



Revised Draft **Planning Agreements Policy**

For Public Exhibition – 2020



WILLOUGHBY PLANNING AGREEMENTS POLICY – DRAFT

Willoughby City Council

GLN Planning Pty Ltd Trading as GLN Planning
ABN 39 585 269 237

A Level 10, 70 Pitt Street Sydney NSW 2000
P GPO Box 5013, Sydney NSW 2001
E info@glnplanning.com.au
T (02) 9249 4109 F (02) 9249 4111

glnplanning.com.au



Willoughby Planning Agreements Policy - DRAFT

Prepared for



By



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1 Introduction

Our community expects that the infrastructure that is needed to serve areas that are developing and growing will be provided when and where it is needed. Timely delivery of local infrastructure is an important goal of the Council.

The provision and maintenance of local infrastructure - which includes local and collector roads, footpaths and cycleways, stormwater drainage systems, open space, recreation and community facilities - is largely a council responsibility.

When new facilities or the upgrade of existing facilities is required due to new development, developers of land share in this responsibility by being required to provide works or make contributions of money and/or land as part of their development approval. These contributions are known as s7.11 and s7.12 contributions. The infrastructure that these contributions are directed towards must be included in a contributions plan adopted by the Council.

Alternatively, a developer can choose to provide public infrastructure by paying money, carrying out works, or dedicating land for public infrastructure by entering into Planning Agreement with the Council under s7.4 of the Environmental Planning and Assessment Act 1979.

Planning Agreements are voluntary for both Council and developers. Ensuring there is an overall net public benefit to the community is key to Council's decision to enter into a Planning Agreement.

This policy has been prepared having regard to the latest practice notes on Planning Agreements prepared by the Secretary of the NSW Department of Planning, Industry and Environment's (2020) Draft Planning Agreements Practice Note.

1.1 Purpose of this policy

This policy's purpose is to detail how Willoughby City Council will interact with developers of land in the LGA who offer to provide development contributions through Planning Agreements.

This policy sets out:

- The different types of agreements that may be offered and which the Council will consider
- Requirements for agreements
- The negotiation, execution and implementation process for agreements
- Council's preferred agreement terms, that will be contained in a Template Planning Agreement document.

This policy is not legally binding. It is intended to provide a guide for Council officers and all persons dealing with Council concerning Planning Agreements.

Requirements set out in this policy complement the statutory framework for Planning Agreements – i.e. Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* and Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation 2000*.



1.2 Aims of the policy

Council aims for this policy to achieve the following:

- Establish a consistent and transparent process for Council and developers to enter into agreements that meet contemporary probity standards.
- Facilitate the timely delivery of infrastructure that is generated by, or in some way related to, development.
- Ensure that all parties to proposed agreements are treated consistently in the negotiation and execution of agreements.
- Where possible and reasonable, work with developers to achieve infrastructure and public benefits for the community which go beyond meeting the impacts generated by their developments.
- Raise public confidence in the Council's use of Planning Agreements as a tool for delivery of infrastructure in the LGA.
- Allow developers to directly provide urban infrastructure as part of their developments where this is in the public interest and the infrastructure delivered achieves a net community benefit.
- Minimise Council's financial risk of providing infrastructure through setting out the conditions upon which a developer can deliver that infrastructure instead of the Council.
- Provide for flexibility to achieve innovative and tailored development outcomes and public benefits to meet the future infrastructure needs of the LGA including spreading the costs and benefits of development.
- Provide specific guidelines on how developers may participate in the Community Infrastructure Scheme that applies to land in the Chatswood CBD.
- Facilitate the provision of public facilities, services and amenities, including the provision of public benefits by developers out of sequence with Council's broader strategic planning processes.

1.3 Meanings of terms used in this policy

1.3.1 What are Planning Agreements?

A Planning Agreement is an arrangement between a developer or developers (and land owner(s) if the developer(s) does not own the land) and one or more councils and/or other planning authorities, where the developer seeks to dedicate land free of cost, pay a monetary contribution, deliver work or provide any other material public benefit, to meet the infrastructure demands of their proposal.

Planning Agreements can be offered in connection to any of the following:

- a planning proposal to change the planning controls applying to land
- a development application for consent to carry out development
- the modification of a development consent
- an application for a complying development certificate.



Planning Agreements may address purposes and contributions included in a contributions plan that has been adopted by the Council. They may also address other purposes and contributions that have a wider public benefit.

For this reason, Planning Agreements are a more flexible type of development contributions mechanism than s7.11 / s7.12 contributions, as they allow a developer to propose alternatives and variations to the timing and scope of public infrastructure. They also allow a planning authority to potentially secure planning benefits that exceed developer's s7.11 / s7.12 contributions obligation.

With flexibility however comes a responsibility to act fairly and consistently. Council has a duty to act with probity and transparency in Planning Agreement negotiations and in the interests of the wider community.

The *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000* set out basic requirements for the preparation, execution and administration of Planning Agreements. This policy provides detail on the Council's approach to Planning Agreements beyond the minimum legislative requirements.

1.4 Other definitions

Other key terms used in this policy are summarised below for ease of interpretation:

Table 1. Key terms

Term	Meaning
CC	Construction Certificate
CDC	Complying Development Certificate
Community Infrastructure Contribution (or CIC)	a contribution of money towards the provision of works referred to in section 5.4 (such as Table 5-1) of this policy
Contributions plan	a plan made by a council or councils for the purpose of imposing conditions under s7.11 or s7.12 of the EP&A Act
DA	Development Application
Developer	a person who proposes to enter into a Planning Agreement under this policy
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
FSR	Floor Space Ratio
LGA	Local Government Area
Material public benefit	a development contribution other than the dedication of land or the payment of cash



Term	Meaning
Public benefit	is the benefit enjoyed by the public as a consequence of a development contribution
Public purpose	Includes (without limitation): <ul style="list-style-type: none"> • the provision of (or the recoupment of the cost of providing) public amenities or public services, • the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land, • the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure, • the monitoring of the planning impacts of development, • the conservation or enhancement of the natural environment.
S7.11 contribution	a contribution of money or dedication of land free of cost for the provision of local infrastructure that is required by a condition imposed on a DA consent or a CDC and that is authorised under s7.11 of the EP&A Act
S7.12 contribution	a fixed rate levy for the provision of local infrastructure that is required by a condition imposed on a DA consent or a CDC and that is authorised under s7.12 of the EP&A Act



2 Key considerations for Planning Agreements

2.1 Guiding principles

Council's use of Planning Agreements will be governed by the following principles:

- (a) Planning decisions will not be bought or sold through Planning Agreements.
- (b) The consideration, negotiation and assessment of a Planning Agreement will, to the extent reasonably practicable and as required by law, be separated from the consideration of the planning merits of a DA or a planning proposal.
- (c) Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.
- (d) When considering a planning proposal or development application Council will not give undue weight to a Planning Agreement.
- (e) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed Planning Agreement.
- (f) Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under Planning Agreements.
- (g) Council prefers benefits under a Planning Agreement to have some broad public benefit in relationship to particular development or the locality of the development, unless the benefits aligns to Council's corporate strategic documents, existing contributions plans or other infrastructure delivery documents adopted by Council.

2.2 Evaluation criteria and acceptability test

In deciding whether to give in principle support to a Planning Agreement letter of offer, or to agree to enter into a Planning Agreement, Council will assess the offer or draft agreement against the following acceptability criteria as a minimum:

- (a) Does the proposed Planning Agreement satisfy all the statutory requirements?
- (b) Does the proposed Planning Agreement comply with the principles in section 2.1?
- (c) Will the Planning Agreement achieve public benefits that are at least equal to or greater than the value of s7.11 or s7.12 contributions?
- (d) Does the proposed Planning Agreement provide for public benefits that bear a relationship to the development that are not wholly unrelated to the development?
- (e) Do the proposed public benefits align with Council's corporate strategic documents, existing development contribution plans or other infrastructure delivery documents adopted by Council?
- (f) Will the proposed Planning Agreement produce outcomes that protect the overall public interest?
- (g) Are there any relevant circumstances that may operate to preclude Council from entering into the proposed Planning Agreement?
- (h) Can the proposed public benefits be achieved via an alternative, more administratively efficient mechanism such as a condition of development consent?



- (i) What are the likely ongoing operational and maintenance costs of infrastructure included in the Planning Agreement being dedicated to Council, and is it reasonable for the developer to absorb some of those costs?
- (j) Is the proposed Planning Agreement directed towards legitimate planning purposes that can be identified from the statutory planning controls and other adopted planning policies applying to development and the particular circumstances of the case?
- (k) Does the proposed Planning Agreement provide for a reasonable means of achieving the relevant purposes and outcomes and for securing the provision of public benefits?
- (l) Will the proposed Planning Agreement cause unreasonable, adverse environmental or amenity impacts?

2.3 Probity

2.3.1 Council's responsibilities

To maximise transparency and public confidence in Planning Agreements, Council will:

- (a) ensure that Planning Agreements are voluntary for both Council and other parties to the agreement
- (b) comply with our Code of Conduct and inform developers about ethical behaviour appropriate to business dealings with the Council
- (c) not allow the interests of individuals or interest groups to outweigh the wider public interest when deciding whether to enter into agreements
- (d) promote involvement of the public in understanding Planning Agreements and their value as a tool in providing public benefits
- (e) provide a copy of this policy to any person who seeks to enter into a Planning Agreement with Council
- (f) allow the public to access and download this policy and all executed Planning Agreements from Council's website
- (g) provide a clear and transparent pathway for developers to make an offer to enter into a Planning Agreement
- (h) work with developers to establish clear timeframes to progress agreements efficiently, and actively communicate the status of the agreement
- (i) ensure as far as practicable that developer works obligations in Planning Agreements are clear, are not open to misinterpretation and include or refer to relevant plans and specifications
- (j) ensure that all meetings with developers in respect of a Planning Agreement are properly documented (including meeting minutes)
- (k) ensure that Councillors and Council staff understand their roles and responsibilities in the Planning Agreement process,
- (l) ensure that the Council staff nominated to negotiate a Planning Agreement are not the same staff with the primary role of assessing or approving the Planning Proposal or DA except to provide advice on contributions or other relevant matters.



