

PARTIES

Lane Cove Municipal Council ABN 42 062 211 626

And

SLS Five Pty Ltd ACN 646 612 508 as trustee for
SLS Five Trust

Draft Planning Agreement

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

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Dated

Parties

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

and

SLS Five Pty Ltd ACN 646 612 508 as trustee for SLS Five Trust of suite 1, 256 Victoria Ave, Chatswood, New South Wales

(the **Developer**)

Background

- A The Developer owns the Land.
- B The Developer has made, or proposes to make, a Development Application in relation to the Land, to carry out the Development on the Land.
- C The Development Application for the Development is accompanied by an offer by the Developer to enter into this Agreement providing for the Developer to make Development Contributions for the Development which are to be applied towards the Agreed Public Purpose.
- D The Developer will provide the Development Contributions to the Council when required by (and in accordance with) this Agreement.
- E As contemplated by section 7.4 of the Act, the parties enter into an Agreement in connection with the carrying out of the Development, on the terms and conditions of this Agreement.
- F The parties anticipate that a development consent will include a condition that requires this Agreement to be Registered on Title for the Land prior to the issue of the first Construction Certificate for the Development.

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 5	means Area 5 as shown on the Key Sites Map — Sheet KYS_004 of the LCLEP as at the date of this Agreement, as marked in the extract set out in Sheet 2 of Schedule 5 .
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.
Contributions Plan	means a contributions plan within the meaning of section 7.18(2) of the Act.
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	<p>means any development of the Land that exceeds the maximum building height or maximum floor space ratio (or both) set under clause 4.3 and clause 4.4 of the LCLEP respectively.</p> <p>Note: At the date of this Agreement Part 7 of the LCLEP provides a pathway to exceed either or both of these standards.</p>
Development Application	has the meaning given to it in the Act lodged with the Consent Authority.
Development Consent	means the consent (if any) granted 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 Control Plan	means the Lane Cove Development Control Plan adopted on 22 February 2010 and amended on 22 October 2020 and referred to in Part 7 of the

	LCLEP 2009 (as it stood on the date of this Agreement).
Draft Contributions Plan	means the 'St Leonards South Precinct Section 7.11 development contributions plan', prepared by GLN, dated March 2021 to the extent that it is relevant 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.
Explanatory Note	the Explanatory Note attached at Schedule 2 .
Final Lot	means a lot, including a Strata Lot, created (or to be created) in the Development for separate residential, retail or commercial occupation and disposition and which is not: (a) intended to be further subdivided (including to create a strata or community lot); (b) a Service Lot; or (c) a lot of a kind or created for a purpose that is otherwise agreed by the Parties.
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.
Just Terms Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
IPART	means the Independent Pricing and Regulatory Tribunal being the body that has certain functions under clause 5(3) and clause 6(5) of the <i>Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012</i> .
Land	means the land comprising the folio identifiers listed in Part A of Schedule 3 .
Law	means: (a) the common law including principles of equity; and

	<p>(b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority,</p> <p>that presently apply or as they may apply in the future.</p>
LCLEP	means the <i>Lane Cove Local Environmental Plan 2009</i> .
Lot	means a lot in a registered deposited plan that constitutes the Land.
Locality 8	means Locality 8 referred to in the Development Control Plan, as shown in the extract in Sheet 3 of Schedule 5 .
LRS	means the Land Registry Services New South Wales or any other Authority replacing it.
Ministerial Direction	means the <i>Environmental Planning and Assessment (Local Contributions — Timing of Payments) Direction 2020</i> attached as Annexure B .
Monetary Contribution	means the total of any monetary contribution to be paid by the Developer to the Council calculated in accordance with the formula specified in Item 1(a) of Column 1 of Schedule 4 (subject to clause 6.3 and clause 6.4) as applicable to the Development in Area 5.
Novation Deed	means a deed generally in the form of the draft deed set out in Annexure A .
Occupation Certificate	has the same meaning as under section 6.4 of the Act.
Party	means a party to this Agreement, including their successors and assigns and a person bound by the Agreement under section 7.6(3) of the Act.
Public Purpose	has the same meaning as in section 7.4 (2) of the Act.
Real Property Act	means the Real Property Act 1900 (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 2000</i> (NSW).
Service Lot	means a lot that is created for one or more of the following purposes:

	<p>(a) to be dedicated or otherwise transferred to an Authority;</p> <p>(b) for any public utility undertaking (within the meaning of the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> as at the date of this Agreement);</p> <p>(c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management; and/or</p> <p>(d) for avoidance of doubt — association property within the meaning of the <i>Community Land Development Act 1989</i>.</p>
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.
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 Development Act 2015</i> (NSW).
Transferee	has the meaning given to it under clause 19.2(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) any schedules and annexures form part of this Agreement;
- (l) headings do not affect the interpretation of this Agreement;
- (m) definitions that occur in this Agreement apply to the construction of the Agreement except in so far as the context or subject matter otherwise indicates or requires;
- (n) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (o) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party;
- (p) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment; and
- (q) this Agreement is not binding on any Party (other than a person who is Party by reason of section 7.6(3) of the Act) unless it or a counterpart has been duly executed by each person named as a Party to this Agreement.

1.3 Compliance with New Laws

- (a) If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.
- (b) For the avoidance of doubt any New Law will not relieve the Developer from its obligation to make the Development Contribution.

