

# Appendix 11

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Public Benefit Offer and Draft VPA

CIFI St Leonards Pty Ltd and  
Greaton St Leonards Holdings Pty Ltd

10<sup>th</sup> May 2022

**General Manager**  
Lane Cove Council  
PO Box 20  
LANE COVE NSW 1595

Dear Mr Wrightson

**RE: SITES 18 – 20 ST LEONARDS SOUTH – PUBLIC BENEFIT OFFER**

Dear Mr Wrightson

The public offer is submitted with the development application on behalf of *CIFI St Leonards Pty Ltd* and *Greaton St Leonards Holdings Pty Ltd* (landowner) for the redevelopment of development lots 18, 19 & 20 St Leonards South at addresses 22-34 Berry Road, 21-31 Holdsworth Avenue and 42-46 River Road, St Leonards South for a residential development under the Lane Cove Local Environmental Plan 2009.

The development application is subject to contributions under the Section 7.11 of the Act in accordance with the Council's draft St Leonards South Precinct Section 7.11 Contributions Plan. The 7.11 contribution plan remains in draft form before the Independent Pricing and Regulatory Tribunal (IPART). The landowner proposes a planning agreement with Lane Cove Council to provide contributions before IPART to finalise consent the development contributions plan for the St Leonards South precinct.

Yours faithfully,

**CIFI St Leonards Pty Ltd and Greaton St Leonards Holdings Pty Ltd.**

Blake Yang  
Managing Director



10/05/2022

Nicho Teng  
Managing Director



## PARTIES

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

And

CIFI St Leonards Pty Ltd ACN 652 332 039

And

Greaton St Leonards Holdings Pty Ltd ACN 609  
953 264

# Draft Planning Agreement

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

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**Annexure D - Berry Road Park Land**

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Dated

## Parties

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

And

**CIFI St Leonards Pty Ltd ACN 652 332 039** of Level 12/440 Collins Street, Melbourne, Victoria, Australia

And

**Greaton St Leonards Holdings Pty Ltd ACN 609 953 264** of Level 20/20 Bond Street, Sydney, New South Wales 2000

(the **Developer**)

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## Background

- A The Land Owner owns the Land.
- B The Developer intends to lodge a Development Application for the development of the Land on behalf of the Land Owner.
- 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 Subject to the grant of Development Consent for the Development, the Developer will provide the Development Contributions to the Council in accordance with this Agreement.
- E As contemplated by section 7.4 of the Act, the Parties wish to enter into an Agreement in connection with the carrying out of the Development, on the terms and conditions of this Agreement.
- 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:

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Agreed Public Purposes</b>	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.
<b>Agreement</b>	means this voluntary planning agreement including any schedules and annexures.
<b>Area</b>	means an area in Locality 8 – St Leonards South Precinct specified in the Lane Cove Development Control Plan.
<b>Area 18, 19 &amp; 20</b>	means areas 18, 19 & 20 in 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 <b>Schedule 5</b>
<b>Authority</b>	means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
<b>Business Day</b>	means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
<b>Consent Authority</b>	means an Authority having the function to determine the Development Application under the Act.
<b>Construction Certificate</b>	has the same meaning as under section 6.4 of the Act, but excludes any construction certificate issued for early works.
<b>CPI</b>	means the All Groups Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.
<b>Dedication Land</b>	means the land required to be dedicated under this Agreement by the Developer as described in <b>Item 3 of Schedule 4</b> .
<b>Development</b>	means the proposed development of the Land.
<b>Development Application</b>	has the meaning given to it in the Act lodged with the Consent Authority.
<b>Development Consent</b>	means the consent (if any) granted by the Consent Authority to the Development Application, and has the same meaning as in the Act and includes any amendment or modification