- (m) ensure that Councillors are not involved in any direct negotiations with developers during the period of the Planning Agreement negotiation
- (n) where Council has a commercial interest in a development the subject of a Planning Agreement, take appropriate steps to ensure that conflicts of interest are avoided or managed, which may include the engagement of an independent third party or person in the negotiation and assessment process
- (o) ensure the Policy is consistent with relevant legislation, practice notes and guidelines
- (p) not approve development that is unacceptable on planning grounds because of public benefits offered by developers
- (q) not refuse or recommend refusal of a DA or CDC on the sole basis that a Planning Agreement has not been entered into or that the developer has not offered to enter into a Planning Agreement
- (r) not enter into Planning Agreements that require planning controls to be changed or a development consent to be granted as a result of the Planning Agreement

2.3.2 Applicant's responsibilities

Council expects developers to act in a respectful and transparent manner during the negotiation and implementation of Planning Agreements. In this regard, Council expects developers to:

- (a) conduct themselves in a professional manner
- (b) provide transparent and sound information to inform the Planning Agreement
- (c) respond to requests for information in a timely manner
- (d) not solicit involvement of Councillors in the negotiations of Planning Agreements
- (e) pay for the Council's costs in drafting and executing the Planning Agreement
- (f) for Planning Agreements that will span more than one DA, include a statement with each DA identifying the relevant infrastructure triggers and items to be delivered to support that development under the Planning Agreement.

2.4 Types of public purposes Council will seek in Planning Agreements

Council will seek to negotiate the provision of the following through Planning Agreements:

- Public purposes that support the strategies and actions in its Local Strategic Planning Statement, Community Strategic Plan, Local Environmental Plans, Development Control Plans, and other land use plans and policies
- Contributions of land, money or works that are required under s7.11 / s7.12 contributions plans, but the developer wishes to modify the location, staging or specification of local infrastructure included in those plans
- Community Infrastructure provision in the Chatswood CBD (refer to chapter 5)
- Conservation of areas with high ecological value.

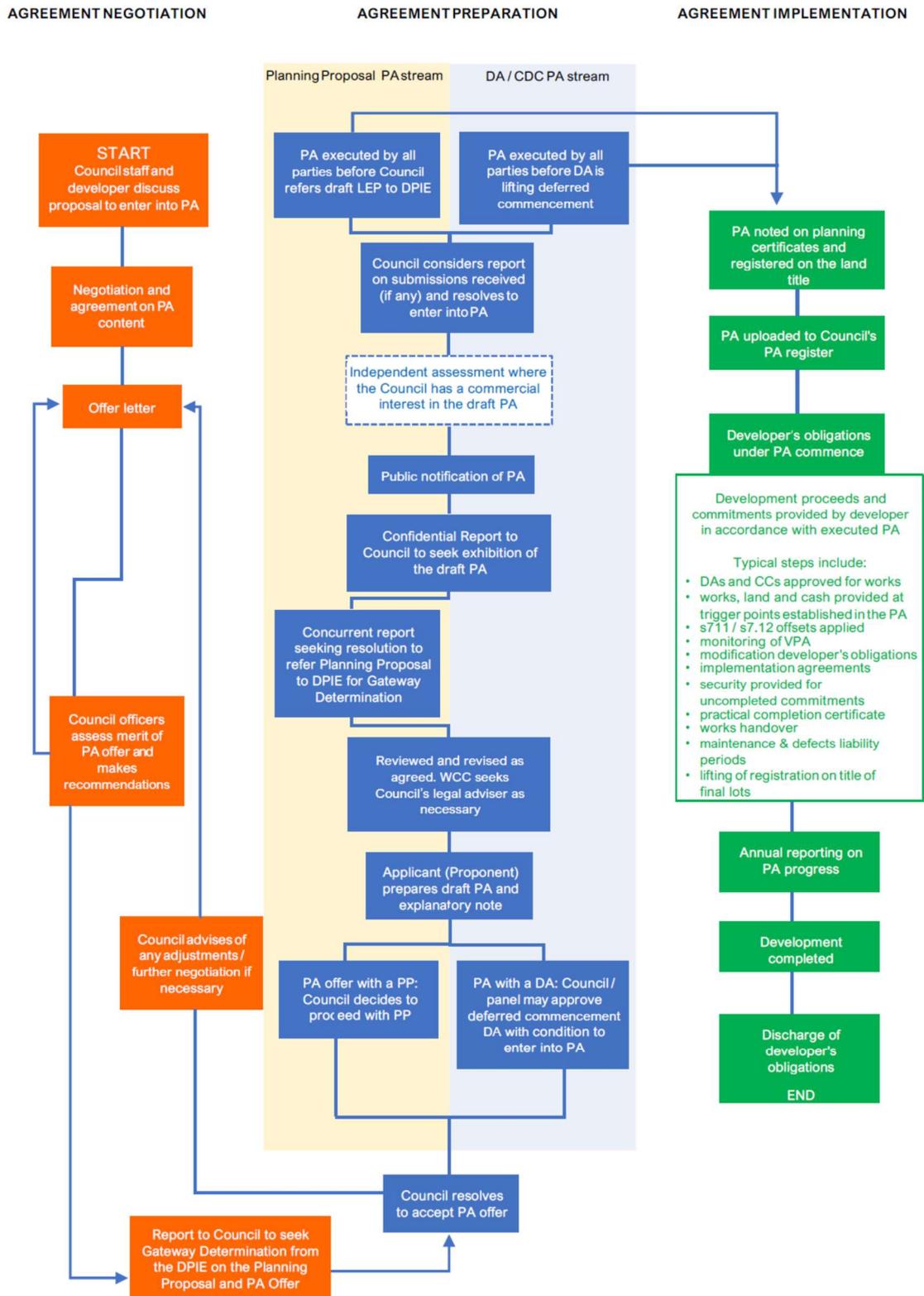
Council may also consider offers to provide land, works or monetary contributions for public purposes other than those listed above, where the offer provides better planning outcomes than the sole use of s7.11 or s7.12 contributions.



Council may also request developers through a Planning Agreement to make contributions towards the recurrent operation and maintenance costs of public facilities or to maintain infrastructure delivered for a certain period of time after handover. The amount of any recurrent funding contribution sought will depend on the type and value of facilities being handed over and the costs to maintain and operate the facility over its life cycle.

3 Planning Agreement negotiation process

The processes for negotiating Planning Agreements is shown in the flow chart below.





4 General requirements

4.1 Parties to a Planning Agreement

The parties to a Planning Agreement will include:

- the Council
- one or more developers, and
- if the developer(s) is not the owner of all of the land the subject of the Planning Agreement, the landowner or owners.

The parties may also include another planning authority, such as a State Government agency or another council.

Planning Agreements with multiple developers / developers can be a useful mechanism to provide certainty to the type of infrastructure and ultimate timing for the delivery of infrastructure. However, they do require a high degree of coordination and cooperation between the developers. Council encourages developers in urban renewal developments to consider working with each other through Planning Agreements.

4.2 Application of s7.11 or s7.12 contributions in Planning Agreements

A Planning Agreement must specify whether local infrastructure contributions under s7.11 or s7.12 of the EP&A Act will apply to the development the subject of the Planning Agreement, in addition to any development contributions to be provided by the developer and included in the Planning Agreement.

The decision of whether s7.11 / s7.12 contributions will be a matter of negotiation between the Council and the developer.

However, as a general guide:

- where one of the aims of the Planning Agreement is to bring to account all local infrastructure contributions required by the development under a Council-adopted contributions plan, then s7.11 / s7.12 contributions will not apply to the development
- where the Planning Agreement does not address contributions required under a contributions plan then s7.11 / s7.12 contributions will apply to the development.

Where s7.11 / s7.12 contributions apply to the development the subject of the Planning Agreement, Council will generally not agree to allowing public benefits to be provided under the Planning Agreement to be taken into consideration, in calculating the s7.11 / s7.12 contributions.



4.3 Letter of offer

A letter of offer will be required to be prepared by the developer for any proposed Planning Agreements.

This should be informed by the Planning Proposal (and supporting studies) or relevant DA or CDC and Council's specifications. Requests for specifications for the works should be made to Council prior to the preparation of a letter of offer.

The Planning Agreement letter of offer shall contain the following details:

- (a) Land affected by the agreement
- (b) Parties to the agreement and where necessary, authority to act on behalf of other parties
- (c) The Planning Proposal, DA or CDC to which the proposed Planning Agreement relates
- (d) Whether the proposed agreement excludes the application of section 7.11, 7.12 or 7.24 of the EP&A Act to the development
- (e) Details of public purposes and public benefits to be provided by the developer:
 - i. the nature and extent contributions (including works, material public benefits, land or monetary contribution) proposed to be provided by the developer
 - ii. a description of the components of the works that are works in kind (i.e. works that in accordance with the relevant contributions plan(s)), and the components which are not works in kind
 - iii. plans demonstrating the location and areas of works and land dedications
 - iv. concept designs of any proposed works

In the case of a Planning Agreement to provide Community Infrastructure, the letter of offer will contain the following additional information:

- the amount of GFA being sought by the developer
- the total value of the Community Infrastructure offer using the latest rates for additional GFA set out in section 5.9
- the breakdown of the total value of the Community Infrastructure offer in terms of the value of works, land, or monetary contributions.

4.4 Agreement drafting and implementation costs

The developer is responsible for all costs related to a Planning Agreement, including the Council's costs of preparing, negotiating, executing and stamping Planning Agreements, and any land or works valuations. Such costs are payable within 30 days of the date of a tax invoice issued by Council.

As outlined in section 4.8, Planning Agreements will require the developer to provide security to Council.