1.4 General

- (a) Nothing in this Agreement requires the Developer:
 - (i) to carry out the Development or any part of it; or
 - (ii) to develop the Land.
- (b) Despite any other provision of this Agreement, this Agreement does not require, allow or preclude anything from being done if by so doing it would cause the Developer to:
 - (i) be in breach; or
 - (ii) not fulfil a requirement,
 of a Development Consent in force and applying to the Land.

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 terminated, discharged or released in accordance with the terms of this Agreement.
- (c) If a legal challenge to the Development Consent for the Development results in it being rendered invalid or unenforceable, then the Developer may, in its absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.
- (d) This Agreement does not impose an obligation on the Council or any Consent Authority 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)(iiia) of the Act to take this Agreement into consideration.
- (f) This Agreement confers rights only upon a Party and not upon any other person.

5 Condition Precedent

Subject to **clause 4(c)**, the obligations and covenants of the Developer 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) The Developer must (subject to clause **and 6.1(e)**, 6.3 and clause 6.4) pay Council the Monetary Contribution described in Items 1 and 2 of **Schedule 4** when it falls due.
- (b) Subject to **subclause 6.1(c)** the Monetary Contribution is payable in accordance with the Ministerial Direction within 7 Business Days of the first Occupation Certificate being issued for the Development.
- (c) If the Ministerial Direction is revoked or amended such that the Monetary Contribution would otherwise be payable at an earlier point in time to that specified in **clause 6.1(b)**, the payments will become payable on the later of the following points-in-time:
 - (i) the point-in-time at which the Monetary Contribution would otherwise be payable under the revised legal arrangements;
 - (ii) if a Construction Certificate has been issued for the Development on or before the date on which the Ministerial Direction is revoked or amended — when prescribed in **clause 6.1(b)**;
 - (iii) if a Construction Certificate has not been issued for the Development on or before the date on which the Ministerial Direction is revoked or amended — within 7 Business Days of the first Construction Certificate being issued for the Development.
- (d) Nothing in this Agreement precludes the Developer from electing to make a Monetary Contribution earlier than it is required to do so.

6.2 Indexation

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**.

6.3 Monetary Contribution figures in Schedule 4

The figures in **Schedule 4** are indicative only as at the date of this Agreement. The actual figures that will apply to Schedule 4 will be the lower of either:

- the relevant figure specified in a Contributions Plan for the given dwelling-type as at the date of payment; or
- the relevant figure in **Schedule 4** for the given dwelling-type, subject only to adjustments for CPI in accordance with **Schedule 4**.

6.4 Works-in-kind

Any Monetary Contribution under this Agreement does not need to be paid to the extent specified in any works-in-kind agreement entered into between the Developer and the Council where the works (as specified

with an agreed value) are to be offset against any Monetary Contribution payable under this Agreement (as indexed under **Schedule 4**).

7 Making of a Monetary Contribution

A Monetary Contribution is taken to have been made by the Developer when the Council receives the full amount of the contribution payable:

- (a) in cash; or
- (b) upon clearance of an unendorsed bank cheque; or
- (c) by a deposit, by means of electronic funds transfer, of cleared funds into a bank account nominated by the Council.

8 The dedication of land

8.1 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**.
- (b) For avoidance of doubt (and without creating by implication any further or expanded obligations) the obligation under **clause 8.1(a)** does not include any obligation to carry out works for the purposes of fitting out the space to be used for a community hall, child care centre and associated outdoor play area.

8.2 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.

8.3 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 8.2(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 8.3(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 8.3(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.

8.4 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.

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

- (a) This Agreement excludes the application of section 7.11 and section 7.12 of the EP&A Act to the Development.
- (b) This Agreement does not exclude the application of section 7.24 of the EP&A Act to the Development.

10 Registration of this Agreement

- (a) The Developer must, at its expense take all practicable 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

(C) the execution of any documents; and

(ii) the production of the relevant duplicate certificates of title (if required),

to enable the Registration on Title of this Agreement, such that the Agreement is registered prior to the issue of the first Construction Certificate.

- (b) The Parties will take all practicable 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) Without limiting the generality of **clause 10(b)**, the Council must, in response to a reasonable request of the Developer, take such action that is reasonably necessary to facilitate efforts by the Developer to achieve Registration on Title.
- (d) The Parties agree that the consequence of section 7.6(3) of the Act is 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 .
- (e) Until such time as this Agreement is Registered on Title the Developer agrees that the Council may lodge a caveat to prevent the transfer of the Land to any party other than to the Developer but no other dealing.
- (f) If the Council lodges a caveat in accordance with **clause 10(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 10(a)**
- (g) Despite **clause 10(e)**, the Council as caveator must promptly consent to the registration of:
 - (i) a transfer of the Land to the Developer;
 - (ii) a transfer of any part of the Land from the Land Owner to a third party if that third party has offered to enter into an agreement on the same terms as this Agreement in accordance with **clause 19**;
 - (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.
- (h) 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 or otherwise breaching its statutory obligations, to permit the registration of:

- (i) any Strata Plan or plan of subdivision consistent with the Development Consent;
 - (ii) any transfer of the Land or any part of the Land from the Developer to a third party if that third-party has entered into an agreement on the same terms as this Agreement in accordance with **clause 19**; and
 - (iii) any other dealing deemed necessary by the Developer, acting reasonably.
- (i) If the Land Owner has failed or has been unable to register this Agreement on any of the Land in accordance with **clause 10(a)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, of exercising its rights under **clause 10(e)** of this Agreement and the Developer agrees to indemnify the Council against all costs or losses or damage howsoever arising as a consequence of being unable to enforce its caveat or the terms of this Agreement including, without limitation, the costs or losses arising in relation to or in connection with any failure by the Developer to provide the Development Contribution.
 - (j) The Council must promptly do all things reasonably required by the Developer to release and discharge this Agreement (and remove any notation relating to this Agreement from the title to the Land) 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 Developer has complied with all its obligations under this Agreement.

