

## Deed

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

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

#### 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]**

Executed Date: [Insert Date]

## DRAFT FOR PUBLIC EXHIBITION

\_\_\_\_\_  
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 \_\_\_\_\_

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## 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]**

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

Willoughby City Council

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### Willoughby City Council

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## 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)

**Landowner 1:** Goldfields Central No. 4 Pty Ltd ACN 632 246 327 [or The Owners - Strata Plan No. 12238] [Drafting note: to be updated immediately prior to execution to reflect landowner entity at that time].

**Name:** [Insert Name]

**Address:** [Insert Details]

**Telephone:** [Insert Details]

**Email:** [Insert Details]

**Representative:** [Insert Details]

**Landowner 2:** Goldfields Central No. 4 Pty Ltd ACN 632 246 327 [or The Owners -Strata Plan No. 57067] [Drafting note: to be updated immediately prior to execution to reflect landowner entity at that time].

**Name:** [Insert Name]

**Address:** [Insert Details]

**Telephone:** [Insert Details]

**Email:** [Insert Details]

**Representative:** [Insert Details]

[Drafting note: if Landowner 1 and 2 is the same entity, only one Landowner need be listed]

[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]

## Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S7.4(1)	'Planning Authority'	Council
	'Developer'	Landowner
	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 'Land' in clause 1.1
S7.4(3)(b)(i)	Instrument Change	See definition of 'LEP Amendment' in clause 1.1
S7.4(3)(b)(ii)	Development	See definition of 'Development' 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 Division 7.1, Subdivision 4 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	The benefits under this Deed are <b>not to be</b> taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development' See clause 8
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
S7.4 (10)	Conformity of Agreement with Act, Environmental Planning Instruments, &	Yes

# 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]**

	Development Consents Applying to the Land	
<b>S7.5</b>	<b>Public Notice &amp; Public Inspection of Draft Agreement</b>	Yes
<b>S6.15(1)(d)</b>	<b>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?</b>	No
<b>S6.9(1)</b>	<b>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?</b>	Yes

Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
<b>Clause 203(1)</b>	<b>Form &amp; Subject-Matter</b>	Yes
<b>Clause 203(7)</b>	<b>Secretary's Practice Note</b>	Yes
<b>Clause 204</b>	<b>Public Notice &amp; Public Inspection of Draft Agreement</b>	Yes
<b>Clause 205</b>	<b>Explanatory Note</b>	See Appendix
<b>Clause 21 of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</b>	<b>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?</b>	Yes

## 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]

<b>Clause 48 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</b>	<b>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?</b>	Yes
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Table 3 – Ministerial Directions

<b>Direction</b>	<b>Requirement</b>	<b>Compliance</b>
N/A	N/A	N/A



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

### Willoughby City Council

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## 641-655 and 655A Pacific Highway, Chatswood 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)

and

**Goldfields Central No. 4 Pty Ltd ACN 632 246 327 [or The Owners - Strata Plan No. 12238 ]** [Drafting note: to be updated immediately prior to execution to reflect landowner entity at that time] (Landowner 1).and

**Goldfields Central No. 4 Pty Ltd ACN 632 246 327 [or The Owners - Strata Plan No. 57067 ]** [Drafting note: to be updated immediately prior to execution to reflect landowner entity at that time] (Landowner 2)

[Drafting note: if Landowner 1 and 2 is the same entity, only one Landowner need be listed]

### Background

- A A Planning Proposal has been lodged to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land.
- B Future Development Applications are proposed to be lodged to carry out the Development on the Land.
- C The Landowner 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 Certificate under Part 6 of the Act.

**[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]**

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

**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.

**Construction Certificate** has the same meaning as in the Act.

**Contribution Item** means an item of Development Contribution specified in Column 1 of Schedule 2.

**Contribution Rate** means \$765 per square metre

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

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

**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.

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

### Willoughby City Council

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**Egress Easement** means an easement in gross for egress 4.5 metres wide (approximately 186sqm of land), in the approximate location shown and marked as '1' on the Plan in Schedule 3 and associated positive covenant and restriction on use generally on terms set out in Schedule 5, which when registered burdens the Land and benefits the Council as prescribed authority.

