

Deed

9-11 Nelson Street, Chatswood Planning Agreement

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

Willoughby City Council

The Owners – Strata Plan No. 65120

Executed Date: [Insert Date]

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~~Instructions for drafting this Deed:~~

Please state “~~not used~~” next to any unused clause instead of deleting them from this template.

Example:

~~Part 3~~ **Not used**

~~11~~ **Not used**

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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: General Manager

Developer:

Name: The Owners – Strata Plan No. 65120

Address: 9-11 Nelson Street, Chatswood, New South Wales 2067

Telephone: 0467 171 146

Email: david.hancy@gmail.com

Representative: David Hancy (Strata Secretary)

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 ' <i>Land</i> ' in clause 1.1
S7.4(3)(b)(i)	Instrument Change	See definition of ' <i>LEP Amendment</i> ' in clause 1.1' or ' <i>N/A</i> '
S7.4(3)(b)(ii)	Development	See definition of ' <i>Development</i> ' 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	<p style="background-color: yellow;">[If s7.11 is excluded, then insert '<i>N/A</i>']</p> <p style="background-color: yellow;">Or</p> <p style="background-color: yellow;">[If s7.11 is not excluded, then insert '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']</p> <p style="background-color: yellow;">Or</p> <p style="background-color: yellow;">[If s7.11 is not excluded and this Deed is related to Works In Kind / Land Dedication to be offset from s7.11, then insert '<i>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</i>']</p> <p>See clause 8</p>

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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 <u>and clause 33</u>
S7.4 (10)	Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
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?	[Insert 'Yes' or 'No' and identify the relevant provision of the Agreement]
S6.9(1)	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?	[Insert 'Yes' or 'No' and identify the relevant provision of the Agreement]

Table 2 – Provisions of Regulation

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Regulation Provision	Requirement	Compliance
Clause 25B(1)	Form & Subject-Matter	Yes
Clause 25B(2)	Secretary’s Practice Note	Yes
Clause 25D	Public Notice & Public Inspection of Draft Agreement	Yes
Clause 25E	Explanatory Note	See Appendix
Clause 146A	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?	[Insert ‘Yes’ or ‘No’ and identify the relevant provision of the Agreement]

Table 3 – Ministerial Directions

Direction	Requirement	Compliance
[Insert Provision under which direction Made & Date of Direction]	[Summarise Requirement of Direction]	[Insert ‘Yes’ or ‘N/A’]

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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

The Owners – Strata Plan No. 65120 ABN 30 967 574 531 of 9-11 Nelson Street, Chatswood, New South Wales 2067 (Developer)

Background

- A The Developer 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. ~~Delete if not applicable~~
- 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 under Part 6 of the Act](#).

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority

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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.~~

~~**Charge** means the charge referred to in clause 28.1 and 28.5.~~

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.

~~**Contribution Value** means, in respect of a Development Contribution Item, the \$ amount specified in Column 5 of the table to Schedule 2 corresponding to that Development Contribution Item, or if no such amount is specified, the amount agreed between the Parties as the value of a Development Contribution made under this Deed. **[Include this definition only if Council will provide any offset or credit arrangement under this Deed.]**~~

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

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CPI means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

Dedication of Land means a Contribution Item comprising the registration of the Proposed Easement described in Part B of Schedule 2 of this Deed.

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.~~

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,

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- (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.

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. ~~[Delete if not applicable]~~

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 (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.~~

Planning Proposal means a planning proposal within the meaning of s3.33 of the Act as detailed in Item 2 of Schedule 1. ~~[Delete if not applicable]~~

Proposed Easement means an easement for public access 3 metres wide in the approximate location shown on the Map, which is proposed to be

registered on the title to the Land on terms reasonably acceptable to the Council.

Novation Deed means the document attached at Schedule 4.

~~**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 2000*.

~~**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.

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- 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~~[that all steps are completed in accordance with clause 3.1](#) on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the LEP Amendment ~~[Delete 'LEP Amendment' if not applicable]~~, 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.
- 5.2 The Developer warrants that it has made all resolutions required under the Strata Schemes Management Act 2015 and Strata Schemes Development Act 2015 (including any regulations made under those statutes) in order to comply with its 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 ~~excludes /~~ 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. [Include this clause only if Contribution Values are specified in this Deed].~~

~~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 [Include this clause only if Contribution Values are specified in this Deed].~~

~~9.49.2~~ 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.