	of the Development Consent, including a Section 4.55 Modification.
<b>Development Contribution</b>	a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a Public Purpose.
<b>Development Contributions Plan</b>	means the Draft St Leonards South Precinct Section 7.11 development contributions plan dated March 2022 as in force and applicable to the Land providing for the payment of Development Contributions to the Council under s.7.11 of the Act in respect of the residential development of the Land having regard for Part 7 of the LCLEP 2009.
<b>Development Control Plan</b>	means the Lane Cove Development Control Plan adopted on the 22 February 2010 and amended on 22 October 2020 and referred to in Part 7 of the LCLEP 2009.
<b>Explanatory Note</b>	the Explanatory Note attached at <b>Schedule 2</b> .
<b>Force Majeure</b>	means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.
<b>GST</b>	has the same meaning as in the GST Law.
<b>GST Law</b>	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.
<b>Item</b>	means an item referred to in the applicable Schedule.
<b>Just Terms Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<b>IPART</b>	means the Independent Pricing and Regulatory Tribunal being the body responsible for approving the Development Contributions Plan.
<b>Land</b>	means the land comprising the folio identifiers listed in Part A of <b>Schedule 3</b> .
<b>Land Owner</b>	means the owner of the Land identified as CIFI St Leonards Pty Ltd ACN 652 332 039 in respect of the Land identified in Part A of <b>Schedule 3</b> and SJD St Leonards Pty Ltd ACN 606 429 896 in respect of the Land identified in Part B of <b>Schedule 3</b> .
<b>Law</b>	means:

	<p>(a) the common law including principles of equity, and</p> <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>
<b>LCLEP</b>	means the <i>Lane Cove Local Environmental Plan 2009</i> .
<b>Lot</b>	means a lot in a registered deposited plan that forms part of the Land and Council's Land.
<b>Locality 8</b>	means Locality 8 referred to in the Development Control Plan.
<b>LRS</b>	means the Land Registry Services New South Wales or any other Authority replacing it.
<b>Map</b>	means the document attached as <b>Annexure C</b> .
<b>Monetary Contribution</b>	means the total of any monetary contribution to be paid by the Developer to the Council calculated in accordance with the formula specified in the Development Contributions Plan and as summarised in <b>Item 1(a)</b> of <b>Column 1</b> of <b>Schedule 4</b> as applicable to the Development in an <b>Area</b> .
<b>Novation Deed</b>	means the draft deed generally in the form set out in <b>Annexure A</b> .
<b>Occupation Certificate</b>	has the same meaning as under section 6.4 of the Act.
<b>Party</b>	a party to this Agreement, including their successors and assigns.
<b>Public Purpose</b>	has the same meaning as in section 7.4 (2) of the Act.
<b>Real Property Act</b>	means the <i>Real Property Act 1900</i> (NSW).
<b>Registration on Title</b>	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 <b>Registered on Title</b> refers to the state of the Agreement being so registered.
<b>Regulation</b>	the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
<b>Schedule</b>	means a schedule to this Agreement and forming part of this Agreement.

<b>Section 4.55 Modification</b>	means any modification of the Development Consent pursuant to section 4.55 of the Act.
<b>Service Lot</b>	<p>means a lot that is created for one or more of the following purposes:</p> <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>for avoidance of doubt — association property within the meaning of the <i>Community Land Development Act 1989</i>.</p>
<b>Subdivision Certificate</b>	has the same meaning as under section 6.4 of the Act.
<b>Standard Requirements</b>	means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard required by a governmental entity or any other applicable requirement of a State governmental entity.
<b>Strata Lot</b>	means a strata lot in a Strata Plan.
<b>Strata Plan</b>	means a strata plan or strata plan of subdivision within the meaning of the <i>Strata Schemes (Freehold Development) Act 1973</i> (NSW) or any other legislation replacing it.
<b>Transferee</b>	has the meaning given to it under <b>clause 19.2(a)</b> .

## 1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency and all amounts payable under this Agreement are payable in Australian dollars;

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

### 1.3 Compliance with New Laws

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

## 2 Planning Agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 7.1 of Part 7 of the Act.
- (b) **Schedule 1** of this Agreement sets out the mandatory requirements of section 7.4 of the Act and the corresponding provisions of this Agreement.

