

## PARTIES

Lane Cove Municipal Council trading as Lane Cove  
Council ABN 42062211626

And

Marshall Land Pty Ltd as trustee for Marshall Land  
Unit Trust

And

Holdsworth Land Pty Ltd as trustee for Holdsworth  
Land Unit Trust

# Draft Planning Agreement

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

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Draft

**Dated**

## Parties

**Lane Cove Municipal Council trading as Lane Cove Council ABN 42062211626** of  
48 Longueville Road, Lane Cove, New South Wales

**(Council)**

And

**Marshall Land Pty Ltd (ACN 611 458 925) as trustee for Marshall Land Unit Trust (ABN 79 745 878 468)** of Unit 5, 171-173 Kingsgrove Road, Kingsgrove, New South Wales

**(ML)**

And

**Holdsworth Land Pty Ltd (ACN 611 697 404) as trustee for Holdsworth Land Unit Trust (ABN 45 167 576 553)** of Unit 5, 171-173 Kingsgrove Road, Kingsgrove, New South Wales,

**(HL)**

Collectively (the **Development Land Owners**)

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## Background

- A ML owns the Marshall Land Properties
- B HL owns the Holdsworth Land Properties.
- C The Development Land Owners have made or propose to make a Development Application in relation to the Land.
- D The Development Application for the Development is accompanied by an offer by the Development Land Owners to enter into this Agreement providing for the Development Land Owners to make Development Contributions for the Development which are to be applied towards the Agreed Public Purpose.
- E The Development Land Owners will provide the Development Contributions to the Council when required by (and in accordance with) this Agreement.
- F 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.
- G 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 Purpose</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>	refers to an Area in Locality 8 of the Development Control Plan
<b>Area 13, 14 and 15</b>	means the areas identified as Areas 13, 14 and 15 in 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>Area 16</b>	means the area identified as Area 16 in 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 2A of <b>Schedule 5</b>
<b>Area 15 Link</b>	means that part of Area 15 on which part of a 15m wide pedestrian and bicycle link connecting Berry Road and Holdsworth Avenue is to be constructed identified as 10 Berry Road and comprising Lot 34 in Section 2 in DP 7259.
<b>Area 16 Link</b>	means that part of Area 16 on which part of a 15m wide pedestrian and bicycle link connecting Berry Road and Holdsworth Avenue is to be constructed identified as 11 Holdsworth Avenue and comprising Lot 10 in Section 2 in DP 7259.
<b>Area 16 Landowner</b>	means the owner of 11 Holdsworth Avenue and comprising Lot 10 in Section 2 in DP 7259 as at the date of this Agreement and any subsequent owner of the land.

<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>Contributions Plan</b>	means a contributions plan within the meaning of section 7.18(2) of the Act and specified as the St Leonards South Precinct section 7.11 Development Contributions Plan .
<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 transferred or dedicated to Council (and, in the case of the Area 15 Link, embellished) under this Agreement by the Development Land Owners as marked in the extract set out in Sheet 4 of <b>Schedule 5</b> and specified in <b>Item 1</b> of <b>Schedule 4</b> .
<b>Development</b>	means any development of the Land that includes the construction on the Land of a Residential Flat Building.
<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 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 Control Plan</b>	means the Lane Cove Development Control Plan adopted on 22 February 2010 and amended on 22 October 2020 and 1 November 2022 and referred to in Part 7 of the LCLEP 2009 (as it stood on the date of this Agreement).
<b>Development Contribution</b>	means the transfer or dedication to Council of the Dedication Land.
<b>Development Land Owners</b>	means the owners of the Land.
<b>Explanatory Note</b>	means the Explanatory Note attached at <b>Schedule 2</b> .



<b>Final Lot</b>	means a lot, including a Strata Lot, created (or to be created) in the Development for separate residential, retail or commercial occupation and disposition and which is not:  (a) intended to be further subdivided (including to create a strata or community lot);  (b) a Service Lot; or  (c) a lot of a kind or created for a purpose that is otherwise agreed by the Parties.
<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>Holdsworth Land Properties</b>	means the land specified in <b>Part A</b> of <b>Schedule 3</b>
<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>Land</b>	means the land specified in Part A and Part B of <b>Schedule 3</b> comprising the Holdsworth Land Properties and the Marshall Land Properties
<b>Law</b>	means:  (a) the common law including principles of equity, and  (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority,  that presently apply or as they may apply in the future.
<b>LCLEP</b>	means the <i>Lane Cove Local Environmental Plan 2009</i> .
<b>Link Project</b>	means the construction of the Area 15 Link and the Area 16 Link.
<b>Link Works</b>	means all the works required to complete the Link Project.
<b>Lot</b>	means a lot in a registered deposited plan that constitutes the Land.