4.5 Specification of works

The specifications for any proposed works in a Planning Agreement will be determined in consultation with the following Council staff representatives:

Item	Council representative
Roads, bridges, drainage systems and other civil engineering works	Traffic & Transport Team Leader and Asset Management Team Leader
Public domain, footpath and streetscape works	Asset Management Team Leader
Local and district parks, playgrounds, sports fields and other recreation items	Culture and Leisure Manager
Community centres, meeting rooms, libraries and other community buildings	Community Life Manager

The specifications will need to be confirmed and detailed as part of preparing the agreement. Specifications will also need to address the following:

- (a) the estimated value of each of the contributions documented by a Quantity Surveyor or appropriately qualified designer
- (b) the proposed staging / timing of those contributions, by reference to triggers or thresholds for the delivery of each works items, land dedication and monetary payment
- (c) the projected lifecycle costs to Council of any works or land in stratum, including operation or ongoing service delivery, as well as the likely maintenance and replacement costs.

4.6 Approvals for works or material public benefits

Most works included in a Planning Agreement will require assessment and approval under the EP&A Act. Other approvals, such as under the Roads Act, may also be necessary. The only exceptions are development that is exempt development.

Entering into a Planning Agreement for works does not provide development approval for those works. Where development approval(s) is required, this must be obtained prior to works commencing. The type of approval(s) required – such as a DA, CDC or CC - will depend on the location, type and scale of the works involved. Council’s Development Assessment Team can be contacted to determine the approvals required.

Where works that are intended to be the subject of a Planning Agreement are included as part of a DA for wider development works, developers are encouraged to consult with Council prior to DA lodgement to determine the necessary specifications. This will reduce delays in the DA assessment.

Council will only consider acceptance of a material public benefit or works in lieu of payment of 7.11 or 7.12 contributions where the applicable development contribution value exceeds \$500,000, or otherwise at the discretion of Council.

Council will not recognise or allow any s7.11 / s7.12 contributions credit if works commence prior to a Planning Agreement being executed and the developer obtaining all the necessary approvals for the works.



4.7 Valuation of land, works and material public benefits

Works valuations are required to inform the amount of any security required and the calculation of s7.11 or s7.12 contributions credits, if any.

Works included in a Planning Agreement will be valued by either a registered quantity surveyor, or another person that Council agrees has the necessary skills, qualifications and experience to perform the valuation.

Land included in a Planning Agreement will be valued by an independent registered valuer with at least ten years' experience in valuing land in NSW. Valuation be carried out in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. However, where any FSR entitlement is transferred from the land proposed to be dedicated to Council to the development component of the remaining parcel, a nominal value of one (1) dollar will be attributed to the land.

In the case of any other type of public benefit, Council may, at its discretion, consult with the developer and apply an appropriate valuation methodology to determine the value to be attributed to those benefits.

In the event that a Planning Agreement proposes works and services that would otherwise be provided as a condition of development consent, then those works and services will be deemed to have no value under the Planning Agreement.

All costs associated with the determination of values will be borne by the developer.

4.8 Security and insurance

Council's preferred arrangements for the provision of security are set out in detail in the Template Planning Agreement, and summarised in the table below.

Type of contribution	Security that Council will seek under the Agreement
<p>Works</p>	<p>Cash deposit, bank guarantee or bond that is 115% of the agreed value of each of the works in a Planning Agreement.</p> <p>The security must be lodged before a CC is issued for each work.</p> <p>Upon completion of the agreed works to Council's satisfaction, part of the security equivalent to 100% of the value of the work.</p> <p>The remaining security equivalent to 15% of the value of the work will be retained by Council as a security bond.</p> <p>To assist in more timely release of securities, Council will accept two separate securities equivalent to 100% and 15% of the value of works.</p> <p>The bond shall be returned:</p> <ul style="list-style-type: none"> • after the defects liability and maintenance periods have lapsed, and • Council's Manager of Design and Infrastructure has certified in writing that all obligations and works have been undertaken and completed to the standard as detailed in the Agreement and relevant approval. <p>Council will also seek to include a provision in the Planning Agreement that will allow the Council to step-in and remedy any breach in carrying out works at the developer's cost.</p>



Type of contribution	Security that Council will seek under the Agreement
<p>Dedication of land and easements</p>	<p>The dedication or transfer of land will be tied to either:</p> <ul style="list-style-type: none"> • if the land contains works that are included in an executed Agreement – the satisfactory completion of those works, and the completion of the defects liability and maintenance periods related to those works, or • if the land does not contain works in an Agreement - the issuing of a specified kind of Part 6 Certificate, which will usually be a subdivision certificate or, in the case of a strata lot, a strata subdivision certificate. <p>Council will include a provision in any Planning Agreement allowing Council to compulsorily acquire the land to be dedicated or transferred for a nominal sum if the landowner defaults.</p> <p>Compulsory acquisition by Council is provided for in the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>. The provision in the Planning Agreement will constitute a pre-acquisition agreement between the landowner and Council for the purposes of that Act.</p> <p>Council may either require, in appropriate cases, the creation of a charge over land, and may require the landowner to agree to not object to Council lodging caveats on the title of all or any of the land the subject of the Planning Agreement.</p> <p>In particular, Council will generally require a Planning Agreement to include provisions acknowledging Council has a caveatable interest over:</p> <ul style="list-style-type: none"> • The whole of the land that relates to the Planning Agreement until the it is registered; and • Any land to be dedicated to Council, once the relevant portion of land has been created. When the Planning Agreement is registered on the title of the land, Councils caveatable interest will be withdrawn.
<p>Payment of a monetary contribution</p>	<p>The Agreement will require any monetary contributions to be paid before the issuing of a specified kind of Part 6 Certificate, which will usually be a subdivision certificate (where subdivision of land is involved), or a construction certificate for built form that proceeds before subdivision.</p> <p>Under special circumstances where landownership cannot be obtained for all affected lands, Council may either:</p> <ul style="list-style-type: none"> • request the proponent's agreement on Council to register a caveat for a charge over land on the title of any or some of the affected lands until such time when Council is satisfied that the proponent's obligations for (partial or full) monetary contributions payment have been met, or • require the proponent to provide a financial security such as a bond or bank guarantee or assets equal to the full monetary contributions amount.

Council will seek to include provisions in the Planning Agreement that the developer will be required to take out and keep current the following insurances in relation to works in an agreement:

- contract works insurance
- public liability insurance
- workers compensation insurance as required by law
- any other insurance required by law.



4.9 When will the developer's obligations arise?

The obligations under a Planning Agreement will arise as agreed between the parties but generally upon execution of the Planning Agreement by all parties.

Council will seek to have the development contributions under a Planning Agreement to be provided as follows:

- (a) In the case of a monetary contribution under a Planning Agreement that relates to a planning proposal:
 - i. 25% at the gazettal of any Local Environmental Plan (LEP) for the subject planning proposal (or within 21 days after the gazettal date) where applicable,
 - ii. 50% of the contribution prior to Construction Certificate, and
 - iii. 25% of the contribution prior to the issue of an Occupation Certificate (interim or final) or prior to the registration of a Strata plan, whichever is earlier.

However, Council is flexible in the percentage of payment for each instalment allowing negotiation on a case by case basis.

Council will accept the provision of bank guarantees in lieu of the first payment due above. In those circumstances, full payment of the contribution will be due prior to the issue of any occupation certificate.

- (b) In the case of works, prior to the issue of the first occupation certificate for development on the land. Council will require any works on land to be dedicated (for example embellishment of a public reserve) to be completed prior to dedication.
- (c) In the case of other land dedication, prior to occupation of the development or the issue of an occupation certificate for the development. This timing may be varied depending on how the development will be staged and the location of the land to be dedicated. Council will require this information from developers so that it can be properly informed when negotiating the likely timing for the dedication of the land.
- (d) Dedication of public reserves or public roads can be made on registration of a subdivision plan creating the lot to be dedicated in accordance with the relevant provisions of the Local Government Act 1993 or the Roads Act 1993.

4.10 Commencing and carrying out works

Council will seek to include provisions in the Planning Agreement concerning the notification of commencement of works, notification of inspections and allowing Council staff to access the land for inspections. These provisions will reflect relevant statutory obligations that apply to the approval and delivery of works and land dedications.

Planning Agreements will establish Council's required approvals, inspections and handover requirements.



4.11 Practical completion of works

The works will be deemed completed when Council provides written notice to that effect, and the developer has provided Council with a full set of works-as-executed plans.

The Planning Agreement will include provisions to cover the situation where the completion of works is unable to be completed as per the specified timing/staging.

4.12 Defects liability and maintenance period

The developer shall be responsible for the maintenance of works and the rectification of any works defects for the period(s) set out in the Planning Agreement.

In the case of structural, or below ground works or landscaping/planting, the defects liability period shall be two years from the issue of certificate of practical completion. In all other circumstances the defects liability period will be one year from issue of certificate or practical completion.

4.13 Dedication of land and easements

Council will not accept land containing infrastructure works or other public purposes, unless by agreement.

Planning Agreements may involve the dedication / transfer of land:

- that is land in stratum
- comprising works for public purposes (including land set aside for conservation purposes) in a Planning Agreement
- without any works thereon.

In all cases where Council accepts land from a developer the land must be dedicated or transferred free of cost.

In dedicating or transferring any land to Council, the developer will be responsible for preparing all documents and meeting all costs of:

- removing an encumbrance on the title
- creating an interest in land in Council's favour
- subdividing land
- preparing and lodging documents for registration
- obtaining the consent of any to registration
- dealing with any requisition from NSW Land Registry Services relating to any dealing lodged for registration.

4.14 Dispute resolution

The Template Planning Agreement contains Council's preferred mechanism for the resolution of disputes under the agreement and the means for enforcement of the Planning Agreement.



4.15 Modification of Planning Agreements

Planning Agreements can be modified by agreement between the parties. Either party can initiate modification.

Modification of a Planning Agreement will generally occur by means of a deed of variation to the Agreement in a form acceptable to Council.

The party proposing the modification must bear the other party's costs of the modification.

4.16 Transferring Planning Agreement responsibilities to a new landowner

A developer may choose to sell the site which is the subject of a Planning Agreement.

