

PARTIES

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

And

New Golden St Leonards Pty Ltd ABN 85 607 196
467

Draft Planning Agreement

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

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Dated

Parties

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

and

New Golden St Leonards Pty Ltd ABN 85 607 196 467 of Suite 11/30 Atchison Street, St Leonards NSW 2065

(the **Land Owner**)

Background

- A The Land Owner owns the Land.
- B The Land Owner:
- ☐ HAS LODGED A Development Application for the development of the Land;
 - ☒ INTENDS TO LODGE a Development Application for the Land,
- to carry out the Development on the Land with the approval 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).
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.
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.
Dedication Land	means the land required to be dedicated under this Agreement.
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 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 2022 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.
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 New Golden St Leonards Pty Ltd ABN 85 607 196 467 as owner of the Land specified in Part A of Schedule 3
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 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.
Public Purpose	has the same meaning as in section 7.4 (2) of the Act.
Real Property Act	means the <i>Real Property Act 1900</i> (NSW).
Registration on Title	means the registration of this Agreement under section 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 2021</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.
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.
Transferee	has the meaning given to it under clause 15.2(a) .

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;

- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency and all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns;
- (l) any schedules and annexures form part of this Agreement;
- (m) headings do not affect the interpretation of this Agreement; and
- (n) this Agreement is not binding on any Party unless it or a counterpart has been duly executed by each person named as a Party to this Agreement.

1.3 Compliance with New Laws

- (a) If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the 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.
- (b) For the avoidance of doubt any New Law will not relieve the Land Owner 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 203 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)(iia) 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 Monetary Contributions to be made under this Agreement

6.1 Provision of Monetary Contribution

Subject to this Agreement

- (a) In consideration of the Council granting to the Land Owner a Development Consent, the Land Owner agrees to pay Council a Monetary Contribution.
- (b) The Monetary Contribution will be payable in accordance with column 3 of the table at Schedule 4; and
- (c) 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 Monetary Contribution calculated in accordance with **clause 6.1** is to be indexed in accordance with any movement in the CPI calculated in the manner specified in **Item 2 of Column 1 of Schedule 4** provided always that the value of the Monetary Contribution shall not be less than the initial amounts stated in **Schedule 4**.

7 The dedication of land

7.1 Requirement to dedicate land

- (a) Subject to this Agreement, the Developer must dedicate land free of cost to the Council as described in, and at the time, set out by — **Items 3 and 4 of Schedule 4**.

7.2 When land is taken to be dedicated

A Development Contribution that is the dedication of land is taken to have been made (and made free of cost) if:

- (a) in relation to **Item 3 of Schedule 4** — dedication is to be effected by the registration of a plan of subdivision under section 49 of the *Local Government Act 1993* and vested in fee simple in the Council under section 49(1) of that Act; or
- (b) in relation to **Items 3 or 4 of Schedule 4** the Council is given an instrument by the Developer, in registrable form, that (when registered) will effect the transfer of the title to the land to the Council.

7.3 Ancillary obligations of the parties in relation to the dedication of land

- (a) When the Council has been given an instrument by the Developer under **clause 7.2(b)**, the Council must promptly do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- (b) The Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), when the Developer dedicates that land to the Council under this Agreement.
- (c) For avoidance of doubt, **clause 7.3(b)** does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the owner of the Dedication Land could not prevent from affecting the Dedication Land and in respect of which no practicable action may be taken by the owner of the Dedication Land.
- (d) Despite **clause 7.3(b)**, if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance or affectation, then:
 - (i) the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:

- (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,
- the Council must not withhold its agreement unreasonably; and
- (iii) in other circumstances, the Council may withhold its agreement at its absolute discretion.

7.4 Risk and warranties in relation to land

The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Dedication Land unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this Agreement; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

8 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 not in addition.

