dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the “Specifications for Affordable Housing in the St Leonards South Precinct”; c) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); d) A 15m wide pedestrian and bicycle link connecting Canberra Avenue and Holdsworth Avenue embellished in accordance with the “Specifications for Public Open Space in the St Leonards South Precinct” and dedicated to Council in perpetuity; e) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the “Specifications for Private Open Space in the St Leonards South Precinct” with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; f) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and g) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 7	25 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.6:1	6 As shown in Figure 10 (consider ‘Building Envelope – Height in Storeys’)	a) Minimum site area of 1,900m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the “Specifications for Private Open Space in the St Leonards South Precinct” with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; d) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and

Table 7.1 – Requirements to be entitled to Incentives

LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
				e) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 8	37 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.6:1	10 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 2,000m ² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; d) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and e) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 9	25 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.6:1	6 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 2,500m ² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; d) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and e) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 10	31 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.6:1	8 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 1,500m ² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; d) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and e) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 11	31 metres, 15 metres & 2.5 metres – As shown in LEP Incentive Height of	2.6:1	8, 6, & 4 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 4,000m ² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) A 6m wide pedestrian and bicycle link connecting Canberra Avenue and Holdsworth Avenue embellished in accordance with the "Specifications for Public Open Space in the St Leonards South

Table 7.1 – Requirements to be entitled to Incentives

LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
	Buildings map			<i>Precinct</i> and dedicated to Council in perpetuity; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the <i>"Specifications for Private Open Space in the St Leonards South Precinct"</i> with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and a) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 12	44 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	3.45:1	12 & 10 As shown in Figure 10 (consider <i>'Building Envelope – Height in Storeys'</i>)	a) Minimum site area of 2,500m² b) Approximately 400sqm of public open space embellished in accordance with the <i>"Specifications for Public Open Space in the St Leonards South Precinct"</i> and dedicated to Council in perpetuity (Marshall Avenue); c) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); d) 2 affordable housing dwellings dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the <i>"Specifications for Affordable Housing in the St Leonards South Precinct"</i>; e) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the <i>"Specifications for Private Open Space in the St Leonards South Precinct"</i> with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; f) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and g) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 13	37 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.85:1	10 As shown in Figure 10 (consider <i>'Building Envelope – Height in Storeys'</i>)	a) Minimum site area of 1,600m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) 1 affordable housing dwelling dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the <i>"Specifications for Affordable Housing in the St Leonards South Precinct"</i>; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the <i>"Specifications for Private Open Space in the St Leonards South Precinct"</i> with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One

Table 7.1 – Requirements to be entitled to Incentives

LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
				Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 14	37 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	3.35:1	10 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 1,600m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) 2 affordable housing dwellings dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct"; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 15	37 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.85:1	10 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 2,000m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) A 15m wide pedestrian and bicycle link connecting Berry Road and Holdsworth Avenue embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct" and dedicated to Council in perpetuity; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 16	37 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.85:1	10 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 2,500m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) A 15m wide pedestrian and bicycle link connecting Berry Road and Holdsworth Avenue embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct" and dedicated to Council in perpetuity; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings

Table 7.1 – Requirements to be entitled to Incentives

LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
				(Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 17	38 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	3.8:1	10 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 2,200m² b) A multi-purpose (child care centre and community hall) facility of 600sqm with direct connection to an outdoor play space of 450sqm provided in accordance with the "Specifications for Community Facilities in the St Leonards South Precinct" and dedicated to Council in perpetuity; c) Public lifts associated with multi-purpose facility, to provide accessibility; d) 1 affordable housing dwelling dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct"; e) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); f) A 15m wide pedestrian and bicycle link connecting Canberra Avenue and Holdsworth Avenue embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct" and dedicated to Council in perpetuity; g) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; h) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and i) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 18	31 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.6:1	8 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 1,500m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; d) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom

Table 7.1 – Requirements to be entitled to Incentives

LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
				dwellings and 20% 3 or more dwellings; and a) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 19	31 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.6:1	8 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 1,500m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; d) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and a) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 20	31 metres, 15 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.6:1	8, 6 & 4 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 5,200m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) A 6m wide pedestrian and bicycle link connecting Berry Road and Holdsworth Avenue embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct" and dedicated to Council in perpetuity; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 21	37 metres, 25 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.6:1	6 & 10 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 4,500m² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; d) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and e) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.

Table 7.1 – Requirements to be entitled to Incentives

LEP Key sites	Maximum LEP height of buildings	Maximum LEP FSR	Maximum Height of Building (storeys)	Outcome to be entitled to Incentives
Area 22	37 metres, 25 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.75:1	6 & 10 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 4,600m ² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) A 12m wide road connecting Park Road and Berry Road constructed in accordance with the "Specifications for Infrastructure in the St Leonards South Precinct" and dedicated to Council in perpetuity; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.
Area 23	37 metres, 25 metres, 15 metres & 2.5 metres – As shown in LEP Incentive Height of Buildings map	2.75:1	4, 6, 8 & 10 As shown in Figure 10 (consider 'Building Envelope – Height in Storeys')	a) Minimum site area of 6,800m ² b) Design Excellence is achieved in accordance with LEP Clause 7.6, including the Maximum Height of Buildings (in storeys); c) A 12m wide road connecting Park Road and Berry Road constructed in accordance with the "Specifications for Infrastructure in the St Leonards South Precinct" and dedicated to Council in perpetuity; d) Provision of appropriate building setbacks to facilitate shared communal open space between buildings (Green Spines) embellished in accordance with the "Specifications for Private Open Space in the St Leonards South Precinct" with a positive covenant granting shared access in accordance with Section 88E of the Conveyancing Act 1919; e) A dwelling mix comprising a minimum 20% One Bedroom and Studio dwellings, 20% Two Bedroom dwellings and 20% 3 or more dwellings; and f) Amalgamation of lots as per Figure 8 to prevent the fragmentation or isolation of land.

