



planning consultants

APPENDIX B

WARRINGAH COUNCIL
ABN 31 565 068 406

(Council)

AND

JUBILEE PROPERTIES PTY. LIMITED
ACN 140 715 073

(Jubilee)

PLANNING AGREEMENT:
DEMOLITION, OFFICE UNIT, PUBLIC TOILETS,
RETAIL UNIT, MONETARY CONTRIBUTION
AND FUTURE SKY BRIDGE
(Fee Simple Transfer)

PLANNING AGREEMENT NO. _____

Section 93F of the Environmental Planning and Assessment Act, 1979

THIS DEED is made on the _____ day of _____ 2014

BETWEEN

WARRINGAH COUNCIL ABN 31 565 068 406 of 725 Pittwater Road, Dee Why in New South Wales ("Council")

AND

JUBILEE PROPERTIES PTY. LIMITED ACN 140 715 073 of c/- MBP Advisory, Level 12, 130 Pitt Street, Sydney in New South Wales acting as trustee of the Cobalt Trust ("Jubilee")

BACKGROUND

- A.** Jubilee is the registered proprietor of the Land.
- B.** The Land is situated within the Warringah Local Government Area. Council is the local authority constituted under the *Local Government Act* 1993 in relation to that LGA.
- C.** On 6 August 2013 Council adopted the Master Plan, which (among other things) proposed an increase in the permissible building height on the Land up to 15 storeys, provided Jubilee could demonstrate sufficient public benefit accruing from the Development to justify such height.
- D.** On 30 September 2013 Jubilee lodged the DA, together with an earlier draft of this Deed, in order to give effect to the objectives of the Master Plan, including by way of establishing an appropriate level of public benefit.
- E.** In support of the DA Jubilee offered, subject to the Condition Precedent being satisfied, to enter into this Deed to demolish the Existing Toilet Block, to transfer the Council Facilities and to make the Monetary Contribution to Council for the purposes set out herein.
- F.** Part or all of the Council Office to be transferred to Council under this Deed may in future be converted into a Sky Link connected with a Sky Bridge across Pittwater Road so as to provide a convenient pedestrian link between Council's Civic Precinct and the proposed new retail and commercial complex at Site B.
- G.** Council reviewed the DA and in December 2013 requested Jubilee to make certain changes to the design of the Building to better reflect the amendments to the WLEP

proposed by Council to give effect to the Master Plan. Council also suggested that Jubilee lodge the Revised DA incorporating these changes. Jubilee agreed to make those changes and to lodge the Revised DA. This Deed has been amended to give effect to revisions in Jubilee's public benefit offer resulting from those design changes suggested by Council.

- H. Jubilee has provided the Valuation, which ascribes a total value of \$1,350,000 to the Council Office and the Retail 1. Jubilee has estimated the value of the other public benefits offered pursuant to this Deed, including the Monetary Contribution, at a total of \$625,000. On this basis the total value of the public benefit offer set out in this Deed is \$2,000,000.
- I. Jubilee has exchanged contracts of sale in relation to 110 strata units within the Building and the parties have agreed that the terms of this Deed must not give rise to any material adverse change in relation to those strata units.
- J. Jubilee is prepared to accept as a condition of the Development Consent a condition that requires Jubilee to enter into this Deed pursuant to section 93I(3) of the Act.

OPERATIVE PROVISIONS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed unless the context otherwise requires:

"Access Ramp" means a disabled access ramp in the southern corner of the Park, being a ramp of [1.1] metres in width and [2.5] metres in length within the Park and at a gradient of 1:14, as shown on Appendix B;

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

"Building" means the building contemplated by the Revised DA or by any subsequent development application by Jubilee in relation to the Land;

"Building Management Committee" means the committee to be established pursuant to the Strata Management Statement to regulate the management and operation of the Building;

"Certifying Authority" means any accredited private certifier including, where appropriate, a Principal Certifying Authority (PCA) appointed or to be appointed to certify the Development or any aspect of it;

"Civic Precinct" means the land owned by Council and bounded by Pittwater Road, St. David Avenue and Civic Drive, Dee Why;

“Cobalt Trust” means the trust established by deed dated 23 November 2009 between Lawrence Myers (as settlor) and Jubilee (as trustee);