However, the developer must not have any transfer dealings with the land (or part of the land) the subject of the Planning Agreement unless:

- the proposed purchaser or incoming party enters into a 'Novation Deed', which transfers the developer's obligation under the Agreement to the incoming party; or
- Council has provided in writing a partial release and discharge of the Planning Agreement in respect of the affected Land.

The Planning Agreement will include provisions relating to the novation to another party.

4.17 Public notification and consideration of submissions

A draft Planning Agreement and explanatory note will be publicly notified for minimum of 28 days. Council will consider all public submissions in deciding whether to enter into a Planning Agreement

A draft Planning Agreement may be subject to further negotiation between the parties to consider any issue arising from the public notification. This may result in the Planning Agreement being modified.

Where the modification is considered by the Council to result in a significant reduction in the public benefit to the notified Planning Agreement, Council will publicly renotify and make available for public inspection the modified Planning Agreement and the application to which it relates.

Public notice will be given at the same time as the development application or planning proposal or as soon as possible after the public notice of the development application or planning proposal, in accordance with section 25D of the *Environmental Planning and Assessment Regulation 2000*.

4.18 Pooling of monetary contributions

So that high priority infrastructure can be provided in a timely manner, Council will seek to include a provision in any Planning Agreement involving the payment of monetary contributions, that permits any money paid to be pooled with money paid under other Planning Agreements or contributions plans and applied progressively for the different purposes under those Planning Agreements or plans.



4.19 Council may co-contribute toward infrastructure

Council may, at its sole discretion, complement monetary contributions paid by the developer with its own funds or grants to further enlarge, enhance or embellish the infrastructure or service funded under the Planning Agreement.

4.20 Implementation agreements

There may be some circumstances where the parties are not able to fully resolve all matters at the time the Planning Agreement is executed, particularly if the agreement accompanies a Planning Proposal. For example, there may be specifications of certain works to be included in the Planning Agreement (for example community buildings) that are more appropriately defined or approved after the Planning Agreement commences.

If this is the case, Council will seek to include provisions in the Planning Agreement that allows for implementation agreement(s) to be entered into between the parties at a later date.

4.21 Registration of Planning Agreements on land title

Council will require a Planning Agreement to acknowledge that Council has a caveatable interest in the land and may register a caveat against the title to the land prior to the Planning Agreement being registered. Once the Planning Agreement is registered, Council will withdraw any caveat it has over the land.

Council will seek to include a provision in the Planning Agreement that requires the Planning Agreement to be registered on the land title immediately on commencement of the Planning Agreement unless Council is satisfied there is a good reason not to do so.

Registration on commencement means that Council will generally not execute a Planning Agreement unless and until evidence to Council's satisfaction of the agreement/consent of all landowner parties to its registration on title is received.

The developer will submit all documents necessary to enable Council to effect registration of the Planning Agreement at their own costs.

Council will generally agree to the removal of registration on any part of the subject land in which a subdivision certificate has been issued to create lots that are to be sold to end-purchasers or otherwise created for separate occupation, use and disposition. The developer will, at their cost, submit all documents necessary to remove the affectation from title as part of the subdivision certificate process.

If the Planning Agreement is not registered prior to development consent, Council will require the Planning Agreement to be registered as a condition of development consent. Council may also require the registration of the Planning Agreement as a deferred commencement condition.

The registration of the Planning Agreement against the title to land can be removed once all the contributions have been delivered. Where contributions are to be delivered after the registration of a subdivision or strata plan, Council may agree to removal of the Planning Agreement from the title



to final lots (lots that are not to be further subdivided), subject to adequate security being provided to Council for any outstanding contributions to be delivered.

This may include:

- (a) A requirement to register the Planning Agreement against the title to the common property;
- (b) Caveats to be registered over any land to be dedicated to Council; and
- (c) Bank guarantees or bonds to secure the cost of any works and/or monetary contributions that remains outstanding.

As detailed at Section 4.8, Council may also require a caveat or caveats to be lodged on title subject to the Planning Agreement. When the Planning Agreement is registered on title, Council's caveat will be withdrawn.

4.22 Notes on planning certificates

Council may seek to include in the Planning Agreement that the Council will make a notation about the Planning Agreement on any certificate issued under s10.7(5) of the EP&A Act in respect to all parcels of land the subject of the Planning Agreement.

4.23 Monitoring of Planning Agreements

Council will periodically monitor the implementation of all Planning Agreements and will seek to include provisions in Planning Agreements requiring developers to report on their progress in the following terms.

The developer is to provide details of progress in the provision of the Planning Agreement's development contributions for the previous financial year in a written report or schedule to be submitted to the Council on or before 31 July in every year that any of the developer's obligations under the Planning Agreement remain outstanding.

This is to enable Council to meet its reporting obligations under s7.5(5) of the EP&A Act.

To assist in the active monitoring of requirements during the DA assessment process, for Planning Agreements that will span more than one DA, developers will be required to include a statement with each DA identifying the relevant infrastructure triggers and items to be delivered to support that development under the Planning Agreement. This will assist in the inclusion of appropriate conditions of consent to ensure the right infrastructure is delivered in line with the development and Planning Agreement requirements.

4.24 Changes to the development

The evolution of a development, for example through a s4.55 modification request, may require additional local infrastructure or other public purposes to be required.

Council will seek to include provisions in the Planning Agreement that clarify that if the additional infrastructure needs for a modified development can be addressed by augmenting the monetary, land or works contributions in a manner consistent with the rates described in the Planning Agreement, the adjustments to the wording of the Planning Agreement to reflect such modification



will not constitute amendment of the Planning Agreement. However, the impacts of any change to development will need to be considered on a case by case basis.

4.25 Public information and reporting

Council will provide public information on Planning Agreements as required by section 7.5 of the EP&A Act and clause 25F of the EP&A Regulation. This includes Planning Agreements to which the Council is not a party but which have been provided to the Council under section 7.5(4) of the EP&A Act.

The relevant information is summarised below.

Council will keep a register of all Planning Agreements applying to land within the local government area. The register will record the date an agreement was entered into and a short description of the agreement, including any subsequent amendments.

The following will be available to download on Council's website, and available for viewing at Council Offices during ordinary office hours:

- the Planning Agreement register
- copies of all Planning Agreements (and any amendments) that apply to land within the Willoughby LGA
- copies of explanatory notes relating to those agreements or amendments.

Council will in its annual report prepare a report on the progress of all the Planning Agreements that it is a party to and which remain in force.



5 Community Infrastructure in Chatswood CBD

This chapter contains the Council's Community Infrastructure policy. It describes how development on certain land in Chatswood CBD can provide Community Infrastructure as part of the development. The provision of Community Infrastructure is formalised through a Planning Agreement.

5.1 Background

Council's vision for the Chatswood CBD is for it to be confident, fine grain and green. It will be a diverse, vibrant, active and accessible place, with attractive places for residents, workers and visitors to enjoy.

Council's *Chatswood CBD Planning and Urban Design Strategy to 2036* (August 2020) (**Chatswood CBD Strategy**) has identified significant growth potential in the CBD area.

At the time the CBD strategy was prepared, it was anticipated that the planning controls covering the CBD area allowed for a further 65,000m² of residential gross floor area to be developed which could be exhausted in 3 years. Full implementation of the CBD strategy will create the opportunity for a capacity of 440,625m² residential gross floor area up to 2036.

This growth will generate demand for a range of infrastructure including open space, public domain, community facilities and transport works. This infrastructure is required as a result of, and to support, the extra development potential identified in the CBD strategy.

Council will facilitate the delivery of this infrastructure through various means including:

- direct provision of works required by conditions of development consent
- local infrastructure contributions by developers, that is, s7.11 and s7.12 contributions
- other council income sources such as general revenue, special reserves, fees and charges.

These funding sources and delivery mechanisms will not be sufficient to provide all of the infrastructure to achieve the Chatswood CBD vision.

To help meet the gap, the Community Infrastructure scheme offers developers the opportunity to obtain additional floor space by providing Community Infrastructure - this is called the Community Infrastructure Scheme (**CIS**).

The following sections explain the process by which developers of land in the Chatswood CBD can participate in the CIS. Part of this process involves developers and Council negotiating Planning Agreements to formalise the provision of Community Infrastructure.

5.2 Where does this Community Infrastructure policy apply?

This Community Infrastructure policy applies to land identified in the expanded Chatswood CBD area shown in Figure 3.1.4 of the Chatswood CBD Strategy.



5.3 Purposes of this Community Infrastructure policy

The purposes of the Community Infrastructure policy are to:

- explain what Community Infrastructure is and why it is needed to meet the growth of the Chatswood CBD
- detail the essential Community Infrastructure that is needed to support redevelopment in the Chatswood CBD
- describe how developers of land can participate in the delivery of Community Infrastructure through the development process
- describe how the value of the Community Infrastructure works to be provided by a development is calculated.

5.4 What is Community Infrastructure?

Community Infrastructure is the civil infrastructure, public domain and physical facilities that is required to support the higher intensity of land use and built environment permitted on certain land in the Chatswood CBD where this policy applies. Community Infrastructure may also benefit the wider resident, worker and visitor population.

For example, by providing new roads the accessibility and permeability of an area increases for pedestrians, cyclists, cars and public transport. Landscape setbacks as an extension to the road reservation can offer a green buffer to development fronting the road, whilst they can provide a pleasant walking and cycling experience for the wider community.

The Community Infrastructure described in this policy supplementary to works required to be carried out as a condition of consent under section 4.17 of the EP&A Act.

The Community Infrastructure covered by this policy is listed in **Appendix A** and summarised in **Table 5-1**.

Table 5-1: Community Infrastructure addressed by this Chapter

Infrastructure type	Examples
Roads	Streetscape, bike and pedestrian improvements such as widened footpaths and landscaped setbacks, local parks, pedestrian and bike paths, overpasses and underpasses, landscape works and lighting; Traffic management works such as road entry thresholds, nodal treatments, pedestrian crossings, road realignment and intersection upgrades; and Bus and traffic turning lanes.
Public Open Space	Embellishment works to new or existing open space, including upgrades to existing open space such as new play equipment, lighting, sports facilities, furniture, public art and landscape works.