Other Built Form

CONTROL	PROVISION	NOTES/LOCATION
Pedestrian Entry/ Address	- All building access shall be sited to provide level street access to minimise ramps. - Provide direct access to ground floor /street level units for Areas 21, 22 & 23, and wherever possible within the precinct.	Note Potential for Canberra Avenue fronting Newlands Park.

Other Built Form		
CONTROL	PROVISION	NOTES/LOCATION
Pedestrian Entry/ Address (contd)	• Provide entries to properties generally as indicated in Figure 11. • Design for passive surveillance of recreation areas and pedestrian and bicycle links from the public domain and from developments.	
Edge Treatments	• Limit basement protrusions to 1.5m. • Treat exposed basements with textural materials and landscaping as per the LMP to minimise visual impact. • Provide 1.2m front fence/ hedge or other landscape combination at front boundary to create privacy for ground floor and semi-basement units.	
Transition to Lower Densities	• Additional setback is to be provided to Park Rd by relocating land area of Berry Lane to Park Road frontage. • Plant large tree species in enlarged front setback. • Additional setback to include large trees and be unfenced with landscaping to integrate with site landscape design.	
Vehicle Access	• Provide vehicle access from street frontage at lower end/edge of site. • Where multiple areas are consolidated, minimise vehicle access points. • For Canberra Avenue South, locate vehicle access points to facilitate road closure to consolidate land into Newlands Park. • Restrict vehicle access from River Road.	For Areas 21, 22 & 23 - Temporary arrangements may be required to maintain access to Berry Lane pending ultimate closure.
Parking	• No parking is permitted within the front setback. • Parking is to be in basements under the building footprint but NOT: ○ under designated deep soil zones as per LMP; ○ under the front setback; ○ under the 'Green Spine'. Where justification is provided, intrusions into deep-soil Green Spine areas shall only be considered after two levels of basement parking has been provided under the building footprint.	See Part R of Council's Development Control Plan for parking rates).



Figure 11: Indicative Site Entry Points

Note that strong street planting, fences/ hedges, 10m setbacks (level 1 and 2) and 3m setbacks above will create a comfortable transition across Park Road

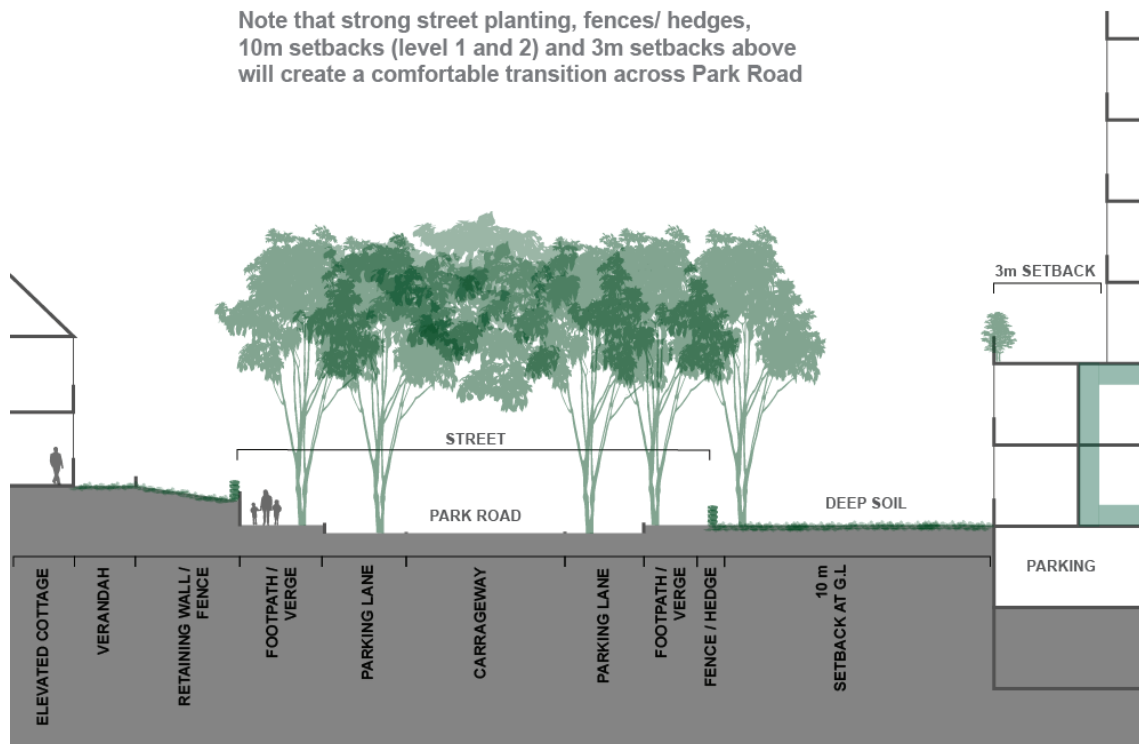


Figure 12: Density Transition

8 Landscape

Objectives

The objectives for the Landscape are to:

- 1 Ensure all development will have a high level of landscaping.
- 2 Conserve existing trees wherever possible and enhance tree planting.
- 3 Implement the Landscape Master Plan (LMP) and Typology Plan.
- 4 Create a “deep soil” network suitable for growing large trees.