“Condition Precedent” means the condition precedent set out in Clause 4.2;

“Construction Certificate” means a construction certificate in respect of the whole or any part of the Development;

“Construction Loan” means any loan(s) to Jubilee solely or primarily for the purpose of enabling Jubilee to construct the Building;

“Construction Period” means the period starting on the date of issue of the Construction Certificate and ending on the date of issue of an Occupation Certificate in respect of the whole Building;

“Council Facilities” means:

- (a) the office unit on level 2 of the Building and designated “Council / Commercial Sky Plaza” and “Skyline” on the Plans, together with the dedicated lift which will operate between the ground floor and that office unit and designated “Public / Council Hydraulic Shuttle Lift” on the Plans (**Council Lift**) and with the three car spaces to be included on the title to that unit in accordance with the Strata Plan (**Council Office**); and
- (b) the retail unit on the ground floor of the Building designated Retail 1 on the Plans, together with the three car spaces to be included on the title to that unit in accordance with the Strata Plan (**Retail 1**); and
- (c) the new public toilet facilities to be incorporated within the Building on the ground floor immediately adjacent to the Park as shown on the Plans (**Council Toilets**);

“DA” means DA 2013/1168;

“Deed” means this planning agreement made in the form of a deed;

“Demolition” means the demolition of the Existing Toilet Block in accordance with Clause 6;

“Development Consent” and means the approval of the Revised DA (or any subsequent development application by Jubilee in respect of the Land) by Council, the JRPP or other competent authority pursuant to the Act;

“Existing Toilet Block” means the Council toilet block currently standing within the Park and designated with a dashed line and labelled “Existing Toilet Block to be Demolished” on the Plans;

“GST” has the same meaning as in the GST Law;

"GST Law" has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)* and any other Act or regulation relating to the imposition or administration of the GST;

"JRPP" means the Joint Regional Planning Panel – Sydney East Region;

"Land" means the land situated at 5 St. David Avenue, Dee Why being the land comprised in Torrens Title Folio Identifiers B/381816, 4/417528 and 1/300967;

"LPI" means the Land and Property Information, New South Wales;

"Master Plan" means the Dee Why Town Centre Final Master Plan July 2013 prepared by Place Design Group on behalf of Council, publicly exhibited by Council between 9 February and 5 April 2013 and adopted by Council at its Ordinary Monthly Meeting held on 6 August 2013;

"Monetary Contribution" means the amount of \$250,000 to be paid by Jubilee to Council pursuant to Clause 8;

"Occupation Certificate" means a final occupation certificate, within the meaning of the Act, in respect of the Building including the Council Facilities;

"Park" means St. David's Park, the Council owned park that lies between the Land, Pittwater Road and St. David Avenue;

"Party" means a party to this Deed including their successors and assigns;

"Plans" means the binder including floor plans, sections and elevations of the Building by Kann Finch dated January 2014 and annexed to this Deed as Appendix A or any later plans which the parties agree in writing to adopt in place of those plans;

"Registration Application" means an application for registration of this deed as a planning agreement on title of the Land pursuant to section 93H of the Act in a form approved by the LPI;

"Regulation" means Environmental Planning and Assessment Regulation 2000;

"Revised DA" means the DA as revised by the statement of environmental effects, architectural drawings, consultant reports and other supporting materials lodged by Jubilee with Council on 28 January 2014;

"Site B" means the site currently owned by Meriton Group and bounded by Pittwater Road, Oaks Avenue and Howard Avenue in Dee Why;

“Skybridge” means an elevated walkway between Level 2 of the Building and Site B over Pittwater Road and / or an elevated walkway between Level 2 of the Building and the Civic Precinct over St. David Avenue;

“Sky Link” means, if and when a Skybridge has been constructed, any part of the Council Office rededicated by Council to connect with or support any such Skybridge;

“Stratum Certificate” means approval by a Certifying Authority for the stratum subdivision of the Building in accordance with the Stratum Plan;

“Strata Management Statement” means the draft strata management statement attached as Appendix D (or a revised statement substantially in the same form in so far as the rights and responsibilities attaching to the Council Office is concerned);

“Stratum Plan” means the draft stratum plan attached as Appendix C (or a revised plan nominated by Jubilee and which is in substantially the same form in so far as the rights and responsibilities attaching to the Council Office is concerned) that on registration will create a stratum scheme in respect of the Building including a separate title to the Council Office, Retail 1 and the Council Toilets;

