

Deed

3-5 Help Street Chatswood Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Willoughby City Council

H and J Vakili

Execution Date: [28 October 2021]

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Summary Sheet

Council:

Name: Willoughby City Council

Address: Level 4, 31 Victor Street, Chatswood, New South Wales 2067

Telephone: (02) 9777 1000

Facsimile: N/A

Email: email@willoughby.nsw.gov.au

Representative: General Manager

Developer:

Name: H and J Vakili

Address: 12 Yawung Street Dundas NSW 2117

Telephone: 0412171188

Facsimile: N/A

Email: harry.vakili@mcr.com.au

Representative: Harry Vakili

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Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S7.4(1)	‘Planning Authority’	Council
	‘Developer’	Developer
	Development Contributions	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(1), (2)	Public Purpose	See column 2 of Schedule 2
S7.4(3)(a)	Land	See Definition of ‘Land’ in clause 1.1
S7.4(3)(b)(i)	Instrument Change	See definition of LEP Amendment in clause 1.1’
S7.4(3)(b)(ii)	Development	See definition of ‘Development’ in clause 1.1
S7.4(3)(c)	Details of Developer’s Provision	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(3)(d)	Whether s7.11, s7.12 and s7.24 of the Act Apply to the Development	See clause 8
S7.4(3)(e)	Whether Benefits are or are not to be Taken into Consideration in Determining a Development Contribution under s7.11	No
S7.4(3)(f)	Mechanism for the Resolution of Disputes under the Planning Agreement	See Part 5
S7.4(3)(g)	Enforcement of the Planning Agreement by a Suitable Means in the Event of Breach by the Developer	See clause 13 and Part 6
S7.4 (10)	Conformity of Planning Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S7.5	Public Notice & Public Inspection of Draft Planning Agreement	Yes
S6.15(1)(d)	If the Development involves the subdivision of land, does the Planning Agreement impose requirements that are	No - N/A

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	required to be complied with before a subdivision certificate is issued?	
S6.9(1)	If an occupation certificate is required in respect of the Development, does the Planning Agreement impose requirements that are required to be complied with before such a certificate is issued?	No

Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Clause 25B(1)	Form & Subject-Matter	Yes
Clause 25B(2)	Secretary's Practice Note	Yes
Clause 25D	Public Notice & Public Inspection of Draft Planning Agreement	Yes
Clause 25E	Explanatory Note	See Appendix
Clause 146A	If the Development involves building work or subdivision work, does the Planning Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued?	No

Table 3 – Ministerial Directions

Direction	Requirement	Compliance
N/A	N/A	N/A

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Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Willoughby City Council ABN 47 974 826 099 of Level 4, 31 Victor Street, Chatswood, New South Wales 2067 (**Council**)

and

H and J Vakili ABN 54 842 177 668 of Level 4/1 McLaren St, North Sydney NSW 2060 (**Developer**)

Background

- A The Developer is the owner of the Land.
- B The Developer has requested the Council to adopt a Planning Proposal to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land.
- C The Developer has made or proposes to make a Development Application to carry out the Development on the Land.
- D The Developer offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the carrying out of Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Approval includes approval, consent, licence, permission or the like and includes, without limitation, a Development Consent and a Part 6 Certificate.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council on terms acceptable to

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the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

CIC means Council's "Community Infrastructure Contributions" scheme.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

Contribution Item means an item of Development Contribution specified in Column 1 of Schedule 2.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Dedication Land means a Contribution Item comprising land specified or described in Part C of Schedule 2 of this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period specified in Item 11 of Schedule 1.

Development means the development specified or described in Item 3 of Schedule 1.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied

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towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Final Lot means:

- (a) any lot created in the Development for separate occupation and disposition, or
- (b) any lot of a kind or created for a purpose that is otherwise agreed by the Parties,

not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
 - (i) an act of God,
 - (ii) strike, lockout, other industrial disturbance or labour difficulty,
 - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
 - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine, or
 - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means the land specified or described in Item 1 of Schedule 1. **LEP** means the *Willoughby Local Environmental Plan 2012*.

LEP Amendment means an amendment to the LEP to which the Planning Proposal relates.

