

Deed

100 Edinburgh Road, Castlecrag Planning Agreement

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

between

Willoughby City Council

and

Greencliff Castlecrag Pty Ltd

Executed Date: [8 June 2023]

100 Edinburgh Road, Castlecrag Planning Agreement

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100 Edinburgh Road, Castlecrag Planning Agreement

Summary Sheet

Council:

Name: Willoughby City Council

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

Telephone: (02) 9777 1000

Email: email@willoughby.nsw.gov.au

Representative: Chief Executive Officer (CEO)

Developer:

Name: Greencliff Castlecrag Pty Ltd

Address: Level 10, 488 Kent Street, Sydney, New South Wales 2000

Telephone: (02) 8823 8869

Email: info@greencliff.com.au

Representative: Marcus Chang, Director

Landowner: Not Used

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 under this Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11	<i>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</i>
S7.4(3)(f)	Mechanism for the Resolution of Disputes under the Agreement	See Part 5
S7.4(3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See clause 13 and Part 6
S7.4 (10)	Conformity of Agreement with Act, Environmental Planning	Yes

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	Instruments, & Development Consents Applying to the Land	
S7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	No
Clause 48 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	Yes

Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Clause 203(1)	Form & Subject-Matter	Yes
Clause 203(7)	Secretary's Practice Note	Yes
Clause 204	Public Notice & Public Inspection of Draft Agreement	Yes
Clause 205	Explanatory Note	See Appendix
Clause 21 of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued?	Yes

Table 3 – Ministerial Directions (NOT USED)

100 Edinburgh Road, Castlecrag 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**)

and

Greycliff Castlecrag Pty Ltd ABN 31 613 199 518 of: Level 10, 488 Kent Street, Sydney, NSW 2000 (**Developer**)

Background

- A The Developer owns the Land 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.
- B The Developer has made or proposes to make a Development Application to carry out the Development on the Land.
- C 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

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.

Castlecrag Local Centre is the area mapped in red in pages 24 and 25, Section 2.2 Castlecrag, of the *Willoughby Council Local Centres Strategy 2036*.

Charge means the charge referred to in clause 28, 29 and 30.

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.

Detailed Design means all such information as is required for the making of an application for a Construction Certificate.

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 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.

Initial Design means the design documents prepared by the Developer identifying the design, materials, lighting, fixtures and (where available) specifications for a Work and is to include or be accompanied by such information as is required for the making of a Development Application for that Work.

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.

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 Development Act 2015*

Planning Proposal means a planning proposal within the meaning of s3.33 of the Act as detailed in Item 2 of Schedule 1.

Public Access Easement means an easement in gross for public access on terms as set out in Schedule 5 which, when registered, burdens land which at the date of this Deed is comprised in Lot 1 DP 43691 and shown on the plan in Schedule 3 and benefits the Council as prescribed authority.

Public Car Spaces means 8 publicly accessible car parking spaces within the Development to be made available by the Developer for use by the public, being car spaces that are over and above the applicable site specific Development Control Plan parking requirements to service the Development the subject of a Development Consent.

Public Car Spaces Encumbrances means an easement in gross and restriction on use burdening the Public Car Spaces and any other ancillary part of the Land and benefitting the Council in respect of the public's access to and use of the Public Car Spaces on terms set out in Schedule 4.

Public Meeting Area means a room or area, of not less than 9 metres x 6 metres (54 sqm) with a capacity to accommodate ten (10) people within the Development to be made available by the Developer for use by the public during ordinary business hours.

Public Meeting Area Encumbrances means an easement in gross and restriction on use burdening the Public Meeting Area and any other ancillary part of the Land and benefitting the Council in respect of the public's access to and use of the Public Meeting Area on terms set out in Schedule 6.

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 2021*.

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.
 - 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 , Land and to 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 5, except in the case of the Monetary Development Contribution for public art, 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.
- 9.6 In respect of the Monetary Development Contribution for public art:
 - 9.6.1 Council must apply that contribution towards the procurement and installation of public art in accordance with Council's Public Art Policy
 - 9.6.2 Council is to consult with the Developer regarding the procurement of the public art and its location; and
 - 9.6.3 the public art is to be placed at a location within the Castlecrag Local Centre as determined by the Council in accordance with the Council's Public Art Policy.

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.

Part 3 – Provisions relating to Public Car Spaces, Public Meeting Area and Public Access Easement

11 Development Application to include Public Car Spaces

- 11.1 The Parties acknowledge and agree that the Developer is to provide the Public Car Spaces.
- 11.2 The Developer is not to lodge a Development Application for the construction of any building in the Development unless the proposed Development (whether in that specific building or the Development more generally) includes a car park containing at least 8 car parking spaces. For the avoidance of doubt, this clause does not prevent a Development Application being lodged for demolition and earthworks only.
- 11.3 If Development Consent is granted to the Development Application referred to in clause 11.2 then the following apply:
 - 11.3.1 the Developer and the Council are to select 8 of the car parking spaces approved in the Development Consent as the Public Car Spaces in accordance with clause 12,
 - 11.3.2 the Developer is to carry out and complete the construction of the building and car park in accordance with the Development Consent, and
 - 11.3.3 upon completion of construction of the car park the Developer is to register the Car Parking Encumbrances on the title to the Land in accordance with clause 13.

12 Selection of Public Car Spaces

- 12.1 The location of the Public Car Spaces is to be determined in accordance with this clause prior to the issuing of the first Construction Certificate for the Development.

- 12.2 For the avoidance of doubt, clause 12.1 operates as a restriction on the issuing of the first Construction Certificate for the purposes of clause 21 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
- 12.3 The Developer is to nominate 8 car parking spaces for the Council's approval within the car parking area associated with retail or commercial uses in the Development.
- 12.4 The Council may accept or reject the nominated car parking spaces at the Council's discretion, and is to use all reasonable endeavours to respond within 14 days.
- 12.5 If the Council rejects the nominated car parking spaces then the Developer is to nominate a further 8 car parking spaces within the car parking area associated with retail or commercial uses in the Development for the Council's approval.
- 12.6 If the Parties cannot agree on the location of the 8 car parking spaces as the Public Car Spaces then the Council may select the 8 car parking spaces within the car parking area associated with retail or commercial uses in the Development acting reasonably.

13 Preparation and Registration of Public Car Spaces Encumbrances and Public Access Easement

The Developer is to register the Public Car Spaces Encumbrances and the Public Access Easement at no cost to the Council in the manner and at the time specified in in this clause and Part D of Schedule 2.

- 13.1 For the avoidance of doubt, clause 0 and Schedule 2 operate as a restriction on the issuing of the first Occupation Certificate for the purposes of clause 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
- 13.2 Prior to lodging the Public Car Spaces Encumbrances and Public Access Easement for registration, the Developer is to prepare and provide to the Council, for the Council's approval:
 - 13.2.1 the registrable form of the instruments and any survey plan required creating the Public Car Spaces Encumbrances and Public Access Easement duly executed by the registered proprietor of the Land and all persons required by the Registrar-General to sign such instrument and plan,
 - 13.2.2 the written consent of such persons as required by the Registrar-General to give consent to the registration of the encumbrances.
- 13.3 Council is to use all reasonable endeavours to provide its response to the documents provided under clause 13.2 within 35 days of receipt of those documents.
- 13.4 The Developer is not to lodge the registrable form of the instruments and any plan creating the Public Car Spaces Encumbrances and Public Access Easement for registration unless and until it has obtained the Council's written approval to them.
- 13.5 The Public Car Spaces Encumbrances and Public Access Easement are registered for the purposes of this Deed when a deposited plan and accompanying instrument under s88B of the *Conveyancing Act 1919* or other approved registrable instrument granting the encumbrances have been

registered with the Registrar-General on the title to the Land creating the Public Car Spaces Encumbrances and the Public Access Easement.

- 13.6 The Developer is to do all things reasonably necessary to enable registration of the relevant instruments to occur, including attending to any steps required in electronic form, if required.

13A. Development Application to include Public Meeting Area

- 13A.1 The Parties acknowledge and agree that the Developer is to provide the Public Meeting Area in the Development.
- 13A.2 The Developer is not to lodge a Development Application for the construction of any part of the Development involving the use for commercial or retail purposes unless the proposed Development Application or a previous Development Application for another part of the Development involving the use for commercial or retail purposes includes and designates a room or an area as the Public Meeting Area. For the avoidance of doubt, this clause does not prevent a Development Application being lodged for demolition and earthworks only.
- 13A.3 The location of the Public Meeting Area, and whether it is a self-contained room or designated area within a larger room or space (such as the manager's area/room), is at the discretion of the Developer provided that the Public Meeting Area is of the required size and accessible to the public including for people with disabilities.
- 13A.4 If Development Consent is granted to the Development Application referred to in clause 13A.2 then the following apply:
- 13A.4.1 the Developer is to carry out and complete the construction of the building and the Public Meeting Area in accordance with the Development Consent, and
- 13A.4.2 upon completion of construction of the Public Meeting Area the Developer is to register the Public Meeting Area Encumbrances on the title to the Land in accordance with clause 13B.