“Transfer” means a transfer in registrable form (stamped by the Office of State Revenue for stamp duty if appropriate) transferring the Council Facilities from Jubilee to the Council;

“Transfer Date” means the date 20 Business days after the date on which:

- (a) the Strata Certificate is issued; or
- (b) the Stratum Plan is registered by the LPI; or
- (c) the Strata Management Statement is registered by the LPI,

whichever occurs last;

“Valuation” means the valuation of the Council Office and Retail 1 by Colliers International dated 26 August 2013 as updated by the letter from Colliers International dated 24 January 2014; and

“WLEP” means the Warringah Local Environmental Plan 2011.

1.2 Interpretation

In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales.
- (c) 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.
- (d) A reference to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (e) A reference 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.
- (f) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) A word that denotes the singular denotes the plural, a word that denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation on the related text.
- (l) A reference to this Deed includes the matters recorded in this Deed.
- (m) A reference to a party to this Deed includes a reference to the employees, officers, agents and contractors of the party, and the party's successors and assigns.
- (n) Words used in this Deed have the same meaning as in the Act unless otherwise defined by this Deed.

2 PLANNING AGREEMENT UNDER THE ACT

The Parties to this Deed agree that it is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act entered into voluntarily and at the request of Jubilee.

3. JUBILEE ACKNOWLEDGMENTS RELATING TO THE WLEP AND NON-FETTER OF COUNCIL

Jubilee acknowledges and agrees that:

- (a) in addition to its obligations under this Deed, Council is also responsible for the conduct and administration of local government in the Warringah Local Government Area;
- (b) this Deed in no way affects Council's statutory obligations, functions or powers, including without limitation, its obligations, functions or powers in respect of the Revised DA, Development Consent and any other approvals or recommendations required in respect of the works to be carried out under the Revised DA; and
- (c) nothing which the Council does or fails to do under this Deed will limit or otherwise affect Jubilee's obligations under the Development Consent.

4. CONDITION PRECEDENT

- 4.1 This Deed will not be executed until after the grant of the Development Consent, but prior to the issue of any Construction Certificate in relation to the Development, and will not be executed unless Jubilee elects in its absolute discretion to take up the Development Consent.
- 4.2 The obligation on Jubilee pursuant to this Deed to transfer the Council Office and Retail 1, and to pay the Monetary Contribution, is conditional upon Development Consent being granted pursuant to the WLEP on or before 30 April 2014 (or any later date to which Jubilee agrees in writing) in a form and on terms consistent with the terms of this Deed and otherwise acceptable to Jubilee in its absolute discretion.
- 4.3 For the avoidance of doubt, neither of the obligations referred to in Clause 5 (a) or (b) is subject to Clause 4.2.

5. PUBLIC BENEFIT OFFER

Subject to the terms hereof, Jubilee agrees:

- (a) to demolish the Existing Council Toilets;
- (b) to incorporate the Council Toilets within the Building;
- (b) to transfer the Council Office and the Retail 1 to Council; and

(b) to pay the Monetary Contribution,

and Council agrees to accept a transfer of the Council Facilities and the Monetary Contribution in accordance with the following provisions of this Deed.

6. DEMOLITION OF TOILET BLOCK AND USE OF PARK

- 6.1 Jubilee hereby agrees to demolish the Existing Toilet Block, at its own expense, prior to or during the Construction Period.
- 6.2 In consideration of the undertaking by Jubilee in Clause 6.1, Council agrees to allow Jubilee to occupy that part of the Park indicated by dotted lines in Appendix B (**Consent Zone**) during the Construction Period (**Consent**). The Consent extends to any builder(s) appointed by Jubilee and any subcontractor or other agent appointed by Jubilee or any such Builder.
- 6.3 Jubilee further agrees to supply temporary toilet facilities at the place indicated in Appendix B during the period in which the Consent Zone is occupied and the Council Toilets are not operational and publicly available. Jubilee will be responsible for the servicing of those temporary toilets.
- 6.4 Jubilee will be responsible to erect appropriate fencing or hoarding to prevent any member of the public gaining access to the Consent Zone during the period in which it is occupied pursuant to the Consent. Jubilee will ensure that appropriate access to the electricity substation within the Consent Zone is provided at all times.
- 6.5 Jubilee will return the Consent Zone for general public access immediately following the Construction Period. That area is to be clean, level and turfed when returned to public access.
- 6.6 This Clause 6 will apply whether Jubilee decides to proceed under its existing development consent (DA 2011/0887 as modified by MOD 2012/0087), the Development Consent or any subsequent development consent granted in relation to the Land.

