

# Planning Agreement

6-30 Artarmon Road and 13 and 25 Richmond Avenue,  
Willoughby, New South Wales

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

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Willoughby City Council ABN 47 974 826 099  
(**Council**)

Mirvac Residential (NSW) Developments Pty Ltd ABN  
29 609 513 135 (**Owner**)

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*Executed on 10 March 2021*

# Planning Agreement

## Channel Nine site redevelopment

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<b>Details</b>	<b>3</b>
<b>Agreed terms</b>	<b>5</b>
1. Defined terms & interpretation	5
2. Planning Agreement under the Act	8
3. Commencement	8
4. Application of this document	8
5. Warranties	8
6. Risk	8
7. Other Provisions	9
8. Further agreements	9
9. Surrender of Right of Appeal	10
10. Operation of this document	10
11. Contributions to be made under this document	10
12. Acquisition of Affordable Housing Units	11
13. Application of sections 7.11, 7.12 and 7.24 of the Act	12
14. Registration of this document	12
15. Dispute resolution	13
16. Security and enforcement	15
17. Assignment and transfer	17
18. No fetter	17
19. Notices	18
20. General	19
<b>Schedule 1 – Land</b>	<b>22</b>
<b>Schedule 2 – Contributions</b>	<b>23</b>
<b>Schedule 3 –Calculation of Maximum Number of Affordable Housing Units</b>	<b>24</b>

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# Details

## Date

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## Parties

Name	<b>Willoughby City Council</b>
ABN	47 974 826 099
Short form name	<b>Council</b>
Notice details	Level 4, 31 Victor Street Chatswood, New South Wales, 2067 Email: email@willoughby.nsw.gov.au Attention: The Chief Executive Officer

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Name	<b>Mirvac Residential (NSW) Developments Pty Ltd</b>
ABN	29 609 513 135
Short form name	<b>Owner</b>
Notice details	Level 28, 200 George Street Sydney, New South Wales, 2000 Email: clancy.sprouster@mirvac.com Attention: Clancy Sprouster – Senior Development Manager

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## Background

- A On 4 August 2020, after the Agreement came off public exhibition, the Owner became the registered proprietor of the Land.
- B On 23 December 2014, the NSW Planning Assessment Commission granted a Part 3A Concept Approval to Modification Application (MP10\_0198) (**Concept Plan Approval**).
- C The Concept Plan Approval provides approval for residential development and small scale non-residential uses on the Land including:
- (i) building envelopes for five residential flat buildings above basement level parking and two rows of terrace houses incorporating;
    - (a) up to 400 dwellings; and
    - (b) up to 500 m<sup>2</sup> floor space of non-residential uses to support the development;
  - (ii) retention and adaptive reuse of No 6 Artarmon Road for retail/commercial purposes;
  - (iii) new internal roadways and other infrastructure works to support the development;
  - (iv) publicly accessible open space and through site link;
  - (v) temporary exhibition homes and / or exhibition villages; and
  - (vi) superlot subdivision.
- D The Concept Plan Approval provides that developer contributions will be payable to Council in accordance with the applicable Development Contributions Plan for residential development that is in place at the time of lodgement for each Development Application, or subject to Council and the registered proprietor of the Land entering into a Voluntary Planning Agreement.

- E On 31 January 2019, Modification Application (MP 10\_0198 MOD 2) (**Modification 2**) was approved by the Independent Planning Commission (**IPC**). The approval of Modification 2 (**Modification 2 Approval**) authorised the following modifications to the Concept Plan Approval:
- (i) increased number of building envelopes by 2 (to 9);
  - (ii) increased total (*sum of retail/commercial + residential*) gross floor area by 7,449 m<sup>2</sup> (to 43,907 m<sup>2</sup>);
  - (iii) increased maximum number of dwellings by 60 (to 460 dwellings in total);
  - (iv) reconfigured layout of buildings, open spaces and the internal road network; and
  - (v) allow child care facilities as a permissible use.
- F By letter dated 28 March 2018, the former owner of the Land made a public benefit offer to Council (**Public Benefit Offer**) to provide the following additional contributions to public infrastructure within the locality:
- (i) a monetary contribution of \$500,000 to Council towards any future intersection upgrade works to Willoughby Road/ Artarmon Road/ Small Street intersection;
  - (ii) a monetary contribution of \$1,000,000 to Council towards future public access and regeneration works to Walter Street Reserve; and
  - (iii) 1% of any residential gross floor area above the approved 35,886m<sup>2</sup> (but only up to a total potential maximum residential gross floor area of 42,557 m<sup>2</sup>) to be transferred to Council as affordable housing (in addition to the 4% of all residential gross floor area)
- G The Modification 2 Approval contains Condition 34a relating to a Voluntary Planning Agreement which provides as follows:
- "If accepted by Willoughby City Council in writing within 6 months of the determination of MP 10 0198 MOD 2, the public benefit offer contained within modification request MP 10 0198 MOD 2 (submitted with the response to submissions dated 28 March 2018) shall form a Voluntary Planning Agreement (VPA) between the Proponent (or its nominated entity) and Willoughby City Council. The VPA shall be prepared, publically [sic] exhibited, and executed prior to the approval of the first residential development application for Stage 1 or as otherwise agreed with Willoughby City Council. A copy of the executed VPA shall be submitted to the Secretary."*
- H On 13 May 2019, Council resolved to delegate to the General Manager to write to the former owner of the Land accepting the Public Benefit Offer as the basis of a Voluntary Planning Agreement (**Agreement**).
- I On 17 May 2019, the former owner of the Land received a letter from Council which confirmed Council's willingness to seek an Agreement under the terms detailed in Condition 34a.
- J The Parties wish to formalise the terms of the former owner's Public Benefit Offer referred to in recital F by entering into this Agreement in accordance with section 7.4 of the Act.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document, unless context indicates a contrary intention:

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

**Address** means a party's address set out in the Notices clause (clause 19) of this document.

**Affordable Housing** has the same meaning as in the Act.

**Affordable Housing Units** means units which will be lots in a strata plan which may or may not be subject to a strata management statement and are located within the Development that provide Affordable Housing and as specified in clause 11.3.

**Agreement** means this Planning Agreement.

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this document.

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays.

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

**Concept Plan Approval** means Concept Plan Approval (MP10\_0198) approved by the NSW Planning Assessment Commission on 23 December 2014.

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

**Contributions** means the payment of a cash contribution and the transfer of Affordable Housing Units as detailed in Schedule 2.

**Contribution Amount** means the amount of a cash contribution to be paid by the Owner as detailed in Schedule 2.

**Defect** means any error, omission, defect, non-conformity or other fault in the Affordable Housing Units or any other matter which prevents the Affordable Housing Units from complying with the terms of this agreement, excluding:

- (a) damage caused to the Affordable Housing Units by Council, an Authority, the general public or any person or organisation other than the Owner; and
- (b) fair wear and tear; and
- (c) Minor Defects, except Minor Defects identified or notified during the Defects Liability Period.

**Defects Liability Period** means the period of 12 months from the date of practical completion of the Affordable Housing Units.

**Development** means the development to be carried out in accordance with Modification 2 that was approved by the IPC on 31 January 2019.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act and as may be granted in respect of the Development.

**Discretion** has the meaning set out in clause 18.1.

**Dispute** means a dispute about the terms and operations of this Agreement.

**Execution Date** means the date that all parties have signed this Agreement.

**Fax Number** means a party's facsimile number set out in the Notices clause (clause 19) of this document.

**Final Occupation Certificate** means the last occupation certificate to issue in respect of the Development.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning given to that term 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.

**Guarantee** means an irrevocable unconditional bank guarantee or documentary performance bond for the Guarantee Amount which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
  - (i) BBB + (Standard & Poors and Fitch);
  - (ii) Baa 1 (Moody's); or
  - (iii) Bbb (Bests);
- (d) be issued on behalf of the Owner;
- (e) have no expiry or end date;
- (f) state the beneficiary as Council;
- (g) be irrevocable; and
- (h) state the purpose of the security as required in accordance with this document.

**Guarantee Amount** means \$AUD1,500,000.00.

**Guarantee Amount Due Date** means the date on which the Owner ceases to be a member of the Mirvac Group.

**Insolvent** means the occurrence of any of the following:

- (a) a Party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a Party becomes unable to pay its debts as they fall due;
- (c) a Party enters into any arrangement with creditors;
- (d) a Party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) above occurs in relation to a party, including the court appointment of a receiver.

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

**Land** means 6-30 Artarmon Road and 13 and 25 Richmond Avenue, Willoughby, New South Wales, including Lot 1 DP 820327, Lot 1 DP 327266, Lot 10 DP1162507; Lot 13 DP 6849; and Lot 12 DP1162507 as detailed in Schedule 1.

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b) above.

**LEP** means the Willoughby Local Environmental Plan 2012.

**Minor Defects** means defects:

- (a) the existence of which do not prevent the Affordable Housing Units being reasonably capable of being used for their intended purpose;
- (b) the Owner has grounds for not promptly rectifying; and
- (c) rectification of which will not affect the immediate and convenient use of the Affordable Housing Units for their intended purpose.

**Mirvac Group** means Mirvac Limited and its Related Bodies Corporate.

**Modification 2** means Modification Application 2 (Ref: MP 10\_0198 Mod 2) to amend building envelopes, development yield, landscaping and open space, vehicular access, cycle and pedestrian routes and off-site infrastructure improvements on land at 6-30 Artarmon Road, Willoughby, New South Wales.

**Modification 2 Approval** means the approval of Modification Application 2 (Ref: MP 10\_0198 Mod 2) comprising approved modifications to the Concept Approval.

**Monetary Contribution** means the monetary contributions listed in rows 2 and 3 of Table 1 of Schedule 2 for future intersection upgrade works to Willoughby Road, Artarmon Road, Small Street intersection, and for future public access and regeneration works to Walter Street Reserve.