11 Variations to Development Contributions

11.1 Variation may be requested and agreed to

The Developer may, in its absolute discretion, request that the Council approve a variation to the Development Contributions (that is, a change to any of the provisions in Schedule 4).

11.2 Council discretion to variation request

- (a) The Council may, in the Council's absolute discretion, agree to a variation of the Development Contributions, provided that the variation is generally consistent with the intended objectives and outcomes of this Agreement.
- (b) A variation under this **clause 11** does not constitute an amendment to this Agreement.

12 Default

12.1 Notice

- (a) 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 specify that the default to be remedied within a reasonable time.
- (b) For avoidance of doubt, the issue of a notice does not, in itself:
 - (i) constitute evidence that there has been a breach; or
 - (ii) create any obligation to remedy an alleged default.

12.2 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.

12.3 Referral of dispute

If a Party disputes the Default Notice it may refer that dispute to dispute resolution under **clause 13** of this Agreement.

13 Dispute Resolution

13.1 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.

13.2 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).

13.3 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 13.2**), 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.

13.4 Parties may not constrain

If:

- (a) at least one meeting has been held in accordance with **clause 13.3**;
- (b) the Parties have been unable to reach an outcome identified in **clauses 13.3(b)(i) to 13.3(b)(iii)**; and
- (c) the Parties, have agreed that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 13.3** (and each Party is not to unreasonably withhold such agreement),

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

13.5 Disputes for expert determination

If the parties agree that the dispute is to be determined by expert determination, the matter will be determined in accordance with **clause 13.6**.

13.6 Expert determination

- (a) A dispute to be determined in accordance with **clause 13.5** 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 13.5**, 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 13.5**, 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 13.6** setting out the terms of the expert's determination and the fees payable to the expert.

13.7 Directions to expert

- (a) In reaching a determination in respect of a dispute under **clause 13.5**, 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.

14 Security and Enforcement

14.1 Developer to provide security

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

- (a) **clause 10** through the registration of this Agreement on the title of the Land.
- (b) registration of a caveat over the Land by the Council pending Registration on Title of this Agreement.

14.2 Enforcement by any party

Nothing in this Agreement (including **clauses 12** and **13**) prevents:

- (a) 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;
- (b) 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; or
- (c) the Developer from commencing and/or conducting any proceedings in the Land and Environment Court.

15 Enforcement in relation to the dedication of land

15.1 Agreement under the Just Terms Act - Acquisition Land

- (a) Subject to **clause 15.2**, if the Developer does not dedicate the land required to be dedicated under this Agreement:
 - (i) at the time at which it is required to be dedicated; or
 - (ii) at any point after that time,the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) **Clause 15.1(a)** is an agreement for the purposes of section 30 of the Just Terms Act.

15.2 Limitations on that agreement

The Council may only acquire land under **clause 15.1** if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to provide the Development Contributions under this Agreement.

15.3 Ancillary obligations

- (a) If, as a result of the acquisition referred to in **clause 15.1** the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council.

- (b) The Developer indemnifies and keeps indemnified, the Council against all claims made against the Council under the Just Terms Act as a result of any acquisition by the Council of the whole or any part of the Acquisition Land under **clause 15.1(a)**.
- (c) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this **clause 15**, including:
 - (i) signing any documents or forms;
 - (ii) producing certificates of title to the Registrar-General under the Real Property Act (if required); and
 - (iii) paying the Council's reasonable costs arising under this **clause 15**.

16 Termination

16.1 Termination of this Agreement — when there is no Development Consent

The Developer or the Council may terminate this Agreement by giving written notice to the other party if any of the following circumstances arise:

- (a) any Development Consent has not been granted and the party who wishes to terminate the Agreement, acting reasonably, forms the opinion that any Development Consent is unlikely to be granted in the immediate future; or
- (b) an Occupation Certificate and Subdivision Certificate have not been issued in relation to any Development Consent and all Development Consents:
 - (i) have been surrendered in accordance with clause 97 of the Regulation;
 - (ii) are declared by a Court to be void;
 - (iii) lapse; or
 - (iv) otherwise cease to have effect,

and, for the avoidance of doubt, termination under this **clause 16.1(b)** cannot occur in circumstances where:

- (v) any Development Consent continues to have effect; or
- (vi) if the party who wishes to terminate the Agreement is the Council — at least five years have elapsed since the date of this Agreement.

16.2 Termination of this Agreement — on the completion of obligations

One party may terminate this Agreement by giving written notice to the other party when the Developer has completed all of its obligations under this Agreement (including remedying any breaches of this Agreement).

16.3 On termination of this Agreement

- (a) If either party terminates this Agreement in accordance with this **clause 16** then:
 - (i) the Developer must take all steps reasonably necessary to minimise any loss that each party may suffer as a result of the termination of this Agreement; and
 - (ii) the Council will, at the Developer's cost, do all things reasonably required to remove the registration of this Agreement from the relevant folio of the Register.