## 3 Application of this Agreement

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

## 4 Operation of this Agreement

- (a) This Agreement is entered into on and from the date that this Agreement is signed by all the parties as required by clause 203 of the Regulation.
- (b) This Agreement will remain in force until:
  - (i) it is terminated by operation of Law;
  - (ii) all obligations are performed or satisfied; or
  - (iii) it is otherwise discharged or released in accordance with the terms of this Agreement.
- (c) If a legal challenge to the Development Consent for the Development by a third-party results in it being rendered invalid or unenforceable, then the Developer may, in its absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.
- (d) This Agreement does not impose an obligation on the Council to grant or modify any Development Consent.
- (e) For avoidance of doubt, **clause 4(d)** does not affect any obligation of the Consent Authority under section 4.15(1)(a)(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) In consideration of the Council granting to the Developer a Development Consent, the Developer agrees to pay Council a Monetary Contribution.
- (b) The Monetary Contribution will be payable in accordance with column 3 of the table at Schedule 4. ; and
- (c) nothing in this Agreement precludes the Developer from electing to make a Monetary Contribution earlier than it is required to do so.

### 6.2 Indexation

- (a) The Monetary Contribution calculated in accordance with **clause 6.1** is to be indexed in accordance with any movement in the CPI calculated in the manner specified in the Development Contributions Plan which is summarised 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 Works-in-kind

If applicable, 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 **Item 3 of Schedule 4**.

### 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 **Item 3 of Schedule 4** the Council is given an instrument by the Development Land Owners, 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 practical steps to procure:
  - (i) the consent of each person who:



- (A) has an estate or interest in the Land registered under the Real Property Act; or
  - (B) is seized or possessed of an estate or interest in the Land; and
- (ii) the execution of any documents; and
- (iii) the production of the relevant duplicate certificates of title, to enable the Registration on Title of this Agreement.
- (b) The Parties will take all practical steps to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the Agreement is entered into by the Parties.
- (c) The Parties agree that on registration by the Registrar-General the Agreement will be binding on and enforceable against the owners of the Land from time to time as if each owner of the Land for the time being had entered into this Agreement.
- (d) Until such time as this Agreement is Registered on Title the Developer warrants that the Land Owner agrees that the Council may lodge a caveat to prevent the transfer of the Land to any party other than to the Land Owner but no other dealing.
- (e) If the Council lodges a caveat in accordance with **clause 10(d)** then the Council will do all things reasonably necessary to:
  - (i) ensure that the caveat does not prevent or delay either the Registration on Title of this Agreement, the transfer of any Transfer Lands to Council or any dealing with the Land other than a transfer to a third party (other than Council); and
  - (ii) remove the caveat from the title to the Land promptly, following the registration of this Agreement in accordance with **clause 10(a)**.
- (f) Despite **clause 10(d)**, the Council as caveator must promptly consent to the registration of:
  - (i) a transfer of the Land to the Land Owner;
  - (ii) a transfer of any part of the Land from the Land Owner to a third party if that third party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 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.
- (g) Following the Agreement being Registered on Title, the Council will do all things reasonably necessary and provide its consent, but without fettering its discretion acting as a consent authority, to permit the registration of:
  - (i) any Strata Plan consistent with the Development Consent;

- (ii) any transfer of the Land or any part of the Land from the Land Owner to a third party if that third-party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 19**; and
  - (iii) any other dealing deemed necessary by the Land Owner or the Land Owner, acting reasonably.
- (h) If the Developer has failed or has been unable to register this Agreement on any of the Land in accordance with **clause 10(a)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, of exercising its rights under **clause 10(d)** of this Agreement and the Developer agrees to indemnify the Council against all costs or losses or damage howsoever arising as a consequence of being unable to enforce its caveat or the terms of this Agreement including, without limitation, the costs or losses arising in relation to or in connection with any failure by the Developer to provide the Development Contribution.
- (i) The Council must promptly do all things reasonably required by the Land Owner to release and discharge this Agreement with respect to any Lot or Lots forming part of any lot, including a Strata Lot, created or to be created on subdivision of the Land on date on which the 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 this Agreement or 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 reasonable discretion, agree to a variation of this Agreement or 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