~~9.59.3~~ Despite clause 9.2, 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.

~~[If Council will provide any offset or credit arrangement under this Deed then a provision should be inserted here dealing with such arrangements.]~~

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 ~~an~~ electronic funds transfer of cleared funds into a bank account nominated by the Council.

~~10.4 — If the Development Consent for the Development is modified to allow for additional [Insert relevant details e.g. dwellings/Final Lots] after [Insert timing, which may, for example, be the issuing of the first relevant Part 4A certificate e.g. Construction Certificate/Subdivision Certificate] for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional [Insert relevant details e.g. dwellings/Final Lots] not later than 7 days after the Development Consent has been modified.~~

Part 3 – Provisions relating to ~~dedication of~~ land Easement

11 ~~Dedication of Dedication Land Proposed Easement~~

- 11.1 The ~~{Developer/~~Landowner~~* [Delete whichever is inapplicable]~~ is to ~~dedicate~~
register the ~~Dedication Land~~Proposed Easement ~~free of at no~~ cost to the
Council in the manner and at the time ~~or times~~ specified in Part ~~CB~~ of
Schedule 2.
- 11.2 Before ~~any Dedication Land~~the Proposed Easement is ~~dedicated to the~~
Council~~registered~~, the ~~{Developer/~~Landowner~~* [Delete whichever is inapplicable]~~ is to do all things reasonably
necessary to enable the Council to enter upon the ~~Dedication Land~~ for the
purposes of inspecting ~~that landsite of the Proposed Easement~~.
- 11.3 After the ~~Dedication Land~~Proposed Easement is ~~dedicated to the~~
Council~~registered~~, the ~~{Developer/~~Landowner~~* [Delete whichever is inapplicable]~~ is to do all things reasonably
necessary to enable the Council to gain access to the ~~Dedication Landsite of~~
the Proposed Easement, including by passing through any adjoining or
adjacent land owned, occupied or otherwise controlled by
~~{Developer/~~Landowner~~* [Delete whichever is inapplicable]~~ for the purpose of inspecting the site of the Proposed
Easement, acting reasonably.
- 11.4 The ~~{Developer's/~~Landowner's~~* [Delete whichever is inapplicable]~~ obligations under clause 11.2 and 11.3 are
subject to the Council giving the ~~{Developer/~~Landowner~~* [Delete whichever is inapplicable]~~ reasonable prior
notice of its intention to enter upon or gain access to the ~~Dedication Landsite~~
of the Proposed Easement.

12 ~~Procedure for Dedication Registration of Dedication~~ Land Proposed Easement

- 12.1 ~~Dedication Land~~The Proposed Easement is ~~dedicated~~registered for the
purposes of this Deed when:
- 12.1.1 a deposited plan is registered in the register of plans held with the
Registrar-General that ~~creates the Proposed Easement~~dedicates the
~~Dedication Land as a public road (including a temporary public road)~~
under the Roads Act 1993 or creates a public reserve or drainage
~~reserve under the Local Government Act 1993~~, or
- 12.1.2 the Council is given:
- (a) an ~~instrument transfer granting easement~~ in registrable form
under the *Real Property Act 1900* duly executed by the
~~{Developer/~~Landowner~~* [Delete whichever is inapplicable]~~ as
the registered proprietor of the servient tenement and
transferor that is effective to transfer the title to the Dedication
Land~~register the Proposed Easement to the Council~~ when
executed by the Council as transferee and registered,

- (b) the written consent to the registration of the transfer granting easement of any person whose consent is required to that registration, and
- (c) ~~a written undertaking from any person holding the certificate of title to evidence of~~ the production of the certificate of title for the purposes of registration of the transfer granting easement.

12.2 The ~~[Developer/Landowner]*~~ is to do all things reasonably necessary to enable registration of the instrument of transfer to occur, including attending to any of the steps required by clause 12.1.2 in electronic form, if required.

