

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

Schedule 4

Public Access Easement Terms

88B Instrument

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88A and 88E Conveyancing Act 1919.

(Sheet [X] of [Y] Sheets)

Plan:

[Insert new deposited plan name]

Full name and address of the
owner of the land

Lot [#] in Deposited Plan [##]

[Insert the name of the landowner]

[Insert address of the landowner]

Part 1 (Creation)

Number of item shown in the intention panel on the Plan	Identity of the easement, profit à prendre, restriction or positive covenant to be created and referred to in the Plan	Burdened Lot(s) or parcel(s)	Benefited Lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Public Access 3 metres in width limited in height and depth [Drafting Note: The height will extend to the bottom of any overhang constructed over the easement site that is approved by development consent. Similarly, if there is a basement level beneath the easement site, the depth will be to the top of the concrete slab forming the ceiling of any basement level approved by the development consent. The actual height and depth will be inserted here at the time the easement is registered.]	[##]	Willoughby City Council
2	Restriction on use	[##]	Willoughby City Council

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Part 2 (Terms)

1 DICTIONARY

1.1 Interpretation

In this instrument:

- (a) **Act** means the *Conveyancing Act* 1919 as amended from time to time.
- (b) **Approval** includes approval, consent, licence, permission or the like and includes, without limitation, a development consent and a certificate under Part 6 of the *Environmental Planning and Assessment Act* 1979.
- (c) **Authorised Users** means every person authorised by the Council and members of the public.
- (d) **Costs** includes any cost, charge, expense, outgoing, payment, fee and other expenditure of any nature, payable or paid.
- (e) **Council** means the Willoughby City Council being a local government authority constituted under the *Local Government Act* 1993, its successors and any other body serving the same or similar function.
- (f) **Easement Site** means in relation to an easement, positive covenant and restrictive covenant in this Instrument the site of an easement, positive covenant and restriction on use identified on the Plan.
- (g) **Emergency Situation** means any circumstance involving a need, for reasons of safety or security, for evacuation or egress from a building or other place or restriction of access, including fire, earthquake, flooding, explosion, gas, terrorist activity, safety incident and any training or test of such evacuation or egress.
- (h) **Grantor** means the owner of the Lot Burdened.
- (i) **Lot Burdened** means a lot burdened by an easement, positive covenant or restriction in this instrument.
- (j) **Plan** means the plan of easement to which this instrument relates.

1.1 Risk

Council and each Authorised User entering upon a relevant Lot Burdened pursuant to this instrument does so at its own risk.

1.2 Successors bound

- (a) Any easement, positive covenant and restrictive covenant in this instrument is a covenant and agreement between:
 - (i) the Council for itself and its successors; and
 - (ii) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

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to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easement, positive covenant and restrictive covenant.

1.3 Statutory discretion

Nothing in this instrument in any way restricts or otherwise fetters the statutory discretion of Willoughby City Council or the use of its statutory powers under the *Local Government Act 1993* or otherwise at law.

1.4 Notice to Grantor and Occupiers

- (a) If a notice to a Grantor is required to be given under this instrument, that notice must also be given to any occupier of the relevant Lot Burdened if Council has been given notice of identity and address for notices of that occupier.
- (b) Notice required in the case of an emergency may be given verbally.

1.5 Severability

If a provision of an easement, positive covenant and restrictive covenant under this instrument is void, unenforceable or illegal, then that provision is severed from that easement, positive covenant and restrictive covenant and the remaining provisions of that easement, positive covenant and restrictive covenant have full force and effect.

2 Terms of easement for public access 3m in width numbered 2 in the plan

2.1 Easement

- (a) The Council and Authorised Users may, in common with the Grantor, have full and free right to pass and repass at all times over and across the Easement Site for pedestrian access purposes including but not limited to access to and from any public road and beyond:
 - (i) on foot; and/or
 - (ii) with wheelchairs or other disability access aids; and
 - (iii) with or without animals; and
 - (iv) with bicycles (being walked or ridden); and
 - (v) without vehicles.
- (b) In exercising the rights granted by this easement, the Council and Authorised Users must:
 - (i) cause as little inconvenience as practicable to the Grantor, and any occupier of the Lot Burdened; and
 - (ii) cause as little damage as is practicable to the Lot Burdened and any improvements on it.
- (c) Except as otherwise agreed in writing with the Council:
 - (i) the Grantor is to keep and maintain the Easement Site and any structure within the area in a good and tidy condition and in a proper state of repair to the satisfaction of the Council,
 - (ii) the Grantor is to, at its Cost, maintain, replace, renew or carry out any other work within the Easement Site, to enable it to be properly and safely used for public access,