7. THE COUNCIL FACILITIES

Construction of Council Facilities

- 7.1 Jubilee will cause the Council Facilities to be constructed in a proper and workmanlike manner in accordance with the Development Consent, the Plans and this Deed.
- 7.2 The Council Office and Retail 1 will be constructed with suspended ceilings, carpet and the provision for the subsequent installation of air conditioning. Those units will be constructed in compliance with the Building Code of Australia and each such unit is to have a capped water supply with its own water meter and a dedicated electricity distribution board with its own electricity meter. Jubilee will ensure that the floor

plate of the Council Office and Retail 1 as constructed is substantially as shown in the Plans.

7.3 Jubilee may (in its absolute discretion):

- (a) construct the Building with a design which permits emergency access from the Council Office to the fire stairs beside the Retail / Goods Lift marked on the Plans; and
- (b) alter the design of the Building at its own cost, before or after construction, so as to preclude such access, provided that emergency access from the Council Office continues to comply with all applicable fire regulations,

and Council acknowledges that if and when the Council Office incorporates or links with a Skybridge, or is otherwise accessible to the general public, the Building will be altered to ensure that there is no access from the Council Office into the remainder of the Building, other than through the Building lobby on the ground floor.

- 7.4 Jubilee shall within 60 days of written notification from the Council (or such other period as the Parties may agree acting reasonably having regard to the nature of the defect), at its own expense, remedy any defect in the Council Facilities caused by faulty materials or faulty workmanship (other than minor settlement cracks and minor shrinkage) which are notified to Jubilee in writing by the Council within three calendar months after the Transfer Date.
- 7.5 Jubilee will immediately notify Council in writing upon the issue of an Occupation Certificate in relation to the Building and Jubilee will deliver to Council an Occupation Certificate in relation to the Council Facilities.

Stratum Subdivision and Strata Management Statement

- 7.6 Within 28 days after an Occupation Certificate has been issued in relation to the Building, Jubilee will lodge the Stratum Plan and the Strata Management Statement for registration with the LPI.
- 7.7 Jubilee will immediately notify Council in writing of:
- (a) the lodgement of the Stratum Plan and Strata Management Statement with the LPI (including the strata plan number allocated to the Stratum Plan upon lodgement); and
 - (b) the registration of the Stratum Plan and Strata Management Statement.

Transfer and Payment

- 7.8 Subject to the terms hereof, prior to or immediately following the issue of the Stratum Certificate, Jubilee will deliver to Council:

- (a) a letter addressed to the LPI authorising and instructing the LPI to forward the certificates of title to the Council Facilities to Council following registration of the Stratum Plan and the Strata Management Statement;
- (b) if required by Council to permit the release of the certificates of title, a letter to the same effect from any mortgagee of the Land;
- (c) discharges of all encumbrances affecting the Council Facilities including:
 - (i) discharges of mortgages in registrable form in respect of all mortgages affecting the Council Facilities; and
 - (ii) (in so far as Jubilee controls any caveat on title) withdrawals of caveats in registrable form in respect of any caveat affecting the Council Facilities;
- (d) a cheque in favour of the LPI for the registration fees on the Transfer and discharges of all encumbrances; and
- (e) a current clear land tax certificate from Office of State Revenue in respect to the Land.

7.9 Subject to the terms hereof, Jubilee will deliver the Transfer to Council so that the Council Facilities are transferred to Council unencumbered in fee simple on the Transfer Date. [EASEMENTS, POSITIVE AND RESTRICTIVE COVENANTS TO BE ADVISED]

7.10 Jubilee authorises Council to date and insert into the Transfer particulars of the title to enable the Transfer to be registered. For the avoidance of doubt, the date of the Transfer will be on or after the Transfer Date.