<b>Locality 8</b>	means Locality 8 referred to in the Development Control Plan, as shown in the extract in <b>Sheet 3</b> of <b>Schedule 5</b> .
<b>LRS</b>	means the Land Registry Services New South Wales or any other Authority replacing it.
<b>Marshall Land Properties</b>	means the land specified in <b>Part B</b> of <b>Schedule 3</b>
<b>Novation Deed</b>	means a deed generally in the form of the draft deed 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>	means a party to this Agreement, including their successors and assigns and a person bound by the Agreement under section 7.6(3) of the Act.
<b>Permitted Encumbrances</b>	means any easements, restrictions and covenants required to be created including any easements, restrictions or covenants: <ul style="list-style-type: none"> <li>(a) in favour of utility service providers;</li> <li>(b) for services or drainage;</li> <li>(c) required by any Authority;</li> <li>(d) required under a development consent (as defined under the Act); or</li> <li>(e) as otherwise agreed in writing by the Council.</li> </ul>
<b>Public Purpose</b>	has the same meaning as in section 7.4 (2) of the Act.
<b>Quantity Surveyor</b>	means a qualified independent and practising quantity surveyor with at least 5 years' experience in the assessment of building and construction costs.
<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>Residential Flat Building</b>	has the meaning given under the LCLEP as at the date of this Agreement.
<b>Service Lot</b>	means a lot that is created for one or more of the following purposes: <ul style="list-style-type: none"> <li>(a) to be dedicated or otherwise transferred to an Authority;</li> </ul>

	<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>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>Strata Certificate</b>	has the meaning given under the <i>Strata Schemes Development Act 2015</i> (NSW).
<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 Development Act 2015</i> (NSW).
<b>Transferee</b>	has the meaning given to it under <b>clause 16.2(a)</b> .
<b>Transfer Lands</b>	Means any land (including a stratum lot) that is to be dedicated to Council where specified in <b>Item 1 of Schedule 4</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) any schedules and annexures form part of this Agreement;
- (l) headings do not affect the interpretation of this Agreement;
- (m) definitions that occur in this Agreement apply to the construction of the Agreement except in so far as the context or subject matter otherwise indicates or requires;
- (n) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (o) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party;
- (p) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment; and
- (q) this Agreement is not binding on any Party (other than a person who is Party by reason of section 7.6(3) of the Act) unless it or a counterpart has been duly executed by each person named as a Party to this Agreement.

### **1.3 Compliance with New Laws**

If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Development Land Owners are obliged by the New Law to perform certain works or pay an amount which they are required to do in accordance with this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.

- (a) For the avoidance of doubt any New Law will not relieve the Development Land Owners from their obligation to make the Development Contribution.

### **1.4 General**

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

- (i) be in breach; or
  - (ii) not fulfil a requirement,
- of a Development Consent in force and applying to the Land.

## 2 Planning Agreement under the Act

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

## 3 Application of this Agreement

This Agreement applies to:

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

## 4 Operation of this Agreement

- (a) This Agreement is entered into on and from the date that this Agreement is signed by all the Parties as required by clause 203(3) of the Regulation.
- (b) This Agreement will remain in force until:
  - (i) it is terminated by operation of Law;
  - (ii) all obligations are performed or satisfied; or
  - (iii) it is otherwise terminated, discharged or released in accordance with the terms of this Agreement.
- (c) If a legal challenge to the Development Consent for the Development results in it being rendered invalid or unenforceable, then the Development Land Owners may, in their absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.
- (d) This Agreement does not impose an obligation on the Council or any Consent Authority to grant or modify any Development Consent.
- (e) For avoidance of doubt, **clause 4(d)** does not affect any obligation of the Consent Authority under section 4.15(1)(a)(iia) 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 Development Land Owners 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 Development Land Owners 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 Developer, 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:
  - (i) 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, including without limitation statutory rights in respect of sewerage, drainage or other utility infrastructure; or
  - (ii) Permitted Encumbrances.
- (d) Despite **clause 6.3(b)**, if, despite having used its best endeavours, the Development Land Owners 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 Development Land Owners must, at their expense take all practicable steps to procure:
  - (i) the consent of each person who:
    - (A) has an estate or interest in the Land registered under the Real Property Act; or
    - (B) is seized or possessed of an estate or interest in the Land; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title (if required),

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



- (b) The Parties will take all practicable steps to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the Agreement is entered into by the Parties.
- (c) Without limiting the generality of **clause 8(b)**, the Council must, in response to a reasonable request of the Developer, take such action that is reasonably necessary to facilitate efforts by the Developer to achieve Registration on Title.
- (d) The Parties agree that the consequence of section 7.6(3) of the Act is that on registration by the Registrar-General the Agreement will be binding on and enforceable against the owners of the Land from time to time as if each owner of the Land for the time being had entered into this Agreement .
- (e) Until such time as this Agreement is Registered on Title the Developer agrees that the Council may lodge a caveat to prevent the transfer of the Land to any party other than to the Development Land Owners but no other dealing.
- (f) If the Council lodges a caveat in accordance with **clause 8(e)** 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)**
- (g) Despite **clause 8(e)**, the Council as caveator must promptly consent to the registration of:
  - (i) a transfer of the Land to the Development Land Owners;
  - (ii) a transfer of any part of the Land from the Development Land Owners to a third party if that third party has offered to enter into an agreement on the same terms as this Agreement in accordance with **clause 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 Permitted Encumbrances;
  - (vii) any mortgage(s) on the title.
- (h) Following the Agreement being Registered on Title, the Council will do all things reasonably necessary and provide its consent, but without fettering its discretion acting as a consent authority or otherwise breaching its statutory obligations, to permit the registration of:
  - (i) any Strata Plan or plan of subdivision consistent with the Development Consent;