13B. Preparation and Registration of Public Meeting Area Encumbrances and Public Access Easement

- 13B.1 The Developer is to register the Public Meeting Area Encumbrances at no cost to the Council in the manner and at the time specified in in this clause and Part D of Schedule 2.
- 13B.2 For the avoidance of doubt, clause 13B.1 and Schedule 2 operate as a restriction on the issuing of the first Occupation Certificate for the purposes of clause 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
- 13B.3 Prior to lodging the Public Meeting Area Encumbrances for registration, the Developer is to prepare and provide to the Council, for the Council's approval:
- 13B.3.1 the registrable form of the instruments and any survey plan required creating the Public Meeting Area Encumbrances duly executed by the registered proprietor of the Land and all persons required by the Registrar-General to sign such instrument and plan,

13B.3.2 the written consent of such persons as required by the Registrar-General to give consent to the registration of the encumbrances.

13B.4 Council is to use all reasonable endeavours to provide its response to the documents provided under clause 13B.3 within 35 days of receipt of those documents.

13B.5 The Developer is not to lodge the registrable form of the instruments and any plan creating the Public Meeting Area Encumbrances for registration unless and until it has obtained the Council's written approval to them.

13B.6 The Public Meeting Area Encumbrances are registered for the purposes of this Deed when a deposited plan and accompanying instrument under s88B of the *Conveyancing Act 1919* or other approved registrable instrument granting the encumbrances have been registered with the Registrar-General on the title to the Land creating the Public Meeting Area Encumbrances.

13B.7 The Developer is to do all things reasonably necessary to enable registration of the relevant instruments to occur, including attending to any steps required in electronic form, if required.

13C. Acquisition of Public Car Space Encumbrances, Public Meeting Area Encumbrances and Public Access Easement

13C.1 If the Developer does not register the Public Car Spaces Encumbrances or Public Meeting Area Encumbrances at the time at which it is required to be registered, the Developer consents to the Council compulsorily acquiring the Public Car Spaces Encumbrances or Public Meeting Area Encumbrances (as the case may be but only strictly on the terms set out in the Public Car Spaces Encumbrances or Public Meeting Area Encumbrances and only in respect of the Public Car Spaces or Public Meeting Area and any other ancillary part of the Land within the car parking area associated with retail or commercial uses in the Development) for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.

13C.2 The Council is to only acquire the Public Car Spaces Encumbrances or Public Meeting Area Encumbrances pursuant to clause 13C.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to register the encumbrances, and after providing the Developer with at least 30 days notice to rectify the failure.

13C.3 The Developer agrees that:

13C.3.1 clause 13C.1 is an agreement between the Council and the Developer for the purposes of section 30 of the Just Terms Act; and

13C.3.2 in clause 13C.1, the Developer has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

13C.4 If, as a result of the acquisition referred to in clause 13C.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council.

13C.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

- 13C.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause, including without limitation:
- 13C.7 signing any documents or forms,
- 13C.8 giving land owner's consent for lodgement of any Development Application, and
- 13C.9 the Developer is to pay the Council's costs arising under this clause 13C
- 13C.10 This clause 13C applies to the Public Access Easement in the same way as it applies to the Public Car Space Encumbrances and Public Meeting Area Encumbrances as if all references to '*Public Car Space Encumbrances*' or '*Public Meeting Area Encumbrances*' are references to '*Public Access Easement*'.

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

Dedication of Dedication Land - Not used

Procedure for Dedication of Dedication Land - Not used

Acquisition of land required to be dedicated - Not used

Part 4 – Provisions relating to carrying out of Work

14A Approval of Design of Work

- 14A.1 The location, design, specifications, materials and finishes for the Work at Item B1 of Schedule 2 are to be determined and approved in accordance with this clause.
- 14A.2 Before commencing the design of that Work, the Developer is to request the Council to provide the Developer with the Council's requirements for the location, design, specifications, materials and finishes for the Initial Design of the Work.
- 14A.3 The Council may request the Developer to provide a written proposal concerning the detailed location, design, specifications, materials and finishes for the Initial Design of the Work to assist Council in determining and notifying the Developer of its requirements.
- 14A.4 Once the Developer receives notification from the Council of its requirements for the Initial Design of the Work, the Developer is to provide the Initial Design for the Work to Council for the Council's approval.
- 14A.5 The Council may reasonably require the Developer to make any change to the location, design, specifications, materials and finishes for the Initial Design of the Work that it reasonably considers necessary or desirable as a

precondition to approving the Initial design of the Work, provided that Council uses all reasonable endeavours to respond within 35 days, and the change required by this clause does not cause the estimated construction cost of Work based on the amended design to exceed the Contribution Value of the Work specified in Column 5 of Schedule 2.

- 14A.6 The Developer is to make any change to the location, design, specifications, materials, and finishes of the Initial Design of the Work as is reasonably required by the Council.
- 14A.7 The Developer is not to make any application for any Approval for the Work unless:
- 14A.7.1 the Council has first notified the Developer of its approval of the Initial Design of the Work, and
- 14A.7.2 the application for Approval is in accordance with, and accompanied by, the Council's approval to the Initial Design when lodged with the relevant Authority.
- 14A.8 Following the granting of Approval for the Work, the Developer is to provide the Detailed Design for the Work to Council for the Council's approval.
- 14A.9 The Council may reasonably require the Developer to make any change to the Detailed Design of the Work that it reasonably considers necessary or desirable as a precondition to approving the Detailed Design of the Work, provided that Council uses all reasonable endeavours to respond within 35 days, and the change required by this clause does not cause the estimated construction cost of Work based on the amended design to exceed the Contribution Value of the Work specified in Column 5 of Schedule 2.
- 14A.10 The Developer is to make any change to the Detailed Design of the Work as is reasonably required by the Council.
- 14A.11 The Developer is not to make any application for any Construction Certificate for the Work and is not to commence construction of the Work unless:
- 14A.7.1 the Council has first notified the Developer of its approval of the Detailed Design of the Work, , and
- 14A.7.2 the application for Construction Certificate is in accordance with, and accompanied by, the Council's approval to the Detailed Design when lodged with the relevant Authority.
- 14A.12 For the avoidance of doubt, nothing in this clause operates to:
- 14A.8.1. fetter the Council's discretion, as consent authority, in determining any application for Approval for the Work, or
- 14A.8.2. limit the Developer's obligation to complete a Work to the approved design of the Work.

14 Carrying out of Work

- 14.1 The Developer is to carry out and complete Work specified in Part B of Schedule 2 in the manner and at the time or times specified in that Part.
- 14.2 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out to the satisfaction of the Council in accordance with:
- 14.2.1 a Development Consent or other Approval (if required, such as any consent under s138 of the *Roads Act 1993*) authorising the carrying out of the Work as modified or varied from time to time,
- 14.2.2 to the extent not inconsistent with such a Development Consent or Approval:

- (a) this Deed, and
- (b) any further agreement that is entered into by the Parties under clause 6,
- (c) any design or specification specified or approved by the Council pursuant to clause 14A,
- (d) any reasonable requirements and directions notified in writing by the Council to the Developer after the granting of Development Consent or other Approval authorising the carrying out of the Work, provided that such requirements and directions do not unreasonably increase the estimated construction costs of the Works as compared to the estimated construction cost based on the design approved by the Development Consent or other Approval, or timing for completion.

- 14.3 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council under clause 14.2.2(d) to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

15 Variation to Work

- 15.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 15.2 Without limiting clause 15.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 15.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 15.2.
- 15.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval, provided that such direction does not unreasonably increase the estimated construction costs of the Works as compared to the estimated construction cost based on the design approved by the Development Consent or other Approval, or timing for completion.
- 15.5 The Developer is to comply promptly with a direction referred to in clause 15.4 at its own cost.

16 Access to land by Developer

- 16.1 Subject to the Developer obtaining all necessary Approvals (including any consent under s138 of the Roads Act 1993), the Council authorises the Developer to enter, occupy and use the land specified in Item 10 of Schedule 1 for the purpose of performing its obligations under this Deed.
- 16.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.

- 16.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 16.1 or 16.2.

17 Access to land by Council

- 17.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 17.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 17.1.

18 Council's obligations relating to Work

- 18.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed.

19 Protection of people, property & utilities

- 19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 19.1.1 all necessary measures are taken to protect people and property,
 - 19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 19.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 19.2 Without limiting clause 19.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

20 Repair of damage

- 20.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 20.2 The Developer is to carry out its obligation under clause 20.1 at its own cost and to the reasonable satisfaction of the Council.

21 Completion of Work

- 21.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.
- 21.2 The Council is to inspect the Work the subject of the notice referred to in clause 21.1 within 14 days of the date specified in the notice for completion of the Work.

- 21.3 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 21.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 21.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 21.5 Before the Council gives the Developer a notice referred to in clause 21.3, it may, acting reasonably, give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 21.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 21.5.