9 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 9(a)** 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 Dedication Land 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 9(a)**
- (f) Despite **clause 9(d)**, the Council as caveator must promptly consent to the registration of:
 - (i) a transfer of the Land to the Land Owner;
 - (ii) a transfer of any part of the Land from the Land Owner to a third party if that third party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 15**;
 - (iii) any surrender of lease;
 - (iv) any discharge of mortgage;
 - (v) any other dealing which effects any dealing listed in the certificates of title for the Land;
 - (vi) any mortgage(s) on the title.
- (g) Following the Agreement being Registered on Title, the Council will do all things reasonably necessary and provide its consent, but without fettering its discretion acting as a consent authority, to permit the registration of:
 - (i) any Strata Plan consistent with the Development Consent;
 - (ii) any transfer of the Land or any part of the Land from the Land Owner to a third party if that third-party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 15**; and
 - (iii) any other dealing deemed necessary by the Land Owner, acting reasonably.

On receipt by Council from the Land Owner to consider a request for the registration of a dealing as contemplated in this **clause 9(g) (Request)**, Council will act expeditiously in its consideration and provide any required feedback to the Land Owner within ten (10) business days of the receipt of a Request.

- (h) If the Land Owner has failed or has been unable to register this Agreement on any of the Land in accordance with **clause 9(a)**, the Land

Owner must pay the Council's reasonable costs and expenses, including legal costs, of exercising its rights under **clause 9(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 reasonably required by the Land Owner to release and discharge this Agreement with respect to any Lot or Lots forming part of any lot, including a Strata Lot, created or to be created on subdivision of the Land on date on which the Land Owner has complied with all its obligations under this Agreement.

10 Default

10.1 Notice

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

10.2 Reasonable Time

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

10.3 Suspension of time-dispute

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

11 Dispute Resolution

11.1 Reference to dispute

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

11.2 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).

11.3 Representatives of parties to meet

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

11.4 Parties may not constrain

If:

- (a) at least one meeting has been held in accordance with **clause 11.3**;
- (b) the Parties have been unable to reach an outcome identified in **clauses 11.3(b)(i) to 11.3(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 11.3**,

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.

11.5 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 11.6**.

11.6 Expert determination

- (a) A dispute to be determined in accordance with **clause 11.5** 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 11.5**, 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 11.5**, 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 11.6** setting out the terms of the expert's determination and the fees payable to the expert.

11.7 Directions to expert

- (a) In reaching a determination in respect of a dispute under **clause 11.5**, 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.

12 Security and Enforcement

12.1 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 9** 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.

12.2 Enforcement by any party

- (a) Subject to firstly complying with **clauses 10 and 11** 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.

13 Notices

13.1 Delivery

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

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

Lane Cove Council

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

Land Owner:

Attention: Roger Luo
Address: PO Box 535, ST LEONARDS NSW 1590
Email: rogerluo@newgoldenintl.com;

13.2 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.

13.3 Giving of notice

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

- (a) If it is delivered, when it is left at the relevant address;
- (b) If it is sent by post, two Business Days after it is posted;
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number;
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.

13.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

14 Approvals and consent

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

15 Assignment and dealings

15.1 Assignment

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

15.2 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 15.2(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.

16 GST

16.1 Construction

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

16.2 Intention of the Parties

Without limiting the operation of this **clause 16**, 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 16.6** no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 16.4** below) on account of GST.

16.3 Consideration GST exclusive

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

16.4 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 16.4(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 16.4(b)** or **16.4(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 16.4(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 16.4(a)**:
 - (i) subject to **clause 16.4(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 16.4(b) or 16.4(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 16**, 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 11.3(b)**.
- (e) The recipient will pay the GST Amount referred to in this **clause 16.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

16.5 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 16.4**. 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.

16.6 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 16.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

16.7 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 16.4** 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.

16.8 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 16.4** in respect of that reimbursement.

16.9 No Merger

This **clause 16** 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.

17 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 **\$15,000 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.

Council will be responsible for:

- (a) the cost of attending to the stamping and registration of any Transfers of land to Council: and
- (b) meeting its obligations in accordance with usual conveyancing practice.

18 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.

19 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.

20 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.

21 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.

22 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.

