ACCESS DEED

DATED 25th June 2014

PARTIES

WARILLA BOWLS AND RECREATION CLUB LIMITED ACN 000 984 145

AND

WARRIGAL CARE ABN 34 002 392 636

DATE:	25th June 2014
PARTIES:	**WARILLA BOWLS AND RECREATION CLUB LIMITED ACN 000 984 145** of Jason Avenue, Warilla NSW 2528 ("**the Club**")
AND:	**WARRIGAL CARE ABN 34 002 392 636** of 2 Pine Street Albion Park Rail NSW 2527 ("**Warrigal Care**")

RECITALS

(A) The Club owns the Land.

(B) The Club has granted an option to purchase the Land to a third party which option may be exercised at any time as may be agreed between the Club and the third party and accordingly Warrigal Care is aware that this Deed may be terminated by either party at any time on two (2) months notice and further aware that the Land must be maintained in, or returned to, the same condition as it is at commencement of this Deed.

(C) Warrigal Care owns land adjacent to the Land being lot 8201 in Deposited Plan 1153225 ("**Warrigal Care Land**").

(D) Warrigal Care have requested the Club grant access across the Land between Shellharbour Road and the Warrigal Care Land.

(E) The Club has agreed to grant access on the terms of this Deed.

OPERATIVE SECTION

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Deed the following terms have the following meaning:

"**Access Date**" means the date of the notice referred to in clause 2.2.

"**Access Period**" means the period commencing at 4am and ending at 8pm on each Week Day.

"**Access Roadway**" means the area having a width of approximately 10 metres the location of which is generally indicated by as "*construction access stage 1*" in the Photograph of the Access Roadway and which area has been marked and defined as provided in this Deed.

"Approved Works" means any works Warrigal Care is to carry out to the Access Roadway which have been first approved in writing by the Club.

"**Balance of the Land**" means that part of the Land excepting the Access Roadway.

"Claim" means any claim, allegation, suit, action, demand, cause of action or proceeding, irrespective of:

(i) when it arises;

(ii) whether or not it is actual or contingent; or

(iii) whether it is made under contract or in tort (including in negligence), in equity, under statute or otherwise; and

"**Commencement Date**" means the date hereof.

"**Conditions Precedent**" means the conditions precedent listed in clause 2.1.

"**Employees**" means employees, agents, officers, contractors and invitees.

"**Fee**" means $3,000 (plus GST) per annum or $250 (plus GST) per month.

"Initial Condition Report" means the condition report in Schedule A and the disk containing photographs taken by Jordan Mealey & Partners as part of that condition report.

"**Land**" means Lot 802 DP1149748 being 802 Addison Road Shellharbour.

"**Laws**" means any statute, ordinance, regulation, by law or other form of secondary or delegated legislation in force as at the Commencement Date or which comes in to force during the term.

"Loss" means actual or contingent damage, death or injury, debt, loss, penalty, fine, expense, liability or costs (including legal costs on a solicitor/client basis and investigative costs).

"**Photograph of Access Roadway**" means the aerial photograph in Schedule B.

"**Security Deposit"** means the sum of $20,000.00

"**Week Day**" means a day that is not a Saturday, Sunday, public holiday and bank holiday in New South Wales.

1.2 Except to the extent that such interpretation is excluded by or is repugnant to the context, reference to:

(a) one gender includes the other.

(b) the singular includes the plural and the plural includes the singular.

(c) a person includes:

(i) an individual, firm, body corporate, partnership, joint venture, unincorporated body or association or any statutory or government body or agency; and

(ii) a person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

(d) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

(e) another grammatical form of a defined term or expression has a corresponding meaning.

(f) this Deed includes any annexure, exhibit or schedule to this Deed.

(g) a notice from, consent or approval of a party and agreement between the Club and Warrigal Care for the purposes of this Deed means a written notice, consent, approval or agreement.

(h) "including" and similar expressions are not words of limitation.

(i) "dollars" or "$" is to Australian currency.

