

PARTIES

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

And

JQZ Twelve Pty Limited ACN 169453196 as
trustee for JQZ Twelve Unit Trust

Draft Planning Agreement

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

Contents

1	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	6
1.3	Compliance with New Laws	6
2	Planning Agreement under the Act	7
3	Application of this Agreement	7
4	Operation of this Agreement	7
5	Condition Precedent	7
6	The dedication of land	8
6.1	Requirement to dedicate land	8
6.2	When land is taken to be dedicated	8
6.3	Ancillary obligations of the parties in relation to the dedication of land	8
6.4	Risk and warranties in relation to land	9
7	Application of sections 7.11, 7.12 and 7.24 of the Act to the Development	9
8	Registration of this Agreement	9
9	Default	11
9.1	Notice	11
9.2	Reasonable Time	11
9.3	Suspension of time-dispute	11
10	Dispute Resolution	11
10.1	Reference to dispute	11
10.2	Notice of dispute	11
10.3	Representatives of parties to meet	11
10.4	Parties may not constrain	12
10.5	Disputes for expert determination	12
10.6	Expert determination	12
10.7	Directions to expert	13
11	Enforcement in relation to the dedication of land	13
11.1	Agreement under the Just Terms Act - Acquisition Land	13
11.2	Limitations on that agreement	14
11.3	Ancillary obligations	14
12	Termination	14
12.1	Termination of this Agreement — when there is no Development Consent	14
12.2	Termination of this Agreement — on the completion of obligations	15
12.3	On termination of this Agreement	15
12.4	Consequences of the termination of this Agreement	15

13	Security and Enforcement	15
13.1	Developer to provide security	15
13.2	Enforcement by any party	16
14	Notices	16
14.1	Delivery	16
14.2	Change of details	16
14.3	Giving of notice	16
14.4	Delivery outside of business hours	17
15	Approvals and consent	17
16	Assignment and dealings	17
16.1	Assignment	17
16.2	Transfer dealings	17
16.3	Transfer dealings	17
16.4	Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into	18
17	GST	19
17.1	Construction	19
17.2	Intention of the Parties	19
17.3	Consideration GST exclusive	19
17.4	Payment of GST – additional payment required	19
17.5	Valuation of non-monetary consideration	20
17.6	Tax invoice	20
17.7	Adjustment event	20
17.8	Reimbursements	20
17.9	No Merger	21
18	Costs	21
19	Entire agreement	21
20	Further acts	21
21	Governing law and jurisdiction	21
22	Joint and individual liability and benefits	21
23	No fetter	21
24	Representations and warranties	22
25	Severability	22
26	Waiver	22
27	Effect of Schedules	22
28	Relationship of parties	22

29	Further steps	23
30	Counterparts	23
31	Rights cumulative	23
32	Confidentiality	23
33	Force Majeure	23
34	Explanatory Note	23
35	Modification	23
36	Requirement to provide works specified in Development Control Plan for Locality 8	24
37	Link Road Works	24
	37.1 Development Approval for Link Road Works	24
	37.2 Completion of Link Road	24
	37.3 Assignment of Warranties and Causes of Action	24
38	Trustee Developer	25
	Schedule 1 Section 7.4 Requirements	27
	Schedule 2 Explanatory Note	29
	Schedule 3 Land	34
	Part A: Title details – Area 22	34
	Part B: Title details – Area 23	36
	Schedule 4 Development Contribution Schedule	38
	Schedule 5 Maps	1
	Sheet 2: Area 22 and 23	1
	Sheet 3: Locality 8	2
	Execution	3
	Annexure A – Novation Deed	4

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

JQZ Twelve Pty Limited ACN 169453196 as trustee for JQZ Twelve Unit Trust of Level 11/1 Margaret Street, Sydney, New South Wales

(the **Developer**)

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:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
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Agreed Public Purposes	means the provision of new and upgraded local infrastructure and other public purposes including new and upgraded roads and stormwater drainage facilities, open space and recreation facilities, community facilities, and affordable housing.
Agreement	means this voluntary planning agreement including any schedules and annexures.
Area	means an area in Locality 8 – St Leonards South Precinct specified in the Lane Cove Development Control Plan.
Area 22 and 23	means area 22 and 23 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 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.
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 by the Developer as described in Item 1 of Schedule 4 .
Development	means the proposed development of the Land.
Development Application	has the meaning given to it in the Act lodged with the Consent Authority.
Development Consent	means the consent (if any) granted by the Consent Authority to the Development Application and has the same meaning as in the Act and includes any amendment or modification of the Development Consent, including a Section 4.55 Modification.