Infrastructure type	Examples
Drainage and Stormwater Management	Drainage amplification, integrated water treatment facilities, large scale detention systems, overland flow path works and stormwater channel improvements.
Public Transport	Public transport works that facilitate and enhance existing public transport facilities such as bus layovers and turning lanes, bus and light rail stops.
Public community facilities	Recreation facilities (indoor and outdoor) such as sporting, recreational, cultural and social facilities and including basketball courts, community buildings and meeting rooms, exhibition and performance spaces, child care centres.

5.5 Basis for Community Infrastructure

5.5.1 Significant growth will generate infrastructure demands

The Chatswood CBD is a regionally significant living and working hub in Sydney. It has been identified as a Strategic Centre in the Greater Sydney Region Plan and is also within the eastern economic corridor under the North District Plan within the Eastern Harbour City. The CBD includes a range of office, mixed use, retail and high density residential uses near a modern transport interchange that provides access to several bus services and to rail services from the North West Metro and T2 Northern Line. These transport services connect Chatswood to other Strategic Centres including Macquarie Park, St Leonards and the Sydney CBD.

The vision for the Chatswood CBD aims to achieve a confident, fine grain and green precinct. The CBD seeks to be a diverse, vibrant and active place with attractive spaces for residents, workers and visitors. The CBD Strategy aims to promote office growth in the core and support residential growth on the periphery.

The Chatswood CBD is expected to grow substantially – by 2036 it will provide jobs for 31,000 to 33,000 workers and is anticipated to accommodate up to 1,250 new dwellings.

To accommodate this growth and to promote and support office growth in the CBD Core, substantial new infrastructure is needed. In particular, it is the provision of new public streets, pedestrian and bike links, parks, community facilities and stormwater management that will ensure successful sustainable regeneration and a high level of amenity in the expanded Chatswood CBD.

5.5.2 A mix of infrastructure funding mechanisms will be required

Some of the public infrastructure can be funded and delivered through consent authorities imposing s7.11 contributions or s7.12 levies under the *Willoughby Local Infrastructure Contributions Plan 2019 (Contributions Plan)*, as updated or replaced from time to time.

All but minor development will be subject to a requirement to make contributions under the Contributions Plan. However the Community Infrastructure included in this policy is distinct from and does not double up with the infrastructure to be funded from contributions and levies collected under the Contributions Plan.



The infrastructure needed in the Chatswood CBD cannot be provided by s7.11 and s7.12 contributions alone, as the contribution amount that can be imposed on developments under these mechanisms is limited. Council will need to find other funding sources and delivery mechanisms if all the infrastructure that is needed is to be provided.

The CIS is one of these mechanisms. The CIS enables developers the opportunity to develop land at a higher density under the Chatswood CBD Strategy with the recognition that additional community infrastructure will be required to support its growth to which they will be invited to contribute.

5.6 Planning framework

This Community Infrastructure policy applies to proponents seeking approval for additional GFA on land in the Chatswood CBD as set out in the Chatswood CBD Strategy.

Council's intention is to formalise the policy through an amendment to the Willoughby LEP 2012 that will allow additional floor space on land within the Chatswood CBD Strategy area if the development provides Community Infrastructure.

The amendment, that will address other planning controls throughout the CBD, is not expected to be finalised for some time. In the interim, this policy will inform site-specific planning proposals for additional floor space.

5.7 Community Infrastructure scheme

The main elements of the Community Infrastructure CIS are as follows:

- Site-specific planning proposal to amend the LEP on land where this policy applies for development including additional floor space and the provision of Community Infrastructure
- The costs of providing community infrastructure works
- Planning agreement to secure the provision of Community Infrastructure
- Provision of the Community Infrastructure
- Overall cost of community infrastructure and equity in distributing this cost across all developments that would result in increased density.

5.8 Site-specific planning proposal

An applicant can prepare and lodge a planning proposal, on land where this policy applies, that proposes to change the maximum floor space ratio and / or maximum height controls that apply under Willoughby LEP 2012 to the floor space ratio and / or height maximums recommended in the Chatswood CBD Strategy.

The planning proposal must be acceptable on merit and be consistent with the Ministerial Directions before Council can agree to the provision of Community Infrastructure. That is, it must:

- be acceptable in terms of environmental capacity, and
- comply with development controls, and



- have little or no adverse impact on the amenity of adjoining properties and the surrounding area.

The proposed Community Infrastructure provision:

- is to be acceptable to Council
- must be consistent with the social, physical and environmental vision for the Chatswood CBD
- must be a type of Community Infrastructure included in the Community Infrastructure schedule at **Appendix A**.

5.9 How is the value of Community Infrastructure assessed?

To ensure an equitable and transparent assessment of the public benefits that may be derived from the provision of Community Infrastructure by an applicant, Council uses a contribution rate to establish the value of the additional floor space and the Community Infrastructure.

The additional floor space (or Community Infrastructure floor space) is calculated as the difference between the following:

- the total residential accommodation floor space proposed under the additional FSR control sought through the site-specific planning proposal, and
- residential accommodation floor space achievable under the existing maximum FSR control allowed under Willoughby LEP 2012.

The undiscounted Community Infrastructure contribution rate is \$900 per square metre of additional floor space. Council may adjust this rate from time to time.

Owing to the economic impacts of Covid-19, the Community Infrastructure contribution rate will be discounted by 15 per cent. The discounted rate is **\$765 per square metre of additional floor space**. Council will review this rate in early 2022.

The Community Infrastructure contributions amount required for a proposed development to access additional floor space via a site-specific planning proposal is calculated as follows:

$$\text{\$CIC}_{\text{Amount}} = \text{\$CIC}_{\text{Rate}} \times \text{Additional GFA}$$

Where:

$\text{\$CIC}_{\text{Amount}}$ is the contribution amount in dollars

$\text{\$CIC}_{\text{Rate}}$ is the contribution rate in dollars per square metre

Additional GFA is the additional gross floor area proposed for the site



5.10 Planning Agreement

Both Council and the applicant must come to a mutual agreement on the appropriateness of the proposed Community Infrastructure package. The details of this package are incorporated into a Planning Agreement that is prepared in accordance with this policy.

The Planning Agreement will contain a provision requiring any Community Infrastructure contribution that is a monetary contribution to be indexed quarterly in accordance with the Consumer Price Index, All Groups, Sydney as published by the Australian Bureau of Statistics.

The Planning Agreement will outline when the Community Infrastructure needs to be provided. This will need to be in accordance with section 4.9 of this policy.



APPENDIX A: COMMUNITY INFRASTRUCTURE SCHEDULE

Community Infrastructure Contributions (CIC) Funding Scheme Works Program - Traffic & Transport

Item #	Item Description	Detailed Description of works	Plan / Strategy Reference	Estimated Costs	Staging / Timing
T1	Major Pedestrian Routes (Future) as per Map (highlighted yellow)	1) Shared Path - Pacific Highway	Integrated Transport Strategy (ITS); Pedestrian Access and Mobility Plan	\$ 1,000,000	2021 - 2026
T2		2) Upgrade - Help St		\$ 3,000,000	
T3		3) New Pedestrian Bridge - Victoria Ave x Pacific Highway		\$ 3,000,000	
T4		4) Continuous Footpath - Victoria Ave (West)		\$ 50,000	
T5		5) Shared Zones - Laneways (Post Office Lane; Charlotte Lane; Mills Lane)		\$ 3,000,000	
T6		6) Red Refuge - Victoria Ave (East)		\$ 100,000	
T7		7) Shared Path - Mowbray Rd		\$ 60,000	
T8	Pedestrian Safety & Access Improvements	1) Victoria Ave - extension of pedestrian thoroughfare by utilising kerb parking space by day of week & time of day (e.g. sign post installation; transition pavement treatment etc) - between Spring St & Neridah St	Pedestrian Access and Mobility Plan	\$ 1,000,000	2021 - 2026
T9		2) Pedestrian bridges across Pacific Hwy near Nelson St		\$ 3,000,000	
T10	Major Bicycle Routes (Future) as per Map (highlighted blue)	1) Pacific Hwy shared path and bicycle lanterns (eastern side of road)	ITS; Willoughby Bike Plan	\$ 7,000,000	2021 - 2026
T11		2) Anderson St; Ashley to McIntosh St - bi-directional bicycle path (west side of road)		\$ 3,000,000	
T12		3) LATM bicycle improvements to support bicycle safety / amenity - along Johnson St (both directions) between Orchard Rd & Bertram St		\$ 250,000	
T13		4) Mowbray Rd near Hampden Rd bicycle / Pedestrian traffic control signals		\$ 1,000,000	
T14		5) Mowbray Rd / Orchard St / Elizabeth St		\$ 500,000	
T15		6) Bicycle Hubs (storage facilities A,B & C)		\$ 60,000	
T16		7) Bicycle logos on all routes (except for Albert Ave; Pacific Hwy to Hercules St; Victoria Ave; Neridah St to Peshurst St;		\$ 70,000	
T17	Major Bus Routes (Future) as per Map (highlighted green)	1) Victoria Ave & Railway St - "Bus Only" (2-way) with footpath extensions*	ITS; Chatswood CBD Strategy; Traffic Study 2012	\$ 3,000,000	2021 - 2026
T18		2) Help St between Railway & Orchard St - "Bus & Taxis Only" - 6-10am & 3-7pm Mon to Fri (e.g sign post installation)		\$ 500,000	
T19		3) Anderson St & Victoria Ave - "Bus & Taxis Only" 24/7 (2-way)* (e.g sign post installation) NB.: Victoria Ave between Neridah St & Bertram St is "Bus & Taxis Only" for westbound direction only. All traffic permitted in eastbound direction		\$ 1,000,000	
T20		4) Planning Study Only - Archer St; Ashley to Victoria Ave - Potential future N-S & E-W bus services instead of Anderson St & Ashley St		\$ 100,000	
		(* service / delivery vehicle access & parking permitted on selected days & times)			
T21	Bus Interchange Expansion study	Bus Interchange Expansion study to identify potential bus interchange layout and operational options that would include: 1) on / off-street and mixed approaches; 2) identifying bus space needs, key dimensions and configurations,; 3) access and egress arrangements; 4) bus layover options; 5) pedestrian provision and passenger waiting and movement needs; 6) pedestrian and transport upgrades surrounding 1-5 Railway St	Traffic Study 2012	\$ 250,000	2021 - 2026
T22	Traffic Management Works	Intersection upgrades & link modifications at:	Traffic Study 2012		2021 - 2026
T23		1) Pacific Hwy / Albert Ave - new left turn lane (W to S)		\$ 10,000,000	
T24		2) Orchard Rd; Johnson St to Albert Ave - LATM (Local Area Traffic Mgt)		\$ 100,000	
T25		3) Albert Ave & Anderson St - 2-way in Anderson St; new right turn bay in Albert Ave & Anderson St (W to N)		\$ 1,500,000	
T26		4) Albert Ave / Archer St - new left turn lane in Albert Ave (W to S)		\$ 1,500,000	
T27		5) Archer St; Albert Ave to Malvern Ave - LATM, footpath widening, one through traffic lane in each direction		\$ 4,000,000	
T28		6) Victoria Ave / Hercules St - new traffic control signals		\$ 1,000,000	
T29		Other:			
T30		A) No stopping on key routes on weekdays & weekends (selected times)		\$ 40,000	
T31		B)Traffic signal operation review / changes to support traffic calming & pedestrian safety		\$ 200,000	
T32		Other (Part 2) - Smart Technology Installations:			
T33		C) CBD wide dynamic parking guidance system (P6S)		\$ 4,000,000	
T34		D) CBD wide incident management system (AI - Mego Incorp P6S): vehicle message signs; closed circuit CCTVs		\$ 3,000,000	
T35		Speed Zoning		Mall; 30km/h (selected streets i.e. Victoria Ave, Spring St, Victor St)	
T35	Taxi Access & Operations Improvement Works	Taxi Hub with weekday morning & afternoon priority access (also refer to 3A - "Bus Priority Works")	ITS	\$ 40,000	2021 - 2026
SUBTOTAL				\$ 56,340,000	