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- (iii) prior to carrying out any work within the Easement Site which may render any part of the Easement Site unavailable for at least 48 hours (not being work that may materially impact on the usability of any part of the Easement Site on a permanent basis), the Grantor is to, at its Cost, obtain written approval (such approval not to be withheld unreasonably) from the Council, and all Approvals necessary, for such work and the Council will use all reasonable endeavours to respond within 30 days of a written request for approval,
 - (iv) prior to carrying out any work within the Easement Site which may materially impact on the usability of any part of the Easement Site on a permanent basis, the Grantor is to, at its Cost, obtain written approval from the Council, such approval which may be given or withheld at the Council's sole discretion within 30 days of a written request for approval, and
 - (v) the Council is not required to maintain, replace, renew or carry out any other work within the Easement Site.
- (d) If the Grantor fails to comply with any of its obligations under this easement, then
 - (i) the Council may notify the Grantor of that failure; and
 - (ii) should the Grantor not rectify that failure to comply with its obligations under this Easement within 14 days of receiving that notice (or dispute the notice within that time), then the Council or any person authorised by the Council may enter the Easement Site with or without machinery, tools and equipment to repair, replace or otherwise remedy any breach by the Grantor and the Grantor is to pay the Council's Costs of doing so within 14 days of a written request for payment of such Costs.
- (e) Any Costs incurred by the Council in remedying a breach by the Grantor that is not paid within the time required for payment may be recovered by the Council as a debt due in a court of competent jurisdiction.
- (f) The Grantor may temporarily restrict access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Council and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible. The Council or the Grantor may erect temporary signage or barriers on the Easement Site to temporarily restrict access to the Easement Site by members of the public under this easement if either of them reasonably forms the view that such access is unsafe.
- (g) The Grantor releases the Council from all claims associated with:
 - (i) the death of or any injury to any person; or
 - (ii) the damage to or destruction of the property of any person,in connection with the exercise by the Council or any of its Authorised Users of the rights under this instrument, except to the extent that any such death, injury, damage or destruction are caused by the negligence or default of the Council.
- (h) The Grantor 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 Grantor's obligations under this instrument except to the extent that any such claim is caused by the negligence or default of the Council.
- (i) The rights and obligations implied under Schedule 8 of the Act do not apply to this easement.

2.2 Varying the easement etc.

Name of the person empowered to release vary or modify this easement:

The Grantor and the Council jointly.

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3 Terms of restriction on use numbered 2 in the plan

3.1 Restriction on use

The Easement Site may not be used, or in the future developed for any use, other than for pedestrian access by the public.

3.2 Release etc.

Name of the person empowered to release vary or modify this restriction on use:
Council.

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Schedule 5

Egress Easement Terms

88B Instrument

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(Sheet *[X]* of *[Y]* Sheets)

Plan:

[Insert new deposited plan name]

Full name and address of the
owner of the land

Lot *[#]* in Deposited Plan *[##]*

[Insert the name of the landowner]

[Insert address of the landowner]

Part 1 (Creation)

Number of item shown in the intention panel on the Plan	Identity of the easement, profit a prendre, restriction or positive covenant to be created and referred to in the Plan	Burdened Lot(s) or parcel(s)	Benefited Lot(s), road(s), bodies or Prescribed Authorities
1	Easement for egress 4.5 metres in width	<i>[##]</i>	Willoughby City Council
2	Restriction on use	<i>[##]</i>	Willoughby City Council

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Part 2 (Terms)

1 DICTIONARY

1.1 Interpretation

In this instrument:

- (a) **Act** means the *Conveyancing Act* 1919 as amended from time to time.
- (b) **Approval** includes approval, consent, licence, permission or the like and includes, without limitation, a development consent and a certificate under Part 6 of the *Environmental Planning and Assessment Act* 1979.
- (c) **Authorised Users** means a person that has been authorised by the Grantee to use the Easement Site, or a person that satisfies one or more of the following criteria:
 - (i) the person is the registered proprietor or occupier (or visitor thereto) of a Strata Lot within a Neighbouring Strata Scheme.
- (d) **Costs** includes any cost, charge, expense, outgoing, payment, fee and other expenditure of any nature, payable or paid.
- (e) **Council** means the Willoughby City Council being a local government authority constituted under the *Local Government Act* 1993, its successors and any other body serving the same or similar function.
- (f) **Easement** means the egress easement numbered 1 in the plan and granted over the Lot Burdened on the terms contained in this instrument.
- (g) **Easement Site** means in relation to the Easement, positive covenant and restrictive covenant in this Instrument the site of the Easement, positive covenant and restriction on use identified on the Plan.
- (h) **Emergency Situation** means any circumstance involving a need, for reasons of safety or security, for evacuation or egress from a building or other place or restriction of access, including fire, earthquake, flooding, explosion, gas, terrorist activity, safety incident and any training or test of such evacuation or egress.
- (i) **Grantee** means in relation to the easement numbered one in the plan, Willoughby City Council.
- (j) **Grantor** means the owner of the Lot Burdened.
- (k) **Lot Burdened** means a lot burdened by an easement, positive covenant or restriction in this instrument.
- (l) **Neighbouring Lot** means a lot that is north of the Easement Site and east of the Pacific Highway and located on land between 689-699 Pacific Highway, Chatswood .
- (m) **Neighbouring Strata Lot** means a Strata Lot in a Neighbouring Strata Scheme.
- (n) **Neighbouring Strata Scheme** means a strata scheme that is on a Neighbouring Lot.
- (o) **Owners Corporation** has the meaning given to this term in the *Strata Schemes Management Act* 2015 (NSW).
- (p) **Plan** means the plan of easement to which this instrument relates.
- (q) **Responsible Entity** means:
 - (i) in respect of a Neighbouring Lot, the registered proprietor; and
 - (ii) in respect of a Neighbouring Strata Scheme, the Owners Corporation of the Neighbouring Strata Scheme,

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who has entered into an agreement or arrangement with the Council (whether or not this agreement or arrangement is also with the Grantor) relating to the construction of the Trafficable Surface and ongoing maintenance, repair or replacement of any surface or structure on the Easement Site.

- (r) **Strata Lot** means a lot as defined in the *Strata Schemes Management Act 2015* (NSW).
- (s) **Strata Scheme** has the same meaning given to this term in the *Strata Schemes Management Act 2015* (NSW).
- (t) **Trafficable Surface** means a surface suitable for the use of Vehicles to egress to the Pacific Highway.
- (u) **Vehicle(s)** means any bicycle, motor bicycle, light vehicle or heavy vehicle but expressly excludes any vehicle:
 - (i) Used for major construction work in relation to a Neighbouring Lot or a Neighbouring Strata Scheme.

1.2 Successors bound

- (a) Any easement, positive covenant and restrictive covenant in this instrument is a covenant and agreement between:
 - (i) the Council for itself and its successors; and
 - (ii) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easement, positive covenant and restrictive covenant.

1.3 Statutory discretion

Nothing in this instrument in any way restricts or otherwise fetters the statutory discretion of Willoughby City Council or the use of its statutory powers under the *Local Government Act 1993* or otherwise at law.

1.4 Notice to Grantor and Occupiers

- (a) If a notice to a Grantor is required to be given under this instrument, that notice must also be given to any occupier of the relevant Lot Burdened if Council has been given notice of identity and address for notices of that occupier.
- (b) Notice required in the case of an emergency may be given verbally.

1.5 Severability

If a provision of an easement, positive covenant and restrictive covenant under this instrument is void, unenforceable or illegal, then that provision is severed from that easement, positive covenant and restrictive covenant and the remaining provisions of that easement, positive covenant and restrictive covenant have full force and effect.