- (ii) any transfer of the Land or any part of the Land from the Development Land Owners to a third party, subject to compliance with **clause 16**; and
  - (iii) any other dealing deemed necessary by the Developer, acting reasonably.
- (i) If the Development Land Owners have failed or have been unable to register this Agreement on any of the Land in accordance with **clause 8(a)**, the Development Land Owners must pay the Council's reasonable costs and expenses, including legal costs, of exercising its rights under **clause 8(e)** of this Agreement and the Development Land Owners agree 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 Development Land Owners to provide the Development Contribution.
- (j) The Council must promptly do all things reasonably required by the Development Land Owners to release and discharge this Agreement (and remove any notation relating to this Agreement from the title to the Land) with respect to any Lot or Lots forming part of any lot, including a Strata Lot created or to be created on subdivision of the Land, on the date on which the Development Contribution has been provided.

## 9 Default

### 9.1 Notice

- (a) In the event a Party considers another Party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to that Party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice specify that the default is to be remedied within a reasonable time.
- (b) For avoidance of doubt, the issue of a notice does not, in itself:
  - (i) constitute evidence that there has been a breach; or
  - (ii) create any obligation to remedy an alleged default.

### 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 Referral of dispute

If a Party disputes the Default Notice it may refer that dispute to dispute resolution under **clause 10** 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, have agreed that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 10.3** (and each Party is not to unreasonably withhold such agreement),

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

### 10.5 Disputes for expert determination

If the parties agree that the dispute is to be determined by expert determination, the matter will be determined in accordance with **clause 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 agreement 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 agreement 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 Security and Enforcement

### 11.1 Developer to provide security

The Development Land Owners have agreed to provide the following security to the Council for the performance of the Development Land Owners' obligations under this Agreement in satisfaction of section 7.4(3)(g) of the Act

- (a) **clause 8** through the registration of this Agreement on the title of the Land.
- (b) registration of a caveat over the Land by the Council pending Registration on Title of this Agreement.

### 11.2 Enforcement by any party

Nothing in this Agreement (including **clauses 9** and **10**) prevents:

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

## 12 Enforcement in relation to the dedication of land

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

- (a) Subject to **clause 12.2**, if the Development Land Owners do 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 12.1(a)** is an agreement for the purposes of section 30 of the Just Terms Act.

### 12.2 Limitations on that agreement

The Council may only acquire land under **clause 12.1** 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.

### 12.3 Ancillary obligations

- (a) If, as a result of the acquisition referred to in **clause 12.1** 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 12.1(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 12**, 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 12**.

## 13 Termination

### 13.1 Termination of this Agreement — when there is no Development Consent

The Development Land Owners may terminate this Agreement by giving written notice to the Council if any of the following circumstances arise:

- (a) any Development Consent has not been granted and the Development Land Owners, acting reasonably, form the opinion that any Development Consent is unlikely to be granted in the immediate future; or

- (b) an Occupation Certificate and Strata Certificate have not been issued in relation to any Development Consent and all Development Consents:
  - (i) have been surrendered in accordance with clause 97 of the Regulation;
  - (ii) are declared by a Court to be void;
  - (iii) lapse; or
  - (iv) otherwise cease to have effect,and, for the avoidance of doubt, termination under this **clause 13.1(b)** cannot occur in circumstances where any Development Consent continues to have effect.

### **13.2 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 Development Land Owners has completed all of their obligations under this Agreement (including remedying any breaches of this Agreement).

### **13.3 On termination of this Agreement**

If either party terminates this Agreement in accordance with this clause 13 then 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.

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

- (a) If this Agreement is terminated under this **clause 13** the parties are released and discharged from their obligations under this Agreement, subject to clause 13.4(b).
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

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

**Development Land Owners:**

Attention: The Directors  
Address: TBC  
Fax: Not applicable  
Email: TBC  
TBC

#### **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) Subject to clause 16.1(b), 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) The Development Land Owners may assign all or part of their rights under this Agreement in accordance with clause 16.2 without requiring Council's consent.
- (c) Any purported dealing in breach of this **clause 16** is of no effect.

