



**HONES
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Experts in Property & Planning Law

Planning Agreement

between

Greencliff Castlecrag Pty Limited
ACN 613 199 518
(Developer)

and

Willoughby City Council
ABN 47 974 826 099
(Council)

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This agreement is made on _____ 2021

between **Greycliff Castlecrag Pty Limited** ACN 613 199 518 of Level 10, 488 Kent Street, Sydney NSW 2000 (**Developer**);

and

Willoughby City Council ABN 47 974 826 099 of 31 Victor St, Chatswood NSW 2067 (**Council**).

Recitals

- A. On [date] The Developer submitted the Planning Proposal for Council's approval, in order that Council may endorse and submit it to the Minister for Planning to amend the WLEP.
- B. The Developer intends on lodging a Development Application to develop the Land pursuant to the Planning Proposal.
- C. The Developer agrees to provide the Development Contributions by means of this Planning Agreement under section 7.4 of the Act.
- D. The Council agrees to accept the Development Contributions as set out in this Agreement.

Now it is agreed as follows:

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

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

Bank Guarantee means the bank guarantee to be provided in accordance with clause 14.

Business Day means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purposes a day on which the banks are open for business in Sydney, New South Wales other than a Sunday or public holiday in Sydney, New South Wales.

Commencement Date means the date of execution of this Agreement.

Construction Certificate has the same meaning as under the Act.

Consumer Price Index means:

- (a) the Alt Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics; and
- (b) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered vary, so as to change the basis of the price index, then any price index the Developer selects that, as nearly as practicable, serves the same purpose.

Development Application means a Development Application to be lodged for the development of the Land facilitated by the Planning Proposal, which seeks development consent for the Development.

Development means the development that is sought to be approved in the Development Application which is anticipated to be for a three-storey (above Edinburgh Road) mixed-use development, with a total GFA of approximately 9,300m², an FSR of approximately 1.8:1, approximately 53 apartments, approximately 1740m² of retail/commercial floor space for a variety of uses, approximately 157 car parking spaces at lower ground and basement levels, and approximately 2,220m² of communal and public open space.

Development Consent has the same meaning as in section 1.4 of the Act.

Development Contribution(s) means the contributions listed in Schedule 1:

Government Agency means any government, governmental, semi-governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

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

Insolvency Event means the occurrence of any one or more of the following events regarding any party to this agreement:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset to the party;
- (c) a security holder, mortgagee or chargee has taken attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor; or

- (d) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it.

Land means the land legally known as Lot 11 DP 611594 and Lot 1 DP 43691, and also known as 100 Edinburgh Road, Castlecrag.

Loss includes any loss, damage, cost, charge liability (including Tax liability) or expense (including legal costs and expenses).

Modification Application means an application to modify a development consent under section 4.55 of the Act.

Occupation Certificate has the same meaning as under the Act.

Party means a party to this Agreement including their successors and assigns.

Planning Agreement has the same meaning as in section 7.1 of the Act.

Planning Proposal means a planning proposal in relation to the Land which seeks an amendment to the WLEP to facilitate the Development.

Public Purpose means the purposes to which the Development Contributions are to be applied by the Council.

Regulation means the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

Tax means all forms of taxes, duties, imposts charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

Term means the lesser of the following periods:

- (a) the period that a Development Consent granted in relation to the Development Application is in force; or
- (b) any other, lesser period resulting from:
 - (i) the surrender of the Development Consent; or
 - (ii) finding by a Court which declares the Development Consent invalid, or other judicial or regulatory action which results in the Development not being developed.

WLEP means the *Willoughby Local Environmental Plan 2012*.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) a reference to:

- (i) one gender includes the others;
- (ii) the singular includes the plural and the plural includes the singular;
- (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this agreement and references to this agreement include any recital, schedule or annexure;
- (iv) any contract (including this agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
- (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (x) time is a reference to legal time in Sydney, New South Wales;
- (xi) a reference to a day or a month means a calendar day or calendar month;
- (xii) a reference to money (including AUD' or 'dollars') is to Australian currency,
- (b) unless expressly stated, no party enters into this agreement as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) the words 'costs' and 'expenses*' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (e) headings and the table of contents are for convenience only and do not form part of this agreement or affect its interpretation;
- (f) if a period of time is specified and dates from a given day or the day of an act or event. it is to be calculated exclusive of that day;
- (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;

- (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (i) where there are two or more persons in a party each are bound jointly and severally; and
- (j) a provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

2. Planning Agreement under the Act

- 2.1** The parties acknowledge and agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. Application of this Agreement

- 3.1** This Agreement applies to:

- (a) the Land;
- (b) the Planning Proposal;
- (c) the Development Application; and
- (d) the Development.

