

Planning Agreement

Lane Cove Council

and

New South Wales Land and Housing Corporation

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Planning Agreement

Date

Parties

Lane Cove Council

ABN 42 062 211 626 of 48 Longueville Road, Lane Cove, New South
Wales

(Council)

New South Wales Land and Housing Corporation

ABN 24 960 729 253 of Level 1, 223-239 Liverpool Road, Ashfield,
New South Wales

(LAHC)

Recitals

- A. LAHC is the owner of the Land.
 - B. LAHC intends to lodge with Council a Development Application seeking approval to carry out the Development on the Land.
 - C. The LAHC has offered to enter into this Planning Agreement with the Council to make the Developer Contributions to Council to provide the Public Benefits if the Development Application is approved.
 - D. The LAHC and the Council agree to enter into this deed.
-

The parties agree, in consideration of, among other things, the mutual promises contained in this deed as follows:

1. Planning Agreement under the Act

The parties agree that this deed is a Planning Agreement governed by subdivision 2 of Division 7.1 of Part 7 of the Act.

2. Application of Section 7.11 and 7.12 of the Act to the Development

The parties agree that this deed does not exclude the operation of Section 7.11 and 7.12 of the Act in relation to the Development Application.

3. Scope and application of this Agreement

3.1 This deed applies to:

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

4. Operation of this Agreement

4.1 Clause 7.1 takes effect on execution of this deed.

4.2 The parties agree that the balance of the terms of this deed are effective and binding on the parties if the Development Application is approved

4.3 The parties agree that the LAHC is not bound by this deed to provide the Developer Contributions unless Development Consent is granted to the Development Application approving the building envelope as described in Item 4 of Schedule 1.

5. Definitions and interpretation clauses

5.1 Definitions

In this deed:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW) (as amended) and includes any regulations made under that Act.
Approved Development	means the development the subject of the Development Consent
Council's Representative	means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this deed.

Dealing	means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.
Development	means the proposal of the nature set out in Item 4 of Schedule 1.
Development Application	means a development application that seeks development consent for a development that is generally in accordance with the Development and includes all plans, reports models, photomontages, material boards (as amended or supplemented) submitted to the consent authority before the determination of that Application.
Development Consent	means the approval granted by the Planning Panel or other consent authority to the Development Application for the Development and includes all modifications made to that consent.
Developer's Contribution	means the transfer of land at No 16 Pinaroo Place, Lane Cove.
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.
LAHC	means the entity described in Item 1 of Schedule 1
Land	means the land generally described as 30 Pinaroo Place, 20 and 22 Mindarie Street Lane Cove. identified in Item 3 of Schedule 1, comprising the land the subject of the Development Application
Lot 16	means 16 Pinaroo Place, Lane Cove as identified in Item 5 of Schedule 1.
NSWLR	means New South Wales Land Registry Services.
Party	means a party to this deed, and includes their successors and assigns.

Planning Panel	means the Planning Panel constituted pursuant to section 2.12 of the Act.
Public Benefits	means the public benefits identified in Item 6 of Schedule 1.
Structures	mean improvements on land that are constructed or built from interrelated parts with a fixed location on the ground.

5.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this deed.
- (b) A reference in this deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) A reference in this deed to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this deed 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.
- (e) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed.
- (f) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) References to the word 'include' or 'including' are to be construed without limitation.
- (h) Reference to a party to this deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (i) Any schedules and attachments form part of this deed.
- (j) A word defined in the Act has the same meaning in this deed.

6. Transfer of Lot 16

- 6.1 LAHC will transfer Lot 16 to the Council free from encumbrances for nil consideration in accordance with the development application within 21 days of notification of the approval of the Development Consent
- 6.2 LAHC must do all things reasonably necessary to complete the transfer of Lot 16 to Council and to effect registration of any instrument of transfer at NSWLRS including:
- (a) sign the transfer of Lot 16 to Council; and
 - (b) all things reasonably necessary to complete the transfer of Lot 16 to Council and to effect registration of any instrument of transfer at NSWLRS.
- 6.3 In the event that Lot 16 is transferred to the Council in accordance with clause 6.2 of this deed Council:
- (a) accepts Lot 16 (including without limitation any Structures) in its present state of condition and repair and subject to any latent or patent defects or infestation or dilapidation existing either at the date of this deed or at completion of the transfer of Lot 16 in accordance with this deed.
 - (b) is not entitled to:
 - (i) make any requisition, claim or objection about; or
 - (ii) rescind, terminate or delay completion of this deed

because of any of the matters referred to in this clause 6 of this deed or as a result of fair wear and tear in any Structures occurring between the date of this deed and completion of the transfer of Lot 16 in accordance with this deed.
- 6.4 The Council will be responsible for any stamp duty and other costs (including without limitation its legal costs and any adjustments for rates and taxes) in connection with the transfer of Lot 16.
- 6.5 The Council agrees that it will use Lot 16 for the purpose of a public park.

7. Caveat

7.1 **Caveat - Lot 16**

- (a) The LAHC acknowledges and agrees that:
 - (i) The Council is deemed to have acquired and the LAHC is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in Lot 16 in respect of which to lodge a caveat over the Land notifying that interest;

- (ii) Council may lodge a caveat in the relevant folios of the Register for Lot 16 provided the caveat does not prevent registration of any dealing or plan other than a transfer;
- (b) The Council must register a withdrawal of any caveat in respect of Lot 16 upon the transfer of Lot 16 to the council in accordance with clause 6.