16.4 Consequences of the termination of this Agreement

- (a) If this Agreement is terminated under this **clause 16** the parties are released and discharged from their obligations under this Agreement, subject to clause 16.4(b).
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

17 Notices

17.1 Delivery

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

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

Lane Cove Council

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

Developer:

Attention: Stephen Abolakian
Address: Heritage House, 256 Victoria Avenue,
Chatswood, NSW
Email: stephen@hyecorp.com.au

17.2 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.

17.3 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.

17.4 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.

18 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.

19 Assignment and dealings

19.1 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 19** is of no effect.

19.2 Transfer dealings

- (a) If this Agreement is not Registered on Title, the Developer must not transfer all or any part of their rights, interests or the Land (as applicable) under this Agreement to another party (**Transferee**) unless the Transferee delivers to the Council a Novation Deed signed by the Transferee and the Developer.

- (b) If this Agreement is Registered on Title, the Developer may, when intending to transfer all or any part of its rights, interests or the Land (as applicable) under this Agreement to another party (**Transferee**) deliver to the Council a Novation Deed signed by the Transferee and the Developer.
- (c) The Council must, within 20 Business Days of receipt of a signed Novation Deed in **clause 19.2(a) or clause 19.2(b)**, execute the Novation Deed and provide a copy of the signed Novation Deed to both the Transferee and the Developer.
- (d) Once the Novation Deed is executed by the Council, the Transferee is released from its obligations under this Agreement on and from the Effective Date (within the meaning of the Novation Deed).

19.3 Transfer dealings

- (a) If:
 - (i) the whole or any part of the land is transferred without a Novation Deed being entered into (**Transferred Land**); and
 - (ii) this Agreement is Registered on Title,
 then this Agreement is deemed to include the provisions of the Novation Deed as if it had been entered into:
 - (iii) by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
 - (iv) by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
 - (v) by the Council,
 on the basis that:
 - (vi) the Effective Date is either:
 - (A) if the New Developer was not a party to the Agreement until the transfer of the Transferred Land, the date that the New Developer became a Party under section 7.6(3) of the Act; or
 - (B) if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.

19.4 Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into

- (a) This **clause 19.4** takes precedence over the other provisions in this **clause 19**.
- (b) For the avoidance of doubt:
 - (i) the Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of that person's right, powers, title, benefit and/or interest in, to, under or derived from the Land, this Agreement

and/or any other asset or property of that person to or in favour of any financier or creditor of that person (or to or in favour of any agent or trustee of or for any such financier or creditor) (any such person being a **Mortgagee**), provided that such mortgage, charge, encumbrance or security interest does affect the title to any Dedication Land when it is transferred to Council; and

- (ii) the Developer may enter into any agreement to sell, transfer, option or lease which, if exercised, may result in the formation of an agreement to sell, transfer or lease any Final Lot comprised in or forming part of the Development, provided that the sale, transfer, option or lease cannot be exercised under the agreement until the Final Lot is the subject of an Occupation Certificate.

20 GST

20.1 Construction

In this **clause 20** 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.

20.2 Intention of the Parties

Without limiting the operation of this **clause 20**, 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 20.6** no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 20.4** below) on account of GST.

Note: The balance of this **clause 20** has been included in the event that the parties are mistaken.

20.3 Consideration GST exclusive

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

20.4 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 20.4(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 20.4(b)** or **20.4(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 20.4(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 20.4(a)**:

- (i) subject to **clause 20.4(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 20.4(b) or 20.4(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 20**, 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 13.3(b)**.

- (e) The recipient will pay the GST Amount referred to in this **clause 20.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

20.5 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 20.4**. 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.

20.6 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 20.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

20.7 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 20.4** 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.

20.8 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 20.4** in respect of that reimbursement.

20.9 No Merger

This **clause 20** 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.

21 Costs

The Developer 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.

22 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.

23 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.

24 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.

25 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.

26 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.

27 Representations and warranties

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.

28 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.

29 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.

30 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.

31 Relationship of parties

- (a) This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.
- (b) No Party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other Party's credit.

32 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.

33 Counterparts

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

34 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.

35 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.

36 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.

37 Explanatory Note

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

38 Modification

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

39 Adoption of a Contributions Plan

- (a) If the amount of the Monetary Contributions under s.7.11 of the Act that would be payable by the Developer to the Council under a Development Consent (but for this Agreement) are less than the Monetary Contributions payable under this Agreement following the adoption of a Contributions Plan, the Council is to promptly pay the difference between the two amounts to the Developer immediately following the payment of Monetary Contributions by the Developer.
- (b) 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.

40 Trustee Landowner

- (a) SLS Five Pty Ltd (ABN 56 707 236 737) (**Trustee**) enters into this Agreement in its capacity as the trustee for the SLS Five Trust (**Trust**) constituted by a trust deed (**Trust Deed**).
- (b) The Trustee warrants that:
 - (i) It is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) Entry into this Agreement is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and perform its obligations and satisfy or discharge its liabilities under this Agreement;
 - (iii) It is not in breach of the Trust Deed;
 - (iv) It is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Agreement; and
 - (v) It has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Agreement and all necessary action has been taken to authorise the execution and performance of this Agreement under the Trust Deed.
- (c) The Trustee indemnifies the Council, and agrees to keep the Council indemnified, in respect of any loss or liability in any way connected with a breach of warranty in **clause 40(b)**.