**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,
  - (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 Landowner takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Landowner to settle a labour dispute if, in the Landowner's opinion, that is not in its best interests); and
- (c) which the Landowner 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.

**Gross Floor Area** has the meaning as the LEP.

**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, being Strata Plan 12238 and Strata Plan 57067.

**Landowner** means Landowner 1 and Landowner 2. **[Drafting note: if Landowner 1 and 2 is the same entity, this definition will be omitted]**

**LEP** means the *Willoughby Local Environmental Plan 2012*.

**LEP Amendment** means an amendment to the LEP to which the Planning Proposal relates.

**Map** means the map in Schedule 3.

**Occupation Certificate** has the same meaning as in the Act.

**Party** means a party to this Deed.

**Plan of Subdivision** means:

**[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]**

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- (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 Development Act 2015*

**Planning Proposal** means a planning proposal within the meaning of s3.33 of the Act as detailed in Item 2 of Schedule 1, relating to the Land.

**Public Access Easement** means an easement in gross for public access 3 metres wide (approximately 405sqm of land) in the approximate location shown and marked as '2' on the Plan in Schedule 3 and associated positive covenant and restriction on use generally on terms set out in Schedule 4, which when registered burdens the Land and benefits the Council as prescribed authority.

**Rectify** means rectify, remedy or correct.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Residential GFA** means any Gross Floor Area relating to the residential component of the Development only and excludes any Gross Floor Area for the provision of affordable housing and non-residential components of the Development.

**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

**Strata Plan** has the same meaning given to that term in the *Strata Schemes Development Act 2015*.

**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.
  - 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 on the front page and on the execution page.
- 3.3 Despite any other provisions of this Deed, the Landowner is under no obligation to make any Development Contributions to the Council as provided for in this Deed, unless and until the LEP Amendment is passed and made into law containing the terms of the LEP Amendment (**Condition Precedent**).
- 3.4 Until the date on which the Condition Precedent is satisfied, this Deed contains the Landowner's irrevocable offer to make the Development Contributions once the Condition Precedent has been satisfied.
- 3.5 Council must notify the Landowner immediately after the Council executes this Deed and promptly provide the Landowner with the Deed as executed by the Council.
- 3.6 This Deed terminates when:
  - 3.6.1 the Landowner has complied with all the obligations imposed on the Landowner under this Deed; or
  - 3.6.2 the Landowner is prevented from carrying out the Development because any amendment to the LEP made as a result of the LEP Amendment is declared invalid or otherwise not legally effective.
- 3.7 As soon as practicable after this Deed has terminated, at the request of and at the Cost of the Landowner, Council will make an application to the Land Registry Services of New South Wales to cancel the recording of this Deed on the title to the Land or any part of it.

## **4 Application of this Deed**

- 4.1 This Deed applies to the LEP Amendment, 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.

## **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 Subject to clause 7.2 the Landowner 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.
- 7.2 Nothing in this clause 7 is to be taken as abrogating or removing the Landowner's right to appeal under the Act in relation to a Development Application, a Development Consent including any application to modify a Development Consent under section 4.55 or 4.56 of the Act, or an Approval relating to the Development, where the subject-matter of the proceedings does not relate to the Landowner's obligations under this Deed.

## **8 Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development**

- 8.1 This Deed does not exclude the application of s7.11, s7.12 and Division 7.1, Subdivision 4 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 not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development. Refer to item 7 in Schedule 1.

## **9 Provision of Development Contributions**

- 9.1 The Landowner 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 [Not used.]
- 9.3 [Not used.]
- 9.4 The Council is to apply each Development Contribution made by the Landowner under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.5 Despite clause 9.4, 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.

