

**629-639 Pacific Highway Chatswood
Planning Agreement
Deed of Variation**

Under s203(5) of the *Environmental Planning and Assessment Regulation 2021*

**Willoughby City Council
Polytec Australia Four Pty Ltd**

Date: 25 August 2025

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Deed of Variation

629-639 Pacific Highway Chatswood Planning Agreement

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Deed of Variation to 629-639 Pacific Highway Chatswood Planning Agreement

Under s203(5) of the *Environmental Planning and Assessment Regulation 2021*

Parties

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

and

Polytec Australia Four Pty Ltd ACN 654 595 945 of Suite 18C, Level 18, 2 Park Street Sydney NSW 2000 (**Developer**)

Background

- A The Council and Pacific Chatswood Pty Ltd entered into the Planning Agreement on 20 October 2022.
- B On 3 May 2023, the Planning Agreement was novated from Pacific Chatswood to Polytec Australia Four Pty Ltd.
- C Pursuant to the novation, the Council and the Developer are now Parties to the Planning Agreement.
- D Pursuant to clause 52 of the Planning Agreement, the Parties agree to amend the Planning Agreement to change the timing by which the Developer is to pay to Council the Second Instalment and Third Instalment of the monetary Development Contribution.

Operative provisions

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Planning Agreement means the 629-639 Pacific Highway Chatswood Planning Agreement pursuant to s7.4 of the *Environmental Planning and Assessment Act 1979* originally entered into between the Council and Pacific Chatswood Pty Ltd on 20 October 2022 and as novated to the Developer.

- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.

- 1.3 Clauses 1.2, 45, 46, 47, 49, 50, 51, 53 and 54 of the Planning Agreement apply as if they form part of this Deed with any necessary changes.

2 Status of this Deed

- 2.1 This Deed is an amendment to the Planning Agreement within the meaning of section 203(5) of the Regulation.
- 2.2 This Deed is not a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Warranties

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

5 Amendment to Planning Agreement

- 5.1 On and from the date this Deed takes effect:
 - 5.1.1 Clause 1.1 of the Planning Agreement is amended to include the following definitions in alphabetical order:
 - (a) **Construction Certificate** has the same meaning as in the Act.
 - (b) **Occupation Certificate** has the same meaning as in the Act.
 - (c) **Strata Plan** has the same meaning as in the Strata Schemes Development Act 2015.
 - 5.1.2 Schedule 2 of the Planning Agreement is amended in accordance with the marking-up shown on the copy of Schedule 2 of the Planning Agreement contained in the Schedule to this Deed.

6 Costs

- 6.1 The Developer is to pay to the Council's reasonable costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 6.2 This clause continues to apply after expiration or termination of this Deed.

7 Explanatory Note

- 7.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205(1) of the Regulation.
- 7.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule

(Clause 5)

Amended Schedule 2 of Planning Agreement

Schedule 2

(Clause 9)

Development Contributions

Table

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

Monetary Development Contributions

Total of \$2,085,008 payable in the following three (3) instalments:

1. \$208,500	Contributions towards Community Infrastructure works as identified in Appendix A of Council's Planning Agreement Policy – Procedures Manual	Payable as lump sum at the timing set out in Column 4	Within 90 days of the making of the LEP Amendment.
2. \$1,355,255	Contributions towards Community Infrastructure works as identified in Appendix A of Council's Planning Agreement Policy – Procedures Manual	Payable as lump sum at the timing set out in Column 4	<u>Prior to the date of issue of the first Construction Certificate for the Development</u> Within 30 days of the granting of first Development Consent for the Development.
3. \$521,253	Contributions towards Community Infrastructure works as identified in Appendix A of Council's Planning Agreement Policy – Procedures Manual	Payable as lump sum at the timing set out in Column 4	<u>Prior to the date of issue of the first Occupation Certificate for the Development, or prior to the date of registration of the first Strata Plan for the Development, whichever is earlier.</u> Immediately prior to the issue of first Construction Certificate for the Development (excluding any Construction Certificate for demolition, preparatory site works, excavation and/or shoring).

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Willoughby City Council
Polytec Australia Four Pty Ltd

Execution

Executed as a Deed

Dated: 25 August 2025

Executed on behalf of the Council pursuant to s377 of Local Government Act 1993



Signature of General Manager



Signature of Witness

ALAN HUGH PIERCE

Name of General Manager

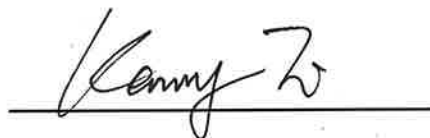
Kara Dwyer

Name of Witness

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



Signature of Director



Signature of Director/Secretary

Yung Hei Lam

Name of Director

Kenny Ji

Name of Director/Secretary

Appendix

(Clause 7)

Environmental Planning and Assessment Regulation 2021

(section 205(1))

Explanatory Note

Deed of Variation to 629-639 Pacific Highway Chatswood Planning Agreement

Under s203(5) of the *Environmental Planning and Assessment Regulation 2021*

Parties

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

and

Polytec Australia Four Pty Ltd ACN 654 595 945 of Suite 18C, Level 18, 2 Park Street Sydney NSW 2000 (**Developer**)

Description of the Land to which the Deed of Variation Applies

The Deed of Variation applies to the same land to which the Planning Agreement relates, being:

- (a) Lot 9 DP 4138,
- (b) Lot 10 DP 4138,
- (c) Lot 11 DP 4138,
- (d) Lot 12 DP 4138,
- (e) Lot 13 DP 4138, and
- (f) Lot 14 DP 4138.