**Notice** has the meaning set out in clause 19.1.

**Notice of Dispute** has the meaning set out in clause 15.2.

**Parties** means the parties to this Agreement.

**Owner** means Mirvac Residential (NSW) Developments Pty Ltd.

**Register** means the Torrens Title register maintained under the *Real Property Act 1900* (NSW).

**Related Bodies Corporate** has the meaning given in the Corporations Act 2001 (Cth).

**Replacement Guarantee** has the meaning set out in clause 16.1(d).

## 1.2 Interpretation

In this document:

- (a) a reference to a clause, schedule, annexure, appendices, attachment/s or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) 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;
- (e) a reference to the word 'include' or 'including' are to be construed without limitation;
- (f) notes appearing in this Agreement are operative provisions of this Agreement;
- (g) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (h) a reference to this document includes the agreement recorded by this document;

- (i) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (j) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (k) a reference to '*dedicate*' or '*dedication*' in relation to land is a reference to dedicate or dedication free of cost (unless specified otherwise in this Agreement);
- (l) a reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are in Australian Dollars;
- (m) a reference in this Agreement to a \$ value relating to a monetary Development Contribution is a reference to the value exclusive of GST;
- (n) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (o) a reference to 'month' means calendar month.

## 2. Planning Agreement under the Act

The Parties agree that this document is a planning agreement within the meaning of section 7.4 of the Act.

## 3. Commencement

This Agreement commences and has force and effect on and from the date when the Parties have:

- (a) all executed the same copy of this Agreement, or
- (b) each executed separate counterparts of this Agreement and exchanged the counterparts.

The Parties are to insert the date when this Agreement commences on the front of the page and on the execution page.

## 4. Application of this document

This document applies to:

- (a) the Land;
- (b) the Concept Plan Approval; and
- (c) the Modification 2 Approval.

## 5. Warranties

The Parties warrant to each other that they:

- (a) have full capacity to enter into this Agreement; and
- (b) are able to fully comply with their obligations under this Agreement.

## 6. Risk

### 6.1 The Owner performs the obligations in this Agreement at its own risk and cost.



- 6.2 The Owner releases the Council from any Claim it may have against the Council arising in respect of the Owner's obligations under this Agreement except to the extent that the Claim arises as a result of any act or omission, default or any act of negligence by the Council.
- 6.3 The Owner indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising from any breach by the Owner of this Agreement except if, and to the extent that, the Claim arises because of the Council's (including any officer, agent or invitee of the Council) negligence or default.
- 6.4 The Owner is to take out and keep current the following insurances from a reputable and financially sound insurer in relation to the Contributions that comprise any Affordable Housing Unit required to be made by the Owner under this Agreement up until the end of the Defects Liability Period:
- (a) contract works insurance, noting the Council as an interested party, for the full replacement value of the Affordable Housing Unit to cover the Owner's liability in respect of damage to or destruction of the Affordable Housing Unit;
  - (b) public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Owner and notes the interest of the Council for liability to any third party. The Owner must ensure that any subcontractor of the Owner holds public liability insurance on similar or same terms;
  - (c) workers compensation insurance as required by Law; and
  - (d) any other insurance required by Law.
- 6.5 If the Owner fails to comply with clause 6.4, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Owner to the Council and may be recovered by the Council as it deems appropriate including:
- (a) by calling on the Guarantee provided by the Owner to the Council under this Agreement, or
  - (b) recovery as a debt due in a court of competent jurisdiction.
- 6.6 The Owner is not to commence to carry out the construction of any Affordable Housing Unit unless it has first provided to the Council a certificate of currency to confirm all of the insurances specified in clause 6.4.

## 7. Other Provisions

- 7.1 If requested by the Council, the Owner is to provide to the Council a report detailing the performance of its obligations under this Agreement.
- 7.2 Council acknowledges that it may only request the report referred to in clause 7.1 once in every calendar year.

## 8. Further agreements

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

## 9. Surrender of Right of Appeal

Subject to clause 15.3, the Owner is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court of tribunal or similar body appealing against, or questioning the validity of this Agreement.

## 10. Operation of this document

- (a) The Parties agree that this document operates on and from the date it is executed by the Parties.
- (b) This Agreement will remain in force until:
  - (i) it is terminated by operation of Law; or
  - (ii) all obligations are performed or satisfied.

## 11. Contributions to be made under this document

### 11.1 The Contributions

- (a) The Owner agrees that it will make the Contributions to Council which are to be made:
  - (i) for the public purpose specified in Column 1 of Table 1 in Schedule 2;
  - (ii) to the extent or in the amount referred to in Column 2 of Table 1 in Schedule 2; and
  - (iii) at the times referred to in Column 3 of Table 1 in Schedule 2.

### 11.2 Payment of monetary Development Contributions

- (a) The Owner is to pay to the Council the monetary Development Contributions specified in Table 1 of Schedule 2 in the manner and at the time or times specified in Column 3 of Table 1 in Schedule 2.
- (b) The amount of a cash Contribution is to be indexed from the date of this Agreement in accordance with the following formula:

**Contribution Amount x CPI**

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**LCPI**

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where:

CPI = the last CPI published before the due date for payment of that Contribution; and

LCPI= the last CPI published before execution date of this VPA.

- (c) A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement 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.

### 11.3 Transfer of Affordable Housing Units

- (a) The Owner (at its cost) agrees to transfer to Council as Affordable Housing Units based on the GFA value set out in Schedule 2.
- (b) The Owner and Council agree that the calculation of the maximum provision of square metres of residential gross floor area as Affordable Housing Units is to be determined by reference to the table set out in Schedule 3.
- (c) Unless otherwise agreed by the Council and the Owner, the transfer of Affordable Housing Units will occur within two months of the registration of subdivision of the development

creating the Affordable Housing Units and within 6 months of the issue of a Final Occupation Certificate being issued or at an earlier time in the Owner's discretion.