## **Part 2 – Provisions relating to monetary contributions**

### **10 Payment of monetary Development Contributions**

- 10.1 The parties acknowledge and agree that, as at the date of this Deed:
  - 10.1.1 if the LEP Amendment takes effect in its current form as at the date of this Deed, 22,400 square metres of Residential GFA will be available on the Land in addition to what is currently permitted under the LEP; and
  - 10.1.2 the Development Contributions specified in Schedule 2 have been calculated on the basis of the Contribution Rate and that 22,400 square metres of additional Residential GFA is capable of being approved by a Development Consent applying to the Land if the LEP Amendment takes effect.
- 10.2 Notwithstanding anything in clause 10.1, the Landowner 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.
- 10.3 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.
- 10.4 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 electronic funds transfer of cleared funds into a bank account nominated by the Council.

## **Part 3 – Provisions relating to Public Access Easement and Egress Easement**

### **11 Preparation of registrable form of instrument**

- 11.1 The Landowner is to register the Public Access Easement and Egress Easement free of Cost to the Council in the manner and at the time or times specified in Part C of Schedule 2.
- 11.2 Prior to lodging the Public Access Easement or Egress Easement for registration, the Landowner is to provide to the Council, for the Council's approval:
  - 11.2.1 the registrable form of the instrument creating the Public Access Easement or Egress Easement duly executed by the registered proprietor of the Land and all persons required by the Registrar-General to sign such instrument; and
  - 11.2.2 the written consent of such persons as required by the Registrar-General to give consent to the registration of the easement.
- 11.3 The Landowner is not to lodge the registrable form of the instrument creating the Public Access Easement or Egress Easement for registration unless and until it has obtained the Council's

written approval to the instrument. Council is to act reasonably and promptly in providing the written approval to the instrument.

## **12 Procedure for registration of easements**

- 12.1 The Public Access Easement and Egress Easement are registered for the purposes of this Deed when a deposited plan and accompanying instrument under s88B of the Conveyancing Act, as set out in Schedule 4 and 5, has been registered with the Registrar-General on the title of the Land creating the easement.
- 12.2 The parties are to do all things reasonably necessary to enable registration of the relevant instrument to occur, including attending to any steps required in electronic form, if required.

## **13 Acquisition of easement**

- 13.1 If the Landowner does not register the Public Access Easement or Egress Easement at the time at which it is required to be registered, the Landowner consents to the Council compulsorily acquiring the Public Access Easement or Egress Easement (as the case may be) 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 Public Access Easement or Egress Easement pursuant to clause 13.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to register the Public Access Easement or Egress Easement as the case may be.
- 13.3 The Landowner agrees that:
  - 13.3.1 clause 13.1 is an agreement between the Council and the Landowner for the purposes of section 30 of the Just Terms Act; and
  - 13.3.2 in clause 13.1, the 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 Landowner the Landowner is to reimburse the Council that amount, upon a written request being made by the Council.
- 13.5 The 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 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
  - 13.6.4 paying the Council's Costs arising under this clause 13.



## **Part 4 – Provisions relating to carrying out of Work**

**14 Not used**

**15 Not used**

**16 Not used**

**17 Not used**

**18 Not used**

**19 Not used**

**20 Not used**

**21 Not used**

**22 Not used**

**23 Not used**

**24 Not used**

## **Part 5 – Dispute Resolution**

### **25 Dispute resolution – expert determination**

- 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.
- 25.7 The Parties are to share equally the Costs of the President, the expert, and the expert determination.

## **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**

### **27 Security for performance of obligations**

- 27.1 The Landowner 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 Landowner'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.