Map means the map in Schedule 3.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

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Occupation Certificate has the same meaning as in the Act.

Part 6 Certificate means a certificate under Part 6 of the Act.

Party means a party to this Deed.

Plan of Subdivision means:

- (a) a plan of subdivision within the meaning of s195 of the *Conveyancing Act 1919*, or
- (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

Planning Proposal means a planning proposal within the meaning of s55 of the Act as detailed in Item 2 of Schedule 1.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 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.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 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.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

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- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word '*include*' or '*including*' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to '*dedicate*' or '*dedication*' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 all executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the LEP Amendment, the Land and the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11, s7.12 and s7.24 of the Act to the Development to the extent provided for in Items 4, 5 and 6 in Schedule 1 respectively.
- 8.2 The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development to the extent provided for in Item 7 in Schedule 1.

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 A Contribution Value specified in this Deed is to be indexed from the date of this Deed in accordance with the index specified in Item 8 of Schedule 1.
- 9.3 Any Contribution Value specified in this Deed in relation to a Contribution Item comprising a Work to be carried out or Dedication Land does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.4 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.5 Despite clause 9.4, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

Part 2 – Provisions relating to monetary contributions

10 Payment of monetary Development Contributions

- 10.1 The Developer is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part.
- 10.2 The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with the index specified in Item 9 of Schedule 1.
- 10.3 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.4 If the Development Consent for the Development is modified to allow for additional dwellings or residential floor space after the issuing of the first relevant Part 6 certificate e.g. Construction Certificate/Subdivision Certificate] for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional dwellings or residential floor space not later than 7 days after the Development Consent has been modified.

Part 3 – Provisions relating to dedication of land - Not Used

11 Not Used

12 Not Used

13 Not Used

Part 4 – Provisions relating to carrying out of Work - Not Used

14 Not Used

15 Not Used

16 Not Used

17 Not Used

18 Not Used

19 Not Used

20 Not Used

21 Not Used

22 Not Used

23 Not Used

24 Not Used

Part 5 – Dispute Resolution

25 Dispute resolution – expert determination

- 25.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 25.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 25.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 25.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 25.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

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- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 25.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

26 Dispute Resolution - mediation

- 26.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 25 applies.
- 26.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 26.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 26.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 26.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 – Enforcement

27 Not Used

28 Breach of obligations

- 28.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 28.1.1 specifying the nature and extent of the breach,
 - 28.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 28.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

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- 28.2 If the Developer fails to fully comply with a notice referred to in clause 28.1, the Council may, without further notice to the Developer, take such action as it considers reasonably necessary to remedy the breach including but not limited to recovering any money due to the Council under this Deed as a debt due in a court of competent jurisdiction.
- 28.3 For the avoidance of doubt, any costs incurred by the Council in remedying a breach may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 28.4 For the purpose of clause 28.3, the Council's costs of remedying a breach the subject of a notice given under clause 28.1 include, but are not limited to:
 - 28.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 28.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 28.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 28.5 Nothing in this clause 28 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

29 Enforcement in a court of competent jurisdiction

- 29.1 Subject only to clauses 25 and 26, the Parties may enforce this Deed in any court of competent jurisdiction.
- 29.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 29.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 29.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 7 – Registration & Restriction on Dealings

30 Registration of this Deed

- 30.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 30.2 On commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 30.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer and any other person required by the Registrar-General to execute such instrument, and
 - 30.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 30.3 The Developer at its cost is to:

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- 30.3.1 do such other things as are reasonably necessary to enable registration of this Deed to occur, and
- 30.3.2 provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information of such registration.
- 30.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 30.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 30.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

31 Restriction on dealings

- 31.1 The Developer is not to:
 - 31.1.1 sell or transfer the Land, other than a Final Lot, or
 - 31.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 31.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 31.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 31.1.5 the Developer is not in breach of this Deed, and
 - 31.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 31.2 Subject to clause 31.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 31.1.
- 31.3 Clause 31.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale, or if the Developer has fully completed its obligations under this Deed.