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

## 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 Suspension of time-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, acting in good faith, form the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 13.3**,

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

### **13.5 Disputes for expert determination**

If the parties agree that the dispute is to be determined by expert evaluation, the matter will be determined in accordance with **clause 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 Enforcement in relation to the dedication of land

### 14.1 Agreement under the Just Terms Act - Acquisition Land

- (a) Subject to **clause 14.2**, 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 14.1(a)** is an agreement for the purposes of section 30 of the Just Terms Act.

## 14.2 Limitations on that agreement

The Council may only acquire land under **clause 14.1** 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.

## 14.3 Ancillary obligations

- (a) If, as a result of the acquisition referred to in **clause 14.1** 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 14.1(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 14**, 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 14**.

# 15 Termination

## 15.1 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 67 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 15.1(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.

### **15.2 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).

### **15.3 On termination of this Agreement**

- (a) If either party terminates this Agreement in accordance with this **clause 15** 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 Development Land Owners' cost, do all things reasonably required to remove the registration of this Agreement from the relevant folio of the Register.

### **15.4 Consequences of the termination of this Agreement**

- (a) If this Agreement is terminated under this **clause 15** the parties are released and discharged from their obligations under this Agreement, subject to **clause 15.4(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.

## **16 Security and Enforcement**

### **16.1 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 9** through the registration of this Agreement on the title of the Land; and
- (b) registration of a caveat over the Land by the Council pending Registration on Title of this Agreement.

### **16.2 Enforcement by any party**

- (a) Subject to firstly complying with **clauses 12** and **13** and without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:

- (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
- (ii) the Council from exercising any function under the Act or any other law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## 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](mailto:lccouncil@lanecove.nsw.gov.au)

#### **Developer:**

Attention: **The Directors**  
 Address: **Suite 1, Level 20**  
**20 Bond Street**  
**Sydney NSW 2000**  
 Email: [nicho.t@greaton.com.au](mailto:nicho.t@greaton.com.au)  
[blake@cifiaus.com.au](mailto:blake@cifiaus.com.au)  
 Copy: [peter.j@greaton.com.au](mailto:peter.j@greaton.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) The Developer must not transfer all or any part of their rights, interests or the Land (as applicable) under this Agreement to another party (**Transferee**) unless the Transferee delivers to the Council a Novation Deed signed by the Transferee and the Developer.
- (b) The Council must, within 20 Business Days of receipt of the signed Novation Deed in **clause 19.2(a)**, execute the Novation Deed and provide a copy of the signed Novation Deed to both the Transferee and the Developer.
- (c) Once the Novation Deed is executed by the Council, the Developer is released from its obligations under this Agreement.

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

### 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.

### 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 1/11<sup>th</sup> 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

- (a) The Developer has agreed, promptly upon request, to lodge at the LRS the relevant certificates of title to enable the registration of the Agreement in the relevant folios of the Land titles and warrants that it has obtained the consent of the Land Owner in respect of such obligation.
- (b) The Council represents and warrants that it has power to enter into this Agreement and comply with its obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

## 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

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

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

The Developer acknowledges and agrees that it is required to provide the benefits specified for a particular Area as noted in the Development Control Plan as applicable to Locality 8 for the Development of an Area and where no s.711 contribution offset is available.