(j) an agreement, representation or warranty:

(i) in favour of two or more persons is for the benefit of them jointly and each of them individually; and

(ii) by two or more persons binds them jointly and each of them individually.

(k) a period of time that is calculated from a given day or the day of an act or event, is to be calculated exclusive of that day.

(l) time is a reference to Sydney time.

(m) a document (including this Deed) includes any novation, variation or replacement of it.

1.3 No provision of this Deed will be construed adversely to a party on the ground, irrespective of whether or not it is the only ground, that the party was responsible for the preparation of this Deed or the inclusion of a specific provision in this Deed.

1.4 Where an act must be done or period of time expires on a specified day and that day is not a Business Day, the act must be done instead on the next Business Day.

1.5 Headings and underlining are for convenience only and do not affect interpretation.

2. CONDITIONS PRECEDENT TO COMMENCEMENT

2.1 The grant of access rights pursuant to clause 3.1 is conditional upon the following conditions precedent being completed to the satisfaction of the Club or waived by the Club:

(a) Warrigal Care paying:

(i) the Security Deposit to the Club;

(ii) the costs of the Club's solicitors pursuant to clause 7.3; and

(iii) or reimbursing the Club for the cost of the Initial Condition Report.

(b) Warrigal Care providing to the Club evidence of insurance as required by this Deed; and

(c) Warrigal Care marking and defining the boundaries of the Access Roadway as required by this Deed.

("**Conditions Precedent**")

2.2 The Club will notify Warrigal Care when all the Conditions Precedent have either been completed to the satisfaction of the Club or waived by the Club

3. GRANT OF ACCESS

3.1 The Club grants Warrigal Care access rights as follows from the Access Date:

(a) In respect of the Access Roadway the non exclusive right for Warrigal Care and its

Employees to pass and re-pass over the Access Roadway on foot or with vehicles during the Access Period and to rectify the Land as required by this Deed; and

(b) In respect of the Balance of the Land the non exclusive right for Warrigal Care and its Employees to access the Balance of the Land to maintain and rectify the Land as required by this Deed.

4. NO WORKS OR STRUCTURES

Warrigal Care must not:

(a) carry out any works to the Land, except Approved Works and other works or maintenance as required by this Deed;

(b) erect any structures or improvements on the Land;

(c) store any goods on the Land; or

(d) have access to the Land except as provided in this Deed.

5. MARKING OF ACCESS ROADWAY

Warrigal Care must, at its cost, clearly mark and define the boundaries of the Access Roadway ("**Boundary Markings**") in a manner approved by the Club and ensure the Boundary Markings at all times properly identify the Access Roadway.

6. MAINTENANCE

Warrigal Care must, at its cost, maintain the Land in a clean and tidy condition as reasonably required by the Club. Such maintenance includes regularly mowing the Balance of the Land and keeping the Land free of rubbish and debris.

7. FEES

7.1 Warrigal Care agrees to pay the Fee by monthly instalments ("**Monthly Fee**") in advance to the Club with the first payment to be paid on the Access Date (pro rata from the Access Date to the end of that month) and on the first day of each month thereafter.

7.2 The Club will provide a tax invoice to Warrigal Care for the each Monthly Fee.

7.3 Warrigal Care agrees to pay the Club's reasonable legal costs in connection with the preparation, negotiation and execution of this Deed.

8. TERMINATION

8.1 Either party may terminate this Deed by giving the other party two (2) months notice in writing of such termination and such two (2) month period may expire at any time.

8.2 Without limiting any other rights which a party may have a law, the Club or Warrigal Care may terminate this Deed immediately by issuing the other party ("***the Defaulting Party***") with a notice if the Defaulting Party breaches any term or condition of this Deed; and

(i) the breach cannot be remedied by the Defaulting Party; or

(ii) if it can be remedied the Defaulting Party fails or refuses to do so within a period of not less than thirty (30) days specified in a Notice issued to the Defaulting Party which specifies the nature of the breach and requires the Defaulting Party to remedy it.