22 Rectification of defects

- 22.1 The Council may, acting reasonably, give the Developer a Rectification Notice during the Defects Liability Period.
- 22.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 22.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 22.1

23 Works-As-Executed-Plan

- 23.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 23.2 The Developer, being the copyright owner in the plan referred to in clause 23.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

24 Removal of Equipment

- 24.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - 24.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
 - 24.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

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, or manifest error of law.
- 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.

- 26.8 Nothing in this clause 26 prevents a party seeking urgent interlocutory or declaratory relief.

Part 6 - Enforcement

27 Security for performance of obligations

- 27.1 The Developer is to provide the Council with Security in the amount specified in Item 12 of Schedule 1 to secure the performance of such of the Developer's obligations under this Deed as are specified or described in Item 13 of Schedule 1.
- 27.2 The Security is to be provided at the time specified in Item 14 of Schedule 1.
- 27.3 The amount of the Security is to be indexed from the date of this Deed in accordance with the index specified in Item 15 of Schedule 1.
- 27.4 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of compliance by the Developer of its obligations under this Deed to the reasonable satisfaction of the Council.
- 27.5 The Developer may at any time provide the Council with a replacement Security.
- 27.6 On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 27.7 The Council may call-up the Security if it reasonably considers that the Developer has not complied with its obligations under this Deed specified in Item 13 of Schedule 1.
- 27.8 However, the Council is not to call-up the Security unless:
- 27.8.1 it has given the Developer not less than 30 days' notice of its intention to do so and particulars of why it intends to do so, and
- 27.8.2 the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 27.9 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 27.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 27.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 27.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 27.10 If the Council calls-up the Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 27.11 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.

28 Grant of Charge

- 28.1 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Land, to secure:
- 28.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
 - 28.1.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer.
- 28.2 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Land referred to in clause 28.1.
- 28.3 If the Land referred to in clause 28.1 comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 28.2 is required to be given, the Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of that part of the Land.
- 28.4 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

29 Caveat and Discharge

- 29.1 The Developer agrees that:
- 29.1.1 pursuant to clauses 13 and 28 of this Deed which give the Council an equitable estate or interest in the Land, the Council may lodge a caveat on the title of the Land,
 - 29.1.2 the Council cannot be required to have the caveat removed from the title to the Land other than in accordance with clause 29.2.
- 29.2 The Council is to release the Charge and withdraw the caveat from the title to the Land upon the earlier of the following to occur:
- 29.2.1 this Deed has been registered on the title to the Land, or
 - 29.2.2 satisfaction by the Developer of its obligations under this Deed to make the monetary Development Contributions and register the Public Car Space Encumbrances and Public Access Easement.
- 29.3 For the purposes of clause 29.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of the Land.

30 Priority

- 30.1 The Developer is not to create any mortgage or charge over the Land or grant any other interest in the Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.
- 30.2 The Council is not to withhold its written approval under clause 30.1 if:

30.2.1 before the Developer creates any mortgage or charge or grants any other interest in the Land to which the Charge applies, it has provided to Council evidence to the Council's satisfaction, of:

- (a) the market value of the Land to which the Charge applies,
- (b) the amount secured by any existing mortgage, charge or other interest in the Land to which the Charge applies,
- (c) the amount to be secured by the mortgage, charge or other interest to be created or granted in the Land to which the Charge applies, and

30.2.2 the Council is satisfied that the market value of the Land to which the Charge applies is sufficient to secure all of the following:

- (a) the monetary Development Contributions to be paid under this Deed,
- (b) any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer,
- (c) the amount secured by any existing mortgage, charge or other interest, and
- (d) the amount to be secured by the mortgage, charge or other interest to be created or granted.

31 Breach of obligations

31.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, Council may give a written notice to the Developer

31.1.1 specifying the nature and extent of the breach,

31.1.2 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,

31.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

31.2 If the Developer fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Developer, call-up the Security provided under this Deed and apply it to remedy the breach.

31.3 If the Developer fails to comply with a notice given under clause 31.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the and any Equipment on such land for that purpose.

31.4 Any costs reasonably incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:

31.4.1 by calling-up and applying the Security provided under this Deed, or

31.4.2 as a debt due in a court of competent jurisdiction.

- 31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
- 31.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 31.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 31.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.6 Nothing in this clause 31 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.

32 Enforcement in a court of competent jurisdiction

- 32.1 Subject only to clauses 25 and 26, the Parties may enforce this Deed in any court of competent jurisdiction.
- 32.2 For the avoidance of doubt, nothing in this Deed prevents:
- 32.2.1 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
 - 32.2.2 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

33 Registration of this Deed

- 33.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 33.2 Within three months of the commencement of this Deed , the Developer is to deliver to the Council in registrable form:
- 33.2.1 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
 - 33.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 33.3 The Developer at its cost is to:
- 33.3.1 do such other things as are reasonably necessary to enable registration of this Deed to occur, and
 - 33.3.2 provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information of such registration.
- 33.4 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:
- 33.4.1 in so far as the part of the Land concerned is a Final Lot,

33.4.2 in relation to any other part of the Land, once the Developer [has completed its obligations under this Deed to provide the Development Contributions, or

33.4.3 this Deed is terminated or otherwise comes to an end for any other reason.

34 Restriction on dealings

34.1 Subject to clause 34.3, the Developer is not to:

34.1.1 sell or transfer the Land, other than a Final Lot, or

34.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

34.1.3 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 in the terms of the Novation Deed included in Schedule 5, and

34.1.4 the Developer is able to demonstrate, to the reasonable satisfaction of the Council, that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

34.1.5 the Developer is not in breach of this Deed..

34.2 Subject to clause 34.3, 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 34.1.

34.3 Clause 34.1 ceases to apply in the following circumstances:

34.3.1 in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land,, or

34.3.2 when all Development Contributions having been provided to Council in accordance with this Deed.

Part 8 – Indemnities & Insurance

35 Risk

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

36 Release

36.1 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.

37 Indemnity

- 37.1 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.

38 Insurance

- 38.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the end of the Defects Liability Period for the final Work to have been completed in accordance with this Deed:
- 38.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 38.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 38.1.3 workers compensation insurance as required by law, and
 - 38.1.4 any other insurance required by law.
- 38.2 If the Developer fails to comply with clause 38.1, 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 Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 38.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 38.2.2 recovery as a debt due in a court of competent jurisdiction.
- 38.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 38.1.

Part 9 – Other Provisions

39 Confidentiality

- 39.1 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.
- 39.2 The Parties acknowledge that:
- 39.2.1 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

- 39.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
- 39.3 Subject to clause 39.4 and 39.5, each Party agrees:
 - 39.3.1 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
 - 39.3.2 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.
- 39.4 A Party may disclose Confidential Information in the following circumstances:
 - 39.4.1 in order to comply with the Law, or
 - 39.4.2 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.
- 39.5 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.

40 Annual report by Developer

- 40.1 The Developer is to provide to the Council by no 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.
- 40.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

41 Review of Deed

- 41.1 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.
- 41.2 For the purposes of clause 41.1, the relevant changes include (but are not limited to):
 - 41.2.1 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,
 - 41.2.2 where the GFA approved by a Development Consent for the Development differs by more than 20% (whether higher or lower) from the GFA available on the Land following the LEP Amendment,
 - 41.2.3 the lapsing of the Development Consent to the Development pursuant to section 4.53 of the Act,
 - 41.2.4 a Party becoming unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this Deed.

- 41.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 41.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 41.4 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.
- 41.5 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 41.1 (but not 41.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

42 Notices

- 42.1 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:
 - 42.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 42.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 42.2 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, or emailed to the latest address.
- 42.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 42.3.1 delivered, when it is left at the relevant address,
 - 42.3.2 sent by post, 2 business days after it is posted, or
 - 42.3.3 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.
- 42.4 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.

43 Approvals and Consent

- 43.1 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.
- 43.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

44 Costs

- 44.1 The Developer is to pay Council all reasonable costs of preparing,

negotiating, executing, stamping and registering this Deed, and any 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.

- 44.2 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.

45 Entire Deed

- 45.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 45.2 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.

46 Further Acts

- 46.1 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.

47 Notations on section 10.7(2) Planning Certificates

- 47.1 The Developer acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement 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.

48 Governing Law and Jurisdiction

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

49 Joint and Individual Liability and Benefits

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

50 No Fetter

- 50.1 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.

51 Illegality

- 51.1 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.

52 Severability

- 52.1 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.
- 52.2 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.

53 Amendment

- 53.1 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 203(5) of the Regulation.

54 Waiver

- 54.1 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.
- 54.2 A waiver by a Party is only effective if it:
- 54.2.1 is in writing,
 - 54.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 54.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 54.2.4 is signed and dated by the Party giving the waiver.
- 54.3 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.
- 54.4 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.

- 54.5 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.

