



Willoughby City Council

ORDINARY COUNCIL

ATTACHMENT BOOKLET

11 December 2023

TABLE OF CONTENTS

TABLE OF CONTENTS.....2

12 REPORTS TO COUNCIL.....3

CUSTOMER & CORPORATE DIRECTORATE3

 12.7 REVIEW OF THE CODE OF MEETING PRACTICE3

PLANNING & INFRASTRUCTURE DIRECTORATE162

 12.10 PLANNING PROPOSAL 641-653 AND 655A PACIFIC HIGHWAY
 CHATSWOOD AND ATTACHMENT 1162

12 REPORTS TO COUNCIL

CUSTOMER & CORPORATE DIRECTORATE

12.7 REVIEW OF THE CODE OF MEETING PRACTICE

ATTACHMENTS:

- 2. DRAFT 2023 CODE OF MEETING PRACTICE**
 - 3. DRAFT 2023 CODE OF MEETING PRACTICE –
TRACK CHANGES**
-



Code of Meeting Practice

June 2022

Table of Contents

1. Introduction.....	3
2. Meeting principles	5
3. Before the meeting	7
4. Public forums.....	13
5. Coming together	17
6. The Chairperson	24
7. Modes of address	27
8. Order of business for ordinary Council meetings.....	29
9. Consideration of business at Council meetings.....	31
10. Rules of debate	35
11. Voting	39
12. Committee of the whole.....	41
13. Dealing with items by exception.....	43
14. Closure of Council meetings to the public.....	45
15. Keeping order at meetings.....	51
16. Conflict of interest	56
17. Decisions of the Council	58
18. Time limits on Council meetings	61
19. After the meetings	63
20. Council committees.....	66
21. Irregularities	71
22. Definitions	73
Appendix One - Procedural Motions.....	76
Supporting information	78

1. Introduction



The *Willoughby City Council Code of Meeting Practice* is made under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2021* (the Regulation).

This code applies to all meetings of Council and committees of Councils of which all the members are Councillors (committees of Council). Council committees whose members include persons other than Councillors may adopt their own rules for meetings unless the Council determines otherwise.

The draft *Willoughby City Council Code of Meeting Practice* incorporates the mandatory provisions of the *Model Meeting Code*, as required in NSW.

The draft Code also incorporates some of the current Code's non-mandatory provisions of the *Model Meeting Code* and other supplementary provisions.

The code of meeting practice does not contain provisions that are inconsistent with the mandatory provisions of the *Model Meeting Code*.

The Council and a committee of the Council of which all the members are Councillors must conduct its meetings in accordance with the code of meeting practice.

2. Meeting Principles



2.1 Council and committee meetings should be:

Transparent:	Decisions are made in a way that is open and accountable.
Informed:	Decisions are made based on relevant, quality information.
Inclusive:	Decisions respect the diverse needs and interests of the local community.
Principled:	Decisions are informed by the principles prescribed under Chapter 3 of the Act.
Trusted:	The community has confidence that Councillors and staff act ethically and make decisions in the interests of the whole community.
Respectful:	Councillors, staff and meeting attendees treat each other with respect.
Effective:	Meetings are well organised, effectively run and skillfully chaired.
Orderly:	Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

3. Before the Meeting



Timing of ordinary Council meetings

- 3.1 Ordinary meetings of the Council will be held in the Council Chambers or virtually (online) or a combination of both, on the fourth Monday of the month at 7:00 pm, except when Council is in recess, or as otherwise resolved by Council. The Council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.

Extraordinary meetings

- 3.2 If the Mayor receives a request in writing, signed by at least two Councillors, the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable, but in any event, no more than 14 days after receipt of the request. The Mayor can be one of the two Councillors requesting the meeting.

Notice to the public of Council meetings

- 3.3 The Council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the Council.
- 3.4 For the purposes of clause 3.3, notice of a meeting of the Council and of a committee of Council is to be published before the meeting takes place. The notice must be published on the Council's website, and in such other manner that the Council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.
- 3.5 For the purposes of clause 3.3, notice of more than one meeting may be given in the same notice.

Notice to Councillors of ordinary Council meetings

- 3.6 The Chief Executive Officer must send to each Councillor, at least thirteen days before each meeting of the Council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.
- 3.7 The notice and the agenda for, and the business papers relating to, the meeting may be given to Councillors in electronic form, but only if all Councillors have facilities to access the notice, agenda and business papers in that form.

Notice to Councillors of extraordinary meetings

- 3.8 Notice of less than three days may be given to Councillors of a meeting of the Council in cases of emergency.

Giving notice of business to be considered at Council meetings

- 3.9 A Councillor may give notice of any business they wish to be considered by the Council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted by noon nineteen business days before the meeting.
- 3.10 A Councillor may, in writing to the Chief Executive Officer, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.
- 3.11 If the Chief Executive Officer considers that a notice of motion submitted by a Councillor for consideration at an ordinary meeting of the Council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the Chief Executive Officer may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the Council.
- 3.12 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the Chief Executive Officer must either:
- (a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the Council, or
 - (b) by written notice sent to all Councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the Council to such a date specified in the notice no later than six weeks, pending the preparation of such a report.

Questions with notice

- 3.13 A Councillor may, by way of a notice submitted under clause 3.9, ask a question for response by the Chief Executive Officer about the performance or operations of the Council.
- 3.14 A Councillor is not permitted to ask a question with notice under clause 3.13 that comprises a complaint against the Chief Executive Officer or a member of staff of the Council, or a question that implies wrongdoing by the Chief Executive Officer or a member of staff of the Council.
- 3.15 The Chief Executive Officer or their nominee may respond to a question with notice submitted under clause 3.13 by way of a report included in the business papers for the relevant meeting of the Council or orally at the meeting.

Agenda and business papers for ordinary meetings

- 3.16 The Chief Executive Officer must cause the agenda for a meeting of the Council or a committee of the Council to be prepared as soon as practicable before the meeting.
- 3.17 The Chief Executive Officer must ensure that the agenda for an ordinary meeting of the Council states:
- (a) all matters to be dealt with arising out of the proceedings of previous meetings of the Council, and
 - (b) if the Mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
 - (c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
 - (d) any business of which due notice has been given under clause 3.9.
- 3.18 Nothing in clause 3.17 limits the powers of the Mayor to put a Mayoral minute to a meeting under clause 9.6.
- 3.19 The Chief Executive Officer must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the Chief Executive Officer, the business is, or the implementation of the business would be, unlawful. The Chief Executive Officer must report, without giving details of the item of business, any such exclusion to the next meeting of the Council.
- 3.20 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the Chief Executive Officer, is likely to take place when the meeting is closed to the public, the Chief Executive Officer must ensure that the agenda of the meeting:
- (a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
 - (b) states the grounds under section 10A(2) of the Act relevant to the item of business.
- 3.21 The Chief Executive Officer must ensure that the details of any item of business which, in the opinion of the Chief Executive Officer, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to Councillors for the meeting concerned. Such details must not be included in the business papers made available to the public, and must not be disclosed by a Councillor or by any other person to another person who is not authorised to have that information.

Statement of ethical obligations

- 3.22 Business papers for all ordinary and extraordinary meetings of the Council and committees of the Council must contain a statement reminding Councillors of their oath or affirmation of office made under section 233A of the Act and their obligations under the Council's code of conduct to disclose and appropriately manage conflicts of interest.

Availability of the agenda and business papers to the public

- 3.23 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the Council and committees of Council, are to be published on the Council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the Council, at the relevant meeting and at such other venues determined by the Council.
- 3.24 Clause 3.23 does not apply to the business papers for items of business that the Chief Executive Officer has identified under clause 3.20 as being likely to be considered when the meeting is closed to the public.
- 3.25 For the purposes of clause 3.23, copies of agendas and business papers must be published on the Council's website and made available to the public at a time that is as close as possible to the time they are available to Councillors.
- 3.26 A copy of an agenda, or of an associated business paper made available under clause 3.23, may in addition be given or made available in electronic form.

Agenda and business papers for extraordinary meetings

- 3.27 The Chief Executive Officer must ensure that the agenda for an extraordinary meeting of the Council deals only with the matters stated in the notice of the meeting.
- 3.28 Despite clause 3.26, business may be considered at an extraordinary meeting of the Council, even though due notice of the business has not been given, if:
- (a) a motion is passed to have the business considered at the meeting, and
 - (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 3.29 A motion moved under clause 3.28(a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.
- 3.30 Despite clauses 10.20–10.30, only the mover of a motion moved under clause 3.28(a) can speak to the motion before it is put.
- 3.31 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.28(b) on whether a matter is of great urgency.

Pre-meeting briefing sessions

- 3.32 Prior to each ordinary meeting of the Council, the Chief Executive Officer may arrange a pre-meeting briefing session to brief Councillors on business to be considered at the meeting or a future meeting and any other matters.
- 3.33 Pre-meeting briefing sessions are to be held in the absence of the public.
- 3.34 Pre-meeting briefing sessions may be held by audio-visual link.
- 3.35 The Chief Executive Officer or a member of staff nominated by the Chief Executive Officer is to preside at pre-meeting briefing sessions.
- 3.36 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal Council or committee meeting at which the item of business is to be considered.
- 3.37 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the Councillor who made the declaration.

4. Public Forums



Public forum: matters on the agenda

- 4.1 The Council may hold a public forum prior to each ordinary meeting of the Council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary Council meetings and meetings of committees of the Council.
- 4.2 Public forums may be held by audio-visual link if endorsed by the Mayor and Chief Executive Officer.
- 4.3 Public forums are to be chaired by the Mayor or their nominee.
- 4.4 To speak at a public forum, a person must first make an application to the Council in the approved form. Applications to speak at the public forum must be received by noon on the business day prior to the meeting on which the public forum is to be held, and must identify the item of business on the agenda of the Council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.
- 4.5 A person may apply to speak on no more than three items of business on the agenda of the Council meeting. An address for additional items of business can be granted with the concurrence of Council.
- 4.6 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.
- 4.7 The Chief Executive Officer or their delegate may refuse an application to speak at a public forum. The Chief Executive Officer or their delegate must give reasons in writing for a decision to refuse an application.
- 4.8 No more than two speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the Council meeting.
- 4.9 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the Chief Executive Officer or their delegate may request the speakers to nominate from among themselves the persons who are to address the Council on the item of business. If the speakers are not able to agree on whom to nominate to address the Council, the Chief Executive Officer or their delegate is to determine who will address the Council at the public forum.
- 4.10 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the Chief Executive Officer or their delegate may, in consultation with the Mayor or the Mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the Council to hear a fuller range of views on the relevant item of business.

- 4.11 Approved speakers at the public forum are to register with the Council any written, visual or audio material to be presented in support of their address to the Council at the public forum, and to identify any equipment needs no later than noon on the business day prior to the meeting. The Chief Executive Officer or their delegate may refuse to allow such material to be presented.
- 4.12 The Chief Executive Officer or their delegate is to determine the order of speakers at the public forum.
- 4.13 Each speaker will be allowed three minutes to address the Council. This time is to be strictly enforced by the chairperson.
- 4.14 Speakers at public forums must not digress from the item on the agenda of the Council meeting they have applied to address the Council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
- 4.15 A Councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.
- 4.16 Speakers are under no obligation to answer a question put under clause 4.12. Answers by the speaker, to each question are to be limited to two minutes.
- 4.17 Speakers at public forums cannot ask questions of the Council, Councillors or Council staff.
- 4.18 The Chief Executive Officer or their nominee may, with the concurrence of the chairperson, address the Council for up to three minutes in response to an address to the Council at a public forum after the address and any subsequent questions and answers have been finalised.
- 4.19 Where an address made at a public forum raises matters that require further consideration by Council staff, the Chief Executive Officer may recommend that the Council defer consideration of the matter pending the preparation of a further report on the matters.
- 4.20 When addressing the Council, speakers at public forums must comply with this code and all other relevant Council codes, policies and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the Council's code of conduct or making other potentially defamatory statements.
- 4.21 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.16, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 4.22 Clause 4.21 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this code.

- 4.23 Where a speaker engages in conduct of the type referred to in clause 4.20, the Chief Executive Officer or their delegate may refuse further applications from that person to speak at public forums for such a period as the Chief Executive Officer or their delegate considers appropriate.
- 4.24 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the Councillor who made the declaration.

Open forum: matters not on the agenda

- 4.21 The Council may hold an open forum either prior to or as part of the order each ordinary meeting of the Council for the purpose of hearing oral submissions from members of the public on items not on the agenda for the meeting.
- 4.22 Open forums are to be chaired by the Mayor or their nominee.
- 4.23 To speak at an open forum, a person must first make an application to the Council in writing. Applications to speak at the open forum must be received by noon on the date of the meeting on which the open forum is to be held, and must identify the topic the person wishes to speak on.
- 4.24 The Chief Executive Officer or their delegate is to determine the order of speakers at the open forum.
- 4.25 Each speaker will be allowed three minutes to address the Council. This time is to be strictly enforced by the chairperson.
- 4.26 A Councillor (including the chairperson) may not ask questions of a speaker following their address at an open forum.
- 4.27 Speakers at open forums cannot ask questions of Councillors or Council staff.
- 4.28 Speakers at open forums must comply with this code and all other relevant Council codes, policies and procedures. Refer to clauses 4.1 – 4.20 for further details.

5. Coming Together



Attendance by Councillors at meetings

- 5.1 All Councillors must make reasonable efforts to attend meetings of the Council and of committees of the Council of which they are members.
- 5.2 A Councillor cannot participate in a meeting of the Council or of a committee of the Council unless personally present at the meeting unless permitted to attend the meeting by audio-visual link under this code.
- 5.3 Where a Councillor is unable to attend one or more ordinary meetings of the Council, the Councillor should request that the Council grant them a leave of absence from those meetings. This clause does not prevent a Councillor from making an apology if they are unable to attend a meeting. However the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.
- 5.4 A Councillor's request for leave of absence from Council meetings should, if practicable, identify (by date) the meetings from which the Councillor intends to be absent and the grounds upon which the leave of absence is being sought.
- 5.5 The Council must act reasonably when considering whether to grant a Councillor's request for a leave of absence.
- 5.6 A Councillor's civic office will become vacant if the Councillor is absent from three consecutive ordinary meetings of the Council without prior leave of the Council, or leave granted by the Council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the Council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.
- 5.7 A Councillor who intends to attend a meeting of the Council despite having been granted a leave of absence should, if practicable, give the Chief Executive Officer at least two days' notice of their intention to attend.
- 5.8 A breach of the code of conduct will be deemed to have occurred if a Councillor or Councillors willfully retire from a Council meeting with the intent of the Council losing its quorum or intentionally withhold a quorum by not attending.

The quorum for a meeting

- 5.9 The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office at that time and are not suspended from office.
- 5.10 Clause 5.9 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the Council.
- 5.11 A meeting of the Council must be adjourned if a quorum is not present:
- (a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
 - (b) within half an hour after the time designated for the holding of the meeting, or
 - (c) at any time during the meeting.
- 5.12 In either case, the meeting must be adjourned to a time, date and place fixed:
- (a) by the chairperson, or
 - (b) in the chairperson's absence, by the majority of the Councillors present, or
 - (c) failing that, by the Chief Executive Officer.
- 5.13 The Chief Executive Officer must record in the Council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present.
- 5.14 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety or welfare of Councillors, Council staff and members of the public may be put at risk by attending the meeting because of a natural disaster, or a public health emergency, the Mayor may, in consultation with the Chief Executive Officer and, as far as is practicable, with each Councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.
- 5.15 Where a meeting is cancelled under clause 5.14, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the Council or at an extraordinary meeting called under clause 3.2.

Entitlement of the public to attend Council Meetings

- 5.16 Everyone is entitled to attend a meeting of the Council and committees of the Council. The Council must ensure that all meetings of the Council and committees of the Council are open to the public.
- 5.17 Clause 5.16 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.
- 5.18 A person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or a committee of the Council if expelled from the meeting:
- (a) by a resolution of the meeting, or
 - (b) by the person presiding at the meeting if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Webcasting of meetings

- 5.19 Each meeting of the Council or a committee of the Council is to be recorded by means of an audio or audiovisual device.
- 5.20 At the start of each meeting of the Council or a committee of the Council, the chairperson must inform the persons attending the meeting that:
- (a) the meeting is being recorded and made publicly available on the Council's website, and
 - (b) persons attending the meeting should refrain from making any defamatory statements.
- 5.21 The recording of a meeting is to be made publicly available on the Council's website:
- (a) at the same time as the meeting is taking place, or
 - (b) as soon as practicable after the meeting.
- 5.22 The recording of a meeting is to be made publicly available on the Council's website for at least 12 months after the meeting.
- 5.23 Clauses 5.21 and 5.22 do not apply to any part of a meeting that has been closed to the public in accordance with section
- 5.24 Recordings of meetings may be disposed of in accordance with the State Records Act 1998.

Attendance of the Chief Executive Officer and other staff at meetings

- 5.25 The Chief Executive Officer is entitled to attend, but not to vote at, a meeting of the Council or a meeting of a committee of the Council of which all of the members are Councillors.
- 5.26 The Chief Executive Officer is entitled to attend a meeting of any other committee of the Council and may, if a member of the committee, exercise a vote.
- 5.27 The Chief Executive Officer may be excluded from a meeting of the Council or a committee while the Council or committee deals with a matter relating to the standard of performance of the Chief Executive Officer or the terms of employment of the Chief Executive Officer.
- 5.28 The attendance of other Council staff at a meeting, (other than as members of the public) shall be with the approval of the Chief Executive Officer.
- 5.29 The Chief Executive Officer and other Council staff may attend meetings of the Council and committees of the Council by audio-visual-link. Attendance by Council staff at meetings by audio-visual link (other than as members of the public) shall be with the approval of the Chief Executive Officer.

Meetings held by audio-visual link

- 5.30 A meeting of the Council or a committee of the Council may be held by audio-visual link where the Mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The Mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of Councillors and staff at risk. The Mayor must make a determination under this clause in consultation with the Chief Executive Officer and, as far as is practicable, with each Councillor.
- 5.31 Where the Mayor determines under clause 5.16 that a meeting is to be held by audio-visual link, the Chief Executive Officer must:
- (a) give written notice to all Councillors that the meeting is to be held by audio-visual link, and
 - (b) take all reasonable steps to ensure that all Councillors can participate in the meeting by audio-visual link, and
 - (c) cause a notice to be published on the Council's website and in such other manner the Chief Executive Officer is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.
- 5.32 This code applies to a meeting held by audio-visual link under clause 5.30 in the same way it would if the meeting was held in person.

Attendance by Councillors at meetings by audio-visual link

- 5.33 Councillors may attend and participate in meetings of the Council and committees of the Council by audio-visual link with the approval of the Council or the relevant committee.
- 5.34 A request by a Councillor for approval to attend a meeting by audio-visual link must be made in writing to the Chief Executive Officer prior to the meeting in question and must provide reasons why the Councillor will be prevented from attending the meeting in person.
- 5.35 Councillors may request approval to attend more than one meeting by audio-visual link. Where a Councillor requests approval to attend more than one meeting by audio-visual link, the request must specify the meetings the request relates to in addition to the information required under clause 5.34.
- 5.36 The Council must comply with the Health Privacy Principles prescribed under the Health Records and Information Privacy Act 2002 when collecting, holding, using and disclosing health information in connection with a request by a Councillor to attend a meeting by audio-visual link.
- 5.37 A Councillor who has requested approval to attend a meeting of the Council or a committee of the Council by audio-visual link may participate in the meeting by audio-visual link until the Council or committee determines whether to approve their request and is to be taken as present at the meeting. The Councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.
- 5.38 A decision whether to approve a request by a Councillor to attend a meeting of the Council or a committee of the Council by audio-visual link must be made by a resolution of the Council or the committee concerned. The resolution must state:
- (a) the meetings the resolution applies to, and
 - (b) the reason why the Councillor is being permitted to attend the meetings by audio-visual link where it is on grounds other than illness, disability, or caring responsibilities.
- 5.39 If the Council or committee refuses a Councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.
- 5.40 A decision whether to approve a Councillor's request to attend a meeting by audio-visual link is at the Council's or the relevant committee's discretion. The Council and committees of the Council must act reasonably when considering requests by Councillors to attend meetings by audio-visual link. However, the Council and committees of the Council are under no obligation to approve a Councillor's request to attend a meeting by audio-visual link where the technical capacity does not exist to allow the Councillor to attend the meeting by these means.
- 5.41 The Council and committees of the Council may refuse a Councillor's request to attend a meeting by audio-visual link where the Council or committee is satisfied that the Councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the Council or a committee of the Council by audio-visual link.

- 5.42 This code applies to a Councillor attending a meeting by audio-visual link in the same way it would if the Councillor was attending the meeting in person. Where a Councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.

6. The Chairperson



The chairperson at meetings

- 6.1 The Mayor, or at the request of or in the absence of the Mayor, the deputy Mayor (if any) presides at meetings of the Council.
- 6.2 If the Mayor and the deputy Mayor (if any) are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council.

Election of the chairperson in the absence of the Mayor and deputy Mayor

- 6.3 If no chairperson is present at a meeting of the Council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.
- 6.4 The election of a chairperson must be conducted:
- (a) by the Chief Executive Officer or, in their absence, an employee of the Council designated by the Chief Executive Officer to conduct the election, or
 - (b) by the person who called the meeting or a person acting on their behalf if neither the Chief Executive Officer nor a designated employee is present at the meeting, or if there is no Chief Executive Officer or designated employee.
- 6.5 If, at an election of a chairperson, two or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- 6.6 For the purposes of clause 6.5, the person conducting the election must:
- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
 - (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- 6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.
- 6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

- 6.9 When the chairperson rises or speaks during a meeting of the Council:
- (a) any Councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
 - (b) every Councillor present must be silent to enable the chairperson to be heard without interruption.

7. Modes of Address



MODES OF ADDRESS

- 7.1 If the chairperson is the Mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor' or 'Mayor'.
- 7.2 Where the chairperson is not the Mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson' or 'Chairperson'.
- 7.3 A Councillor is to be addressed as 'Councillor [surname]'.
- 7.4 A Council officer is to be addressed by their official designation or as Mr/Ms [surname].

8. Order of Business for Ordinary Council Meetings



ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

- 8.1 The general order of business for an ordinary meeting of the Council shall be as outlined below or as otherwise resolved by Council:
- 1 Opening meeting
 - 2 Acknowledgement of country
 - 3 Oath
 - 4 Apologies and applications for a leave of absence or attendance by audio-visual link by Councillors
 - 5 Confirmation of minutes
 - 6 Disclosures of interests
 - 7 Petitions
 - 8 Open and Public Forum
 - 9 Mayoral minute(s)
 - 10 Chief Executive Officer's late report
 - 11 Matters by exception
 - 12 Reports to Council
 - 13 Notices of motion
 - 14 Questions with notice
 - 15 Confidential matters
 - 16 Conclusion of the meeting
- 8.2 The order of business as fixed under 8.1 may be altered for a particular meeting of the Council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.
- 8.3 Despite clauses 10.20 - 10.30, only the mover of a motion referred to in clause 8.2 may speak to the motion before it is put.

9. Consideration of Business at Council Meetings



WILLOUGHBY
CITY COUNCIL

Business that can be dealt with at a Council meeting

- 9.1 The Council must not consider business at a meeting of the Council:
- (a) unless a Councillor has given notice of the business, as required by clause 3.9, and
 - (b) unless notice of the business has been sent to the Councillors in accordance with clause 3.6 in the case of an ordinary meeting or clause 3.8 in the case of an extraordinary meeting called in an emergency.
- 9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:
- (a) is already before, or directly relates to, a matter that is already before the Council, or
 - (b) is the election of a chairperson to preside at the meeting, or
 - (c) subject to clause 9.9, is a matter or topic put to the meeting by way of a Mayoral minute, or
 - (d) is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the Council.
- 9.3 Despite clause 9.1, business may be considered at a meeting of the Council even though due notice of the business has not been given to the Councillors if:
- (a) a motion is passed to have the business considered at the meeting, and
 - (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 9.4 A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.
- 9.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).

Mayoral minutes

- 9.6 Subject to clause 9.9, if the Mayor is the chairperson at a meeting of the Council, the Mayor may, by minute signed by the Mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the Council, or of which the Council has official knowledge.
- 9.7 A Mayoral minute, when put to a meeting, takes precedence over all business on the Council's agenda for the meeting. The chairperson (but only if the chairperson is the Mayor) may move the adoption of a Mayoral minute without the motion being seconded.
- 9.8 A recommendation made in a Mayoral minute put by the Mayor is, so far as it is adopted by the Council, a resolution of the Council.

- 9.9 A Mayoral minute must not be used to put without notice matters that are routine and not urgent, or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 9.10 Where a Mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the Mayoral minute does not identify a funding source, the Council must defer consideration of the matter, pending a report from the Chief Executive Officer on the availability of funds for implementing the recommendation if adopted, unless otherwise resolved by Council.

Staff reports

- 9.11 A recommendation made in a staff report is, so far as it is adopted by the Council, a resolution of the Council.

Reports of committees of Council

- 9.12 The recommendations of a committee of the Council are, so far as they are adopted by the Council, resolutions of the Council.
- 9.13 If in a report of a committee of the Council distinct recommendations are made, the Council may make separate decisions on each recommendation.

Questions

- 9.14 A question must not be asked at a meeting of the Council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.9 and 3.13.
- 9.15 A Councillor may, through the chairperson, put a question to another Councillor about a matter on the agenda.
- 9.16 A Councillor may, through the Chief Executive Officer, put a question to a Council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the Chief Executive Officer at the direction of the Chief Executive Officer.
- 9.17 A Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to information. Where a Councillor or Council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the Council.
- 9.18 Councillors must put questions directly, succinctly, respectfully and without argument.

- 9.19 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a Councillor or Council employee.

10. Rules of Debate



Motions to be seconded

- 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

- 10.2 A Councillor who has submitted a notice of motion under clause 3.9 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.
- 10.3 If a Councillor who has submitted a notice of motion under clause 3.9 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to Councillors, the Councillor may request the withdrawal of the motion when it is before the Council.
- 10.4 In the absence of a Councillor who has placed a notice of motion on the agenda for a meeting of the Council:
- (a) any other Councillor may, with the leave of the chairperson, move the motion at the meeting, or
 - (b) the chairperson may defer consideration of the motion until the next meeting of the Council.

Chairperson's duties with respect to motions

- 10.5 It is the duty of the chairperson at a meeting of the Council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.
- 10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.
- 10.8 Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been lost.

Motions requiring the expenditure of funds

- 10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/ or services other than those already provided for in the Council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the Council must defer consideration of the matter, pending a report from the Chief Executive Officer on the availability of funds for implementing the motion if adopted, unless otherwise resolved by Council.

Amendments to motions

- 10.10 An amendment to a motion must be moved and seconded before it can be debated.
- 10.11 An amendment to a motion must relate to the matter being dealt with in the original motion before the Council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.
- 10.12 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.
- 10.13 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one motion and one proposed amendment can be before Council at any one time.
- 10.14 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 10.15 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 10.16 An amendment may become the motion without debate or a vote where it is accepted by the Councillor who moved the original motion.

Foreshadowed motions

- 10.17 A Councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the Council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.
- 10.18 Where an amendment has been moved and seconded, a Councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the Council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.
- 10.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

Limitations on the number and duration of speeches

- 10.20 A Councillor who, during a debate at a meeting of the Council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 10.21 A Councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- 10.22 A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than five minutes at any one time.
- 10.23 Despite clause 10.22, the chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than five minutes on that motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 10.24 Despite clause 10.22, the Council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.
- 10.25 Despite clauses 10.20 and 10.21, a Councillor may move that a motion or an amendment be now put:
- (a) if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, or
 - (b) if at least two Councillors have spoken in favour of the motion or amendment and at least two Councillors have spoken against it.
- 10.26 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.25. A seconder is not required for such a motion.
- 10.27 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.20.
- 10.28 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 10.29 All Councillors must be heard without interruption and all other Councillors must, unless otherwise permitted under this code, remain silent while another Councillor is speaking.
- 10.30 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.

11. Voting



Voting entitlements of Councillors

- 11. 1 Each Councillor is entitled to one vote.
- 11. 2 The person presiding at a meeting of the Council has, in the event of an equality of votes, a second or casting vote.
- 11. 3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

Voting at Council meetings

- 11. 4 A Councillor who is present at a meeting of the Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion
- 11. 5 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the Council may resolve that the voting in any election by Councillors for Mayor or deputy Mayor is to be by secret ballot.
- 11. 6 All voting at Council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

Voting on planning decisions

- 11. 7 The Chief Executive Officer must keep a register containing, for each planning decision made at a meeting of the Council or a Council committee (including, but not limited to a committee of the Council), the names of the Councillors who supported the decision and the names of any Councillors who opposed (or are taken to have opposed) the decision.
- 11. 8 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.
- 11. 9 Clauses 11.7-11.8 apply also to meetings that are closed to the public.

12. Committee of the Whole



COMMITTEE OF THE WHOLE

12. 1 The Council may resolve itself into a committee to consider any matter before the Council.
12. 2 All the provisions of this code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of the Council when in committee of the whole, except the provisions limiting the number and duration of speeches.
12. 3 The Chief Executive Officer or, in the absence of the Chief Executive Officer, an employee of the Council designated by the Chief Executive Officer, is responsible for reporting to the Council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.
12. 4 The Council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the Council's minutes. However, the Council is not taken to have adopted the report until a motion for adoption has been made and passed.

13. Dealing with Items by Exception



WILLOUGHBY
CITY COUNCIL

DEALING WITH ITEMS BY EXCEPTION

- 13.1 The Council or a committee of Council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.
- 13.2 Before the Council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask Councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 13.3 The Council or committee must not resolve to adopt any item of business under clause 13.1 that a Councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the Council or committee must resolve to alter the order of business in accordance with clause 8.2.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the Council's code of conduct.
- 13.8 When a Notice of Motion is carried as part of an en bloc resolution, the original wording of the motion as submitted in accordance with clause 3.9 is carried, unless the motion results in matters encompassed by sections 3.11 or 3.12, in which case, the item must be called for individual consideration.

14. Closure of Council Meetings to the Public



Grounds on which meetings can be closed to the public

- 14.1 The Council or a committee of the Council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:
- (a) personnel matters concerning particular individuals (other than Councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the Council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,
 - (f) matters affecting the security of the Council, Councillors, Council staff or Council property,
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
 - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
 - (i) alleged contraventions of the Council's code of conduct.
- 14.2 The Council or a committee of the Council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

Matters to be considered when closing meetings to the public

- 14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:
- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
 - (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the Council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.
- 14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:
- (a) are substantial issues relating to a matter in which the Council or committee is involved, and
 - (b) are clearly identified in the advice, and
 - (c) are fully discussed in that advice.
- 14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.
- 14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
- (a) a person may misinterpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the Council or committee concerned, or to Councillors or to employees of the Council, or
 - (ii) cause a loss of confidence in the Council or committee.
- 14.7 In deciding whether part of a meeting is to be closed to the public, the Council or committee concerned must consider any relevant guidelines issued by the Departmental Chief Executive of the Office of Local Government.

Notice of likelihood of closure not required in urgent cases

- 14.8 Part of a meeting of the Council, or of a committee of the Council, may be closed to the public while the Council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.19 as a matter that is likely to be considered when the meeting is closed, but only if:
- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and
 - (b) the Council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and
 - (ii) should take place in a part of the meeting that is closed to the public.

Representations by members of the public

- 14.9 The Council, or a committee of the Council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.
- 14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.
- 14.11 Where the matter has been identified in the agenda of the meeting under clause 3.20 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the Council in writing, via email, post or delivered and addressed to the Chief Executive Officer. Applications must be received before noon on the day of the meeting at which the matter is to be considered.
- 14.12 The Chief Executive Officer (or their delegate) may refuse an application made under clause 14.11. The Chief Executive Officer or their delegate must give reasons in writing for a decision to refuse an application.
- 14.13 No more than three speakers are to be permitted to make representations under clause 14.9.
- 14.14 If more than the permitted number of speakers apply to make representations under clause 14.9, the Chief Executive Officer or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the Council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the Chief Executive Officer or their delegate is to determine who will make representations to the Council.
- 14.15 The Chief Executive Officer (or their delegate) is to determine the order of speakers.

CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC

- 14.16 Where the Council or a committee of the Council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.19 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than two speakers to make representations in such order as determined by the chairperson.
- 14.17 Each speaker will be allowed three minutes to make representations and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

Expulsion of non-Councillors from meetings closed to the public

- 14.18 If a meeting or part of a meeting of the Council or a committee of the Council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a Councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 14.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Information to be disclosed in resolutions closing meetings to the public

- 14.20 The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:
- (a) the relevant provision of section 10A(2) of the Act,
 - (b) the matter that is to be discussed during the closed part of the meeting,
 - (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Resolutions passed at closed meetings to be made public

- 14.21 If the Council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.
- 14.22 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.21 during a part of the meeting that is webcast.