4. Operation of this Agreement

- 4.1** This Agreement takes effects from the Commencement Date.

5. Development Contributions

- 5.1** **Schedule 1** has effect in relation to the Development Contributions to be made by the Developer under this Agreement in relation to the Planning Proposal and Development Application.

- 5.2** If:

- (a) the WLEP is amended by the gazettal of the Planning Proposal such that the Development may be carried out (on grant of Development Consent); and
- (b) Development Consent is granted in relation to the Development Application;

then the Developer must make the Development Contributions in the manner and timing as set out in Schedule 1, and otherwise in accordance with this Agreement.

- 5.3** If the Planning Proposal or Development Consent are granted on terms which mean that the yield of the development approved under the WLEP/consent would be more than 10% lower than the yield proposed for the Development (in terms of GFA, FSR, height, number of apartments, retail/commercial floor area, and the like), then the parties agree to negotiate in good faith to reduce the quantum of costs to be

expended on the Development Contributions by a proportion commensurate with the reduced yield.

5.4 For the purposes of Clause 5.2:

- (a) Council acknowledges that the Developer may elect not to take up Development Consent granted in relation to the Development Application;
- (b) The Developer must notify Council once a Construction Certificate is issued in relation to the Development Application; and
- (c) The Developer must notify the Council once an Occupation Certificate is issued in relation to the Development Application.

5.5 The Developer agrees to make and the Council agrees to accept, the Development Contributions in relation to the Development Application, to be applied for the Public Purpose by the Council.

6. Works and handover

- 6.1** The works in kind required to be carried out under this Agreement must be carried out in accordance with the relevant guidelines or specifications in force and utilised by Council for equivalent Council infrastructure, or if no such guidelines or specifications are in force, equivalent guidelines or specifications by RMS, or relevant Australian Standards, as the case may be.
- 6.2** The parties may by mutual agreement, modify the design, or specification of any works under this Agreement.
- 6.3** The Council authorises the Developer to enter, occupy and use any Council land on which works are to be located for the purpose of performing its obligations under this Agreement, on providing the Council with at least 14 days notice.
- 6.4** The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.
- 6.5** In carrying out works under this Agreement, the Developer is to use reasonable endeavours to take necessary measures to protect people and property, and avoid unnecessary interference with the passage of people and vehicles.
- 6.6** Except for the Public End of Trip Facilities, following completion of works required under this Agreement and prior to handover, the Developer is to notify the Council. Council may inspect those works after such notification and prior to handover. Should the works be subject to defect, the Council may provide the Developer with a Notice requiring the defect(s) to be rectified prior to handover.
- 6.7** Following completion of the relevant works (and rectification of any defects if necessary), the Developer is to hand back control of the relevant area of Council land, and handover the completed works to Council, at which time such works become the property of Council (save for the Public End of Trip Facilities which remain the

property of the Developer, and if the Council agrees for it to be displayed in the Development, the Public Art).

7. Late Payment

- 7.1** Where any payment of a monetary Development Contribution is not made on or before the due date for payment, the unpaid amount will accrue interest at a rate of 2% above the daily Reserve Bank of Australia Cash Rate from the date that payment was due up to and including the date when the overdue amount is paid.

8. Assignment and Transfer

- 8.1** Unless the matters specified in Clause 8.2 are satisfied, or all Development Contributions have already been made, the Developer is not to do any of the following:
- (a) assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement.
- 8.2** The matters required to be satisfied for the purposes of Clause 8.1 are as follows:
- (a) the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned, transferred or novated, of an agreement in favour of the Council on terms that are no less favourable to Council than the terms of this agreement;
 - (b) the Developer has provided evidence to Council's reasonable satisfaction to demonstrate that the assignee, transferee or novatee, is reasonably capable of performing its obligations under the substituted agreement; and
 - (c) the Developer is not in breach of this Agreement.
- 8.3** Nothing in this clause will be interpreted to prevent the sale of individual residential units created (and strata subdivided) as part of the Development.