Part 8 – Indemnities & Insurance

32 Risk

- 32.1 The Developer performs this Deed at its own risk and its own cost.

33 Release

- 33.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

34 Indemnity

- 34.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

35 Not Used

Part 9 – Other Provisions

36 Confidentiality

- 36.1 The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.
- 36.2 The Parties acknowledge that:
- 36.2.1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and
- 36.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
- 36.3 Subject to clause 36.4 and 36.5, each Party agrees:
- 36.3.1 not to disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and
- 36.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access.
- 36.4 A Party may disclose Confidential Information in the following circumstances:
- 36.4.1 in order to comply with the Law, or
- 36.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- 36.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

37 Annual report by Developer

- 37.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 37.2 The report referred to is to be in such a form and to address such matters as required by the Council from time to time.

38 Review of Deed

- 38.1 The Parties agree to review this Deed periodically as specified in Item 17 of Schedule 1, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 38.2 For the purposes of clause 38.1, the relevant changes include (but are not limited to):
 - 38.2.1 any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development,
 - 38.2.2 the lapsing of the Development Consent to the Development pursuant to section 4.53 of the Act,
 - 38.2.3 a Party becoming unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this Deed.
- 38.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 38.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 38.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 38.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 38.1 (but not 38.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

39 Notices

- 39.1 Any notice, consent, information, application or request that is to 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:
 - 39.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 39.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 39.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 39.2 If a Party gives the other Party 3 business days' notice of a change of its address, or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.

3-5 Help Street Chatswood Planning Agreement

Willoughby City Council

H and J Vakili

- 39.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 39.3.1 delivered, when it is left at the relevant address,
 - 39.3.2 sent by post, 2 business days after it is posted, or
 - 39.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 39.4 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 5pm 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.

40 Approvals and Consent

- 40.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, 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.
- 40.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

41 Costs

- 41.1 The Developer is to pay the Council all reasonable costs of preparing, negotiating, executing, stamping and registering this Deed, and any charge, caveats or other documents related to this Deed, within 7 days of a written demand by the Council for such payment.
- 41.2 If requested by the Developer in writing, the Council must inform the Developer in writing of its estimated or actual costs referred to in clause 41.1.
- 41.3 The Developer is also to pay to the Council the Council's reasonable costs of implementing, monitoring and enforcing this Deed within 7 days of a written demand by the Council for such payment.

42 Entire Deed

- 42.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 42.2 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 Deed was executed, except as permitted by law.

43 Further Acts

- 43.1 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 Deed and all transactions incidental to it.

44 Notations on section 10.7(2) Planning Certificates

- 44.1 The Developer acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Deed on any certificate issued under section 10.7(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.

45 Governing Law and Jurisdiction

- 45.1 This Deed is governed by the law of New South Wales.
- 45.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 45.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

46 Joint and Individual Liability and Benefits

- 46.1 Except as otherwise set out in this Deed:
- 46.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 46.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

47 No Fetter

- 47.1 Nothing in this Deed shall 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 shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

48 Illegality

- 48.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

49 Severability

- 49.1 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.
- 49.2 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 rest of this Deed is not affected.

50 Amendment

- 50.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

51 Waiver

- 51.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 51.2 A waiver by a Party is only effective if it:
- 51.2.1 is in writing,
 - 51.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 51.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 51.2.4 is signed and dated by the Party giving the waiver.
- 51.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 51.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 51.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

52 Not Used

53 Explanatory Note

- 53.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 53.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.
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3-5 Help Street Chatswood Planning Agreement

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Schedule 1

(Clause 1.1)