Community Infrastructure Contributions (CIC) Funding Scheme Works Program - Open Space and Recreation

Item #	Item Description	Detailed Description of works	Plan / Strategy Reference	Estimated Costs	Staging / Timing
OS1	Chatswood Oval	Trumper Pavilion Redevelopment- new pavilion fit for sport and recreation purpose, including demolition of Paul Harrison Pavilion and Jack Donnelly Grandstand.	Chatswood Park Master Plan 2018	\$ 3,000,000	2021 - 2026
OS2	Additional Open Space	Land acquisition of private open space- part costs of purchase	N/A	\$ 25,000,000	Unknown (subject to funding availability)
OS3	Chatswood High School	Partnership with Dept of Education for indoor sports courts in Master plan for school	Willoughby Open Space and Recreation Plan 2013	\$ 20,000,000	Unknown (subject Dept of Education's decision)
OS6	Green Streets program	Streetscape improvements of street verges incorporating new trees, pocket parks and creative footpath art for creative spaces	Missing Links footpath plan and Chatswood CBD Strategy	\$ 7,000,000	2021+ (driven by development activities in the CBD)
OS7	Metro Dive site	After rail construction, new open space development of the site bordered by Mowbray Rd, Nelson St and Pacific Highway.	N/A	\$ 13,000,000	Unknown (subject to funding availability)
			SUBTOTAL	\$ 68,000,000	

Community Infrastructure Contributions (CIC) Funding Scheme Works Program - Public Domain & Streetscape

Item #	Item Description	Detailed Description of works	Plan / Strategy Reference	Estimated Costs (per year)	Estimated Costs	Period	Staging / Timing (driven by development activities in CBD)
PD1	Public Domain Upgrade	Increase the "performance" of the public domain to responds to increased and changing use patterns.	Chatswood CBD Public Domain Plan (Pending to be finalised as Draft)	\$ 5,200,000	\$ 78,000,000	(over 15 years)	2021+
PD2	Public Domain Maintenance upgrade	Maintenance and management due to increased levels of wear and tear.Replacement of existing with more robust (and sustainable) materials	Chatswood CBD Public Domain Plan (Pending to be finalised as Draft)	\$ 3,250,000	\$ 48,750,000	(over 15 years)	2021+
PD3	Public Art Management and Maintenance	Maintenance, restoration, management of public artworks due to increased levels of wear and tear	Public Art Contribution (as per the current version of the Public Art Policy.	\$ 550,000	\$ 8,250,000	(over 15 years)	2021+
PD4	Water Quality Manage (WSUD)	Reduce impact on water catchment due to higher levels of pollutants	Chatswood CBD Public Domain Plan (Pending to be finalised as Draft)	N/A	\$ 260,000	N/A	2021+
PD5	Air Quality - Increase vegetation	Increased activity (particulaly service vehicle use) requires increased levels of vegetation to reduce air quality impact. Note: reearch indicates that increased levels of planting does improve air quality within urban environments	Chatswood CBD Strategy, Changing Lanes CBD Laneway Activation and improvement and Chatswood CBD Public Domain Plan (Pending to be finalised as Draft)	N/A	\$ 260,000	N/A	2021+
PD6	Heat Island - Tree Canopy increase	Increased building mass has a adverse effect on urban heat generation, increased pedestrian activity may also require additional hard surface paving. Vegetation , particularly broad tree canopies ameliorate this impact, reducing urban temperature.	Chatswood CBD Strategy, Changing Lanes CBD Laneway Activation and improvement and Chatswood CBD Public Domain Plan (Pending to be finalised as Draft)	N/A	\$ 260,000	N/A	2021+
PD7	Additional Public Domain Space (Land acquisition)	Additional open space to meet HaPP requirements (Part costs)	Chatswood CBD Strategy, Chatswood CBD Public Domain Plan (Pending to be finalised as Draft)	N/A	\$ 49,000,000	N/A	2021+
PD8	Flexible adaptive use of public space -temporary closures etc	Provision of event space, and pedestrianisation of space evenings/weekends.	Chatswood CBD Strategy, Chatswood CBD Public Domain Plan (Pending to be finalised as Draft)	\$ 1,020,000	\$ 15,300,000	(over 15 years)	2021+
SUBTOTAL					\$ 200,080,000		



APPENDIX B: PLANNING AGREEMENT AND EXPLANATORY NOTES TEMPLATE

Deed

[Insert Name] Planning Agreement

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

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Date: **[Insert Date]**

[Insert Name] Planning Agreement

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[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

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[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

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DRAFT

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

[Insert Name] Planning Agreement

Summary Sheet

Council:

Name: Willoughby City Council

Address: Level 4, 31 Victor Street, Chatswood, New South Wales 2067

Telephone: (02) 9777 1000

Facsimile: **[Insert Details]**

Email: email@willoughby.nsw.gov.au

Representative: General Manager

Developer:

Name: **[Insert Name]**

Address: **[Insert Details]**

Telephone: **[Insert Details]**

Facsimile: **[Insert Details]**

Email: **[Insert Details]**

Representative: **[Insert Details]**

Landowner: **[Insert this only if the Developer is not the owner of land required to be dedicated or land on which works are to be carried out]**

Name: **[Insert Name]**

Address: **[Insert Details]**

Telephone: **[Insert Details]**

Facsimile: **[Insert Details]**

Email: **[Insert Details]**

Representative: **[Insert Details]**

Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S7.4(1)	‘Planning Authority’	Council
	‘Developer’	Developer
	Development Contributions	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(1), (2)	Public Purpose	See column 2 of Schedule 2
S7.4(3)(a)	Land	See Definition of ‘Land’ in clause 1.1
S7.4(3)(b)(i)	Instrument Change	[Insert either: ‘See definition of LEP Amendment in clause 1.1’ or ‘N/A’]
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 s7.24 of the Act Apply to the Development	See clause 8
S7.4(3)(e)	Whether Benefits are or are not to be Taken into Consideration in Determining a Development Contribution under s7.11	[Insert either: ‘Yes’ or ‘No’]. 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, & Development Consents Applying to the Land	Yes
S7.5	Public Notice & Public Inspection of Draft	Yes

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

	Agreement	
S6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	[Insert 'Yes' or 'No' and identify the relevant provision of the Agreement]
S6.9(1)	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	[Insert 'Yes' or 'No' and identify the relevant provision of the Agreement]

Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Clause 25B(1)	Form & Subject-Matter	Yes
Clause 25B(2)	Secretary's Practice Note	Yes
Clause 25D	Public Notice & Public Inspection of Draft Agreement	Yes
Clause 25E	Explanatory Note	See Appendix
Clause 146A	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued?	[Insert 'Yes' or 'No' and identify the relevant provision of the Agreement]

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Table 3 – Ministerial Directions

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

DRAFT

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

[Insert Name of 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

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

and

[Insert Name of Landowner] ABN **[Insert ABN if a corporation]** of **[Insert Details]** (**Landowner**) **[Insert only if the Developer is not the owner of land required to be dedicated or land on which works are to be carried out]**

Background

- A The Developer has requested the Council to adopt a Planning Proposal to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land. **[Delete if not applicable]**
- B The Developer has made or proposes to make a Development Application to carry out the Development on the Land.
- C The Developer offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the carrying out of Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like and includes, without limitation, a Development Consent and a Part 4A Certificate.

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

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

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.

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

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

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

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

Dedication Land means a Contribution Item comprising land specified or described in Part C of Schedule 2 of this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period specified in Item 11 of Schedule 1.

Development means the development specified or described in Item 3 of Schedule 1.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Final Lot means:

- (a) any lot created in the Development for separate occupation and disposition, or
- (b) any lot of a kind or created for a purpose that is otherwise agreed by the Parties,

not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
 - (i) an act of God,
 - (ii) strike, lockout, other industrial disturbance or labour difficulty,
 - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
 - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine, or
 - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

GST has the same meaning as in the GST Law.