23 Representations and warranties

- (a) The Land Owner warrants and 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 and to obtain any required Mortgagee consent.
- (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.

24 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.

25 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.

26 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.

27 Relationship of parties

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

28 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.

29 Counterparts

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

30 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.

31 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.

32 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.

33 Explanatory Note

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

34 Modification

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

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

The Land Owner acknowledges and agrees that it is required to provide the benefits specified for **Area 12** as noted in the Development Control Plan as applicable to Locality 8 for the Development of an Area and where no s.7.11 contribution offset is available. For the avoidance of Doubt this includes the requirement to give effect to the dedication of land specified in **Items 3 and 4 of Schedule 4**.

36 Monetary Contribution under Agreement where condition of Development Consent

There is no requirement to pay a Monetary Contribution under this Agreement if (despite the terms of this Agreement) Development Consent is nonetheless granted with a requirement to pay a Monetary Contribution under s.7.11 or s.7.12 of the Act.

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.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(b) made, or proposes to make, a development application.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Description of the land to which this Agreement applies- (Section 7.4(3)(a))	The Land
Description of the development to which this Agreement applies- (Section 7.4(3)(b)(ii))	The Development.
The scope, timing and manner of delivery of Development Contribution required by this Agreement - (Section 7.4(3)(c))	See clause 6 .
Applicability of Section 7.11 of the Act - (Section 7.4 (3)(d))	The application of section 7.11 of the Act is 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 11 .
Enforcement of this Agreement - (Section 7.4 (3)(g))	See clause 9, 10, 11 and 12 .
Registration of this Agreement (Section 7.6)	See clause 9 .
No obligation to grant consent or exercise functions - (Section 7.4 (9))	See clause 22 .

TABLE 2 – OTHER MATTERS

REQUIREMENT UNDER THE ACT	THIS DEED
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 205 of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 205 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 205 of the Regulation)	No

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Explanatory Note

Explanatory Note – St Leonards South Precinct Planning Agreement, Clause 205

Environmental Planning and Assessment Regulation 2021

Explanatory Note for Draft Voluntary Planning Agreement

3 Holdsworth Avenue, St Leonards

Summary

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a draft Voluntary Planning Agreement (“**the Planning Agreement**”) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (“**the Act**”) and Environmental Planning and Assessment Regulation 2021 (Clause 205) (“**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

New Golden St Leonards Pty Ltd ABN 85 607 196 467

Description of subject land

Lot 8 in DP1275969 known as 3 Holdsworth Avenue, St Leonards, (referred to as the “**the Land**”), and identified as **Area 12** in Locality 8 of the Development Control Plan.

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

Objectives

The objective of the Planning Agreement is to provide non-monetary contributions for public amenities and services beyond those likely to be required by a Contributions Plan.

In terms of monetary contributions, the objective is to provide for monetary contributions that reflect either an existing draft contributions plan or the final contributions plan (if the rates are lower).

Nature

The Planning Agreement will be a voluntary Planning Agreement under section 7.4 of the EPA Act.

A Planning Agreement of this kind may require a Developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the Planning Agreement provides for:

- the dedication of land free of cost; and
- monetary contributions towards public purposes.

Effect

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 support by the Independent Pricing and Regulatory Tribunal;
2. the dedication to Council in perpetuity of approximately 400sqm of open public space embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct"; and
3. the dedication to Council in perpetuity of 2 affordable housing dwellings. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South

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 prior to the issue of first occupation certificate for the Development.

Schedule 3

Land

Part A title details

Folio Identifier	Address
8/1275969	3 Holdsworth Avenue, St Leonards

Schedule 4

Development Contribution Schedule

1. Development Contribution

The Land Owner undertakes to provide the following Development Contribution as set out and provided for in the Table below in respect of Area 12 in Locality 8.