Development Contribution	means the dedication of land free of cost, pursuant to this Agreement to be used by the Council for or applied towards a Public Purpose.
Development Control Plan	means the Lane Cove Development Control Plan adopted on the 22 February 2010 and amended on 22 October 2020 and referred to in Part 7 of the LCLEP 2009.
Explanatory Note	the Explanatory Note attached at Schedule 2 .
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 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).
Land	means the land comprising the folio identifiers listed in Part A of Schedule 3 .
Land Owner	means the owner of the Land identified in column 3 to the Tables in Schedule 3

Law	<p>means:</p> <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>
Link Road	means the stratum development of 36 Park Road in Area 23 and 39 Berry Road in Area 22 as a 12m wide road comprising a stratum lot limited in depth connecting Park Road and Berry Road constructed in accordance with the “ <i>Specifications for Infrastructure in the St Leonards South Precinct</i> ” and dedicated to Council in perpetuity.
Link Road Project	means the construction of the Link Road
Link Road Works Sunset Date	means prior to the issue of an Occupation Certificate for the Development
Link Road Works	means all the works required to complete the Link Road Project.
LCLEP	means the <i>Lane Cove Local Environmental Plan 2009</i> .
Lot	means a lot in a registered deposited plan that forms part of the Land and Council’s Land.
Locality 8	means Locality 8 referred to in the Development Control Plan.
LRS	means the Land Registry Services New South Wales or any other Authority replacing it.
Map	means the document attached as Annexure C .
Novation Deed	means the draft deed generally in the form set out in Annexure A .
Occupation Certificate	has the same meaning as under section 6.4 of the Act.
Party	a party to this Agreement, including their successors and assigns.
Public Purpose	has the same meaning as in section 7.4 (2) of the Act.

Real Property Act	means the <i>Real Property Act 1900</i> (NSW).
Registration on Title	means the registration of this Agreement under section 7.6 of the Act in the folio of the register kept under the Real Property Act in relation to the Land and Registered on Title refers to the state of the Agreement being so registered.
Regulation	the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Schedule	means a schedule to this Agreement and forming part of this Agreement.
Section 4.55 Modification	means any modification of the Development Consent pursuant to section 4.55 of the Act.
Service Lot	<p>means a lot that is created for one or more of the following purposes:</p> <ul style="list-style-type: none"> (a) to be dedicated or otherwise transferred to an Authority; (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); (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management; and/or <p>for avoidance of doubt — association property within the meaning of the <i>Community Land Development Act 1989</i>.</p>
Subdivision Certificate	has the same meaning as under section 6.4 of the Act.
Standard Requirements	means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard required by a governmental entity or any other applicable requirement of a State governmental entity.
Strata Lot	means a strata lot in a Strata Plan.
Strata Plan	means a strata plan or strata plan of subdivision within the meaning of the <i>Strata Schemes (Freehold Development) Act 1973</i> (NSW) or any other legislation replacing it.
Transferee	has the meaning given to it under clause 16.2(a) .

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency and all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns;
- (l) any schedules and annexures form part of this Agreement;
- (m) headings do not affect the interpretation of this Agreement; and
- (n) this Agreement is not binding on any Party unless it or a counterpart has been duly executed by each person named as a Party to this Agreement.

1.3 Compliance with New Laws

- (a) If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the 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 The dedication of land

6.1 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 1** of **Schedule 4**.

6.2 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 1** 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 1** 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.

6.3 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 6.2(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 6.3(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 6.3(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.

6.4 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.

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

- (a) This Agreement does not exclude the application of 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.

8 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 8(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 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 8(a)**
- (f) Despite **clause 8(d)**, the Council as caveator must promptly consent to the registration of:
 - (i) a transfer of the Land to the Land Owner;
 - (ii) a transfer of any part of the Land from the Land Owner to a third party if that third party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 16**;
 - (iii) any surrender of lease;
 - (iv) any discharge of mortgage;
 - (v) any other dealing which effects any dealing listed in the certificates of title for the Land;
 - (vi) any mortgage(s) on the title.
- (g) Following the Agreement being Registered on Title, the Council will do all things reasonably necessary and provide its consent, but without fettering its discretion acting as a consent authority, to permit the registration of:
 - (i) any Strata Plan consistent with the Development Consent;
 - (ii) any transfer of the Land or any part of the Land from the Land Owner to a third party if that third-party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 16**; and
 - (iii) any other dealing deemed necessary by the 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 8(a)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, of exercising its rights under **clause 8(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.