### 16.2 Transfer dealings

- (a) If this Agreement is not Registered on Title, the Development Land Owners may transfer all or any part of their rights, interests or the Land (as applicable) under this Agreement to another party (**Transferee**) without requiring Council's consent provided that the Transferee delivers to the Council a Novation Deed signed by the Transferee and the Development Land Owners.
- (b) If this Agreement is Registered on Title, the Development Land Owners may transfer all or any part of their rights, interests or the Land (as applicable) under this Agreement to another party (**Transferee**) without requiring Council's consent. The Development Land Owners may, when intending to transfer all or any part of their rights, interests or the Land (as applicable) under this Agreement to the Transferee deliver to the Council a Novation Deed signed by the Transferee and the Development Land Owners.
- (c) The Council must, within 20 Business Days of receipt of a signed Novation Deed in **clause 16.2(a) or clause 16.2(b)**, execute the Novation Deed and provide a copy of the signed Novation Deed to both the Transferee and the Development Land Owners.
- (d) Once the Novation Deed is executed by the Council, the Development Land Owners are released from their obligations under this Agreement on and from the Effective Date (within the meaning of the Novation Deed).
- (e) If a Transferee under **clause 16.2(a) or clause 16.2(b)** is a trustee or a custodian for a trust, the Council agrees to:
  - (i) the inclusion in a Novation Deed under **clause 16.2(a) or clause 16.2(b)** (as the case may be) of the Transferee's limitation of liability clause; and
  - (ii) if requested by the Transferee, promptly do all things necessary for the purpose of varying this Agreement to include the relevant limitation of liability clause.

### 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 Development Land Owners may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of that person's right, powers, title, benefit and/or interest in, to, under or derived from the Land (or any part of it), 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 not affect the title to any Dedication Land when it is transferred to Council; and

(ii) the Development Land Owners may:

(A) enter into any agreement to sell, transfer or lease any Final Lot; or

(B) grant an option to purchase or lease any Final Lot, provided that any sale, transfer or grant of a lease of a Final Lot cannot be completed 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.

**Note:** The balance of this **clause 17** has been included in the event that the parties are mistaken.

### 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, 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 for the Relevant Supply is a taxable supply made to the Supplier by the Recipient (**Recipient Supply**), then the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with

**clause 17.4(a)** will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

- (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 payment, indemnification or 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 Development Land Owners 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**

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

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

## 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

- (a) Subject to clause 1.4(a), the Development Land Owners acknowledge and agree that they must and will not object to providing the following “*Outcome[s] to be entitled to Incentives*” referred to in column 5 of Table 7.1 of the Development Control Plan (as at the date of this Agreement) for Areas 13, 14 and 15 and where no s.7.11 contribution offset is available:

Item	Area	Outcome to be entitled to Incentive referred to in column 5 of Table 7.1 of the Development Control Plan
1.	13	1 affordable housing dwelling dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct".
2.	14	2 affordable housing dwellings dedicated to Council in perpetuity. Each dwelling shall comprise a minimum of 2 bedrooms with an internal area of at least 70 sqm (plus storage) and one car space, in accordance with the "Specifications for Affordable Housing in the St Leonards South Precinct".
3.	15	A 15m wide pedestrian and bicycle link connecting Berry Road and Holdsworth Avenue embellished in accordance with the "Specifications for Public Open Space in the St Leonards South Precinct" and dedicated to Council in perpetuity.

- (b) For clarity, nothing in clause 36(a) or elsewhere in this Agreement obliges the Development Land Owners to:
- (i) provide the relevant outcomes other than in accordance with this Agreement or earlier than the time that is immediately prior to the issue of the first Occupation Certificate for the Development; or
  - (ii) construct or complete the Area 16 Link or any part of it, or carry out any work on or in relation to Lot 10 in Section 2 in DP 7259.

## 37 Link Works

### 37.1 Development Approval for Area 15 Link Works

- (a) It is acknowledged that the Development Land Owners must, at their own cost, obtain a development consent (as defined under the Act) (if applicable) to complete the Link Project or so much of it as relates to the Area 15 Link as part of the Development Application.

### 37.2 Area 15 Link

- (a) Subject to any conditions of consent to the Development, if given, the Development Land Owners acknowledge that they **MUST** complete the construction of the Area 15 Link or have procured the construction of the Area 15 Link by agreement with the Area 16 Landowner no later than immediately prior to the issue of the first Occupation Certificate for the Development.



### 37.3 Area 16 Link

- (a) Subject to any conditions of consent to the Development, if given, the Development Land Owners **MAY** complete the Area 16 Link as part of the Link Project subject to a separate agreement with the Area 16 Landowner however the Development Land Owners will not be entitled to an offset for the cost of constructing the Area 16 Link.

### 37.4 Assignment of Warranties and Causes of Action

- (a) In respect of the Link Works, the Development Land Owners must assign (as beneficial owner) or cause to be assigned to the Council the benefit of any warranties or guarantees obtained by the Development Land Owners and their builder with respect to any material or goods incorporated in or forming part of the Link Works, but only where such warranties or guarantees are capable of being assigned without the consent or agreement of a third party.
- (b) To the extent that such warranties or guarantees are not capable of being assigned without the consent or agreement of a third party or are not capable of being assigned at all, the Development Land Owners 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.