Column 1		Column 3
Development Contribution		Timing
Total Development Contribution		
Item	<u>Monetary Contribution</u>	Time for payment
1 (a).	<p>The Land Owner must make a Monetary Contribution to Lane Cove Council estimated in the amount of \$2,700,752 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.</p> <p>Contribution Amount per Studio or 1 bedroom Dwelling (1BRD):</p> <p>\$ 20,284.00</p> <p>Contribution Amount per Studio or 2 bedroom Dwelling (2BRD):</p> <p>\$28,978.00</p> <p>Contribution Amount per Studio or 3 bedroom Dwelling (3BRD):</p> <p>\$44,917.00</p> <p><u>Formula:</u></p> <p>Calculated by multiplying the number of 1, 2 and 3 bedroom dwellings by the amounts specified above for 1BRD, 2BRD and 3BRD (and providing for a reduction in recognition of four existing dwellings) and as noted in the Formula below:</p> <p>MC = (1BRD x R1) plus (2BR x R2) plus (3BR x R3) – (4 x 3BRD)</p> <p>Where:</p>	<p>The Monetary Contribution is payable in accordance with the timing provisions set out in clause 5.1 of the Development Contributions Plan. For the avoidance of doubt, where a construction certificate is required, the Monetary Contribution is payable prior to the issue of that Construction Certificate.</p>

Column 1		Column 3
Development Contribution		Timing
<p>1BRD means the applicable contribution rate for a Studio or 1 Bedroom dwelling;</p> <p>2BRD means the applicable contribution rate for a 2 Bedroom dwelling;</p> <p>3BRD means the applicable contribution rate for a 3 Bedroom dwelling;</p> <p>R1 means the number of studio or 1 bedroom dwellings in the proposed Development equivalent to 29</p> <p>R2 means the number of 2 bedroom dwellings in the proposed Development equivalent to 45</p> <p>R3 means the number of 3 bedroom dwellings in the proposed Development equivalent to 22</p>		

Indexation		
Item 2.	<p>Indexation:</p> <p>The Monetary Contribution must be indexed between the date of this Agreement and the date of payment in accordance with the following formula:</p> $\frac{\$C_c \times CPI_p}{CPI_c}$ <p>Where:</p> <p>\$C_c is the contribution amount shown in this Agreement expressed in dollars</p> <p>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</p> <p>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.</p> <p>Note: The contribution payable will not be less than the contribution specified in this Agreement.</p>	
Item 3	<p>Open Space (Marshall Avenue):</p> <p>Dedication to Council in perpetuity of approximately 400sqm of open public space embellished in accordance with the “<i>Specifications for Public Open Space in the St Leonards South Precinct</i>”.</p>	Immediately prior to the issue of the first Occupation Certificate for the Development.
Item 4	<p>Affordable Housing:</p> <p>Dedication to Council in perpetuity of 2 affordable housing dwellings. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70sqm (plus storage) and one car space, in accordance with the “<i>Specifications for Affordable Housing in the St Leonards South Precinct</i>”.</p>	Immediately prior to the issue of the first Occupation Certificate for the Development.

Execution

Executed as an agreement.

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

.....
Witness

.....
Name of Witness (print)

.....
Attorneys Signature

CRAIG ANTHONY WRIGHTSON

.....
Name of Attorney (print)

Executed by **New Golden St**)
Leonards Pty Ltd ABN 85 607 196)
467 in accordance with section 127(1))
of the *Corporations Act 2001* (Cth):)
)

.....
Signature of Director / Secretary

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

.....
Signature of Director / Secretary

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

Annexure A – Novation Deed

This is **Annexure A** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **New Golden St Leonards Pty Ltd ABN 85 607 196 467 (Land Owner)**

Dated

Draft No []
[Date]

Lane Cove Council

New Golden St Leonards Pty Ltd ABN 85 607 196
467

[<<INSERT DETAILS OF New Land Owner>>]

Deed of Novation for Voluntary Planning Agreement

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Date

Parties

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

New Golden St Leonards Pty Ltd ABN 85 607 196 467 of Suite 11/30 Atchison Street, St Leonards NSW 2065 (**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 **New Golden St**)
Leonards Pty Ltd ABN 85 607 196)
467 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)