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2 Terms of easement for egress 4.5m in width numbered 1 in the plan

2.1 Grant of Easement

- (a) Subject to clause 2.2, the Grantor grants to the Grantee and every Authorised User the right to go, pass and repass at all times across the Easement Site for the purposes of egress from the relevant Neighbouring Lot or Neighbouring Strata Lot to the Pacific Highway:
 - (i) on foot; and/or
 - (ii) with wheelchairs or other disability access aids; and
 - (iii) with or without animals; and
 - (iv) with bicycles (being walked or ridden); and
 - (v) with Vehicles.
- (b) Until the rights under clause 2.1(a) commence, the Grantor grants to the Grantee and any Responsible Entity nominated by the Council and their contractors, the right to enter the Easement Site with or without vehicles, plant and equipment for the purposes of constructing the Trafficable Surface on the Easement Site in accordance with any applicable Approvals.

2.2 Commencement of Easement

- (a) The rights under clause 2.1(a) do not commence until the Trafficable Surface has been constructed on the Easement Site in accordance with any required Approvals.
- (b) The Grantor must provide landowners consent to enable a development application to be lodged for the Trafficable Surface over the Easement Site where the proposed works and use is consistent with the Easement.

2.3 Easement

- (a) In exercising the rights under this Easement, the Council and Authorised Users:
 - (i) must cause as little inconvenience as practicable to the Grantor, and any occupier of the Lot Burdened;
 - (ii) must cause as little damage as is practicable to the Lot Burdened and any improvements on it;
 - (iii) when travelling in a Vehicle, must not exceed 5km/h in the Easement Site;
 - (iv) must not park or stand any Vehicle in the Easement Site; and
 - (v) must comply with all other reasonable requirements of the Grantor in relation to the direction of traffic, safety, and use of the Easement Site.
- (b) Prior to carrying out any work within the Easement Site at any time after the date of commencement of construction of the Trafficable Surface, which may render any part of the Easement Site unavailable for at least 48 hours (not being work that may materially impact on the usability of any part of the Easement Site on a permanent basis), the Grantor is to, at its Cost, obtain written approval (such approval not to be withheld unreasonably) from the Council, and all Approvals necessary, for such work and the Council will use all reasonable endeavours to respond within 30 days of a written request for approval.
- (c) Prior to carrying out any work within the Easement Site which may materially impact on the usability of any part of the Easement Site on a permanent basis as contemplated in this instrument, the Grantor is to, at its Cost, obtain written approval from the Council, such approval which may be given or withheld at the Council's sole discretion within 30 days of a written request for approval.
- (d) If at any time after the date of commencement of construction of the Trafficable Surface, the Grantor intends to temporarily restrict access to the Easement Site, it can do so in an Emergency Situation provided that it gives as much notice as is practicable to the Council

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and any registered proprietor of a Neighbouring Lot and Owners Corporation of a Neighbouring Strata Scheme and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible. The Council or the Grantor may erect temporary signage or barriers on the Easement Site to temporarily restrict access to the Easement Site by members of the public under this easement if either of them reasonably forms the view that such access is unsafe.

- (e) The rights and obligations implied under Schedule 8 of the Act do not apply to this easement.
- (f) Nothing in this instrument requires the Council to construct, maintain, repair, renew or replace any surface or structure on the Easement Site or to incur any Costs in that regard.
- (g) Following the construction of the Trafficable Surface pursuant to clause 2.1(b), the Grantor authorises any Responsible Entity nominated by Council in writing to the Grantor and their contractors, to enter the Easement Site to carry out works to maintain, repair, renew or replace any surface or structure on the Easement Site consistent with the purposes of the Easement at the Responsible Entity's own Cost.
- (h) Until such time as the commencement of construction of the Trafficable Surface on the Easement Site the Grantor is to maintain the Easement Site and once commencement of construction of the Trafficable Surface occurs, the Grantor is not responsible to maintain, repair, renew or replace any surface or structure on the Easement Site or incur any Costs in that regard.
- (i) Notwithstanding the rights granted to an Authorised User or nominated Responsible Entity under this easement, upon request of the Council the Grantor is to negotiate in good faith with a Responsible Entity nominated by the Council the terms of an agreement or arrangement (such as an easement and covenant) whereby the Responsible Entity takes responsibility to construct, maintain, repair, renew or replace the Trafficable Surface within the Easement Site. Nothing in this clause, modifies the other restrictions and purpose of the Easement or requires the Grantor to construct, repair, renew or improve the Trafficable Surface..
- (j) The Grantor releases the Council from all claims associated with:
 - (i) the death of or any injury to any person; or
 - (ii) the damage to or destruction of the property of any person,in connection with the exercise by the Council or any of its Authorised Users or nominated Responsible Entities or their contractors of the rights under this easement, except to the extent that any such death, injury, damage or destruction are caused by the negligence or default of the Council .
- (k) The Grantor 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 Grantor's obligations under this easement except to the extent that any claim is caused by the negligence or default of the Council.
- (l) No person may oblige the Grantor to construct or improve the Trafficable Surface over the Easement Site or make it capable of handling additional traffic loads or volumes.
- (m) No person may access the Easement Site for, or in relation to, major construction work on a Neighbouring Lot or Neighbouring Strata Scheme except for the construction of the Trafficable Surface. For the avoidance of doubt, no person shall access the Easement Site with a vehicle other than a Vehicle.