Obligations of Councillors and staff attending meetings by audio-visual link

- 14.23 Councillors and staff attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

15. Keeping Order at Meetings



Points of order

- 15.1 A Councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.
- 15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.
- 15.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the Councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

- 15.4 The chairperson, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- 15.5 A Councillor who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- 15.6 The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.
- 15.7 The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

Motions of dissent

- 15.8 A Councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 15.9 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- 15.10 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

Acts of disorder

- 15.11 A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a committee of the Council:
- (a) contravenes the Act, the Regulation or any in force under the Act or this code, or
 - (b) assaults or threatens to assault another Councillor or person present at the meeting, or
 - (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or the committee, or addresses or attempts to address the Council or the committee on such a motion, amendment or matter, or
 - (d) insults, makes unfavourable personal remarks about, or imputes improper motives to any other Council official, or alleges a breach of the Council's code of conduct, or
 - (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or the committee into disrepute.
- 15.12 The chairperson may require a Councillor:
- (a) to apologise without reservation for an act of disorder referred to in clauses 15.11(a), (b) or (e)
 - (b) to withdraw a motion or an amendment referred to in clause 15.11(c) and, where appropriate, to apologise without reservation, or
 - (c) to retract and apologise without reservation for any statement that constitutes an act of disorder referred to in clauses 15.11(d) and (e).

How disorder at a meeting may be dealt with

- 15.13 If disorder occurs at a meeting of the Council, the chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The Council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of Councillors.

Expulsion from meetings

- 15.14 All chairpersons of meetings of the Council and committees of the Council are authorised under this code to expel any person, including any Councillor, from a Council or committee meeting, for the purposes of section 10(2)(b) of the Act.
- 15.15 Clause 15.14, does not limit the ability of the Council or committee of the Council to resolve to expel a person, including a Councillor, from a Council or committee meeting, under section 10(2)(a) of the Act.
- 15.16 A Councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for having failed to comply with a requirement under clause 15.12. The expulsion of a Councillor from the meeting for that reason does not prevent any other action from being taken against the Councillor for the act of disorder concerned.
- 15.17 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for engaging in or having engaged in disorderly conduct at the meeting.
- 15.18 Where a Councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.
- 15.19 If a Councillor or a member of the public fails to leave the place where a meeting of the Council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the Councillor or member of the public from that place and, if necessary, restrain the Councillor or member of the public from re-entering that place for the remainder of the meeting.

How disorder by Councillors attending meetings by audio-visual link may be dealt with

- 15.20 Where a Councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the Councillor's audio link to the meeting for the purposes of enforcing compliance with this code.
- 15.21 If a Councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the Councillor's audio-visual link to the meeting.

Use of mobile phones and the unauthorised recording of meetings

- 15.22 Councillors, Council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the Council and committees of the Council.
- 15.23 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the Council or a committee of the Council without the prior authorisation of the Council or the committee.

KEEPING ORDER AT MEETINGS

- 15.24 Without limiting clause 15.17, a contravention of clause 15.23 or an attempt to contravene that clause, constitutes disorderly conduct for the purpose of clause 15.17. Any person who contravenes or attempts to contravene clause 15.23, may be expelled from the meeting as provided for under section 10(2) of the Act.
- 15.25 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

16. Conflict of Interest



CONFLICT OF INTEREST

- 16.1 All Councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the Council and committees of the Council in accordance with the Council's code of conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.
- 16.2 Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the Council's code of conduct. Where a Councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the Councillor's audio-visual link to the meeting must be suspended or terminated and the Councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the Council or committee, or at any time during which the Council or committee is voting on the matter.

17. Decisions of the Council



Council decisions

- 17.1 A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council.
- 17.2 Decisions made by the Council must be accurately recorded in the minutes of the meeting at which the decision is made.
- 17.3 In addition to webcasting Council meetings, confidential sessions of Council meetings will be audio recorded, only for the purposes of compiling Council minutes.

Rescinding or altering Council decisions

- 17.4 A resolution passed by the Council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.10.
- 17.5 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.
- 17.6 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with clause 3.9.
- 17.7 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) Councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.
- 17.8 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.
- 17.9 The provisions of clauses 17.6–17.8 concerning lost motions do not apply to motions of adjournment.
- 17.10 A notice of motion submitted in accordance with clause 17.7 may only be withdrawn under clause 3.10 with the consent of all signatories to the notice of motion.
- 17.11 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the Chief Executive Officer no later than 4pm on the business day immediately following the Council meeting after the meeting at which the resolution was adopted.
- 17.12 A motion to alter or rescind a resolution of the Council may be moved on the report of a committee of the Council and any such report must be recorded in the minutes of the meeting of the Council.
- 17.13 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the Council may be moved at the same meeting at which the resolution was adopted, where:
 - (a) a notice of motion signed by three Councillors is submitted to the chairperson, and
 - (b) a motion to have the motion considered at the meeting is passed, and

- (c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.

- 17.14 A motion moved under clause 17.13(b) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.13(b) can speak to the motion before it is put.
- 17.15 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.13(c).

Recommitting resolutions to correct an error

- 17.16 Despite the provisions of this Part, a Councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:
 - (a) to correct any error, ambiguity or imprecision in the Council’s resolution, or
 - (b) to confirm the voting on the resolution.
- 17.17 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.16(a), the Councillor is to propose alternative wording for the resolution.
- 17.18 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.16(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.
- 17.19 A motion moved under clause 17.16 can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.16 can speak to the motion before it is put.
- 17.20 A motion moved under clause 17.16 with the leave of the chairperson cannot be voted on unless or until it has been seconded.

18. Time Limits on Council Meetings



WILLOUGHBY
CITY COUNCIL

TIME LIMITS ON COUNCIL MEETINGS

- 18.1 Meetings of the Council and committees of the Council are to conclude no later than 10.30pm.
- 18.2 If the business of the meeting is unfinished at 10.30pm, the Council or the committee may, by resolution, extend the time of the meeting.
- 18.3 If the business of the meeting is unfinished at 10.30pm, and the Council does not resolve to extend the meeting, the chairperson must either:
- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the Council, or
 - (b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 18.4 Clause 18.3 does not limit the ability of the Council or a committee of the Council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 18.5 Where a meeting is adjourned under clause 18.3 or 18.4, the Chief Executive Officer must:
- (a) individually notify each Councillor of the time, date and place at which the meeting will reconvene, and
 - (b) publish the time, date and place at which the meeting will reconvene on the Council's website and in such other manner that the Chief Executive Officer is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

19. After the Meetings



Minutes of meetings

- 19.1 The Council is to keep full and accurate minutes of the proceedings of meetings of the Council.
- 19.2 At a minimum, the Chief Executive Officer must ensure that the following matters are recorded in the Council's minutes:
- (a) The names of Councillors attending a Council meeting and whether they attended the meeting in person or by audio-visual link
 - (b) details of each motion moved at a Council meeting and of any amendments moved to it,
 - (c) the names of the mover and seconder of the motion or amendment,
 - (d) whether the motion or amendment was passed or lost, and
 - (e) such other matters specifically required under this code.
- 19.3 The minutes of a Council meeting must be confirmed at a subsequent meeting of the Council.
- 19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.
- 19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 19.7 The confirmed minutes of a Council meeting must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The Council and committees of the Council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.
- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.
- 19.10 Clause 19.8 does not apply if the Council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

AFTER THE MEETINGS

- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the Council

- 19.12 The Chief Executive Officer is to implement, without undue delay, lawful decisions of the Council.

20. Council Committees



Application of this Part

- 20.1 This Part only applies to committees of the Council whose members are all Councillors.

Council committees whose members are all Councillors

- 20.2 The Council may, by resolution, establish such committees as it considers necessary.
- 20.3 A committee of the Council is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council
- 20.4 The quorum for a meeting of a committee of the Council is to be:
- (a) such number of members as the Council decides, or
 - (b) if the Council has not decided a number – a majority of the members of the committee.

Functions of committees

- 20.5 The Council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

Notice of committee meetings

- 20.6 The Chief Executive Officer must send to each Councillor, regardless of whether they are a committee member, at least three days before each meeting of the committee, a notice specifying:
- (a) the time, date and place of the meeting, and
 - (b) the business proposed to be considered at the meeting.
- 20.7 Notice of less than three days may be given of a committee meeting called in an emergency.

Attendance at committee meetings

- 20.8 A committee member (other than the Mayor) ceases to be a member of a committee if the committee member:
- (a) has been absent from three consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or
 - (b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.

- 20.9 Clause 20.8 does not apply if all of the members of the Council are members of the committee.

Non-members entitled to attend committee meetings

- 20.10 A Councillor who is not a member of a committee of the Council is entitled to attend, and to speak at a meeting of the committee. However, the Councillor is not entitled:
- (a) to give notice of business for inclusion in the agenda for the meeting, or
 - (b) to move or second a motion at the meeting, or
 - (c) to vote at the meeting.

Chairperson and deputy chairperson of Council committees

- 20.11 The chairperson of each committee of the Council must be:
- (a) the Mayor, or
 - (b) if the Mayor does not wish to be the chairperson of a committee, a member of the committee elected by the Council, or
 - (c) if the Council does not elect such a member, a member of the committee elected by the committee.
- 20.12 The Council may elect a member of a committee of the Council as deputy chairperson of the committee. If the Council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- 20.13 If neither the chairperson nor the deputy chairperson of a committee of the Council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- 20.14 The chairperson is to preside at a meeting of a committee of the Council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

- 20.15 Subject to any specific requirements of this code, each committee of the Council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the Council unless the Council or the committee determines otherwise in accordance with this clause.
- 20.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the Council or the committee determines otherwise in accordance with clause 20.15.
- 20.17 Voting at a Council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

Closure of committee meetings to the public

- 20.18 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the Council to the public in the same way they apply to the closure of meetings of the Council to the public.
- 20.19 If a committee of the Council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and report the resolution or recommendation to the next meeting of the Council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.
- 20.20 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.19 during a part of the meeting that is webcast.

Disorder in committee meetings

- 20.21 The provisions of the Act and this code relating to the maintenance of order in Council meetings apply to meetings of committees of the Council in the same way as they apply to meetings of the Council.

Minutes of Council committee meetings

- 20.22 Each committee of the Council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:
- (a) The names of Councillors attending a meeting and whether they attended in person or by audio-visual link
 - (b) details of each motion moved at a meeting and of any amendments moved to it,
 - (c) the names of the mover and seconder of the motion or amendment,
 - (d) whether the motion or amendment was passed or lost, and
 - (e) such other matters specifically required under this code.
- 20.23 All voting at meetings of committees of the Council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.
- 20.24 The minutes of meetings of each committee of the Council must be confirmed at a subsequent meeting of the committee.
- 20.25 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 20.26 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.
- 20.27 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 20.28 The confirmed minutes of a meeting of a committee of the Council must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of meetings of committees of the Council on its website prior to their confirmation.

21. Irregularities



- 21.1 Proceedings at a meeting of a Council or a Council committee are not invalidated because of:
- (a) a vacancy in a civic office, or
 - (b) a failure to give notice of the meeting to any Councillor or committee member, or
 - (c) any defect in the election or appointment of a Councillor or committee member, or
 - (d) a failure of a Councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a Council or committee meeting in accordance with the Council's code of conduct, or
 - (e) a failure to comply with this code.

22. Definitions



Definitions:

the Act	means the <i>Local Government Act 1993</i>
act of disorder	means an act of disorder as defined in clause 15.11 of this code
amendment	in relation to an original motion, means a motion moving an amendment to that motion. An amendment is a change to the motion before the Council, and takes place while that motion is being debated. An amendment to a motion must be put forward in a motion in itself
audio recorder	any device capable of recording speech
Audio-visual link	means a facility that enables audio and visual communication between persons at different places
business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
chairperson	in relation to a meeting of the Council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 20.11 of this code
chief executive officer	means officer carrying out all the roles and responsibilities assigned to the general manager under the Act and any other relevant legislation
(this) code	means the Council’s adopted code of meeting practice
committee of the Council	means a committee established by the Council in accordance with clause 20.2 of this code (being a committee consisting only of Councillors) or the Council when it has resolved itself into committee of the whole under clause 12.1
Council official	has the same meaning it has in the <i>Model Code of Conduct for Local Councils in NSW</i>
day	means calendar day
division	means a request by two Councillors under clause 11.5 of this code requiring the recording of the names of the Councillors who voted both for and against a motion
foreshadowed amendment	means a proposed amendment foreshadowed by a Councillor under clause 10.18 of this code during debate on the first amendment

DEFINITIONS

foreshadowed motion	means a motion foreshadowed by a Councillor under clause 10.17 of this code during debate on an original motion. It is advice to the Council of an intention to put forward a motion that relates to a motion currently before the Council. However the chairperson cannot accept the new motion until the first motion is decided
motion	a motion is a proposal to be considered by a Council meeting. It is a request to do something or express an opinion about something. A motion formally puts the subject of the motion as an item of business for the Council
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
open forum: matters not the agenda	held for the purpose of hearing oral submissions from members of the public on items of business not under consideration at the Council meeting
planning decision	means a decision made in the exercise of a function of a Council under the <i>Environmental Planning and Assessment Act 1979</i> including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act
performance improvement order	means an order issued under section 438A of the Act
public forum: matters on the agenda	held for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting
quorum	means the minimum number of Councillors or committee members necessary to conduct a meeting
resolution	a resolution is a motion that has been passed by a majority of Councillors at the meeting. While in practice it means the 'Council decision', the word 'resolution' also indicates the process by which the decision was made
the Regulation	means the <i>Local Government (General) Regulation 2005</i>
webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time
year	means the period beginning 1 July and ending the following 30 June

Appendix One: Procedural Motions



WILLOUGHBY
CITY COUNCIL

APPENDIX ONE – PROCEDURAL MOTIONS

Motion	Moved without Notice	Requires Secunder	Speakers / Debate Permitted	Right of Reply
Change the Order of Business	Yes	Yes	Mover of motion only	No
Business without Notice (matter of urgency) (Clause 9.3)	Yes	Yes	Mover of motion only	No
Dissent from Chairperson's ruling on Point of Order	Yes	Yes	Mover and chairperson only may speak	No
Adjournment of Meeting	Yes	Yes	No debate permitted	No
Limitation to number of speakers (motion be now put)	Yes if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, or if at least 2 Councillors have spoken in favour of the motion or amendment and at least 2 Councillors have spoken against it.		No debate permitted. Motion must be put immediately after mover of original motion / amendment has right of reply.	No
Deferment of a Matter	Yes	Yes	Yes	Yes
Motion be dealt with in seriatim (Point by Point)	Yes	Yes	Mover of motion only	No

Supporting Information



Supporting information:

Governing laws and standards	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Local Government Amendment (Governance and Planning) Act 2016</i> • <i>Local Government (General) Regulations 2005</i>
Related policies and other documents	<ul style="list-style-type: none"> • Office of Local Government • <i>Model Code of Meeting Practice for Local Councils in NSW 2018</i> • <i>Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW 2018</i>
Document History	<ul style="list-style-type: none"> • Amended 27 June 2022 • Amended 31 January 2022 • Amended: 14 December 2020 • Adopted: 11 June 2019
Next Review Date	<ul style="list-style-type: none"> • November 2025
Version	<ul style="list-style-type: none"> • 4
Responsible Position	<ul style="list-style-type: none"> • Governance, Risk & Corporate Planning Manager
Administration Reference	<ul style="list-style-type: none"> • 608521



Code of Meeting Practice

June 2022

Table of Contents

1. Introduction.....	3
2. Meeting principles	5
3. Before the meeting	7
4. Public forums.....	13
5. Coming together	17
6. The Chairperson	24
7. Modes of address	27
8. Order of business for ordinary Council meetings.....	29
9. Consideration of business at Council meetings.....	31
10. Rules of debate	35
11. Voting	39
12. Committee of the whole.....	41
13. Dealing with items by exception.....	43
14. Closure of Council meetings to the public.....	45
15. Keeping order at meetings.....	51
16. Conflict of interest	56
17. Decisions of the Council	58
18. Time limits on Council meetings	61
19. After the meetings	63
20. Council committees.....	66
21. Irregularities	71
22. Definitions	73
Appendix One - Procedural Motions.....	76
Supporting information	78

1. Introduction



The *Willoughby City Council Code of Meeting Practice* is made under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2021* (the Regulation).

This code applies to all meetings of Council and committees of Councils of which all the members are Councillors (committees of Council). Council committees whose members include persons other than Councillors may adopt their own rules for meetings unless the Council determines otherwise.

The draft *Willoughby City Council Code of Meeting Practice* incorporates the mandatory provisions of the *Model Meeting Code*, as required in NSW.

The draft Code also incorporates some of the current Code's non-mandatory provisions of the *Model Meeting Code* and other supplementary provisions.

The code of meeting practice does not contain provisions that are inconsistent with the mandatory provisions of the *Model Meeting Code*.

The Council and a committee of the Council of which all the members are Councillors must conduct its meetings in accordance with the code of meeting practice.

2. Meeting Principles



2.1 Council and committee meetings should be:

Transparent:	Decisions are made in a way that is open and accountable.
Informed:	Decisions are made based on relevant, quality information.
Inclusive:	Decisions respect the diverse needs and interests of the local community.
Principled:	Decisions are informed by the principles prescribed under Chapter 3 of the Act.
Trusted:	The community has confidence that Councillors and staff act ethically and make decisions in the interests of the whole community.
Respectful:	Councillors, staff and meeting attendees treat each other with respect.
Effective:	Meetings are well organised, effectively run and skillfully chaired.
Orderly:	Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

3. Before the Meeting



Timing of ordinary Council meetings

- 3.1 Ordinary meetings of the Council will be held in the Council Chambers or virtually (online) or a combination of both, on the fourth Monday of the month at 7:00 pm, except when Council is in recess, or as otherwise resolved by Council. The Council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.

Extraordinary meetings

- 3.2 If the Mayor receives a request in writing, signed by at least two Councillors, the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable, but in any event, no more than 14 days after receipt of the request. The Mayor can be one of the two Councillors requesting the meeting.

Notice to the public of Council meetings

- 3.3 The Council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the Council.
- 3.4 For the purposes of clause 3.3, notice of a meeting of the Council and of a committee of Council is to be published before the meeting takes place. The notice must be published on the Council's website, and in such other manner that the Council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.
- 3.5 For the purposes of clause 3.3, notice of more than one meeting may be given in the same notice.

Notice to Councillors of ordinary Council meetings

- 3.6 The Chief Executive Officer must send to each Councillor, at least ~~three~~thirteen days before each meeting of the Council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.
- 3.7 The notice and the agenda for, and the business papers relating to, the meeting may be given to Councillors in electronic form, but only if all Councillors have facilities to access the notice, agenda and business papers in that form.

Notice to Councillors of extraordinary meetings

- 3.8 Notice of less than three days may be given to Councillors of a meeting of the Council in cases of emergency.

Giving notice of business to be considered at Council meetings

- 3.9 A Councillor may give notice of any business they wish to be considered by the Council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted by noon ~~five~~nineteen business days before the meeting.
- 3.10 A Councillor may, in writing to the Chief Executive Officer, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.
- 3.11 If the Chief Executive Officer considers that a notice of motion submitted by a Councillor for consideration at an ordinary meeting of the Council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the Chief Executive Officer may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the Council.
- 3.12 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the Chief Executive Officer must either:
- (a) prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the Council, or
 - (b) by written notice sent to all Councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the Council to such a date specified in the notice no later than six weeks, pending the preparation of such a report.

Questions with notice

- 3.13 A Councillor may, by way of a notice submitted under clause 3.9, ask a question for response by the Chief Executive Officer about the performance or operations of the Council.
- 3.14 A Councillor is not permitted to ask a question with notice under clause 3.13 that comprises a complaint against the Chief Executive Officer or a member of staff of the Council, or a question that implies wrongdoing by the Chief Executive Officer or a member of staff of the Council.
- 3.15 The Chief Executive Officer or their nominee may respond to a question with notice submitted under clause 3.13 by way of a report included in the business papers for the relevant meeting of the Council or orally at the meeting.

Agenda and business papers for ordinary meetings

- 3.16 The Chief Executive Officer must cause the agenda for a meeting of the Council or a committee of the Council to be prepared as soon as practicable before the meeting.
- 3.17 The Chief Executive Officer must ensure that the agenda for an ordinary meeting of the Council states:
- (a) all matters to be dealt with arising out of the proceedings of previous meetings of the Council, and
 - (b) if the Mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
 - (c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
 - (d) any business of which due notice has been given under clause 3.9.
- 3.18 Nothing in clause 3.17 limits the powers of the Mayor to put a Mayoral minute to a meeting under clause 9.6.
- 3.19 The Chief Executive Officer must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the Chief Executive Officer, the business is, or the implementation of the business would be, unlawful. The Chief Executive Officer must report, without giving details of the item of business, any such exclusion to the next meeting of the Council.
- 3.20 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the Chief Executive Officer, is likely to take place when the meeting is closed to the public, the Chief Executive Officer must ensure that the agenda of the meeting:
- (a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
 - (b) states the grounds under section 10A(2) of the Act relevant to the item of business.
- 3.21 The Chief Executive Officer must ensure that the details of any item of business which, in the opinion of the Chief Executive Officer, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to Councillors for the meeting concerned. Such details must not be included in the business papers made available to the public, and must not be disclosed by a Councillor or by any other person to another person who is not authorised to have that information.

Statement of ethical obligations

- 3.22 Business papers for all ordinary and extraordinary meetings of the Council and committees of the Council must contain a statement reminding Councillors of their oath or affirmation of office made under section 233A of the Act and their obligations under the Council's code of conduct to disclose and appropriately manage conflicts of interest.

Availability of the agenda and business papers to the public

- 3.23 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the Council and committees of Council, are to be published on the Council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the Council, at the relevant meeting and at such other venues determined by the Council.
- 3.24 Clause 3.23 does not apply to the business papers for items of business that the Chief Executive Officer has identified under clause 3.20 as being likely to be considered when the meeting is closed to the public.
- 3.25 For the purposes of clause 3.23, copies of agendas and business papers must be published on the Council's website and made available to the public at a time that is as close as possible to the time they are available to Councillors.
- 3.26 A copy of an agenda, or of an associated business paper made available under clause 3.23, may in addition be given or made available in electronic form.

Agenda and business papers for extraordinary meetings

- 3.27 The Chief Executive Officer must ensure that the agenda for an extraordinary meeting of the Council deals only with the matters stated in the notice of the meeting.
- 3.28 Despite clause 3.26, business may be considered at an extraordinary meeting of the Council, even though due notice of the business has not been given, if:
- (a) a motion is passed to have the business considered at the meeting, and
 - (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 3.29 A motion moved under clause 3.28(a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.
- 3.30 Despite clauses 10.20–10.30, only the mover of a motion moved under clause 3.28(a) can speak to the motion before it is put.
- 3.31 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.28(b) on whether a matter is of great urgency.

Pre-meeting briefing sessions

- 3.32 Prior to each ordinary meeting of the Council, the Chief Executive Officer may arrange a pre-meeting briefing session to brief Councillors on business to be considered at the meeting or a future meeting and any other matters.
- 3.33 Pre-meeting briefing sessions are to be held in the absence of the public.
- 3.34 Pre-meeting briefing sessions may be held by audio-visual link.
- 3.35 The Chief Executive Officer or a member of staff nominated by the Chief Executive Officer is to preside at pre-meeting briefing sessions.
- 3.36 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal Council or committee meeting at which the item of business is to be considered.
- 3.37 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the Councillor who made the declaration.

4. Public Forums



Public forum: matters on the agenda

- 4.1 The Council may hold a public forum prior to each ordinary meeting of the Council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary Council meetings and meetings of committees of the Council.
- 4.2 Public forums may be held by audio-visual link if endorsed by the Mayor and Chief Executive Officer.
- 4.3 Public forums are to be chaired by the Mayor or their nominee.
- 4.4 To speak at a public forum, a person must first make an application to the Council in the approved form. Applications to speak at the public forum must be received by noon on the business day prior to the meeting on which the public forum is to be held, and must identify the item of business on the agenda of the Council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.
- 4.5 A person may apply to speak on no more than three items of business on the agenda of the Council meeting. An address for additional items of business can be granted with the concurrence of Council.
- 4.6 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.
- 4.7 The Chief Executive Officer or their delegate may refuse an application to speak at a public forum. The Chief Executive Officer or their delegate must give reasons in writing for a decision to refuse an application.
- 4.8 No more than two speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the Council meeting.
- 4.9 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the Chief Executive Officer or their delegate may request the speakers to nominate from among themselves the persons who are to address the Council on the item of business. If the speakers are not able to agree on whom to nominate to address the Council, the Chief Executive Officer or their delegate is to determine who will address the Council at the public forum.
- 4.10 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the Chief Executive Officer or their delegate may, in consultation with the Mayor or the Mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the Council to hear a fuller range of views on the relevant item of business.

- 4.11 Approved speakers at the public forum are to register with the Council any written, visual or audio material to be presented in support of their address to the Council at the public forum, and to identify any equipment needs no later than noon on the business day prior to the meeting. The Chief Executive Officer or their delegate may refuse to allow such material to be presented.
- 4.12 The Chief Executive Officer or their delegate is to determine the order of speakers at the public forum.
- 4.13 Each speaker will be allowed three minutes to address the Council. This time is to be strictly enforced by the chairperson.
- 4.14 Speakers at public forums must not digress from the item on the agenda of the Council meeting they have applied to address the Council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
- 4.15 A Councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.
- 4.16 Speakers are under no obligation to answer a question put under clause 4.12. Answers by the speaker, to each question are to be limited to two minutes.
- 4.17 Speakers at public forums cannot ask questions of the Council, Councillors or Council staff.
- 4.18 The Chief Executive Officer or their nominee may, with the concurrence of the chairperson, address the Council for up to three minutes in response to an address to the Council at a public forum after the address and any subsequent questions and answers have been finalised.
- 4.19 Where an address made at a public forum raises matters that require further consideration by Council staff, the Chief Executive Officer may recommend that the Council defer consideration of the matter pending the preparation of a further report on the matters.
- 4.20 When addressing the Council, speakers at public forums must comply with this code and all other relevant Council codes, policies and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the Council's code of conduct or making other potentially defamatory statements.
- 4.21 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.16, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 4.22 Clause 4.21 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this code.

- 4.23 Where a speaker engages in conduct of the type referred to in clause 4.20, the Chief Executive Officer or their delegate may refuse further applications from that person to speak at public forums for such a period as the Chief Executive Officer or their delegate considers appropriate.
- 4.24 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the Councillor who made the declaration.

Open forum: matters not on the agenda

- 4.21 The Council may hold an open forum either prior to or as part of the order each ordinary meeting of the Council for the purpose of hearing oral submissions from members of the public on items not on the agenda for the meeting.
- 4.22 Open forums are to be chaired by the Mayor or their nominee.
- 4.23 To speak at an open forum, a person must first make an application to the Council in writing. Applications to speak at the open forum must be received by noon on the date of the meeting on which the open forum is to be held, and must identify the topic the person wishes to speak on.
- 4.24 The Chief Executive Officer or their delegate is to determine the order of speakers at the open forum.
- 4.25 Each speaker will be allowed three minutes to address the Council. This time is to be strictly enforced by the chairperson.
- 4.26 A Councillor (including the chairperson) may not ask questions of a speaker following their address at an open forum.
- 4.27 Speakers at open forums cannot ask questions of Councillors or Council staff.
- 4.28 Speakers at open forums must comply with this code and all other relevant Council codes, policies and procedures. Refer to clauses 4.1 – 4.20 for further details.

5. Coming Together



Attendance by Councillors at meetings

- 5.1 All Councillors must make reasonable efforts to attend meetings of the Council and of committees of the Council of which they are members.
- 5.2 A Councillor cannot participate in a meeting of the Council or of a committee of the Council unless personally present at the meeting unless permitted to attend the meeting by audio-visual link under this code.
- 5.3 Where a Councillor is unable to attend one or more ordinary meetings of the Council, the Councillor should request that the Council grant them a leave of absence from those meetings. This clause does not prevent a Councillor from making an apology if they are unable to attend a meeting. However the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.
- 5.4 A Councillor's request for leave of absence from Council meetings should, if practicable, identify (by date) the meetings from which the Councillor intends to be absent and the grounds upon which the leave of absence is being sought.
- 5.5 The Council must act reasonably when considering whether to grant a Councillor's request for a leave of absence.
- 5.6 A Councillor's civic office will become vacant if the Councillor is absent from three consecutive ordinary meetings of the Council without prior leave of the Council, or leave granted by the Council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the Council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.
- 5.7 A Councillor who intends to attend a meeting of the Council despite having been granted a leave of absence should, if practicable, give the Chief Executive Officer at least two days' notice of their intention to attend.
- 5.8 A breach of the code of conduct will be deemed to have occurred if a Councillor or Councillors willfully retire from a Council meeting with the intent of the Council losing its quorum or intentionally withhold a quorum by not attending.

The quorum for a meeting

- 5.9 The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office at that time and are not suspended from office.
- 5.10 Clause 5.9 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the Council.
- 5.11 A meeting of the Council must be adjourned if a quorum is not present:
- (a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
 - (b) within half an hour after the time designated for the holding of the meeting, or
 - (c) at any time during the meeting.
- 5.12 In either case, the meeting must be adjourned to a time, date and place fixed:
- (a) by the chairperson, or
 - (b) in the chairperson's absence, by the majority of the Councillors present, or
 - (c) failing that, by the Chief Executive Officer.
- 5.13 The Chief Executive Officer must record in the Council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present.
- 5.14 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety or welfare of Councillors, Council staff and members of the public may be put at risk by attending the meeting because of a natural disaster, or a public health emergency, the Mayor may, in consultation with the Chief Executive Officer and, as far as is practicable, with each Councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.
- 5.15 Where a meeting is cancelled under clause 5.14, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the Council or at an extraordinary meeting called under clause 3.2.

Entitlement of the public to attend Council Meetings

- 5.16 Everyone is entitled to attend a meeting of the Council and committees of the Council. The Council must ensure that all meetings of the Council and committees of the Council are open to the public.
- 5.17 Clause 5.16 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.
- 5.18 A person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or a committee of the Council if expelled from the meeting:
- (a) by a resolution of the meeting, or
 - (b) by the person presiding at the meeting if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Webcasting of meetings

- 5.19 Each meeting of the Council or a committee of the Council is to be recorded by means of an audio or audiovisual device.
- 5.20 At the start of each meeting of the Council or a committee of the Council, the chairperson must inform the persons attending the meeting that:
- (a) the meeting is being recorded and made publicly available on the Council's website, and
 - (b) persons attending the meeting should refrain from making any defamatory statements.
- 5.21 The recording of a meeting is to be made publicly available on the Council's website:
- (a) at the same time as the meeting is taking place, or
 - (b) as soon as practicable after the meeting.
- 5.22 The recording of a meeting is to be made publicly available on the Council's website for at least 12 months after the meeting.
- 5.23 Clauses 5.21 and 5.22 do not apply to any part of a meeting that has been closed to the public in accordance with section
- 5.24 Recordings of meetings may be disposed of in accordance with the State Records Act 1998.

Attendance of the Chief Executive Officer and other staff at meetings

- 5.25 The Chief Executive Officer is entitled to attend, but not to vote at, a meeting of the Council or a meeting of a committee of the Council of which all of the members are Councillors.
- 5.26 The Chief Executive Officer is entitled to attend a meeting of any other committee of the Council and may, if a member of the committee, exercise a vote.
- 5.27 The Chief Executive Officer may be excluded from a meeting of the Council or a committee while the Council or committee deals with a matter relating to the standard of performance of the Chief Executive Officer or the terms of employment of the Chief Executive Officer.
- 5.28 The attendance of other Council staff at a meeting, (other than as members of the public) shall be with the approval of the Chief Executive Officer.
- 5.29 The Chief Executive Officer and other Council staff may attend meetings of the Council and committees of the Council by audio-visual-link. Attendance by Council staff at meetings by audio-visual link (other than as members of the public) shall be with the approval of the Chief Executive Officer.

Meetings held by audio-visual link

- 5.30 A meeting of the Council or a committee of the Council may be held by audio-visual link where the Mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The Mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of Councillors and staff at risk. The Mayor must make a determination under this clause in consultation with the Chief Executive Officer and, as far as is practicable, with each Councillor.
- 5.31 Where the Mayor determines under clause 5.16 that a meeting is to be held by audio-visual link, the Chief Executive Officer must:
- (a) give written notice to all Councillors that the meeting is to be held by audio-visual link, and
 - (b) take all reasonable steps to ensure that all Councillors can participate in the meeting by audio-visual link, and
 - (c) cause a notice to be published on the Council's website and in such other manner the Chief Executive Officer is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.
- 5.32 This code applies to a meeting held by audio-visual link under clause 5.30 in the same way it would if the meeting was held in person.