Security Arrangements Concerning Retail 1 and Alternative Consideration

7.11 Council acknowledges and agrees that Jubilee intends to take out a Construction Loan to be secured over the Land and the whole of the Building other than the Council Office and the Council Toilets.

7.12 If Jubilee complies with Clauses 7.8 and 7.9 in relation to the Council Office and the Council Toilets but not Retail 1, it will be deemed to have fully complied with that provision but within six months after the Transfer date must either:

- (a) comply with Clause 7.8 and 7.9 in relation to Retail 1; or
- (b) pay to Council an amount of \$540,000 (**Market Value Amount**), being the market value ascribed to Retail 1 in the Valuation,

and in either case Jubilee must at the same time pay to Council an additional amount equal to \$147.95 for each day after the Transfer Date until the date of payment, representing interest at 10% per annum on the Market Value Amount.

- 7.13 If Jubilee has complied with Clause 7.8 and 7.9 in relation to the Council Office and the Council Toilets but not Retail 1, and fails to comply with Clause 7.12, Council may give notice that it elects for the Market Value Amount (plus interest in accordance with Clause 7.12) to be a debt immediately due and payable to it. In this case Council may take any action available under general law to recover that debt.
- 7.14 If Jubilee has not fully complied with Clause 7.8 and 7.9, it may not make any profit distribution to holders of units in the Cobalt trust until it has complied with Clause 7.12 or paid in full its debt to Council following receipt of a notice from Council under Clause 7.13.
- 7.15 The conditions attaching to the Development Consent will reflect and accommodate the provisions of Clause 7.11, 7.12, 7.13 and 7.14.

Use of Council Facilities and Public Purpose

- 7.16 Following transfer of the Council Facilities, Council will use those facilities for the following public purposes:
 - (a) in relation to the Council Office, subject to Clause 7.17, as commercial premises to be occupied by Council staff or sold or let to third parties for use as commercial premises so as to generate sales proceeds or rental income for Council,
 - (b) in relation to Retail 1, as retail premises to be sold or let to third parties so as to generate sales proceeds or rental income for Council, and
 - (c) in relation to the Council Toilets, as public toilet facilities,

provided that, for so long as it remains the owner, Council may not allow any person to occupy the Council Office or Retail 1 (on any basis whatsoever) if occupation by such person is reasonably likely to prejudice the quiet enjoyment of any other strata unit within the Building.

- 7.17 If in future Council constructs one or more Skybridges it may, in its absolute discretion, re-dedicate part or all of the Council Office as a Sky Link, provided that:
 - (a) any such Skybridge and Sky Link will be constructed at Council's expense to a design, using materials and to a standard of construction in keeping with the design, materials and standard of construction of the Building;
 - (b) Council will be responsible for the upkeep and maintenance of any such Skybridge and Sky Link in a condition that enhances the appearance of the Building;

- (c) Council will be responsible to ensure that all public areas are maintained to in a tidy manner and that noise generated in such public areas is restricted to a level that does not interfere with the quiet enjoyment of the Building by occupiers and visitors; and
- (d) Council will ensure that no public access to the Council Lift, fire stairs, Sky Link or any Skybridge is allowed outside the hours of 8 a.m. to 6 p.m. Mondays to Fridays or 8 a.m. to 4 p.m. on Saturdays.

- 7.18 Council will responsible for the maintenance and cleaning of the Council Toilets and for ensuring that they are properly provisioned and available for use during the hours of operation of those facilities. Council will be responsible for managing the opening times of the Public Toilets, but access to the Public Toilets will be so restricted as to ensure public safety and so as not to detract from the amenity of occupiers of or visitors to any stratum or strata unit within the Building.
- 7.19 The use of the Council Facilities will not adversely impact upon the quiet enjoyment or amenity of the occupiers of any stratum or strata unit within the Building.
- 7.20 Council will be responsible for obtaining any necessary consent or approval for the use, fit-out, change of use or further development of the Council Facilities, at its own cost, and will obtain the consent of the Building Management Committee prior to making application for any such consent or approval.
- 7.21 Due to the importance of the Public Toilets being managed and maintained to an appropriate standard, so as not to prejudice the amenity and quiet enjoyment of other stratum or strata units by occupiers and visitors, Council may not sell, transfer, assign, novate, charge, encumber or otherwise deal with the Public Toilets or any interest therein without the prior approval of the Building Management Committee.