CONTROL	PROVISION	NOTES/LOCATION
Landscape Master Plan	Landscaping for the Precinct shall be as set out in the Landscape Master Plan (LMP).	
Open Space Configuration	Open space shall be located as shown in the LMP (See Figure 14).	- Open space typologies include: Public - Local park - Pocket parks - Streets - New Road - Pedestrian links; and Private - Green Spines - Front and side setbacks - Courtyards and balconies - Roof gardens

- This approach allows for a clear distinction between the private communal spaces and the public domain.
- The public spaces are in keeping with the existing native / informal character of the area and surrounding parks, tying together the overall development
- There is greater flexibility within the green spines which will allow for more individual expression between developments
- Deciduous trees in the private areas provide greater winter solar access to largely overshadowed communal areas
- Material palettes to be high quality and robust while providing a distinction between public and private areas

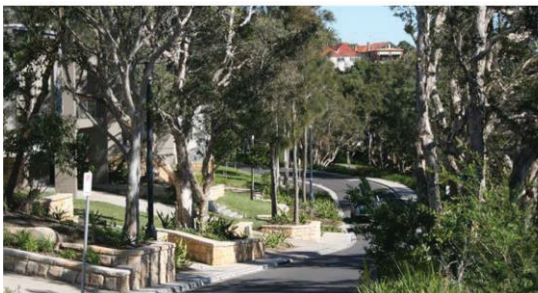




Figure 13: Landscape Master Plan

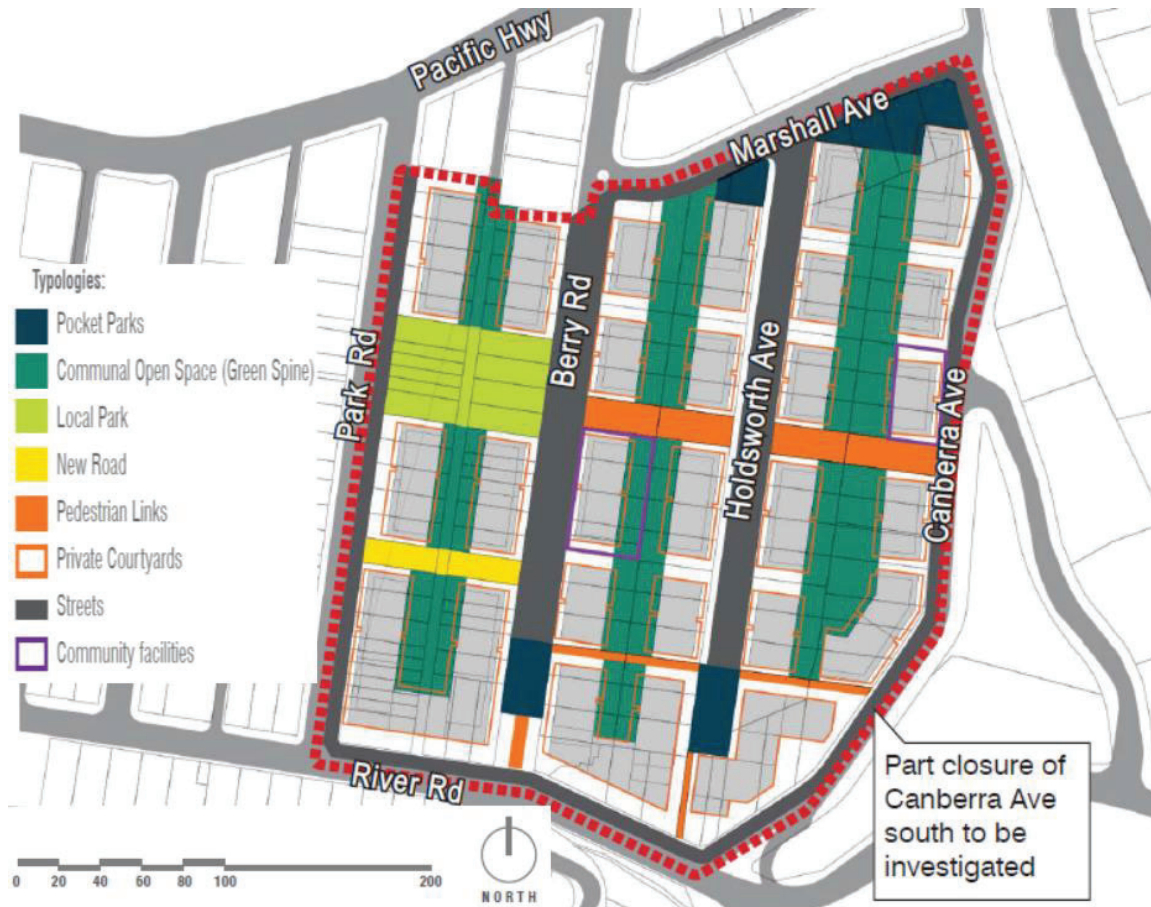


Figure 14: Landscape Typology

Public Domain

CONTROL	PROVISION	NOTES/LOCATION
Extension of Newlands Park	Landscape design in Areas 7, 9 & 11 shall provide for possible future closure of Canberra Ave between River Rd and south of the intersection with Duntroon Ave to create an extension of Newlands Park.	
Pocket Parks	Landscape design in Areas 10, 11, 18, 19, 20 and 23 shall provide for future road closures in Holdsworth Avenue and Berry Road to create Recreation areas.	
Street Trees	Street tree and other landscape planting shall be provided as set out in the LMP.	Parking or Planting blisters as per typical streetscape section (Figure 15)
E-W Pedestrian Links	Landscape design of all E-W Pedestrian Links shall be provided as set out in the LMP.	