## 38 Trustee Landowner Marshall Land Unit Trust

- (a) Marshall Land Pty Ltd (ABN 79 745 878 468) (**ML Trustee**) enters into this Agreement in its capacity as the trustee for the Marshall Land Unit Trust (**ML Trust**) constituted by a trust deed (**ML Trust Deed**).
- (b) The ML Trustee warrants that:
  - (i) It is the sole trustee of the ML 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 ML Trust and as trustee it is authorised and empowered under the ML 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 ML Trust Deed;
  - (iv) It is entitled under the ML 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 ML 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 ML Trust Deed.
- (c) The ML 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 ML Trustee being replaced as the trustee of the ML Trust in accordance with the ML Trust Deed:



- (i) the ML Trustee must procure that the replacement trustee enters into a new agreement with the Council on the same terms as this Agreement;
  - (ii) the ML Trustee (as outgoing trustee) must procure an agreement from the Council, under which the Council releases the ML Trustee from the requirement to observe and perform any future obligations under this Agreement;
  - (iii) the ML Trustee (as outgoing trustee) must release the Council, from the requirement to observe and perform any future obligations under this Agreement; and
  - (iv) the ML 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 on 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 ML Trustee only to the extent to which the ML Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of any liability out of the assets of the ML Trust.
- (f) Notwithstanding any other provisions of this Agreement, **clause 38(e)** does not apply to any obligation or liability of the ML Trustee to the extent to which there is, in respect of that obligation or liability, whether under the ML Trust Deed or by operation of law, a reduction in the extent of the ML Trustee's indemnification, or loss of the ML Trustee's right of indemnification, out of the assets of the ML Trust as a result of the ML Trustee's failure to properly perform its duties as trustee of the ML Trust.

## 39 Trustee Landowner Holdsworth Land Unit Trust

- (a) Holdsworth Land Pty Ltd (ABN 45 167 576 553) (**HL Trustee**) enters into this Agreement in its capacity as the trustee for the Holdsworth Land Unit Trust (**HL Trust**) constituted by a trust deed (**HL Trust Deed**).
- (b) The HL Trustee warrants that:
  - (i) It is the sole trustee of the HL 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 HL Trust and as trustee it is authorised and empowered under the HL 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 HL Trust Deed;
  - (iv) It is entitled under the HL 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 HL 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 HL Trust Deed.

- (c) The HL 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 42(b)**.
- (d) Prior to the HL Trustee being replaced as the trustee of the HL Trust in accordance with the HL Trust Deed:
  - (i) the HL Trustee must procure that the replacement trustee enters into a new agreement with the Council on the same terms as this Agreement;
  - (ii) the HL Trustee (as outgoing trustee) must procure an agreement from the Council, under which the Council releases the HL Trustee from the requirement to observe and perform any future obligations under this Agreement;
  - (iii) the HL Trustee (as outgoing trustee) must release the Council, from the requirement to observe and perform any future obligations under this Agreement; and
  - (iv) the HL 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 42** and the costs and expenses of registering any new agreement on the title to the Land.
- (e) Subject to **clause 42(f)**, liability arising under or in connection with this Agreement (except under or in connection with **clause 42(d)** above) is limited and can be enforced against the HL Trustee only to the extent to which the HL Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of any liability out of the assets of the HL Trust.
- (f) Notwithstanding any other provisions of this Agreement, **clause 42(e)** does not apply to any obligation or liability of the HL Trustee to the extent to which there is, in respect of that obligation or liability, whether under the HL Trust Deed or by operation of law, a reduction in the extent of the HL Trustee's indemnification, or loss of the HL Trustee's right of indemnification, out of the assets of the HL Trust as a result of the HL Trustee's failure to properly perform its duties as trustee of the HL Trust.

# Schedule 1

## Section 7.4 Requirements

Provision of the Act	This Agreement
Under section 7.4(1), the Development Land Owners has:	
(a) sought a change to an environmental planning instrument.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(b) made, or proposes to make, a development application.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<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 contribution required by this Agreement -</b> (Section 7.4(3)(c))	See <b>clause 6</b> and <b>clause 37</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 not excluded by this Agreement.
<b>Applicability of Section 7.12 of the Act -</b> (Section 7.4 (3)(d))	The application of section 7.12 of the Act is not 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)), s.7.4(6)	The benefits under the Agreement are not to be taken into consideration under section 7.11(6) of the Act.
<b>Mechanism for Dispute resolution -</b> (Section 7.4 (3)(f))	See <b>clauses 9 and 10</b> .
<b>Enforcement of this Agreement -</b> (Section 7.4 (3)(g))	See <b>clauses 8, 9, 10, 11 and 12</b> .
<b>Registration of this Agreement</b> (Section 7.6)	See <b>clause 8</b> .
<b>No obligation to grant consent or exercise functions -</b> (Section 7.4 (9))	See <b>clauses 4, 5 and 23</b> .