Item 1	Land	The land shown on the Map in Schedule 3 and identified as 3 to 5 Help Street, Chatswood (Lots 40 & 41, DP2602)
Item 2	Planning Proposal	<p>The planning proposal submitted by the Council to the Department of Planning, Industry and Environment ref: PP_2020_WILLO_002_00 (PP-2021-2420) in respect of the Land, which proposes to amend the <i>Willoughby Local Environmental Plan 2012</i> to:</p> <ul style="list-style-type: none">• increase the maximum floor space ratio control from 2.7:1 to 6:1;• increase the maximum permitted height of building from 25m (north section of the site) and 20m (south section of site) to 90m
Item 3	Development	Development on the Land made permissible under the Act by the LEP Amendment and authorised by a Development Consent.
Item 4	Application of S7.11	Section 7.11 of the Act is not excluded
Item 5	Application of S7.12	Section 7.12 of the Act is not excluded
Item 6	Application of S7.24	Section 7.24 of the Act is not excluded
Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11	The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development
Item 8	Indexation of Contribution Values	N/A
Item 9	Indexation of Monetary Development Contributions	<p>The Monetary Development Contributions are indexed on the Indexation Date in accordance with the following formula:</p> $\text{Indexed Monetary Development Contribution} = A \times B / C$ <p>Where:</p> <p>A is the value of the Monetary Development Contribution applicable immediately before the Indexation Date;</p> <p>B is the CPI last published before the Indexation Date; and</p> <p>C is the CPI last published 12 months before the Indexation Date.</p>
Item 10	Access to Council owned or controlled land	N/A

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Item 11	Defects Liability Period	N/A
Item 12	Security	N/A
Item 13	Obligations to which Security Relates	N/A
Item 14	Timing of Security	N/A
Item 15	Indexation of Security	N/A
Item 16	Costs	See clause 41
Item 17	Review of Deed	N/A

Schedule 2

(Clause 9)