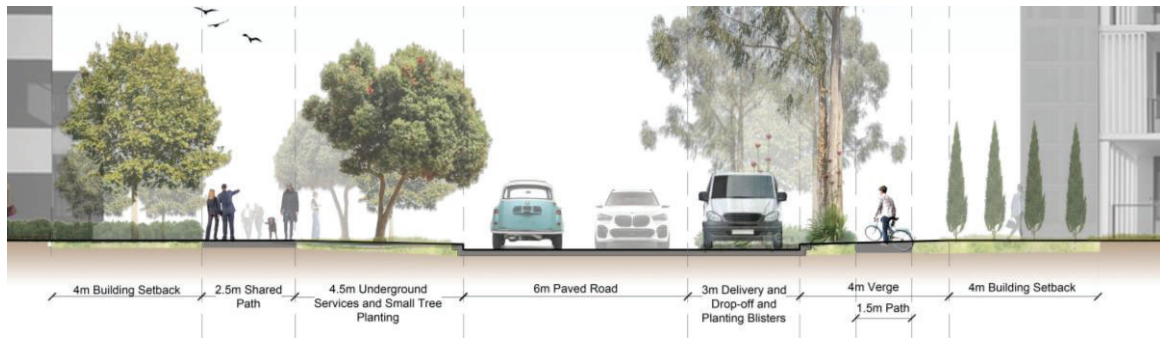


Figure 15: Cross-section of typical narrowed street

Private Domain

Objectives

The objectives for the Private Domain are to:

- 1 Preserve and enhance, wherever possible, the existing vegetation and landscape character of the Precinct.
- 2 Create a coherent and attractive private street-front landscape to support and enhance the Public Domain.
- 3 Facilitate the creation of integrated communal open space (Green Spines) with extensive deep soil zones.
- 4 Ensure that communal open space facilities (swimming pools, activity areas, playgrounds, barbeque areas etc) are located and designed to minimise negative impacts on adjacent residential apartments.
- 5 Facilitate private open space (balconies and courtyards) which will enhance residential amenity.
- 6 Facilitate roof gardens to provide further communal residential open space and contribute to sustainability.
- 7 Minimise off-site impacts such as stormwater run-off.

Private Domain		
CONTROL	PROVISION	NOTES/LOCATION
Tree Conservation / Removal	• Tree retention shall be as per Figure 16. • An Arborist's Report is required for each Area which shall include: ○ Location, Age, condition, species and conservation value of all trees (SULE assessment) ○ Justification for any trees proposed to be removed ○ Trees to be retained and any measures needed to facilitate tree retention ○ Measures taken to minimise impacts of construction on deep soil zones and mature existing trees	



Figure 16: Tree Conservation / Removal

Private Domain		
CONTROL	PROVISION	NOTES/LOCATION
Communal Open Space (Green Spines)	- Green Spines are to be provided as set out on Figure 17 - The design of the Green Spines and provision of communal facilities shall be as set out in the LMP, in particular the nine specific landscape plans for contiguous Green Spine areas. - The Green Spines shall comprise predominantly deep soil as per the LMP. - Intrusions into deep-soil Green Spine areas shall only be considered after two levels of basement parking has been provided under the building footprint. - Alternative arrangements to the requirements of the LMP for Deep Soil areas in Areas 11, 20 and 23 may be considered provided it can be demonstrated the intent of the deep soil zones can be achieved. - Finished Green Spine levels shall generally comply with those shown on Figure 18 and (LMP) to relate to building floor levels. - Level transition at property boundaries shall generally be as per LMP and Figures 20 and 21. - Connections shall be provided (at levels shown in Figures 18 and 19) to adjacent areas and to areas of public domain as shown on LMP (particularly streets and E-W links) - Planting on structure (Podia, basements, roof gardens etc) shall be as specified in Figure 25 and LMP. - The Recreation Areas adjacent to the community facilities in Areas 5 & 17 Green Spine and all residual rear setback area are to be incorporated into the Green Spines - Connect Green Spines to communal areas of buildings/foyers and lobbies to provide access. - Edge treatments to private open space, buildings and parking basements shall be as detailed in Figures 22-24 and LMP - Security gates shall be provided at the connection of Green Spines to Public Domain. See Figure 11	- Refer to Part 7 of Lane Cove LEP. - Minor variations may be acceptable where accessibility and pedestrian connection can be demonstrated throughout the Green Spine and the adjacent public and private domains.