Attendance by Councillors at meetings by audio-visual link

- 5.33 Councillors may attend and participate in meetings of the Council and committees of the Council by audio-visual link with the approval of the Council or the relevant committee.
- 5.34 A request by a Councillor for approval to attend a meeting by audio-visual link must be made in writing to the Chief Executive Officer prior to the meeting in question and must provide reasons why the Councillor will be prevented from attending the meeting in person.
- 5.35 Councillors may request approval to attend more than one meeting by audio-visual link. Where a Councillor requests approval to attend more than one meeting by audio-visual link, the request must specify the meetings the request relates to in addition to the information required under clause 5.34.
- 5.36 The Council must comply with the Health Privacy Principles prescribed under the Health Records and Information Privacy Act 2002 when collecting, holding, using and disclosing health information in connection with a request by a Councillor to attend a meeting by audio-visual link.
- 5.37 A Councillor who has requested approval to attend a meeting of the Council or a committee of the Council by audio-visual link may participate in the meeting by audio-visual link until the Council or committee determines whether to approve their request and is to be taken as present at the meeting. The Councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.
- 5.38 A decision whether to approve a request by a Councillor to attend a meeting of the Council or a committee of the Council by audio-visual link must be made by a resolution of the Council or the committee concerned. The resolution must state:
- (a) the meetings the resolution applies to, and
 - (b) the reason why the Councillor is being permitted to attend the meetings by audio-visual link where it is on grounds other than illness, disability, or caring responsibilities.
- 5.39 If the Council or committee refuses a Councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.
- 5.40 A decision whether to approve a Councillor's request to attend a meeting by audio-visual link is at the Council's or the relevant committee's discretion. The Council and committees of the Council must act reasonably when considering requests by Councillors to attend meetings by audio-visual link. However, the Council and committees of the Council are under no obligation to approve a Councillor's request to attend a meeting by audio-visual link where the technical capacity does not exist to allow the Councillor to attend the meeting by these means.
- 5.41 The Council and committees of the Council may refuse a Councillor's request to attend a meeting by audio-visual link where the Council or committee is satisfied that the Councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the Council or a committee of the Council by audio-visual link.

- 5.42 This code applies to a Councillor attending a meeting by audio-visual link in the same way it would if the Councillor was attending the meeting in person. Where a Councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.

6. The Chairperson



The chairperson at meetings

- 6.1 The Mayor, or at the request of or in the absence of the Mayor, the deputy Mayor (if any) presides at meetings of the Council.
- 6.2 If the Mayor and the deputy Mayor (if any) are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council.

Election of the chairperson in the absence of the Mayor and deputy Mayor

- 6.3 If no chairperson is present at a meeting of the Council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.
- 6.4 The election of a chairperson must be conducted:
- (a) by the Chief Executive Officer or, in their absence, an employee of the Council designated by the Chief Executive Officer to conduct the election, or
 - (b) by the person who called the meeting or a person acting on their behalf if neither the Chief Executive Officer nor a designated employee is present at the meeting, or if there is no Chief Executive Officer or designated employee.
- 6.5 If, at an election of a chairperson, two or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- 6.6 For the purposes of clause 6.5, the person conducting the election must:
- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
 - (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- 6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.
- 6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

- 6.9 When the chairperson rises or speaks during a meeting of the Council:
- (a) any Councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
 - (b) every Councillor present must be silent to enable the chairperson to be heard without interruption.

7. Modes of Address



MODES OF ADDRESS

- 7.1 If the chairperson is the Mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor' or 'Mayor'.
- 7.2 Where the chairperson is not the Mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson' or 'Chairperson'.
- 7.3 A Councillor is to be addressed as 'Councillor [surname]'.
- 7.4 A Council officer is to be addressed by their official designation or as Mr/Ms [surname].

8. Order of Business for Ordinary Council Meetings



ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

- 8.1 The general order of business for an ordinary meeting of the Council shall be as outlined below or as otherwise resolved by Council:
- 1 Opening meeting
 - 2 Acknowledgement of country
 - 3 Oath
 - 4 Apologies and applications for a leave of absence or attendance by audio-visual link by Councillors
 - 5 Confirmation of minutes
 - 6 Disclosures of interests
 - 7 Petitions
 - 8 Open and Public Forum
 - 9 Mayoral minute(s)
 - 10 Chief Executive Officer's late report
 - 11 Matters by exception
 - 12 Reports to Council
 - 13 Notices of motion
 - 14 Questions with notice
 - 15 Confidential matters
 - 16 Conclusion of the meeting
- 8.2 The order of business as fixed under 8.1 may be altered for a particular meeting of the Council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.
- 8.3 Despite clauses 10.20 - 10.30, only the mover of a motion referred to in clause 8.2 may speak to the motion before it is put.

9. Consideration of Business at Council Meetings



Business that can be dealt with at a Council meeting

- 9.1 The Council must not consider business at a meeting of the Council:
- (a) unless a Councillor has given notice of the business, as required by clause 3.9, and
 - (b) unless notice of the business has been sent to the Councillors in accordance with clause 3.6 in the case of an ordinary meeting or clause 3.8 in the case of an extraordinary meeting called in an emergency.
- 9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:
- (a) is already before, or directly relates to, a matter that is already before the Council, or
 - (b) is the election of a chairperson to preside at the meeting, or
 - (c) subject to clause 9.9, is a matter or topic put to the meeting by way of a Mayoral minute, or
 - (d) is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the Council.
- 9.3 Despite clause 9.1, business may be considered at a meeting of the Council even though due notice of the business has not been given to the Councillors if:
- (a) a motion is passed to have the business considered at the meeting, and
 - (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 9.4 A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.
- 9.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).

Mayoral minutes

- 9.6 Subject to clause 9.9, if the Mayor is the chairperson at a meeting of the Council, the Mayor may, by minute signed by the Mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the Council, or of which the Council has official knowledge.
- 9.7 A Mayoral minute, when put to a meeting, takes precedence over all business on the Council's agenda for the meeting. The chairperson (but only if the chairperson is the Mayor) may move the adoption of a Mayoral minute without the motion being seconded.
- 9.8 A recommendation made in a Mayoral minute put by the Mayor is, so far as it is adopted by the Council, a resolution of the Council.

- 9.9 A Mayoral minute must not be used to put without notice matters that are routine and not urgent, or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 9.10 Where a Mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the Mayoral minute does not identify a funding source, the Council must defer consideration of the matter, pending a report from the Chief Executive Officer on the availability of funds for implementing the recommendation if adopted, unless otherwise resolved by Council.

Staff reports

- 9.11 A recommendation made in a staff report is, so far as it is adopted by the Council, a resolution of the Council.

Reports of committees of Council

- 9.12 The recommendations of a committee of the Council are, so far as they are adopted by the Council, resolutions of the Council.
- 9.13 If in a report of a committee of the Council distinct recommendations are made, the Council may make separate decisions on each recommendation.

Questions

- 9.14 A question must not be asked at a meeting of the Council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.9 and 3.13.
- 9.15 A Councillor may, through the chairperson, put a question to another Councillor about a matter on the agenda.
- 9.16 A Councillor may, through the Chief Executive Officer, put a question to a Council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the Chief Executive Officer at the direction of the Chief Executive Officer.
- 9.17 A Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to information. Where a Councillor or Council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the Council.
- 9.18 Councillors must put questions directly, succinctly, respectfully and without argument.

- 9.19 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a Councillor or Council employee.

10. Rules of Debate



Motions to be seconded

- 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

- 10.2 A Councillor who has submitted a notice of motion under clause 3.9 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.
- 10.3 If a Councillor who has submitted a notice of motion under clause 3.9 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to Councillors, the Councillor may request the withdrawal of the motion when it is before the Council.
- 10.4 In the absence of a Councillor who has placed a notice of motion on the agenda for a meeting of the Council:
- (a) any other Councillor may, with the leave of the chairperson, move the motion at the meeting, or
 - (b) the chairperson may defer consideration of the motion until the next meeting of the Council.

Chairperson's duties with respect to motions

- 10.5 It is the duty of the chairperson at a meeting of the Council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.
- 10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.
- 10.8 Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been lost.

Motions requiring the expenditure of funds

- 10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/ or services other than those already provided for in the Council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the Council must defer consideration of the matter, pending a report from the Chief Executive Officer on the availability of funds for implementing the motion if adopted, unless otherwise resolved by Council.

Amendments to motions

- 10.10 An amendment to a motion must be moved and seconded before it can be debated.
- 10.11 An amendment to a motion must relate to the matter being dealt with in the original motion before the Council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.
- 10.12 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.
- 10.13 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one motion and one proposed amendment can be before Council at any one time.
- 10.14 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 10.15 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 10.16 An amendment may become the motion without debate or a vote where it is accepted by the Councillor who moved the original motion.

Foreshadowed motions

- 10.17 A Councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the Council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.
- 10.18 Where an amendment has been moved and seconded, a Councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the Council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.
- 10.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

Limitations on the number and duration of speeches

- 10.20 A Councillor who, during a debate at a meeting of the Council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 10.21 A Councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- 10.22 A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than five minutes at any one time.
- 10.23 Despite clause 10.22, the chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than five minutes on that motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 10.24 Despite clause 10.22, the Council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.
- 10.25 Despite clauses 10.20 and 10.21, a Councillor may move that a motion or an amendment be now put:
- (a) if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, or
 - (b) if at least two Councillors have spoken in favour of the motion or amendment and at least two Councillors have spoken against it.
- 10.26 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.25. A seconder is not required for such a motion.
- 10.27 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.20.
- 10.28 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 10.29 All Councillors must be heard without interruption and all other Councillors must, unless otherwise permitted under this code, remain silent while another Councillor is speaking.
- 10.30 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.

11. Voting



Voting entitlements of Councillors

- 11. 1 Each Councillor is entitled to one vote.
- 11. 2 The person presiding at a meeting of the Council has, in the event of an equality of votes, a second or casting vote.
- 11. 3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

Voting at Council meetings

- 11. 4 A Councillor who is present at a meeting of the Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion
- 11. 5 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the Council may resolve that the voting in any election by Councillors for Mayor or deputy Mayor is to be by secret ballot.
- 11. 6 All voting at Council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

Voting on planning decisions

- 11. 7 The Chief Executive Officer must keep a register containing, for each planning decision made at a meeting of the Council or a Council committee (including, but not limited to a committee of the Council), the names of the Councillors who supported the decision and the names of any Councillors who opposed (or are taken to have opposed) the decision.
- 11. 8 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.
- 11. 9 Clauses 11.7-11.8 apply also to meetings that are closed to the public.

12. Committee of the Whole



COMMITTEE OF THE WHOLE

12. 1 The Council may resolve itself into a committee to consider any matter before the Council.
12. 2 All the provisions of this code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of the Council when in committee of the whole, except the provisions limiting the number and duration of speeches.
12. 3 The Chief Executive Officer or, in the absence of the Chief Executive Officer, an employee of the Council designated by the Chief Executive Officer, is responsible for reporting to the Council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.
12. 4 The Council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the Council's minutes. However, the Council is not taken to have adopted the report until a motion for adoption has been made and passed.

13. Dealing with Items by Exception



DEALING WITH ITEMS BY EXCEPTION

- 13.1 The Council or a committee of Council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.
- 13.2 Before the Council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask Councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 13.3 The Council or committee must not resolve to adopt any item of business under clause 13.1 that a Councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the Council or committee must resolve to alter the order of business in accordance with clause 8.2.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the Council's code of conduct.
- 13.8 When a Notice of Motion is carried as part of an en bloc resolution, the original wording of the motion as submitted in accordance with clause 3.9 is carried, unless the motion results in matters encompassed by sections 3.11 or 3.12, in which case, the item must be called for individual consideration.

14. Closure of Council Meetings to the Public



Grounds on which meetings can be closed to the public

- 14.1 The Council or a committee of the Council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:
- (a) personnel matters concerning particular individuals (other than Councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the Council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,
 - (f) matters affecting the security of the Council, Councillors, Council staff or Council property,
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
 - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
 - (i) alleged contraventions of the Council's code of conduct.
- 14.2 The Council or a committee of the Council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

Matters to be considered when closing meetings to the public

- 14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:
- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
 - (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the Council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.
- 14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:
- (a) are substantial issues relating to a matter in which the Council or committee is involved, and
 - (b) are clearly identified in the advice, and
 - (c) are fully discussed in that advice.
- 14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.
- 14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
- (a) a person may misinterpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the Council or committee concerned, or to Councillors or to employees of the Council, or
 - (ii) cause a loss of confidence in the Council or committee.
- 14.7 In deciding whether part of a meeting is to be closed to the public, the Council or committee concerned must consider any relevant guidelines issued by the Departmental Chief Executive of the Office of Local Government.

Notice of likelihood of closure not required in urgent cases

- 14.8 Part of a meeting of the Council, or of a committee of the Council, may be closed to the public while the Council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.19 as a matter that is likely to be considered when the meeting is closed, but only if:
- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and
 - (b) the Council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and
 - (ii) should take place in a part of the meeting that is closed to the public.

Representations by members of the public

- 14.9 The Council, or a committee of the Council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.
- 14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.
- 14.11 Where the matter has been identified in the agenda of the meeting under clause 3.20 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the Council in writing, via email, post or delivered and addressed to the Chief Executive Officer. Applications must be received before noon on the day of the meeting at which the matter is to be considered.
- 14.12 The Chief Executive Officer (or their delegate) may refuse an application made under clause 14.11. The Chief Executive Officer or their delegate must give reasons in writing for a decision to refuse an application.
- 14.13 No more than three speakers are to be permitted to make representations under clause 14.9.
- 14.14 If more than the permitted number of speakers apply to make representations under clause 14.9, the Chief Executive Officer or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the Council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the Chief Executive Officer or their delegate is to determine who will make representations to the Council.
- 14.15 The Chief Executive Officer (or their delegate) is to determine the order of speakers.

CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC

- 14.16 Where the Council or a committee of the Council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.19 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than two speakers to make representations in such order as determined by the chairperson.
- 14.17 Each speaker will be allowed three minutes to make representations and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

Expulsion of non-Councillors from meetings closed to the public

- 14.18 If a meeting or part of a meeting of the Council or a committee of the Council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a Councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 14.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Information to be disclosed in resolutions closing meetings to the public

- 14.20 The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:
- (a) the relevant provision of section 10A(2) of the Act,
 - (b) the matter that is to be discussed during the closed part of the meeting,
 - (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Resolutions passed at closed meetings to be made public

- 14.21 If the Council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.
- 14.22 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.21 during a part of the meeting that is webcast.

Obligations of Councillors and staff attending meetings by audio-visual link

- 14.23 Councillors and staff attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

15. Keeping Order at Meetings



Points of order

- 15.1 A Councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.
- 15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.
- 15.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the Councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

- 15.4 The chairperson, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- 15.5 A Councillor who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- 15.6 The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.
- 15.7 The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

Motions of dissent

- 15.8 A Councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 15.9 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- 15.10 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

Acts of disorder

- 15.11 A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a committee of the Council:
- (a) contravenes the Act, the Regulation or any in force under the Act or this code, or
 - (b) assaults or threatens to assault another Councillor or person present at the meeting, or
 - (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or the committee, or addresses or attempts to address the Council or the committee on such a motion, amendment or matter, or
 - (d) insults, makes unfavourable personal remarks about, or imputes improper motives to any other Council official, or alleges a breach of the Council's code of conduct, or
 - (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or the committee into disrepute.
- 15.12 The chairperson may require a Councillor:
- (a) to apologise without reservation for an act of disorder referred to in clauses 15.11(a), (b) or (e)
 - (b) to withdraw a motion or an amendment referred to in clause 15.11(c) and, where appropriate, to apologise without reservation, or
 - (c) to retract and apologise without reservation for any statement that constitutes an act of disorder referred to in clauses 15.11(d) and (e).

How disorder at a meeting may be dealt with

- 15.13 If disorder occurs at a meeting of the Council, the chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The Council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of Councillors.

Expulsion from meetings

- 15.14 All chairpersons of meetings of the Council and committees of the Council are authorised under this code to expel any person, including any Councillor, from a Council or committee meeting, for the purposes of section 10(2)(b) of the Act.
- 15.15 Clause 15.14, does not limit the ability of the Council or committee of the Council to resolve to expel a person, including a Councillor, from a Council or committee meeting, under section 10(2)(a) of the Act.
- 15.16 A Councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for having failed to comply with a requirement under clause 15.12. The expulsion of a Councillor from the meeting for that reason does not prevent any other action from being taken against the Councillor for the act of disorder concerned.
- 15.17 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for engaging in or having engaged in disorderly conduct at the meeting.
- 15.18 Where a Councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.
- 15.19 If a Councillor or a member of the public fails to leave the place where a meeting of the Council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the Councillor or member of the public from that place and, if necessary, restrain the Councillor or member of the public from re-entering that place for the remainder of the meeting.

How disorder by Councillors attending meetings by audio-visual link may be dealt with

- 15.20 Where a Councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the Councillor's audio link to the meeting for the purposes of enforcing compliance with this code.
- 15.21 If a Councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the Councillor's audio-visual link to the meeting.

Use of mobile phones and the unauthorised recording of meetings

- 15.22 Councillors, Council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the Council and committees of the Council.
- 15.23 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the Council or a committee of the Council without the prior authorisation of the Council or the committee.

KEEPING ORDER AT MEETINGS

- 15.24 Without limiting clause 15.17, a contravention of clause 15.23 or an attempt to contravene that clause, constitutes disorderly conduct for the purpose of clause 15.17. Any person who contravenes or attempts to contravene clause 15.23, may be expelled from the meeting as provided for under section 10(2) of the Act.
- 15.25 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

16. Conflict of Interest



CONFLICT OF INTEREST

- 16.1 All Councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the Council and committees of the Council in accordance with the Council's code of conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.
- 16.2 Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the Council's code of conduct. Where a Councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the Councillor's audio-visual link to the meeting must be suspended or terminated and the Councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the Council or committee, or at any time during which the Council or committee is voting on the matter.

17. Decisions of the Council



Council decisions

- 17.1 A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council.
- 17.2 Decisions made by the Council must be accurately recorded in the minutes of the meeting at which the decision is made.
- 17.3 In addition to webcasting Council meetings, confidential sessions of Council meetings will be audio recorded, only for the purposes of compiling Council minutes.

Rescinding or altering Council decisions

- 17.4 A resolution passed by the Council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.10.
- 17.5 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.
- 17.6 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with clause 3.9.
- 17.7 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) Councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.
- 17.8 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.
- 17.9 The provisions of clauses 17.6–17.8 concerning lost motions do not apply to motions of adjournment.
- 17.10 A notice of motion submitted in accordance with clause 17.7 may only be withdrawn under clause 3.10 with the consent of all signatories to the notice of motion.
- 17.11 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the Chief Executive Officer no later than 4pm on the business day immediately following the Council meeting after the meeting at which the resolution was adopted.
- 17.12 A motion to alter or rescind a resolution of the Council may be moved on the report of a committee of the Council and any such report must be recorded in the minutes of the meeting of the Council.
- 17.13 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the Council may be moved at the same meeting at which the resolution was adopted, where:
 - (a) a notice of motion signed by three Councillors is submitted to the chairperson, and
 - (b) a motion to have the motion considered at the meeting is passed, and

- (c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.

- 17.14 A motion moved under clause 17.13(b) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.13(b) can speak to the motion before it is put.
- 17.15 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.13(c).

Recommitting resolutions to correct an error

- 17.16 Despite the provisions of this Part, a Councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:
 - (a) to correct any error, ambiguity or imprecision in the Council’s resolution, or
 - (b) to confirm the voting on the resolution.
- 17.17 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.16(a), the Councillor is to propose alternative wording for the resolution.
- 17.18 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.16(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.
- 17.19 A motion moved under clause 17.16 can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.16 can speak to the motion before it is put.
- 17.20 A motion moved under clause 17.16 with the leave of the chairperson cannot be voted on unless or until it has been seconded.

18. Time Limits on Council Meetings



TIME LIMITS ON COUNCIL MEETINGS

- 18.1 Meetings of the Council and committees of the Council are to conclude no later than 10.30pm.
- 18.2 If the business of the meeting is unfinished at 10.30pm, the Council or the committee may, by resolution, extend the time of the meeting.
- 18.3 If the business of the meeting is unfinished at 10.30pm, and the Council does not resolve to extend the meeting, the chairperson must either:
- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the Council, or
 - (b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 18.4 Clause 18.3 does not limit the ability of the Council or a committee of the Council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 18.5 Where a meeting is adjourned under clause 18.3 or 18.4, the Chief Executive Officer must:
- (a) individually notify each Councillor of the time, date and place at which the meeting will reconvene, and
 - (b) publish the time, date and place at which the meeting will reconvene on the Council's website and in such other manner that the Chief Executive Officer is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

19. After the Meetings



Minutes of meetings

- 19.1 The Council is to keep full and accurate minutes of the proceedings of meetings of the Council.
- 19.2 At a minimum, the Chief Executive Officer must ensure that the following matters are recorded in the Council's minutes:
- (a) The names of Councillors attending a Council meeting and whether they attended the meeting in person or by audio-visual link
 - (b) details of each motion moved at a Council meeting and of any amendments moved to it,
 - (c) the names of the mover and seconder of the motion or amendment,
 - (d) whether the motion or amendment was passed or lost, and
 - (e) such other matters specifically required under this code.
- 19.3 The minutes of a Council meeting must be confirmed at a subsequent meeting of the Council.
- 19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.
- 19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 19.7 The confirmed minutes of a Council meeting must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The Council and committees of the Council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.
- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.
- 19.10 Clause 19.8 does not apply if the Council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

AFTER THE MEETINGS

- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the Council

- 19.12 The Chief Executive Officer is to implement, without undue delay, lawful decisions of the Council.

20. Council Committees



Application of this Part

- 20.1 This Part only applies to committees of the Council whose members are all Councillors.

Council committees whose members are all Councillors

- 20.2 The Council may, by resolution, establish such committees as it considers necessary.
- 20.3 A committee of the Council is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council
- 20.4 The quorum for a meeting of a committee of the Council is to be:
- (a) such number of members as the Council decides, or
 - (b) if the Council has not decided a number – a majority of the members of the committee.

Functions of committees

- 20.5 The Council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

Notice of committee meetings

- 20.6 The Chief Executive Officer must send to each Councillor, regardless of whether they are a committee member, at least three days before each meeting of the committee, a notice specifying:
- (a) the time, date and place of the meeting, and
 - (b) the business proposed to be considered at the meeting.
- 20.7 Notice of less than three days may be given of a committee meeting called in an emergency.

Attendance at committee meetings

- 20.8 A committee member (other than the Mayor) ceases to be a member of a committee if the committee member:
- (a) has been absent from three consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or
 - (b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.

- 20.9 Clause 20.8 does not apply if all of the members of the Council are members of the committee.

Non-members entitled to attend committee meetings

- 20.10 A Councillor who is not a member of a committee of the Council is entitled to attend, and to speak at a meeting of the committee. However, the Councillor is not entitled:
- (a) to give notice of business for inclusion in the agenda for the meeting, or
 - (b) to move or second a motion at the meeting, or
 - (c) to vote at the meeting.

Chairperson and deputy chairperson of Council committees

- 20.11 The chairperson of each committee of the Council must be:
- (a) the Mayor, or
 - (b) if the Mayor does not wish to be the chairperson of a committee, a member of the committee elected by the Council, or
 - (c) if the Council does not elect such a member, a member of the committee elected by the committee.
- 20.12 The Council may elect a member of a committee of the Council as deputy chairperson of the committee. If the Council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- 20.13 If neither the chairperson nor the deputy chairperson of a committee of the Council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- 20.14 The chairperson is to preside at a meeting of a committee of the Council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

- 20.15 Subject to any specific requirements of this code, each committee of the Council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the Council unless the Council or the committee determines otherwise in accordance with this clause.
- 20.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the Council or the committee determines otherwise in accordance with clause 20.15.
- 20.17 Voting at a Council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

Closure of committee meetings to the public

- 20.18 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the Council to the public in the same way they apply to the closure of meetings of the Council to the public.
- 20.19 If a committee of the Council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and report the resolution or recommendation to the next meeting of the Council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.
- 20.20 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.19 during a part of the meeting that is webcast.

Disorder in committee meetings

- 20.21 The provisions of the Act and this code relating to the maintenance of order in Council meetings apply to meetings of committees of the Council in the same way as they apply to meetings of the Council.

Minutes of Council committee meetings

- 20.22 Each committee of the Council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:
- (a) The names of Councillors attending a meeting and whether they attended in person or by audio-visual link
 - (b) details of each motion moved at a meeting and of any amendments moved to it,
 - (c) the names of the mover and seconder of the motion or amendment,
 - (d) whether the motion or amendment was passed or lost, and
 - (e) such other matters specifically required under this code.
- 20.23 All voting at meetings of committees of the Council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.
- 20.24 The minutes of meetings of each committee of the Council must be confirmed at a subsequent meeting of the committee.
- 20.25 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 20.26 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.
- 20.27 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 20.28 The confirmed minutes of a meeting of a committee of the Council must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of meetings of committees of the Council on its website prior to their confirmation.

21. Irregularities



- 21.1 Proceedings at a meeting of a Council or a Council committee are not invalidated because of:
- (a) a vacancy in a civic office, or
 - (b) a failure to give notice of the meeting to any Councillor or committee member, or
 - (c) any defect in the election or appointment of a Councillor or committee member, or
 - (d) a failure of a Councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a Council or committee meeting in accordance with the Council's code of conduct, or
 - (e) a failure to comply with this code.

22. Definitions



Definitions:

the Act	means the <i>Local Government Act 1993</i>
act of disorder	means an act of disorder as defined in clause 15.11 of this code
amendment	in relation to an original motion, means a motion moving an amendment to that motion. An amendment is a change to the motion before the Council, and takes place while that motion is being debated. An amendment to a motion must be put forward in a motion in itself
audio recorder	any device capable of recording speech
Audio-visual link	means a facility that enables audio and visual communication between persons at different places
business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
chairperson	in relation to a meeting of the Council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 20.11 of this code
chief executive officer	means officer carrying out all the roles and responsibilities assigned to the general manager under the Act and any other relevant legislation
(this) code	means the Council’s adopted code of meeting practice
committee of the Council	means a committee established by the Council in accordance with clause 20.2 of this code (being a committee consisting only of Councillors) or the Council when it has resolved itself into committee of the whole under clause 12.1
Council official	has the same meaning it has in the <i>Model Code of Conduct for Local Councils in NSW</i>
day	means calendar day
division	means a request by two Councillors under clause 11.5 of this code requiring the recording of the names of the Councillors who voted both for and against a motion
foreshadowed amendment	means a proposed amendment foreshadowed by a Councillor under clause 10.18 of this code during debate on the first amendment

DEFINITIONS

foreshadowed motion	means a motion foreshadowed by a Councillor under clause 10.17 of this code during debate on an original motion. It is advice to the Council of an intention to put forward a motion that relates to a motion currently before the Council. However the chairperson cannot accept the new motion until the first motion is decided
motion	a motion is a proposal to be considered by a Council meeting. It is a request to do something or express an opinion about something. A motion formally puts the subject of the motion as an item of business for the Council
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
open forum: matters not the agenda	held for the purpose of hearing oral submissions from members of the public on items of business not under consideration at the Council meeting
planning decision	means a decision made in the exercise of a function of a Council under the <i>Environmental Planning and Assessment Act 1979</i> including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act
performance improvement order	means an order issued under section 438A of the Act
public forum: matters on the agenda	held for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting
quorum	means the minimum number of Councillors or committee members necessary to conduct a meeting
resolution	a resolution is a motion that has been passed by a majority of Councillors at the meeting. While in practice it means the 'Council decision', the word 'resolution' also indicates the process by which the decision was made
the Regulation	means the <i>Local Government (General) Regulation 2005</i>
webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time
year	means the period beginning 1 July and ending the following 30 June

Appendix One: Procedural Motions



WILLOUGHBY
CITY COUNCIL

APPENDIX ONE – PROCEDURAL MOTIONS

Motion	Moved without Notice	Requires Secunder	Speakers / Debate Permitted	Right of Reply
Change the Order of Business	Yes	Yes	Mover of motion only	No
Business without Notice (matter of urgency) (Clause 9.3)	Yes	Yes	Mover of motion only	No
Dissent from Chairperson's ruling on Point of Order	Yes	Yes	Mover and chairperson only may speak	No
Adjournment of Meeting	Yes	Yes	No debate permitted	No
Limitation to number of speakers (motion be now put)	Yes if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, or if at least 2 Councillors have spoken in favour of the motion or amendment and at least 2 Councillors have spoken against it.		No debate permitted. Motion must be put immediately after mover of original motion / amendment has right of reply.	No
Deferment of a Matter	Yes	Yes	Yes	Yes
Motion be dealt with in seriatim (Point by Point)	Yes	Yes	Mover of motion only	No

Supporting Information



Supporting information:

Governing laws and standards	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Local Government Amendment (Governance and Planning) Act 2016</i> • <i>Local Government (General) Regulations 2005</i>
Related policies and other documents	<ul style="list-style-type: none"> • Office of Local Government • <i>Model Code of Meeting Practice for Local Councils in NSW 2018</i> • <i>Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW 2018</i>
Document History	<ul style="list-style-type: none"> • Amended 27 June 2022 • Amended 31 January 2022 • Amended: 14 December 2020 • Adopted: 11 June 2019
Next Review Date	<ul style="list-style-type: none"> • November 2025
Version	<ul style="list-style-type: none"> • 4
Responsible Position	<ul style="list-style-type: none"> • Governance, Risk & Corporate Planning Manager
Administration Reference	<ul style="list-style-type: none"> • 608521

PLANNING & INFRASTRUCTURE DIRECTORATE

**12.10 PLANNING PROPOSAL 641-653 AND 655A PACIFIC HIGHWAY
CHATSWOOD AND ATTACHMENT 1**

ATTACHMENTS:

- 1. IMPLICATIONS**
 - 2. COUNCIL DETAILED ASSESSMENT OF PLANNING PROPOSAL**
 - 3. COUNCIL ASSESSMENT OF DEPARTMENT OF PLANNING AND ENVIRONMENT'S 'LOCAL ENVIRONMENTAL PLAN MAKING GUIDELINE'**
 - 4. PLANNING PROPOSAL CONCEPT PLANS**
 - 5. PRECINCT PLAN FOR 641 TO 745 PACIFIC HIGHWAY**
 - 6. DRAFT SITE AND PRECINCT DEVELOPMENT CONTROL PLANS**
 - 7. PROPOSED WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012 AMENDMENTS**
 - 8. WILLOUGHBY LOCAL PLANNING PANEL RECORD OF ADVICE 14 NOVEMBER 2023**
 - 9. DRAFT VOLUNTARY PLANNING AGREEMENT (ATTACHMENTS 2 – 9 CONTAINED IN ATTACHMENT BOOKLET)**
-

DETAILED ASSESSMENT OF PLANNING PROPOSAL

PLANNING PROPOSAL 2022/1
641-653, and 655A Pacific Highway Chatswood

The Site

The overall site which is the subject of this Planning Proposal involves:

- 641-653 Pacific Highway Chatswood, being SP 12238.
- 655A Pacific Highway Chatswood, being SP 57067.

The site has a total area of 5,774m², bounded by the Pacific Highway to the west, the Chatswood Bowling Club to the east, 689 Pacific Highway to the north and Gordon Avenue to the south. Refer below to **Figure 1 – Location Plan**.

Vehicle access for 641-653 Pacific Highway is via Gordon Avenue. Vehicle access for 655A Pacific Highway is in via Hammond Lane and out via the Pacific Highway. There are a number of easements across 655A Pacific Highway, some being in favour of the Chatswood Bowling Club with particular regard to rights of carriageway and 41 dedicated car parking spaces.

Figure 1 – Location Plan



Existing development on the site is as follows:

- 641-653 Pacific Highway comprises a three-storey residential flat building.
- 655A Pacific Highway comprises a three-storey residential flat building, with a one-way driveway left-out exit onto Pacific Highway. The driveway also provides 41 car parking spaces and access dedicated to the Chatswood Bowling Club.

Under *Willoughby Local Environmental Plan 2012* (WLEP 2012) the site is zoned R3 Medium Density Residential, with a maximum height of 12m and maximum floor space ratio of 0.9:1.

The Planning Proposal has been lodged by One Global Capital on the NSW Planning Portal on 11 March 2022, with the required fees paid to Willoughby Council on 7 April 2022. The Planning Proposal was subsequently allocated the Council reference number 2022/1.

The Locality

To the west of the site, on the other side of the Pacific Highway, is land zoned R3 Medium Density Residential and characterised by residential flat buildings and low density detached dwellings.