- (d) Other than any encumbrances and affectations, authorised or required by the Concept Plan Approval, Modification 2 Approval or any Development Consent, the Owner is to ensure that the Affordable Housing Units are transferred to Council free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability of rates, taxes and charges) except as otherwise agreed in writing by the Council.
- (e) If, having used all reasonable endeavours, the Owner cannot ensure that the Affordable Housing Units are transferred to the Council free of all encumbrances and affectations referred to in clause 11.3(c), the Owner may request that Council agree to accept the Affordable Housing Units subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- (f) Before the Affordable Housing Units are transferred to Council, the Owner must do all things necessary to enable the Council to enter upon the land on which the Affordable Housing Units are to be situated for the purposes of inspecting that land.
- (g) After the Affordable Housing Units are transferred to Council, the Owner is to do all things reasonably necessary to gain access to the land on which the Affordable Housing Units are situated by passing through any adjoining or adjacent land owned, occupied or otherwise controlled by the Owner.
- (h) The Council acknowledges that:
  - (i) the Owner's obligations under clause 11.3(e) and (f) are subject to the Council giving the Owner reasonable prior notice of its intention to enter upon or gain access to the land on which the Affordable Housing Units are to be situated; and
  - (ii) it must comply with all Law, and all reasonable directions of the Landlord, when entering and being present on the land on which the Affordable Housing Units are to be situated.
- (i) The Council will accept the transfer of the Affordable Housing Units including by signing and stamping all necessary documentation.

## 12. Acquisition of Affordable Housing Units

The Owner agrees that:

- (a) clause 12 is an agreement between the Council and the Owner for the purposes of section 30 of the Just Terms Act; and
- (b) in clause 12, the Owner has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

- 12.1 If the Owner does not transfer the Affordable Housing Units specified in Schedule 2 (and calculated by reference to Schedule 3) by the time referred to in clause 11.3(c), the Owner consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures under the Just Terms Act.

- 12.2 The Council is only to acquire the Affordable Housing Units specified in Schedule 2 (and calculated by reference to Schedule 3) if it considers it reasonable to do so having regard to the circumstances surrounding any failure by the Owner to transfer that unit/s.
- 12.3 If, as a result of the acquisition referred to in clause 12.1, the Council is required to pay compensation to any person other than the Owner, the Owner is to reimburse the Council that amount, upon a written request being made by the Council.
- 12.4 The Owner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 12 including:
- (a) signing any documents or forms;
  - (b) producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW); and
  - (c) paying the Council's reasonable costs arising under this clause 12.

### 13. Application of sections 7.11, 7.12 and 7.24 of the Act

- (a) This Agreement does not exclude the application of section 7.11, except to any Affordable Housing Unit in the Development to be transferred to Council under this Agreement.
- (b) Contributions under sections 7.12 of the Act are excluded under the Planning Agreement in respect of the Development generally and are therefore not payable by the Owner if development consent is granted for the Development.
- (c) Contributions under section 7.24 of the Act to the Development are not excluded under this Agreement.
- (d) Benefits under this Agreement must not be taken into consideration under section 7.11(6) of the Act for the purposes of determining any contributions payable under the Act for the Development or any other development on the Land.

### 14. Registration of this document

#### 14.1 Registration of this document

- (a) The Owner represents and warrants that it is the registered proprietor of the Land.
- (b) The Owner agrees that it will procure the registration of this document, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with section 7.6 of the Act.
- (c) The Owner agrees that it will procure the registration of any relevant plan(s) of strata subdivision and Council consents to this agreement remaining registered only on the certificate of title of the common property of the registered strata plan(s).
- (d) The Owner at its own expense will, promptly after this document is executed, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - (i) the consent of each person who:
    - (A) has an estate or interest in the Land; or
    - (B) is seized or possessed of an estate or interest in the Land; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title,to enable the registration of this document in accordance with clause 14.1(b).
- (e) The Owner, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:

- (i) to procure the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document is executed but in any event, no later than 40 Business Days after that date; and
- (ii) to procure the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

#### 14.2 Release and discharge of Agreement

- (a) The Council agrees to promptly do all things reasonably required by the Owner to release and discharge this Agreement with respect to any part of the Land, and any relevant plan(s) of strata subdivision upon the Owner providing all of the Contributions in respect of that part of the Land or where there are no Contributions to be provided on that part of the Land.
- (b) Should the Owner request Council to extinguish the Agreement on folio(s) of the Register for the Land, at any time, the Council will consider that request having regard to the:
  - (i) remaining Contributions to be provided; and
  - (ii) the provision of security or other arrangements to Council's satisfaction to secure the performance of any outstanding obligations.
- (c) The Parties agree that if the Land is subdivided such that the Development takes place in more than one stage, the registration of this Agreement will be removed from the title of any allotment of the Land subject to a strata scheme under the *Strata Schemes (Freehold Development) Act 2005* immediately prior to such subdivision save where the strata scheme includes the Affordable Housing Units in which case the Agreement must remain registered on the title of those Affordable Housing Units until such time that the transfer to Council takes place. It will be Council's responsibility to remove the registration of this Agreement from the title after transfer has taken place.