~~12.2~~

12.3 ~~The [Developer/Landowner]* is to ensure that the Dedication Land is dedicated to the Council free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.~~

12.4 ~~If, having used all reasonable endeavours, the [Developer/Landowner]* cannot ensure that the Dedication Land is dedicated to the Council free from all encumbrances and affectations, the [Developer/Landowner]* may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.~~

12.5 ~~Despite any other provision of this Deed, if the [Developer/Landowner]* is required to dedicate land to the Council on the Developer is required to carry out a Work under this Deed, the [Developer/Landowner]* is to comply with clause 12.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.~~

13 Acquisition of land required to be dedicated

13.1 If the ~~[Developer/Landowner]* [Delete whichever is inapplicable]~~ does not ~~dedicate the Dedication Land~~ register the Proposed Easement at the time at which it is required to be ~~dedicated~~ registered, the ~~[Developer/Landowner]*~~ consents to the Council compulsorily acquiring ~~that land~~ the Proposed Easement for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.

13.2 The Council is to only acquire the ~~Dedication Land~~ Proposed Easement pursuant to clause 13.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the ~~[Developer/Landowner]*~~ to ~~dedicate that land~~ register the Proposed Easement.

13.3 The ~~[Developer/Landowner]*~~ agrees that:

13.3.1 clause 13.1 is an agreement between the Council and the ~~[Developer/Landowner]*~~ for the purposes of section 30 of the Just Terms Act; and

13.3.2 in clause 13.1, the ~~[Developer/Landowner]*~~ has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

- 13.4 If, as a result of the acquisition referred to in clause 13.1, the Council is required to pay compensation to any person other than the [Developer/Landowner]*, the [Developer/Landowner]* is to reimburse the Council that amount, upon a written request being made by the Council, ~~or the Council can call on any Security provided under this Deed.~~
- 13.5 The [Developer/Landowner]* 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.
- 13.6 The [Developer/Landowner]* 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:
- 13.6.1 signing any documents or forms,
- 13.6.2 giving land owner's consent for lodgement of any Development Application,
- 13.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
- paying the Council's costs arising under this clause 13. *[Corrs Note: There is no in principle objection to this clause. However, it is unclear why the Developer would need to do any of the above steps to give effect to a compulsory acquisition of land where this VPA constitutes a section 30 agreement. We suggest deleting on this basis.]*

Part 4 – ~~Provisions relating to carrying out of Work~~ Not used

14 ~~Carrying out of Work~~ Not used

- 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 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;~~

~~(d) — any reasonable requirements and directions notified in writing by the Council to the Developer.~~

~~14.3 — The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council 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~~Not used

~~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.~~

~~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~~Not used

~~16.1 — 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~~Not used

~~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~~Not used

~~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~~Not used

~~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~~Not used

~~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 satisfaction of the Council.~~

21 ~~Completion of Work~~Not used

~~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 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 ~~Not used~~

~~22.1 — The Council may 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 ~~Not used~~

~~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 ~~Not used~~

~~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~~ Not used

- ~~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.~~
- ~~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.~~
- ~~The Parties are to share equally the costs of the President, the expert, and the expert determination. [Corrs Note: Expert determination is not a suitable form of dispute resolution given the contributions to be delivered under this VPA.]~~

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.

Part 6 - Enforcement

[Corrs Note: The Developer considers that registration on title, the requirement to pay the monetary contributions and register the easement prior to OC, and the ability to acquire the Proposed Easement for \$1 is sufficient security and facilitates suitable means of enforcement by Council given the contributions required to be delivered under this VPA. Accordingly, the provisions below related to monetary security, a charge and caveat have been deleted.]