To the east of the site, land is characterised by the Chatswood Bowling Club (655 Pacific Highway).

The northern boundary interfaces land zoned R3 Medium Density Residential, characterised by two and three storey residential flat buildings and low density dwellings fronting Pacific Highway. Land to the north is part of the Chatswood CBD and comes under the CBD Strategy. A Planning Proposal has been lodged regarding properties to the north from 691, 695 and 699 Pacific Highway (689 Pacific Highway has not been included).

Properties to the north from 689-701 Pacific Highway all have vehicle access solely from Pacific Highway. Immediately to the north of the Chatswood Bowling Club is the CBD Strategy identified key public space at the Tennis courts and Croquet Greens.

Planning Proposals consistent with the CBD Strategy have already been supported by Council and made for 5-9 Gordon Avenue to the east, 613-627 Pacific Highway, 629-637 Pacific Highway and 10 Gordon Avenue and 15-19 Nelson Street to the south, and 9-11 Nelson Street to the south east, of the subject site.

Background

The subject site is located within the Chatswood CBD boundary identified in the *Chatswood CBD Planning and Urban Design Strategy 2036* (referred to in this report as the CBD Strategy) endorsed by Council on 26 June 2017, supported by the Greater Sydney Commission on 18 May 2018, and endorsed by the Department of Planning and Environment (DPE) on 9 July 2020. Endorsement of the CBD Strategy was further noted by Council on 14 September 2020.

Under the CBD Strategy, the site was recommended as a B4 Mixed Zone with a maximum height of 90 metres and a floor space ratio of 6:1. This zone and maximum controls were subject to the satisfaction of other CBD Strategy key elements and *Willoughby Local Environmental Plan 2012* (WLEP 2012) requirements.

The CBD Strategy has now been incorporated into the comprehensive WLEP 2012 review, endorsed for finalisation at the Council Meeting dated 12 December 2022, and now made by DPE and notified on 30 June 2023 (Amendment 34).

Under WLEP 2012 (Amendment 34), this Planning Proposal site was saved under the previous controls – noting that there was a submitted Planning Proposal to be assessed and determined based on the CBD Strategy.

655A Pacific Highway was originally part of the Chatswood Bowling Club site known as 655 Pacific Highway. On 29 May 1995 Council resolved to rezone what is now known as 655A Pacific Highway to Residential 2 (c) under WLEP 1995 (a medium density residential zone), gazetted on 17 November 1995. Development Application 1995/0477, and Subdivision Applications 1996/0092 and 1996/2005 were subsequently approved on 18 March 1996 for construction of a residential flat building and an associated two lot subdivision (which created 655A Pacific Highway), also providing parking associated with the Chatswood Bowling Club (41). Some parking associated with the Chatswood Bowling Club and Croquet Premises (6) remained on the Chatswood Bowling Club site (655 Pacific Highway).

Planning Proposal

The Planning Proposal submitted seeks to:

- Change the zoning from R3 Medium Density Residential to MU1 Mixed Use
- Increase the maximum height of buildings control from 12m to 90 metres
- Increase the maximum Floor Space Ratio control from 0.9:1 to 6:1
- Apply a minimum non-residential floor space requirement equating to 17% of total assessable GFA on the site.

The proposed amendments to *Willoughby Local Environmental Plan 2012* are detailed in Table 1 below.

Table 1 – Summary of Planning Proposal Amendments

	641-653 and 655A Pacific Highway Chatswood	Compliance
Zoning		
Current WLEP 2012	R3 Medium Density Residential	
Proposed in Planning Proposal	MU1 Mixed Use	Yes
Floor Space Ratio		
Current WLEP 2012	0.9:1	
Proposed in Planning Proposal	6:1	Yes
Height		
Current WLEP 2012	12m	
Proposed in Planning Proposal	90m	Yes
Affordable Housing		
Current WLEP 2012	10% of residential GFA	
Proposed in Planning Proposal	4% of residential GFA	No, however satisfactory in this circumstance. Refer to discussion section of report.

Following assessment of the Planning Proposal, and consideration of the Transport for NSW letter dated 9 March 2023, Council has requested additional information to address a number of issues. The latest information was provided in September 2023.

The amended concept plans show the potential redevelopment of the entire site as follows:

- Two towers above a podium of between one and three storeys
- Tower 1 (north tower – towards 689 Pacific Highway)
 - Total height of 27 storeys (90m), containing:
 - 1 storey non-residential podium facing: Pacific Highway, 689 Pacific Highway, Chatswood Bowling Club
 - 2 storeys of non-residential,
 - 22 storeys of residential,
 - 1 storey lift overrun / plant,
 - 1 storey residential amenity area.

- Residential tower floor plate: 692m² (22 storeys)
- Non-residential GFA: 3,230m²
- Residential GFA: 15,583m²
- Tower 2 (south tower – towards Gordon Avenue)
 - Total height of 27 storeys (90m), containing:
 - 1 storey non-residential podium facing: Pacific Highway and Gordon Avenue
 - 2 storeys of non-residential,
 - 22 storeys of residential,
 - 1 storey lift overrun / plant,
 - 1 storey residential amenity area.
 - Residential tower floor plate: 589m² (22 storeys)
 - Non-residential GFA: 2,542m²
 - Residential GFA: 13,277m²
- Total FSR of 6:1 (34,632m²), containing:
 - 5:1 residential (28,860m²) including affordable housing
 - 1:1 non-residential (5,772m²)
- Total number of residential apartments: 319
- Tower 1 (north tower – towards 689 Pacific Highway) - Ground Level setbacks:
 - 4m setback to Pacific Highway
 - 8m setback to 689 Pacific Highway
 - Approx. 12-16m setback to Chatswood Bowling Club
 - 12m to Tower 2 podium
- Tower 1 (north tower – towards 689 Pacific Highway) – Tower setbacks:
 - 6m above podium to the Pacific Highway (making overall setback 10m when including ground setback)
 - Minimum 4.5m above podium to 689 Pacific Highway (making overall setback 12.5m when including ground setback)
 - 7m above podium to the Chatswood Bowling Club (making overall setback minimum 19m when including ground setback)
 - 24m setback above podium to Tower 2
- Tower 2 (south tower – towards Gordon Avenue) - Ground Level setbacks:
 - 4m setback to Pacific Highway
 - 1.5m setback to Gordon Avenue
 - 3m setback to Hammond Lane
 - 12m to Tower Podium 1
- Tower Podium 2 (south tower – towards Gordon Avenue) – Tower setbacks:
 - 6m above podium to the Pacific Highway (making overall setback 10m when including ground setback)
 - 3m above podium to Gordon Avenue (making overall setback 4.5m when including ground setback)
 - 3m to above podium to Hammond lane (making overall setback 6m when including ground setback)
 - 24m setback above podium to Tower 1

Other Concept plan details:

- A through site link is provided from Gordon Avenue and Hammond Lane to the northern boundary and western boundary (the Pacific Highway). Minimum width 3m. Public ROW proposed.
- All vehicle access and egress via Hammond Lane.
- All loading for site at basement level, accessed via Tower 2, with loading vehicles access / egress in a forward direction via a physical solution.
- Deep soil planting provided in Pacific Highway setback.
- Podium / Level 1 – Proposed as communal open space.
- 310 parking spaces within basement
- 35 car spaces for the Chatswood Bowling Club proposed under future bowling green basement (this is a concern, discussed in this report and addressed in the Officers recommendation).
- 6 car spaces for the Chatswood Bowling Club (CBC) proposed at ground level, adjacent the shared boundary with 655A Pacific Highway. ROW benefitting CBD proposed for access and car spaces.
- Existing egress to Pacific Highway not to be used by 641-655A Pacific Highway and CBC. This is to be closed off by a physical barrier and only to be used by 689-699 Pacific Highway. This is to be the subject of a ROW.

The existing rights of the Chatswood Bowling Club have been incorporated into the Planning Proposal, with regard to pedestrian and vehicle access.

The Concept Plans are at **Attachment 4**. Council officers have prepared site specific and precinct *Development Control Plan* provisions which are discussed below (Refer to **Attachment 6**). The precinct provisions are based on the Precinct Plan for 641 to 745 Pacific Highway, developed by Council in consultation with Transport for NSW (Refer to **Attachment 5**).

The Planning Proposal is accompanied by a draft Voluntary Planning Agreement including:

- Payment of a monetary contribution comprising the CIC payable under Council's Planning Agreements Policy.

Discussion

Discussion of the Planning Proposal is based on the 'Key Elements of Future LEP and DCP Controls' contained in the CBD Strategy dated September 2020, listed 1 to 35, with comments provided. These Key Elements have been incorporated, as appropriate, into *Willoughby Local Environmental Plan 2012* (WLEP) - Amendment 34, made and notified on 30 June 2023 and *Willoughby Development Control Plan* (endorsed by Council and updated accordingly). Any mention of the B4 Mixed Use zone should be read as MU1 Mixed Use under WLEP 2012 (Amendment 34).

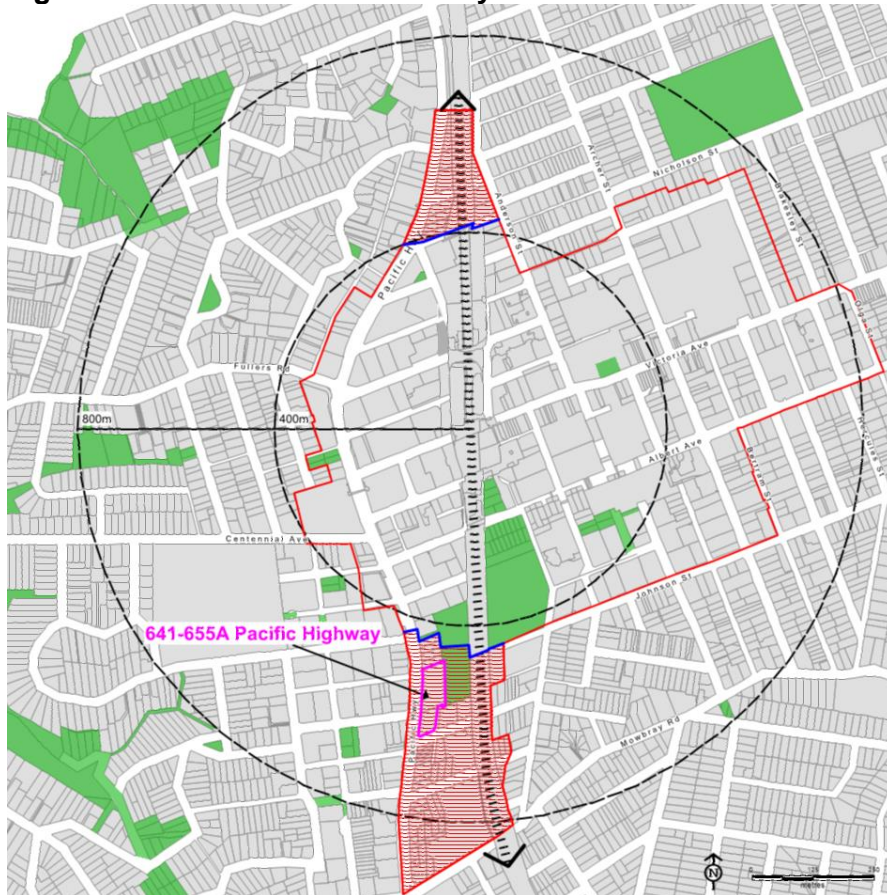
CBD Boundary

Key Element 1. **The Chatswood CBD boundary is expanded to the north and south as per Figure 1 to accommodate future growth of the centre.**

Comment

The subject site is located within the expanded Chatswood CBD boundary proposed in the CBD Strategy, as shown below in **Figure 1 - Extended CBD boundary**.

Figure 1 - Extended CBD boundary



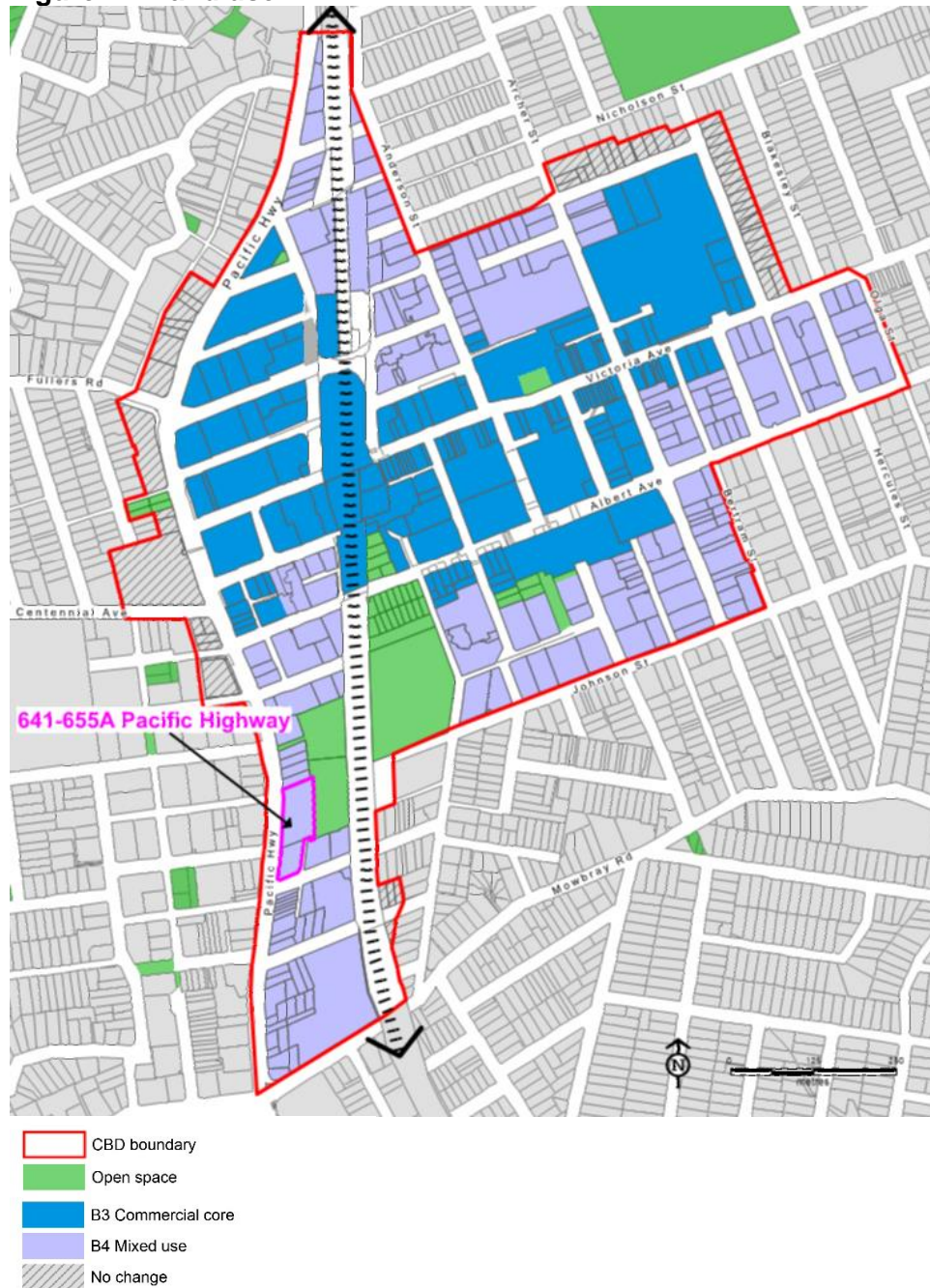
Land Use

- Key Element 2.** Land uses in the LEP will be amended as shown in Figure 2, to:
- (a) Protect the CBD core around the Interchange as commercial, permitting retail throughout to promote employment opportunities (with no residential permitted).
 - (b) Enable other areas to be mixed use permitting commercial and residential.

Comment

The subject site is located in that part of the Chatswood CBD identified as Mixed Use, meaning part non-residential and part residential. Refer below to **Figure 2 – Land use**.

Figure 2 – Land use



The proponent has proposed the zoning for the site be changed from R3 Medium Density Residential to MU1 Mixed Use in the WLEP 2012 Land Zoning Map.

The concept plans propose a Mixed Use development, with non-residential on the ground, level 1 and 2 (total 3 storeys) (1:1, 17%), with residential above (5:1).

Regarding land use, the Planning Proposal is considered consistent with the CBD Strategy.

Key Element 3. The existing DCP limits on office and retail use in parts of the Commercial Core to be removed.

Comment

This Key Element is not applicable to the Planning Proposal as the site is not located within the E2 Commercial Centre zone.

Key Element 4. Serviced apartments to be removed as a permissible use from the B3 Commercial Core zone.

Comment

This Key Element is not applicable to the Planning Proposal as the site is not located within the E2 Commercial Centre zone.

Planning Agreements to fund public domain

Key Element 5. Planning Agreements will be negotiated to fund public domain improvements.

Comment

The proponent has put forward a draft voluntary planning agreement that is generally supported by Council officers.

Key Element 6. A new Planning Agreements Policy will apply and be linked to a contributions scheme that will provide the public and social infrastructure in the Chatswood CBD necessary to support an increased working and residential population.

The scheme would:

- a) Apply to residential uses.**
- b) Apply to commercial uses above 10:1 FSR.**
- c) Operate in addition to any adopted Section 7.11 or 7.12 contributions scheme and separate from Affordable Housing requirements within Willoughby Local Environment Plan (WLEP).**
- d) Contribute to public domain improvements in the centre (including streets and parks) that would enhance amenity and support residential and commercial uses.**

Comment

The Planning Proposal is accompanied by a draft Voluntary Planning Agreement involving payment of a monetary contribution comprising the CIC payable under Council's Planning Agreements Policy.

Separate to the VPA, affordable housing and Section 7.12 contributions are proposed.

Key Element 7. All redevelopments in the Chatswood CBD should contribute to public art in accordance with Council's Public Art Policy.

Comment

The draft DCP provisions state that *"Public Art is to be provided in accordance with Council's Public Art Policy."*

The intention of a public art contribution is that it is subject to a Council policy where that money is to be spent. This does not prevent a proponent addressing public art on-site separately to Council.

Design Excellence and Building Sustainability

Key Element 8. Design excellence is to be required for all developments based on the following process:
a) A Design Review Panel for developments up to 35m high.
b) Competitive designs for developments over 35m high.

Comment
Consistent

The Planning Proposal involves a development that is over 35 metres in height. On this basis a competitive design process is envisaged at development application stage to ensure design excellence under existing WLEP 2012 Clause 6.23 Design Excellence at certain sites. In this regard the subject site is to be included on the Special Provisions Area Map.

Key Element 9. Achievement of design excellence will include achievement of higher building sustainability standards.

Comment
Consistent

As part of the competitive design process to achieve design excellence, higher building sustainability standards are expected. This is acknowledged by the proponent.

The proposed Development Control Plan provisions include a requirement that a minimum 5 star GBCA building rating is expected. An assessment report is to be submitted at Development Application Stage.

Key Element 10. The Architects for design excellence schemes should be maintained through the development application process and can only be substituted with written agreement of Council.

Comment

With regard to Key Element 10, it is considered that the Planning Proposal is consistent with the CBD Strategy and will be further considered at design excellence stage.

Floor Space Ratio (FSR)

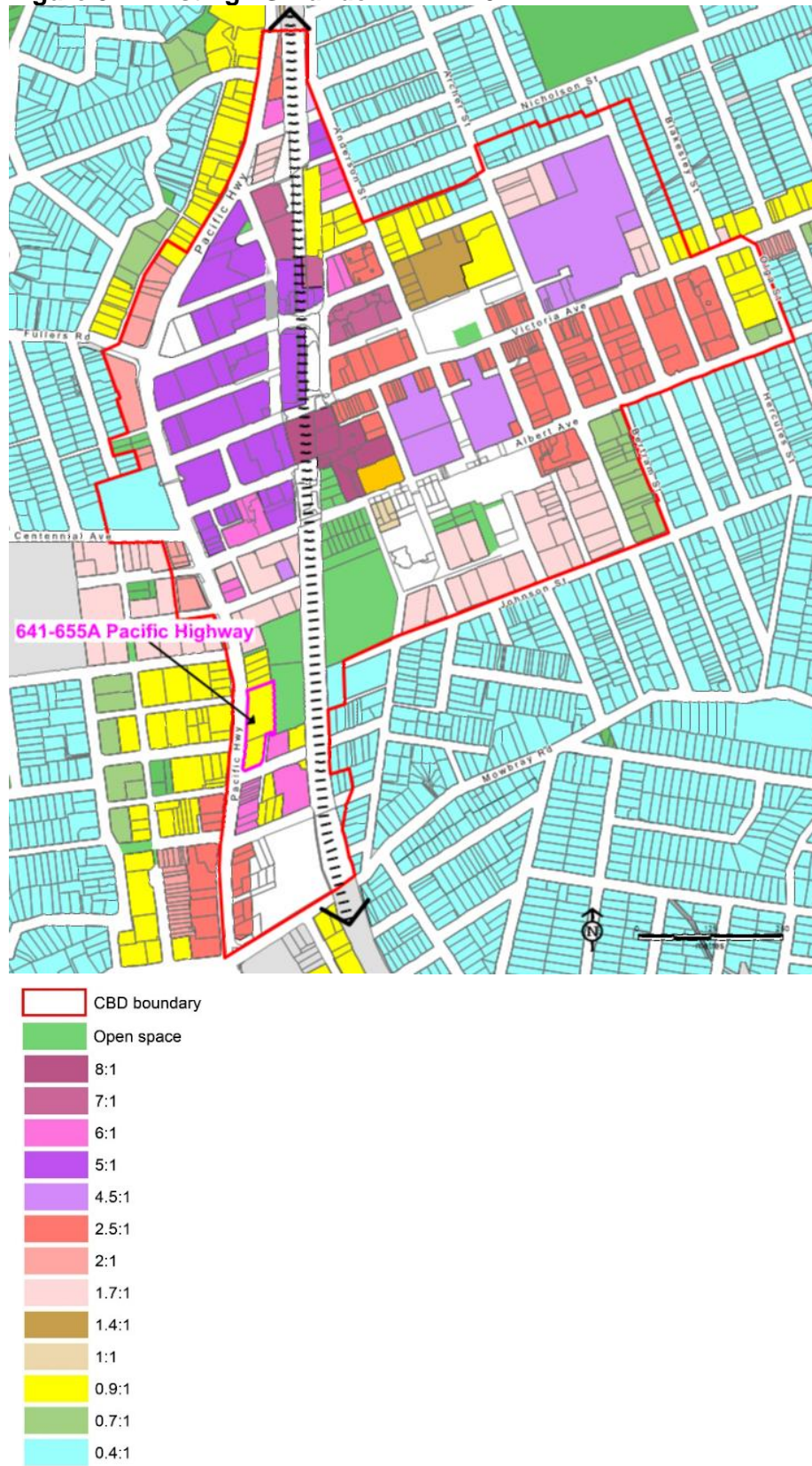
Key Element 11. Figure 3 shows the existing FSR controls under WLEP 2012.

Comment

The subject site is in a location with a maximum floor space ratio of 0.9:1 (relating to the R3 Medium Density Residential land) as shown below in **Figure 3 – Existing FSR under WLEP 2012.**

The Planning Proposal seeks to increase this to 6:1, which is discussed below in Key Element 12.

Figure 3 – Existing FSR under WLEP 2012



- Key Element 12. Minimum site area of:**
- a) 1800sqm for commercial development in the B3 Commercial Core zone.
 - b) 1200sqm for mixed use development in the B4 Mixed Use zone.
- to achieve maximum FSR as indicated in Figure 4.**

Site amalgamation is encouraged to meet this minimum requirement. In addition sites should not be left isolated.

Comment

The subject site is 5,774m² and is well above the minimum site area of 1200m² for mixed development involving residential land use.

Under WLEP 2012, minimum lot sizes for commercial and mixed use development in Chatswood CBD is addressed in Clause 6.16 and the Lot Size Map. The objective of the minimum site area is addressed in Part L, Section 4.3.1, c) of WDCP.

In response to the subject Planning Proposal and the amalgamated site involved, it is proposed to introduce a site specific lot size requirement of 5,500m² on the Lot Size Map.

- Key Element 13. The FSRs in Figure 4 should be considered as maximums achievable in the centre subject to minimum site area and appropriate contributions, and are as follows:**

- a) No maximum FSR for commercial development in the B3 zone.
- b) A range of FSR maximums in the B4 zone, surrounding the B3 zone, reflecting context.
- c) Retention of 2.5:1 FSR along northern side of Victoria Avenue east.

Floor space ratio maximums are not necessarily achievable on every site, and will depend on satisfactorily addressing:

- a) Site constraints,
- b) Surrounding context,
- c) Other aspects of this Strategy including setbacks at ground and upper levels,
- d) SEPP 65 and the associated Apartment Design Guidelines.

Comment

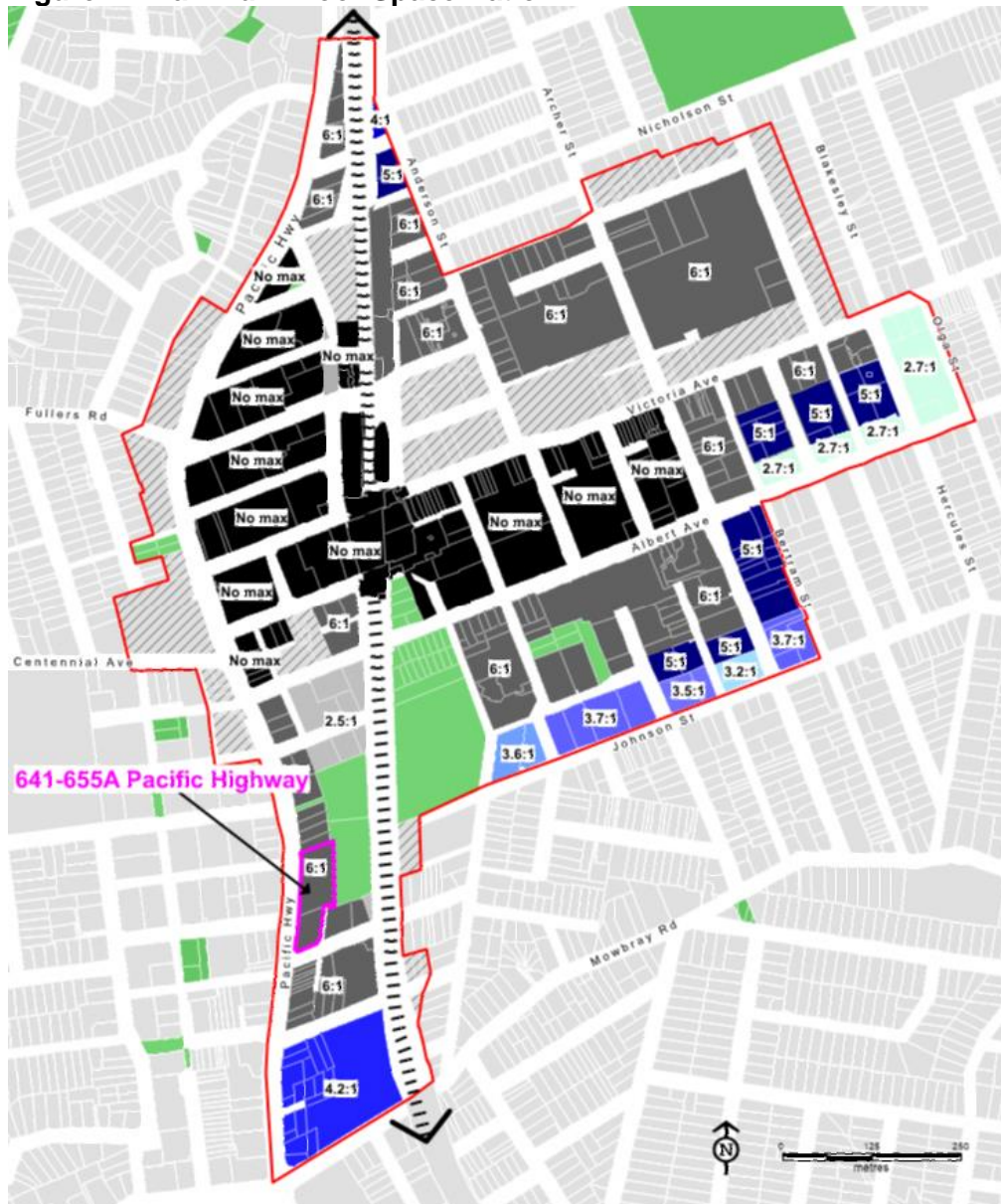
Consistent.

The subject site is in a general location with an FSR of 6:1, as shown below in **Figure 4 - Maximum Floor Space Ratio**.

The Planning Proposal proposes a maximum FSR of 6:1, which includes affordable housing, and is therefore consistent with the CBD Strategy.

Under WLEP 2012, floor space ratio is addressed in Clause 4.4 and the Floor Space Ratio Map.

Figure 4 - Maximum Floor Space Ratio



- CBD boundary
- Open space
- 6.0:1
- 5.0:1
- 4.2:1
- 4.0:1
- 3.7:1
- 3.6:1
- 3.5:1
- 3.2:1
- 2.7:1
- 2.5:1
- No bonus
- No max FSR for commercial

Key Element 14. Affordable housing is to be provided within the maximum floor space ratio, and throughout a development rather than in a cluster.

Comment

Under *Willoughby Local Environmental Plan 2012* (Amendment 34), (WLEP 2012), which came into effect on 30 June 2023, contributions can be sought for the provision of affordable housing within the Chatswood CBD at a rate of 10% of the residential gross floor area. Affordable housing is addressed under Clause 6.8 and the Affordable Housing Map of WLEP 2012.

Under the comprehensive review of Council's LEP, which began in December 2020 and led to WLEP 2012 (Amendment 34), contributions towards affordable housing was proposed to be increased in some parts of the LGA from 4% to 10%. The subject site, which is located within the Chatswood CBD, was saved from the proposed increase due to the timing of the subject Planning Proposal lodgement.

The floor space ratio of 6:1 proposed in the Planning Proposal includes affordable housing (at 4%), to be provided in accordance with Council's DCP requirements.

It is noted that Planning Proposal 2022/1 for the subject site was lodged as follows:

- Lodged on the NSW Planning Portal on 11 March 2022.
- Fee paid and assessment commenced on 7 April 2022.

Planning Proposal 2022/1 was lodged, with fee paid and assessment commencing, prior to the end of the comprehensive WLEP 2012 review exhibition (7 June 2022).

Under WLEP 2012, affordable housing is addressed in Clause 6.8 and the Affordable Housing Map.

To achieve the above 4% in regards implementation under WLEP 2012, the site is to be included on the Affordable Housing Map.

While a greater affordable housing provision may be encouraged, it is fair and reasonable to consider the proposed provision of a 4% affordable housing contribution in the assessment of this specific Planning Proposal.

Key Element 15. Where the maximum floor space ratio of 6:1 is achieved, the minimum commercial floor space ratio sought in development in a Mixed Use zone is 1:1.

The objective of this Key Element is to achieve a satisfactory level of commercial in the B4 Mixed Use zone to deliver a reasonable amount of employment floor space, typically to be within the podium levels of a development. This will be moderated depending on the overall FSR.

Comment

Consistent.

The proponent has indicated that a commercial component of 1:1, 17% will be provided, and has shown this in the concept plans provided.

Under WLEP 2012, the minimum commercial component in the MU1 Mixed Use zone is addressed in Clause 6.25.

Built Form

- Key Element 16.** In order to achieve the slender tower forms sought by Council the maximum floor plate at each level of a development should be no more than:
- a) 2000sqm GFA for office (to achieve this maximum a large site would be required).
 - b) 700sqm GFA for residential towers above Podium within Mixed Use zones.

Comment

Consistent.

The towers above the podiums shown in the Concept Plans contain a maximum floor plate Gross Floor Area of:

- Tower 1 (north tower – towards 689 Pacific Highway): 692m²
- Tower 2 (south tower – towards Gordon Avenue): 589m²

This is below the identified Gross Floor Area maximum of 700m².

Under WDCP, slender towers and floor plate size are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.1, d).

- Key Element 17.** In pursuit of the same goal of slender tower forms, the width of each side of any tower should be minimised to satisfactorily address this objective. To the same end, design elements that contribute to building bulk are not supported, and should be minimised.

Setbacks are considered an important part of achieving slender tower forms.

Comment

Consistent.

The dimensions of the residential towers shown in the Concept Plans are considered generally consistent with the slender tower objective and an appropriate response to the site.

It should be noted that setbacks consistent with, and in some cases greater than, CBD Strategy requirements have been provided.

Consistency with the CBD Strategy setback requirements, as well as the provision of additional setbacks, has assisted in satisfying the slender tower objective. Setbacks are discussed below.