9. Council's Acknowledgement

- 9.1** Subject to Clause 9.2, Council acknowledges and agrees that for the duration of the Term:
- (a) the making of the Development Contributions is in substitution for the payment of any other fees, rates, charges or levies (**Levy Payments**) which Council could or may seek to impose on the Developer and its successors or assigns in respect of the Planning Proposal or the Development;
 - (b) Council releases the Developer and its successors or assigns from all liability for Levy Payments in respect of the Planning Proposal and Development; and
 - (c) Council will not seek to impose levies to the same effect of the Development Contributions.
- 9.2** Nothing in Clause 9 limits or fetters in any way Council's power to impose fees, rates,

charges or levies under any legislation (including but not limited to the *Local Government Act 1993*) regulation, statutory rule or similar which the Council could or may seek to impose as a standard application fee, lodgement fee or other administrative or processing fee or charge that is payable to Council in connection with any Development Application, Modification application, application for a Construction Certificate or similar.

10. No Fetter

10.1 Nothing in this Agreement shall be construed as requiring the 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.

11. Application of sections 7.11 & 7.12 of the Act to the Development

11.1 This Agreement does not exclude the application of Sections 7.11 and 7.12 of the Act to the Development.

12. No Registration of this Agreement

12.1 The Parties agree that this Agreement will not be registered for the purposes of section 7.6 of the Act.

13. Dispute Resolution

13.1 Notice of Dispute

If a party claims that a dispute has arisen under this agreement (**Claimant**), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).

13.2 Response to Notice

Within 10 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

13.3 Negotiation

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 business days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 10 business days after they have met.

13.4 Further Notice if not Settled

If the dispute is not resolved within 10 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**).

13.5 Mediation

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator;
- (c) the Mediator appointed pursuant to this Clause 13.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with her function as mediator, she being required to fully disclose any such interest or duty before her appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to her knowledge by reason of her appointment and performance of her duties;
- (e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation unless otherwise agreed; and
 - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

13.6 Litigation

If the dispute is not finally resolved in accordance with clause 13.5 the parties are free to litigate the dispute.

13.7 Exchange of Information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to

attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this Clause 13 for any purpose other than an attempt to settle a dispute between the parties.

13.8 Continue to Perform Obligations

Each party must continue to perform its obligations under this agreement, notwithstanding the existence of a dispute.

13.9 Urgent relief

Nothing in this clause prevents a party from seeking, and being granted, urgent interlocutory relief.

14. Bank Guarantee

14.1 At the time of application for the first Construction Certificate in relation to the Development Application, the Developer must deliver to Council an irrevocable and unconditional Bank Guarantee in favour of Council in the amount of \$100,000.

14.2 The Council must return the Bank Guarantee referred to in Clause 14.1 at the earliest of the end of the Term, or on the Developer fulfilling all of its obligations to make the Development Contributions.

14.3 If the Developer does not comply with its obligations under this Agreement, the Council may after 14 days' notice, call on the Bank Guarantee.

15. GST

15.1 Defined GST terms

In this Clause 18, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

15.2 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the party providing the consideration for that Taxable Supply must also pay the GST Amount as additional consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

15.3 Tax Invoice

If a Party is liable for GST on any payments made under this Agreement, the other Party must issue a tax invoice (or an adjustment note) to the liable Party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

15.4 GST obligations to survive termination

This Clause 15 will continue to apply after expiration of termination of this Agreement.

16. Notices

16.1 Service of Notices

A notice, consent, approval or other communication under this agreement (**Notice**) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in Clause 16.3; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by facsimile or email, or any other lawful means as set out in clause 16.3.

16.2 Effect of Receipt

- (a) A Notice given in accordance with this Clause 16 is treated as having been given and received:
 - (i) if personally delivered, on delivery;
 - (ii) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia);
 - (iii) if sent by facsimile, when the senders fax machine produces a transmission report stating that the transmission of the entire Notice was complete; and
 - (iv) if sent by email, at the top of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that if the delivery, receipt or transmission, is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

16.3 Addresses

- (a) The particulars for delivery of Notices are initially:

The Developer

Name: **David Butt[?]**

Address: Level 10, 488 Kent Street, Sydney NSW 2000

Email: **david@greenclyff.com.au**[?]

Facsimile: Not to be used

Willoughby Council

Name: [Insert]

Attention: [insert]

Address: [insert]

Fax: [insert]

Email: [insert]

- (b) A party may change its address for the delivery of Notices by notifying that change to each other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

17. General

17.1 Legal Costs

- (a) Except as expressly stated otherwise in this agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.