55 GST

- 55.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 55.2 Subject to clause 55.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 55.3 Clause 55.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 55.4 No additional amount shall be payable by the Council under clause 55.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 55.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 55.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 55.5.2 that any amounts payable by the Parties in accordance with clause 55.2 (as limited by clause 55.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 55.6 No payment of any amount pursuant to this clause 55, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 55.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred

by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

55.8 This clause continues to apply after expiration or termination of this Deed.

56 Explanatory Note

56.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.

56.2 Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

(Clause 1.1)

Item 1	Land	The land which at the date of this Deed is identified as Lot 11 DP 611594 and Lot 1 DP 43691 as per Map including any land created as a result of a subdivision or consolidation of that land
Item 2	Planning Proposal	<p>The Planning Proposal PP2021/6 (Council's Ref) or PP2021-5395 (DPE's Ref) seeks an amendment to the <i>Willoughby Local Environmental Plan 2012</i> to:</p> <ul style="list-style-type: none"> ▪ Increase the maximum floor space ratio (FSR) for the site from 1:1 to FSR not exceeding 1.8:1 of which not more than 1.6:1 shall be above the level of Edinburgh Road. ▪ Increase the maximum building height for the site from 9m to height that would not exceed AHD 97.490 subject to any reference made in clause 4.3A Exceptions to height of buildings of the <i>WLEP 2012</i> to exceeding AHD 97.490
Item 3	Development	The development proposed on the Land the subject of the Planning Proposal, being a mixed-use development comprising residential and retail/commercial uses authorised by Development Consent and permitted as a consequence of the LEP Amendment (that is, being above the FSR or height permitted prior to the LEP Amendment), which as at the date of this Deed is proposed to include a minimum 20% of non-residential (retail/commercial) gross floor area as a proportion of the approved gross floor area.
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	<p><i>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'</i></p> <p>See clause 8</p>
Item 8	Indexation of Contribution Values	<p>The monetary Development Contributions specified in Schedule 2 of this Deed will be indexed quarterly from the date of this Deed (the "Indexation Date").</p> <p>This will be done in accordance with the following formula:</p> <p>Indexed monetary contribution =</p> <p>$A \times B/C$</p>

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		<p>Where A is the value of the monetary Development Contribution applicable immediately before the Indexation Date</p> <p>B is the CPI last published at the quarter ending immediately before the date of payment; and</p> <p>C is the CPI last published at the quarter ending immediately before the Indexation Date</p>
Item 9	Indexation of Monetary Development Contributions	<p>The monetary Development Contributions specified in Schedule 2 of this Deed will be indexed quarterly from the date of this Deed (the "Indexation Date").</p> <p>This will be done in accordance with the following formula:</p> <p>Indexed monetary contribution =</p> $A \times B/C$ <p>Where A is the value of the monetary Development Contribution applicable immediately before the Indexation Date</p> <p>B is the CPI last published at the quarter ending immediately before the date of payment; and</p> <p>C is the CPI last published at the quarter ending immediately before the Indexation Date</p>
Item 10	Access to Council owned or controlled land	Public road extending from the eastern boundary of Lot 1, DP 43691 to The Postern, Castlecrag
Item 11	Defects Liability Period	The period of twelve months commencing on the day immediately after the Work is taken to be completed for the purposes of this Deed.
Item 12	Security	\$100,000
Item 13	Obligations to which Security Relates	Monetary Development Contribution and Works under Schedule 2
Item 14	Timing of Security	Upon execution of this Deed
Item 15	Indexation of Security	<p>The security specified in item 12 of this schedule will be indexed quarterly from the date of this Deed (the "Indexation Date").</p> <p>This will be done in accordance with the following formula:</p> <p>Indexed security payment amount=</p> $A \times B/C$ <p>Where A is the value of the security applicable immediately before the Indexation Date</p> <p>B is the CPI last published at the quarter ending immediately before the date of payment; and</p>

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		C is the CPI last published at the quarter ending immediately before the Indexation Date
Item 16	Costs	See Clause 44
Item 17	Review of Deed	Every two years

Schedule 2

(Clause 9)

Development Contributions

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Contribution Value
A. Monetary Development Contributions				
1. \$100,000	Towards the provision of public art in accordance with clause 9.6 and Council's Public Art Policy	Payable as lump sum to Council	At least 7 days prior to issue of Construction Certificate	\$100,000
B. Carrying out of Work				
1. Pathway extending from the eastern boundary of land which at the date of this Deed is comprised in Lot 1 DP 43691 to The Postern	Public pathway	Carry out and complete construction of works and upgrades to public pathway in the location shown as 'Item B.1' in Schedule 3 to a design and with specifications, materials and finishes as determined and approved in accordance with clause 14A free of cost to the Council.	Completion of Work prior to issuing of the first Occupation Certificate for the Development	\$180,000
2. Construction of Public Car Spaces	Car parking	Construction and completion free of cost to the Council of the Public Car Spaces	Completion of Work prior to issuing of first Occupation Certificate for the Development	\$800,000
3. Construction of Public Meeting Area	Public meetings and general community use	Construction and completion free of cost to the Council of the Public Meeting Area	Completion of Work prior to issuing of first Occupation Certificate for the Development	approx. \$250,000 [indicative estimated cost only as meeting room location is not determined yet]
C. Dedication Land - Not used				

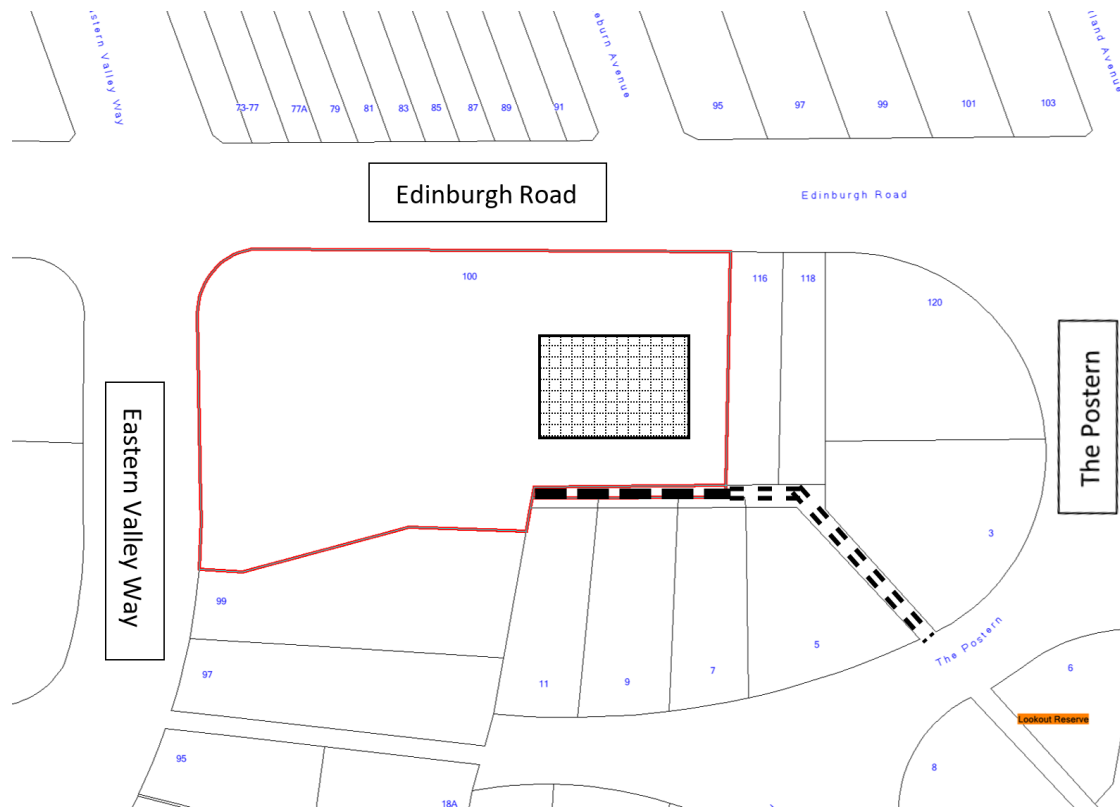
D. Other material public benefit

Registration of Public Car Spaces Encumbrances	Car parking	Registration free of cost to the Council of the Public Car Spaces Encumbrances in accordance with clauses 11 to 13 of this Deed.	Public Car Spaces Encumbrances to be registered on title prior to issuing of first Occupation Certificate for the Development	N/A
Registration of Public Meeting Area Encumbrances	Car parking	Registration free of cost to the Council of the Public Meeting Area Encumbrances in accordance with clauses 13A to 13B of this Deed.	Public Meeting Area Encumbrances to be registered on title prior to issuing of first Occupation Certificate for the Development	N/A
Registration of Public Access Easement	Public access	Registration free of cost to the Council of the Public Access Easement on title to Lot 1 DP 43691	Public Access Easement to be registered on title prior to the issuing of the first Occupation Certificate for the Development.	N/A


Schedule 3

(Clause 1.1)

Map



Key: (item numbers referenced from Schedule 2)