8. MONETARY CONTRIBUTION

Subject to the terms hereof, Jubilee agrees to make the Monetary Contribution to Council on the Transfer Date, such monies to be applied by Council (in its absolute discretion) either in landscaping or other improvements to the Park and / or towards the cost of constructing a Sky Bridge across Pittwater Road.

9. APPLICATION OF SECTION 94, SECTION 94A AND SECTION 94EF OF THE ACT TO THE DEVELOPMENT

- 9.1 This Deed does not exclude the application of Sections 94, 94A or 94EF of the Act in relation to the Development.
- 9.2 Consistent with Clause 15(2) of the Warringah Council Section 94A Development Contributions Plan, the cost of the Demolition, the market value of the Council Facilities and the Monetary Contribution will be taken into consideration as development contributions under Section 94 of the Act. Council acknowledges and

agrees that the total value of these items substantially exceeds the contribution that might otherwise be levied under the Act, and accordingly Council agrees that it will not levy any additional contribution in respect of the Development.

10. COUNCIL CONSENT AS OWNER OF THE PARK

- 10.1 Upon request by Jubilee Council will grant a licence to Jubilee to enter the Park [and the footpath to Pittwater Road immediately adjacent to the Land] to install rock anchors and to permit any crane installed on the Land or the Consent Zone to intrude into the air space over the Park [and the footpath to Pittwater Road immediately adjacent to the Land], such licence to be in the usual form.
- 10.2 Council consents to permanent access between the Building and the Park so as to permit free entry and exit to the fire stairs immediately adjacent to the Park, the Council Lift lobby servicing the Council Office and the Council Toilets. [MAY NEED MORE FORMAL DOCUMENTATION FOR THIS]
- 10.3 Council consents to permanent access to the Park for the purpose of locating the Access Ramp as shown on Appendix B, so as to enable the building to provide disabled access to the residential lobby and the five retail units in accordance with the BCA. [MAY NEED MORE FORMAL DOCUMENTATION FOR THIS]

11. REGISTRATION OF THIS DEED

- 11.1 The Parties agree this Deed is to be registered by the LPI as provided for in section 93H of the Act.
- 11.2 Jubilee warrants that it has done everything necessary to enable this Deed to be registered under section 93H of the Act and, without limitation, Jubilee warrants that it has obtained the express written consent to the registration of this Deed under section 93H of the Act from each person who has an estate or interest in the Land registered under that Act.
- 11.3 On registration of the Stratum Plan of Subdivision Jubilee will at its cost:
 - (a) deliver to Council the Registration Application noting Council as applicant and executed by Jubilee and any other person the subject of the warranty in clause 11.2;
 - (b) lodge or cause to be lodged the title deed with the LPI and advise Council of the production number; and
 - (c) provide Council with a cheque in favour of the LPI for the registration fees for registration of this Deed.
- 11.4 Upon compliance with Clause 11.3 by Jubilee, Council will promptly lodge the Registration Application with the Registrar General.

- 11.5 The Parties will co-operate with each other to ensure that the Deed is registered by the LPI.
- 11.6 Upon transfer of the Council Facilities to Council in accordance with this Deed (or compliance with Clause 7.12 or 7.13), or upon surrender of the Development Consent, Jubilee may request the removal from the title to the Land of the dealing created by registration of the Deed. Council will not withhold its consent to such removal provided the terms of this Deed have been complied with and Jubilee pays all reasonable costs, expenses and fees of Council relating to such removal.
- 11.7 Upon registration of this Deed by the LPI this Deed is binding on, and is enforceable by and against, the owner of the Land from time to time as if each owner for the time being had entered into this Deed.

12. REVIEW OF THE DEED

The Parties agree that, subject to section 93G of the Act, this Deed can be reviewed and amended at any time by mutual deed.

13. DISPUTE RESOLUTION

- 13.1 If a dispute arises out of or in connection with this Deed, including any dispute as to breach or termination of this Deed or to any claim in law or equity, a Party cannot commence any court proceedings relating to the dispute (except for urgent interlocutory relief) unless and until that Party has complied with the provisions of this Clause.
- 13.2 A Party claiming that a dispute has arisen must serve a notice on the other Party specifying the nature of the dispute.
- 13.3 Upon service of a notice specifying the nature of a dispute, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or arbitration in a form agreed upon by the Parties.
- 13.4 If the parties fail to agree within 10 Business Days of the service of the notice of dispute, or any further period agreed in writing by them, as to:
 - (a) the dispute resolution technique and procedures to be adopted;
 - (b) the timetable for each of those procedures; and
 - (c) the selection and compensation of any independent person required in connection with that technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request that President or his nominee to select the mediator and determine the mediator's remuneration.