#### 14.3 Council consent to dealings

The Council must in its capacity as beneficiary under a registered planning agreement promptly consent to any dealing or plans which the Owner proposes to register in respect of the Development provided the relevant dealing or plan is not inconsistent with this Agreement.

### 15. Dispute resolution

#### 15.1 Reference to dispute

If a dispute arises between the Parties in relation to this document, the Parties must not commence any court proceedings relating to the dispute unless the Parties have complied with this clause, except where a party seeks urgent interlocutory relief.

#### 15.2 Notice of Dispute

The party wishing to commence the dispute resolution processes must give written notice (**Notice of Dispute**) to the other party of:

- (a) the nature of the dispute;
- (b) the alleged basis of the dispute; and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

#### 15.3 Representatives of Parties to meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the Notice of Dispute) 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 determination in accordance with clause 15.6 about a particular issue 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.

#### 15.4 Further Notice if not settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, a party may give to the other parties a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 15.5 or by expert determination under clause 15.6.

#### 15.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) the Parties must agree to the terms of reference of the mediation within ten Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply) failing which clause 15.6 will apply;
- (b) the mediator will be agreed between the Parties, or failing agreement within five Business Days of receipt of the Determination Notice, a party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 15.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the Parties must within ten Business Days of receipt of the Determination Notice notify each other of their representatives that will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within five Business Days of the resolution);
- (f) the Parties agree to be bound by a mediation settlement and unless waived by the Parties, may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
  - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the mediator will be shared equally by the Parties unless the mediator determines that a party has engaged in unreasonable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 15.6 Expert determination

If the dispute is not resolved under clause 15.3 or clause 15.5, or the Parties otherwise agree that the dispute may be resolved by expert determination, the Parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:

- (i) agreed upon and appointed jointly by Council and the Owner; and
  - (ii) in the event that no agreement is reached or no appointment is made within 30 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the Parties unless:
  - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) the determination is in respect of, or relates to, termination or purported termination of this document by any party, in which event the expert is deemed to be giving a non-binding appraisal.

#### 15.7 Litigation

If the dispute is not finally resolved in accordance with this clause 15, then each party is at liberty to litigate the dispute.

#### 15.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 15.1, the referral to or undertaking of a dispute resolution process under this clause 15 does not suspend the Parties' obligations under this document.

## 16. Security and enforcement

### 16.1 Guarantee – Monetary Contribution

- (a) The Owner must deliver the Guarantee for the Guarantee Amount to the Council by the Guarantee Amount Due Date.
- (b) The Owner may provide multiple Guarantees to the Council for the various components of the Owner's provision of Affordable Housing Units provided the total amount of the Guarantees equals the Guarantee Amount and all Guarantees are provided by the Guarantee Amount Due Date.
- (c) The Council may call on a Guarantee provided under this clause if:
  - (i) the Owner is in material or substantial breach of the obligation to provide the Contributions under this document and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
  - (ii) the Owner becomes Insolvent before providing the Contributions.
- (d) At any time following the provision of a Guarantee under this clause, the Owner may provide the Council with one or more Replacement Guarantees totalling the Guarantee Amount required to be provided under this clause for the time being. On receipt of such Replacement Guarantee(s), the Council must release and return to the Owner, as directed, the Guarantee(s) which it holds that have been replaced.

- (e) The Council must apply the proceeds of a Guarantee provided under this clause in satisfaction of:
  - (i) any obligation of the Owner under this document to pay the Monetary Contribution; and
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure of the Owner to pay the Monetary Contribution.
- (f) The Council must return a Guarantee provided under this clause if requested by the Owner and the Owner has duly fulfilled the obligation under this document to provide the Contributions.
- (g) Nothing in this clause 16.1 prevents or restricts the Council from taking any enforcement action in relation to:
  - (i) any obligation of the Owner under this document; or
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Owner to comply with this document, that is not or cannot be satisfied by calling on a Guarantee.
- (h) For the sake of clarity, the Parties confirm that the Council may not call on a Guarantee in relation to a failure by the Owner to perform any of its obligations under this document, including but not limited to those obligations listed in clause 14 of this document.

#### 16.2 Transfer documents

- (a) Prior to the issue of a Final Occupation Certificate for development on the Land, the Owner will deliver to Council:
  - (i) a form of transfer under the *Real Property Act 1900* for the purpose of the transfer of the Affordable Housing Units with the Owner named as transferor and Council named as transferee, properly executed by the Owner; and
  - (ii) any other document (for example, a discharge of mortgage or withdrawal of caveat) in registrable form as is necessary to ensure that Council is able to register the transfer of the Affordable Housing Units, or an irrevocable undertaking from the relevant person issuing the document that the document together with any certificates of title held by the person will be produced for registration on request for the purposes of transferring the transfer of the Affordable Housing Units to Council under this document.
- (b) If, at any time, a certificate of title for the transfer of the Affordable Housing Units is provided, issued to or received by the Owner, the Owner must immediately provide that certificate of title to the Council, to be held by the Council until the transfer of the Affordable Housing Units is effected in accordance with this document.
- (c) The documents referred to in clause 16.2(a) and clause 16.2(b) are to be held by Council as security for the performance by the Owner of the obligations imposed on it under this document.
- (d) If the transfer of the Affordable Housing Units is not effected in accordance with this document, the Council may, at the Owner's cost, lodge for registration any or all of the documents referred to in clause 16.2(a) and clause 16.2(b), and call on any undertaking given in accordance with clause 16.2(a)(ii), so that Council can become the registered proprietor of the Affordable Housing Units.
- (e) Until the Owner has performed its obligations under this document, it shall not lodge or suffer or cause to be lodged for registration any document that would, if registered, cause any document held by Council under clause 16.2(a) and clause 16.2(b) incapable of being registered or obsolete.