**TABLE 2 – OTHER MATTERS**

REQUIREMENT UNDER THE ACT	THIS DEED
<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 25E(2)(g) 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 25E(2)(g) 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 25E(2)(g) of the Regulation)	No.

# Schedule 2

## Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

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

**Clause 25E**

***Environmental Planning and Assessment Regulations 2000***

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

14 and 16 Marshall Avenue and 2, 4, 6, 8, and 10 Berry Road and 5, 7 and 9 Holdsworth Avenue, St Leonards, NSW

#### **Summary**

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a draft Voluntary Planning Agreement (“**the Planning Agreement**”) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (“**the Act**”) and Environmental Planning and Assessment Regulation 2000 (Clause 25E) (“**the Regulation**”).

This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

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

#### **Parties**

The parties to this planning agreement are:

Lane Cove Council as the planning authority; and

Marshall Land Pty Ltd as trustee for Marshall Land Unit Trust and Holdsworth Land Pty Ltd as trustee for Holdsworth Land Unit Trust

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

The various parcels of land as set out in Schedule 3 of the Planning Agreement known as 14 and 16 Marshall Avenue and 2, 4, 6, 8, and 10 Berry Road and 5, 7 and 9 Holdsworth Avenue, St Leonards, NSW

("the Land"), depicted in the map shown below:



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

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

The "**Development**" on the Land comprises any development of the Land that includes the construction on the Land of a Residential Flat Building (as defined under the *Lane Cove Local Environmental Plan 2009* as at the date of the Planning Agreement).

#### **Summary of Objectives, Nature and Effect of the Planning Agreement**

##### **Objectives**

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

##### **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

- the carrying out of works

towards public purposes.

### ***Effect***

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

1. the dedication of land for use as a part of a pedestrian and bicycle link;
2. the construction of part of the pedestrian and bicycle link; and
3. the dedication of 3 affordable housing dwellings.

### **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 providing infrastructure to support the future population of the St Leonards South Precinct, as determined by Council in the St Leonards South Masterplan.

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 Development Land Owners 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 no later than immediately prior to the issue of the first occupation certificate for the Development.



# Schedule 3

## Land

### Part A – Holdsworth Land Properties

Address	Lot and Deposited Plan
4 Berry Road	Lot 37 Sec 2 DP 7259
6 Berry Road	Lot 36 Sec 2 DP 7259
8 Berry Road	Lot 35 Sec 2 DP 7259
10 Berry Road	Lot 34 Sec 2 DP 7259
5 Holdsworth Av	Lot 7 Sec 2 DP 7259
7 Holdsworth Av	Lot 8 Sec 2 DP 7259
9 Holdsworth Av	Lot 9 Sec 2 DP 7259

### Part B – Marshall Land Properties

Address	Lot and Deposited Plan
14 Marshall Av	Lot 2 Sec 2 DP 7259
16 Marshall Av	Lot 1 Sec 2 DP 7259
2 Berry Road	Lot 38 Sec 2 DP 7259