27 ~~Security for performance of obligations~~ Not used

- 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 *[insert 'and Landowner' here if applicable]* 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 *[insert 'or Landowner' here if applicable]* 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 *[insert 'or Landowner' here if applicable]* 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 ~~Not used~~

~~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 part of the Land in respect of which the Developer is the registered proprietor, 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 part of the Land referred to in clause 28.1.~~

~~28.3 — If the part of 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.~~

~~28.5 — In respect of any part of the Land that is not owned by the Developer on the date of execution of this Deed, on and from the date the Developer becomes registered proprietor of any part of that Land, clauses 28.1-28.4 apply to that part subject to:~~

~~28.5.1 – the words in clause 28.1 ‘On the date of execution of this Deed’ are replaced with ‘On the date the Developer becomes registered proprietor’;~~

~~the words in clause 28.2 ‘Upon the execution of this Deed’ are replaced with ‘Upon the Developer becoming the registered proprietor’.~~

29 Caveat and Discharge ~~Not used~~

~~29.1 – The Developer agrees that:~~

~~29.1.1 – the Council may lodge a caveat on the title of the Land to which the Charge applies;~~

~~29.1.2 – the Council is to release the caveat from any part of the land to which the Charge applies that is not the subject of the Charge once that part of the land is contained in a separate lot to the Land the subject of the Charge, and~~

~~29.1.3 – 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 – In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.~~

~~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 a Final Lot on or immediately prior to the date for settlement of the sale of that lot.~~

~~29.4 – Nothing in this Deed prevents the registration of a Plan of Subdivision in respect of the Land nor the creation of a Final Lot from the Land.~~

30 Priority ~~Not used~~

~~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~~ Not used

- 31.1 — If the Council reasonably considers that the Developer [~~Insert 'or Landowner' here if applicable~~] is in breach of any obligation under this Deed, it may give a written notice to the Developer [~~Insert 'or Landowner, as the case may be' here if applicable~~]:
 - 31.1.1 — specifying the nature and extent of the breach,
 - 31.1.2 — requiring the Developer [~~Insert 'or Landowner, as the case may be' here if applicable~~] 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 [~~Insert 'or Landowner, as the case may be' here if applicable~~] fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Developer [~~Insert 'or Landowner, as the case may be' here if applicable~~], call up the Security provided under this Deed and apply it to remedy the breach.
- 31.3 — If the Developer [~~Insert 'or Landowner, as the case may be' here if applicable~~] 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 [~~Developer/Landowner~~]* [~~Delete whichever is inapplicable~~] and any Equipment on such land for that purpose.

~~31.4 Any costs 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 [Insert 'or Landowner, as the case may be' here if applicable], 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 On 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 or on behalf of the [Developer/Landowner]*
[Delete whichever is inapplicable] and any other person required by the Registrar-General to execute such instrument, and

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- 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 NSW Land Registry Services](#) 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 ~~[Insert 'and Landowner' if applicable]~~ has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

34 Restriction on dealings

- 34.1 The Developer ~~[Insert 'and Landowner' here if applicable]~~ is not to:
- 34.1.1 sell or transfer the Land, other than a Final Lot, or
- 34.1.2 assign the Developer's ~~[Insert 'and Landowner's' here if applicable]~~ rights or obligations under this Deed, or novate this Deed, to any person unless:
- 34.1.3 the Developer ~~[Insert 'and Landowner' here if applicable]~~ 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 ~~[Insert 'and Landowner's' here if applicable]~~ rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council substantially in the form of the Novation Deed, and **[Corrs Note: As Council is aware, the Developer (an Owners Corporation) proposes to dissolve the strata scheme and sell the land following the LEP amendment. It is appropriate to agree the terms of a novation deed as part of the VPA negotiations to avoid the parties' having to re-enter negotiations at the time of sale.]**
- 34.1.4 the Council has given written notice to the Developer ~~[Insert 'and Landowner' here if applicable]~~ stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 34.1.5 the Developer ~~[Insert 'and Landowner' here if applicable]~~ is not in breach of this Deed, and
- 34.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

34.2 Subject to clause 1.1, the Developer ~~[Insert 'and Landowner' here if applicable]~~ 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 31.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.~~

Part 8 – Indemnities & Insurance

35 Risk

35.1 The Developer ~~[Insert 'and Landowner' here if applicable]~~ performs this Deed at its own risk and its own cost.

36 ~~Release~~Not used

~~36.1 The Developer [Insert 'and Landowner' here if applicable] releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's [Insert 'and Landowner's' here if applicable] obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default. **[Corrs Note: Releases and indemnities are not appropriate for this VPA, which does not relate to the carrying out of any works.]**~~