2.4 Varying terms of the easement etc.

Name of the person empowered to release vary or modify this easement:

Grantor and Council jointly.

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3 Terms of restriction on use numbered 2 in the plan

3.1 Restriction on use

- (a) Until the commencement of construction of a Trafficable Surface on the Easement Site, the Easement Site may not be used other than for landscaping.
- (b) On and from the commencement of construction of a Trafficable Surface on the Easement Site, the Easement Site may not be used, or developed for any use, other than for egress access to the Pacific Highway.

3.2 Release, etc.

Name of the person empowered to release vary or modify this restriction on use:
Council.

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Schedule 6

(clause 34)

Novation Deed

(see following pages)

DRAFT

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Deed of Novation

**641-655 and 655A Pacific Highway, Chatswood
Planning Agreement**

Willoughby City Council

and

[Insert name of Existing Party]

and

[Insert name of Incoming Party]

and

[Insert name of Continuing Party]

Dated: **[Insert Date]**

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Deed of Novation
641-655 and 655A Pacific Highway, Chatswood
Planning Agreement

Summary Sheet

Council:

Name: Willoughby City Council
Address: Level 4, 31 Victor Street, Chatswood, New South Wales 2067
Telephone: (02) 9777 1000
Email: email@willoughby.nsw.gov.au
Representative: Chief Executive Officer (CEO)

Existing Party:

Name: [Drafting Note: Insert name]
Address: [Drafting Note: Insert address]
Telephone: [Drafting Note: Insert contact number]
Email: [Drafting Note: Insert contact email]
Representative: [Drafting Note: Insert name]

Incoming Party:

Name: [Drafting Note: Insert name]
Address: [Drafting Note: Insert address]
Telephone: [Drafting Note: Insert contact number]
Email: [Drafting Note: Insert contact email]
Representative: [Drafting Note: Insert name]

Continuing Party:

Name: [Drafting Note: Insert name]
Address: [Drafting Note: Insert address]
Telephone: [Drafting Note: Insert contact number]

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Email: [Drafting Note: Insert contact email]

Representative: [Drafting Note: Insert name]

DRAFT

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Deed of Novation

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Parties

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

Existing Party [Insert details]

Incoming Party [Insert details]

Continuing Party [Insert details of any continuing party]

Background

- A The Existing Party, Continuing Party and the Council are parties to the Planning Agreement.
- B The Existing Party owns the Land which is part of the land to which the Planning Agreement relates.
- C The Existing Party wishes to transfer the Land to the Incoming Party.

[If, as a result of the transfer, the Existing Party will no longer own any of the land to which the Planning Agreement relates:]

- D The Existing Party wishes to novate the Planning Agreement and all of its respective rights and obligations in the Planning Agreement to the Incoming Party.
- E The Council consents to the transfer of the Land to the Incoming Party and agrees to the novation of the Planning Agreement to the Incoming Party on the terms set out in this Deed.

[If, as a result of the transfer, the Existing Party will still own part of the land to which the Planning Agreement relates:]

- F The Incoming Party has agreed to accept and assume the rights and obligations in the Planning Agreement as a Landowner under the Planning Agreement.
- G The Council consents to the transfer of the Land to the Incoming Party and the inclusion of the Incoming Party as a Landowner party to the Planning Agreement.
- H The Council, the Existing Party, the Incoming Party and the Continuing Party agree to enter into this Deed to give effect to the above.