Development Contributions

Table

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing

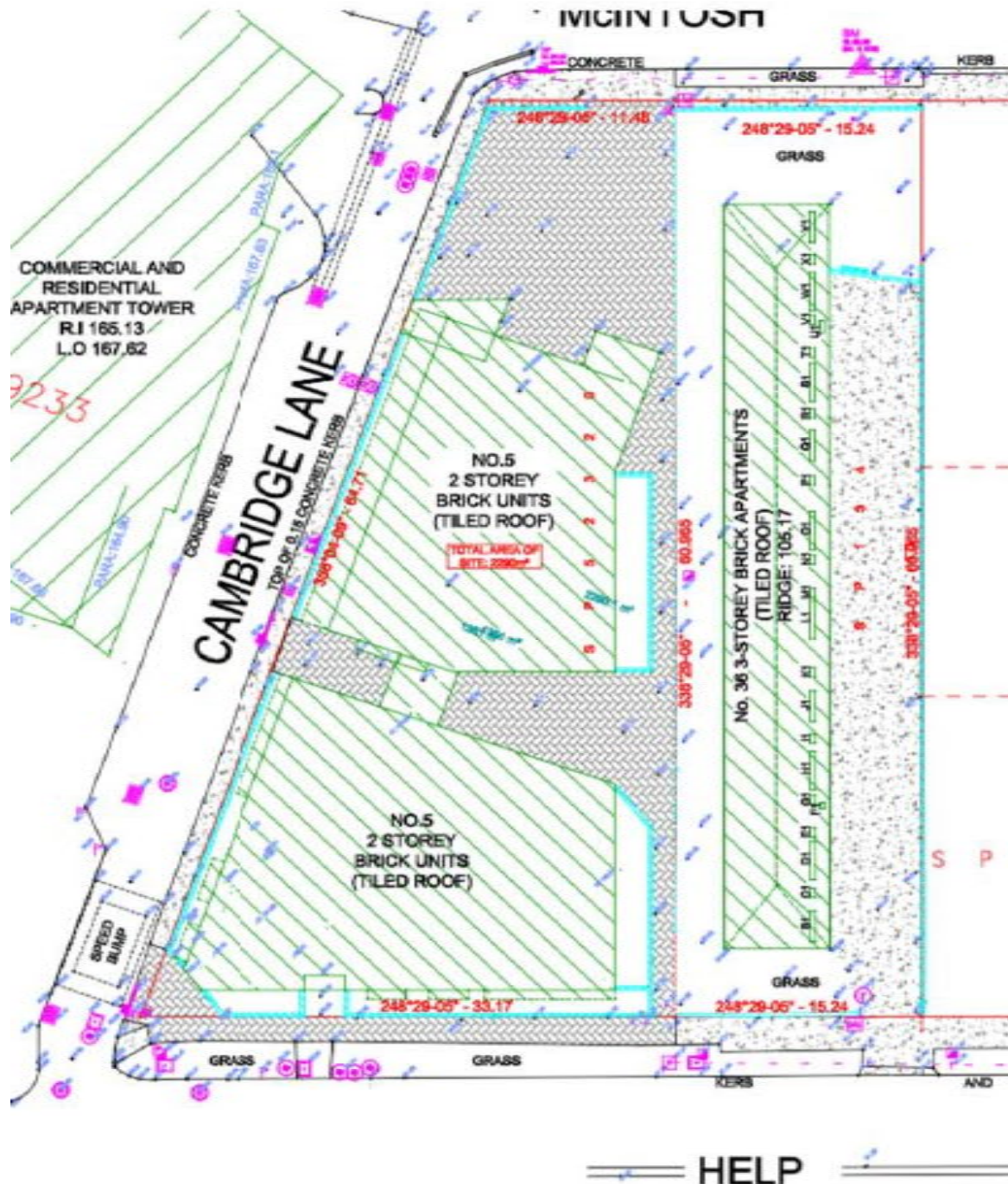
A. Monetary Development Contributions

1. \$1,401,480	Contributions towards Council's Community Infrastructure Contributions scheme	Payable as a lump sum	Payable upon execution of this Deed
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Schedule 3

(Clause 1.1)

Map



3-5 Help Street Chatswood Planning Agreement
Willoughby City Council
H and J Vakili

Execution

Executed as a Deed

Dated: 28/10/2021

Executed on behalf of the Council



Chief Executive Officer (CEO)



Witness

Position: PLANNING MANAGER
(Name: IAN ARNOTT **)**


Executed on behalf of the Developer



Signature of Partner
(Name: H Vakili **)**



Signature of Partner
(Name: J Vakili **)**



Witness Sida Kolandouzan.
(Name:)

Appendix

(Clause 53)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Willoughby City Council ABN 47 974 826 099 of Level 4, 31 Victor Street, Chatswood, New South Wales 2067 (**Council**)

H and J Vakili ABN 54 842 177 668 of 12 Yawung Street Dundas NSW 2117 (**Developer**).

Description of the Land to which the Draft Planning Agreement Applies

The land shown on the Map in Schedule 3, identified as 3 to 5 Help Street, Chatswood (Lots 40 & 41, DP2602)

Description of Proposed Development

The Draft Planning Agreement applies to an amendment to the Willoughby Local Environmental Plan 2012 relating to a planning proposal with the Department of Planning, Industry and Environment ref: PP_2020_WILLO_002_00 (PP-2021-2420) in respect of the Land which proposes to:

- Increase the maximum floor space ratio control from 2.7:1 to 6:1;
- Increase the maximum permitted height of building from 25m (north section of the site) and 20m (south section of site) to 90m

This will facilitate higher density development of the Land. The Draft Planning Agreement also applies to development on the Land as authorised by Development Consent granted as a result of the LEP Amendment.

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Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

To provide Council a development monetary contribution of \$1,401,480.00 towards the Community Infrastructure Contributions ('CIC') to fund various public infrastructure within the CIC scheme, in accordance with *Council's Revised Draft Planning Agreement Policy*.

Nature of Draft Planning Agreement

This Draft Planning Agreement takes the form of a legally binding deed over the subject property titles, binding the Council and the Developer.

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the proposed amendment to the LEP in accordance with the Planning Proposal and the subsequent carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Developer,
- does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development,
- is to be registered on the title to the Land until all obligations are met, and
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development,
- provides for additional monetary contributions by a developer to the Council to be used for public purposes, additional to other development contributions required for a proposed Development on the land to which it applies.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3 (c), (d) and (g) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

3-5 Help Street Chatswood Planning Agreement

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Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government by:

- keeping the local and wider community informed about its activities,
- provides value for residents and ratepayers by requiring the developer to contribute to public works. The works are to upgrade public domain, works on road, open space and recreation spaces. The developer's contribution to these public works is additional to the developer's statutory contributions to the Council for the proposed development on the site.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Yes

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

No