37 ~~Indemnity~~Not used

~~37.1 The Developer [Insert 'and Landowner' here if applicable] 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 [Insert 'and Landowner's' here if applicable] obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.~~

38 ~~Insurance~~Not used

~~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~~Not used

~~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.~~

~~The report referred is to be in such a form and to address such matters as required by the Council from time to time. **[Corrs Note: Annual reporting is not necessary given the limited contributions required to be delivered under this VPA.]**~~

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 ~~40.1~~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 the lapsing of ~~the a~~ Development Consent to the Development pursuant to ~~section s~~4.53 of the Act,

41.2.3 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 ~~40.1~~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~~40.1~~ (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, 27 business days after it is posted, or **[Corrs Note: Amendment made to reflect the current postal service rule in s76 of the Interpretation Act 1987.]**
 - 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 charge, caveats or other documents related to this Deed within 7 days of a written demand by the Council for such payment. If required, Council can provide an estimate of its legal costs and provide updates of the associated costs as the matter progresses.

- 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 [\[Insert 'and Landowner' if applicable\]](#) 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 25C 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 The Parties agree, in accordance with Class Ruling CR2013/13, that Development Contributions required to be made under this Deed are exempt from GST.](#)

[55.255.3](#) Subject to clause 55.5, 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.

[55.355.4](#) 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.

[55.455.5](#) 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.

[55.555.6](#) 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

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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~~55.6.1 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~~55.6.2 that any amounts payable by the Parties in accordance with clause 55.2 (as limited by clause 55.5) 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~~55.7 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~~55.8 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~~55.9 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 25E of the Regulation.
 - 56.2 Pursuant to clause 25E(7) 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 identified as such on the Map
Item 2	Planning Proposal	<p>{Describe by reference to proposed LEP amendments; otherwise insert 'N/A'} <u>Planning Proposal No 2020/12 to amend the following controls applicable to the Land under the LEP:</u></p> <ol style="list-style-type: none"> <u>1. change the zoning of the Land from R2 Low Density Residential to B4 Mixed Use;</u> <u>2. increase the maximum building height from 12 metres to 90 metres; and</u> <u>3.3. increase the maximum floor space ratio from 0.9:1 to 6:1.</u>
Item 3	Development	The development on the Land the subject of {Insert details of relevant Development Application; otherwise describe the proposed development} <u>following the amendments to the LEP in accordance with the Planning Proposal.</u>
Item 4	Application of S7.11	<p>{Insert 'Section 7.11 of the Act is excluded'} or Section 7.11 of the Act is not excluded' or If the Deed only partially excludes the application of s7.11 the particulars of the exclusion must be provided}</p>
Item 5	Application of S7.12	<p>{Insert 'Section 7.12 of the Act is excluded'} or Section 7.12 of the Act is not excluded' or If the Deed only partially excludes the application of s7.12 the particulars of the exclusion must be provided}</p>
Item 6	Application of S7.24	<p>Section 7.24 of the Act is not excluded {or insert 'Section 7.24 of the Act is excluded', but only if the Minister or a development corporation designated by the Minister has given approval under s7.4(5A) to such an exclusion.}</p>

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Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11	<p>[If s7.11 is excluded, then insert 'N/A']</p> <p>Or</p> <p>[If s7.11 is not excluded, then insert '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']</p> <p>Or</p> <p>[If s7.11 is not excluded and this Deed is related to Works In Kind / Land Dedication to be offset from s7.11, then insert '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']</p> <p>See clause 8</p>
Item 8	Indexation of Contribution Values <u>Not used</u>	[Specify index; otherwise insert 'N/A'] N/A
Item 9	Indexation of Monetary Development Contributions	[Specify index; otherwise insert 'N/A'] Indexed in accordance with any adjustments in CPI between the date of this Deed and the date of payment of the monetary Development Contributions.
Item 10	Access to Council owned or controlled land <u>Not used</u>	[Insert title details of Council owned or controlled land which the Developer may enter, occupy and use for the purpose of performing its obligations under this Deed.] N/A
Item 11	Defects Liability Period <u>Not used</u>	The period of [Insert number] [insert 'year' or 'months'] commencing on the day immediately after the Work is taken to be completed for the purposes of this Deed. N/A
Item 12	Security <u>Not used</u>	[\$ [Insert amount being not less than 10% of the value of development contributions to be provided under this Deed; otherwise insert 'N/A'] N/A
Item 13	Obligations to which Security Relates <u>Not used</u>	[Specify or describe obligations; otherwise insert 'N/A'] N/A
Item 14	Timing of Security <u>Not used</u>	[Insert timing; otherwise insert 'N/A'] N/A