9 Default

9.1 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.

9.2 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.

9.3 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.

10 Dispute Resolution

10.1 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.

10.2 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).

10.3 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 10.2**), 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.

10.4 Parties may not constrain

If:

- (a) at least one meeting has been held in accordance with **clause 10.3**;
- (b) the Parties have been unable to reach an outcome identified in **clauses 10.3(b)(i) to 10.3(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 10.3**,

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.

10.5 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 10.6**.

10.6 Expert determination

- (a) A dispute to be determined in accordance with **clause 10.5** 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 10.5**, 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 10.5**, 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 10.6** setting out the terms of the expert's determination and the fees payable to the expert.

10.7 Directions to expert

- (a) In reaching a determination in respect of a dispute under **clause 10.5**, 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.

11 Enforcement in relation to the dedication of land

11.1 Agreement under the Just Terms Act - Acquisition Land

- (a) Subject to **clause 11.2**, 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 11.1(a)** is an agreement for the purposes of section 30 of the Just Terms Act.

11.2 Limitations on that agreement

The Council may only acquire land under **clause 11.1** 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.

11.3 Ancillary obligations

- (a) If, as a result of the acquisition referred to in **clause 11.1** 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 11.1(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 11**, 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 11**.

12 Termination

12.1 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 12.1(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.

12.2 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).

12.3 On termination of this Agreement

(a) If either party terminates this Agreement in accordance with this **clause 12** 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.

12.4 Consequences of the termination of this Agreement

(a) If this Agreement is terminated under this **clause 12** the parties are released and discharged from their obligations under this Agreement, subject to **clause 12.4(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.

13 Security and Enforcement

13.1 Developer to provide security

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

(a) **clause 7** 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.

13.2 Enforcement by any party

- (a) Subject to firstly complying with **clauses 9 and 10** and without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
 - (ii) the Council from exercising any function under the Act or any other law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

14 Notices

14.1 Delivery

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

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

Lane Cove Council

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

Developer:

Attention: Development Manager – Jeremy Hung
Address: Retail 24 & 25, 1 Nipper street, Homebush, NSW
Email: Jeremy.hung@jqz.com.au

14.2 Change of details

If a Party gives another Party three Business Days' notice of a change of its postal address, fax number or email address then any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest postal address, fax number or email address.

14.3 Giving of notice

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

- (a) If it is delivered, when it is left at the relevant address;
- (b) If it is sent by post, two Business Days after it is posted;
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number;
or
- (d) If it sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

14.4 Delivery outside of business hours

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

15 Approvals and consent

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

16 Assignment and dealings

16.1 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Parties. Council must not unreasonably withhold or delay its written consent and must respond within 15 Business Days.
- (b) Any purported dealing in breach of this **clause 16** is of no effect.

16.2 Transfer dealings

- (a) The 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 16.2(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.

16.3 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.

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

- (a) This **clause 16.4** takes precedence over the other provisions in this **clause 16**.
- (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.

17 GST

17.1 Construction

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

17.2 Intention of the Parties

Without limiting the operation of this **clause 17**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in connection with this Agreement;
- (b) Except as provided in **clause 17.6** no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 17.4** below) on account of GST.

17.3 Consideration GST exclusive

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

17.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 17.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 17.4(b)** or **17.4(c)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clause 17.4(c)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,**(Non-taxable non-monetary consideration)**,
the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the non-taxable non-monetary consideration.
- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 17.4(a)**:

- (i) subject to **clause 17.4(d)(ii)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply; and
 - (ii) however, if taking into account any liability for GST of, any input tax credit of, and any amount payable under **clauses 17.4(b) or 17.4(c)** by a Supplier or Recipient, a Supplier or Recipient, or the representative member of a GST group of which they are a member, has a net amount of GST payable that it is not able to recover from another Party under this **clause 17**, the Parties must negotiate in good faith to agree on an appropriate treatment of GST as between them. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter is to be resolved in the same way as a dispute under **clause 10.3(b)**.
- (e) The recipient will pay the GST Amount referred to in this **clause 17.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

17.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 17.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

17.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 17.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

17.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 17.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

17.8 Reimbursements

Where a Party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another Party, the amount to be paid, indemnified or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other Party, or to which the representative member of a GST group of which the other Party is a member, is entitled; and
- (b) any additional amount payable under **clause 17.4** in respect of that reimbursement.