1. Item B1 - shown in ■ ■ ■ , the Pathway extending to The Postern from the eastern boundary of land known as Lot 1 DP 43691 at the date of this Deed
2. Item D3 - shown in ■ ■ ■ ■ ■ , the land known as Lot 1 DP 43691 at the date of this Deed, the location of the Public Access Easement for the pathway connecting to Item B1
3. Item B2 & D1 - shown in , the approximate location of Public Car Spaces (however final location subject to clause 12)
4. Item B3 & D2 (not shown in any colour here) - Public Meeting Area will be within the development site and its location is at the discretion of the Developer subject to clause 13A

[**Note:** The above map was replaced by a black and white version after public exhibition showing the same information]

Schedule 4

(Clause 1.1)

Public Car Spaces Encumbrances

1 Interpretation

1.1 Definitions

In this Instrument, unless the contrary intention appears, the following terms have the following meanings:

- (a) **Authority** means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Benefitted Authority.
- (b) **Authorised User** means every person authorised by the Benefitted Authority for the purposes of the Easement including:
 - (i) employees, agents, servants, contractors, workmen, tenants and licensees of the Benefitted Authority; and
 - (ii) members of the public.
- (c) **Benefitted Authority** means the prescribed authority having the benefit of this easement, being Willoughby City Council.
- (d) **Burdened Lot Owner** means every person who is at any time entitled to an estate or interest in the Lot Burdened, including any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened.
- (e) **Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.
- (f) **Cost** includes any cost, charge, expense, outgoing, payment, fee or other expenditure of any nature, payable or paid.
- (g) **Easement** means the right of carriageway and parking created in this Instrument.
- (h) **Easement Site** means that part of the Lot Burdened denoted [##] [Drafting Note. Insert alpha-numeric identification for easement for public car spaces that is used in the deposited plan of survey, once it is has been prepared] on the Plan and includes all items within the site of the easement.
- (i) **Instrument** means this instrument under [Drafting Note. insert relevant section number e.g. s88A of the *Conveyancing Act 1919*].
- (j) **Liability** means each and every Cost, expense, liability, obligation, action, demand, loss, Claim and all damages.
- (k) **Lot Burdened** means [Drafting Note. Insert title reference of lot on which the easement will be registered.].
- (l) **Plan** means the plan to which this Instrument relates.

1.2 This clause applies to each Easement and restriction on use in this Instrument, except where the contrary intention is expressed.

1.3 The Easement and restriction on use in this Instrument is a covenant and agreement between:

- (a) the Benefitted Authority for itself and its successors; and
- (b) each Burdened Lot Owner for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the Easement and restriction on use.

- 1.4 A reference to any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

Right of Carriageway and Parking

- 2.1 The Burdened Lot Owner grants to the Benefitted Authority and its Authorised Users a right of carriageway to go, pass and repass by any reasonable means over the Easement Site together with a right for the Benefitted Authority and its Authorised Users to temporarily park motor vehicles within any constructed and delineated car parking bays located wholly or partially within the Easement Site.
- 2.2 The Burdened Lot Owner must keep driveways located within the Easement Site clear and unobstructed at all times to allow the Benefitted Authority and its Authorised Users to use the Easement Site for the purposes permitted under this Easement.
- 2.3 The Benefitted Authority and its Authorised Users entering the Lot Burdened pursuant to the rights granted by this Easement do so at their own risk.
- 2.4. Except as otherwise agreed in writing with the Benefitted Authority:
- (a) the Burdened Lot Owner is to keep and maintain the Easement Site and any parking bays and structures within the Easement Site in a good and tidy condition and in a proper state of repair to the satisfaction of the Benefitted Authority,
 - (b) the Burdened Lot Owner is to, at its cost, maintain, replace, renew or carry out any other work within the Easement Site, to enable it to be properly and safely used for the purposes permitted under this Easement,
 - (c) prior to carrying out any work within the Easement Site which may render any of the parking spaces within the Easement Site unavailable for at least 48 hours (not being work that may materially impact on the usability of any part of the Easement Site on a permanent basis), the Burdened Lot Owner is to, at its cost, obtain written approval (such approval not to be unreasonably withheld) from the Benefitted Authority, and all Approvals necessary, for such work, and the Benefitted Authority will use all reasonable endeavours to respond within 35 days of a written request for approval,
 - (d) prior to carrying out any work within the Easement Site which may materially impact on the usability of any part of the Easement Site on a permanent basis, the Burdened Lot Owner is to, at its cost, obtain written approval from the Benefitted Authority, such approval which may be given or withheld at the Benefitted Authority's sole discretion, and
 - (e) the Benefitted Authority is not required to maintain, replace, renew or carry out any other work within the Easement Site.
- 2.5 If the Burdened Lot Owner fails to comply with any of its obligations under this Easement, then:
- (a) the Benefitted Authority may notify the Lot Owner of that failure;
 - (b) should the Lot Owner not rectify that failure to comply with its obligations under this Easement within 14 days of receiving that notice (or dispute the

notice within that time), then the Benefitted Authority or any person authorised by the Benefitted Authority may enter the Easement Site with or without machinery, tools and equipment to repair, replace or otherwise remedy any breach by the Burdened Lot Owner and the Burdened Lot Owner is to pay the Benefitted Authority's Costs of doing so within 7 days of a written request for payment of such Costs .

- 2.6 Any Costs incurred by the Benefitted Authority in remedying a breach by the Burdened Lot Owner that is not paid within the time required for payment may be recovered by the Benefitted Authority as a debt due in a court of competent jurisdiction.
- 2.7 The Burdened Lot Owner releases the Authority Benefitted from all Claims associated with:
- (a) the death of or any injury to any person; or
 - (b) the damage to or destruction of the property of any person,
- in connection with the exercise by the Benefitted Authority or any of its Authorised Users of the rights under this Easement, except to the extent that any such death, injury, damage or destruction are caused by the negligence of the Authority Benefitted.
- 2.8 The Burdened Lot Owner indemnifies the Benefitted Authority from and against all Claims that may be sustained, suffered, recovered or made against the Benefitted Authority arising in connection with the performance of the Burdened Lot Owner's obligations under this Easement.
- 2.9 The Burdened Lot Owner may, by providing reasonable notice to the Benefitted Authority, temporarily restrict access to all or parts of the Easement Site in order for the Burdened Lot Owner to carry out the repair and maintenance works on the Easement Site.
- 2.10 On any day, the Burdened Lot Owner is only required to allow access to the Benefitted Authority and its Authorised Users to the Easement Site from the time the business that is open earliest for business until the time the business that closes the latest has closed for business. For the purposes of this clause 'business' means a business in the building containing the Easement Site.
- 2.11 The Burdened Lot Owner may manage the physical system for access to the Easement Site in the same or similar way as the system established for other car parking spaces at the Development (such as with boom gate and the like), however it is not to charge money for access to and use of the parking spaces (whether or not after a certain number of hours of use) except as agreed in writing with the Authority Benefitted.
- 2.12 The Burdened Lot Owner shall be able to impose rules on the use of the car parking bays to ensure compliance with workplace health and safety, environmental, and other laws and approvals, and to ensure public safety and amenity of other shopping centre patrons, as well as shopping centre staff provided that those rules are publicly available and are made clearly visible at the entrance to the car park containing the Easement Site.

Name of Authority empowered to release vary or modify this Easement is Willoughby City Council.

Restriction on use

- 3.1 The Easement Site may not be used, or in the future developed for any use, other than for use as a car park and access to the car park for use by the public.

Name of Authority empowered to release vary or modify this restriction on use is Willoughby City Council.

Schedule 5

(Clause 1.1)

Terms of Public Access Easement

1 Interpretation

1.1 Definitions

In this Instrument following definitions apply:

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Benefitted Authority.

Benefitted Authority means the prescribed authority having the benefit of this easement, being Willoughby City Council.

Burdened Lot Owner means every person who is at any time entitled to an estate or interest in the Lot Burdened, including any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened.

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

Costs includes any cost, charge, expense, outgoing, payment, fee and other expenditure of any nature, payable or paid.

Easement means the right of access and passive recreation created in this Instrument.

Easement Site means that part of the Lot Burdened denoted [##] [Drafting Note. Insert alpha-numeric identification for easement for public access that is used in deposited plan of survey, once it is has been prepared] on the Plan and includes all items within the site of the easement.

Instrument means this instrument under [Drafting Note. insert relevant section number e.g. s88A of the *Conveyancing Act 1919*].

Lot Burdened means [Drafting Note. Insert title reference of lot on which the easement will be registered.]

Plan means the plan to which this Instrument relates.

1.2 This clause applies to each Easement and restriction on use in this Instrument, except where the contrary intention is expressed.

1.3 The Easement and restriction on use in this Instrument is a covenant and agreement between:

- (a) the Benefitted Authority for itself and its successors; and
- (b) each Burdened Lot Owner for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the Easement and restriction on use.