Building articulation and appropriate architectural design responses will be further explored at design excellence stage.

Notwithstanding the above, attention is drawn to the east / west presentation of the proposed development in the concept plans. The proponent is encouraged to examine options that assist in the minimisation of tower height and width as it presents east / west. This is not to result in further building coverage at ground level.

Under WDCP, slender towers are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.1.

Key Element 18. If there is more than one residential tower on a site, sufficient separation is to be provided in accordance with setbacks required in this Strategy, SEPP 65 and the Apartment Design Guidelines, to ensure that the slender tower form objective is achieved. Council will seek to avoid an outcome where two towers read as one large tower. Towers are not to be linked above Podium and should operate independently regarding lifts and services.

Comment

Two towers are proposed in the concept plans.

The building separation between the two towers shown in the concept plans is 24m in accordance with the requirements of SEPP 65 and the Apartment Design Guidelines.

This Key Element has been satisfactorily addressed.

Under WDCP, slender towers are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.1.

Sun Access to Key Public Spaces

Key Element 19. The sun access protection in Figure 5 will be incorporated into LEP controls, to ensure no additional overshadowing and protection in mid winter of:

- a) Victoria Avenue (between interchange and Archer St) 12pm - 2pm.
- b) Concourse Open Space 12pm - 2pm.
- c) Garden of Remembrance 12pm - 2pm.
- d) Tennis and croquet premises 12pm - 2pm.
- e) Chatswood Oval 11am - 2pm (which in turn also protects Chatswood Park).

- In addition,
- f) Heights adjoining the South Chatswood Conservation Area will provide for a minimum 3 hours solar access between 9am and 3pm mid winter.

Comment

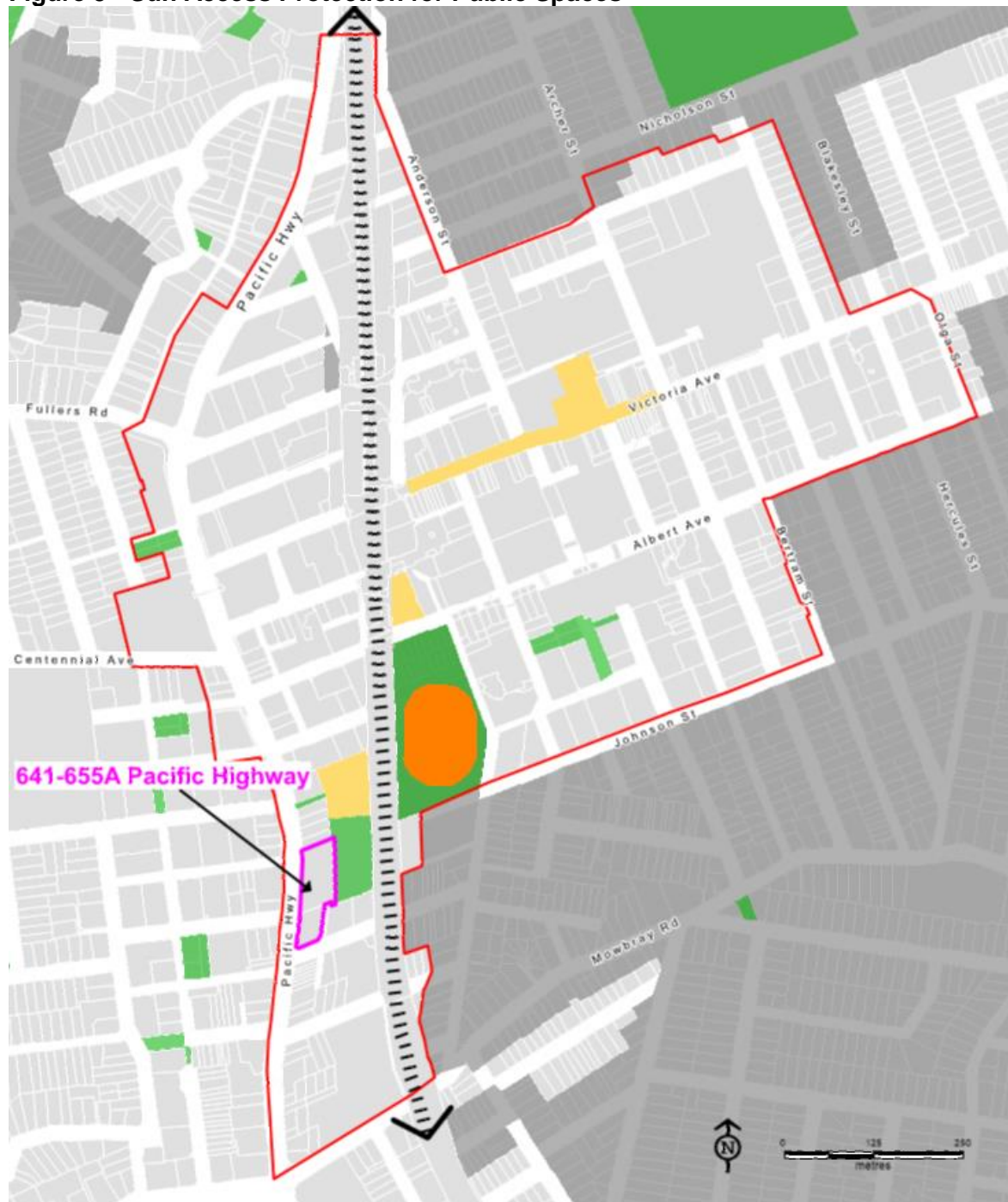
Consistent.






The subject site is located in the southern section of the Chatswood CBD, south of any public open space areas identified within the Chatswood CBD as requiring sun access protection, as shown below in **Figure 5 - Sun Access Protection**. It is outside of the area where additional height control is required to ensure sun access to the specified open space areas, as shown in **Figure 6 – Height**.

Overshadowing is further discussed below under Solar Access.

In WLEP 2012, sun access protection is addressed in the Sun Access Protection Map.

Figure 5 - Sun Access Protection for Public Spaces



-  CBD boundary
-  Open space
-  LEP control - no additional overshadowing 12.00am-2pm mid-winter
-  LEP control - no additional overshadowing 11am-2pm mid-winter
-  Conservation areas - WLEP2012 (North Chatswood, South Chatswood)

Building Heights

Key Element 20. Maximum height of buildings in the CBD will be based on Figure 6, based on context and up to the airspace limits (Pans Ops plane), except as reduced further to meet:

a) Sun access protection.

Achievement of nominated height maximums will depend on addressing site constraints, surrounding context and other aspects of this Strategy in addition to satisfying SEPP 65 and Apartment Design Guidelines.

Comment

Consistent.

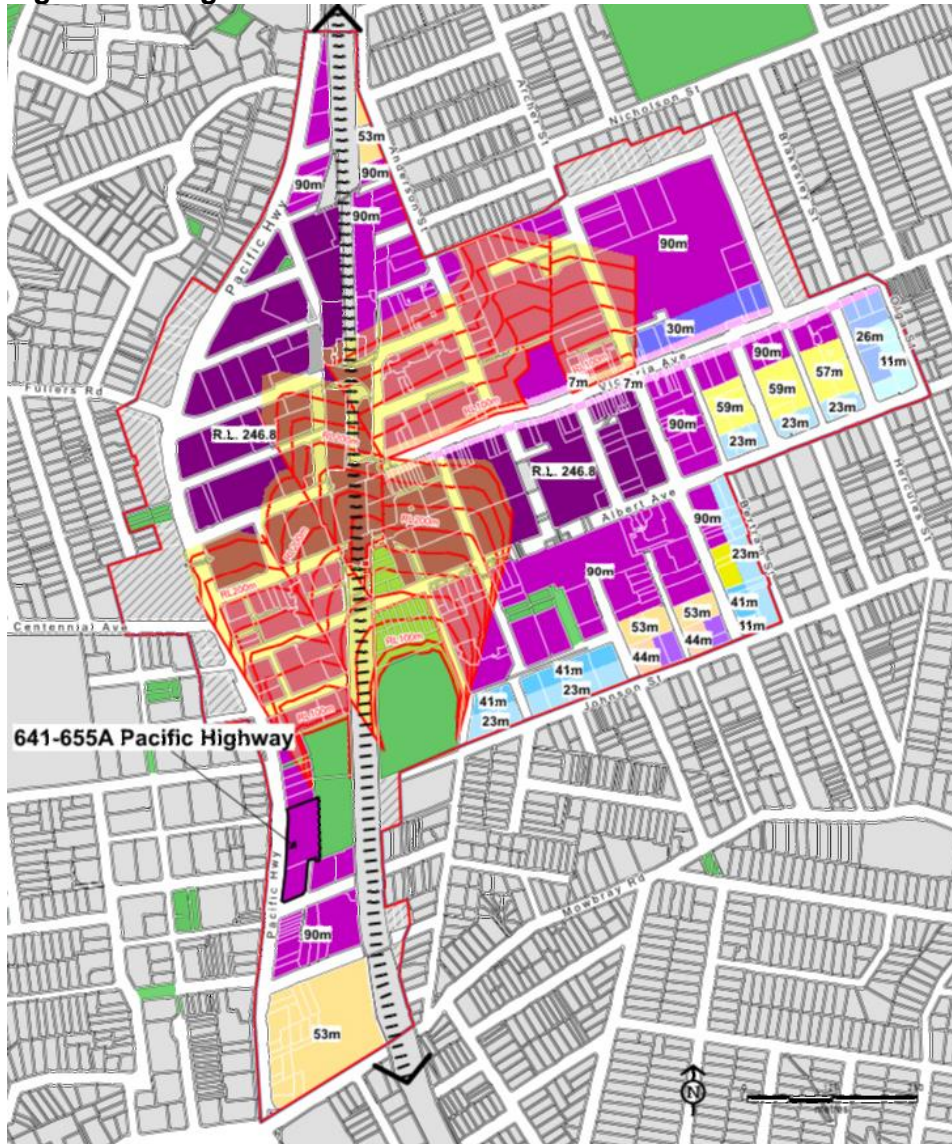
Figure 6 – Height below shows the height maximums in the Chatswood CBD, including where height is to be reduced in order to achieve sun access protection to the public open space areas identified in **Figure 5** (above).

The subject site is in a location with a height maximum of 90m.

The Planning Proposal proposes a maximum height of 90m, and is therefore consistent with the CBD Strategy.

Under WLEP 2012, height is addressed in Clause 4.3 and the Height of Buildings Map.

Figure 6 – Height



Key Element 21. All structures located at roof top level, including lift over runs and any other architectural features are to be:
a) Within the height maximums.
b) Integrated into the overall building form.

Comment

Consistent.

The concept plans provided show two towers designed to contain all roof top structures within the height maximum of 90 metres.

Detailed plans, showing integration of roof top structures into the overall building form will be provided at development application stage.

Under WLEP 2012, height is addressed in Clause 4.3 and the Height of Buildings Map.

Links and Open Space

Key Element 22. The links and open space plan in Figure 7 will form part of the DCP. All proposals should have regard to the potential on adjacent sites. Pedestrian and cycling linkages will be sought in order to improve existing access within and through the CBD.

New linkages may also be sought where these are considered to be of public benefit. All such links should be provided with public rights of access and designed with adequate width, sympathetic landscaping and passive surveillance.

Comment

Consistent.

A 24 hour pedestrian and cycle through site link is identified as being required from Gordon Avenue, Hammond Lane, through the subject site, and on towards Ellis Street. This through site link goes past the Chatswood Bowling Club and key public space being the tennis courts and croquet greens (see **Figure 7 - Links and New Open Space** below).

It is considered the responsibility of the subject site to provide this through site link as far as its northern boundary – for future connections with other sites and the key public space.

The subject Planning Proposal provides:

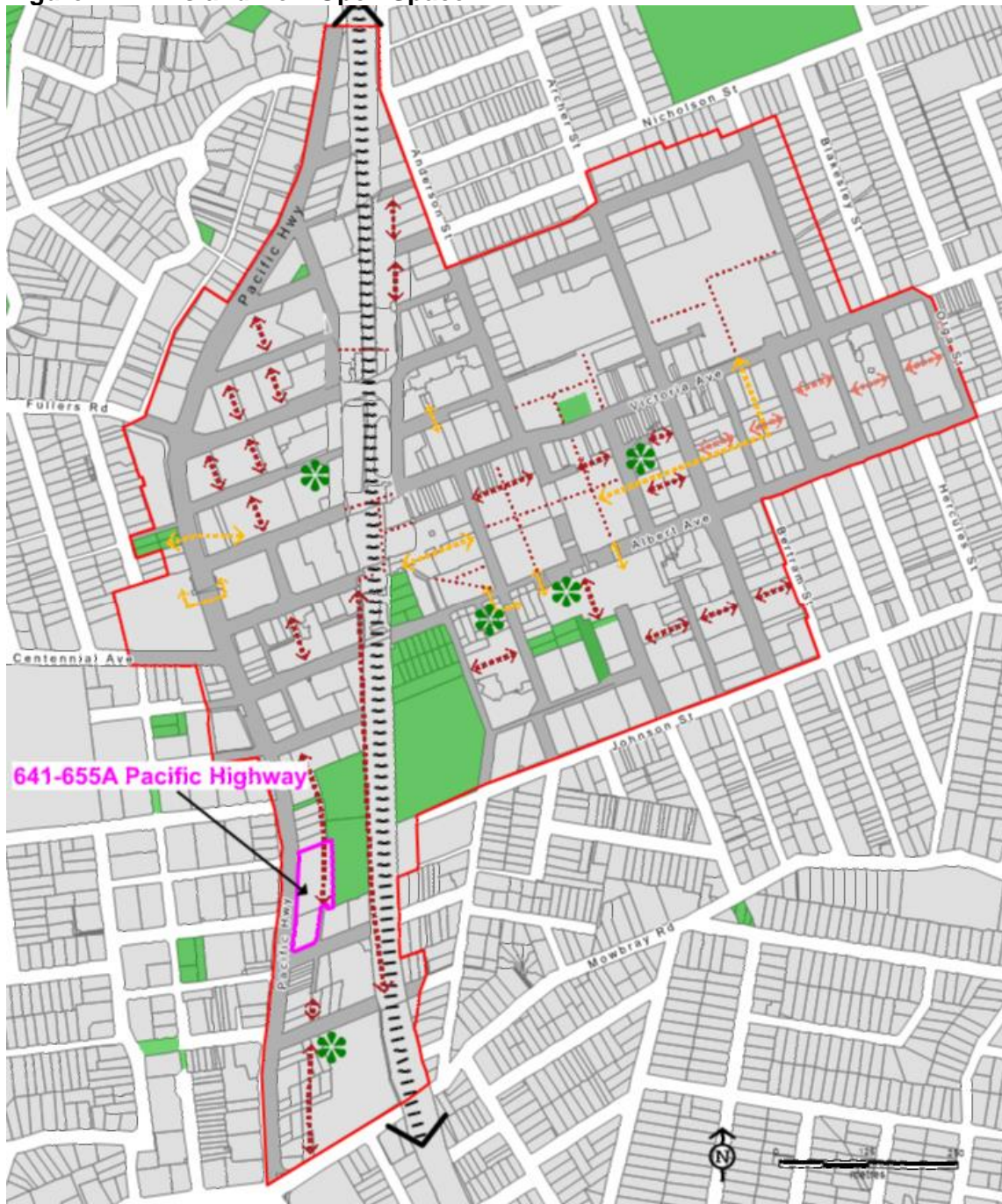
- A through site link connecting Gordon Avenue with the subject sites northern boundary (3m wide).

Additional linkages and public realm is discussed below.

The Planning Proposal satisfactorily addresses this Key Element.

Under WDCP, links and public realm are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.3.

Figure 7 - Links and New Open Space



- CBD boundary
- Open space
- ✱ New open space
- ↔ Open air 24 hour through-site links
- ↔ Open air 24 hour through-site links within block
- ⋯ Through-building links
- ↔ Existing upper storey links
- ↔ Proposed upper storey links
- Streets and public places

Key Element 23. Any communal open space, with particular regard to roof top level on towers, should be designed to address issues of quality, safety and usability.

Comment

Consistent.

Communal open space has been provided within concept plans on the site, with particular regard to above the level 1 podium between the two towers and rooftop for each tower.

Under WDCP, podium and roof top communal open space is addressed in Part L, Section 4.2.

Public realm or areas accessible by public on private land

Key Element 24. Public realm or areas accessible by public on private land:

- a) **Is expected from all B3 and B4 redeveloped sites.**
- b) **Is to be designed to respond to context and nearby public domain.**
- c) **Should be visible from the street and easily accessible.**
- d) **Depending on context, is to be accompanied by public rights of way or similar to achieve a permanent public benefit.**

Comment

Consistent.

The Planning Proposal proposes:

- A 24 hour publicly accessible north / south through site link connecting Gordon Avenue with the subject sites northern boundary (minimum 3m). In addition the ground area between each building and eastern site boundary is also proposed as a public right of way.
- A 4m publicly accessible setback along Pacific Highway to facilitate a shared pedestrian and cycle pathway along the western side of the Pacific Highway.
- A east / west publicly accessible through site precinct separating the two podiums, connecting the rear through site link and the Pacific Highway. This through site link is partly covered by the above podium level 1 communal open space linking both residential towers.

An additional east / west publicly accessible through site link is sought towards the northern boundary of the site.

The above is to be addressed in the development control plan provisions.

Under WDCP, public realm is addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.3.

Key Element 25. All roofs up to 30 metres from ground are to be green roofs. These are to provide a green contribution to the street and a balance of passive and active green spaces that maximise solar access.

Comment

Consistent.

Concept plans have been provided showing green roofs at podium level. This will be further addressed at development application stage.

Under WDCP, green roofs are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.2.

Key Element 26. A minimum of 20% of the site is to be provided as soft landscaping, which may be located on Ground, Podium and roof top levels or green walls of buildings.

Comment
Consistent.

Soft landscaping has been provided above 20% of the site area.

Under WDCP, soft landscaping is addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.2.

Setbacks and street frontage heights

Key Element 27. Street frontage heights and setbacks are to be provided based on Figure 8, which reflect requirements for different parts of the Chatswood CBD. With setbacks of 3 metres or more, including the Pacific Highway, deep soil planting for street trees is to be provided.

- d) Mixed use frontage with commercial Ground Floor**
 - i. 6-14 metre street wall height at front boundary.**
 - ii. Minimum 3 metre setback above street wall.**

- e) Pacific Highway frontage**
 - i. Minimum 4 metre setback at Ground level from front boundary (with exception of heritage sites).**
 - ii. Maximum 7 metre street wall height.**
 - iii. Minimum 6 metre setback above street wall to tower.**

Comment
Consistent.

The concept plans are consistent with the below **Figure 8 - Setbacks and street frontage heights** requirements applying to the subject site. For the purpose of this Key Element, the Mixed use frontage applies to Gordon Avenue and Hammond Lane.

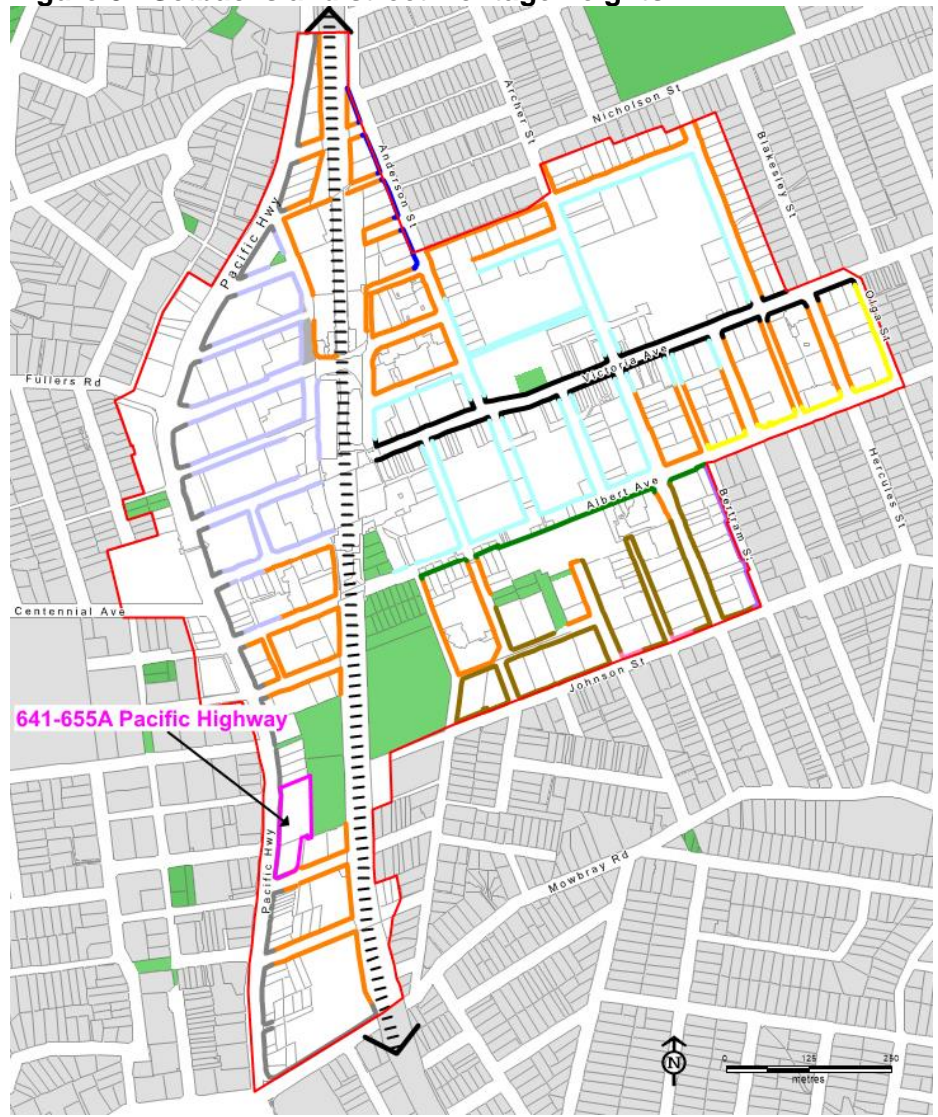
The minimum requirements have been provided in the concept plans.

Setbacks above minimum requirements are supported and encouraged where possible.

Street wall heights below the maximum under the CBD Strategy, and in accordance with the envisioned number of storeys under the CBD Strategy, are supported.

Under WDCP, setbacks and street frontage heights are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.4.

Figure 8 - Setbacks and street frontage heights



- CBD boundary
- Open space
- Pacific Highway frontage
- Office Core frontage
- Urban Core
- Victoria Avenue retail frontage
- Albert Avenue South
- Southern Precinct
- Anderson Street Interface
- Johnson Street interface
- Bertam Street interface
- Albert Avenue north and Olga Street interface
- Mixed use frontage with commercial Ground Floor

Key Element 28. All towers above podiums in the B3 Commercial Core and B4 Mixed Use zones are to be setback from all boundaries a minimum of 1:20 ratio of the setback to building height.

This means if a building is:

- a) A total height of 30m, a minimum setback from the side boundary of 1.5m is required for the entire tower on any side.
- b) A total height of 60m, a minimum setback from the side boundary of 3m is required for the entire tower on any side.
- c) A total height of 90m, a minimum setback from the side boundary of 4.5m is required for the entire tower on any side.
- d) A total height of 120m, a minimum setback from the side boundary of 6m is required for the entire tower on any side.
- e) A total height of 150m, a minimum setback from the side boundary of 7.5m is required for the entire tower on any side.
- f) A total height of 160m, a minimum setback from the side boundary of 8m is required for the entire tower on any side.

The required setback will vary depending on height and is not to be based on setback averages but the full setback.

Comment

Consistent.

Key Element 28 is a general requirement for all new development within the Chatswood CBD. The proposed height of 90 metres requires a minimum 4.5 metre building setback from all boundaries for all towers above podiums.

Tower setbacks, for both towers, have been provided consistent with the Strategy.

Under WDCP, tower setbacks are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.4.

Key Element 29. Building separation to neighbouring buildings is to be:

- a) In accordance with the Apartment Design Guide for residential uses.
- b) A minimum of 6 metres from all boundaries for commercial uses above street wall height.

Comment

The Concept Plans address the required setbacks to neighbouring properties as outlined in this Key Element.

Under WDCP, building separation to neighbouring properties is addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.3, c) and d).

Active Street Frontages

Key Element 30. At ground level, to achieve the vibrant CBD Council desires, buildings are to maximise active frontages.

Particular emphasis is placed on the B3 Commercial Core zone. Blank walls are to be minimised and located away from key street locations.

Comment

Consistent.

The Concept Plans provided show non-residential floor space at Ground Level, and Levels 1 and 2, with the opportunity for active street frontages to the Pacific Highway, Gordon Avenue, Hammond Lane and the through site link.

This issue will be further assessed at development application stage.

Under WLEP 2012, active street frontages are addressed in the Active Street Frontages Map.

Further Built Form Controls

Key Element 31. Site Isolation will be discouraged and where unavoidable joined basements and zero-setback podiums should be provided.

Comment

Consistent.

This Key Element is satisfactorily addressed as the Planning Proposal involves the amalgamation of two large lots.

In regards the properties to the north (689-699 Pacific Highway), consistent with the Precinct Plan developed by Council in consultation with Transport for NSW, the opportunity exists for vehicle egress to be via the Pacific Highway – utilising the existing access on 655A Pacific Highway. The subject Planning Proposal retains this access – not for use by the subject site – but for use of 689-699 Pacific Highway.

Under WDCP, site isolation addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.1, h).

Key Element 32. Controls will be applied to ensure the traditional lot pattern along Victoria Ave east (building widths of between 6-12m) is reflected into the future.

Comment

Not applicable.

Key Element 33. Floor space at Ground level is to be maximised, with supporting functions such as car parking, loading, garbage rooms, plant and other services located in Basement levels.

Comment

Consistent.

All car parking and loading as well as garbage provision for the site is shown in the concept plans as located within basement levels.

Services are shown as being provided within basement levels.

Under WDCP, maximising ground level floor space is addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.1, c).

Key Element 34. Substations are to be provided within buildings, not within the streets, open spaces or setbacks and not facing key active street frontages.

Comment
Consistent.

This Key Element will be further reviewed at development application stage.

Under WDCP, substations are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.1, i).

Key Element 35. The CBD Strategy employs a Travel Demand Management approach seeking to modify travel decisions to achieve more desirable transport, social, economic and environmental objectives. A new CBD Transport Strategy will build on the approach.

In addition, site specific traffic and transport issues are to be addressed as follows:

- a) **Vehicle entry points to a site are to be rationalised to minimise streetscape impact, with one entry into and exiting a site. To achieve this objective loading docks, including garbage and residential removal trucks, are to be located within Basement areas.**
- b) **In order to facilitate rationalisation of vehicle entry points on neighbouring sites, all development sites are to provide an opportunity within Basement levels to provide vehicle access to adjoining sites when they are developed.**
- c) **All vehicles are to enter and exit a site in a forward direction. In this regard vehicle turntables should be provided where necessary.**
- d) **All commercial and residential loading and unloading is required to occur on-site and not in public streets.**
- e) **Car parking should be reduced by utilising RMS car parking rates for sites close to public transport, as well as reciprocal parking and car share strategies.**

Comment
Consistent.

Pre-exhibition comments have been sought by Council officers and received from Transport for NSW due to the importance of transport related issues to both the individual Planning Proposal and the surrounding locality.

The Transport for NSW letter dated 9 March 2023 addressed a number of options, focused on reducing the number of existing access points to and from sites between 641 and 705 Pacific Highway, and thereby limiting impacts on the Pacific Highway.

Council officers supported a solution consistent with the Transport for NSW letter, and requested amended plans. An amended Planning Proposal was received.

An amended Traffic Impact Assessment, prepared by The Transport Planning has been submitted, concluding that the surrounding road network is able to accommodate the increased traffic from this proposal.

The Planning Proposal is considered to satisfactorily address this key Element for the purposes of Gateway consideration and exhibition:

- All car parking for the proposed development is located within the Basement levels (excluding 6 Chatswood Bowling Club car spaces to be provided at Ground level).
- All loading is accommodated off street and within basement levels.
- Loading vehicles are shown able to access and exit the site in a forward direction, with a physical manouvering solution provided within basement levels.
- A maximum of 310 car spaces are proposed in the concept plans. Car parking is required consistent with WDCP and car parking provision will be reviewed on this basis. This is addressed in the Officers recommendation.
- All vehicle access for the subject development and the Chatswood Bowling Club is via Hammond Lane.
- Consistent with the feedback from Transport for NSW, the retention of the existing access to the Pacific Highway is to be for the sole use of properties to the north, being 689-699 Pacific Highway. A right of way is proposed by the proponent. A physical barrier is also proposed to ensure traffic from the subject site, or any other site to the south, could not use this access to reach the Pacific Highway.

A Precinct Plan and draft Precinct DCP has been developed by Council to plan, manage and prepare for the future of transport in this Precinct. These documents are consistent with the Willoughby Intergrated Transport Strategy 2036 and desired transport and transport related outcomes.

Additional information is required as follows:

- i. A Planning Report and Traffic Impact Assessment Report confirming, as relevant, that:
 - a) All car parking related to the Chatswood Bowling Club, currently located on 655A Pacific Highway, is located on the Planning Proposal site.
 - b) All car parking is to be in accordance with Willoughby Development Control Plan.
 - c) Access and egress is provided for croquet allocated car parking on the Chatswood Bowling Club site (being the subject of existing rights of way) via Hammond Lane.
- ii. An updated Traffic Impact Assessment Report providing more detailed analysis of traffic impacts:in Gordon Avenue, Orchard Road and Albert Venue, having regard to recently approved Planning Proposals responding to the Chatswood CBD Planning and Urban Design Strategy 2036.

.Amended plan requirements are outlined below in the Additional information required in Officers recommendation section.

Transport and parking with be further considered by Transport for NSW during exhibition and will be reviewed by Council post exhibition. In addition traffic and transport matters will be again reviewed at development application stage.

Under WDCP, vehicular access and loading / unloading facilities are addressed in Part L, Section 4.3 Controls for Chatswood, 4.3.1, f) and g).

Other Issues to be addressed

Solar Access

With regard to the built form being the subject of the Concept Plans, and impacts on surrounding properties, the shadow analysis provided by the proponent for 9am to 3pm, 21 June has been assessed as showing the following:

- At 9am, properties to the south west, in the direction of 598, 594, 586, a small part of 582 and 574 Pacific Highway, 4, 6 and part of 8-12 Sutherland Road, 2 Fehon Street, 1 Moriarty Road, part of 1 Whitton Road, and 12, 14, 16 and 18 Moriarty Road, are affected by additional overshadowing. Overshadowing does not cross the Pacific Highway.
- At 10am, 596, 594, part of 586, 582 and 574 Pacific Highway, and 4 Sutherland Road, are affected by additional overshadowing. The overshadowing crosses the Pacific Highway and impacts a small part of 637 Pacific Highway.
- At 11am, 629-637 and 613-627 Pacific Highway are affected by additional overshadowing. Overshadowing no longer crosses the Pacific Highway.
- At 12pm, 629-637 and 613-627 Pacific Highway, a small part of 10 Gordon Avenue and 19 Nelson Street, are affected by additional overshadowing.
- At 1pm, a small part of 629-637 Pacific Highway, 10 Gordon Avenue, 15, 17, and 19 Nelson Street, and a small part of 9-11 Nelson Street, are affected by additional overshadowing. A small part of the Metro Dive site, in the middle section, is also affected.
- At 2pm, a small corner of 629-637 Pacific, 10 Gordon Avenue, 15, 19, 9-11 Nelson Street, 5-9 Gordon Avenue and a small part of the Chatswood Bowling Club are affected by additional overshadowing. The north east corner of the Metro Dive site is also affected.
- At 3pm, a larger part of the Chatswood Bowling Club, 3, 5-9 Gordon Avenue, part of 10 Gordon Avenue and 9-11 Nelson Street are affected. A small part of the north eastern corner of the Metro Dive site is also affected. Overshadowing also crosses the North Shore Rail Line and impacts the rear part of 14, 12, 10, 8, 6, and 2 Orchard Road, and 2, 3 and 5 Berkeley Court.

The following conclusions can be made:

- At 11am, overshadowing no longer crosses the Pacific Highway to the western side.
- The Metro Dive site is affected to a minor degree from 1pm. The Individual Heritage Item (I96) on the Metro Dive site, being 339 Mowbray Road and located on the Mowbray Road frontage, is unaffected through the day.
- A small part of the South Chatswood Conservation is affected – being 2 Orchard Road (which is also an Individual Heritage Item (I105), 6, 8, 10, 12 and 14 Orchard Road. Additional overshadowing does not cross Orchard Road.
- Overshadowing to the South Chatswood Conservation does not conflict with the CBD Strategy requirement of a minimum 3 hours solar access between 9am and 3pm.
- Neighbouring properties are able to achieve the minimum 2 hour solar access requirement under the Apartment Design Guidelines and WDCP requirement of 3 hours of sunlight between 9am and 3pm mid-winter.