Figure 17: Green Spines

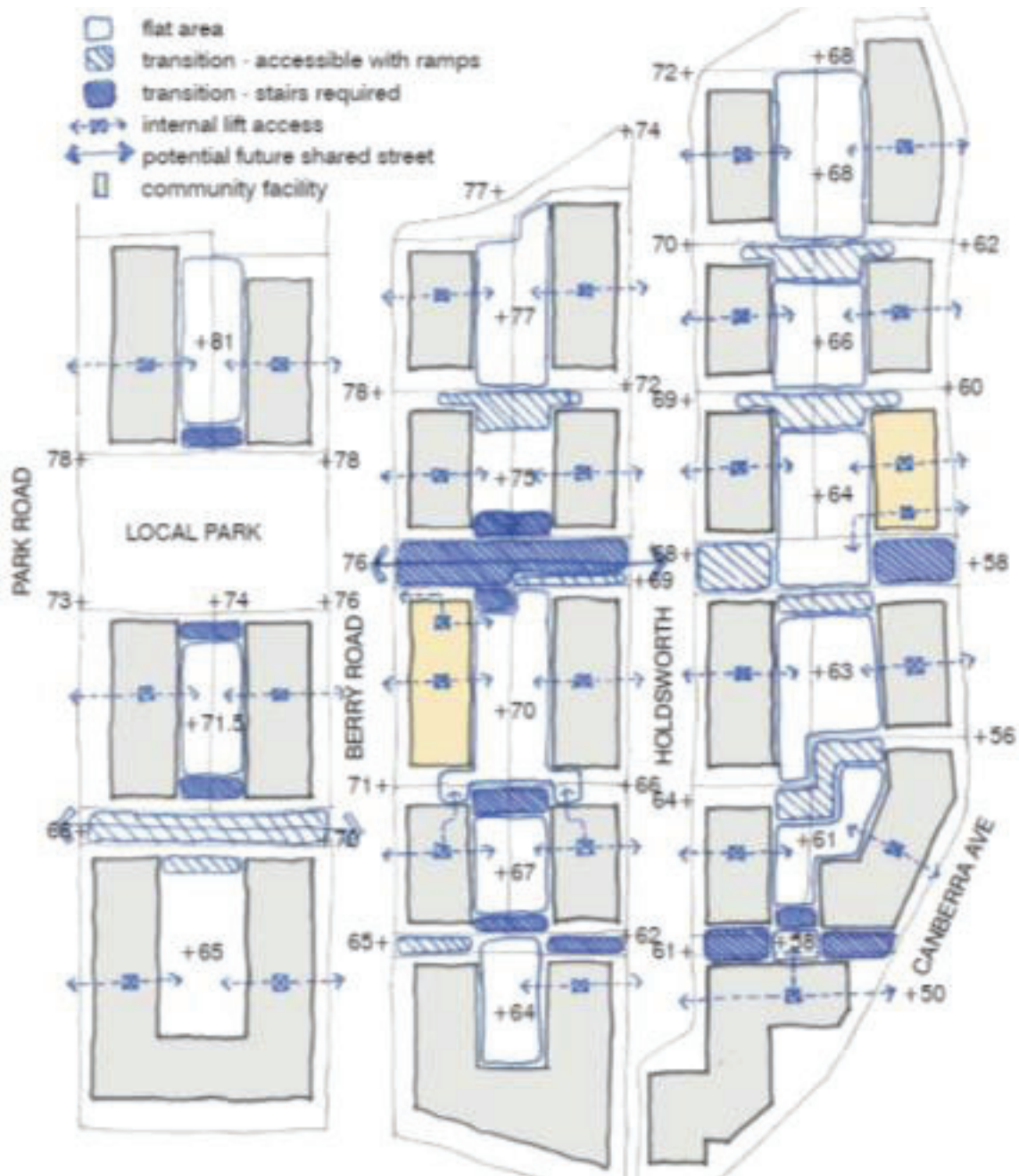


Figure 18: Indicative Site Levels

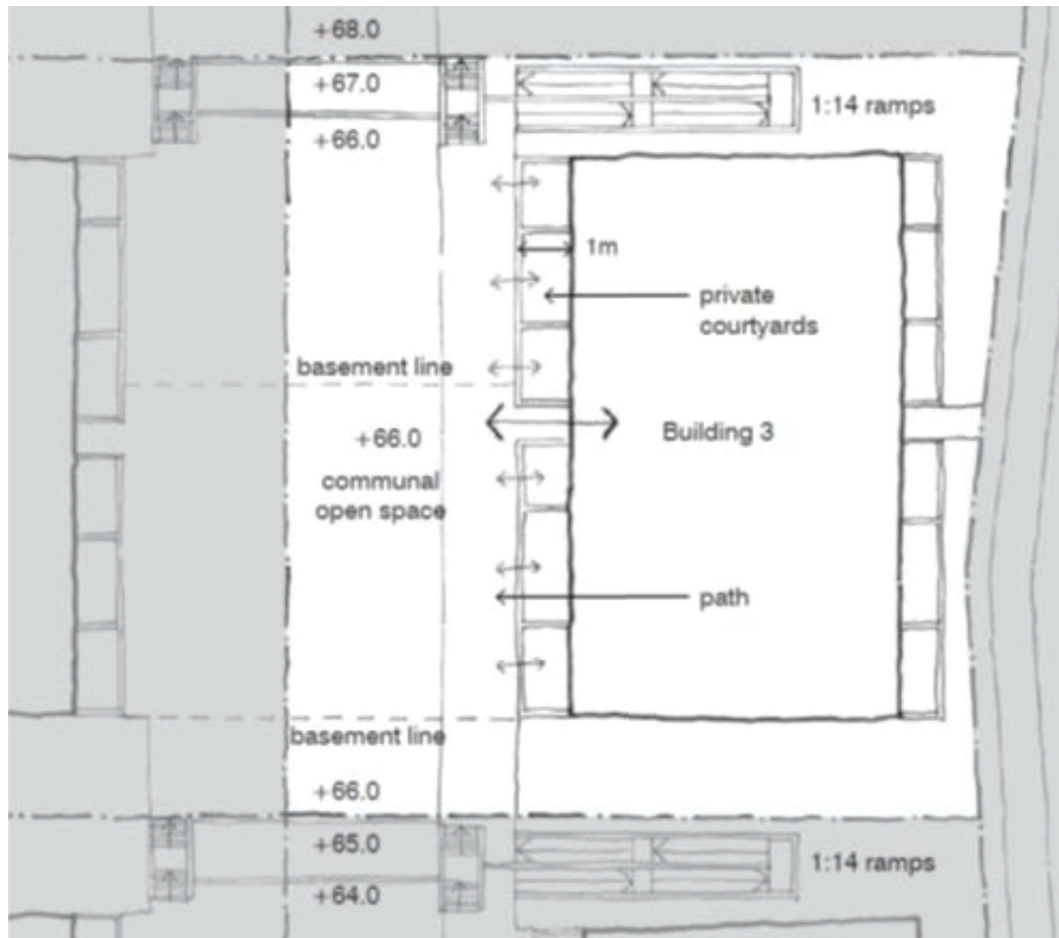


Figure 19: Level Changes (Ramp)