1.4 A reference to any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

Public Access

- 2.1 The Benefitted Authority and any person authorised by the Benefitted Authority and members of the public ("Authorised Users") have full and free right to pass and repass at all times over and across the Easement Site for pedestrian access and passive recreation purposes including but not limited to access to and from any public road and beyond:
- (a) on foot; and/or
 - (b) with wheelchairs or other disables access aids; and
 - (c) with or without animals; and
 - (d) with bicycles (being walked or ridden); and
 - (e) without vehicles.
- 2.2 In exercising the rights granted by this easement, the Benefitted Authority and any Authorised User must:
- (a) cause as little inconvenience as practicable to the Burdened Lot Owner and any occupier of the Lot Burdened; and
 - (b) cause as little damage as is practicable to the Lot Burdened and any improvements on it.
- 2.3 Except as otherwise agreed in writing with the Benefitted Authority:
- (a) the Burdened Lot Owner is to keep and maintain the Easement Site and any structure within the area in a good and tidy condition and in a proper state of repair to the satisfaction of the Benefitted Authority,
 - (b) the Burdened Lot Owner is to, at its cost, maintain, replace, renew or carry out any other work within the Easement Site, to enable it to be properly and safely used for public access,
 - (c) prior to carrying out any work within the Easement Site which may render any part of the Easement Site unavailable for at least 48 hours (not being work that may materially impact on the usability of any part of the Easement Site on a permanent basis), the Burdened Lot Owner is to, at its cost, obtain written approval (such approval not to be withheld unreasonably) from the Benefitted Authority, and all Approvals necessary, for such work and the Benefitted Authority will use all reasonable endeavours to respond within 35 days of a written request for approval,
 - (d) prior to carrying out any work within the Easement Site which may materially impact on the usability of any part of the Easement Site on a permanent basis, the Burdened Lot Owner is to, at its cost, obtain written approval from the Benefitted Authority, such approval which may be given or withheld at the Benefitted Authority's sole discretion, and
 - (e) the Benefitted Authority is not required to maintain, replace, renew or carry out any other work within the Easement Site.
- 2.4 If the Burdened Lot Owner fails to comply with any of its obligations under this easement, then
- (a) the Benefitted Authority may notify the Burdened Lot Owner of that failure; and
 - (b) should the Burdened Lot Owner not rectify that failure to comply with its obligations under this Easement within 14 days of receiving that notice (or dispute the notice within that time), then the Benefitted Authority or any person authorised by the Benefitted Authority may enter the Easement Site with or without machinery, tools and equipment to repair, replace or otherwise

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Greycliff Castlecrag Pty Ltd

remedy any breach by the Burdened Lot Owner and the Burdened Lot Owner is to pay the Benefitted Authority's Costs of doing so within 7 days of a written request for payment of such Costs.

- 2.5 Any Costs incurred by the Benefitted Authority in remedying a breach by the Burdened Lot Owner that is not paid within the time required for payment may be recovered by the Benefitted Authority as a debt due in a court of competent jurisdiction.
- 2.6 The Burdened Lot Owner releases the Authority Benefitted from all Claims associated with:
- (a) the death of or any injury to any person; or
 - (b) the damage to or destruction of the property of any person,
- in connection with the exercise by the Benefitted Authority or any of its Authorised Users of the rights under this easement, except to the extent that any such death, injury, damage or destruction are caused by the negligence of the Authority Benefitted.
- 2.7 The Burdened Lot Owner indemnifies the Benefitted Authority from and against all Claims that may be sustained, suffered, recovered or made against the Benefitted Authority arising in connection with the performance of the Burdened Lot Owner's obligations under this easement.

Name of Authority empowered to release vary or modify this easement is Willoughby City Council.

Restriction on use

- 3.1 The Easement Site may not be used, or in the future developed for any use, other than for pedestrian access and passive recreation purposes by the public.

Name of Authority empowered to release vary or modify this restriction on use is Willoughby City Council.

Schedule 6

(Clause 1.1)

Public Meeting Area Encumbrances

1 Interpretation

1.1 Definitions

In this Instrument, unless the contrary intention appears, the following terms have the following meanings:

- (a) **Authority** means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Council.
 - (b) **Authorised User** means every person authorised by the Benefitted Authority for the purposes of the Easement including:
 - (i) employees, agents, servants, contractors, workmen, tenants and licensees of the Benefitted Authority; and
 - (ii) members of the public.
 - (c) **Benefitted Authority** means Willoughby City Council.
 - (d) **Burdened Lot Owner** means every person who is at any time entitled to an estate or interest in the Lot Burdened, including any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened.
 - (e) **Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.
 - (f) **Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature, payable or paid.
 - (g) **Easement** means the right of access and use created in this Instrument.
 - (h) **Easement Site** means that part of the Lot Burdened denoted [##] [Drafting Note. Insert alpha-numeric identification for easement for public meeting space that is used in the deposited plan of survey, once it has been prepared] on the Plan and includes all items within the site of the easement.
 - (i) **Instrument** means this instrument under [Drafting Note; Insert relevant section number e.g. s88A of the *Conveyancing Act 1919*].
 - (j) **Liability** means each and every Cost, expense, liability, obligation, action, demand, loss, Claim and all damages.
 - (k) **Lot Burdened** means [Drafting Note; Insert title reference of lot on which the easement will be registered.].
 - (l) **Plan** means the plan to which this Instrument relates. 1.2 This clause applies to each Easement and restriction on use in this Instrument, except where the contrary intention is expressed.
- 1.3 The Easement and restriction on use in this Instrument is a covenant and agreement between:
- (a) the Benefitted Authority for itself and its successors; and

- (b) each Burdened Lot Owner for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the Easement and restriction on use.

- 1.4 A reference to any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

Right of Access and Use

- 2.1 The Burdened Lot Owner grants to the Benefitted Authority and its Authorised Users a right to access and use the Easement Site for public recreational and general community purposes such as community group meetings, community gatherings and activities for recreation purposes and the like within the Easement Site.
- 2.2 The Burdened Lot Owner must keep the Easement Site in a state suitable for use for public recreational and general community purposes (for up to 10 people), including being unobstructed (save for tables, chairs and the like) at all times (except as otherwise authorised under this instrument) to allow the Benefitted Authority and its Authorised Users to use the Easement Site for the purposes permitted under this Easement.
- 2.3 The Benefitted Authority and its Authorised Users entering the Lot Burdened pursuant to the rights granted by this Easement do so at their own risk.
- 2.4. Except as otherwise agreed in writing with the Benefitted Authority:
 - (a) the Burdened Lot Owner is to keep and maintain the Easement Site in a good and tidy condition and in a proper state of repair to the satisfaction of the Benefitted Authority,
 - (b) the Burdened Lot Owner is to, at its cost, maintain, replace, renew or carry out any other work within the Easement Site, to enable it to be properly and safely used for the purposes permitted under this Easement,
 - (c) prior to carrying out any planned work within the Easement Site which may render any part of the Easement Site unavailable for at least 72 hours (not being work that may materially impact on the usability of any part of the Easement Site on a permanent basis), the Burdened Lot Owner is to, at its cost, obtain written approval (such approval not to be unreasonably withheld) from the Benefitted Authority, and all Approvals necessary, for such work, and the Benefitted Authority will use all reasonable endeavours to respond within 35 days of a written request for approval.
 - (d) If the Easement Site is unavailable:
 - (i) for a period of less than 72 hours in order to carry out cleaning, maintenance, repairs, renovations, and the like, (provided the Easement Site is only made unavailable for so long as is necessary in the circumstances) in which case it shall provide notice to any persons that have booked the Easement Site during those times and no notice to the Benefitted Authority is required,
 - (ii) in the event of an emergency or urgent need to clean/repair in which case it shall provide notice to any persons that booked the Easement Site during those times and notice to the Benefitted Authority if the Easement Site is made unavailable for 72 hours or more,
 - (e) prior to carrying out any work within the Easement Site which may materially impact on the usability of any part of the Easement Site on a permanent

basis, the Burdened Lot Owner is to, at its cost, obtain written approval from the Benefitted Authority, such approval which may be given or withheld at the Benefitted Authority's sole discretion,

- (f) the Benefitted Authority is not required to maintain, replace, renew or carry out any other work within the Easement Site;
- (g) the Burdened Lot Owner is only required to allow access to the Benefitted Authority and its Authorised Users to the Easement Site during ordinary business hours of the businesses within the building containing the Easement Site
- (h) on and from the date of registration of this easement, the Burdened Lot Owner is to manage the physical access and use of the Easement Site using with an electronic online booking system to be established by the Burdened Lot Owner in consultation with the Council. The Burdened Lot Owner may deny access to any person(s) who have not been authorised to attend the Easement Site in accordance with the booking system; and
- (i) Without limiting clause 2.4(h), the electronic booking system referred to in clause 2.4(h) is to:
 - (i) be implemented, managed and promoted by the Burdened Lot Owner on a publicly accessibly website,
 - (ii) be able to be linked to the Benefitted Authority's venues booking system on the Benefitted Authority's website, and
 - (iii) enable the Burdened Lot Owner to identify the purposes for which the Easement Site is booked.
- (j) The Burdened Lot Owner is to provide to the Benefitted Authority administrative access to the electronic booking system and such details of bookings as requested by the Benefitted Authority from time to time.
- (k) The Burdened Lot Owner may require a refundable bond or deposit to be provided in respect of a booking for the Easement Site for any damages to the Easement Site that may arise from that booking, but is not to otherwise impose any fees or charges for any bookings. The amount for the refundable bond or deposit is not to exceed the amount that may be required by the Benefitted Authority for a bond or deposit for a similar sized venue as published and adopted by the Benefitted authority from time to time.
- (l) The Burdened Lot Owner shall be able to impose rules on the use of the Easement Site to ensure compliance with workplace health and safety, environmental, and other laws and Approvals, and to ensure public safety and amenity of other shopping centre patrons, as well as shopping centre staff, provided that those rules are publicly available and is published on the booking system. This shall include an ability to expel people from the Easement Site for violating the rules, endangering members of the public or staff, behaving offensively, and the like.