## **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]**

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- 27.4 The Council is to release and return the Security or any unused part of it to the Landowner within 14 days of compliance by the Landowner of its obligations specified or described in Item 13 of Schedule 1 to this Deed to the reasonable satisfaction of the Council.
- 27.5 The Landowner 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 Landowner, 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 Landowner 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 Landowner 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 Landowner 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 Landowner's non-compliance.
- 27.10 If the Council calls-up the Security, it may, by notice in writing to the Landowner, require the Landowner 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 Not used**

**29 Not Used**

**30 Not used**

### **31 Breach of obligations**

- 31.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Deed, it may give a written notice to the Landowner:
- 31.1.1 specifying the nature and extent of the breach,
- 31.1.2 requiring the Landowner 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 Landowner fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Landowner, call-up the Security provided under this Deed and apply it to remedy the breach.
- 31.3 Any Costs incurred by the Council in remedying a breach in accordance with clause 31.2 may be recovered by the Council by either or a combination of the following means:
  - 31.3.1 by calling-up and applying the Security provided under this Deed, or
  - 31.3.2 as a debt due in a court of competent jurisdiction.
- 31.4 For the purpose of clause 31.3, the Council's Costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
  - 31.4.1 the Costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 31.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 31.4.3 all legal Costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.5 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 Landowner, 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 the date of commencement of this Deed, the Landowner is to deliver to the Council in registrable form:

## **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]**

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- 33.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner and any other person required by the Registrar-General to execute such instrument, and
  - 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 Landowner at its Cost is to:
  - 33.3.1 subject to clause 33.5, lodge the instrument requesting registration of this Deed with NSW Land Registry Services for registration within 5 business days of the commencement of this Deed,
  - 33.3.2 do such other things as are reasonably necessary to enable registration of this Deed to occur, and
  - 33.3.3 provide the Council with evidence of registration within 5 days of being notified by the 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 Landowner 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.
- 33.5 If NSW Land Registry Services notifies the Council or the Landowner in writing that it requires Council to lodge the request for registration, then Council is to lodge the request and do such other things as are reasonably necessary to enable registration of this Deed to occur at the Landowner's Cost.

## **34 Restriction on dealings**

- 34.1 The Landowner is not to:
  - 34.1.1 sell or transfer the Land, other than a Final Lot, or
  - 34.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed, to any person unless:
    - 34.1.3 the Landowner 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 Landowner's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council generally in the terms of the Novation Deed included in Schedule 6, and
  - 34.1.4 the Landowner is not in breach of this Deed, and
  - 34.1.5 if the proposed assignee or transferee is not Goldfields Central No. 4 Pty Ltd the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 34.2 Subject to clause 34.3, the Landowner 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 34.1 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 or to a sale, transfer or assignment to another Landowner.

## Part 8 – Indemnities & Insurance

### 35 Risk

- 35.1 The Landowner performs this Deed at its own risk and its own Cost.

### 36 Not used

### 37 Not used

### 38 Not used

## 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 Landowner**

- 40.1 The Landowner 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.
- 40.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

## **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 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 where the maximum Residential GFA approved by a Development Consent for the Development differs by more than 20% (whether higher or lower) from the additional 22,400 square metres of Residential GFA available on the Land following the LEP Amendment, ,
  - 41.2.3 the lapsing of the Development Consent to the Development pursuant to section 4.53 of the Act,
  - 41.2.4 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 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 (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, 2 business days after it is posted, or
- 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 discretion acting reasonably 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 Landowner 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 28 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 Landowner is also to pay to the Council the Council's reasonable Costs of implementing, monitoring and enforcing this Deed within 28 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 Landowner 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 203(5) 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.

## 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]**

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- 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 Subject to clause 55.4, 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.
- 55.3 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.
- 55.4 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.
- 55.5 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 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 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 that any amounts payable by the Parties in accordance with clause 55.2 (as limited by clause 55.4) 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 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 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 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 205 of the Regulation.
- 56.2 Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

## **57 Electronic Execution**

- 57.1 Each Party:
- 57.1.1 consents to this Deed being signed by electronic signature by the methods set out in clause 57.3;
- 57.1.2 agrees that those methods validly identify the person signing and indicates that person's intention to sign this Deed;
- 57.1.3 agrees that those methods are reliable as appropriate for the purpose of signing this Deed, and
- 57.1.4 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.
- 57.2 If this Deed is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- 57.3 For the purposes of clause 57.1, the methods are:
- 57.3.1 insertion of an image (including a scanned image) of the person's own unique signature onto the Deed; or
- 57.3.2 insertion of the person's name onto the Deed; or
- 57.3.3 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
- 57.3.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Deed; or
- 57.3.5 as otherwise agreed in writing between the Parties.