# 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Description of the land to which this Agreement applies-</b> (Section 7.4(3)(a))	The Land
<b>Description of the development to which this Agreement applies-</b> (Section 7.4(3)(b)(ii))	The Development.
<b>The scope, timing and manner of delivery of Development Contribution required by this Agreement -</b> (Section 7.4(3)(c))	See <b>clause 6</b> .
<b>Applicability of Section 7.11 of the Act -</b> (Section 7.4 (3)(d))	The application of section 7.11 of the Act is excluded by this Agreement.
<b>Applicability of Section 7.12 of the Act -</b> (Section 7.4 (3)(d))	The application of sections 7.12 of the Act is excluded by this Agreement.
<b>Applicability of Section 7.24 of the Act -</b> (Section 7.4 (3)(d))	The application of section 7.24 of the Act is not excluded by this Agreement.
<b>Benefits to be taken into account</b> (Section 7.4 (3)(e))	The benefits under the Agreement are to be taken into consideration when determining a development contribution under section 7.11(6) of the Act.
<b>Mechanism for Dispute resolution -</b> (Section 7.4 (3)(f))	See <b>clause 13</b> .
<b>Enforcement of this Agreement -</b> (Section 7.4 (3)(g))	See <b>clauses 14 and 16</b> .
<b>Registration of this Agreement</b> (Section 7.6)	See <b>clause 9</b> .
<b>No obligation to grant consent or exercise functions -</b> (Section 7.4 (9))	See <b>clause 26</b> .

**TABLE 2 – OTHER MATTERS**

<b>REQUIREMENT UNDER THE ACT</b>	<b>THIS DEED</b>
<b>Registration of the Planning Agreement –</b> (section 7.6 of the Act)	Yes
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (clause 205 of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (clause 205 of the Regulation)	Yes
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (clause 205 of the Regulation)	No

## Schedule 2

### Explanatory Note

Environmental Planning and Assessment Regulation 2021

(Clause 205)

#### **Explanatory Note**

## **Explanatory Note – St Leonards South Precinct Planning Agreement,**

### **Clause 25E**

#### ***Environmental Planning and Assessment Regulations 2021***

### **Explanatory Note for Draft Voluntary Planning Agreement**

21, 23, 25, 27, 29 & 31 Holdsworth Avenue, St Leonards and 22, 24, 26, 28, 30, 32 & 34 Berry Road and 42, 44 & 46 River Road, St Leonards

#### **Summary**

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a draft Voluntary Planning Agreement (“**the Planning Agreement**”) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (“**the Act**”) and Environmental Planning and Assessment Regulation 2000 (Clause 25E) (“**the Regulation**”). This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

#### **Parties**

The parties to this planning agreement are:

Lane Cove Council as the planning authority; and

CIFI St Leonards Pty Ltd ACN 652 332 039; and

Greaton St Leonards Holdings Pty Ltd ACN 609 953 264

#### **Description of subject land**

Lot 15 in Section 2 in DP 7259 known as 21 Holdsworth Avenue, St Leonards;  
Lot 16 in Section 2 in DP 7259 known as 23 Holdsworth Avenue, St Leonards;  
Lot 17 in Section 2 in DP 7259 known as 25 Holdsworth Avenue, St Leonards;  
Lot 18 in Section 2 in DP 7259 known as 27 Holdsworth Avenue, St Leonards;  
Lot 19 in Section 2 in DP 7259 known as 29 Holdsworth Avenue, St Leonards;  
Lot 20 in Section 2 in DP 7259 known as 31 Holdsworth Avenue, St Leonards;  
Lot 29 in Section 2 in DP 7259 known as 22 Berry Road, St Leonards;  
Lot 28 in Section 2 in DP 7259 known as 24 Berry Road, St Leonards;  
Lot 27 in Section 2 in DP 7259 known as 26 Berry Road, St Leonards;  
Lot 26 in Section 2 in DP 7259 known as 28 Berry Road, St Leonards;  
Lot 25 in Section 2 in DP 7259 known as 30 Berry Road, St Leonards;  
Lot 24 in Section 2 in DP 7259 known as 32 Berry Road, St Leonards;  
Lot 1 in DP 1037926 known as 34 Berry Road, St Leonards;  
Lot 21 in Section 2 in DP 7259 known as 42 River Road, St Leonards;  
Lot 22 in Section 2 in DP 7259 known as 44 River Road, St Leonards; and  
Lot 2 in DP 1037926 known as 46 River Road, St Leonards.