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Item 15	Indexation of Security <u>Not used</u>	{Specify index, otherwise insert 'N/A'} N/A
Item 16	Costs	See Clause 44
Item 17	Review of Deed	Every {Insert number} 5 years

draft

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 Include this column only if Council will provide any offset or credit arrangement under this Deed.

A. Monetary Development Contributions

1. \$(insert amount) 12,464.74 2 <u>[Corrs Note: This has been calculated based on 16,293.78sqm of GFA uplift that will be achieved under the Planning Proposal at the agreed rate of \$765/sqm as set out in Council's Draft Planning Agreement Policy (2020), and rounded up to the nearest whole number.]</u>	[Specify] <u>[Corrs Note: Council to advise the public purpose for which it intends to use the monetary contributions.]</u> [[Specify amount and whether payable as a lump sum or payable in instalments or otherwise] <u>Lump sum payment</u>	\$(insert amount) [Insert timing. For example: Prior to the issuing of the <u>first Subdivision Occupation Certificate that creates the first Final Lot</u> infor the Development.]	\$(insert amount)
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B. Carrying out of Work

1. [Insert description]	[Specify]	[Specify details and specifications of Work and identify location of Work on the Map]	[Insert timing. For example: Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in the Development.]	\$(Insert amount, to be determined in accordance with the Council's Planning Agreement Policy.)
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C.B. Dedication of Land

1. [Insert description] <u>Dedication of easement for public access</u>	[Specify] <u>Public infrastructure</u>	[Specify details and identify location of land on the Map] <u>Easement for public access 3 metres wide as shown on the Map</u>	[Insert timing. For example: On or before the registration of the Plan of Subdivision that creates the first Final Lot in Prior to the issuing of the first Occupation Certificate for the Development or at such other time agreed by the Council in writing.]	\$(Insert amount, to be determined in accordance with the Council's Planning Agreement Policy.)
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D. Other material public benefit

1. [Specify]	[Specify]	[Specify]	[Specify]	\$(Insert amount)
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Schedule 3

(Clause 1.1)

Map

~~[Include a map showing the land to which this Deed applies, location of Work and land to be dedicated under this Deed] [Corrs Note: A map is to be provided in due course.]~~

draft

Schedule 4

(Clause 1.1)

Novation Deed

draft

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

Chief Executive Officer (CEO)

Witness

Position:

(Name:)

The seal of **The Owners – Strata Plan No. 65120** was affixed on..... in the presence of the following person(s) authorised by section 273 of the *Strata Schemes Management Act 2015* to attest the affixing of the seal:

Signature

(Name:)

Authority:

Signature

(Name:)

Authority:

Appendix

(Clause 53)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

[Corrs Note: This note is to be completed once the terms of the VPA have been finalised.]

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**)

[Insert name of Developer] ABN **[Insert ABN if a corporation]** of **[Insert Details]** (**Developer**)

[Insert Name of Landowner] ABN **[Insert ABN if a corporation]** of **[Insert Details]** (**Landowner**) **[Insert if applicable]**

Description of the Land to which the Draft Planning Agreement Applies

[Insert]

Description of Proposed Development

[Insert]

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

Objectives of Draft Planning Agreement

[Specify]

Nature of Draft Planning Agreement

[Specify]

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Landowner,
- [does not/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,
- [Specify additional effects]

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,
- [Specify additional purposes]

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[specify relevant subsections] 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,
- [Specify additional ways in which the principles are promoted]

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

[Answer ‘Yes’ or ‘No’]

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

[Specify]