It is considered that the overshadowing from this Planning Proposal is reasonable for a site located within the Chatswood CBD.

Notwithstanding the above, more detailed and readable shadow diagrams are required if this Planning Proposal proceeds to Gateway and public exhibition. This has been addressed in the officer's recommendation.

Further consideration of overshadowing may occur following public exhibition and at development application stage.

Privacy and general amenity

With regard to privacy and general amenity impacts to neighbouring properties, it is noted that:

- To the north, from 689 to 701 Pacific Highway, are single storey dwellings and three storey residential flat buildings. This land is part of the Chatswood CBD. A Planning Proposal has been lodged on 691-699 Pacific Highway.
- To the south, on the other side of Gordon Avenue, is 629-637 Pacific Highway – the subject of a Planning Proposal responding to the CBD Strategy, supported by Council and made (maximum height of 90m and FSR of 6:1). A Planning Proposal is being assessed for 10 Gordon Avenue and 15-19 Nelson Street (maximum height of 90m and FSR of 6:1). Another Planning Proposal at 9-11 Nelson Street, responding to the CBD Strategy, has been supported by Council and made (maximum height of 90m and FSR of 6:1).
- To the east is 5-9 Gordon Avenue – the subject of a Planning Proposal responding to the CBD Strategy, supported by Council and made (maximum height of 90m and FSR of 6:1).
Also to the east is the Chatswood Bowling Club. The proponent has been in consultation with the Chatswood Bowling Club. Privacy and amenity concerns will be further considered following Gateway and public exhibition with regards to the Chatswood Bowling Club.
- To the west is the Pacific Highway, and on the opposite side, R3 Medium Density Residential land containing a mix of single storey houses and three storey residential flat buildings, outside of the Chatswood CBD.

Further consideration of amenity impacts such as privacy may occur following public exhibition of the Planning Proposal, and at the design excellence and development application stage.

Other Internal Referrals

The Planning Proposal has also been referred to the Urban Design, Traffic, Engineering and Open Space sections of Council, and no objections have been raised.

The Engineering section made the following comment:

- The site is flood affected and tagged as affected by overland flow – major.
- Access to basement parking areas must be 500mm above the 1% AEP flood level or the PMF level adjacent to the crossing, whichever is higher.
- Floor levels are to be 500mm above the 1%AEP flood level.
- A Flood Impact Report in accordance with Technical Standard 3 will be required as part of the DA, to confirm that the above minimum flood levels are achieved and to confirm that the proposed works do not impact flood levels. A preliminary report should be considered at this stage, to confirm that the proposed building platform is clear of the overland flow path.

- The site will require OSD, and space for this needs to be included in any DA plans. Given the size of the system required, consideration should be given at this stage as to where the OSD tank will be located, ensuring that all impervious area can drain to the tank. The outlet level for the tank needs to be above the downstream 1%AEP flood level. Where connecting to a Council pit, the adopted level must be the grate level on the pit.

Preliminary floor analysis is required prior to gateway and exhibition and is addressed in the officer's recommendation.

Development Control Plan provisions

Council has prepared draft site specific and precinct development control plan provisions.

These will be further assessed following public exhibition and may be the subject of amendments.

It is also noted that, where matters are not covered by site specific provisions, the remainder of the Development Control Plan will apply to the site.

Department of Planning and Environment Requirements

The Planning Proposal is considered to be generally in accordance with the requirements under Section 3.33(2) of the *Environmental Planning and Assessment Act 1979* and the Department of Planning and Environment (August 2023) *Local Environmental Plan Making Guideline*. Refer to **Attachment 3**.

Willoughby Local Planning Panel

The Willoughby Local Planning Panel has provided advice on this matter dated 14 November 2023 (Refer to **Attachment 8**). The issues considered included:

- Compliance with the strategic framework,
- Ground level public domain embellishment,
- Connection to a wider pedestrian and cycle network,
- Relationship of site with the Chatswood Bowling Club,
- Adequacy of the percentage of affordable housing to be provided,
- Precinct Plan and wider transport issues,
- Approach to vehicle access and egress,
- Traffic capacity of Gordon Avenue,
- Site access from the south, and
- Car parking and traffic generation.

The Panel *“advises it is satisfied that the planning proposal is worthy of being forwarded to the DP&E for a Gateway consideration having demonstrated strategic and site specific merit. The Panel notes that the plans and documentation provided have been superseded and are to include amendments to reflect recent changes to the Council planning controls. The Panel advises the Council that it supports forwarding the planning proposal to the DP&E for a Gateway consideration as set out in the Officer's report for the following reasons:*

- a) *The proposal is to be consistent with Council's CBD strategy public domain vision with regard to through site links and open space embellishment.*

- b) *The design of the podiums should be in accordance with the podium heights in the site specific development control plan, and involve stepping and articulation to address amenity considerations for through site links and open space and achieve design excellence.*
- c) *The non-residential areas adjoining through site links and open space areas are to be designed to create visual interest, amenity and pedestrian activity*
- d) *The design of the towers should consider location (with particular regard to key public spaces), articulation, potential shadow and achieve design excellence.*
- e) *All parking related to the development and the Chatswood Bowling Club to be located on-site.*
- f) *Vehicle access and egress involving the site is to be consistent with the Precinct Plan developed by Council in consultation with Transport for NSW. In this regard the existing Pacific Highway egress point on 655A Pacific Highway is not to be utilised by the subject site, is to be consistent with the Precinct Plan and therefore utilised solely by properties to the north via a right of way.*
- g) *The physical blocking of the internal vehicle access from Hammond Lane through to the Pacific Highway for 641-655A Pacific Highway is to involve measures that continue to invite pedestrian access to publicly accessible through site links and open space (cul-de-sac or similar and not barriers or gates)."*

Additional information required in Officers recommendation

A) The following amended information:

- i. A Planning Report and Traffic Impact Assessment Report confirming, as relevant, that:
 - a) All car parking related to the Chatswood Bowling Club, currently located on 655A Pacific Highway, is located on the Planning Proposal site.
 - b) All car parking is to be in accordance with Willoughby Development Control Plan.
 - c) Access and egress is provided for croquet allocated car parking on the Chatswood Bowling Club site (being the subject of existing rights of way) via Hammond Lane.
- ii. An updated Traffic Impact Assessment Report providing detailed analysis of traffic impacts in Gordon Avenue, Orchard Road and Albert Avenue, having regard to recently approved Planning Proposals responding to the Chatswood CBD Planning and Urban Design Strategy 2036.
- iii. Amended/additional plans showing:
 - a) All proposed setbacks, at ground and tower levels, clearly dimensioned.
 - b) All car spaces allocated to the Chatswood Bowling Club clearly identified on-site at ground and basement level.
 - c) Basement design to reflect reduced car parking provision in accordance with Willoughby Development Control Plan. Deep soil planting areas to be maximised, with appropriate landscaping.
 - d) Two east / west pedestrian through site links, as well as the north / south link, consistent with the site specific draft development control plan.

B) Preliminary flood analysis responding to the overland flow issues identified by Council's engineers in the Detailed Assessment.

- C) Detailed shadow diagrams at a readable scale for each hour between 9am and 3pm based on 21 June mid-winter, with each hour showing street names, the individual properties impacted (including addresses), analysis, patterns and conclusions. In addition, clear distinction is to be made between existing shadows and additional shadows from the proposed development.

Conclusion

The Planning Proposal for a mixed use development at 641-653 and 655A Pacific Highway Chatswood, in the Chatswood CBD, is consistent with the strategic objectives of the *Greater Sydney Region Plan*, the *North District Plan* and Councils' *Local Strategic Planning Statement* (LSPS), as well as the *Chatswood CBD Planning and Urban Design Strategy 2036* (the CBD Strategy). It is considered that the relevant requirements under Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the matters identified in the Department of Planning and Environment's *Local Environmental Plan Making Guideline* are adequately addressed and that the environmental impacts are acceptable for referral to Gateway and further consideration following public exhibition.

It should be noted that following exhibition and further assessment, amendments may be required.

Based on the above, it is recommended that Council forward the Planning Proposal to the Department of Planning and Environment, seeking a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*. It is further recommended that Council advise the Department of Planning and Environment that Council's Head of Planning be nominated as delegate to process and finalise the Planning Proposal.

The draft site specific and precinct development control plan provisions are satisfactory for the purposes of public exhibition and will be further reviewed post exhibition.

**COUNCIL ASSESSMENT OF DEPARTMENT OF PLANNING AND ENVIRONMENT'S
'LOCAL ENVIRONMENTAL PLAN MAKING GUIDELINE.**

The Planning Proposal is considered to be generally in accordance with the requirements under Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the Department of Planning and Environment (August 2023) *Local Environmental Plan Making Guideline*. This document establishes six parts for Planning Proposal preparation:

PART 1 – OBJECTIVES AND INTENDED OUTCOMES

The proponent provides the following objectives in support of the Planning Proposal to amend *Willoughby Local Environmental Plan 2012* (referred to as WLEP 2012):

- (a) *“To realise the development potential of this strategically located site and in turn support the evolution of the Chatswood CBD and contribute to the rejuvenation of the wider Willoughby LGA.*
- (b) *To provide a compatible mix of land uses that contribute to the creation of a vibrant and active community, including potential for high amenity residential accommodation and employment generating land uses.*
- (c) *To contribute to the housing dwelling supply needed to achieve the dwelling targets for the North district.*
- (d) *To provide 4% of the total accountable residential floor space as affordable housing within proximity to public transport and employment opportunities.*
- (e) *To provide public domain improvements at ground floor that responds to the interface to the Chatswood Bowling Club and improves pedestrian connectivity from Pacific Highway to Hammond Lane.”*

PART 2 – EXPLANATION OF PROVISIONS

In response to the Planning Proposal, Council Officer's have proposed that the outcome be achieved by requiring that the Planning Proposal request be consistent with the following amendments to *Willoughby Local Environmental Plan 2012* (WLEP 2012), which will include:

- a) To amend the Land Zoning Map for 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, to MU1 Mixed Use.
- b) To amend the Height of Buildings Map for 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, to 90 metres.
- c) To amend the Floor Space Ratio Map for 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, to 6:1 (including affordable housing).
- d) To amend the Special Provisions Area Map to show 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, as Area 5 (Cl. 6.23 Design Excellence).
- e) To amend the Active Street Frontages Map to include for 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, the Pacific Highway, Gordon Avenue and Hammond Lane frontages.
- f) To amend the Lot Size Map to include 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, with a minimum lot size of 5,500 sq metres.

- g) Identify 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, on the Affordable Housing Map as Area 1 (4%).

Accompanying the Planning Proposal are draft site specific and precinct *Development Control Plan* provisions prepared by Council.

PART 3 – JUSTIFICATION OF STRATEGIC AND SITE SPECIFIC MERIT

Questions to consider when demonstrating the justification

Section A - Need for the Planning Proposal

- 1) Is the planning proposal a result of an endorsed LSPS, strategic study or report?**

The Planning Proposal arises from the adoption by Council of the *Chatswood CBD Planning and Urban Design Strategy 2036* (the CBD Strategy) and its subsequent endorsement by the Department of Planning and Environment (DPE) . The CBD Strategy recommends increased building heights and development density for land within the Chatswood CBD and the proposed expanded CBD boundaries. These new boundaries extend to the north and south of the existing CBD, along the eastern side of the Pacific Highway, north to Wilson Street and south to Mowbray Road.

The subject land is located within the proposed expanded CBD boundaries to the south and is identified for an increase in maximum building height up to 90m and increase in floor space ratio (FSR) up to 6:1. These increased densities are intended to accommodate anticipated demand for additional housing in the Willoughby Local Government Area (LGA) as envisaged in the *Greater Sydney Region Plan – A Metropolis of 3 Cities* and the *North District Plan* (2018).

A Council initiated Planning Proposal for the Willoughby LGA, proposing changes to *Willoughby Local Environmental Plan 2012* (LEP) and *Willoughby Development Control Plan* (DCP), was exhibited from 5 March until June 2022. This was a comprehensive review of WLEP 2012, and included the CBD Strategy.

The Council endorsed Planning Proposal was endorsed for finalisation at the Council Meeting dated 12 December 2022, and was made and notified by DPE on 30 June 2023 (Amendment 34).

Under WLEP 2012 (Amendment 34), the subject site was saved under the previous controls – noting that there was a submitted Planning Proposal to be assessed and determined based on the CBD Strategy.

Council's current planning strategy for accommodating existing and future housing demand, as outlined in the *Willoughby Local Strategic Planning Statement* (WLSPS) and the *Willoughby Housing Strategy*, is to concentrate higher density development in and adjoining the Chatswood City Centre and other larger centres and transport corridors, so that existing low density suburban housing areas can be retained substantially as they currently exist. This approach is also consistent with the *Greater Sydney Region Plan* and the *North District Plan* (NDP).

The *North District Plan* aims to increase densities along transport corridors and in centres, particularly in those centres near public transport and facilitate redevelopment of existing apartment sites that are capable of accommodating increased density. In response to the

NDP Council's Local Housing Strategy anticipates the Willoughby LGA will be required to accommodate more than 6,000 additional dwellings by 2036.

Analysis supporting the application has been provided with the Planning Proposal.

2) Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

It is considered that the Planning Proposal is the best means of achieving the objectives and outcomes discussed above.

Section B - Relationship to the strategic planning framework

3) Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The Planning Proposal is consistent with the strategic objectives of the *Greater Sydney Region Plan* and the *North District Plan*, as well as the more detailed requirements of the CBD Strategy.

The *Greater Sydney Region Plan* is built on a vision of three cities where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. Delivering a metropolis of three cities will be guided by 10 overarching directions, which provide interconnected infrastructure, productivity, liveability and sustainability benefits to all residents.

The North District forms a large part of the Eastern Harbour City and its economy is focused on the Harbour CBD which includes North Sydney as well as the strategic centres such as Chatswood within the Eastern Economic Corridor. The Chatswood strategic centre comprises a mix of uses including retail, office, residential as well as community and health. Entertainment facilities and a vibrant night-time economy contribute to the amenity. Job targets for Chatswood as a strategic centre has informed the scale of growth and land use and infrastructure planning. Maintaining and growing a high quality commercial core will facilitate the continued growth of the centre as a major employment hub.

Chatswood remains a Strategic Centre located in the Eastern Economic Corridor, and an important office market in Greater Sydney. Chatswood is earmarked as a centre that should be attracting significant investment and business activity in strategic centres to provide jobs growth; creating the conditions for residential development within strategic centres but not at the expense of the attraction and growth of jobs, retailing and services; where appropriate, strategic centres should define commercial cores informed by an assessment of their need.

The CBD Strategy has been a response to the above strategic plans and is consistent with the objectives of those plans as well as being a component of Willoughby's LSPS.

The Planning Proposal is considered consistent with the *Greater Sydney Region Plan* and the *North District Plan* for the following reasons:

- The proposal provides commercial floor space at an amount envisioned under the *Chatswood CBD Planning and Urban Design Strategy 2036*. The commercial component supports and strengthens the commercial core of

Chatswood by increasing the availability of jobs in an identified strategic centre with good access to existing and planned public transport services. The proposal will also provide more employment opportunities to local residents.

- The proposal will assist in meeting the housing supply targets in a location identified as Mixed Use in the CBD Strategy.
- The additional housing is provided in a location close to existing and proposed transport and urban services infrastructure.
- The additional housing is in a location that is a walkable or cyclable distance to the services and amenities of Chatswood CBD centre.

The Department of Planning and Environment (August 2023) *Local Environmental Plan Making Guideline* establishes specific assessment criteria to assist a Relevant Planning Authority.

Assessment Criteria

a) Does the proposal have strategic merit? Will it:

- Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy;

Comment: The Planning Proposal will give effect to the *Greater Sydney Region Plan* and *North District Plan* released March 2018.

- Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan;

Comment: The *Willoughby Council Local Strategic Planning Statement* (LSPS) was granted assurance by DPE in March 2020.

The CBD Strategy was endorsed by Council on 26 June 2017, supported by the Greater Sydney Commission on 18 May 2018, and endorsed by DPE on 9 July 2020. Endorsement of the CBD Strategy was further noted by Council on 14 September 2020.

The Planning Proposal is consistent with the Willoughby Council LSPS, and the CBD Strategy as endorsed by DPE. This is discussed in the Council Detailed Assessment (**Attachment 2**).

- Respond to a change in circumstances that has not been recognised by the existing planning framework.

Comment: The Planning Proposal does not respond to a change in circumstances not recognised by the planning framework, It is considered that the Planning Proposal is consistent with the envisioned land use mix within the Chatswood CBD, and the utilization of existing and upcoming infrastructure by different land uses. The CBD Strategy has been prepared with a careful allocation of commercial core and mixed use zones within an expanded Chatswood CBD, intended to capitalise on infrastructure such as the Metro rail and accommodate expected future residential demand.

b) Does the proposal have site-specific merit, having regard to the following:

- the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)

Comment: The site is not characterised by an existing significant natural environment. The proposal does have site specific merit with ground level publicly accessible open space proposed with landscaping.

- existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates

Comment: The planning controls proposed are consistent with the *Chatswood CBD Planning and Urban Design Strategy 2036* and the envisaged future development for the locality, with the site located within the expanded Chatswood CBD boundaries. The proposal promotes the future urban renewal of the land involved.

- services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision

Comment: This issue is discussed in the Council Detailed Assessment.

4) Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

Our Future Willoughby 2032

Our Future Willoughby 2032 is the Council's community strategic plan for the future of the local government area to help guide decision making and planning.

Our Future Willoughby 2032 sets out five broad outcomes, which are identified below with relevant community priorities:

1. A City that is green
 - 1.1 Create and enhance green spaces urban tree canopy cover and greening.
 - 1.2 Promote sustainable lifestyles and practices.
 - 1.3 Enhance, protect and respect waterways, bushland, nature, wildlife and ecological systems.
 - 1.4 Reduce use of energy, water and natural resources and maximise reuse of waste.
 - 1.5 Reduce carbon and greenhouse gas emissions.
2. A city that is connected, inclusive and resilient
 - 2.1 Enhance transport choices and connections throughout the City.
 - 2.4 Manage parking and reduce traffic congestion.
 - 2.7 Promote accessible services for the community

3. A city that is liveable
 - 3.1 Foster feelings of inclusion, safety and cleanliness.
 - 3.2 Create recreation spaces for all.
 - 3.3 Promote an active and healthy lifestyle.
 - 3.4 Create desirable places to be and enjoy.
 - 3.5 Balance population growth and development with quality of life.
 - 3.6 Activate local spaces in creative ways.
 - 3.7 Promote housing choice and affordability.

4. A city that is prosperous and vibrant
 - 4.1 Facilitate the development of all businesses.
 - 4.2 Build and support a night-time economy.
 - 4.3 Create memorable food destinations.
 - 4.4 Attract visitors and promote local destination-based tourism.
 - 4.5 Diversify our economy including creative and innovative industries.
 - 4.6 Facilitate the viability and vibrancy of our CBD and village centres.

5. A City that is effective and accountable
 - 5.1 Be honest, transparent and accountable in all that we do.
 - 5.4 Anticipate and respond to changing community and customer needs.

The Planning Proposal is consistent with the above applicable objectives.

Local Strategic Planning Statement (LSPS)

In regards the Willoughby LSPS, the Planning Proposal is consistent with the following key directions, priorities and actions:

Key Direction - Housing the City

Priorities

1. Increasing housing diversity to cater to families, the aging population, diverse household types and key workers.

Actions

- 1.1 Complete and implement the *Willoughby City Housing Strategy*.
- 1.2 Review planning controls in the Chatswood CBD and in local centres to facilitate delivery of an increased number of medium and high-density dwellings, increasing dwelling diversity in the LGA.
- 1.3 Generally protect existing low-density areas from development as they are not needed to ensure sufficient dwelling supply and are important as a source of traditional family housing.

Priorities

2. Increasing the supply of affordable housing.

Actions

- 2.1 Increase the proportion of total floor space to be delivered as affordable housing in new developments from 4% to 7% by 2021 and to 10% by 2026.
- 2.2 Seek opportunities to deliver increased proportions of affordable housing when increases in density are sought as part of major development proposals.

Key Direction - A City for People

Priorities

3. Enhancing walking and cycling connections to Willoughby's urban areas, local centres and landscape features.

Actions

- 3.1 Develop both east-west and north-south routes in the LGA as green links for walking and cycling, consistent with green grid priority corridors identified in the *Greater Sydney Region Plan* and *North District Plan*.
- 3.2 Expand the bicycle network as planned in the *Willoughby City Bike Plan*.
- 3.3 Work with Transport for NSW to address barriers to walking and cycling caused by Major transport corridors such as the Pacific Highway, Gore Hill Freeway and North Shore Rail Line.

Priorities

4. Ensuring that social infrastructure caters to the population's changing needs and improve the public domain to foster healthy and connected communities.

Actions

- 4.2 Maintain and upgrade existing recreational and bicycle facilities in areas of greatest Use and demand.
- 4.3 Where opportunities are available, align the location of community and recreational spaces for community to the population distribution in the LGA.
- 4.4 Pursue opportunities in new developments to increase public open space areas.

Key Direction - A well connected City

Priorities

7. Developing Chatswood's role as a true transport hub for Willoughby City and the North Shore.

Actions

- 7.4 Enable increased walking and cycling as a transport mode across the LGA, and maximise access to public transport.
- 7.5 Reduce the congestion and impact of car usage in Chatswood

Key Direction - Jobs and skills for the City

Priorities

9. Developing Chatswood CBD as a key commercial centre and integral part of the Eastern Economic Corridor.

Actions

- 9.1 Promote office growth and a diverse mix of uses
- 9.2 Create great spaces and a high level of urban design quality
- 9.3 Create a 'green' walkable CBD
- 9.4 Develop and promote Chatswood's distinct role in the Eastern Economic Corridor
- 9.5 Seek contributions to public and social infrastructure to improve the amenity and services in the Chatswood CBD

Key Direction - A City in its landscape

Priorities

14. Increasing Willoughby's tree canopy coverage.

Actions

14.4 Encourage green roofs or green nature walls and green buildings, particularly in the Chatswood CBD and St Leonards.

Key Direction - A City supported by Infrastructure

Priorities

17. Augmenting local infrastructure and using existing infrastructure more intensively and efficiently to accommodate planned growth.

Actions

17.3 Maintain current service levels of social and sport and active recreational infrastructure so that liveability does not decrease as development occurs.

17.4 Require major development to share any value uplift from changes in development rights to deliver a community benefit through improved local infrastructure.

17.5 Focus future development and density in places where infrastructure is available, which is expected to be along the major public transport corridors.

17.6 Apply the principles of the Movement and Place framework by catering for and encouraging the role of walking and cycling in local movement networks and places.

Willoughby Integrated Transport Strategy 2036

The Willoughby Integrated Transport Strategy 2036 adopted by Council in August 2020 is designed to provide an *“overarching framework for transport planning and initiatives across the Willoughby local government area to 2036.”* The Strategy aims to achieve 5 key transport outcomes relating to matters such as sustainability/promotion of walking and cycling, efficient local and regional connectivity accessible to all, contribute to vibrant, liveable, and safe places, support the local economy, efficiently manage congestion and parking demand, embrace smart technology, and respond to community needs.

The Planning Proposal is consistent with the *Willoughby Integrated Transport Strategy 2036* in that it will:

- Provide increased housing density and additional employment in close proximity to Chatswood Railway Station and Transport Interchange.
- Its location within easy walking and cycling distance of a wide range of services, retail and employment area will encourage active transport and reduced car dependency.
- Adopts reduced off-street parking rates to minimise reliance on private motor vehicles and traffic generation.

5) Is the planning proposal consistent with any other applicable State and regional studies or strategies?

The Planning Proposal is considered consistent with relevant State strategies.

6) Is the planning proposal consistent with applicable SEPPs?

The following State Environmental Planning Policies (SEPPs) are applicable, with comment provided.

SEPP Title	Comment
SEPP (Resilience & Hazards) 2021	<p>The site is zoned residential and has a history of residential use and is not identified as potentially contaminated. The site is suitable for the proposed high-density mixed-use development. A preliminary land contamination assessment recommended:</p> <ul style="list-style-type: none"> • <i>“A detailed (Stage 2) site investigation (DSI) should be undertaken to characterise the site contamination conditions and establish whether the site is suitable for the proposed development, or whether remediation is required. The DSI should include groundwater sampling and analysis to assess the potential for off-site contamination impacts on the development; and</i> • <i>A hazardous building materials survey should be undertaken prior to demolition of the buildings. Following demolition of the buildings (and preferably prior to removal of the hardstand), an asbestos clearance certificate should be obtained.</i> <p><i>JKE also recommend that a waste classification be undertaken to classify material to be excavated for the proposed development. Fill and contaminated soil disposal costs are significant and should be assessed at an early stage of the project.”</i></p> <p>These matters can be addressed in any future DA consent issued for redevelopment of the site.</p>
SEPP (BASIX) 2004	<p>This SEPP will apply to future proposed dwellings/units and appropriate BASIX documentation will be required with any future development application for redeveloping the site.</p>
SEPP (Exempt and Complying Codes) 2008	<p>The Planning Proposal does not contain provisions that contradict the application of the SEPP.</p>
SEPP 65 – Design Quality of Residential Flat Development (referred to as SEPP 65 in this report)	<p>This SEPP will apply to the proposed residential component of the future mixed use building. The concept plan has been submitted having regard to the <i>SEPP 65 Apartment Design Guide</i> (referred to as ADG in this report) and achieves general compliance with this Code.</p> <p>Detailed assessment of compliance with SEPP 65 and Apartment Design Guidelines would occur at DA stage.</p>

SEPP (Housing) 2021	<p>The Planning Proposal will increase the supply and range of housing types in the Chatswood CBD in a location close to services and in a manner that provides a reasonable level of amenity for occupants and neighbours. A good design outcome is achieved by requiring that the future building be the subject of a design competition.</p> <p>The proposal does not result in removal of any affordable housing and will provide affordable housing.</p> <p>The Planning Proposal is consistent with the SEPP (Housing) 2021.</p>
SEPP (Transport & Infrastructure) 2021	<p>The Planning Proposal provides additional housing and jobs close to services and infrastructure and includes monetary contributions towards the funding of additional infrastructure. The Planning Proposal is consistent with SEPP (Transport & Infrastructure) 2021.</p> <p>Vehicle access to the Pacific Highway is addressed in the Attachment 2: Detailed Assessment.</p> <p>Suitable noise attenuation measures can be incorporated in future building design to mitigate the impacts of road and rail noises from the nearby Pacific Highway and North Shore Rail Line.</p>

7) Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or Key government priority ?

Section 9.1 Directions issued to councils require that a Planning Proposal does not conflict with the Directions. The following is a summary of the planning proposal against the relevant Section 9.1 Directions in this instance.

Focus Area 2 – Design and Place

Direction	Relevant?	Consistent?	Comment
3.2 Heritage Zones	Yes	Yes	The site is not identified as a heritage item nor located within a heritage conservation area.

Focus Area 4 – Resilience and Hazards

Direction	Relevant?	Consistent?	Comment
4.4 Remediation of Contaminated Land	No	N/A	To be assessed as part of a detailed DA. Note: Preliminary contamination investigation has been provided with the Planning proposal.

Focus Area 5 – Transport and Infrastructure

Direction	Relevant?	Consistent?	Comment
<p>5.1 Integrating Land Use and Transport</p> <p><i>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</i></p> <p><i>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</i></p> <p><i>(b) increasing the choice of available transport and reducing dependence on cars, and</i></p> <p><i>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</i></p> <p><i>(d) supporting the efficient and viable operation of public transport services, and</i></p> <p><i>(e) providing for the efficient movement of freight</i></p>	Yes	Yes	<p>The planning proposal is consistent with the direction for the following reasons:</p> <ul style="list-style-type: none"> • The site exhibits excellent access to public transport being within close proximity to Chatswood train and Metro station. • The increase in density on the site supports the patronage of the future Metro and accords with the key direction from the state <p>The provision of increased housing supply within a walkable neighbourhood reduces the need for car dependency.</p> <ul style="list-style-type: none"> • The provision of residential accommodation within proximity of employment in Chatswood and transport nodes, encourages walkable neighbourhood. • The proposal would provide a new mix of employment opportunities through the non-residential land use within close proximity to existing services and infrastructure.

Focus Area 6: Housing

Direction	Relevant?	Consistent	Comment
<p>6.1 Residential Zones (1) The objectives of this direction are:</p> <p><i>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</i></p> <p><i>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</i></p> <p><i>(c) to minimise the impact of residential development on the environment and resource lands.</i></p>	Yes	Yes	<p>The planning proposal seeks to broaden the range of housing choices provided in the LGA through the delivery of residential floor space that is capable of being developed with a mix of apartment typologies and layouts as well as committing to affordable housing targets.</p> <p>The site is suitably located to accommodate a high-rise residential development, as it is located within close proximity to the future Chatswood Metro Station and meets residential amenity and locational criteria.</p> <p>A mixed-use development in this location would make efficient use of existing services and infrastructure. A MU1 Mixed Use zone creates the potential to provide housing and to help meet infill housing targets, which reduce the need for land release on the metropolitan fringe. It also focuses new housing development in an identified urban renewal area, which benefits from excellent (existing and future) public transport service and improves accessibility</p> <p>Optimising high density residential accommodation in a strategic centre will minimise impacts on the natural environment or resource lands as the precinct and sites are already developed.</p> <p>Future residential accommodation can be provided on the site without significantly impacting the land or neighbouring development.</p>

Direction	Relevant?	Consistent?	Comment
Focus Area 7: Industry and Employment	Yes	Yes	<p>The Planning Proposal seeks to rezone the site from R3 Medium Density Residential to MU1 Mixed Use. The proposal is aligned with the recommended land use for the site in the Chatswood CBD Strategy.</p> <p>The planning proposal will optimise a development outcome that facilitates non-residential land uses by rezoning the site and amending built form planning controls. The economic benefits of the proposal include:</p> <ul style="list-style-type: none"> Providing for a broader variety of job types within the non-residential land uses, in turn contributing to the diversity of employment generation; Activating the site's strategically important location within the CBD with non-residential land uses at street level.

Section C – environmental, social and economic impact

8) Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The subject site and adjoining lands have not been identified as containing any areas of critical habitat or threatened species, populations or ecological communities or habitats.

9) Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

The following environmental impacts of the proposal and their proposed management are discussed in the Council Detailed Assessment (see **Attachment 2**):

- Consistency with the *Chatswood CBD Planning and Urban Design Strategy 2036*, as endorsed by Council. In this regard the following issues have been addressed:
 - CBD boundary
 - Land use
 - Commercial component
 - Design excellence

- Building sustainability
- Planning Agreements
- Public art
- Floor space ratio
- Minimum site area
- Affordable housing
- Maximum residential tower floor plate size
- Built form
- Sun access to key public places
- Height
- Links and open space
- Landscaping
- Public realm
- Street frontage heights
- Setbacks
- Traffic and transport issues

- Other issues addressed include solar access, privacy and general amenity.

10) Has the planning proposal adequately addressed any social and economic effects?

It is considered that the Planning Proposal has adequately addressed social and economic effects. It should be noted that the Planning Proposal does include affordable housing provision at an acceptable rate in the circumstances.

Section D – Infrastructure (Local, State and Commonwealth)

11) Is there adequate public infrastructure for the planning proposal?

The subject site is located within an identified mixed use area under the CBD Strategy, and serviced by existing utilities infrastructure and within walking distance from the Chatswood Railway Station and Transport Interchange.

Section E – State and Commonwealth Interests

12) What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

As noted in the Council report, pre-exhibition input has been sought from Transport for NSW regarding vehicle access to and from the Pacific Highway. As a result a Precinct Plan has been developed (refer to **Attachment 5** and the draft development control plan provisions at **Attachment 6**).

Council has not notified any other public authorities. It is expected that any Gateway Determination would establish which government authorities would be required to be included in the public exhibition.

PART 4 – MAPS

This Planning Proposal as proposed involves amending *Willoughby Local Environmental Plan 2012* maps as follows:

- a) To amend the Land Zoning Map for 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, to MU1 Mixed Use.
- b) To amend the Height of Buildings Map for 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, to 90 metres.
- c) To amend the Floor Space Ratio Map for 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, to 6:1 (including affordable housing).
- d) To amend the Special Provisions Area Map to show 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, as Area 5 (Cl. 6.23 Design Excellence).
- e) To amend the Active Street Frontages Map to include for 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, the Pacific Highway, Gordon Avenue and Hammond Lane frontages.
- f) To amend the Lot Size Map to include 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, with a minimum lot size of 5,500 sq metres.
- g) Identify 641-653 Pacific Highway and 655A Pacific Highway, Chatswood, on the Affordable Housing Map as Area 1 (4%).