17.2 Governing Law and Jurisdiction

- (a) This agreement is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia 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.

17.3 Severability

- (a) Subject to Clause 17.3(a), if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.
- (b) Clause 17.3(a) does not apply if severing the provision:
 - (i) materially alters the:
 - A. scope and nature of this agreement; or
 - B. relative commercial or financial positions of the parties; or
 - (ii) would be contrary to public policy.

17.4 Rights Cumulative

Except as expressly stated otherwise in this agreement, the rights of a party under this agreement are cumulative and are in addition to any other rights of that party.

17.5 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any Loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise or a right.

17.6 Survival

The rights and obligations of the parties do not merge on:

- (a) Completion of any transaction under this Agreement; or
- (b) Termination or expiration of the Agreement.

17.7 Amendment

This agreement may only be varied or replaced by an agreement executed by the parties.

17.8 Assignment

The Developer must not assign or deal with its rights under this agreement without the prior written consent of Council.

17.9 Counterparts

This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.

17.10 Entire Understanding

- (a) This agreement contains the entire understanding between the parties as to the subject matter of this agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

Executed as an agreement

EXECUTED for and on behalf of)
Greencliff Castlecrag Pty Limited)
ACN 613 199 518 in accordance with)
Section 127(1) of the *Corporations Act*)
2001:

Signature of Director/Secretary

Signature of Director/Secretary

Name of Director/Secretary

Name of Director/Secretary

EXECUTED for and on behalf of)
Willoughby City Council ABN 47 974)
826 099 in the presence of:)
)

Witness

Authorised Person

Name of Witness

Name of Authorised Person

Schedule 1 – Development Contributions

Contribution Type	Contribution Description/Amount	Timing of Contribution
In-kind Contribution	<p>Public domain improvements</p> <p>The Developer will upgrade the Edinburgh Road and Eastern Valley Way frontages (paving/footpath only) directly adjoining the Land in accordance with that established for the Castlecrag Local Centre. The area to be upgraded shall be that area between the rear of the kerb to the Developer's property boundary. It excludes any works to the existing roadway. The works shall include paving, tree surrounds (noting existing trees to remain) street signage and furniture.</p> <p>The Developer will consult with Council's Public Domain officers prior to undertaking those upgrade works to obtain input on the standards and finishes of those upgrade works.</p> <p>The Developer will maintain area for day to day usage, with regard to general wear and tear. However, future upgrades, reinstatement of Authority works and repair of vandalism will remain the responsibility of Council</p>	Prior to issue of the (final) Occupation Certificate for the whole of the Development
In-kind Contribution	<p>Publicly accessible private domain improvements</p> <p>The developer will design, construct and commission 1,150 sqm approximately of the site designated for public access. That area will extend along the Edinburgh Road frontage of the site and will extend through and under the building to link with the pathway to The Postern. The area will remain in the ownership of the future owner or owners' corporation and be maintained at the expense of the owner(s).</p> <p>The Developer will consult with the community and Council's Public Domain officers prior to undertaking those upgrade works to obtain input on the standards and finishes of those upgrade works.</p> <p>The Developer will maintain area for day to day usage.</p>	Prior to issue of the (final) Occupation Certificate for the whole of the Development
In-kind Contribution	<p>The developer will design, construct and commission the pathway on the southern side of the site which links with Council section of the path to The Postern. The pathway is to be a natural, meandering pathway, through the trees on the southern boundary of the site. Its design should be in accordance with the naturalist philosophy of the Griffins.</p> <p>The pathway will remain in the ownership of future owner or owners' corporation and be maintained at the expense of the owner(s).</p> <p>The Developer will consult with the community and Council's Public Domain officers prior to undertaking those upgrade works to obtain input on the standards and finishes of those upgrade works.</p>	Prior to issue of the (final) Occupation Certificate for the whole of the Development