## Schedule 4 Development Contribution Schedule

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

Column 1		Column 3
Development Contribution		Timing

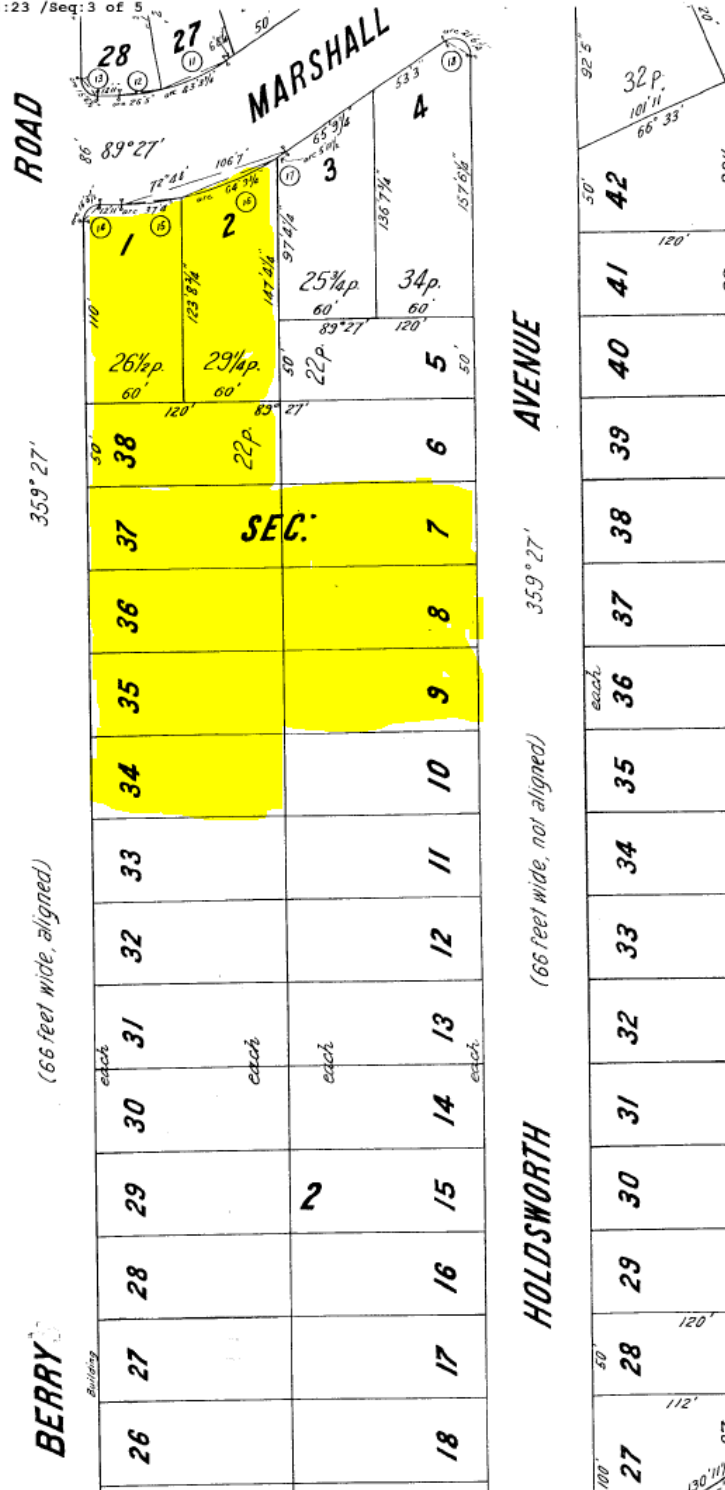
<p><b>Item 1</b></p> <ul style="list-style-type: none"> <li>• Dedication in perpetuity of the parcel of land identified as 10 Berry Road and comprising Lot 34 in Section 2 in DP 7259 in Area 15 as part of a 15m wide pedestrian and bicycle link connecting Berry Road and Holdsworth Avenue to be constructed in accordance with the <i>"Specifications for Public Open Space in the St Leonards South Precinct"</i>.</li> <li>• Dedication in perpetuity of 1 affordable housing dwelling in Area 13 and 2 affordable housing dwellings in Area 14 and where each dwelling shall comprise an internal area of at least 70sqm (plus storage) and one car space, in accordance with the <i>"Specifications for Affordable Housing in the St Leonards South Precinct"</i>.</li> </ul>		<p>No later than immediately prior to the issue of the first Occupation Certificate for the Development</p>
---	--	---