17.9 No Merger

This **clause 17** does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

18 Costs

The Developer must pay Council its reasonable legal and other costs and expenses of negotiating, preparing, executing, stamping and registering this Agreement 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.

19 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier agreement, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by Law.

20 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

21 Governing law and jurisdiction

This Agreement and the transactions contemplated by this Agreement are governed by and are to be construed in accordance with the Laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

22 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23 No fetter

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without

limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24 Representations and warranties

- (a) The 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.
- (b) The Council represents and warrants that it has power to enter into this Agreement and comply with its obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

25 Severability

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

26 Waiver

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

27 Effect of Schedules

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

28 Relationship of parties

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

29 Further steps

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

30 Counterparts

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

31 Rights cumulative

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

32 Confidentiality

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

33 Force Majeure

- (a) If a Party is unable by reason of Force Majeure to carry out wholly or in part its obligations under the Agreement, it must give to the other Parties prompt notice of the Force Majeure with reasonably full particulars.
- (b) The obligations of the Parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the Parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under the Agreement.

34 Explanatory Note

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

35 Modification

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

36 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.7.11 contribution offset is available.

37 Link Road Works

37.1 Development Approval for Link Road Works

- (a) It is acknowledged that the Developer must, at their own cost, obtain a Development Approval (if applicable) to complete the Link Road Project as part of the Development Application.

37.2 Completion of Link Road

- (a) The Developer acknowledge and agree that it is a requirement for the Link Road Project to be completed by the Developer and **MUST** complete the construction of the Link Road Project or have procured the construction of the Link Road Project by the **Link Road Works Sunset Date**.

37.3 Assignment of Warranties and Causes of Action

- (a) In respect of the Link Road Works, the Developer must assign (as beneficial owner) or cause to be assigned to the Council the benefit of any warranties or guarantees obtained by the Developer and their builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Link Road Works.
- (b) To the extent that such warranties or guarantees cannot be assigned, the Developer must, at the request of the Council do anything reasonably required by the Council to enforce such warranties or guarantees for the benefit of the Council, including but not limited to:
 - (i) appointing Council as its attorney to exercise its rights and powers under any building contract, including any right to conduct proceedings or prosecute any action to enforce the Developer rights against others under a building contract for the Link Road Works;
 - (ii) executing all such documents and doing all such things on the Council's behalf as are necessary or desirable to enable the Council to rectify any defects in the Link Road Works; and
- (c) providing any assistance required for the purpose of defending or settling any claim or the pursuit of any rights of recovery from others under a building contract for the Link Road Works.

38 Trustee Developer

- (a) JQZ Twelve Pty Limited (ACN 169 453 196) (**Trustee**) enters into this Agreement in its capacity as the trustee for the JQZ Twelve Unit 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 38(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 38** and the costs and expenses of registering any new agreement in the title to the Land.
- (e) Subject to **clause 38(f)**, liability arising under or in connection with this Agreement (except under or in connection with **clause 38(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 38(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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Description of the land to which this Agreement applies- (Section 7.4(3)(a))	The Land
Description of the development to which this Agreement applies- (Section 7.4(3)(b)(ii))	The Development.
The scope, timing and manner of delivery of Development Contribution required by this Agreement - (Section 7.4(3)(c))	See clause 6 .
Applicability of Section 7.11 of the Act - (Section 7.4 (3)(d))	The application of section 7.11 of the Act is not excluded by this Agreement.
Applicability of Section 7.12 of the Act - (Section 7.4 (3)(d))	The application of sections 7.12 of the Act is not excluded by this Agreement.
Applicability of Section 7.24 of the Act - (Section 7.4 (3)(d))	The application of section 7.24 of the Act is not excluded by this Agreement.
Benefits to be taken into account (Section 7.4 (3)(e))	The benefits under the Agreement are not to be taken into consideration when determining a development contribution under section 7.11(6) of the Act.
Mechanism for Dispute resolution - (Section 7.4 (3)(f))	See clause 10 .
Enforcement of this Agreement - (Section 7.4 (3)(g))	See clauses 11 and 13 .
Registration of this Agreement (Section 7.6)	See clause 7 .
No obligation to grant consent or exercise functions - (Section 7.4 (9))	See clause 23 .