Operative provisions

1 Definitions & Interpretation

Definitions

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

Table

Column 1 Word or phrase	Column 2 Meaning
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Claim	all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
Contract for Sale	means the contract for sale of the Land between the Existing Party and the Incoming Party dated [##].
Deed	means this Deed.
Development	has the same meaning as in the Planning Agreement.
Effective Date	means the date when the Contract for Sale completes.
Land	[Insert title details of land to be transferred]
Party	means a party to this Deed.
Planning Agreement	means the planning agreement pursuant to s7.4 of the Act titled '641-655 and 655A Pacific Highway, Chatswood Planning Agreement' entered into between Council, Existing Party and the Continuing Party on [date].

Interpretation

641-655 and 655A Pacific Highway, Chatswood Planning Agreement
Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

1.2 In this Deed:

- (a) words denoting any gender include all genders,
- (b) headings are for convenience only and do not affect interpretation,
- (c) the singular includes the plural and vice versa,
- (d) any schedule or annexure attached to this Deed forms part of it,
- (e) a reference to a Party includes its legal personal representatives, successors and permitted assigns, servants, contractors and agents.
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity,
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them,
- (h) all references to dates and times are to New South Wales time,
- (i) all references to '\$' and 'dollars' are to the lawful currency of Australia,
- (j) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it,
- (k) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions,
- (l) a reference to this Deed includes any schedules, annexures and appendices to this Deed, and any variation or replacement of this Deed.

2 Commencement

2.1 This Deed commences and has effect on and from the date when the Parties have:

- 2.1.1 all executed the same copy of this Deed, or
- 2.1.2 each executed separate counterparts of this Deed and exchanged, whether by physical or electronic transmission of, the counterparts.

2.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

3 Novation of Planning Agreement

[If, as a result of the transfer, the Existing Party will no longer own any of the land to which the Planning Agreement relates:]

3.1 Subject to this Deed and with effect from the Effective Date:

- 3.1.1 the Incoming Party is substituted for the Existing Party as a Party to the Planning Agreement,
- 3.1.2 the Incoming Party is bound by the Planning Agreement to perform all of the obligations of the Existing Party in the Planning Agreement,
- 3.1.3 the Incoming Party is entitled to the benefit of the Planning Agreement as if the Incoming Party was a Party to the Planning Agreement when it was entered into, and
- 3.1.4 the Existing Party is released and discharged from all obligations and liabilities, and from all Claims, arising under the Planning Agreement, except in relation to any breaches of the Planning Agreement which arose prior to the Effective Date.

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

3.2 With effect from the Effective Date:

- 3.2.1 all references to the Existing Party in the Planning Agreement are construed as references to the Incoming Party, and
- 3.2.2 the Council must address all notices and communications given or made by it under the Planning Agreement to the Incoming Party using the address noted on the Summary Sheet to this Deed for the Incoming Party.

[If, as a result of the transfer, the Existing Party will still own part of the land to which the Planning Agreement relates:]

3.3 Subject to this Deed and with effect from the Effective Date:

- 3.3.1 the Incoming Party taken to be a party to the Planning Agreement,
- 3.3.2 the Incoming Party is bound by the Planning Agreement to perform all of the obligations imposed on the Existing Party in the Planning Agreement,
- 3.3.3 the Incoming Party is entitled to the benefit of the Planning Agreement as if the Incoming Party was a Party to the Planning Agreement when it was entered into.

3.4 With effect from the Effective Date:

- 3.4.1 the definition of 'Landowner' in the Planning Agreement is taken to include the Incoming Party, and
- 3.4.2 the Council must address all notices and communications given or made by it under the Planning Agreement to the Incoming Party using the address noted on the Summary Sheet to this Deed for the Incoming Party.

4 Affirmation of Planning Agreement

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

4.2 Subject to this Deed:

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

5 Council Satisfaction

- 5.1 For the purposes of clause 34.1.3 of the Planning Agreement, the Council confirms that:
- 5.1.1 this Deed is the deed in favour of the Council referred to in that clause,
 - 5.1.2 the Council is satisfied that the Incoming Party is reasonably capable of performing the obligations under the Planning Agreement.