2.5 If the Burdened Lot Owner fails to comply with any of its obligations under this Easement, then:

- (a) the Benefitted Authority may notify the Lot Owner of that failure;
- (b) should the Lot Owner not rectify that failure to comply with its obligations under this Easement within 14 days of receiving that notice (or dispute the notice within that time), then the Benefitted Authority or any person authorised by the Benefitted Authority may enter the Easement Site with or without machinery, tools and equipment to repair, replace or otherwise remedy any

breach by the Burdened Lot Owner and the Burdened Lot Owner is to pay the Benefited Authority's Costs of doing so within 7 days of a written request for payment of such Costs .

- 2.6 Any Costs incurred by the Benefitted Authority in remedying a breach by the Burdened Lot Owner that is not paid within the time required for payment may be recovered by the Benefitted Authority as a debt due in a court of competent jurisdiction.
- 2.7 The Burdened Lot Owner releases the Authority Benefitted from all Claims associated with:
- (a) the death of or any injury to any person; or
 - (b) the damage to or destruction of the property of any person,
- in connection with the exercise by the Benefitted Authority or any of its Authorised Users of the rights under this Easement, except to the extent that any such death, injury, damage or destruction are caused by the negligence of the Authority Benefitted.
- 2.8 The Burdened Lot Owner indemnifies the Benefitted Authority from and against all Claims that may be sustained, suffered, recovered or made against the Benefitted Authority arising in connection with the performance of the Burdened Lot Owner's obligations under this Easement.
- 2.9 The Burdened Lot Owner may, by providing reasonable notice to the Benefitted Authority, temporarily restrict access to all or parts of the Easement Site in order for the Burdened Lot Owner to carry out the repair and maintenance works on the Easement Site.

Name of Authority empowered to release vary or modify this Easement is Willoughby City Council.

Restriction on use

- 3.1 The Easement Site may not be used, or in the future developed for any use, other than for use as a public meeting area for the public recreational and general community the purposes as set out in the Easement created in this Instrument.

Name of Authority empowered to release vary or modify this restriction on use is Willoughby City Council.

Schedule 7

(clause 34)

Novation Deed

(see following pages)

Deed of Novation

100 Edinburgh Road, Castlecrag
Planning Agreement

Willoughby City Council

and

Greencliff Castlecrag Pty Ltd

and

[Insert name of Incoming Party]

Dated: **[Insert Date]**

Deed of Novation
100 Edinburgh Road, Castlecrag
Planning Agreement

Summary Sheet

Council:

Name: Willoughby City Council

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

Telephone: (02) 9777 1000

Email: email@willoughby.nsw.gov.au

Representative: Chief Executive Officer (CEO)

Outgoing Party:

Name: Greycliff Castlecrag Pty Ltd

Address: Level 10, 488 Kent Street, Sydney, New South Wales 2000

Telephone: (02) 8823 8869

Email: info@greycliff.com.au

Representative: Marcus Chang, Director

Incoming Party:

Name: [Drafting Note: Insert name]

Address: [Drafting Note: Insert address]

Telephone: [Drafting Note: Insert contact number]

Email: [Drafting Note: Insert contact email]

Deed of Novation

100 Edinburgh Road, Castlecrag Planning Agreement

Parties

Council	Willoughby City Council ABN 47 974 826 099 of Level 4, 31 Victor Street, Chatswood, New South Wales 2067
Outgoing Party	Greycliff Castlecrag Pty Ltd ABN 31 613 199 518 of: Level 10, 488 Kent Street, Sydney, NSW 2000
Incoming Party	[Insert details]

Background

- A The Outgoing Party and the Council are parties to the Planning Agreement.
- B The Outgoing Party owns the Land to which the Planning Agreement relates.
- C The Outgoing Party wishes to transfer the Land to the Incoming Party.
- D The Outgoing Party wishes to novate the Planning Agreement and all of the respective rights and obligations in the Planning Agreement to the Incoming Party.
- E The Council consents to the transfer of the Land to the Incoming Party and agrees to the novation of the Planning Agreement to the Incoming Party on the terms set out in this Deed.

Operative provisions

1 Definitions & Interpretation

Definitions

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to those words or phrases except in so far as the context or subject-matter otherwise indicates or requires.

Table

Column 1	Column 2
Word or phrase	Meaning
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Claim	all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
Contract for Sale	means the contract for sale of the Land between the Outgoing Party and the Incoming Party dated [##].
Deed	means this Deed.
Development	has the same meaning as in the Planning Agreement.
Effective Date	means the date when the Contract for Sale completes.
Land	has the same meaning as in the Planning Agreement.
Party	means a party to this Deed.
Planning Agreement	means the planning agreement pursuant to s7.4 of the Act titled ' <i>100 Edinburgh Road, Castlecrag Planning Agreement</i> ' entered into between Council and Outgoing Party on [date].

Interpretation

1.2 In this Deed:

- (a) words denoting any gender include all genders,
- (b) headings are for convenience only and do not affect interpretation,
- (c) the singular includes the plural and vice versa,
- (d) any schedule or annexure attached to this Deed forms part of it,
- (e) a reference to a Party includes its legal personal representatives, successors and permitted assigns, servants, contractors and agents.
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity,
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them,
- (h) all references to dates and times are to New South Wales time,

- (i) all references to '\$' and 'dollars' are to the lawful currency of Australia,
- (j) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it,
- (k) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by '*including*', '*for example*' or similar inclusive expressions,
- (l) a reference to this Deed includes any schedules, annexures and appendices to this Deed, and any variation or replacement of this Deed.

2 Commencement

- 2.1 This Deed commences and has effect on and from the date when the Parties have:
 - 2.1.1 all executed the same copy of this Deed, or
 - 2.1.2 each executed separate counterparts of this Deed and exchanged, whether by physical or electronic transmission of, the counterparts.
- 2.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

3 Novation of Planning Agreement

- 3.1 Subject to this Deed and with effect from the Effective Date:
 - 3.1.1 the Incoming Party is substituted for the Outgoing Party as a Party to the Planning Agreement,
 - 3.1.2 the Incoming Party is bound by the Planning Agreement to perform all of the obligations in the Planning Agreement,
 - 3.1.3 the Incoming Party is entitled to the benefit of the Planning Agreement as if the Incoming Party was a Party to the Planning Agreement when it was entered into, and
 - 3.1.4 the Outgoing Party is released and discharged from all obligations and liabilities, and from all Claims, arising under the Planning Agreement, except in relation to any breaches of the Planning Agreement which arose prior to the Effective Date.
- 3.2 With effect from the Effective Date:
 - 3.2.1 all references to the Outgoing Party in the Planning Agreement are construed as references to the Incoming Party, and
 - 3.2.2 the Council must address all notices and communications given or made by it under the Planning Agreement to the Incoming Party using the address noted on the Summary Sheet to this Deed for the Incoming Party.

4 Affirmation of Planning Agreement

- 4.1 The Planning Agreement is to be read and construed subject to this Deed, and in all other respects the provisions of the Planning Agreement are ratified

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

4.2 Subject to this Deed:

4.2.1 on and from the Effective Date, the Incoming Party must properly and punctually observe and perform all of the Outgoing Party's obligations (both present, future, actual and contingent) under the Planning Agreement or which arise as a result of the Council exercising any right under the Planning Agreement and which are due to be performed on or after the Effective Date,

4.2.2 until the Effective Date, the Outgoing Party must continue to properly and punctually observe and perform all of the Outgoing Party's obligations both future, actual and contingent under the Planning Agreement.

5 Council Satisfaction

5.1 For the purposes of clause 34(1) of the Planning Agreement, the Council confirms that:

5.1.1 this Deed is the deed in favour of the Council referred to in that clause,

5.1.2 the Council is satisfied that the Incoming Party is reasonably capable of performing the obligations under the Planning Agreement.