PART 5 – COMMUNITY CONSULTATION

Should Council support the Planning Proposal for public exhibition, it will proceed to the Department of Planning and Environment 'Gateway' process to seek endorsement for the proposal to be placed on public exhibition. Public exhibition will be in accordance with the Department of Planning and Environment's Gateway Determination requirements and should include the Draft *Willoughby Local Environmental Plan 2012* Amendment and the site specific and precinct *Draft Development Control Plan* provisions. This would involve appropriate notification and receipt of submissions from relevant state agencies and the general community.

PART 6 – PROJECT TIMELINE

Planning Proposal Presented to Council	December 2023
Planning Proposal submitted to Gateway	March 2024
Gateway Determination received by Council	June 2024
Community Consultation (28 days)	July 2024
Outcomes of Community Consultation presented to Council	October 2024
Planning Proposal submitted to Department requesting notification on Government website	December 2024



GROUND FLOOR LANDSCAPE PLAN



PODIUM LANDSCAPE PLAN



PACIFIC HIGHWAY

NON RESI GFA
827 m²

NON RESI GFA
953 m²

COMMUNAL OPEN SPACE

GORDON AVENUE

HAMMOND LANE

5-9
GORDON
AVENUE

level 2



PACIFIC HIGHWAY

SITE BOUNDARY

GORDON AVENUE

RESIDENTIAL AMENITY
147 m²

COMMUNAL OPEN SPACE

HAMMOND LANE

5-9
GORDON
AVENUE

CHATSWOOD

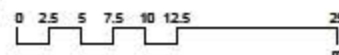
PODIUM LANDSCAPE PLAN



641 & 655A Pacific Highway,
Chatswood

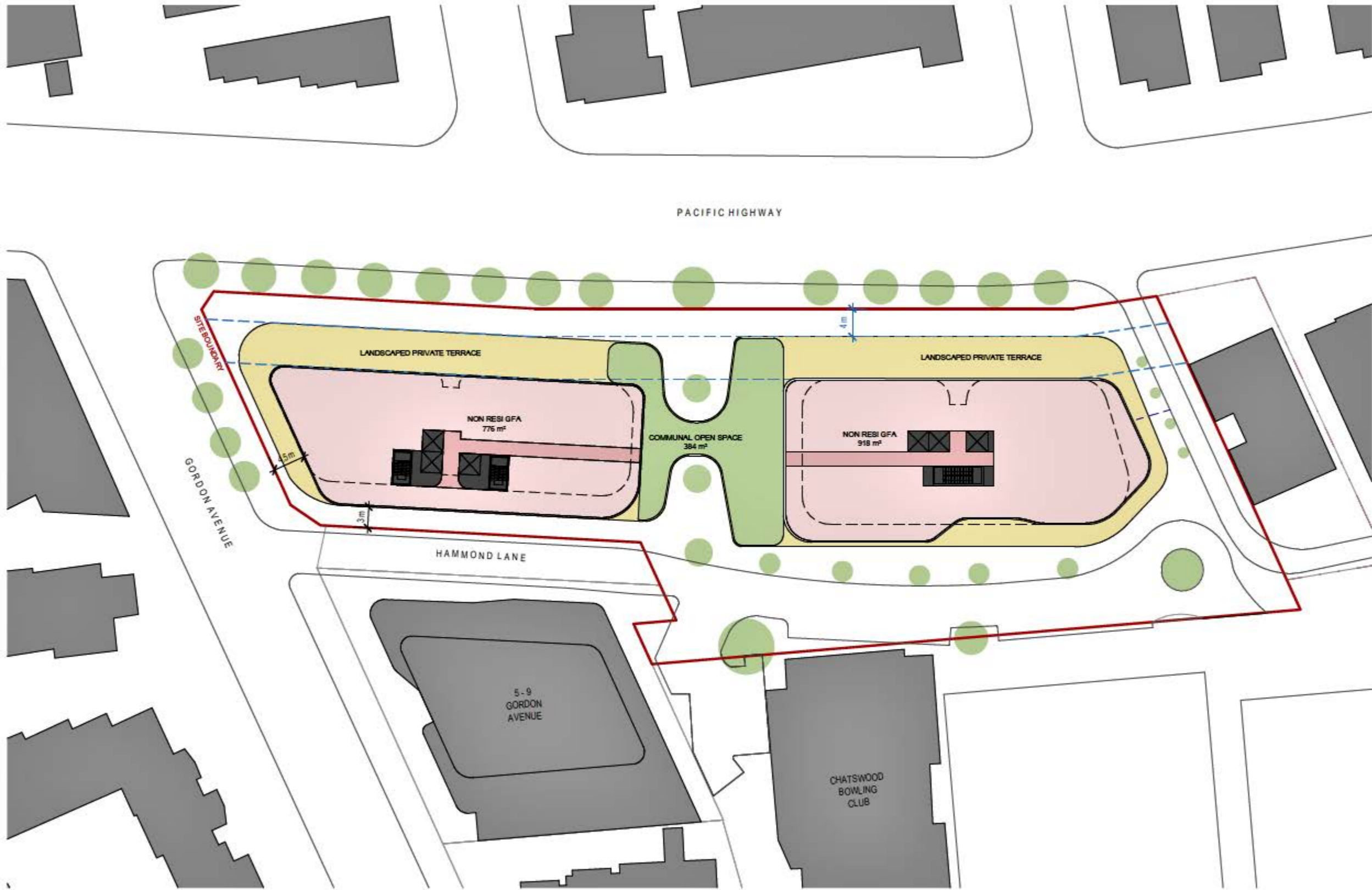
Drawing:
Drawing no:
Issue:
Scale @ A3:
Date:

Ground floor plan of Schedule 1 items
A21
B
1 : 500
07/09/23



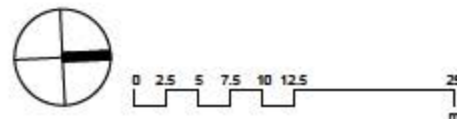
Architectus Sydney
Level 18 MLC Centre
19 Martin Place
Sydney NSW 2000
sydney@architectus.com.au

architectus™



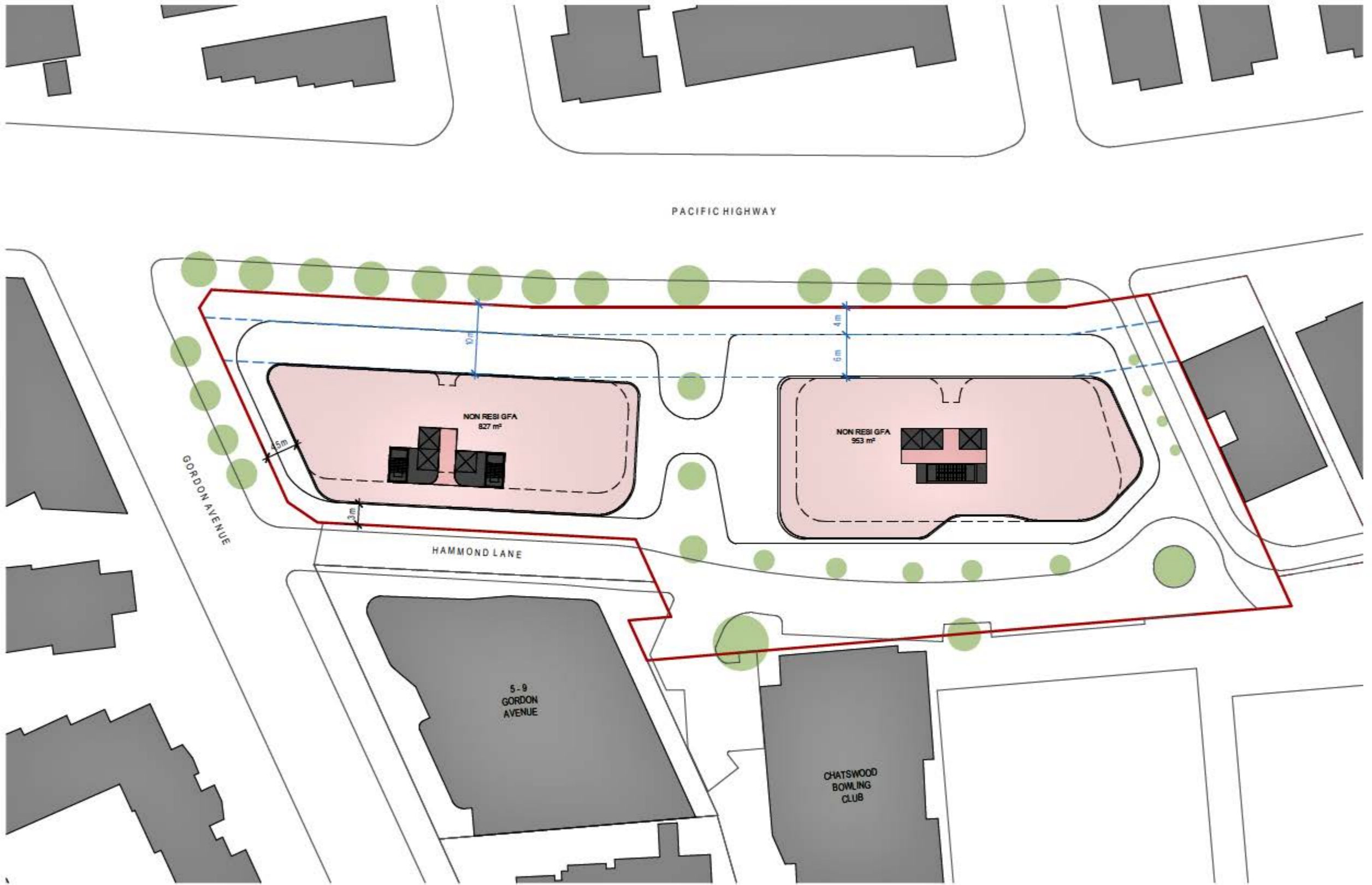
641 & 655A Pacific Highway,
Chatswood

Drawing: A11
 Drawing no: B
 Issue: 1 : 500
 Scale @ A3: 07/09/23
 Date:



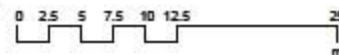
Architectus Sydney
 Level 18 MLC Centre
 19 Martin Place
 Sydney NSW 2000
 sydney@architectus.com.au

architectus™



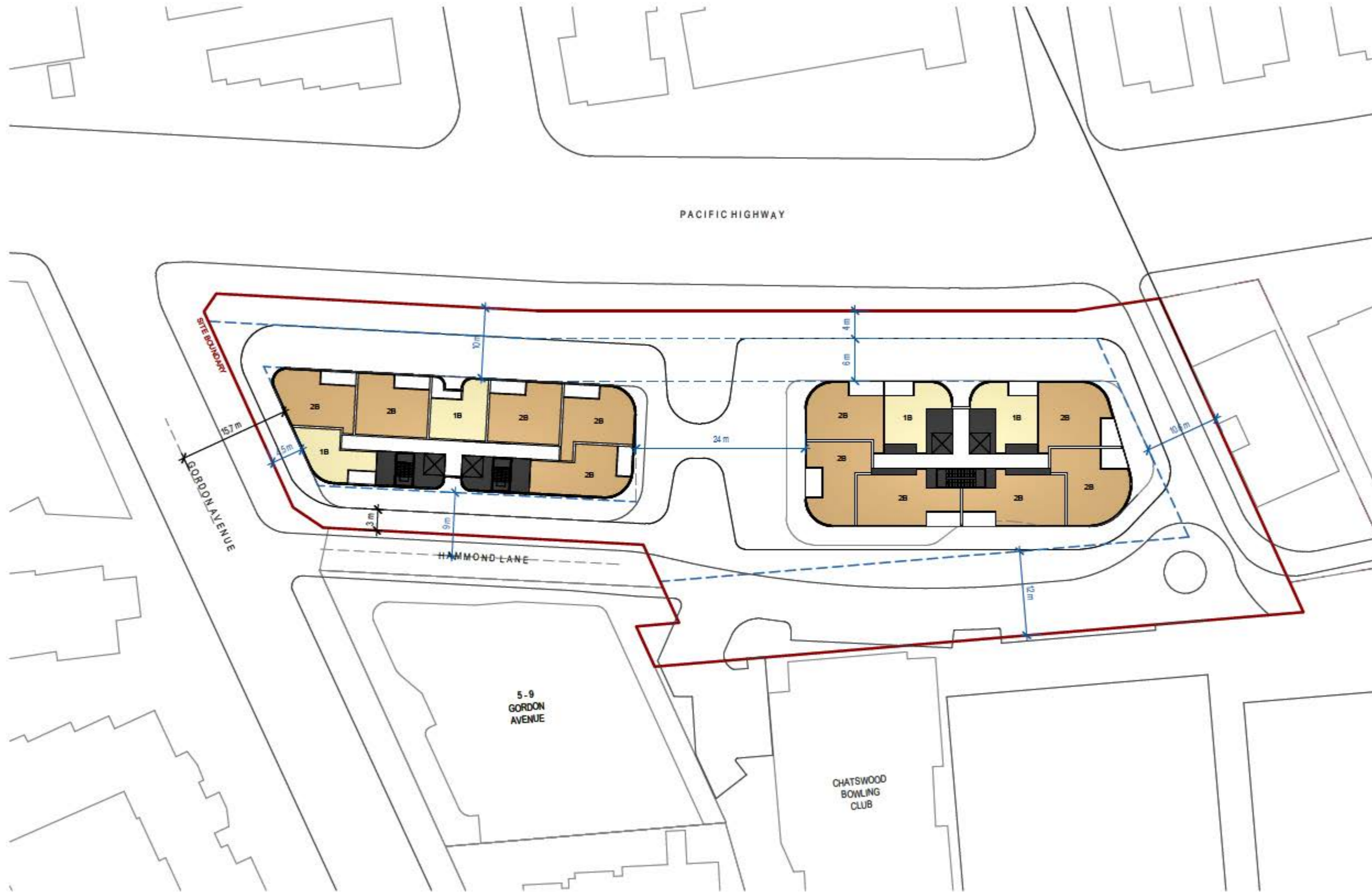
641 & 655A Pacific Highway,
Chatswood

Drawing: Level 2 Plan
 Drawing no: A12
 Issue: B
 Scale @ A3: 1 : 500
 Date: 07/09/23



Architectus Sydney
 Level 18 MLC Centre
 19 Martin Place
 Sydney NSW 2000
 sydney@architectus.com.au

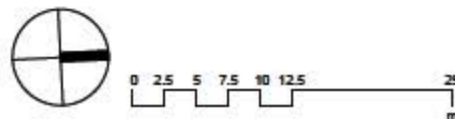
architectus™



641 & 655A Pacific Highway,
Chatswood

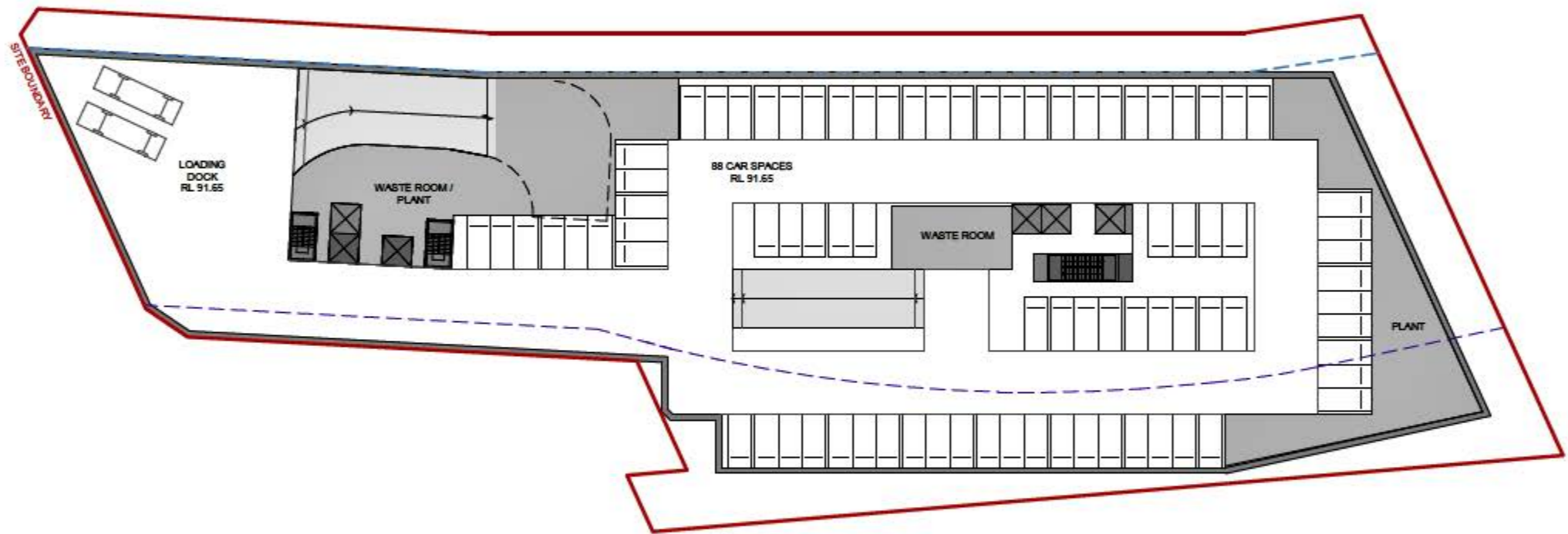
Drawing:
Drawing no:
Issue:
Scale @ A3:
Date:

Typical Tower Plan
A13
B
1 : 500
07/09/23



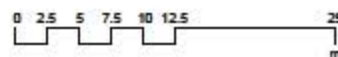
Architectus Sydney
Level 18 MLC Centre
19 Martin Place
Sydney NSW 2000
sydney@architectus.com.au

architectus



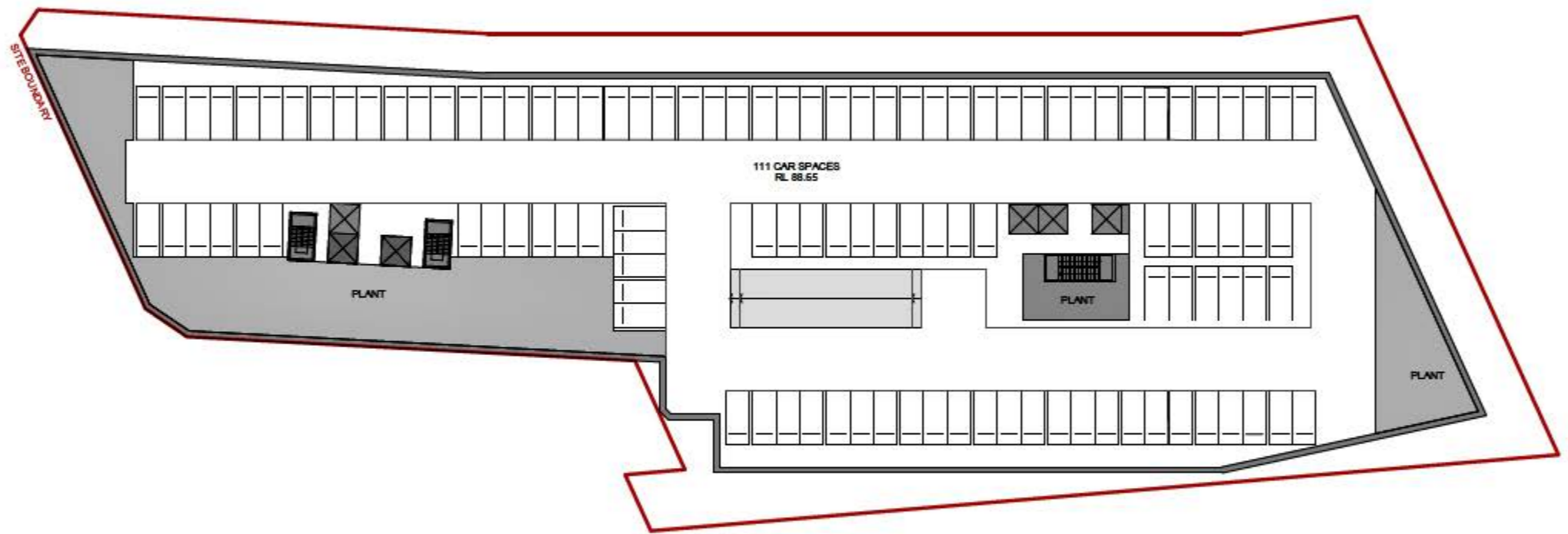
641 & 655A Pacific Highway,
Chatswood

Drawing: **Basement 1 Plan**
 Drawing no: **A09**
 Issue: **B**
 Scale @ A3: **1 : 500**
 Date: **07/09/23**



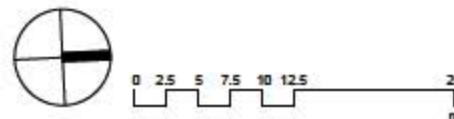
Architectus Sydney
 Level 18 MLC Centre
 19 Martin Place
 Sydney NSW 2000
 sydney@architectus.com.au

architectus™



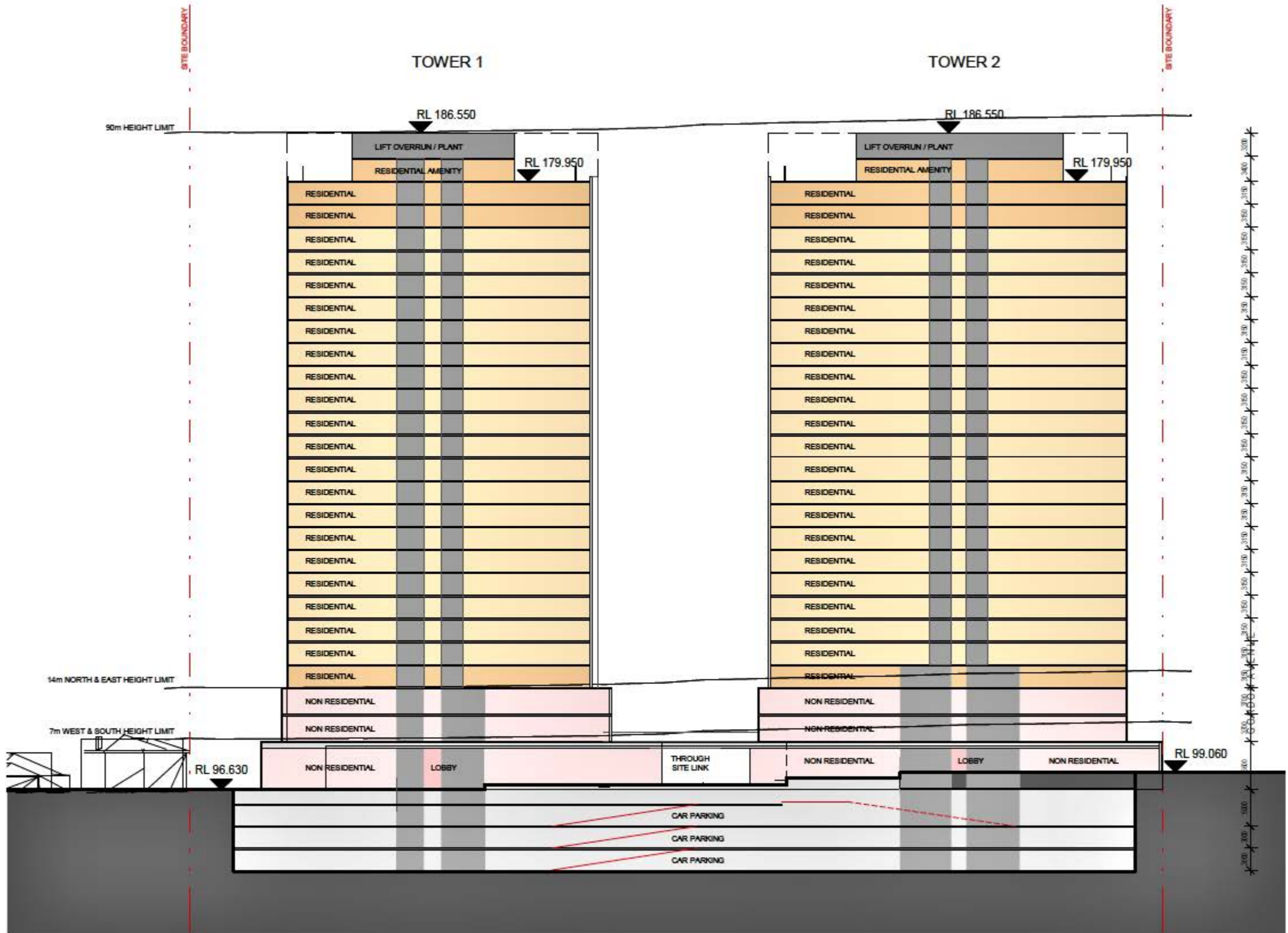
641 & 655A Pacific Highway,
Chatswood

Drawing: **Basement 2 & 3 Plan**
 Drawing no: **A08**
 Issue: **B**
 Scale @ A3: **1 : 500**
 Date: **07/09/23**



Architectus Sydney
 Level 18 MLC Centre
 19 Martin Place
 Sydney NSW 2000
 sydney@architectus.com.au

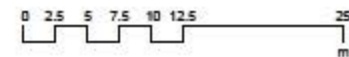
architectus™



Roof	RL 186.550
Level 26	RL 183.350
Level 25	RL 179.950
Level 24	RL 176.800
Level 23	RL 173.650
Level 22	RL 170.500
Level 21	RL 167.350
Level 20	RL 164.200
Level 19	RL 161.050
Level 18	RL 157.900
Level 17	RL 154.750
Level 16	RL 151.600
Level 15	RL 148.450
Level 14	RL 145.300
Level 13	RL 142.150
Level 12	RL 139.000
area schedule	RL 135.850
Level 10	RL 132.700
Level 09	RL 129.550
Level 08	RL 126.400
Level 07	RL 123.250
Level 06	RL 120.100
Level 05	RL 116.950
Level 04	RL 113.800
Level 03	RL 110.650
Level 02	RL 106.950
Level 01	RL 103.250
Upper Ground	RL 99.300
Ground	RL 99.050
Mezzanine	RL 94.650
Basement 01	RL 91.500
Basement 02	RL 88.350
Basement 03	RL 85.200

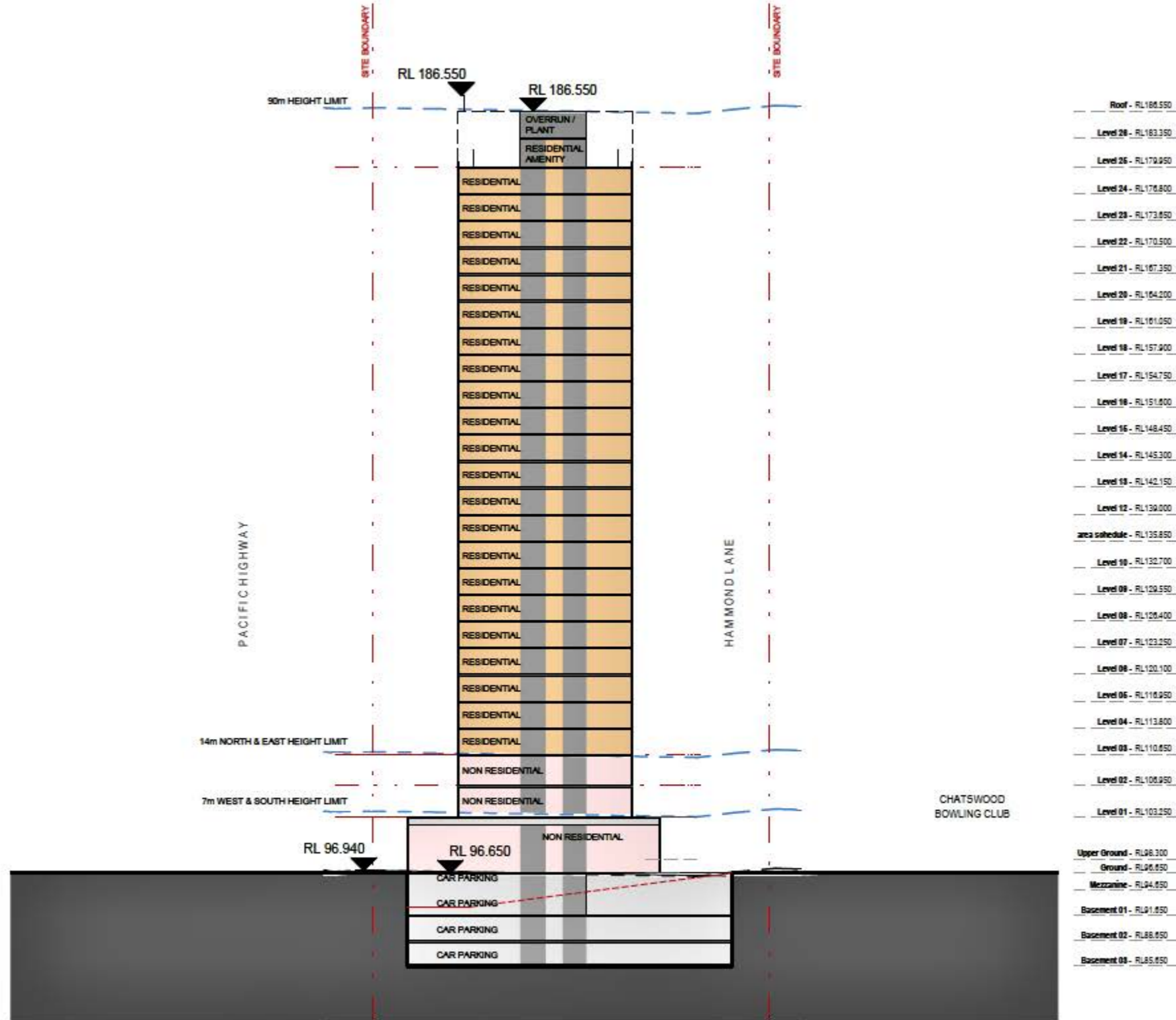
641 & 655A Pacific Highway,
Chatswood

Drawing: North - South Section
 Drawing no: A40
 Issue: B
 Scale @ A3: 1 : 500
 Date: 07/09/23



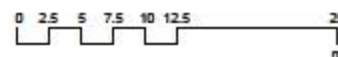
Architectus Sydney
 Level 18 MLC Centre
 19 Martin Place
 Sydney NSW 2000
 sydney@architectus.com.au

architectus



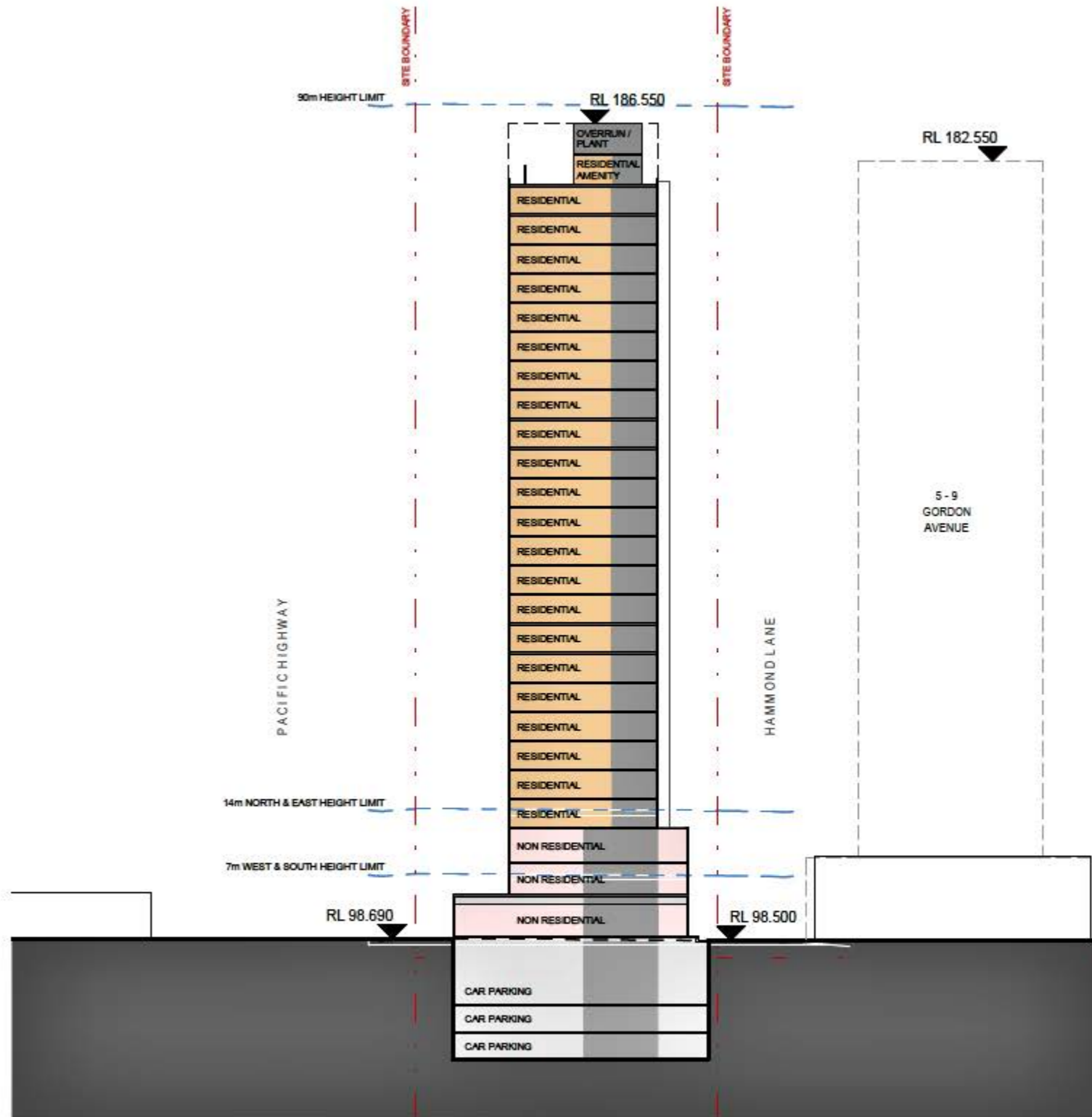
641 & 655A Pacific Highway,
Chatswood

Drawing: Tower 1 Section
Drawing no: A41
Issue: B
Scale @ A3: 1 : 500
Date: 07/09/23