**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]**

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

### Willoughby City Council

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## Schedule 1

(Clause 1.1)

Item 1	Land	The land identified as such on the Map, which includes all of the land subject to Strata Plan 12238 and Strata Plan 57067.
Item 2	Planning Proposal	<p>Planning proposal (Council's Ref: PP2022/1; ePlanning Portal Ref: PP-2022-822) which seeks to amend the <i>Willoughby Local Environmental Plan 2012</i> as it applies to the Land including as follows:</p> <ul style="list-style-type: none"> <li>Land is rezoned from R3 Medium Density to MU1 Mixed Use.</li> <li>maximum building height development standard is amended from 12 metres to 90 metres.</li> <li>maximum Floor Space Ratio (FSR) development standard is amended from 0.9:1 to 6:1.</li> <li>Land is identified 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.</li> <li>Land is identified on the LEP 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)</li> <li>Land is identified as within "Area 5" on the LEP Special Provisions area Map such that clause 6.23 (design excellence at certain sites in Willoughby) applies.</li> <li>Land as identified on the LEP lot size map requiring minimum lot size of 5,500m<sup>2</sup></li> <li>Land is identified on the Active Street Frontages Map to provide active street frontages to Gordon Avenue and Hammond Lane.</li> </ul>
Item 3	Development	The development proposed on the Land the subject of the Planning Proposal, being a mixed-use development comprising residential and commercial uses authorised by Development Consent and permitted as a consequence of the LEP Amendment.
Item 4	Application of S7.11	Section 7.11 of the Act is not excluded.
Item 5	Application of S7.12	Section 7.12 of the Act is not excluded.
Item 6	Application of Division 7.1, Subdivision 4,	Division 7.1, Subdivision 4, of the Act is not excluded.
Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11	<p>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>See clause 8</p>

## 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]**

Item 8	Indexation of Contribution Values	N/A
Item 9	Indexation of Monetary Development Contributions	<p>The monetary Development Contributions specified in Schedule 2 of this Deed will be indexed quarterly from the date of this Deed (the "Indexation Date").</p> <p>This will be done in accordance with the following formula:</p> <p>Indexed monetary contribution =</p> <p><math>A \times B/C</math></p> <p>Where A is the value of the monetary Development Contribution applicable immediately before the Indexation Date</p> <p>B is the CPI last published at the quarter ending immediately before the date of payment; and</p> <p>C is the CPI last published at the quarter ending immediately before the Indexation Date</p>
Item 10	Access to Council owned or controlled land	N/A
Item 11	Defects Liability Period	N/A
Item 12	Security	<b>\$1,199,520.</b>
Item 13	Obligations to which Security Relates	For registration of this Deed on title and payment of first instalment of monetary Development Contributions.
Item 14	Timing of Security	Upon commencement of this Deed.
Item 15	Indexation of Security	Security to be indexed in the same way that monetary Development Contributions are indexed in Item 9 of this schedule except that references to 'monetary Development Contributions' are replaced with a reference to 'Security'
Item 16	Costs	<b>See Clause 44</b>
Item 17	Review of Deed	<b>Every 2 years</b>

**[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 2

(Clause 9)