[Insert Name] Planning Agreement

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[Insert Name of Developer]

[Insert Name of Landowner]

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means the land specified or described in Item 1 of Schedule 1.

LEP means the *Willoughby Local Environmental Plan 2012*.

LEP Amendment means an amendment to the LEP to which the Planning Proposal relates. **[Delete if not applicable]**

Map means the map in Schedule 3.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Occupation Certificate has the same meaning as in the Act.

Part 4A Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Plan of Subdivision means:

- (a) a plan of subdivision within the meaning of s195 of the *Conveyancing Act 1919*, or
- (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

Planning Proposal means a planning proposal within the meaning of s55 of the Act as detailed in Item 2 of Schedule 1. **[Delete if not applicable]**

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

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

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.

1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 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.

4 Application of this Deed

- 4.1 This Deed applies to the LEP Amendment [**Delete 'LEP Amendment' if not applicable**], Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed excludes the application of s7.11, s7.12 and s7.24 of the Act to the Development to the extent provided for in Items 4, 5 and 6 in Schedule 1 respectively.
- 8.2 The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development to the extent provided for in Item 7 in Schedule 1.

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

making of Development Contributions and otherwise to the satisfaction of the Council.

- 9.2 A Contribution Value specified in this Deed is to be indexed from the date of this Deed in accordance with the index specified in Item 8 of Schedule 1. **[Include this clause only if Contribution Values are specified in this Deed].**
- 9.3 Any Contribution Value specified in this Deed in relation to a Contribution Item comprising a Work to be carried out or Dedication Land does not serve to define the extent of the Developer's obligation to make the Development Contribution **[Include this clause only if Contribution Values are specified in this Deed].**
- 9.4 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.5 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.

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

Part 2 – Provisions relating to monetary contributions

10 Payment of monetary Development Contributions

- 10.1 The Developer is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part.
- 10.2 The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with the index specified in Item 9 of Schedule 1.
- 10.3 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.4 If the Development Consent for the Development is modified to allow for additional **[Insert relevant details e.g. dwellings/Final Lots]** after **[Insert timing, which may, for example, be the issuing of the first relevant Part 4A certificate e.g. Construction Certificate/Subdivision Certificate]** for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional **[Insert relevant details e.g. dwellings/Final Lots]** not later than 7 days after the Development Consent has been modified.

Part 3 – Provisions relating to dedication of land

11 Dedication of Dedication Land

- 11.1 The [Developer/Landowner]* [Delete whichever is inapplicable] is to dedicate the Dedication Land free of cost to the Council in the manner and at the time or times specified in Part C of Schedule 2.
- 11.2 Before any Dedication Land is dedicated to the Council, the [Developer/Landowner]* is to do all things reasonably necessary to enable the Council to enter upon the Dedication Land for the purposes of inspecting that land.
- 11.3 After the Dedication Land is dedicated to the Council, the [Developer/Landowner]* is to do all things reasonably necessary to enable the Council to gain access to the Dedication Land by passing through any adjoining or adjacent land owned, occupied or otherwise controlled by [Developer/Landowner]*.
- 11.4 The [Developer's/Landowner's]* obligations under clause 11.2 and 11.3 are subject to the Council giving the [Developer/Landowner]* reasonable prior notice of its intention to enter upon or gain access to the Dedication Land.

12 Procedure for Dedication of Dedication Land

- 12.1 Dedication Land is dedicated for the purposes of this Deed when:
- 12.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 12.1.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the [Developer/Landowner]* [Delete whichever is inapplicable] as transferor that is effective to transfer the title to the Dedication Land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 12.2 The [Developer/Landowner]* is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 12.3 The [Developer/Landowner]* is to ensure that the Dedication Land is dedicated to the Council free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

- 12.4 If, having used all reasonable endeavours, the [Developer/Landowner]* cannot ensure that the Dedication Land is dedicated to the Council free from all encumbrances and affectations, the [Developer/Landowner]* may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 12.5 Despite any other provision of this Deed, if the [Developer/Landowner]* is required to dedicate land to the Council on the Developer is required to carry out a Work under this Deed, the [Developer/Landowner]* is to comply with clause 12.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

13 Acquisition of land required to be dedicated

- 13.1 If the [Developer/Landowner]* [Delete whichever is inapplicable] does not dedicate the Dedication Land at the time at which it is required to be dedicated, the [Developer/Landowner]* consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 13.2 The Council is to only acquire the Dedication Land pursuant to clause 13.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the [Developer/Landowner]* to dedicate that land.
- 13.3 The [Developer/Landowner]* agrees that:
- 13.3.1 clause 13.1 is an agreement between the Council and the [Developer/Landowner]* for the purposes of section 30 of the Just Terms Act; and
- 13.3.2 in clause 13.1, the [Developer/Landowner]* has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- 13.4 If, as a result of the acquisition referred to in clause 13.1, the Council is required to pay compensation to any person other than the [Developer/Landowner]*, the [Developer/Landowner]* is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.
- 13.5 The [Developer/Landowner]* indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 13.6 The [Developer/Landowner]* is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 30, 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 Carrying out of Work

- 14.1 The Developer is to carry out and complete Work specified in Part B of Schedule 2 in the manner and at the time or times specified in that Part.
- 14.2 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out to the satisfaction of the Council in accordance with:
- 14.2.1 a Development Consent or other Approval authorising the carrying out of the Work as modified or varied from time to time,
- 14.2.2 to the extent not inconsistent with such a Development Consent or Approval:
- (a) this Deed, and
 - (b) any further agreement that is entered into by the Parties under clause 6,
 - (c) any design or specification specified or approved by the Council,
 - (d) any reasonable requirements and directions notified in writing by the Council to the Developer.
- 14.3 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

15 Variation to Work

- 15.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 15.2 Without limiting clause 15.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 15.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 15.2.
- 15.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 15.5 The Developer is to comply promptly with a direction referred to in clause 15.4 at its own cost.

16 Access to land by Developer

- 16.1 The Council authorises the Developer to enter, occupy and use the land specified in Item 10 of Schedule 1 for the purpose of performing its obligations under this Deed.
- 16.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 16.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 16.1 or 16.2.

17 Access to land by Council

- 17.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 17.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 17.1.

18 Council's obligations relating to Work

- 18.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed.

19 Protection of people, property & utilities

- 19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - 19.1.1 all necessary measures are taken to protect people and property,
 - 19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 19.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 19.2 Without limiting clause 19.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

20 Repair of damage

- 20.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.

- 20.2 The Developer is to carry out its obligation under clause 20.1 at its own cost and to the satisfaction of the Council.

21 Completion of Work

- 21.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.
- 21.2 The Council is to inspect the Work the subject of the notice referred to in clause 21.1 within 14 days of the date specified in the notice for completion of the Work.
- 21.3 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 21.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 21.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 21.5 Before the Council gives the Developer a notice referred to in clause 21.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 21.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 21.5.

22 Rectification of defects

- 22.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 22.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 22.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 22.1.

23 Works-As-Executed-Plan

- 23.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 23.2 The Developer, being the copyright owner in the plan referred to in clause 23.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

24 Removal of Equipment

- 24.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:

24.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and

24.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 5 – Dispute Resolution

25 Dispute resolution – expert determination

- 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 Developer is to provide the Council with Security in the amount specified in Item 12 of Schedule 1 to secure the performance of such of the Developer's obligations under this Deed as are specified or described in Item 13 of Schedule 1.
- 27.2 The Security is to be provided at the time specified in Item 14 of Schedule 1.
- 27.3 The amount of the Security is to be indexed from the date of this Deed in accordance with the index specified in Item 15 of Schedule 1.
- 27.4 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of compliance by the Developer **[Insert 'and Landowner' here if applicable]** of its obligations under this Deed to the reasonable satisfaction of the Council.
- 27.5 The Developer may at any time provide the Council with a replacement Security.
- 27.6 On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 27.7 The Council may call-up the Security if it reasonably considers that the Developer **[Insert 'or Landowner' here if applicable]** has not complied with its obligations under this Deed specified in Item 13 of Schedule 1.
- 27.8 However, the Council is not to call-up the Security unless:
- 27.8.1 it has given the Developer not less than 30 days' notice of its intention to do so and particulars of why it intends to do so, and
- 27.8.2 the Developer **[Insert 'or Landowner' here if applicable]** has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 27.9 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 27.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 27.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and

- 27.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 27.10 If the Council calls-up the Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 27.11 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.

28 Breach of obligations

- 28.1 If the Council reasonably considers that the Developer **[Insert 'or Landowner' here if applicable]** is in breach of any obligation under this Deed, it may give a written notice to the Developer **[Insert 'or Landowner, as the case may be' here if applicable]**:
- 28.1.1 specifying the nature and extent of the breach,
- 28.1.2 requiring the Developer **[Insert 'or Landowner, as the case may be' here if applicable]** to:
- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 28.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 28.2 If the Developer **[Insert 'or Landowner, as the case may be' here if applicable]** fails to fully comply with a notice referred to in clause 28.1, the Council may, without further notice to the Developer **[Insert 'or Landowner, as the case may be' here if applicable]**, call-up the Security provided under this Deed and apply it to remedy the breach.
- 28.3 If the Developer **[Insert 'or Landowner, as the case may be' here if applicable]** fails to comply with a notice given under clause 28.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the **[Developer/Landowner]* [Delete whichever is inapplicable]** and any Equipment on such land for that purpose.
- 28.4 Any costs incurred by the Council in remedying a breach in accordance with clause 28.2 or clause 28.3 may be recovered by the Council by either or a combination of the following means:
- 28.4.1 by calling-up and applying the Security provided under this Deed, or
- 28.4.2 as a debt due in a court of competent jurisdiction.
- 28.5 For the purpose of clause 28.4, the Council's costs of remedying a breach the subject of a notice given under clause 28.1 include, but are not limited to:
- 28.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

- 28.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 28.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 28.6 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer **[Insert 'or Landowner, as the case may be' here if applicable]**, including but not limited to seeking relief in an appropriate court.

