
Willoughby City Council

853 Pacific Highway Pty Ltd as trustee for the 2017
PHC Unit Trust

BB Wilson Property Pty Limited

Novation Deed for the 849-859 Pacific Highway and 2 and 8 Wilson Street, Chatswood Planning Agreement

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Date 10 May 2023

Parties

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

and

853 Pacific Highway Pty Ltd as trustee for the 2017 PHC Unit Trust ABN 12 390 679 581 of PO Box 885, North Willoughby, New South Wales 2068 (**Original Developer**)

and

BB Wilson Property Pty Limited ACN 661 086 513 Suite 101, 25 Angas Street, Meadowbank, New South Wales 2114 (**New Developer**)

Background

- A The Council and the Original Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land.
 - C The Original Developer proposes to transfer the whole of its interests in the Land to the New Developer and wishes to novate all of its rights and obligations under the Original Agreement to the New Developer.
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Agreed terms

1 Definitions

In this deed these terms have the following meanings:

Effective Date	The date of the Original Agreement.
Land	Has the meaning given to that term in the Original Agreement.
Original Agreement	The planning agreement dated the same date as this deed and made between the Council and the Original Developer.
Trust	means the 2017 PHC Unit Trust.

2 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement, except in respect of any obligation, liability, claim or breach of the Original Agreement that arose prior to the Effective Date.

2.2 Reference in Original Agreement

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

2.3 Address for notices

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

New Developer:

Address: Suite 101, 25 Angas Street, Meadowbank, NSW 2114

Contact Person: Paul Addison

Email: paul.addison@billbergia.com.au

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 Council Satisfaction

- (a) For the purposes of clause 34.1 of the Original Agreement, the Council acknowledges that:
 - (i) this Deed is the deed referred to in clause 34.1.3 of the Original Agreement,

- (ii) the Council is satisfied that the New Developer is reasonably capable of performing the obligations under the Original Agreement, and
- (iii) as at the date of this Deed, the Original Developer is not in breach of the Planning Agreement, and
- (iv) the Council consents to the novation.

5 Indemnities

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

6 Warranties and representations

6.1 Warranties

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

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

6.2 Survival of warranties

The warranties and representations in **clause 6.1** survive the execution of this deed and the novation of the Original Agreement.

7 GST

7.1 Construction

In this **clause 7**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

7.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under this deed is exclusive of GST (**GST-exclusive consideration**).

7.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under this deed, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

7.4 Timing of GST payment

The amount referred to in **clause 7.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

7.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 7.3**.

7.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under this deed, any amount that is payable under **clause 7.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

7.7 Reimbursements

- (a) Where a party is required under this deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 7.7** does not limit the application of **clause 7.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 7.7(a)**.

7.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under this deed is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

7.9 No merger

This **clause 7** does not merge on the completion, rescission or other termination of this deed or on the transfer of any property supplied under this deed.

8 Stamp duty and costs

- (a) The New Developer will pay all stamp duty arising directly or indirectly from this deed.
- (b) The Original Developer will pay the Council's costs related to the negotiation, preparation and execution of this deed.

9 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) 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.

10 Amendment

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

11 Governing law and jurisdiction

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

12 Counterparts

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

13 General

13.1 Construction

Unless expressed to the contrary, in this deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

13.2 Headings

Headings do not affect the interpretation of this deed.


Execution

Executed as a deed.

Executed on behalf of the **Willoughby City Council** in the presence of:


.....
Chief Executive Officer (CEO)
DEBRA KAY JUST

10/5/2023


.....
Witness
Planning Process & Contribution
Position Specialist
Sylvia Mok
.....
Name (print)

Executed by 853 Pacific Highway Pty Ltd)
as trustee for the 2017 PHC Unit Trust)
(ABN 12 390 679 581) in accordance with
section 127 of the *Corporations Act 2001*
(Cth) in the presence of:


.....
Company Secretary/Director

STANLEY ELI HURLWITZ
.....
Name of Company Secretary/Director
(print)


.....
Director
Nicholas Andrijic
.....
Name of Director (print)

Executed by BB Wilson Property Pty)
Limited ACN 661 086 513 in accordance)
with section 127 of the *Corporations Act*)
2001 (Cth) in the presence of:


.....
Company Secretary / Director

John Kinsella

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


.....
Director

William Kinsella

.....
Name of Director (print)