### Development Contributions

Table

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
<b>A. Monetary Development Contributions</b>			
<u>Total of \$17,136,000 payable in the following four (4) instalments</u>			
1. \$1,713,600	Community Infrastructure as identified in Appendix A of Council's Planning Agreement Policy – Procedures Manual	Payable as a lump sum at the timing set out in Column 4.	Within 90 days after the LEP Amendment.
2. \$2,000,000	Community Infrastructure as identified in Appendix A of Council's Planning Agreement Policy – Procedures Manual	Payable as a lump sum at the timing set out in Column 4.	At least 7 days prior to the issuing of the first Construction Certificate for the Development (other than for demolition, site preparatory works, excavation and/or shoring).
3. \$7,836,580	Community Infrastructure as identified in Appendix A of Council's Planning Agreement Policy – Procedures Manual	Payable as a lump sum at the timing set out in Column 4.	At least 7 days prior to the issuing of the first Occupation Certificate that authorises the occupation or use of any floor area which forms part of the Residential GFA in the Development on the Land
4. \$5,585,820	Community Infrastructure as identified in Appendix A of Council's Planning Agreement Policy – Procedures Manual	Payable as a lump sum at the timing set out in Column 4.	At least 7 days prior to the issuing of the Occupation Certificate that authorises (whether alone or in conjunction with previously issued Occupation Certificates) the occupation or use of the 11, 200 <sup>th</sup> sqm of floor area which forms part of the Residential GFA in the Development on the Land

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

Willoughby City Council

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C. Registration of Easements

1. Registration of Public Access Easement	Public Access	The granting and registration of a Public Access Easement on title to the Land.	Prior to the issuing of the first Occupation Certificate that authorises the occupation or use of any floor area which forms part of the Residential GFA of the Development on the Land or registration of a new Strata Plan for the Development on the Land whichever is the earlier, or such other time agreed by Council in writing.
2. Registration of Egress Easement	Public Access	The granting and registration of an Egress Easement on the title to the Land.	Prior to the issuing of the first Occupation Certificate that authorises the occupation or use of any floor area which forms part of the Residential GFA on the northern boundary of the Development, or such other time agreed by Council in writing



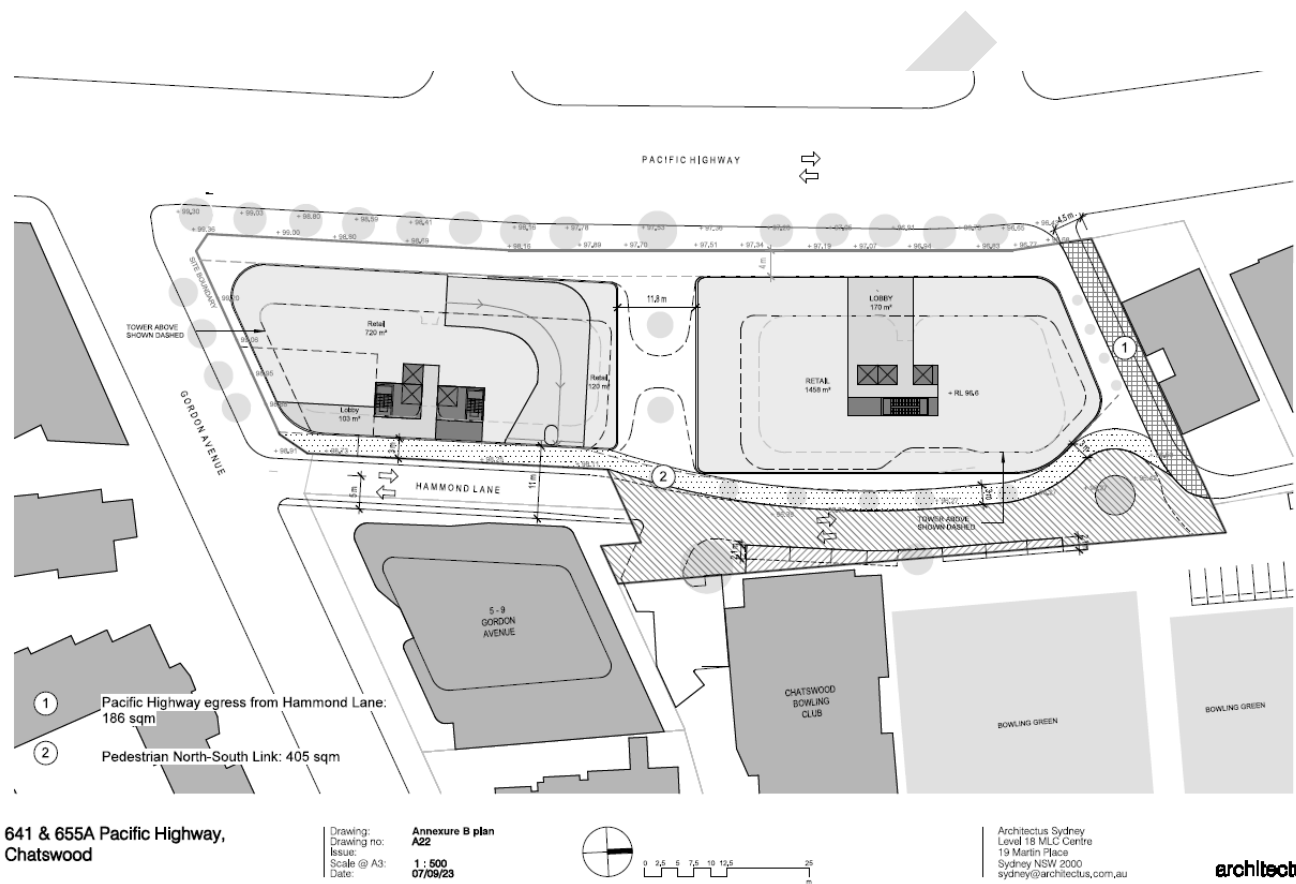
641-655 and 655A Pacific Highway, Chatswood Planning Agreement  
Willoughby City Council