# Schedule 5

## Maps

### Sheet 1: Land

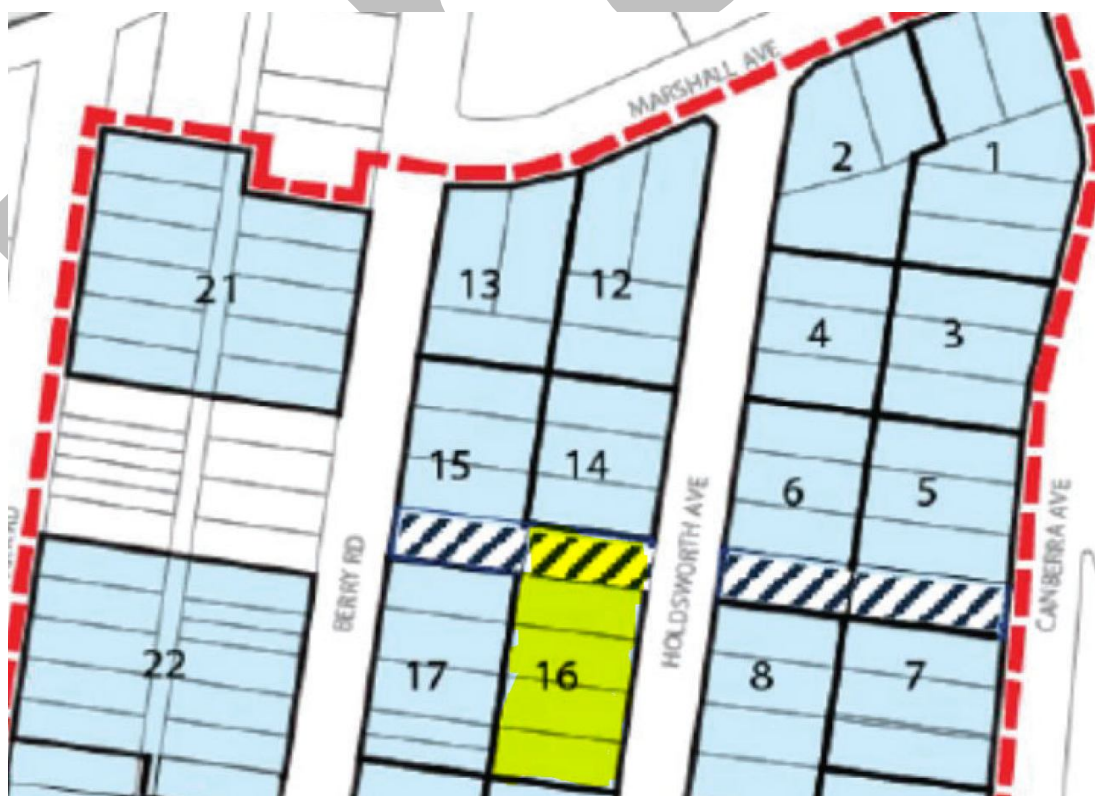
May-2023 14:23 / Seq: 3 of 5



Sheet 2: Area 13, 14 and 15



Sheet 2A: Area 16



## Sheet 3: Locality 8



## Sheet 4: Dedication Land — Area 15 Link

Refer to Sheet 1 - the area identified as Lot 34 in Section 2 in DP 7259

Draft

## Execution

**Executed** as an agreement.

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

.....  
Witness

.....  
Attorneys Signature

**CRAIG ANTHONY WRIGHTSON**

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

**Executed by Marshall Land Pty Ltd** )  
**as trustee for Marshall Land Unit** )  
**Trust** in accordance with section 127(1)  
of the *Corporations Act 2001* (Cth):

.....  
Company Secretary/Director

.....  
Director

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

.....  
Name of Director (print)

**Executed by Holdsworth Land Pty )  
Ltd ACN as trustee for Holdsworth )  
Land Unit Trust in accordance with  
section 127(1) of the Corporations  
Act 2001 (Cth):**

.....  
Company Secretary/Director

.....  
Director

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

.....  
Name of Director (print)

Draft



## Annexure A – Novation Deed

This is **Annexure A** referred to in the Voluntary Planning Agreement between **Lane Cove Council (Council)** and **Marshall Land Pty Ltd as trustee for Marshall Land Unit Trust and Holdsworth Land Pty Ltd ACN as trustee for Holdsworth Land Unit Trust (Development Land Owners)**

**Dated**

---

Draft

[Date]

---

Lane Cove Council

---

[EXISTING DEVELOPER]

---

[<<INSERT DETAILS OF New Developer>>]

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# Deed of Novation for Voluntary Planning Agreement

# Contents

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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**)

---

## Background

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

## Agreed terms

### 2 Definitions

In this document these terms have the following meanings:

**Council**

Lane Cove Council.

**Effective Date**

means:

(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 Original Agreement.

**Original Agreement**

The voluntary planning agreement dated [insert] and made between the Council and Marshall Land Pty Ltd as trustee for Marshall Land Unit Trust & Holdsworth Land Pty Ltd as trustee for Holdsworth Land Unit Trust.

**Party**

means a party to this document.

### 3 Novation

#### 3.1 Original Agreement

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

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

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

#### 3.2 Reference in Original Agreement

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

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

#### 3.3 Address for notices

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

**New Developer:**

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

### 4 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this document, and in all other respects the provisions of the Original Agreement are ratified

and confirmed, and, subject to the variation and novation contained in this document, the Original Agreement will continue in full force and effect.

## 5 Release and Discharge

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

## 6 Indemnities

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

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

## 7 Warranties and representations

### 7.1 Warranties

Each Party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other Party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
  - (i) any law or directive from a government entity;
  - (ii) its constituent documents;
  - (iii) any agreement or instrument to which it is a Party; or
  - (iv) any obligation of it to any other person.

## 7.2 Survival of warranties

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

## 8 GST

Where a supply made under this document gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) will be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this document. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

## 9 Stamp duty and costs

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

## 10 Further acts

- (a) Each Party will take all steps, execute all deeds and do everything reasonably required by any other Party to give effect to any of the actions contemplated by this document.
- (b) This document binds each Party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

## 11 Amendment

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

## 12 Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## 13 Counterparts

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

## 14 General

### 14.1 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

### 14.2 Headings

Headings do not affect the interpretation of this document.

### 14.3 Continuing performance

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



#### **14.4 Party acting as trustee**

If a party enters into this Deed as trustee of a trust, he 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) it is entitled under the deed establishing the trust to be indemnified in full in respect of the obligations and liabilities incurred by it under this Deed.

#### **14.5 Waiver**

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

#### **14.6 Pre-contractual negotiation**

This Deed:

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

#### **14.7 Third parties**

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

#### **14.8 Remedies**

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

#### **14.9 Severability**

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

Draft

# Execution

**Executed** as a deed.

**[Insert relevant attestation clauses]**

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

Draft

## Annexure B – Not used

Draft

## Annexure C – Not used

Draft