9. UPON TERMINATION

9.1 On or before termination of this Deed Warrigal Care will rectify the Land by returning the Land (including any kerb and guttering adjacent to the Access Roadway) to the condition shown in the Initial Condition Report.

9.2 Upon termination Warrigal Care and its Employees will cease to have access to the Land and the parties will adjust the Fee as may be necessary.

9.3 This clause 9 will not merge on termination.

10. RELEASE AND INDEMNITY BY WARRIGAL CARE

10.1 Warrigal Care agrees it and its Employees have access to the Land entirely at the risk of Warrigal Care.

10.2 Warrigal Care hereby releases the Club to the full extent permitted by law from all Claims for Loss directly or indirectly arising in connection with Warrigal Care and its Employees having access to the Land except to the extent that any such Claim has arisen in connection with the negligence, act or omission or breach of this Deed by the Club.

10.3 Warrigal Care indemnifies the Club from and against any Loss suffered by the Club and any Claim for any Loss against the Club directly or indirectly arising in connection with the:

(a) negligence of Warrigal Care or its Employees;

(b) act or omission by Warrigal Care or its Employees; or

(c) breach of this Deed by Warrigal Care or its Employees.

10.4 Notwithstanding clause 10.3, Warrigal Care is not liable for any proportion of Loss or any Claim to the extent that such Loss or Claim has arisen in connection with the negligence, act or omission or breach of this Deed by the Club.

10.5 It is not necessary for the Club to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.

10.6 Each indemnity in this clause is a continuing obligation, separate and independent from the other obligations of the parties and will not merge on termination, completion or expiration of this Deed.

11. INSURANCE

11.1 Warrigal Care must maintain during the term of this Deed a workers' compensation insurance policy in respect of the full amount of its liability under *Workers Compensation Act 1987* and will pay the policy premiums.

11.2 Warrigal Care must maintain during the term of this Deed public liability insurance policy against claims up to $20,000,000 in respect of any matter or thing arising or occurring in or about the Land. This clause 11.2 is subject to the exclusions and sub-limits referred to or noted in the Coverage Summary provided by Gow Gates dated 11 March 2014 including those contained in the Policy Wording referred to therein.

11.3 The policy referred to in clause 11.2 shall:

(a) note the Club as an insured party but solely in respect of public liability arising out of the access to and use of the Land by Warrigal Care under this Deed;

(b) cover the Club as an insured party in respect of any liability for property damage or personal injury arising out of the access to and use of the Land by Warrigal Care under this Deed, subject to the exclusions, endorsements and alterations referred to under clause 11.3(e) below and clause 11.2.

(c) deleted intentionally;

(d) contain a clause providing that each insured (the Club and Warrigal Care) will be treated as if each has a separate policy; and

(e) have no exclusions, endorsements or alterations (other than those noted in the Coverage Summary provided by Gow Gates dated 11 March 2014) which vary or limit the insurance coverage of the Club pursuant to the policy referred to in clauses 11.2 and 11.3.

11.4 Warrigal Care must, upon request by the Secretary of the Club, provide to the Club certified copies of all policies under clauses 11.1 and 11.2.

11.5 Warrigal Care must not do, or permit to be done, any act, matter or thing, which would or might prejudice the Club's rights under any policy of insurance effected by the Club, or effected to cover the Club in respect to the Premises.

12. COMPLIANCE WITH DIRECTIONS

Warrigal Care will at all times comply with all reasonable directions given by the Club with regard to any matter in this Deed.

13. COMPLIANCE WITH LAWS

13.1 In having access to the Land under this Deed Warrigal Care must comply with and observe all applicable Laws.

14. WARRIGAL CARE NOT TO ASSIGN

Warrigal Care must not assign this Deed or the benefit of this Deed to any other party without the prior written approval of the Club.