6 Representations & Warranties

6.1 Each Party represents and warrants that at the time of execution of this Deed and at the Effective Date:

6.1.1 it has capacity unconditionally to execute, deliver and comply with its obligations under this Deed,

6.1.2 it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Deed,

6.1.3 this Deed is a valid and legally binding obligation and is enforceable against it by each other Party in accordance with its terms, and

6.1.4 its unconditional execution and delivery of, and compliance with its obligations under this Deed do not contravene:

(a) any law or directive from a government entity,

(b) its constituent documents,

(c) any agreement or instrument to which it is a Party, or

(d) any obligation of it to any other person.

6.2 The warranties and representations in clause 6.1 survive the execution of or any termination of this Deed and the novation and assignment of the Planning Agreement.

7 Trustee Developer [Insert if Incoming Party is a trustee]

- 7.1 The Incoming Party enters into this Deed in its capacity as the trustee for the Trust constituted by a trust deed (**Trust Deed**).
- 7.2 The Incoming Party warrants as follows:
- 7.2.1 it is the sole trustee of the Trust,
- 7.2.2 it has not been removed as trustee and no action has been taken to remove or replace it as trustee, or to terminate the Trust,
- 7.2.3 no release or revocation of its powers under the Trust Deed has occurred,
- 7.2.4 it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Deed and the Planning Agreement;
- 7.2.5 it is not in breach of the Trust Deed;
- 7.2.6 it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Deed and the Planning Agreement;
- 7.2.7 it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Deed and the Planning Agreement.
- 7.3 The Incoming Party indemnifies the Council, and agrees to keep the Council indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 7.2.
- 7.4 The warranties and representations in this clause 7 survive the execution of and any termination of this Deed and the novation and assignment of the Planning Agreement.
- 7.5 In this clause:
- 7.5.1 **Trust** means **[Insert]**

8 General

Costs and Stamp Duty

- 8.1 The Outgoing Party and the Incoming Party are jointly and severally liable for the Council's legal costs associated with the negotiation, preparation, and execution of this Deed.
- 8.2 The Incoming Party must pay all stamp duty (if any) arising directly or indirectly from this Deed.
- 8.3 This clause continues to apply after termination of this Deed.

GST

- 8.4 Where a supply made under this Deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) is to be increased by an additional amount equal to the GST payable on the supply.
- 8.5 The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this Deed.

- 8.6 Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Further acts

- 8.7 Immediately upon settlement of the sale of the Land to the Incoming Party, the Outgoing Party is to notify the Council in writing of the Effective Date.
- 8.8 Each Party will take all steps, execute all deeds and do everything reasonably required by any other Party to give effect to any of the actions contemplated by this Deed.
- 8.9 This Deed binds each Party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

Entire Deed

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

Amendment

- 8.12 This Deed may only be varied or replaced by a document executed by the Parties.

Governing law and jurisdiction

- 8.13 This Deed is governed by the laws of New South Wales and the Commonwealth of Australia.
- 8.14 Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

Severability

- 8.15 If a provision of this Deed is invalid, illegal, or unenforceable, it must, to the extent that it is invalid, illegal, or unenforceable, be treated as severed from this Deed.
- 8.16 Severance of a provision will not affect the validity and enforceability of the remaining provisions.

Electronic Execution

- 8.17 Each Party:
- 8.17.1 consents to this Deed being signed by electronic signature by the methods set out in clause 8.19;
 - 8.17.2 agrees that those methods validly identify the person signing and indicates that person's intention to sign this Deed;
 - 8.17.3 agrees that those methods are reliable as appropriate for the purpose of signing this Deed, and
 - 8.17.4 agrees that electronic signing of this Deed by or on behalf of a Party by those methods indicates that Party's intention to be bound.

- 8.18 If this Deed is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- 8.19 For the purposes of clause 8.17, the methods are:
- 8.19.1 insertion of an image (including a scanned image) of the person's own unique signature onto the Deed; or
- 8.19.2 insertion of the person's name onto the Deed; or
- 8.19.3 use of a stylus or touch finger or a touch screen to sign the Deed, provided that in each of the above cases, words to the effect of '*Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]*' are also included on the Deed; or
- 8.19.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Deed; or
- 8.19.5 as otherwise agreed in writing between the Parties.

Execution

Executed as a Deed.

Dated:

Executed by the Council:

[Insert execution clause]

Executed by the Outgoing Party:

[Insert execution clause]

Executed by the Incoming Party:

[Insert execution clause]

[End of Novation Deed]

100 Edinburgh Road, Castlecrag Planning Agreement
Willoughby City Council
Greycliff Castlecrag Pty Ltd

Execution

Executed as a Deed

Marcus Chang
Director.

Dated: 8 June 2023

DAVID BUI
SECRETARY

Executed on behalf of the Council

Debra Kay Just

Chief Executive Officer (CEO)
(Name: DEBRA KAY JUST)

Sylvia Mok

Witness
Position: Planning Process & Contribution
(Name: Sylvania Mok. , Specialist.

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Position:
(Name:)

Position:
(Name:)

Appendix

(Clause 56)

Environmental Planning and Assessment Regulation 2021

(Clause 205)

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**)

Greycliff Castlecrag Pty Ltd ABN 31 613 199 518 of: Level 10, 488 Kent
Street, Sydney, NSW 2000 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

100 Edinburgh Road, Castlecrag is land legally known as Lot 11 DP 611594 and Lot 1 DP 43691.

Description of Proposed Development

The Draft Planning Agreement is in connection with a proposed amendment to the *Willoughby Local Environmental Plan 2012 (WLEP)* relating to a Planning Proposal with the Department of Planning and Environment under PP2021/6 (Council's Ref) or PP2021-5395 (DPE's Ref) which seeks to amend the LEP to facilitate a mixed use development comprising residential and retail/commercial uses on the Land by:

- a) Increasing the maximum floor space ratio (FSR) for the site from 1:1 to FSR not exceeding 1.8:1 of which not more than 1.6:1 shall be above the level of Edinburgh Road
- b) Increasing the maximum building height for the site from 9m to height that would not exceed AHD 97.490 subject to the any reference made to clause 4.3A Exceptions to height of buildings of the *WLEP 2012*.

The Draft Planning Agreement also applies to development on the Land as authorised by the future Development Consent granted as a result of the LEP Amendment.

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

Objectives of Draft Planning Agreement

The Draft Planning Agreement provides for:

1. the payment of a monetary contribution of \$100,000 (indexed in accordance with the CPI) by the Developer to be applied towards public art.
2. Works and upgrade to the public pathway to the south-east corner (rear) of site to The Postern
3. Provision of eight (8) car spaces within development to replace those lost by conversion of Council car park to pocket park, over and above the site specific Development Control Plan car parking requirements to service the Development subject of the Development Consent
4. provision of access and use of a public meeting area of an area not less than 9 metres x 6 metres (54 sqm) to accommodate 10 people within the site

The objective of the Planning Agreement is to record the terms of the offer made by the Developer for public benefits to be made by way of Development Contributions.

The Planning Agreement is consistent with the Council's City Strategy in that it:

- Meets the current and future demands of the community by providing a monetary contribution for public art, and providing upgraded facilities and contributing to the health and wellbeing of the community;
- Facilitates economic opportunities for the business community, if the Development proceeds; and
- Facilitates the provision of land use planning controls to support viability of local centres, if the Planning Proposal is gazetted.

If the Planning Proposal is gazetted and Development Consent is granted for the Development Application, the Planning Agreement requires the Development Contributions to be made prior to Construction Certificate, and prior to the issuing of an Occupation Certificate for the Development.

The Planning Agreement is an enforceable arrangement between Council and the Developer under the EPA Act. The Planning Agreement requires the Developer to make a monetary contribution and carry out works, as well as dedicating car parking spaces and comply with certain requirements including providing Security and registration of the Planning Agreement, pending delivery of the Development Contribution.

The Planning Agreement also contains provisions as to dispute resolution and does not exclude application of s7.11, s7.12, or s7.24 of the EPA Act. No Occupation Certificate for the Development is to be issued pending delivery of the Development Contribution.

Nature and Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the Planning Proposal and 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,
- 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,
- serves the public purpose and promotes section 1.3, object (a) of the Act by securing the provision of the Development Contributions in the nature of a monetary payment for the purposes of public art, works for the purposes of upgrading pedestrian footpaths, and the provision of public car parking spaces.

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(a)-(c) of the Act.

For Planning Authorities:

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

N/A

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,
- assists to provide appropriate services and facilities for the community in the form of funding for such service as a result of monetary contributions;
- enabling Council to allocate additional funding to appropriate service to promote strong, health and prosperous a community

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

The Agreement does not relate to works in the Council’s current capital works program. However, it can be expected that, in due course, the works to be delivered by the Developer will conform with Council’s expected delivery of public works in the capital works program.

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

The Planning Agreement provides that no Occupation Certificate may be issued in relation for the Development if a Development Contribution required to be made by the Developer has not been made in accordance with the Deed