#### 16.3 General enforcement

- (a) Without limiting any other remedies available to the Parties, this document may be enforced by any party in any court of competent jurisdiction.



- (b) Nothing in this document prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this document or any matter to which this document relates; and
  - (ii) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this document or any matter to which this document relates.

## 17. Assignment and transfer

- (a) Subject to clause 17(b) the Parties must not assign or otherwise transfer their rights under this document without the prior written consent of the other parties.
- (b) The Owner must not assign, transfer or dispose of any right, title or interest in the Land to another person or entity (**Transferee**) unless:
  - (i) the Owner satisfies Council that the proposed Transferee is financially capable of complying with the Owner's obligations under this document;
  - (ii) the Owner satisfies Council that the rights of the Council will not be diminished or fettered in any way;
  - (iii) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Owner under this document;
  - (iv) any default by the Owner under any provisions of this Agreement have been remedied by the Owner or waived by the Council on such conditions as the Council may determine; and
  - (v) the Owner and the Transferee pay the Council's reasonable costs in relation to the novation deed and the assignment.

## 18. No fetter

### 18.1 Discretion

This document is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including but not limited to any statutory power or discretion of the Council relating to the granting of Development Consent for the Development (all referred to in this document as a **Discretion**).

### 18.2 No fetter

No provision of this document is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that 18.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this document which is to be held to be a fetter to the extent that is possible having regard to the relevant court judgment.

## 19. Notices

### 19.1 Notices

Subject to clause 19.2(a), any notice given under or in connection with this document (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by fax at the Address or Fax Number below, or at the Address or Fax Number last notified by the intended recipient to the sender after the date of this document:

#### **Council**

Name Willoughby City Council  
Attention The Chief Executive Officer  
Address Level 4, 31 Victor Street Chatswood NSW

#### **Owner**

Name Mirvac Residential (NSW) Developments Pty Ltd  
Attention Clancy Sprouster and Annabelle Welsh  
Address Level 28, 200 George Street, Sydney, New South Wales 2000

- (c) is taken to be given and made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an Address in the same country) or seven Business Days after the date of posting (if posted to an Address in another country); and
  - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's Fax Number; and
- (d) if under clause 19.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

### 19.2 Notices sent by email

- (a) A party may serve a Notice by email if the Notice:
  - (i) includes a signature block specifying:
    - (A) the name of the person sending the Notice; and
    - (B) the sender's position within the relevant party;
  - (ii) states in the body of the message or the subject field that it is sent as a Notice under this document;
  - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this document; and
  - (iv) is sent to the email address/addresses below or the email address last notified by the intended recipient to the sender:

Name Willoughby City Council  
Attention The Chief Executive Officer  
Email email@willoughby.nsw.gov.au

Name	Mirvac Residential (NSW) Developments Pty Ltd
Attention	Clancy Sprouster and Annabelle Welsh
Email	<a href="mailto:clancy.sprouster@mirvac.com">clancy.sprouster@mirvac.com</a> and <a href="mailto:annabelle.welsh@mirvac.com">annabelle.welsh@mirvac.com</a>

- (b) The recipient of a Notice served under this clause 19.2 must:
  - (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice.
- (c) Failure to comply with clause 19.2(b) does not invalidate service of a Notice under this clause.

#### 19.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 19.2 is taken to be given or made:
  - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above without receiving an "out of office" response from any of the recipients;
  - (ii) when the Notice enters an information system controlled by the recipient; or
  - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause 19.3(a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

## 20. General

### 20.1 Amendments

This document may only be amended by written agreement between all Parties.

### 20.2 Counterparts

This document may be signed in any number of counterparts. All counterparts together make one instrument.

### 20.3 No merger

The rights and obligations of the Parties under this document do not merge on completion of any transaction contemplated by this document.

### 20.4 Entire agreement

- (a) This document supersedes all previous agreements about its subject matter. This document embodies the entire agreement between the Parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this document.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.

### 20.5 Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

20.6 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

20.7 Governing law and jurisdiction

- (a) New South Wales law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

20.8 Severability

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

20.9 Representations and warranties

The Parties represent and warrant that they have the power to enter into this document and comply with their obligations under this document and that entry into this document will not result in the breach of any law.

20.10 Legal expenses

The Owner is to pay all Council's reasonable costs of and incidental to 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. If required, Council can provide an estimate of its legal costs and provide updates of the associated costs as the matter progresses.

20.11 GST

- (a) Words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this document, the Owner must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances following receipt of a tax invoice.

20.12 Relationship between Parties

- (a) Nothing in this document:
  - (i) constitutes a partnership between the Parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.

- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

20.13 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this document expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00pm on the specified day, it is taken to have been done on the following Business Day.