15. NOT A LEASE

15.1 Warrigal Care agrees nothing in this Deed is to be construed as:

(a) a lease to Warrigal Care over the Land or any part thereof;

(b) as creating the relationship between the Club and Warrigal Care as landlord and tenant, or partners or joint venturers, or employer and employee; or

(c) as giving Warrigal Care any right of occupation over the Land or any interest in the Land or part thereof.

16. NOTICES

16.1 A notice or other communication under this Deed:

(a) must be in writing;

(b) must be addressed to the party's address as set out in this Deed;

(c) must be given personally to the addressee (which in the case of the Club will be the Secretary of the Club), or sent by registered post to the address of the addressee, or sent by facsimile to the facsimile number which the addressee has specified by notice in writing to the other party, or any other substituted address or facsimile number the addressee has specified by notice in writing to the other party.

In the case of either party giving a notice or other communication to the other party by post or facsimile, that notice or communication will be deemed to have been received by that other party three (3) days after posting or transmission.

17. DISPUTES

17.1 If a dispute arises out of or in relation to this Deed which cannot be resolved between the parties, the dispute may be arbitrated by a person agreed to between the parties. Failing agreement, the arbitrator will be a person appointed by the President of The Law Society of New South Wales. Either party may request the President to appoint an arbitrator. The arbitration will be held in Sydney or in such other place as the parties may agree, in accordance with and subject to the laws of New South Wales. The decision of the arbitrator in relation to a dispute will be final and binding on the parties. This clause survives termination of the Deed.

18. ENTIRE DEED

18.1 This Deed constitutes the entire understanding and agreement of the parties about its subject matter and any previous understanding or agreements on that subject matter cease to have any effect.

19. NO WAIVER

19.1 No delay, neglect or forbearance by either party in enforcing against the other any provision of this Deed shall be a waiver by, or in any way prejudice any right, of that party.

20. SEVERABILITY

20.1 If any clause or any part of any clause contained in this Deed is declared invalid or unenforceable, all other clauses or parts of clauses contained in this Deed shall remain in full force and effect and shall not be affected by such invalidity or unenforceability for the term of this Deed.

21. AMENDMENTS

21.1 This Deed can only be amended, supplemented or novated by written agreement between the parties.

22. SECURITY DEPOSIT

22.1 Warrigal Care must pay the Security Deposit to the Club prior to the Commencement Date.

22.2 The Club shall retain the Security Deposit for the duration of this Deed and on termination of this Deed shall return the balance of the Security Deposit to Warrigal Care after making the following deductions (if any):

(a) any unpaid amounts due to the Club;

(b) the cost of any damage caused by Warrigal Care to the Land (including any damage to kerb and guttering adjacent to the Access Roadway);

(c) if Warrigal Care fail to return the Land to the condition shown in the Initial Condition Report following termination of the Deed, the cost to the Club in returning the Land to that condition.

22.3 The rights of the Club pursuant to this clause 22 shall not limit any cause of action or claim which the Club may have or may make against Warrigal Care.

23. ACKNOWLEDGMENTS AND WARRANTIES

23.1 Warrigal Care acknowledges that it is fully familiar with the physical condition of the Land and has

relied upon its own inspection of the suitability of the Land for the purposes of Warrigal Care.

23.2 Warrigal Care takes the Land in its present condition and state of repair and subject to all defects which may exist at the Commencement Date.

23.3 Warrigal Care must ensure that all necessary precautions are taken to protect the Land from damage whilst exercising its Access Rights under this Deed.

23.4 Warrigal Care acknowledges that it has considered the Initial Condition Report and agrees it accurately records the condition of the land as at the date of the Report and as at the Commencement Date.