29 Enforcement in a court of competent jurisdiction

- 29.1 Subject only to clauses 25 and 26, the Parties may enforce this Deed in any court of competent jurisdiction.
- 29.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 29.2.1 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
 - 29.2.2 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

30 Registration of this Deed

- 30.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 30.2 On commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 30.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the **[Developer/Landowner]* [Delete whichever is inapplicable]** and any other person required by the Registrar-General to execute such instrument, and
 - 30.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 30.3 The Developer at its cost is to:
 - 30.3.1 do such other things as are reasonably necessary to enable registration of this Deed to occur, and
 - 30.3.2 provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information of such registration.
- 30.4 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:
 - 30.4.1 in so far as the part of the Land concerned is a Final Lot,

- 30.4.2 in relation to any other part of the Land, once the Developer **[Insert 'and Landowner' if applicable]** has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

31 Restriction on dealings

- 31.1 The Developer **[Insert 'and Landowner' here if applicable]** is not to:
- 31.1.1 sell or transfer the Land, other than a Final Lot, or
- 31.1.2 assign the Developer's **[Insert 'and Landowner's' here if applicable]** rights or obligations under this Deed, or novate this Deed, to any person unless:
- 31.1.3 the Developer **[Insert 'and Landowner' here if applicable]** has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's **[Insert 'and Landowner's' here if applicable]** rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 31.1.4 the Council has given written notice to the Developer **[Insert 'and Landowner' here if applicable]** stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 31.1.5 the Developer **[Insert 'and Landowner' here if applicable]** is not in breach of this Deed, and
- 31.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 31.2 Subject to clause 31.3, the Developer **[Insert 'and Landowner' here if applicable]** acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 31.1.
- 31.3 Clause 31.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 8 – Indemnities & Insurance

32 Risk

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

33 Release

- 33.1 The Developer **[Insert 'and Landowner' here if applicable]** releases the Council from any Claim it may have against the Council arising in connection

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

34 Indemnity

- 34.1 The Developer **[Insert 'and Landowner' here if applicable]** indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's **[Insert 'and Landowner's' here if applicable]** obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

35 Insurance

- 35.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the end of the Defects Liability Period for the final Work to have been completed in accordance with this Deed:
- 35.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 35.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 35.1.3 workers compensation insurance as required by law, and
 - 35.1.4 any other insurance required by law.
- 35.2 If the Developer fails to comply with clause 35.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 35.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 35.2.2 recovery as a debt due in a court of competent jurisdiction.
- 35.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 35.1.

Part 9 – Other Provisions

36 Confidentiality

- 36.1 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.
- 36.2 The Parties acknowledge that:
- 36.2.1 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
- 36.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
- 36.3 Subject to clause 36.4 and 36.5, each Party agrees:
- 36.3.1 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
- 36.3.2 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.
- 36.4 A Party may disclose Confidential Information in the following circumstances:
- 36.4.1 in order to comply with the Law, or
- 36.4.2 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.
- 36.5 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.

37 Annual report by Developer

- 37.1 The Developer is to provide to the Council by not 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.
- 37.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

38 Review of Deed

- 38.1 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.
- 38.2 For the purposes of clause 38.1, the relevant changes include (but are not limited to):

- 38.2.1 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,
 - 38.2.2 the lapsing of the Development Consent to the Development pursuant to s95 of the Act,
 - 38.2.3 a Party becoming unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this Deed.
- 38.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 38.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 38.4 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.
- 38.5 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 38.1 (but not 38.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

39 Notices

- 39.1 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:
- 39.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 39.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 39.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 39.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 39.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 39.3.1 delivered, when it is left at the relevant address,
 - 39.3.2 sent by post, 2 business days after it is posted,
 - 39.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 39.3.4 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.
- 39.4 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.

40 Approvals and Consent

- 40.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 40.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

41 Costs

- 41.1 The Developer is to pay to the Council the Council's costs specified in Item 16 of Schedule 1 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 41.2 The Developer is also to pay to the Council the Council's reasonable costs of implementing, monitoring and enforcing this Deed within 7 days of a written demand by the Council for such payment.

42 Entire Deed

- 42.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 42.2 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.

43 Further Acts

- 43.1 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.

44 Notations on section 10.7(2) Planning Certificates

- 44.1 The Developer [Insert 'and Landowner' if applicable] acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.

45 Governing Law and Jurisdiction

- 45.1 This Deed is governed by the law of New South Wales.
- 45.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

- 45.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

46 Joint and Individual Liability and Benefits

- 46.1 Except as otherwise set out in this Deed:
- 46.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 46.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

47 No Fetter

- 47.1 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.

48 Illegality

- 48.1 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.

49 Severability

- 49.1 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.
- 49.2 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.

50 Amendment

- 50.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

51 Waiver

- 51.1 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.

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

- 51.2 A waiver by a Party is only effective if it:
- 51.2.1 is in writing,
 - 51.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 51.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 51.2.4 is signed and dated by the Party giving the waiver.
- 51.3 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.
- 51.4 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.
- 51.5 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.

52 GST

- 52.1 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.
- 52.2 Subject to clause 52.4, 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.
- 52.3 Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 52.4 No additional amount shall be payable by the Council under clause 52.2 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.

- 52.5 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:
- 52.5.1 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;
- 52.5.2 that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 52.6 No payment of any amount pursuant to this clause 52, 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.
- 52.7 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.
- 52.8 This clause continues to apply after expiration or termination of this Deed.

53 Explanatory Note

- 53.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 53.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.
-

Schedule 1

(Clause 1.1)

Item 1	Land	The land identified as such on the Map
Item 2	Planning Proposal	[Describe by reference to proposed LEP amendments; otherwise insert 'N/A']
Item 3	Development	The development on the Land the subject of [Insert details of relevant Development Application; otherwise describe the proposed development]
Item 4	Application of S7.11	[Insert 'Section 7.11 of the Act is excluded' or 'Section 7.11 of the Act is not excluded' or If the Deed only partially excludes the application of s7.11 the particulars of the exclusion must be provided]
Item 5	Application of S7.12	[Insert 'Section 7.12 of the Act is excluded' or 'Section 7.12 of the Act is not excluded' or If the Deed only partially excludes the application of s7.12 the particulars of the exclusion must be provided]
Item 6	Application of S7.24	Section 7.4 of the Act is not excluded [or insert 'Section 7.4 of the Act is excluded', but only if the Minister or a development corporation designated by the Minister has given approval under s7.4(5A) to such an exclusion.]
Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11	[If s7.11 is excluded, then insert 'N/A'] [If s7.11 is not excluded, then insert 'The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development'] or [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']
Item 8	Indexation of Contribution Values	[Specify index; otherwise insert 'N/A']
Item 9	Indexation of Monetary Development	[Specify index; otherwise insert 'N/A']

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

	Contributions	
Item 10	Access to Council owned or controlled land	[Insert title details of Council owned or controlled land which the Developer may enter, occupy and use for the purpose of performing its obligations under this Deed.]
Item 11	Defects Liability Period	The period of [Insert number] [insert 'year' or 'months'] commencing on the day immediately after the Work is taken to be completed for the purposes of this Deed.
Item 12	Security	[\$[Insert amount being not less than 10% of the value of development contributions to be provided under this Deed; otherwise insert 'N/A'.]
Item 13	Obligations to which Security Relates	[Specify or describe obligations; otherwise insert 'N/A']
Item 14	Timing of Security	[Insert timing; otherwise insert 'N/A']
Item 15	Indexation of Security	[Specify index; otherwise insert 'N/A']
Item 16	Costs	[\$[Specify Amount, being full costs of the Council in preparing, negotiating, executing and stamping this Deed, including legal costs and costs of engaging any experts]
Item 17	Review of Deed	Every [Insert number] years

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Schedule 2

(Clause 9)

Development Contributions

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Contribution Value Include this column only if Council will provide any offset or credit arrangement under this Deed.]

A. Monetary Development Contributions

1. \$[Insert amount]	[Specify]	[Specify amount and whether payable as a lump sum or payable in instalments or otherwise]	[Insert timing. For example: Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in the Development.]	[\$[Insert amount]
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B. Carrying out of Work

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

C. Dedication Land

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

1. [Insert description]

[Specify]

[Specify details and identify location of land on the Map]

[Insert timing. For example: On or before the registration of the Plan of Subdivision that creates the first Final Lot in the Development or at such other time agreed by the Council in writing.]

[\$Insert amount, to be determined in accordance with the Council's Planning Agreement Policy.]

D. Other material public benefit

1. [Specify]

[Specify]

[Specify]

[Specify]

[\$Insert amount]

DRAFT

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Schedule 3

(Clause 1.1)

Map

[Include a map showing the land to which this Deed applies, location of Work and land to be dedicated under this Deed]

DRAFT

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

Chief Executive Officer (CEO)

Witness

Mayor

Witness

Executed on behalf of the Developer **[Use this if the Landowner is an individual]**

Landowner

Witness

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Executed on behalf of the Landowner [Use this if the Landowner is an individual] [Delete this execution clause if not applicable]

Landowner

Witness

Executed on behalf of the Landowner in accordance with s127 of the Corporations Act 2001 (Cth) [Use this if the Landowner is a corporation] [Delete this execution clause if not applicable]

Director

Director / Secretary

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Appendix

(Clause 53)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

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

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

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

Description of the Land to which the Draft Planning Agreement Applies

[Insert]

Description of Proposed Development

[Insert]

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

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Objectives of Draft Planning Agreement

[Specify]

Nature of Draft Planning Agreement

[Specify]

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Landowner,
- **[does not/does not]*** exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- **[Specify additional effects]**

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development,
- **[Specify additional purposes]**

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5**[specify relevant subsections]** of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

[Insert Name] Planning Agreement

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Councils – How the Draft Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government by:

- keeping the local and wider community informed about its activities,
- **[Specify additional ways in which the principles are promoted]**

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

[Answer ‘Yes’ or ‘No’]

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

[Specify]