Description of Proposed Development

The Planning Agreement was entered into in connection with planning proposal PP2017/3 (Council's Ref) the subject of a gateway determination PP-2021-2470 (Planning Portal's Ref) which seeks to amend the *Willoughby Local Environmental Plan 2021* to facilitate a mixed use development comprising residential and commercial uses on this Land by:

- (a) rezoning the land from B5 Business Development to B4 Mixed Use,

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- (b) increasing the maximum building height from 20 metres to 90 metres,
- (c) increasing the maximum floor space ratio from 2:5:1 to 6:1 (including affordable housing), and
- (d) amending the Special Provisions Areas Map (Sheet SPA_004) to include the Land as 'Area 9', 'Area 11' and 'Area 12'.

The LEP Amendment has been made and the Developer has now lodged development application DA-2023/256 which relies on the LEP Amendment. The Planning Agreement, as amended by this Deed of Variation applies to the development on this Land as authorised by the future Development Consent granted to development application DA-2023/256.

Description of Development Contributions

The original Planning Agreement required the Developer to provide monetary contributions in the amount of \$2,085,008 in three instalments towards the Council's Community Infrastructure Contribution (CIC) scheme for the Chatswood CBD. The public purpose of the monetary development contribution will be to ensure there is adequate funding for civil infrastructure, public domain and open space and community facilities as set out in the Council's CIC in the Willoughby Planning Agreement Policy Procedures Manual.

The Deed of Variation does not change the amount or public purpose of the monetary contributions. It only amends the timing of payment of the second and third instalments.

Summary of Objectives, Nature and Effect of the Deed of Variation

Objectives of Deed of Variation

The objective of the Deed of Variation is to amend the timing of the payment of the second and third instalments of the monetary contributions to be made to benefit the community.

The amounts of the monetary contribution instalments to be paid to the Council are unchanged.

Nature of Deed of Variation

The Deed of Variation operates to effect an amendment to the voluntary agreement pursuant to clause 52 of the Planning Agreement and s203(5) of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

In this particular case, the agreement provides that the developer will make a monetary contribution of \$2,085,008 (to be paid in 3 instalments) towards the Council's Community Infrastructure Contribution (CIC) scheme for the Chatswood CBD. The public purpose of the monetary development contribution will be to ensure there is adequate funding for civil infrastructure, public domain and open space and community facilities as set out in the Council's CIC in the *Willoughby Planning Agreement Policy Procedures Manual*.

Effect of the Deed of Variation

The Deed of Variation:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Planning Agreement) on the Land by the Developer, and
- effects a change to the timing of the payment of the second and third instalments of the monetary contributions under the Planning Agreement, and

otherwise does not make any other changes to the Planning Agreement.

Assessment of the Merits of the Deed of Variation

The Planning Purposes Served by the Deed of Variation

The Deed of Variation does not change the amount or the public purpose for which the monetary contributions are to be provided. Therefore, the Planning Agreement, as amended by the Deed of Variation continues to:

- 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,
- facilitates the provision of a monetary contribution to meet the demands for infrastructure in relation to roads, public open space, drainage and stormwater management, public transport infrastructure and public community facilities in the Chatswood CBD, and
- contributes to the public infrastructure required for future growth in the Chatswood CBD.
- enables the development to mitigate the potential impacts of the Development on existing infrastructure.

How the Deed of Variation Promotes the Public Interest

The Deed of Variation does not change the public purpose for which the monetary contributions are to be provided. Therefore, the Planning Agreement, as amended by the Deed of Variation continues to promote the public interest by promoting the objects of the Act as set out in s1.3(c) and (j) of the Act.

The Planning Agreement, as amended by this Deed of Variation continues to provide a public benefit to the community, above and beyond the normal contributions regime. The Developer will also still need to make the routine contributions to local infrastructure and affordable housing.

Assessment of the positive or negative impacts of the Deed of Variation

The Deed of Variation does not change the amount of monetary contributions that are to be provided. The proposed change to the timing of the payment of the second and third instalments of the monetary contributions under the Planning Agreement is generally consistent with the Council's adopted *Planning Agreement Policy and Procedures Manual*, which states that the Council will seek to have development contributions under a planning agreement to be provided as follows:

For a monetary contribution under a planning agreement that relates to a planning proposal:

- 10% at the gazettal of the local environmental plan for the subject planning proposal (or within 21 days after the gazettal date) where applicable;
- 45% of the contribution prior to Construction Certificate; and
- 45% of the contribution prior to the issue of an Occupation Certificate (interim or final) or prior to the registration of a Strata plan, whichever is earlier.

The first instalment of the monetary contribution is 10% of the contribution. The second instalment of the monetary contribution will exceed 45%.

There will not be a negative impact as Security has been provided as required by clause 27 of the Planning Agreement, and the Planning Agreement is registered on the Land as required by clause 33 of the Planning Agreement.

Whether the Deed of Variation Conforms with the Authority's Capital Works Program

Yes. The proposed contributions are consistent with the community infrastructure identified in the Council's Planning Agreements Policy – Procedures Manual and aligns with Council's capital works program.

Whether the Deed of Variation specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Deed of Variation requires that the Second Instalment of the monetary Development Contribution is made prior to the issue of a Construction Certificate, and the Third Instalment of the monetary Development Contribution is made prior to the date of issue of an Occupation Certificate, or prior to the date of registration of a Strata plan, whichever is earlier.