6 Representations & Warranties

- 6.1 Each Party represents and warrants that at the time of execution of this Deed and at the Effective Date:
- 6.1.1 it has capacity unconditionally to execute, deliver and comply with its obligations under this Deed,
 - 6.1.2 it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Deed,
 - 6.1.3 this Deed is a valid and legally binding obligation and is enforceable against it by each other Party in accordance with its terms, and
 - 6.1.4 its unconditional execution and delivery of, and compliance with its obligations under this Deed do not contravene:
 - (a) any law or directive from a government entity,
 - (b) its constituent documents,
 - (c) any agreement or instrument to which it is a Party, or
 - (d) any obligation of it to any other person.
- 6.2 The warranties and representations in clause 6.1 survive the execution of or any termination of this Deed and the novation and assignment of the Planning Agreement.

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

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

8 General

Costs and Stamp Duty

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

GST

- 8.4 Where a supply made under this Deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) is to be increased by an additional amount equal to the GST payable on the supply.
- 8.5 The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this Deed.
- 8.6 Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Further acts

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

Entire Deed

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

Amendment

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

Governing law and jurisdiction

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

Severability

- 8.15 If a provision of this Deed is invalid, illegal, or unenforceable, it must, to the extent that it is invalid, illegal, or unenforceable, be treated as severed from this Deed.

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

- 8.16 Severance of a provision will not affect the validity and enforceability of the remaining provisions.

Electronic Execution

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

Execution

Executed as a Deed.

Dated:

Executed by the Council:

[Insert execution clause]

Executed by the Existing Party:

[Insert execution clause]

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

Executed by the Incoming Party:

[Insert execution clause]

Executed by the Continuing Party:

[Insert execution clause]

[End of Novation Deed]

DRAFT

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council by its authorised delegate pursuant to s377 of Local Government Act 1993

Certified correct for the purposes of the *Real Property Act 1900* by the authorised delegate named below.

I certify that I am an eligible witness and the authorised delegate signed this dealing in my presence.

Signature of CEO

Signature of Witness

Name of CEO

Name of Witness

Address of Witness

* Electronic signature of me, _____
affixed by me, or at my direction, on _____

*Electronic signature of me, _____
affixed by me, or at my direction, on _____

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

Executed on behalf of Goldfields Central No. 4 Pty Ltd ACN 632 246 327

(Landowner 1) in accordance with s127(1) of the Corporations Act (Cth) 2001

Certified correct for the purposes of the *Real Property Act 1900* by the authorised person(s) whose signature(s) appear below.

Signature of [*Director/*Sole Director and Secretary/*
Sole Director]

Signature of [*Director/*Secretary]

Name of [*Director/*Sole Director and Secretary/* Sole
Director]

Name of [*Director/*Secretary]

* Electronic signature of me, _____
affixed by me, or at my direction, on _____

*Electronic signature of me, _____
affixed by me, or at my direction, on _____

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

Executed on behalf of Goldfields Central No. 4 Pty Ltd ACN 632 246 327 (Landowner 2) in accordance with s127(1) of the Corporations Act (Cth) 2001

Certified correct for the purposes of the *Real Property Act 1900* by the authorised person(s) whose signature(s) appear below.

Signature of [*Director/*Sole Director and Secretary/*
Sole Director]

Signature of [*Director/*Secretary]

Name of [*Director/*Sole Director and Secretary/* Sole
Director]

Name of [*Director/*Secretary]

* Electronic signature of me, _____
affixed by me, or at my direction, on _____

*Electronic signature of me, _____
affixed by me, or at my direction, on _____

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners – Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

Explanatory Note

Environmental Planning & Assessment Regulation 2021 (clause 205)

Draft Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (**the Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the payment of monetary contributions towards the delivery of public infrastructure and amenities and the registration of easements, in connection with a Planning Proposal and proposed development of land known as 641-655 and 655A Pacific Highway, Chatswood.

This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021 (the Regulations)*.