Private Domain		
CONTROL	PROVISION	NOTES/LOCATION
North-South Grade Transitions	- North-South level transitions shall be accommodated at or near property boundaries by ramp or stairs to achieve the levels shown in Figures 18 and 20. - Any extensive ramps shall desirably be located between buildings (in side setbacks) as per Figure 19. - Ramps and stairs (connecting to LMP levels) will be provided by the first development area to proceed - Retaining walls shall be constructed as per LMP.	
East-West Grade Transitions	- East-West transitions shall incorporate levels shown in Figures 18 and 21 - The site may step at - street edge and/or - building facade - Green Spine levels shall connect seamlessly as per Figure 18 and LMP	



Figure 20: Indicative North-South Level Transition

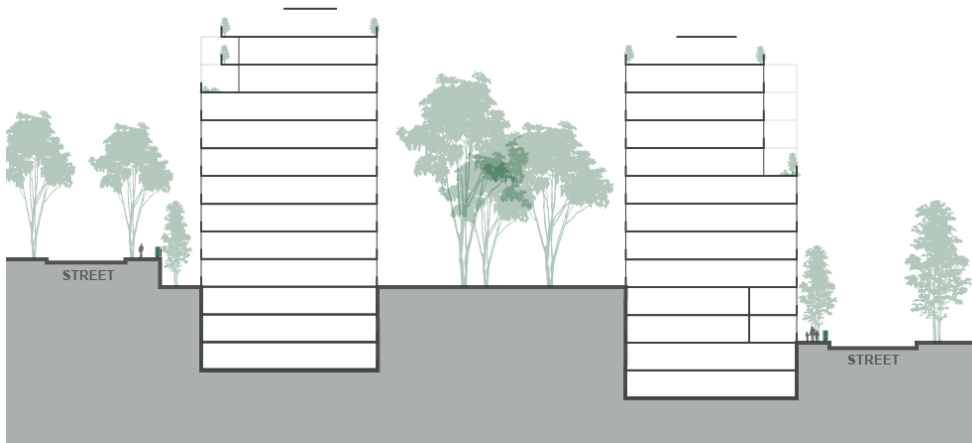


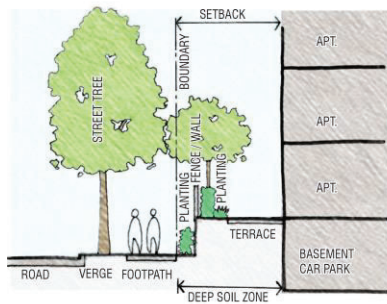
Figure 21: Indicative East-West Level Transition

Private Domain		
CONTROL	PROVISION	NOTES/LOCATION
Front Courtyards and Setbacks	- Front setbacks to be deep soil and to be treated as front gardens to GF units (or basements units) - Edge treatment to the boundary shall comprise a 1.2m max fence/hedge to provide screening as per the LMP. - Boundary treatments shall be as indicated in Figures 23-24 & LMP	The setback area shall be of a suitable size to ensure the development is not visually intrusive by providing softening between buildings, driveways and car parking areas.
Private Courtyards at ground level	- Private courts to be located as indicated on Figure 23. - Private courts may extend a maximum of 1 metre into Green Spines. - Direct access shall be provided from private courts to Public Domain and/or Green Spine.	

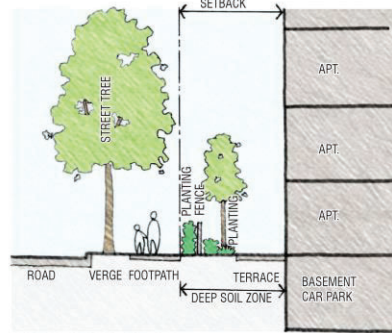
Private Domain		
CONTROL	PROVISION	NOTES/LOCATION
Private Courtyards at ground level (contd)	Edge treatment between private courts and communal Green Spine shall be as detailed in Figures 22, 23 and 24.	
Edge Treatments	- Edge treatments to protruding basements, retaining walls shall be as per LMP details (Figure 24). - Edge treatments between private courts and communal green spine – see as detailed in Figures 22, 23 and 24	
Roof Terraces	- Roof Terraces are encouraged, refer Figures 25 (a) and (b) and LMP for desired Roof Terrace design. - Roof Terraces must be accessible (lift access). - Communal amenities shall be provided (kitchen, toilets, sheltered eating/BBQ areas). - Enclosed space and shelter for communal amenities provided for roof terraces are not counted as a storey. These spaces should only contain non-habitable floor space.	
Public Art	- Each Area shall prepare a public art strategy to integrate with their landscape plans (see LMP) - Each Area shall provide Public Art to a minimum value of 0.1% of the development construction value.	See LMP and Part L of Council's Development Control Plan