(“**the Land**”), depicted in the map attached as **AT-1** to this explanatory note.

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

#### **Description of the Development to which the Planning Agreement applies**

1. The “**Development**” on the Land comprises 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 approval by the Independent Pricing and Regulatory Tribunal; and
2. The dedication in perpetuity of a parcel of land identified as part of 28 Berry Road, St Leonards being part of Lot 26 in Section 2 in DP 7259 and part 27 Holdsworth Avenue, St Leonards, being part of Lot 18 in Section 2 in DP 7259 constructed to form a 6m wide pedestrian and bicycle link connecting Holdsworth Avenue and Berry Road constructed in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct".

## **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.

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
16/2/7259	23 Holdsworth Avenue, St Leonards
17/2/7259	25 Holdsworth Avenue, St Leonards
18/2/7259	27 Holdsworth Avenue, St Leonards
19/2/7259	29 Holdsworth Avenue, St Leonards
20/2/7259	31 Holdsworth Avenue, St Leonards
28/2/7259	24 Berry Road, St Leonards
27/2/7259	26 Berry Road, St Leonards
26/2/7259	28 Berry Road, St Leonards
25/2/7259	30 Berry Road, St Leonards
24/2/7259	32 Berry Road, St Leonards
1/1037926	34 Berry Road, St Leonards
21/2/7259	42 River Road, St Leonards
22/2/7259	44 River Road, St Leonards
2/1037926	46 River Road, St Leonards



## Part B title details

15/2/7259	21 Holdsworth Avenue, St Leonards
29/2/7259	22 Berry Road, St Leonards

# Schedule 4

## Development Contribution Schedule

### 1. Development Contribution

The Developer undertakes to provide the following Development Contribution as set out in the Development Contributions Plan as summarised in the Table below.

Column 1		Column 3
Development Contribution		Timing
Total Development Contribution		
Item	<b><u>Monetary Contribution</u></b>	Time for payment
1 (a).	<p>The Developer must make a Monetary Contribution to Lane Cove Council <b>estimated</b> in the amount of <b>\$7,167,713</b> for the purposes of the Local Infrastructure identified in the Development Contributions Plan comprising the following Amounts calculated in accordance with the Formula subject to the <u>Indexation</u> noted in <b>Item 2</b> and The rates specified in the Development Contributions Plan that shall apply to this VPA will be the rates which are applicable at the time of payment of the Monetary Contribution.</p> <p><b>Contribution Amount per Studio or 1 bedroom Dwelling (1BRD):</b></p> <p><b>\$ 20,284.00</b></p> <p><b>Contribution Amount per 2 bedroom Dwelling (2BRD):</b></p> <p><b>\$28,978.00</b></p> <p><b>Contribution Amount per 3 bedroom Dwelling (3BRD):</b></p> <p><b>\$44,917.00</b></p> <p><b><u>Formula:</u></b></p> <p><b>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:</b></p>	<p>The Monetary Contribution is payable prior to the issue of a Construction Certificate for any works authorising construction above the floor level of the ground floor.</p>