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

Parties

Willoughby City Council

Goldfields Central No. 4 Pty Ltd ACN 632 246 327 [Drafting note: This party may change as the Landowner entity for 641-655 Pacific Highway Chatswood as at the date of execution will be the party to this Deed, being either The Owners Strata Plan No. 12338 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327 at date of execution]

Goldfields Central No. 4 Pty Ltd ACN 632 246 327 [Drafting note: This party may change as the Landowner entity for 655A Pacific Highway, Chatswood as at the date of execution will be the party to this Deed, being either The Owners Strata Plan No. 57067 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327 at date of execution]

Description of the Land to which the Draft Planning Agreement Applies

641-655 and 655A Pacific Highway, Chatswood being land currently known as SP 12338 and SP 57067.

Description of Proposed Development

The Draft Planning Agreement is in connection with a planning proposal to amend *Willoughby Local Environmental Plan 2012 (WLEP)* relating to the Land including by:

- a) Rezoning it from R3 Medium Density to MU1 Mixed Use.
- b) Amending the maximum building height development standard from 12 metres to 90 metres.
- c) Amending the maximum Floor Space Ratio (FSR) development standard from 0.9:1 to 6:1.

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

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- d) Identifying it as subject to clause 4.4A(14) of the Comprehensive LEP Amendment. This clause requires land zoned MU1 Mixed Use to contain a minimum non-residential floor space component calculated at 17% of the maximum FSR.
- e) Identifying it on the Affordable Housing Map such that clause 6.8 (Affordable Housing) applies. This clause requires development for the erection of residential accommodation to provide affordable housing dwellings (or payment of a monetary contribution to the consent authority) equivalent to 4% of the accountable total floor space (being the residential component)
- f) Identifying it as within "Area 5" on the LEP Special Provisions area Map such that clause 6.23 (design excellence at certain sites in Willoughby) applies
- g) Identifying it on the LEP lot size map requiring minimum lot size of 5,500m²
- h) Identifying it on the Active Street Frontages Map to provide active street frontages to Gordon Avenue and Hammond Lane.

(Planning Proposal)

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

Objectives of Draft Planning Agreement

The Draft Planning Agreement provides for the payment of a monetary contribution of \$17,136,000 (to be indexed in accordance with the CPI) by the Landowners to be applied towards Community Infrastructure as identified in Appendix A to Council's Planning Agreement Policy – Procedures Manual. The monetary contribution is to be paid in 4 instalments.

The Draft Planning Agreement also requires the registration of a public access easement and egress easement on the Land in favour of the Council.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4(1) of the *Environmental Planning and Assessment Act 1979* (the **Act**). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the draft Planning Agreement) are made by the Landowners for various public purposes (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- is in connection with an amendment to the LEP relating to the Planning Proposal
- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Landowners,
- does not exclude the application of s7.11, s7.12 or Division 7.1, Subdivision 4 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,
- provides for the payment of monetary contributions by the Landowners in instalments

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

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- provides for the registration of a public access easement and egress easement in favour of the Council.

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,
- provides for additional monetary contributions by a developer to the Council to be used for public purposes, in addition to other development contributions under s7.11 or s7.12 and Division 7.1, Subdivision 4 of the Act required for the proposed Development on the land to which it applies.
- Provides for easements to improve public access.

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 of the Act.

Impacts of the Planning Agreement on the Public

The Planning Agreement will ensure future redevelopment of the Land delivers monetary contributions that can fund by Council public benefits associated with community and social facilities. The easements will improve accessibility, connectivity and amenity. Whilst there will be some short-term construction impacts, the proposed contributions under the Planning Agreement will have a positive impact on the public.

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,
- providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

641-655 and 655A Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

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

Yes. The proposed contributions are consistent with the community infrastructure identified in the Council's Planning Agreement Policy and aligns with Council's Capital Works Program.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes. Monetary contributions are required to be paid prior to the issuing of specific construction certificates and occupation certificates for the Development. The easements are also required to be registered prior to the issuing of specific occupation certificates for the Development.

Signature of Council CEO

** Electronic signature of me,

affixed by me, or at my direction, on _____

Signatures of Landowner 1

* Electronic signature of me,

affixed by me, or at my direction, on _____

Signatures of Landowner 2

* Electronic signature of me,

affixed by me, or at my direction, on _____