8. Enforcement

This deed may be enforced by either party in any Court of competent jurisdiction.

9. Dispute Resolution

9.1 Reference to dispute

If a dispute arises between the parties in relation to this deed, then either party may seek to resolve in accordance with this clause 9.

9.2 Notice of dispute

- (a) The party wishing to commence dispute resolution processes must notify the other of:
 - (i) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve latter than by way of this clause 9;
 - (ii) the intent to involve this clause 9;
 - (iii) (if practicable) the outcomes which the notifying party wishes to achieve; and
 - (iv) any material impact which the dispute has upon the completion of the LAHC's Works, the LAHC's Contribution or the transfer of land in accordance with clause 8 (and in particular the completion of the remainder of the Development).
- (b) The contents of a notice issued under the clause 9.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

9.3 Principals of parties to meet

The principals of the parties (and in the case of the Council, the principal may include the person acting in the role of General Manager as defined in the Local Government Act, or such person as is nominated by that officer in writing) must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) 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); and
- (c) 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.

9.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 9.3;
- (b) the parties have been unable to reach an outcome identified in clause 9.2(a)(i) to 9.2(a)(iii); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 9.3,

then that party may, by 14 day's notice to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 9 does not of itself amount to a breach of the Agreement.

10. Notices

10.1 Service of Notice

Any notice, consent, information, application or request that must or may be given or made to a Party under this deed 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 in Item 7 of Schedule 1; or
- (b) emailed to that Party at its email address set out in Item 7 of Schedule 1.

10.2 Change of address

If a Party gives the other Party 10 business day's notice of a change of its address or email address, 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 address or email address.

10.3 Time of service 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; and
- (a) if it is sent by email, as soon as the sender receives an acknowledgement from the recipient's information system showing the Notice has been delivered to the email address, or when the notice enters an information system controlled by the recipient, or when the notice is first opened or read by the recipient, whichever occurs first.

10.4 Service after hours, on weekends and holidays

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.

11. Approvals and consent

Except as otherwise set out in this deed, a party may give or withhold an approval or consent to be given under this deed 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.

12. Variation of Agreement

The parties may agree to vary the terms of this Agreement. Any such variation shall be evidenced by a written variation and must comply with the provisions of Section 7.5 of the *Environmental Planning and Assessment Act 1979*.

13. Costs

13.1 Legal and administrative costs

Each party must pay their own legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this deed;
- (b) the giving effect to this deed; and
- (c) any enforcement of the rights under this deed.

13.2 Stamp duty

The Council is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this deed, any document executed under it or any dutiable transaction evidenced or effected by it.

14. Entire Agreement

This deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, 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.

15. Further acts

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

16. Governing law and jurisdiction

This deed is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

17. Joint and several liability

Any agreement, covenant, representation or warranty under this deed by two or more persons binds them jointly and each of them individually.

18. No fetter

Nothing in this deed will be construed as limiting or fettering in any way the exercise by Council of any statutory discretion or duty.

19. Representations and warranties

The Parties represent and warrant that they have power to enter into this deed and that entry into this deed will not result in the breach of any law.

20. Severability

If a clause or part of a clause of this deed 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 deed, but the remainder of this deed is not affected.

20.1 Modification

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

20.2 Waiver

A waiver by either Party is only effective if it is given in writing, and that waiver will only relate to the particular obligation or breach (as the case may be) identified in that communication.

21. GST

21.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**).

21.2 If a party to this deed (the "Supplier") makes a supply under or in connection with this deed and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

21.3 If this deed requires a party to pay for, or reimburse any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.

- 21.4 If a party to this deed has the benefit of an indemnity for a cost, expense, loss or outgoing (indemnified cost) under this deed, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- 21.5 Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this deed.
- 21.6 Subject to the operation of this clause, and unless otherwise expressly stated amounts in this deed are GST exclusive.

Schedule 1 Reference Schedule

Item 1 LAHC's Details Name: New South Wales Land and Housing Corporation

Address: Level 1 223-239 Liverpool Rd
 ASHFIELD NSW 2131

Attention: Hugh Phemister, Executive Director Projects

Telephone:

Email: _____

Item 2 Council's Representative Name: Craig Wrightson, General Manager Lane Cove Council

Address: 48 Longueville Rd
 LANE COVE NSW 2066

Telephone:

Email: _____

Item 3 Land 20-22 Mindarie Street and 30 Pinaroo Place, Lane Cove

Item 4 Development Application Stage 1 Concept Plan development application for a building envelope seeking a variation to the LEP height controls to achieve a FSR of 1.8:1

Item 5 16 Pinaroo Place, Lane Cove, Lot 89 DP36362

Item 6 Public Benefits transfer of Land for the purposes of a public park

Item 7 Notices

Council

Name: Lane Cove Council

Address: 48 Longueville Rd

LANE COVE NSW 2066

Attention: Craig Wrightson, General Manager

Telephone:

Email: _____

LAHC

Name: New South Wales Land and Housing Corporation

Address: Level 1 223-239 Liverpool Rd

ASHFIELD NSW 2131

Attention: Hugh Phemister, Executive Director Projects

Telephone:

Email: _____

Signing page

Executed as an agreement

Executed as a deed

Executed by Lane Cove Council by:

Signature of Mayor

Signature of General Manager

Full name (print)

Full name (print)

Signed Sealed and Delivered by me

.....
**as Delegate of the New South Wales
Land and Housing Corporation** and I
hereby certify that I have no notice of
revocation of that delegation :

Signature of Delegate

Signature of Witness

Full name (print)

Full name (print)