TABLE 2 – OTHER MATTERS

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

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Explanatory Note

Explanatory Note – St Leonards South Precinct Planning Agreement,

Clause 205

Environmental Planning and Assessment Regulation 2021

Explanatory Note for Draft Voluntary Planning Agreement

26, 28, 30, 32, 34 36, 38, 40A, 40B, 42, 42A, 44-50 Park Road, St Leonards and 27, 29, 31, 33, 35, 37, 39 , 41, 43A, 43B, 45, and 47, Berry Road, St Leonards and 48, 50, 52 and 54 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 2021* (Clause 205) (“**the Regulation**”). This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

Parties

The parties to this planning agreement are:

Lane Cove Council as the planning authority; and

JQZ Twelve Pty Limited ACN 169453196 as trustee for JQZ Twelve Unit Trust as the Developer

Description of subject land

Lot 33 in Section 3 in DP 3044 known as 26 Park Road, St Leonards; Lot 43 in Section 3 in DP 3044 known as 28 Park Road, St Leonards; Lot 5 in DP 305449 known as 30 Park Road, St Leonards; Lot 4 in DP 3044 known as 32 Park Road, St Leonards; Lot 3 in DP 305449 known as 34 Park Road, St Leonards; Lot 2 in DP 305449 known as 36 Park Road, St Leonards; Lot 1 in DP 305449 known as 38 Park Road, St Leonards; Lot 37 in DP 666528 known as 40A Park Road, St Leonards; Lot 36 in Section 3 in DP 3044 known as 40B Park Road, St Leonards; Lot 351 in DP 848236 known as 42 Park Road, St Leonards; Lot 352 in DP 848236 known as 42A Park Road, St Leonards; Lot 1 in DP 225445 known as 44 Park Road, St Leonards; Lot 2 in DP 225445 known as 46 Park Road, St Leonards; Lot 3 in DP 225445 known as 48 Park Road, St Leonards; Lot 4 in DP 225445 known as 50 Park Road, St Leonards; Lot 19 in DP 82696 known as 27 Berry Road, St Leonards; Lot 1 in DP 533847 known as 29 Berry Road, St Leonards; Lot 2 in DP 533847 known as 31 Berry Road, St Leonards; Lot 21 in Section 3 in DP 3044 known as 33 Berry Road, St Leonards; Lot 22 in Section 3 in DP 111237 known as 35 Berry Road, St Leonards and Lot 23 in DP 79978 known as 37 Berry Road, St Leonards; Lot 24 in Section 3 in DP 3044 known as 39 Berry Road St Leonards; Lot 25 in Section 3 in DP 3044 known as 41 Berry Road St Leonards; Lot 1 in DP 734702 known as 43A Berry Road St Leonards; Lot 2 in DP 734702 known as 43B Berry Road St Leonards; Lot 27 in Section 3 in DP 3044 known as 45 Berry Road, St Leonards; Lot 28 in Section 3 in DP 3044 known as 47 Berry Road St Leonards; Lot 29 in DP 72918 known as 48 River

Road St Leonards; Lot 1 in DP 1223070 known as 50 River Road St Leonards; Lot 31 in Section 3 in DP 3044 known as 52 River Road St Leonards; CP in SP 16063 known as 54 River Road, St Leonards; Lot 1 in SP 16063 known as 1/54 River Road, St Leonards; Lot 2 in SP 16063 known as 2/54 River Road, St Leonards; (**“the Land”**).

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 the provision of public amenities and services beyond those required by the St Leonards South Precinct Section 7.11 Development Contributions Plan.

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 towards public purposes and the construction of public infrastructure in the form of a road, footpath and drainage works

Effect

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

1. The dedication in perpetuity of a stratum parcel of land identified as 39 Berry Road, St Leonards being Lot 24 Section 3 in DP 30442 and 36 Park Road, St Leonards comprising Lot 2 in DP 305449 and constructed as part of a 12m wide road connecting Park Road and Berry Road constructed in accordance with the “Specifications for Infrastructure 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 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 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 Development Contributions must be provided to Council prior to the issue of first occupation certificate for the Development.