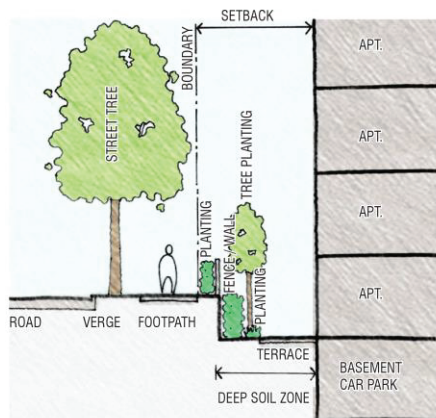
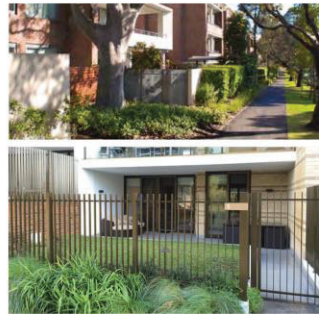
Figure 22: Front Boundary / Edge Treatments (Location)



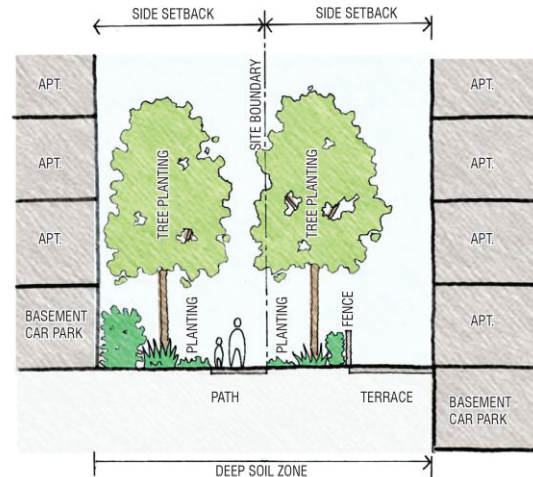
STREET FRONTAGE A. ELEVATED



STREET FRONTAGE B. AT GRADE



STREET FRONTAGE C. SUNKEN



SIDE SETBACK



Figure 23: Front Boundary / Edge Treatments (Details)



Figure 24: Front Boundary / Edge Treatments (Photos)



Figure 25 (a): Roof Terraces - Location



Figure 25 (b): Roof Terraces – Details



Figure 26: Public Art Samples

9 Environmental / Sustainability

Explanation

Transit-orientated development alone significantly cuts energy consumption in multi-family buildings, more so than Energy Star building construction or green cars, though the latter make a significant contribution as well.

In this section, sustainable design refers to measures and provisions relating to building materials, water conservation (including water sensitive urban design), and energy efficiency.

Objectives

The objectives for Environmental/Sustainability are:

- 1 To reduce the need for mechanical heating and cooling in buildings
- 2 To reduce reliance on fossil fuels
- 3 To minimise greenhouse emissions and environmental impact over the life-cycle of development
- 4 To promote renewable energy initiatives

Environmental / Sustainability		
CONTROL	PROVISION	NOTES/LOCATION
Environmental Performance	The design, construction and operations of any new building in this precinct, including its services and fit outs, must be capable of achieving a minimum 6 star rating under the Nationwide House Energy Rating Scheme (NatHERS) by a suitably qualified person.	Taller buildings should consider providing a centralised integrated air-conditioning system, located within the building plant.
Wind Impact	Buildings shall comply Part B Cl 6.2 of Council's Development Control Plan	A Wind effects report relating to all facades, internal and external to the site, is to demonstrate methods to achieve appropriate outcomes for public and private domains, e.g. awnings, baffles, articulation etc.
Green Roofs	All developments are encouraged to consider inclusion of a green roof to provide thermal efficiency.	
Green Walls / Vertical Gardens	All developments are encouraged to consider inclusion of green walls / vertical gardens.	

Water Management and Conservation

Explanation

Water sensitive urban design is the integrated management of water in urban areas. It takes into account all of the elements of the urban water cycle including potable (drinking quality) water, rainwater, wastewater, stormwater and groundwater.

The Building Sustainability Index (BASIX) ensures that all new dwellings are designed to minimise potable water use and reduce greenhouse gas emissions. To support the requirements of BASIX there are a number of planning and design considerations that are relevant to apartment developments.

Water Management and Conservation		
CONTROL	PROVISION	NOTES/LOCATION
Potable Water	- Minimise potable water use by: - Using water efficient appliances - Explore rainwater collection and reuse - Use drought tolerant plants	
Urban Stormwater	- Collect, store and treat on site - Maintain maximum Green Spine and other deep soil for percolation - Provide on-site stormwater and infiltration including bio-retention systems such as rain gardens - Buildings shall comply Part B Cl 6.3 of Council's Development Control Plan - All other stormwater management measures are detailed in Council's Development Control Plan Part O (Stormwater Management).	Stormwater can be collected and stored in combined storage tanks/retaining walls, which will be integrated with the stepped nature of green spines. This water can be used to irrigate garden areas.
Flood Management	Provide detention tanks desirably under paved areas, driveways, in retaining walls or in basement car parks	See the LMP

10 Infrastructure Funding

Objective

The objective for infrastructure funding is to provide new and improved built infrastructure (roads, drainage, pathways/E-W links, community facilities, public domain improvements, parks and public art) that is required within the Precinct to support population growth and to create an attractive, vibrant, liveable environment, as a sustainable TOD.

Explanation

The specific Infrastructure items have been identified in the LEP under Part 7 and also in detail in this DCP.

Funding for the infrastructure will be achieved through:

- Development contributions under S7.11 of the Environmental Planning and Assessment Act;
- The development process as conditions of development; and
- The provision of planning incentives (Height and FSR) in return for items identified in LEP Part 7.