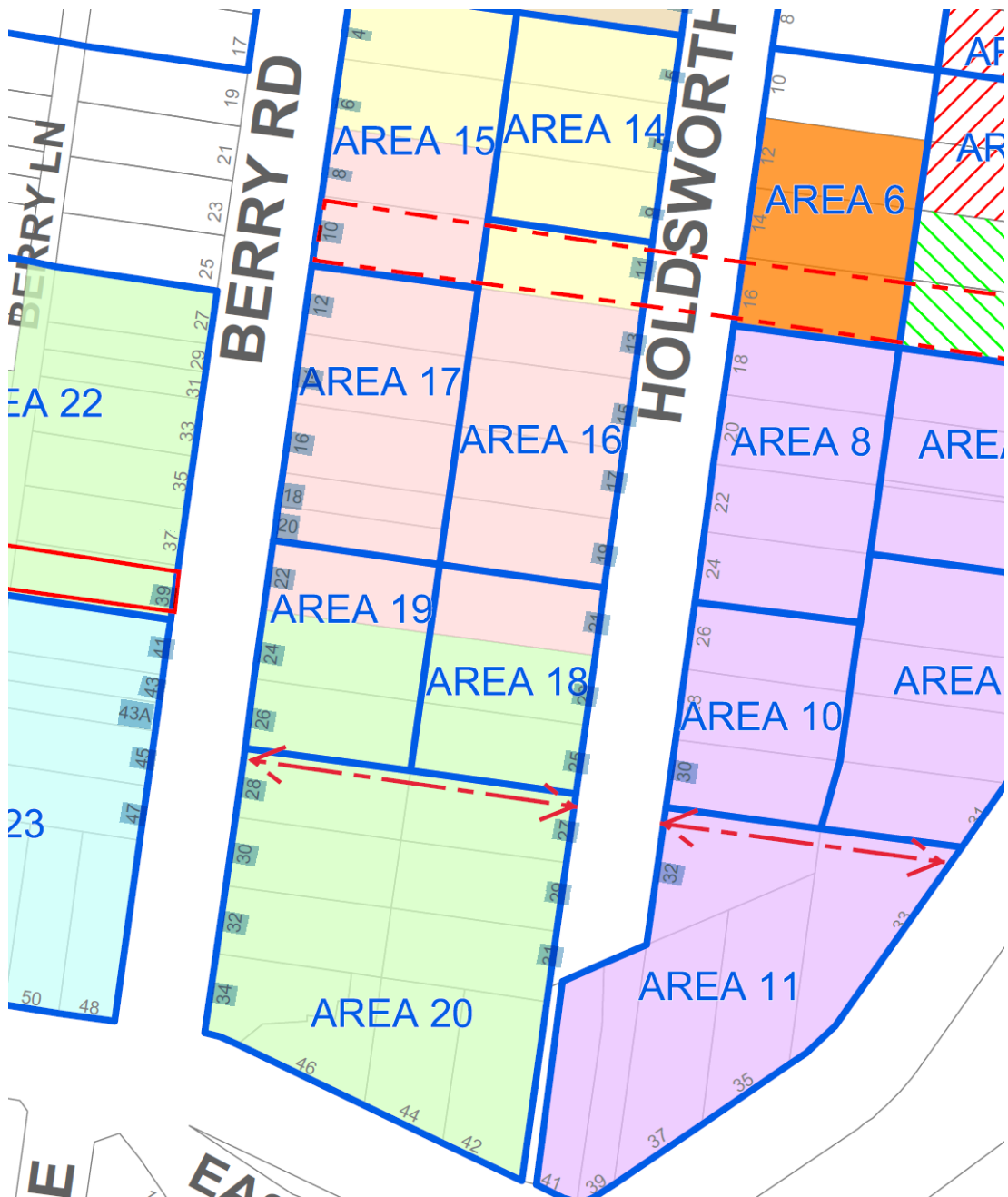
Column 1		Column 3
Development Contribution		Timing
<p>(a) 1 existing 2 BRD dwelling;</p> <p>(b) 8 existing 3BDR dwellings;</p> <p>(c) 5 existing 4BDR dwellings;</p> <p>(d) 1 existing 5BDR dwelling; and</p> <p>(e) 1 existing 6BDR dwelling,</p> <p>and as noted in the Formula below:</p> <p><b>MC = (1BRD x R1) plus (2BRD x R2) plus (3BRD x R3) - ((2BRD x 1) plus (3BRD x 8) plus (4BDR x 5) plus (5BDR x 1) plus (6BDR x 1))Where:</b></p> <p><b>1BRD</b> means the applicable contribution rate for a Studio or 1 Bedroom dwelling;</p> <p><b>2BRD</b> means the applicable contribution rate for a 2 Bedroom dwelling;</p> <p><b>3BRD</b> means the applicable contribution rate for a 3 Bedroom dwelling;</p> <p>4BDR means the applicable contribution rate for a 4 Bedroom dwelling;</p> <p>5BDR means the applicable contribution rate for a 5 Bedroom dwelling; and</p> <p>6BDR means the applicable contribution rate for a 5 Bedroom dwelling;</p> <p><b>R1</b> means the number of studio or 1 bedroom dwellings in the proposed Development equivalent to <b>82</b>;</p> <p><b>R2</b> means the number of 2 bedroom dwellings in the proposed Development equivalent to <b>114</b>; and</p> <p><b>R3</b> means the number of 3 bedroom dwellings in the proposed Development equivalent to <b>49</b>.</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><b>Where:</b></p> <p><b>\$C<sub>c</sub></b> is the contribution amount shown in this Agreement expressed in dollars</p> <p><b>CPI<sub>p</sub></b> 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><b>CPI<sub>c</sub></b> is the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Statistician which applied at the time of the issue of this Agreement.</p> <p><b>Note:</b> The contribution payable will not be less than the contribution specified in this Agreement.</p>	
Item 3	<p>Dedication in perpetuity of a parcel of land identified as part of 28 Berry Road, St Leonards being part of Lot 26 in Section 2 in DP 7259 and 27 Holdsworth Avenue, St Leonards, being part of Lot 18 in Section 2 in DP 7259 constructed to form a 6m wide pedestrian and bicycle link connecting Holdsworth Avenue and Berry Road constructed in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct".</p>	<p>Immediately prior to the issue of the first Occupation Certificate for the Development</p>