Schedule 3

Land

Part A: Title details – Area 22

Address	Folio Identifier	Land Owner
26 Park Road, St Leonards	44/3/3044	JQZ Twelve Pty Ltd
28 Park Road, St Leonards	43/3/3044	JQZ Twelve Pty Ltd
30 Park Road, St Leonards	5/305449	JQZ Twelve Pty Ltd
32 Park Road, St Leonards	4/305449	JQZ Twelve Pty Ltd
34 Park Road, St Leonards	3/305449	JQZ Twelve Pty Ltd
27 Berry Road, St Leonards	19/82696	JQZ Twelve Pty Ltd
29 Berry Road, St Leonards	1/533847	JQZ Twelve Pty Ltd
31 Berry Road, St Leonards	2/533847	JQZ Twelve Pty Ltd
33 Berry Road, St Leonards	21/3/3044	JQZ Twelve Pty Ltd
35 Berry Road, St Leonards	22/3/111237	JQZ Twelve Pty Ltd
37 Berry Road, St Leonards	23/79978	JQZ Twelve Pty Ltd

39 Berry Road, St Leonards	24/3/3044	JQZ Twelve Pty Ltd
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Part B: Title details – Area 23

Address	Folio Identifier	Land Owner
38 Park Road, St Leonards	1/305449	JQZ Twelve Pty Ltd
40A Park Road, St Leonards	37/666528	JQZ Twelve Pty Ltd
40B Park Road, St Leonards	36/3/3044	JQZ Twelve Pty Ltd
42 Park Road, St Leonards	351/848236	JQZ Twelve Pty Ltd
42A Park Road, St Leonards	352/848236	JQZ Twelve Pty Ltd
44 Park Road, St Leonards	1/225445	JQZ Twelve Pty Ltd
46 Park Road, St Leonards	2/225445	JQZ Twelve Pty Ltd
48 Park Road, St Leonards	3/225445	JQZ Twelve Pty Ltd
50 Park Road, St Leonards	4/225445	JQZ Twelve Pty Ltd
41 Berry Road, St Leonards	25/3/3044	JQZ Twelve Pty Ltd
43A Berry Road, St Leonards	1/734702	JQZ Twelve Pty Ltd
43B Berry Road, St Leonards	2/734702	JQZ Twelve Pty Ltd

Address	Folio Identifier	Land Owner
45 Berry Road, St Leonards	27/3/3044	JQZ Twelve Pty Ltd
47 Berry Road, St Leonards	28/3/3044	JQZ Twelve Pty Ltd
48 River Road, St Leonards	29/72918	JQZ Twelve Pty Ltd
50 River Road, St Leonards	1/1223070	JQZ Twelve Pty Ltd
52 River Road, St Leonards	31/3/3044	JQZ Twelve Pty Ltd
54 River Road, St Leonards	CP/SP16063	The Owners Strata Plan 1603
1/54 River Road, St Leonards	1/SP16063	JQZ Twelve Pty Ltd
2/54 River Road, St Leonards	2/SP16063	JQZ Twelve Pty Ltd
36 Park Road	2/305449	JQZ Twelve Pty Ltd

Schedule 4

Development Contribution Schedule

1. Development Contribution

The Developer undertakes to provide the following Development Contribution as set out and provided for in the Table below.

Column 1		Column 3
Development Contribution		Timing

Item 1	Dedication in perpetuity of: <ul style="list-style-type: none">a stratum parcel of land identified as 39 Berry Road, St Leonards being a stratum lot limited in depth to allow for basement parking below the road and formerly part of Lot 24 Section 3 in DP 30442 and constructed as part of a 12m wide road connecting Park Road and Berry Road constructed in accordance with the <i>"Specifications for Infrastructure in the St Leonards South Precinct"</i>; anda stratum parcel of land identified as 36 Park Road, St Leonards being a stratum lot limited in depth to allow for basement parking below the road and formerly part of Lot 2 in DP 305449 and constructed as part of a 12m wide road connecting Park Road and Berry Road constructed in accordance with the <i>"Specifications for Infrastructure in the St Leonards South Precinct"</i>; and		Immediately prior to the issue of the first Occupation Certificate for the Development
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Schedule 5

Maps

Sheet 2: Area 22 and 23



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 JQZ Twelve Pty Limited)
ACN 169453196 as trustee for JQZ)
Twelve Unit Trust in accordance with)
section 127(1) of the *Corporations Act*)
2001 (Cth):)

.....
Signature of Sole Director / Secretary

JIANQIU ZHANG

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

Annexure A – Novation Deed

This is **Annexure A** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **JQZ Twelve Pty Limited ACN 169453196 as trustee for JQZ Twelve Unit Trust (Developer)**

Dated

[Date]

Lane Cove Council

[EXISTING DEVELOPER]

[<<INSERT DETAILS OF New Developer>>]

Deed of Novation for Voluntary Planning Agreement

Contents

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

Date

Parties

Lane Cove Council 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

1 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.

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]