The principles of the planning incentives scheme are:

- Nexus:** That some of the benefit afforded to sites within the St Leonards South Precinct (through an uplift in FSR) is captured by Council to provide essential infrastructure required as a result of increased densities in the area

- **Transparency:** this includes a clear understanding of what infrastructure is to be funded and how contribution rates and community benefit are calculated and applied to individual sites
- **Equity:** A framework that treats landowners fairly and where both infrastructure and incentives for development are based on equity and fairness
- **Practical:** The implementation of the mechanism must be practical and occur in a timely fashion to avoid delays and provide certainty for commercial dealings
- **Feasibility:** The contributions must be reasonable and provide infrastructure without burdening land such that development is not feasible at each stage

Annexure C - Map



Figure 8.8: Required Amalgamations

Annexure D – Ministerial Direction

Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Public Spaces, in pursuance of section 7.17 of the *Environmental Planning and Assessment Act 1979*, give the following Direction.



Minister for Planning and Public Spaces

Dated: 25/06/2020

1 Name of Direction

This Direction is the *Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020*.

2 When Direction takes effect

This Direction takes effect on the date of its publication in the Gazette.

3 Consent authorities to whom Direction is given

- (1) This Direction is given to all consent authorities.
- (2) To avoid doubt, this Direction also applies to:
 - (a) any local planning panel when exercising, on behalf of a council, the functions of the council as a consent authority, and
 - (b) any other officer or employee of such a council to whom the council delegates its functions as a consent authority.

4 Application of Direction

- (1) This Direction applies to the grant of development consent that authorises the erection of a new building or a change of use of an existing building, but only if Part 6 of the *Environmental Planning and Assessment Act 1979* (the *Act*) will require an occupation certificate for:

- (a) the commencement of the occupation or use of the whole or any part of the new building, or
 - (b) the commencement of a change of building use for the whole or any part of the existing building.
- (2) However, this Direction does not apply in any of the following circumstances:
- (a) the estimated cost of the proposed development is less than \$10,000,000, as determined in accordance with the *Environmental Planning and Assessment Regulation 2000* for the purposes of calculating the fee for the development application for the proposed development,
 - (b) the development application concerned is for the subdivision of land that will result in the creation of additional lots, as well as for the erection of a building or a change of use of an existing building,
 - (c) the proposed development is the subject of an application for a complying development certificate.
- (3) In this clause, ***subdivision of land*** does not include the procurement of the registration of a strata plan or strata plan of subdivision, within the meaning of the *Strata Schemes Development Act 2015*.

5 Timing of payment of contributions

- (1) Subject to this clause, a consent authority must not impose a condition on the grant of development consent to which this Direction applies for the payment of a monetary contribution under section 7.11 of the Act, or a levy under section 7.12 of the Act, (a ***local infrastructure contribution***) that requires the payment to be made at any time that is earlier than before the issue of an occupation certificate in respect of any building to which the development consent relates.

Accordingly, a consent authority may require the payment of the whole of the monetary contribution required by the development consent before the issue of the first occupation certificate in respect of any of the buildings to which the consent relates.

- (2) This subclause applies if, but for this Direction, the whole or any part of the local infrastructure contribution could have been required to be paid at a time that is earlier than before the issue of an occupation certificate in respect of any building to which the development consent relates (the ***earlier stage for payment***), such as before the issue of a construction certificate or strata certificate, in accordance with the policy relating to the timing of payment of contributions set out in the applicable contributions plan.

In that case, the consent authority may, in the development consent, require the whole or part of the local infrastructure contribution to be paid at the earlier stage for payment, but only on the condition that the earlier stage occurs after 25 September 2022.

Note. An example of a condition that a consent authority may impose in accordance with clause 5 (1) and (2) above, where the applicable contributions plan provides for payment before the issue of a construction certificate, in circumstances where the development involves the erection of a building, is as follows:

(1) A monetary contribution that is required to be paid under the conditions of this consent must be paid before the issue of the first occupation certificate in respect of any building to which this consent relates, except as provided by condition (2).

(2) If no construction certificate in respect of the erection of any building to which the consent relates has been issued on or before 25 September 2022, the monetary contribution must be paid before the issue of the first construction certificate after that date for any such building.

- (4) This Direction does not affect an arrangement for the deferral of payment of a local infrastructure contribution, entered into before or after this Direction takes effect, in accordance with the policy for deferred payments in the applicable contributions plan.
- (5) However, a condition of consent imposed in accordance with subclause (1) after this Direction takes effect that requires payment of a local infrastructure contribution to be made before the issue of an occupation certificate, rather than at an earlier time, cannot require the developer to enter into an arrangement to secure the payment (such as the provision of a bank guarantee).

Note. Under section 7.17 (1B) of the *Environmental Planning and Assessment Act 1979*, any development consent that has been granted before this direction takes effect and that requires a monetary contribution or levy to be paid at an earlier stage (for example, before the issue of a construction certificate in relation to the development) is modified, so as to allow the contribution or levy to be paid before the issue of the occupation certificate instead. If the monetary contribution is payable under the consent in instalments, the unpaid instalments can be paid at the later stage in accordance with this direction.

6 Expiry of Direction

This Direction expires on the last day of the prescribed period within the meaning of section 10.17 of the Act. Its expiry does not affect the operation of any condition of consent imposed in accordance with it or a condition that is modified by operation of section 7.17 (1B) of the Act.

Note. Under section 10.17 of the *Environmental Planning and Assessment Act 1979*, the prescribed period (for the purposes of the COVID-19 pandemic) ends on 25 September 2020, unless a regulation is made extending that period. The period can be extended until 25 March 2021.

Annexure E – Canberra Land & Holdsworth Land