- (d) Prior to the Trustee being replaced as the trustee of the trust in accordance with the Trust Deed:
 - (i) the Trustee must procure that the replacement trustee enters into a new agreement with the Council on the same terms as this Agreement;
 - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Council, under which the Council releases the Trustee from the requirement to observe and perform any future obligations under this Agreement;
 - (iii) the Trustee (as outgoing trustee) must release the Council, from the requirement to observe and perform any future obligations under this agreement; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Council in relation to entering into a new agreement under this **clause 40** and the costs and expenses of registering any new agreement in the title to the Land.
- (e) Subject to **clause 40(f)**, liability arising under or in connection with this Agreement (except under or in connection with **clause 40(d)** above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of any liability out of the assets of the Trust.
- (f) Notwithstanding any other provisions of this Agreement, **clause 40(e)** does not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of the Trustee's failure to properly perform its duties as trustee of the Trust.

Schedule 1

Section 7.4 Requirements

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	<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 type="checkbox"/> Yes <input checked="" 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 section 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 not excluded by this Agreement.
Benefits to be taken into account (Section 7.4 (3)(e), s 7.4(6))	Benefits under the Agreement are not to be taken into consideration under section 7.11(6) of the Act.
Mechanism for Dispute resolution - (Section 7.4 (3)(f))	See clause 12 and clause 13 .
Enforcement of this Agreement - (Section 7.4 (3)(g))	See clauses 10, 12, 13 and 14 and Schedule 4..
Registration of this Agreement (Section 7.6)	See clause 10 .
No obligation to grant consent or exercise functions - (Section 7.4 (9))	See clauses 4(b) and 26 .

TABLE 2 – OTHER MATTERS

REQUIREMENT UNDER THE ACT	THIS DEED
<p>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)</p>	<p>Yes.</p>
<p>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)</p>	<p>No</p>
<p>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)</p>	<p>No</p>

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note – St Leonards South Precinct Planning Agreement,

Clause 25E

Environmental Planning and Assessment Regulations 2000

Explanatory Note for Draft Voluntary Planning Agreement

13, 15, 17 and 19 Canberra 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 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.

In preparing the explanatory note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 25B(2). The Planning Secretary has published *Planning agreements: Practice note – February 2021*. It has been considered by the parties in the course of preparing this explanatory note as required by clause 25E(2) of the Regulation.

Parties

The parties to this planning agreement are:

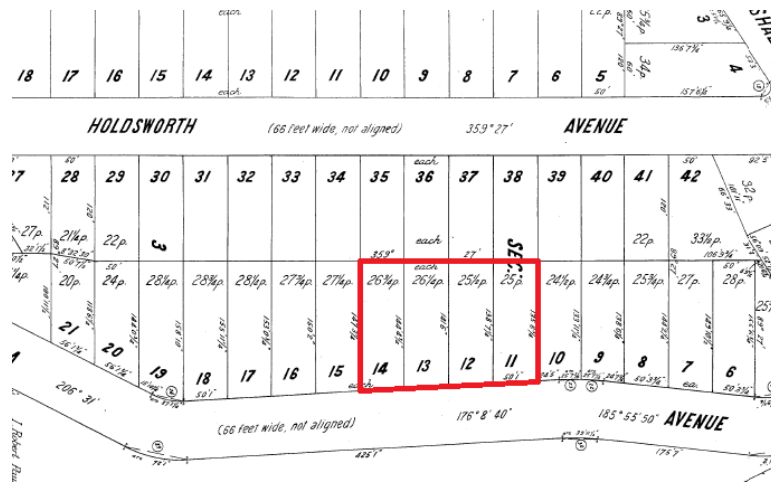
- Lane Cove Council as the planning authority; and
- SLS Five Pty Ltd as trustee for SLS Five Trust.

Description of subject land

- Lot 11 in Section 3 in DP7259 known as 13 Canberra Avenue, St Leonards
- Lot 12 in Section 3 in DP7259 known as 15 Canberra Avenue, St Leonards
- Lot 13 in Section 3 in DP7259 known as 17 Canberra Avenue, St Leonards; and

- Lot 14 in Section 3 in DP7259 known as 19 Canberra Avenue, St Leonards,

(collectively referred to as the “the Land”),
depicted in the map shown below:



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

Description of the Development to which the Planning Agreement applies

1. The “**Development**” on the Land comprises any development of the Land that exceeds the maximum building height or maximum floor space ratio (or both) set under clause 4.3 and clause 4.4 of the *Lane Cove Local Environmental Plan 2009* respectively.
2. At the date of this Agreement Part 7 of the *Lane Cove Local Environmental Plan 2009* provides a pathway to exceed either or both of these standards.

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 of land for use as a publicly accessible pedestrian an east-west link; and
3. the dedication of a parcel of land, limited in height and depth (which may be a Strata Lot) comprising a community hall, child care centre and associated outdoor play area.

How the agreement promotes the public interest

The Planning Agreement Promotes the Objects of the Act

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.

How the Planning Agreement otherwise promotes the public interest

The Planning Agreement promotes the public interest by making monetary contributions (equivalent to s7.11 Developer Contributions) and where applicable provides 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.

The Planning Agreement also promotes the public interest by providing for the dedication of land, in circumstances where such dedications are not anticipated as part of a contributions plan.