# Schedule 1 – Land

The Land comprises the following allotments at 6-30 Artarmon Road, and 13 and 25 Richmond Avenue, Willoughby:

- Lot 1 DP820327;
- Lot 1 DP 327266;
- Lot 10 DP 1162507;
- Lot 13 DP 6849;
- Lot 12 DP1162507.

# Schedule 2 – Contributions

Table 1.		
Purpose of Development Contribution	Development Contribution	Time for making Development Contribution
Future intersection upgrade works to Willoughby Road, Artarmon Road, Small Street intersection	A monetary contribution of \$500,000 to Council	Payment is to be made within fourteen (14) days of a Final Occupation Certificate being issued
Future public access and regeneration works to Walter Street Reserve	A monetary contribution of \$1,000,000 to Council	Payment is to be made within fourteen (14) days of a Final Occupation Certificate being issued
Affordable Housing Units	<p>Residential gross floor area (GFA) of 1,435 m<sup>2</sup> (based on 4% of original concept approval GFA of 35,886m<sup>2</sup>)</p> <p><b>plus</b></p> <p>5% of any residential gross floor area developed by the Owner above the approved 35,886m<sup>2</sup> (but only up to the total approved GFA of 42,557 m<sup>2</sup>) as Affordable Housing by way of Affordable Housing Units, at no cost to the Council.</p> <p><b>thus</b></p> <p>Affordable Housing Units value as per items F and I of Schedule 3</p>	The Affordable Housing Unit/s are to be transferred to the Council within two months of the registration of subdivision of the development creating the Affordable Housing Units and within 6 months of the issue of a Final Occupation Certificate being issued


# Schedule 3 – Calculation of Maximum Number of Affordable Housing Units

	<b>Residential GFA Provision Calculation</b>		<b>units</b>
A	Residential GFA proposed in the Modification 2 Approval	42,557	m <sup>2</sup>
B	Original Concept Approval Residential GFA	35,886	m <sup>2</sup>
C	Difference (A-B)	6,671	m <sup>2</sup>
	<b>Affordable Housing GFA</b>		
D	Affordable Housing GFA based on the residential GFA exceeding B (5% of C)	334	m <sup>2</sup>
E	Affordable Housing GFA based on Original Concept Approval (4% of B)	1,435	m <sup>2</sup>
F	<b>Total Affordable Housing GFA</b>	<b>1,769</b>	m <sup>2</sup>
	<b>Affordable Housing Units to be provided</b>		
G	Number of Apartments approved in the Modification 2 Approval (A / H)	409	units
H	Average Residential GFA per Apartment	104	units
I	<b>Total Affordable Housing Apartments to be provided (F / H)</b>	<b>17</b>	units



Signing page  
**EXECUTED** as an agreement.

**Signed** for and on behalf of **Willoughby City Council** ABN 47 974 826 099 in accordance with a resolution of the Council on 14/12/2020 by:

  
Signature of

DEBRA KAY JUST  
Full name of Chief Executive Officer  
10 March 2021

  
Signature of

Sylvania Mok (Contributions  
Officer)  
Full name of Witness (position)

**Executed by Mirvac Residential (NSW) Developments Pty Ltd** ABN 29 609 513 135 in accordance with Section 127 of the *Corporations Act 2001*

  
Signature of director

TOBEN WJ LONG  
Name of director (print)

  
Signature of director/company secretary  
(Please delete as applicable)

STUART PENKELL  
Name of director/company secretary (print)

# Planning Agreement Explanatory Note

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## 1 Summary

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The purpose of this Explanatory Note is to provide a summary to support the notification of the proposed planning agreement between the parties listed in section 2 of this Explanatory Note, in relation to the subject land described in section 3 of this Explanatory Note (**Planning Agreement**), in accordance with section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**).

This Explanatory Note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW).

In this Explanatory Note, unless context indicates a contrary intention, capitalised terms are to be defined in accordance with the Planning Agreement.

## 2 Parties

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The parties to the Planning Agreement are:

- (1) Willoughby City Council ABN 47 974 826 099 (**Council**);
- (2) Mirvac Residential (NSW) Developments Pty Ltd ABN 29 609 513 135 (**Owner**); and

## 3 Descriptions of Subject Land

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The Land to which the Planning Agreement is as follows:

Folio Identifiers: Lot 1 DP820327, Lot 1 DP 327266, Lot 10 DP 1162507, Lot 13 DP 6849, and Lot 12 DP1162507

Location: 6-30 Artarmon Road, Willoughby, New South Wales and 13 and 25 Richmond Avenue, Willoughby, New South Wales

## 4 Introduction and Background

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- (1) On 23 December 2014, the NSW Planning Assessment Commission granted a Part 3A Concept Approval to Modification Application (MP10\_0198) (**Concept Plan Approval**).
- (2) The Concept Plan Approval provides approval for residential development and small scale non-residential uses on the Land including:
  - (a) building envelopes for five residential flat buildings above basement level parking and two rows of terrace houses incorporating;
  - (b) up to 400 dwellings;
  - (c) up to 500 m<sup>2</sup> floor space of non-residential uses to support the development;
  - (d) retention and adaptive reuse of No 6 Artarmon Road for retail/commercial purposes;
  - (e) new internal roadways and other infrastructure works to support the development;
  - (f) publicly accessible open space and through site link;
  - (g) temporary exhibition homes and / or exhibition villages; and
  - (h) superlot subdivision.