# Schedule 5

## Maps

### Sheet 2: Areas 18, 19 and 20



### Sheet 3: Locality 8



# 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 CIFI St Leonards Pty** )  
**Ltd ACN 652 332 039** in accordance )  
with section 127(1) of the *Corporations* )  
*Act 2001* (Cth): )  
)

.....  
Signature of Director / Secretary

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

.....  
Signature of Director / Secretary

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

**Executed by Greateon St Leonards** )  
**Holdings Pty Ltd ACN 609 953 264** 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 **CIFI St Leonards Pty Ltd ACN 652 332 039** and **Greaton St Leonards Holdings Pty Ltd ACN 609 953 264 (Developer)**

**Dated**

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[Date]

---

Lane Cove Council

---

[EXISTING DEVELOPER]

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[<<INSERT DETAILS OF New Developer>>]

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# Deed of Novation for Voluntary Planning Agreement

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**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**)

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## 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

### 1 Definitions

In this document these terms have the following meanings:

<b>Council</b>	Lane Cove Council.
<b>Effective Date</b>	means: <ul style="list-style-type: none"><li>(a) the date that this document is signed by all of the Parties; or</li><li>(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,</li></ul> whichever is the latter event.
<b>Land</b>	Has the meaning given to that term in the Existing Agreement.

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

## 2 Novation

### 2.1 Original Agreement

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

- (a) the New Developer is substituted for the 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]***

### 2.2 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]***

### 2.3 Address for notices

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

**New Developer:**

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

## 3 Affirmation of the Original Agreement

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

## 4 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.

## 5 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]***

## 6 Warranties and representations

### 6.1 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.

## 6.2 Survival of warranties

The warranties and representations in **clause 6.1** survive the execution of this document and the novation of the Original Agreement.

## 7 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.

## 8 Stamp duty and costs

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

## 9 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.

## 10 Amendment

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

## 11 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.

## 12 Counterparts

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

## 13 General

### 13.1 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.

### 13.2 Headings

Headings do not affect the interpretation of this document.

### 13.3 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.

#### **13.4 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.

#### **13.5 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.

#### **13.6 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).

#### **13.7 Third parties**

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

#### **13.8 Remedies**

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

#### **13.9 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]**