- 13.5 All costs associated with compliance with this Clause (other than costs of litigation), including any costs of a mediator, will be shared equally between the Parties.
- 13.6 If the dispute is not finally resolved through the forum of mediation, each Party is at liberty to take legal action without further notice.

14. ENFORCEMENT

Until such time as the Council Facilities have been transferred to Council in accordance with this Deed (or Jubilee has complied with Clause 7.12 or 7.13) or Jubilee has surrendered the Development Consent, Jubilee must:

- (a) notify the Council in writing of the name and contact details of any Certifying Authority to which it has applied for a Construction Certificate at the same time that such application is made;
- (b) at the time it lodges any application for a Construction Certificate notify the Certifying Authority in writing of the existence and terms of this Deed; and
- (c) procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not:
 - (i) issue a Construction Certificate until this Deed is registered in accordance with Clause 11 of this Deed; and
 - (ii) issue an Occupation Certificate until Council provides written confirmation that Jubilee has complied with those terms of this Deed which were required to be complied with at that time; or
 - (iii) issue a Stratum Certificate until Council provides written confirmation that Jubilee has complied with those terms of this Deed which were required to be complied with at that time,

provided that Council may not delay or refuse to give written confirmation in accordance with this Clause 14 (c) except on valid grounds and acting reasonably.

15. NOTICES

- 15.1 Any notice, consent, information, application or request that must 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:

- (a) delivered or posted to that Party at its address; or
- (b) emailed to that Party at its email address.

15.2 The address and email address for each Party is;

For Council:

Address: 725 Pittwater Road, Dee Why

Email address:

For Jubilee:

Address: C/- MBP Advisory,
Level 12, 130 Pitt Street, Sydney

Email address: patrick@jubilee-group.com.au

provided that if a Party gives the other Party three business days notice of a change of its address or email address, this Clause 15.2 is deemed to refer to that new address or email address.

15.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 business days after it is posted; or
- (c) if it is emailed, immediately upon the email being sent, provided that the sender does not receive an electronic notification that the transmission of the email has failed.

15.4 If any notice, consent, information, application or request is delivered, or an email is sent without electronic notification that transmission of the email failed, 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.

16. APPROVALS AND CONSENT

Except as otherwise set out in this Deed, and subject to any binding statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party. Any party delaying or withholding any approval or consent under this Deed must promptly provide a detailed written explanation of its reasons for doing so.

17. ASSIGNMENT AND DEALINGS

17.1 Until the Council Facilities are transferred to Council in accordance with this Deed, Jubilee cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land in favour of any person (**Third Party**), or attempt or purport to do so unless Jubilee:

- (a) (except in the case of the Construction Loan) gives Council no less than 10 Business Days notice in writing of the proposed dealing with its rights in respect of the Land; and
- (b) in the case of a proposed sale, transfer or assignment of the Land, procures that the Third Party promptly executes a deed in favour of Council whereby that person becomes contractually bound with Council to perform Jubilee's obligations and enforce Jubilee's rights under this Deed, and accordingly thereafter all references to Jubilee will be deemed to be references to the Third Person; or
- (c) in the case of any other proposed dealing, procures that the Third Party promptly executes a deed in favour of Council whereby that party recognises the rights and obligations of Council under this Deed, and provides to Council all appropriate consents and assurances from the Third Person to permit the transfer of the Council Facilities to Council by Jubilee in accordance with the terms of this Deed.

17.2 In the case of the Construction Loan, the obligation under Clause 17.1 in relation to Retail 1 is an obligation to provide to Council consents and assurances to permit the transfer of that unit to Council if and when the Construction Loan has been repaid in full and the security arrangements relating to that unit have been discharged in accordance with their terms.