- (3) The Concept Plan Approval provides that developer contributions will be payable to Council in accordance with the applicable development contributions plan for residential development that is in place at the time of lodgement for each Development Application, or subject to Council and the registered proprietor of the Land entering into a Voluntary Planning Agreement.
- (4) On 31 January 2019, Modification Application (MP 10\_0198 MOD 2) (**Modification 2**) was approved by the Independent Planning Commission (IPC). The approval of Modification 2 (**Modification 2 Approval**) authorised the following modifications to the Concept Plan Approval:
  - (a) increased number of building envelopes by 2 (to 9);
  - (b) increased total gross floor area by 7,449 m<sup>2</sup> (to 43,907 m<sup>2</sup>);
  - (c) increased maximum number of dwellings by 60 (to 460 dwellings in total);
  - (d) reconfigured layout of buildings, open spaces and the internal road network; and
  - (e) allow child care facilities as a permissible use.
- (5) The Parties have formalised the terms of the Owner's offer to provide the Contributions (defined in the below section 5(2)) by entering into this Agreement in accordance with section 7.4 of the EPA Act.

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

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- (1) The Planning Agreement relates to the provision of financial Contributions and Affordable Housing to support the increased demands for facilities arising from the development of the Land and is generally consistent with the *Willoughby Local Environmental Plan 2012 (LEP)* and the *Willoughby Development Control Plan 2006 (DCP)*.
- (2) The former owner of the Land has offered to provide the following Contributions in accordance with the Planning Agreement, and these include the following Contributions to public infrastructure and affordable housing within the locality:
  - (a) a monetary contribution of \$500,000 to Council towards any future intersection upgrade works to Willoughby Road/ Artarmon Road/ Small Road intersection;
  - (b) a monetary contribution of \$1,000,000 to Council towards future public access and regeneration works to Walter Street Reserve; and
  - (c) Residential gross floor area (GFA) of 1,435 m<sup>2</sup> (based on 4% of original concept approval GFA of 35,886m<sup>2</sup>); plus 5% of any residential gross floor area developed by the Owner above the approved 35,886m<sup>2</sup> (but only up to a total potential maximum GFA of 42,557 m<sup>2</sup>) to be transferred to Council as affordable housing.

## **6 Assessment of the Merits of the Planning Agreement**

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### **6.1 Promotion of the public interest**

The public benefits to be secured by the Planning Agreement will flow from the achievement of the Planning Agreement's objectives (refer to section 5(2) of this Explanatory Note). That public benefit includes, in accordance with s 1.3(a) and (d) of the EPA Act, promotion of the social and economic welfare of the community and the delivery and maintenance of affordable housing.

Significant efficiencies will be achieved through the Planning Agreement by allowing the Owner:

- (1) greater involvement in the timing and scope of the material public benefits (ie Affordable Housing Units); and
- (2) the ability to assist with financing and coordinating the concurrent roll-out of lots and local infrastructure in the most efficient way.

The expected efficiencies, together with anticipated public benefits of the Planning Agreement, are that the Planning Agreement relieves Council of the obligation of sourcing funding for material public benefits required for the Proposed Development (which is more ably provided and, in the case of Affordable Housing, delivered by the Owner).

There are various provisions in the Planning Agreement relating to the implementation of the Planning Agreement which protect and uphold the public interest. These include the following:

- (1) provisions requiring the Owner to provide the Contributions in accordance with the Planning Agreement; and
- (2) various provisions relating to security including:
  - (a) registration of the Planning Agreement on the title of the Land; and
  - (b) providing a bank guarantee in the amount of \$1,500,000.

## **6.2 Promotion of Council's charter**

The Planning Agreement promotes the Council's charter under section 8 of the *Local Government Act* 1993 by providing adequate, equitable and appropriate Affordable Housing and funding for services and facilities for the community.

## **6.3 The planning purposes served by the Planning Agreement**

The Planning Agreement provides a reasonable means of achieving and securing outcomes envisaged by the LEP and the DCP through the provision of Affordable Housing consistent with cl 6.8 of the LEP and by identifying the works, method of payment and timing to ensure the public benefits secured by the Planning Agreement meet the increased demand for public facilities resulting from the Development.

## **6.4 Capital works program**

The Planning Agreement will assist in the financing and delivery of infrastructure required to support growth within the Willoughby Local Government Area. The works contained within the Planning Agreement are to be financially contributed by the Owner and conforms with Council's existing capital works program (see, for example, p 28 of Council's Operational Plan 2019-2020).

## **6.5 Compliance matters**

The Planning Agreement specifies that the timing for the provision of Contributions.

A monetary contribution of \$500,000 to Council for future intersection upgrade works to Willoughby Road, Artarmon Road, Small Street intersection is to be made within fourteen (14) days of a Final Occupation Certificate being issued for the Development or any part of the Development.

A monetary contribution of \$1,000,000 to Council for future public access and regeneration works to Walter Street Reserve is to be made within fourteen (14) days of a Final Occupation Certificate being issued for the Development or any part of the Development.

The Affordable Housing Units are to be transferred to the Council within two months of the registration of subdivision of the development creating the Affordable Housing Units and within 6 months of the issue of a Final Occupation Certificate being issued for the Development or any part of the Development.