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.

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

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

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

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

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.

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

In the event of the Developer obtaining development consent for the Development, the Voluntary Planning Agreement requires that the agreement be registered on title prior to the issue of first construction certificate for the Development.

In the event of the Developer obtaining development consent for the Development, the Voluntary Planning Agreement requires that all contributions must be provided to Council within seven days of the issue of first occupation certificate for the Development.

Schedule 3

Land

Part A title details

Folio Identifier	Address
11/3/7259 and 12/3/7259	13 & 15 Canberra Avenue, St Leonards

Part B title details

Folio Identifier	Address
13/3/7259	17 Canberra Avenue, St Leonards

Part C title details

Folio Identifier	Address
14/3/7259	19 Canberra Avenue, St Leonards

Note: This land is depicted in the extract from DP 7259 set out in Sheet 1 of **Schedule 5**.

Schedule 4

Development Contribution Schedule

1. Development Contribution

The Developer undertakes to provide the following Development Contribution as set out and provided for in the Table below in respect of **Area 5** in Locality 8.

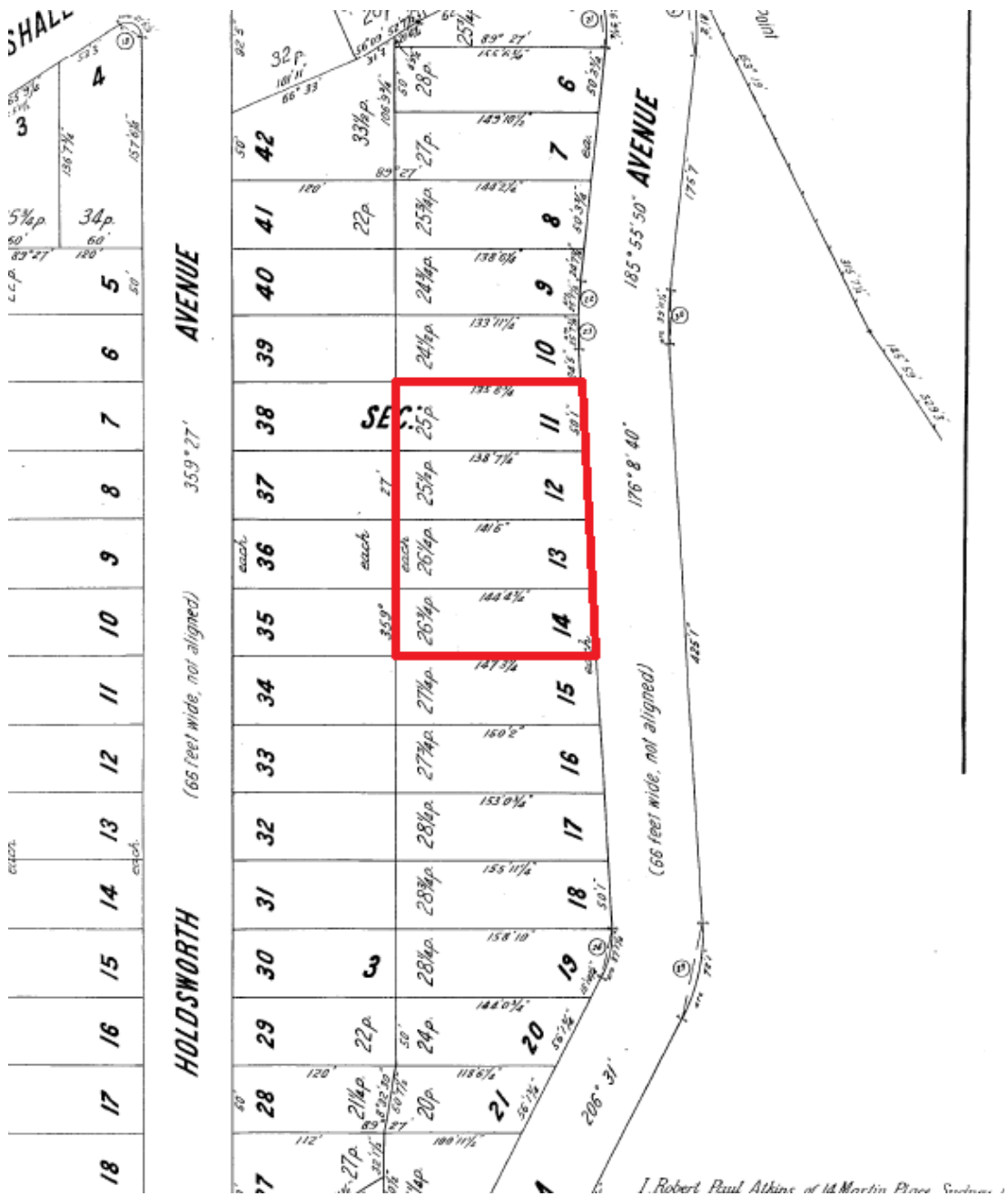
Column 1		Column 3
Development Contribution		Timing
Item 1 (a).	<p><u>Monetary Contribution</u></p> <p>Subject to clause 6.3, the Developer must make a Monetary Contribution to Lane Cove Council estimated in the amount of \$2,538,323 for the purposes of the Local Infrastructure identified in the adopted Contributions Plan (or if there is no adopted Contributions Plan, the Draft 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 reduction in rates recommended by IPART</u>.</p> <p>Contribution Amount per Studio or 1 bedroom Dwelling (1BRD):</p> <p>\$ 20,745.00</p> <p>Contribution Amount per 2 bedroom Dwelling (2BRD):</p> <p>\$29,636.00</p> <p>Contribution Amount per 3 bedroom Dwelling (3BRD):</p> <p>\$45,936.00</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>Monetary Contribution = (1BRD x R1) plus (2BR x R2) plus (3BR x R3) – (3BRD x 4)</p>	<p>Time for payment</p> <p>The Monetary Contribution is to be paid in accordance with clause 6.1.</p>