	The Developer will maintain area for day to day usage, with regard to general wear and tear.	
In-kind Contribution	<p>Public End of Trip Facilities</p> <p>In addition to providing facilities for the retail employees, the Developer will provide and maintain amenities for customers of the retail uses with regards to toilet facilities and will provide a single unisex disabled washroom with shower and change facilities.</p> <p>(Note: These remain the property of the Developer)</p>	Prior to issue of the (final) Occupation Certificate for the whole of the Development
In-kind Contribution valued at \$400,000	<p>Additional car spaces</p> <p>If requested by Council, eight car spaces will be made available in the development to replace those displaced from the site of a nearby pocket park. The spaces will remain the property of the owner or owners; corporation and made available for use by members of the public in accordance with the car park management plan to be adopted for the parking areas on the subject site.</p>	Prior to issue of the (final) Occupation Certificate for the whole of the Development
Monetary Contribution of \$75,000	<p>Public Art Contribution</p> <p>The Developer will assist Council in procuring a piece of public art to be installed at the site in a location nominated by the committee which selects the artwork and agreed with the architect. The budget for the artwork will not exceed \$75,000. The artwork is to be selected by a committee comprising a representative of the community, a representative of Council, a representative of the architect and a representative of the developer. The method of procurement will be decided by the selection committee.</p>	Prior to issue of the (final) Occupation Certificate for the whole of the Development

Explanatory Note

Pursuant to clause 25E of the *Environmental Planning and Assessment Regulation 2000*

1. Introduction

1.1 Purpose

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed planning agreement (Planning Agreement) prepared in accordance with Subdivision 2, Division 7.1, Part 7 of the *Environmental Planning and Assessment Act 1979 (Act)*.

1.2 Preparation

This Explanatory Note has been prepared jointly by the Parties to the Planning Agreement in accordance with clause 25E(3) of the *Environmental Planning and Assessment Regulation 2000 (Regulation)*.

2. Parties to the Planning Agreement

Greycliff Castlecrag Pty Limited
ACN 613 199 518
(Developer)

and

Willoughby Council
ABN 47 974 826 099
(Council)

3. Description of the Subject Land

Land	First Schedule (owner of the Land)	Registered Dealing Number of leasehold interest in Land (if applicable)
Lot 11 DP 611594 and Lot 1 DP 43691, and also known as 100 Edinburgh Road, Castlecrag	Greycliff Castlecrag Pty Limited	N/A

The Planning Agreement applies to the Land described in Table 1.

4. Description of the Planning Proposal and Development Application

The Planning Agreement applies to a Planning Proposal on the Land and to a future Development Application to facilitate the development of a three-storey high (above Edinburgh Road) mixed-use development, with a total GFA of approximately 9,300m², an FSR of approximately 1.8:1, approximately 53 apartments, approximately 1740m² of retail/commercial

floor space for a variety of uses, approximately 157 car parking spaces at lower ground and basement levels, and approximately 2,220m² of communal and public open space (Application).

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

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

The Planning Agreement provides that the Developer is to make the following contributions to Council after the Planning Proposal has been gazetted and the Development Consent is effective:

- a) Public domain improvements to upgrade the Edinburgh Road and Eastern Valley Way frontages directly adjoining the Land;
- b) Provision of amenities for customers of the retail uses with regards to toilet facilities and a single unisex disabled washroom with shower and change facilities; and
- c) Procurement of Public Art worth up to \$100,000.

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

6. Assessment of Merits and Purpose of the Planning Agreement

The Planning Agreement serves the public purpose and promotes object (a) of the Environmental Planning and Assessment Act 1979 (Act) by securing the provision of Development Contributions in the nature of monetary payments for the purposes of public benefit works in relation to transport and traffic matters of a public nature, including but not limited to [to insert details of public purpose(s)].

7. How the Planning Agreement promotes one or more of the objects of the Local Government Act 1993

The Planning Agreement promotes the principles of local government under the Local Government Act 1993 (see former section 8 of the Local Government Act 1993) by:

- providing appropriate services and facilities for the community in the form funding for such service as a result of the monetary contributions;
- [to insert details of other public purposes per the LG Act];

8. Planning Purposes served by the Planning Agreement

The planning purpose of the Planning Agreement is to provide funds to the Council for the purposes of public benefit works in relation to pedestrian and transport and traffic matters of a public nature, and public art, including but not limited to pedestrian benefits, public transport, public art to [to insert details of public purpose(s)]. The Planning Agreement provides for a reasonable means of achieving that purpose.

9. The Council's capital works program

The proposed Planning Agreement accords with Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation [Council-to-confirm]

10. Requirements prior to the issue of construction, occupation or subdivision certificates

The Planning Agreement provides that no final Occupation Certificate may be issued in relation to the Development Application if a Development Contribution required to be made by the Developer has not been made in breach of the Agreement.

11. Interpretation of Planning Agreement

This Explanatory Note is not intended to be used to assist in construing the Planning Agreement.