[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 3

(Clause 1.1)

Map



641 & 655A Pacific Highway,  
Chatswood

Drawing: Annexure B plan  
Drawing no: A22  
Issue: 1  
Scale @ A3: 1:500  
Date: 07/09/23



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architectus

[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 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 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

## Part 2 (Terms)

### 1 DICTIONARY

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#### 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,

## 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]**

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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

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### 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,
  - (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

## 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]**

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- 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.

## 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]**

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#### **3 Terms of restriction on use numbered 2 in the plan**

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##### **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.

**[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 5

### Egress 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 egress 4.5 metres in width	<b>[##]</b>	Willoughby City Council
2	Restriction on use	<b>[##]</b>	Willoughby City Council

## 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,



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

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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.

## 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]**

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

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### **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

## 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]**

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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.

## 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]**

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### 3 Terms of restriction on use numbered 2 in the plan

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#### 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.

**[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]**

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## **Schedule 6**

(clause 34)

## **Novation Deed**

(see following pages)

DRAFT

## **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]**

## 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]

**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]**

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**Email:** [Drafting Note: Insert contact email]

**Representative:** [Drafting Note: Insert name]

DRAFT



## 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.

[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]

## 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	Column 2
Word or phrase	Meaning
<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Claim</b>	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.
<b>Contract for Sale</b>	means the contract for sale of the Land between the Existing Party and the Incoming Party dated [##].
<b>Deed</b>	means this Deed.
<b>Development</b>	has the same meaning as in the Planning Agreement.
<b>Effective Date</b>	means the date when the Contract for Sale completes.
<b>Land</b>	[Insert title details of land to be transferred]
<b>Party</b>	means a party to this Deed.
<b>Planning Agreement</b>	means the planning agreement pursuant to s7.4 of the Act titled ' <i>641-655 and 655A Pacific Highway, Chatswood Planning Agreement</i> ' entered into between Council, Existing Party and the Continuing Party on [date].

#### Interpretation

- 1.2 In this Deed:

**[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]**

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- (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.
- 3.2 With effect from 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]**

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- 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**

## 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]**

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- 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.
- 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]

#### **Executed by the Incoming Party:**

**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]**

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[Insert execution clause]

**Executed by the Continuing Party:**

[Insert execution clause]

[End of Novation Deed]

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[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 \_\_\_\_\_

**[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]**

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## **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.
- 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.

**[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]**

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- 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 5,500m<sup>2</sup>
- 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
- provides for the registration of a public access easement and egress easement in favour of the 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]**

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## 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.

#### ***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

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]

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 \_\_\_\_\_