Column 1		Column 3
Development Contribution		Timing
<p>Where:</p> <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 27</p> <p>R2 means the number of 2 bedroom dwellings in the proposed Development equivalent to 28</p> <p>R3 means the number of 3 bedroom dwellings in the proposed Development equivalent to 29</p>		

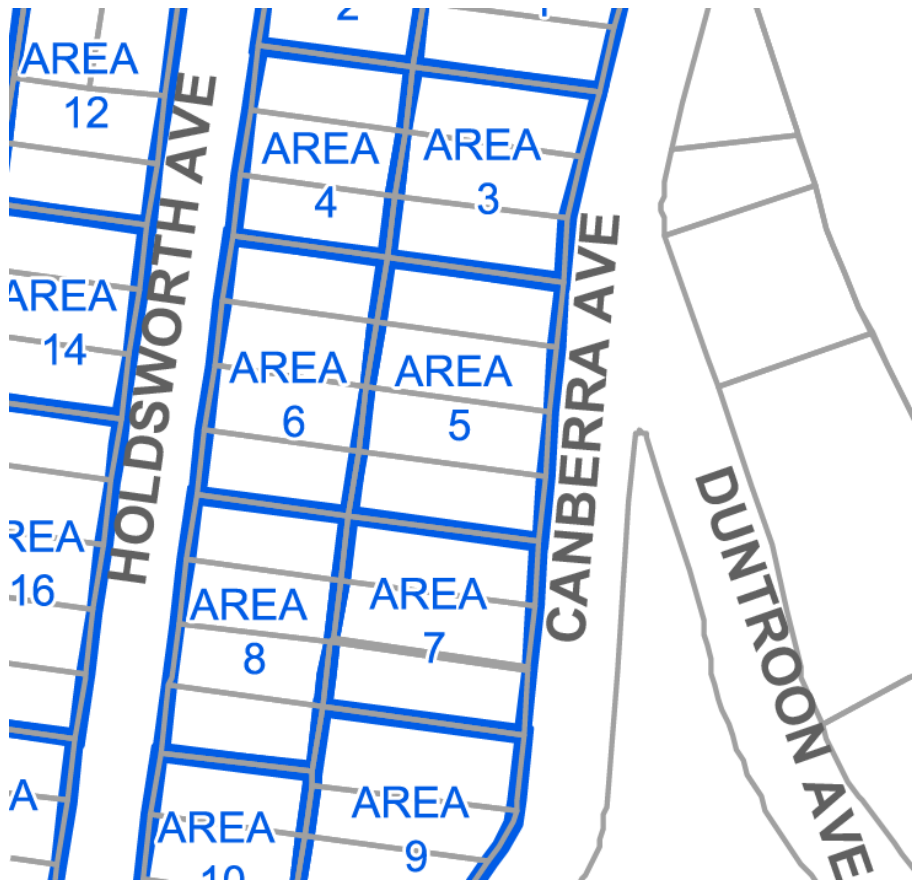
Indexation		
Item 2.	<p>Indexation:</p> <p>The Monetary Contribution must be indexed between the date of this Agreement and the date of payment in accordance with the following formula:</p> $\frac{\$C_c \times CPI_p}{CPI_c}$ <p>Where:</p> <p>\$C_c is the contribution amount under this Agreement expressed 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 date of this Agreement.</p> <p>Note: The contribution payable will not be less than the contribution specified in this Agreement.</p>	
Item 3	<p><u>East-west link</u></p> <p>Dedication of a parcel of land generally consistent with the parcel identified as Lot 5 (as indicated by the number '5') set out in Sheet 4 of Schedule 5.</p>	Immediately prior to the issue of the first Occupation Certificate for the Development.
Item 4	<p><u>Community hall, child care centre and associated outdoor play area</u></p> <p>Dedication of a parcel of land, limited in height and depth (which may be a Strata Lot), comprising of areas that are close to the following areas:</p> <ul style="list-style-type: none"> • childcare indoor area: <ul style="list-style-type: none"> - indoor play: 412m²; - lobby: 11m²; - waste room: 9.5m²; - storage room: 23m²; - parking spaces: 266m²; 	Immediately prior to the issue of the first Occupation Certificate for the Development .