24. COUNTERPARTS

This Deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument

Executed as a Deed by **WARILLA BOWLS AND RECREATION CLUB LIMITED ACN 000 984 145** pursuant to Section 127 of the Corporations Act 2001)

Director / Secretary

Name of Director/Secretary
(print name)

THOMAS S. FEENEY

Director / Secretary

Name of Director/Secretary
(print name)

PHILLIP KIPP

Executed as a Deed by WARRIGAL CARE pursuant to Section 127 of the Corporations Act 2001)

Director / Secretary

Name of Director/Secretary
(print name)

Director / Secretary

Name of Director/Secretary
(print name)

Schedule A

Initial Condition Report

Jordan Mealey
& Partners
Consulting Civil-Structural Engineers

G.A. MEALEY B.E. (Civil) M.I.E. (Aust.) CPEng. NPER
D.S. ASTUDILLO B.E. (Civil)

Suite3 10 Beverley Ave
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P.O. Box 137 Warilla, 2528.
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A.C.N. 075 099 795

Our Ref: 20130133 Dilapidation

DILAPIDATION REPORT
LOT 802 SHELLHARBOUR ROAD, SHELLHARBOUR 2529

SITE INSPECTION

Date inspected – 27 May 2013.

INTRODUCTION

This Dilapidation Report has been prepared to detail conditions of the public infrastructures. This report is to be submitted to the Principal Certifying Authority prior to the commencement of work.

This report is to read in conjunction with the attached drawing Number 20130133 Sheet No 1-6.

This report is set out to cover three main areas in relation to Lot 802, Shellharbour Road, Shellharbour.

1) Kerb, gutter and footpath along street frontage.
2) Public infrastructure within subject Lot.
3) Existing material within the subject Lot.

SITE DESCRIPTION

The site is located on the eastern side of Shellharbour Road, Shellharbour, between the intersections of Wattle Road/ Old Bass Point Road and Lakewood Blvd. It is described as Lot 802 in Deposited Plan 1149748 having a frontage to Shellharbour Road of 106.43 metres and an area of 1.407 hectares (DP 1149748 Attachment). The majority of the site is gradual declining land at a ratio of 1:4.2 towards the Southern boundary however the site does vary in surface texture.

The site is vacant grassed land with scattered trees and shrubs. A rough asphalt path runs parallel to the length of the Eastern Boundary in addition to a steel grate. Furthermore, the site contains a natural water channel which pools towards the centre of the site before dissipating downstream.

Jordan Mealey
& Partners
Consulting Civil-Structural Engineers

1. Kerb, Gutter & Footpath Street Frontage

   The kerb, gutter and footpath generally are in good condition. However, I would like to highlight certain sections.

   The following photos highlight the major cracks in kerb, gutter or driveway entry however other faults have been noted and are present in the photo's taken throughout the collective photo file.

   Photos 1-6, 7-12 and 16-18.

   The following photos highlight the sewer manhole, light poles, electrical poles and gas mains.

   Photos 13 -15 and 24.

2. Public Infrastructure within subject Lot.

   The following photos highlight stormwater pits.

   Photos 23 and 25.

3. Existing material within the subject Lot.

   The following photos highlight the existing material within the subject lot, including bordering fences, and storage material.

   Photos 19-22 and 26-29.

Aerial Photograph of LOT 802, Shellharbour Rd, Shellharbour

Schedule B

Photograph of Access Roadway

- Access Roadway

N

Hodges Shorten Architects Pty Ltd

Shell Cove
Proposed ACF & ILU's at Harbour Boulevarde, Shell Cove for Warrigal Care

Proposed Harbour Boulevard Photo Overlay
2433.DA121

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10 July 2014

Our Ref: NKS:KS:121535
Consultant: Neil Simmons
Email: n.simmons@pigott.com.au
Your ref: PM1:JF2:802969

RECEIVED
BY:

Kells
Lawyers
DX 5162 WOLLONGONG

Attention: Mr Jean-Paul Fraticelli

Dear Jean-Paul,

Access Deed between Warilla Bowls and Recreation Club Limited and Warrigal Care

We **enclose** deed signed by the club dated 25 June 2014 to complete the exchange.

We also **enclose** our further tax invoice for your client's attention.

We again draw your attention to the Conditions Precedent in clause 2 of the deed.

Please advise when your client intends to commence access.

Yours faithfully
PIGOTT STINSON

Neil Simmons
Consultant
n.simmons@pigott.com.au
encl