17.3 If Jubilee complies with Clause 17.1 and / or Clause 17.2 (as appropriate) and Council fails or refuses to grant written consent within 10 Business days after the latter of:

- (a) being served with a written request from Jubilee for the grant of such consent, and
 - (b) the Third Party offering to comply with Clause 17.1 (b) or (c) (as appropriate),
- upon expiration of that 10 Business day period, Council is deemed to have given the required consent.

18. TRUSTEE PROVISIONS

18.1 Jubilee is liable under this Deed in its own right and as trustee of the Cobalt Trust and a reference in this Deed to Jubilee includes Jubilee in both of those capacities.

18.2 Jubilee represents and warrants to Council that:

- (a) in executing this Deed and entering into the transaction contemplated herein, it has properly performed its obligations to the beneficiaries of the Cobalt Trust;
- (b) all necessary action required by the deed establishing the Cobalt Trust has been taken to authorise its unconditional execution and delivery of this Deed and its compliance with its obligations hereunder;
- (c) it is the only trustee of the Cobalt Trust and no action has been taken to terminate the Cobalt Trust, nor has the date, or any event, occurred for the vesting of the property it holds as trustee of the Cobalt Trust; and
- (d) it has the right to be fully indemnified out of the assets of the Cobalt Trust in respect of its obligations under this Deed.

19. ENTIRE AGREEMENT

This Deed contains everything to which the Parties have agreed in relation to the matters it deals with. 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.

20. FURTHER ACTS

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Deed and all transactions incidental to it.

21. GOVERNING LAW AND JURISDICTION

This Deed is governed by the laws of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

22. REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power to enter into this Deed and comply with their obligations under it and that entry into this Deed will not result in the breach of any law.

23. SEVERABILITY

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. If any clause or party 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.

24. MODIFICATION

No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

25. WAIVER

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, the other Party. A waiver by a Party is only effective if it is in writing and only in relation to the particular obligation or breach in respect of which it is expressed to be given. It 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.

26. GOODS AND SERVICES TAX

- 26.1 Unless otherwise indicated, all amounts payable by one party to the other party in relation to a supply under this Deed have been calculated exclusive of any GST that may be imposed on the supply.
- 26.2 If any supply made under this Deed is, or becomes, subject to GST, the party making the supply (**Supplier**) is entitled to issue a Valid Tax Invoice to the party to whom the supply is made (**Recipient**), showing an additional amount payable on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST. In that case the Recipient must pay such amount to the Supplier, as consideration in addition to any consideration payable or to be provided elsewhere in this Deed.
- 26.3 Any amount in respect of GST payable under Clause 26.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.
- 26.4 If any party is required to reimburse or indemnify the other party for a cost or expense incurred by the other party (**Cost**), the amount of that Cost for the purpose of this Deed is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.
- 26.5 If GST is linked with the abolition or reduction of other taxes and charges, all amounts payable by the Recipient to the Supplier under this Deed (excluding GST) must be reduced by the same proportion as the actual total costs of the Supplier (excluding GST) are reduced either directly as a result of the abolition or reduction of other taxes and charges payable by the Supplier or indirectly by way of any

reduction in prices (excluding GST) charged to the Supplier. Both parties must also comply with Part VB of the *Trade Practices Act 1974* (Commonwealth).

27. COSTS

Subject to the terms of this Deed each Party is to bear its own costs of an incidental to the finalisation and execution of this Deed and any related documents and any step required thereunder, except that Jubilee is responsible to pay any stamp duty payable in respect of this Deed or the Transfer.

28. EXECUTION IN TRIPLICATE

The Parties hereto will execute this Deed in triplicate so as to provide one original signed by both parties for attachment to the Registration Application referred to in Clause 11 and an original for each of the Parties signed by both Parties.

EXECUTION

EXECUTED as a deed by **WARRINGAH**)
COUNCIL in accordance with Section 683)
of the Local Government Act 1993)

Witness:

EXECUTED as a deed by **JUBILEE**)
PROPERTIES PTY. LIMITED)
in accordance with Section 127)
of the Corporations Act 2001)

Patrick Keenan
Sole Director

Witness

APPENDIX A

Draft Plans

APPENDIX B

Diagram of the Park referred to in Clause 6 showing the Consent Zone and referred to in Clause 10.3 showing the location of the disabled access ramp

APPENDIX C

Draft Stratum Plan

APPENDIX D

Strata Management Statement