<ul style="list-style-type: none"> - total: 721.5m²; • childcare outdoor area — 530m²; • community facility: <ul style="list-style-type: none"> - indoor: 117m²; - balcony: 34m²; - total: 151m². <p>The above space must be located within a cold shell at the time of dedication (subject to any separate agreement that may, at each Party's absolute discretion, be reached between the Council and the Developer under clause 6.4 of this Agreement in relation to any fit out).</p>		
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Sheet 1: Land



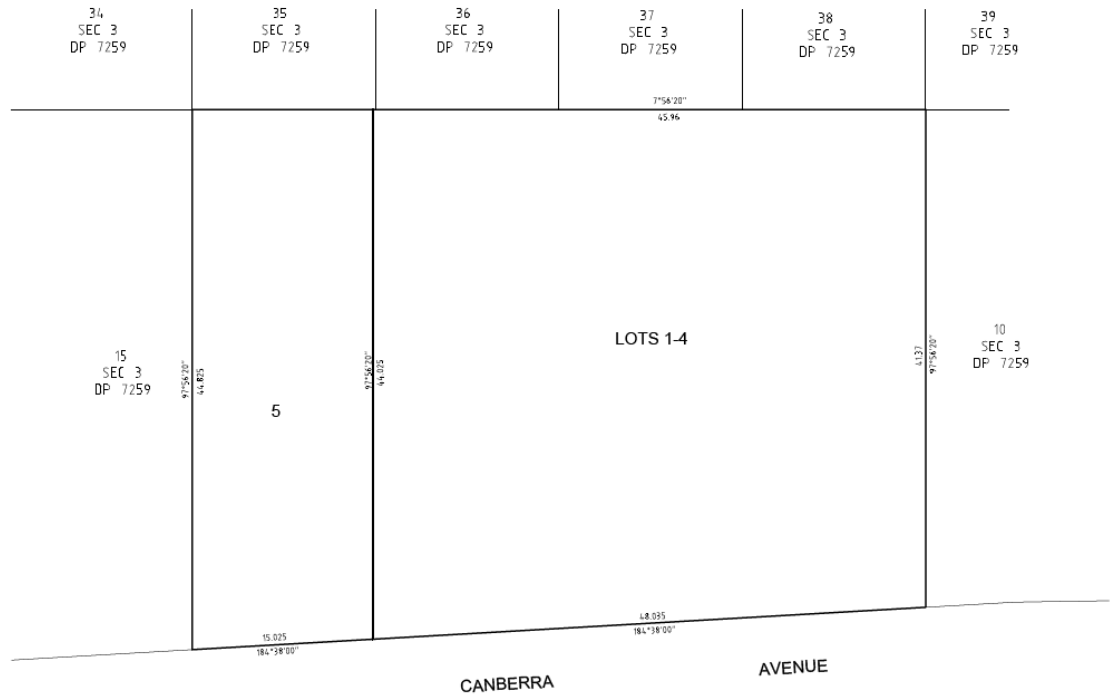
Sheet 2: Area 5



Sheet 3: Locality 8



Sheet 4: Dedication Land — East West Link



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 **SLS Five Pty Ltd** as)
trustee for SLS Five Trust 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 SLS Five Pty Ltd ACN as trustee for SLS Five Trust **(Developer)**

Dated

Draft No []
[Date]

Lane Cove Council

[Existing Developer]

[<<INSERT DETAILS OF New Developer>>]

Deed of Novation for Voluntary Planning Agreement

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	Execution	6

Date

Parties

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

[Existing Developer] A CN [insert] of [insert address] New South Wales (**[Existing Developer]**)

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

Background

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

Agreed terms

2 Definitions

In this document these terms have the following meanings:

Council	Lane Cove Council.
Effective Date	means: <ul style="list-style-type: none">(a) the date that this document is signed by all of the Parties; or(b) the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer, whichever is the latter event.
Land	Has the meaning given to that term in the Existing Agreement.

Original Agreement	The voluntary planning agreement dated [insert] and made between the Council and SLS Five Pty Ltd as trustee for SLS Five Trust.
Party	means a party to this document.

3 Novation

3.1 Original Agreement

Subject to **clause 3.2** and with effect from the Effective Date:

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

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

3.2 Reference in Original Agreement

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

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

3.3 Address for notices

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

New Developer:

Address: [insert]
Fax: [insert]
Contact Person: [insert]
Email: [insert]

4 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.

5 Release and Discharge

- (a) On and from the Effective Date, the Council and the New Developer releases the Existing Developer from all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement and from all claims that they may have against the Existing Developer under or in respect of the Agreement.
- (b) On and from the Effective Date, the Existing Developer releases the Council and the New Developer from all their obligations under the Agreement and from all claims that it may have against the Council or New Developer under or in respect of the Agreement.

6 Indemnities

The New Developer indemnifies the Existing Developer on demand against all liabilities, claims, damages and loss which the Existing Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

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

7 Warranties and representations

7.1 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.

7.2 Survival of warranties

The warranties and representations in **clause 7.1** survive the execution of this document and the novation of the Original Agreement.

8 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*. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

9 Stamp duty and costs

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

10 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.

11 Amendment

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

12 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.

13 Counterparts

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

14 General

14.1 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.

14.2 Headings

Headings do not affect the interpretation of this document.

14.3 Continuing performance

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
 - (ii) survives and continues after performance of this Deed.

14.4 Party acting as trustee

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

14.5 Waiver

- (a) Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

14.6 Pre-contractual negotiation

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement (other than any deed or contract entered into between the Existing Developer and the New Developer).

14.7 Third parties

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

14.8 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

14.9 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

Execution

Executed as a deed.

[Insert relevant attestation clauses]

[Insert the executed planning agreement that is the subject of the novation as Annexure A]

Annexure B – Ministerial Direction

This is **Annexure B** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and SLS Five Pty Ltd ACN as trustee for SLS Five Trust **(Developer)**

Dated

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.