Architectus Sydney
Level 18 MLC Centre
19 Martin Place
Sydney NSW 2000
sydney@architectus.com.au

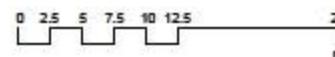
architectus™



Roof	RL 186.550
Level 28	RL 183.350
Level 26	RL 179.950
Level 24	RL 176.800
Level 23	RL 173.850
Level 22	RL 170.900
Level 21	RL 167.350
Level 20	RL 164.200
Level 19	RL 161.050
Level 18	RL 157.900
Level 17	RL 154.750
Level 16	RL 151.600
Level 15	RL 148.450
Level 14	RL 145.300
Level 13	RL 142.150
Level 12	RL 139.000
area schedule	RL 135.850
Level 10	RL 132.700
Level 09	RL 129.550
Level 08	RL 126.400
Level 07	RL 123.250
Level 06	RL 120.100
Level 05	RL 116.950
Level 04	RL 113.800
Level 03	RL 110.650
Level 02	RL 106.950
Level 01	RL 103.250
Upper Ground	RL 98.300
Ground	RL 98.690
Mezzanine	RL 94.890
Basement 01	RL 91.890
Basement 02	RL 88.890
Basement 03	RL 85.890

641 & 655A Pacific Highway,
Chatswood

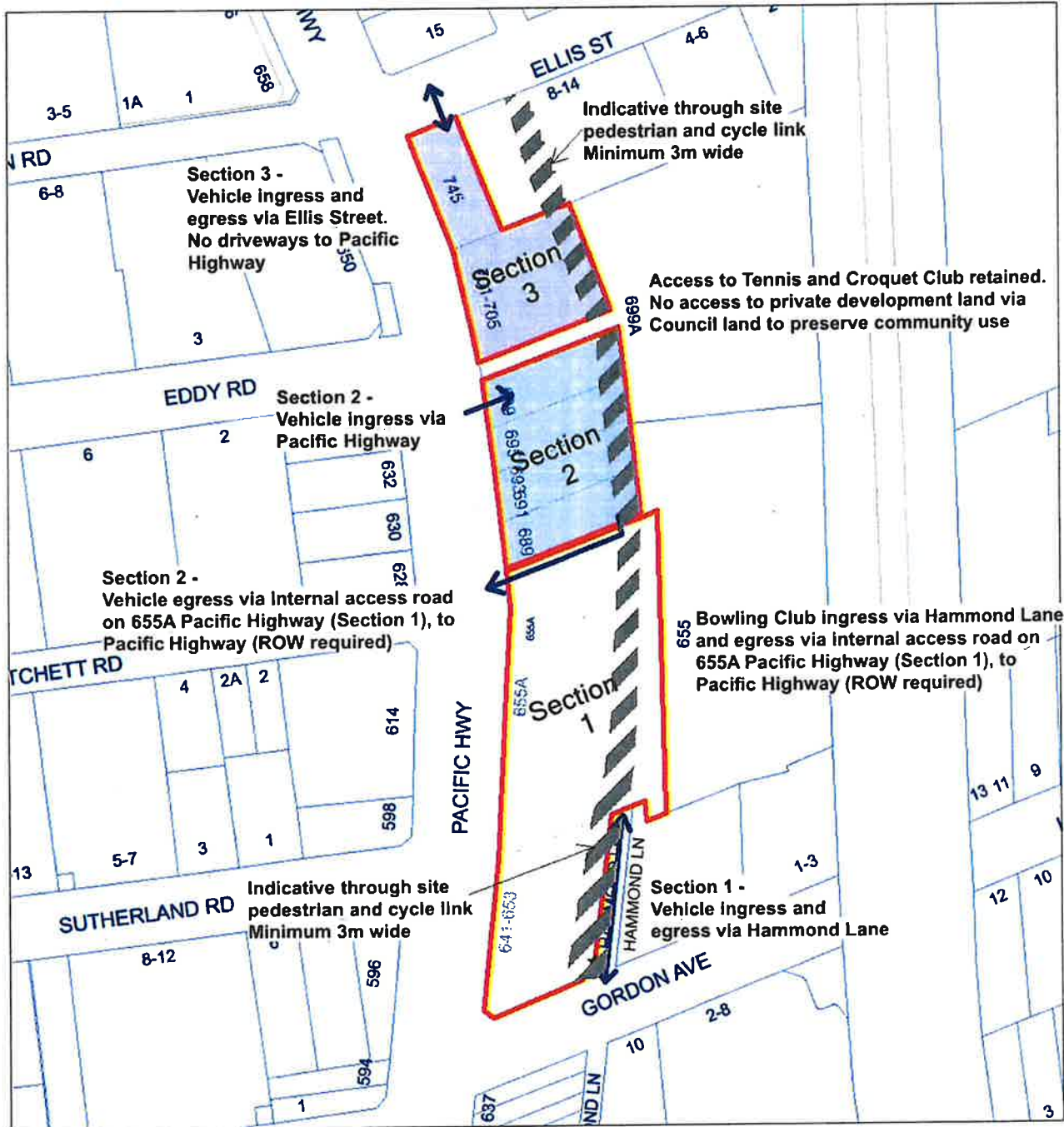
Drawing: Tower 2 Section
 Drawing no: A42
 Issue: B
 Scale @ A3: 1 : 500
 Date: 07/09/23



Architectus Sydney
 Level 18 MLC Centre
 19 Martin Place
 Sydney NSW 2000
 sydney@architectus.com.au

architectus™

Precinct Plan: from 641 Pacific Highway to 745 Pacific Highway



641- 655A Pacific Hwy - 689-699 Pacific Highway and 701-705 Pacific Highway and 745 Pacific Highway

- Section 1
- Section 2
- Section 3

Scale: N.T.S. 

Site Specific and Precinct Development Control Plan

Site: 641-653, and 655A Pacific Highway
Chatswood

Precinct: Eastern side of Pacific Highway,
between Gordon Avenue and Ellis
Street, Chatswood

(641-653, 655A, 689, 691-693, 695, 699,
701-705 and 745 Pacific Highway
Chatswood)

**Site: 641-653, and 655A Pacific Highway
Chatswood**

Contents

1. General
2. Built Form
3. Height of Building
4. Setbacks and Street Frontage Heights
5. Building Exterior
6. Amenity
7. Open Space and Landscaping
8. Links
9. Active Street Frontages
10. Traffic and Transport
11. Waste Management and Loading
12. Design Excellence
13. Public Art
14. Building Sustainability

Figures

Figure 1: Site Map

Figure 2: Site Layout

Figure 3: Setbacks and Street Frontage Heights

Figure 4: Through Site Links and Open Space

1. General

The controls contained in this site specific Development Control Plan applies to 641-653, and 655A Pacific Highway Chatswood.

Figure 1: Site Map



Objectives of the Plan

The aims and objectives of this Plan are to:

1. Provide guidelines for a mixed use development on the site.
2. Provide a development that ensures the viability of adjoining and surrounding sites for future development.
3. Minimise traffic impacts on the surrounding road network
4. Ensure development on the site minimises impacts to the amenity of neighbouring residential properties.

5. Provide landscaping in and surrounding the site that enhances the presentation of the site as well as the amenity of the development.
6. Embellish public domain on the site, to connect with existing and envisioned public domain outside the site.
7. Achieve architectural and urban design excellence.
8. Maximise activation to Pacific Highway, Gordon Avenue and Hammond Lane.

2. Built Form

Performance Criteria

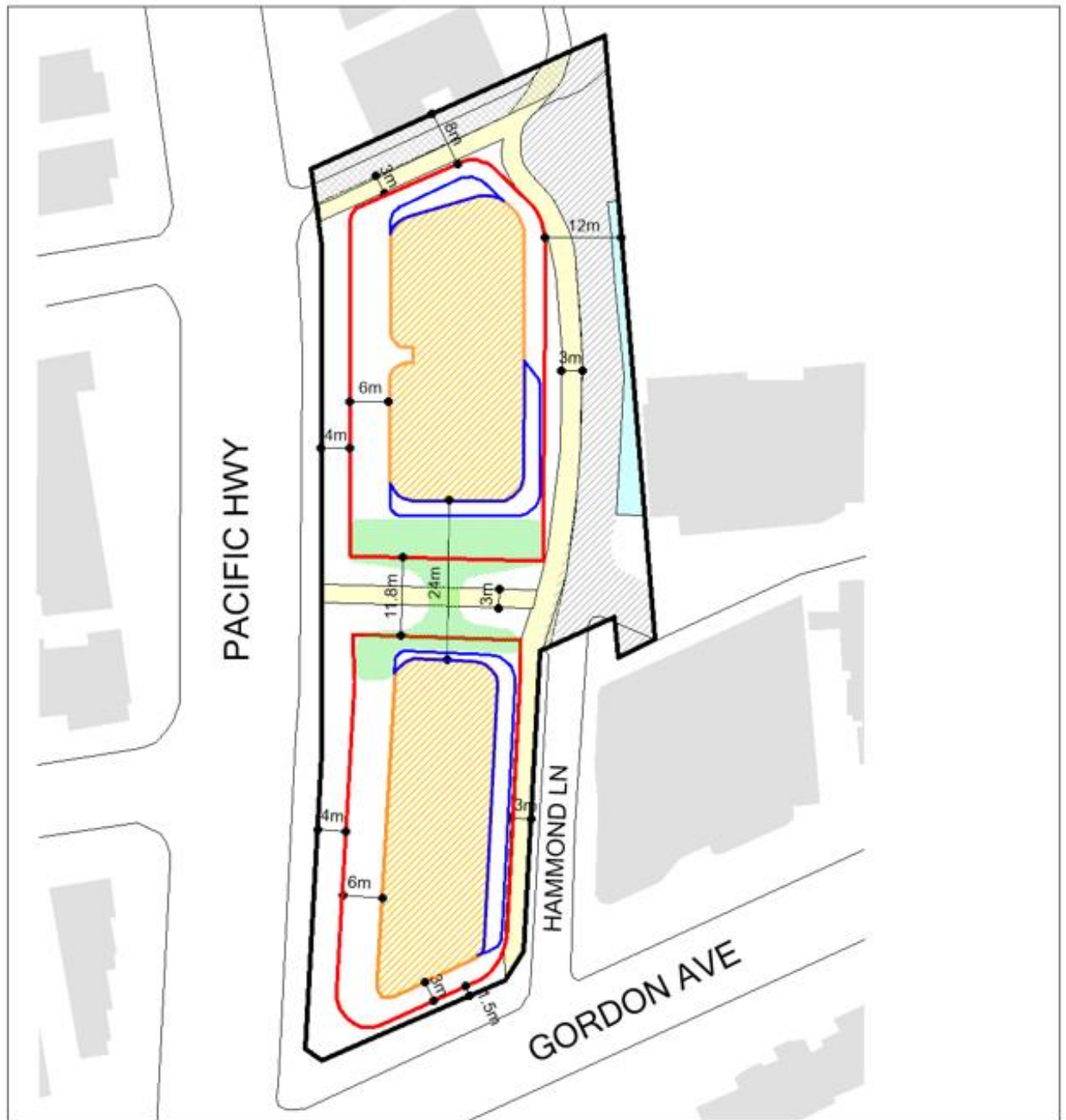
The built form of the new development shall:

1. Achieve a slender tower/s form on the site.
2. Achieve a site layout that provides a pleasant environment for the occupants and minimises impact on surrounding properties.
3. Ensure visual and acoustic privacy, natural ventilation, sun access, and views.
4. Provide suitable areas for communal open spaces, deep soil zones, and landscaping.

Controls

1. The maximum tower floor plate that applies to this site for residential towers above a podium is 700m².
2. The width of each side of any tower should be minimised and design elements that contribute to building bulk should be minimised. Particular attention is drawn to the east / west elevation on this site.
3. The building layout is to be in accordance with Figure 2.

Figure 2: Site Layout



- Boundary
- Podium 1
- Podium 2
- Tower

- Minimum 3m wide through site link
- Chatswood Bowling Club ground level car parking
- Suspended Communal Open Space

Scale: N.T.S.



3. Height of Buildings

Performance Criteria

The built form of new development shall:

1. Be consistent with the permitted Height of Buildings development standard applicable to the site.
2. Minimise overshadowing of surrounding properties, key public spaces and public domain.

Controls

1. The maximum building height is to include all structures located at roof level, including lift over runs and any other architectural features.
2. All roof top lift over runs or exposed structures are to be integrated with the building.
3. Flat roof areas shall incorporate useable outdoor recreation space where suitable, within the maximum building height.

4. Setbacks and Street Frontage Heights

Performance Criteria

Setbacks shall:

1. Ensure the positioning of new buildings is consistent with the proposed streetscape envisioned for Chatswood CBD and contained in the Chatswood CBD Planning and Urban Design Strategy 2036.
2. Be provided at Ground level to contribute to public domain.
3. Contribute at Ground level deep soil areas, landscaping, and open space.
4. Protect all significant on-site trees and all street trees on Pacific Highway, Gordon Avenue and Hammond Lane.
5. Contribute to slender tower forms.
6. Minimise the effects of adverse wind conditions at street level.

Street wall heights shall:

7. Ensure such heights are consistent with the street wall heights envisioned for Chatswood CBD and contained in the Chatswood CBD Planning and Urban Design Strategy 2036.
8. Be at a lower scale reflecting the location of the site towards the south western edge of the Chatswood CBD.
9. Be sympathetic, and respond positively, to what is located on neighbouring sites.

Controls

1. The building setbacks are to be in accordance with Figure 3 (Setbacks and street frontage heights) – except where additional setback is provided, and identified in Figure 2: Site layout. Setbacks are as follows:
 - a) Pacific Highway (western) frontage:
 - i) Minimum 4m setback at Ground Level
 - ii) Minimum 6m setback above street wall to tower

- iii) Maximum street wall height of 7m (two storeys).
- b) Gordon Avenue (southern) frontage:
 - i) Minimum 1.5m setback at Ground Level
 - ii) Minimum 3m setback above street wall to tower
 - iii) Maximum street wall height of 7m (one to two storeys).
- c) Northern frontage adjacent 689 Pacific Highway
 - i) Minimum 8m setback at Ground Level
 - ii) Minimum 4.5m setback above Podium to tower
 - iii) Maximum street wall height of 7m (one to two storeys).
- d) Eastern boundary frontage (facing Chatswood Bowling Club)
 - Podium / Tower 1 (north tower)
 - i) Minimum setback between 12m (at northern end) and 16m (at southern end)
 - ii) Minimum 4m setback above street wall to tower
 - iii) Podium wall height of between 7m (one to storeys) and a maximum 14m (three storeys).
 - Podium / Tower 2 (south tower)
 - iv) Minimum 3m setback at Ground Level
 - v) Minimum 4.5m setback to tower
 - vi) Podium wall height of between 7m (one to storeys) and a maximum 14m (three storeys).

2. Balconies are not to encroach into setbacks.

Figure 3 Setbacks and street frontage heights



3. In addition to Control 1:

- a) Setbacks may be greater and street wall heights may be lower.
- b) Additional ground level setbacks are sought that contribute to public domain.
- c) Stepped podium setbacks are supported and encouraged to provide:

- Elevated landscaping to neighbouring properties and the towers located on-site
- Elevated landscaping to ground level public domain embellishment located on-site such as public rights of way

to encourage sympathetic relationships with neighbouring sites and the greening of the Chatswood CBD.

5. Building Exterior

Performance Criteria

1. Buildings are to demonstrate a high design quality when viewed from the public domain and the surrounding area, including Pacific Highway, Gordon Avenue, Hammond Lane, the Chatswood Bowling Club and Tennis and Croquet Key Public Space.

2. Facade treatment and design is to be used to break down the mass and bulk of buildings.
3. High quality façade materials and finishes are to be used which contribute positively to the built environment and mitigate urban heat.

Controls

1. Facades are to be articulated and should incorporate recesses and projecting elements that do not encroach into required setbacks.
2. Extensive blank walls shall be avoided at street level.

6. Amenity

Performance Criteria

1. Maximise solar access and ventilation to residential units.
2. Ensure visual and acoustic privacy of residential units in the development and adjoining properties.
3. Improve pedestrian amenity surrounding the site.

Controls

1. A Wind Assessment shall be submitted at Development Application Stage.
2. A detailed Acoustic Assessment shall be submitted at Development Application Stage addressing noise and vibrations from the Pacific Highway, Gordon Avenue, Hammond Lane and the North Shore Rail Line.
3. Residential units shall be designed to maximise solar access, cross ventilation, visual and acoustic privacy.

7. Open Space and Landscaping

Performance Criteria

1. Landscaping is to soften and complement the development.
2. Landscaping at street level shall improve the amenity and attractiveness of the pedestrian environment.
3. The development shall provide publicly accessible links and open space.
4. Publicly accessible open space is to include meaningful green landscaping, providing corridors of locally indigenous vegetation that link open spaces to enhance environmental quality and optimise opportunities for habitat for native flora and fauna species.
5. Greening at the podium levels is to be provided, with planting visible to the surrounding area – with particular regard to Pacific Highway, Gordon Avenue, Hammond Lane, the Chatswood Bowling Club and Tennis and Croquet Key Public Space.
6. Podium and roof tops are to be a combination of green and recreation spaces.
7. Street tree planting is to be provided.

Controls

1. Open space at ground level shall be utilised as publicly accessible open space.

2. Large canopy tree planting must be provided along the Pacific Highway and the eastern setback to the Chatswood Bowling Club, where any setback area is greater than 3m.
3. All roofs up to 30 metres from ground are to be green roofs. These are to provide a balance of passive and active green spaces that maximise solar access.
4. A minimum of 2 hours of solar access is to be provided to the public open space on the site.
5. Public domain improvements shall be provided to all street frontages, and the through site link, to Council requirements.
6. A minimum of 20% of the site is to be provided as soft landscaping, which may be located on Ground, Podium and roof top levels or green walls of buildings.
7. Deep soil planting is to be provided along the Pacific Highway frontage, and the eastern setback to the Chatswood Bowling Club (subject to vehicle access), where any setback area is greater than 3m. Deep soil plantings include trees and shrubs, and are to be unimpeded by buildings or structures below ground.
8. A Landscape Plan is to be provided at Development Application stage detailing all public domain at ground level, street tree planting, planting and space allocation at podium and roof top levels. This is to include species, container size at planting, spacing and approximate size at maturity.
9. Street tree planting is at the cost of the proponent, with location and species to be determined in consultation with Council at Development Application stage.
10. All existing aerial cables which may include for electricity, communications and other cables connecting to street poles and buildings around the site shall be removed and installed underground in accordance with the requirements of the relevant service authorities. Ausgrid lighting poles are to be provided to the requirements of Ausgrid for street lighting and shall be positioned compatible to the landscaping design around the site.

8. Links

Performance Criteria

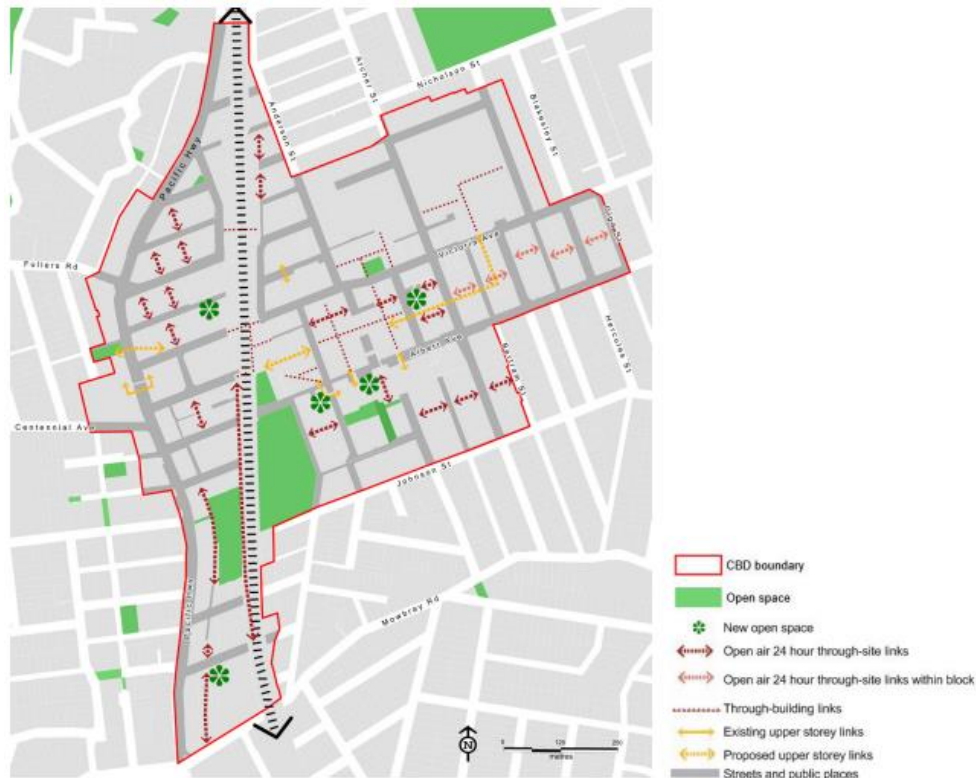
1. The development shall provide publicly accessible through site links and open space.
2. Publicly accessible through site links and open space is to include green landscaping.

Controls

1. The development is to incorporate publicly accessible through site links and open space in accordance with Figure 4 below.
2. Through site links and open space in addition to Figure 4 is required on a site by site basis.
3. Public rights of way are to be provided on the subject site as follows:
 - a) A minimum 4m setback to Pacific Highway.
 - b) A minimum 3m wide north / south through site link from Gordon Avenue to the north eastern boundary with the Chatswood Bowling Club – separated from any vehicle access (except where unavoidable).
 - c) A minimum 3m wide east / west through site link, connecting the north / south through site link with the Pacific Highway, along the northern boundary, separate of any vehicle egress.
 - d) A minimum 3m wide east / west through site link, connecting the north / south through site link with the Pacific Highway, between the two towers.

- e) A minimum 1.5m setback to Gordon Avenue.
4. All publicly accessible open space and links are to be the responsibility of the relevant ownership entity, with formal public access to be created over these areas.

Figure 4: Through Site Links and Open Space



9. Active Street Frontages

Performance Criteria

1. To ensure that uses on the ground level contribute to the activation of the public domain.
2. To ensure that design and location of ground floor uses maximise surveillance of the public domain.

Controls

1. At ground level buildings are to maximise active frontages to Pacific Highway, Gordon Avenue and Hammond Lane.
2. Active frontages are to be maximised adjacent through site links.
3. A building has an active street frontage if all premises on the ground floor of the building facing the street(s) are used for the purpose of commercial premises or non-residential purposes and provide elements of visual interest when viewed from the street.

10. Traffic and Transport

Performance Criteria

1. Development must be designed to provide adequate and safe access to the site.
2. Development on the site must not cause adverse traffic impacts on the surrounding road system.
3. Minimise the number of vehicular ingress and egress points to the development.
4. All vehicles are to enter and exit the site in a forward direction.
5. Traffic and transport solutions are to be physical (rather than mechanical) on this site.
6. Minimise car parking and encourage alternative transport options.
7. Minimise impacts on, and be sympathetic to, publicly accessible through site links

Controls

641-653 and 655A Pacific Highway

1. Vehicle ingress and egress for the development is to be from one access point in Hammond Lane.
2. Vehicle ingress and egress is to be designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create a high quality streetscape.
3. All car parking and loading facilities are to be located below ground level, utilizing physical solutions to ensure all vehicles (including loading and garbage vehicles) enter and leave the site in a forward direction.
4. Other strategies for car parking reduction, such as reciprocal arrangements for sharing parking and car share, is to be included in any future Development Application.
5. The following is to be provided in any future development application:
 - a) Reduced car parking rates based on Council's Development Control Plan.
 - b) An amended Transport report containing updated traffic analysis and modelling having regard to other nearby made planning proposals, the uplift under Willoughby Local Environmental Plan 2012 (Amendment 34) and the Precinct Plan prepared by Willoughby Council for the Eastern side of Pacific Highway, between Gordon Avenue and Ellis Street, Chatswood.

Chatswood Bowling Club

6. Chatswood Bowling Club vehicle ingress and egress is to be via Hammond Lane
7. The existing egress from 655A Pacific Highway to the Pacific Highway is to be blocked via physical measures (not gates or barriers but by cul-de-sac or a similar solution whereby pedestrians are encouraged onto the site and able to access through site links) for the exclusive use of properties to the north (identified as Section 2 in the Precinct Plan for the Eastern side of Pacific Highway, between Gordon Avenue and Ellis Street, Chatswood).
 - a) In this regard appropriate rights of way are to be established. This egress is not in any way to serve the subject site, the Chatswood Bowling Club or any other vehicles from Gordon Avenue.
8. Car parking for the Chatswood Bowling Club is to be on-site at 641-653 and 655A Pacific Highway and as follows:
 - a) 6 car spaces at Ground Level.

- b) 35 car spaces at Basement level.

11. Waste Management, Loading and Services

Performance Criteria

1. Ensure all loading, unloading and servicing occurs on-site.
2. Ensure adequate provision is made for waste storage and disposal.
3. Ensure floor space at Ground level is maximised.
4. Ensure loading, unloading and servicing does not interfere with public rights of way and through site links.

Controls

1. All loading and unloading services are required to occur at basement level on-site.
2. Other supporting functions such as garbage rooms, plant and other services are to be located in Basement levels.
3. A Waste Management Plan shall be submitted at the Development Application stage.
4. Substations are to be provided within buildings, not within the streets, open spaces or setbacks and not facing key active street frontages.
5. Substations are to be designed to ensure protection of residents from Electro Magnetic Radiation (EMR) emissions.

12. Design Excellence

Performance Criteria

1. Ensure high quality and varied design through the use of competitive design processes.
2. Implement a rigorous process to support good design outcomes.

Controls

1. All developments that have a height of 35m or more are subject to a competitive design process.
2. The competitive design process must be undertaken in accordance with the Willoughby Design Excellence Policy and Willoughby Design Excellence Guidelines.

13. Public Art

Performance Criteria

1. All redevelopments in the Chatswood CBD should contribute to public art in accordance with Council's Public Art Policy.
2. Public art is to promote place, sustainability and resilience.

Controls

1. Public Art is to be provided in accordance with Council's Public Art Policy.

14. Building Sustainability

Performance Criteria

1. Design excellence shall include achievement of higher building sustainability standards.

Controls

1. A minimum of 5 stars GBCA building rating, or the equivalent, is expected. A higher rating is encouraged. An assessment report is to be submitted at Development Application stage.

**Precinct: Eastern side of Pacific Highway,
between Gordon Avenue and Ellis
Street, Chatswood**

**(641-653, 655A, 689, 691-693, 695, 699,
701-705 and 745 Pacific Highway
Chatswood)**

Contents

- 1. General**
- 2. Precinct Amalgamation**
- 3. Links**
- 4. Traffic and Transport**

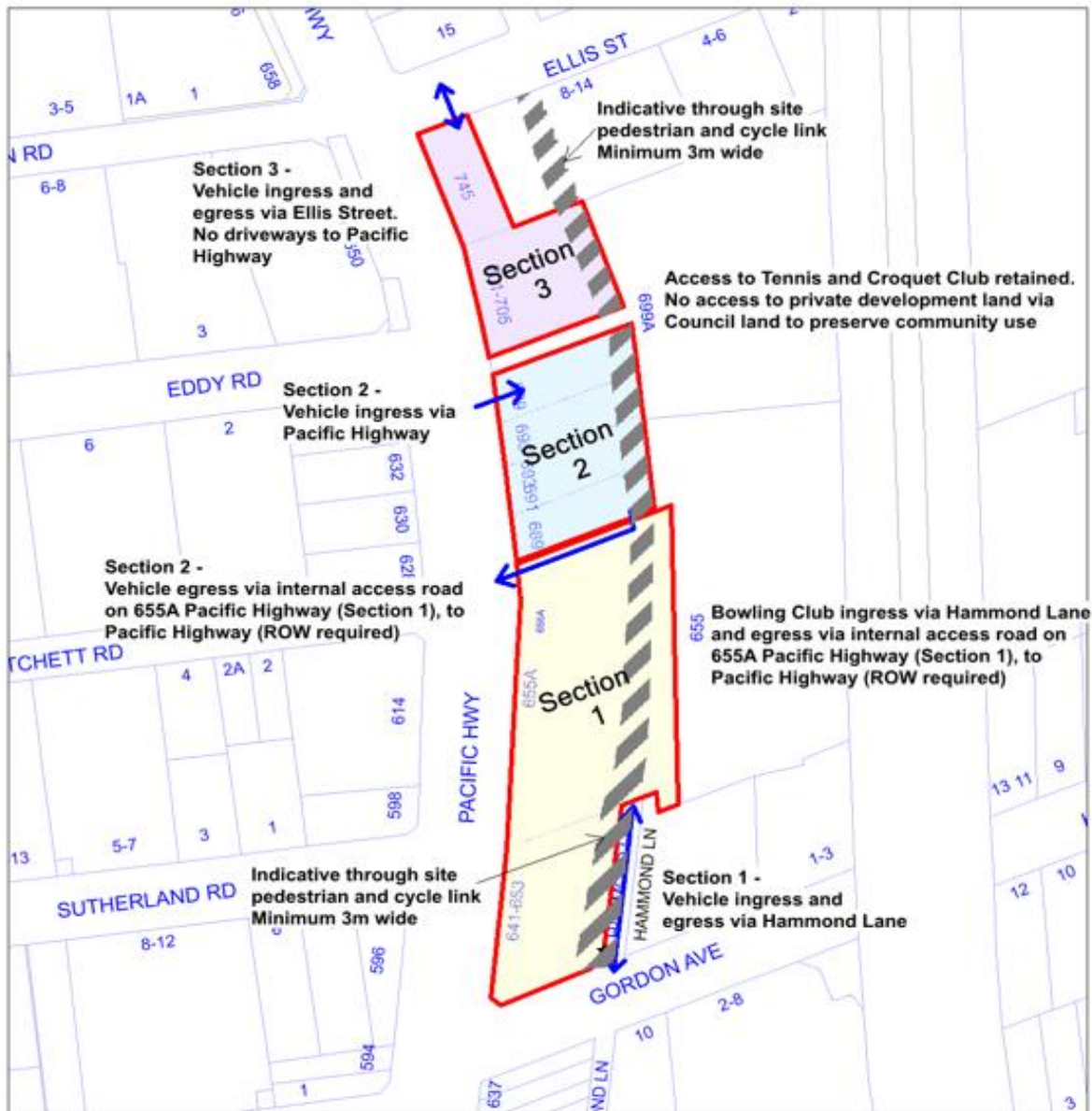
Figures

Figure 1: Precinct Map

1. General

The controls contained in this site specific Development Control Plan apply to the eastern side of Pacific Highway, between Gordon Avenue and Ellis Street, Chatswood (being 641-653, 655A, 689, 691-693, 695, 699, 701-705 and 745 Pacific Highway Chatswood).

Figure 1: Precinct Map



- 641- 655A Pacific Hwy - 689-699 Pacific Highway and 701-705 Pacific Highway and 745 Pacific Highway
- Section 1
- Section 2
- Section 3

Scale: N.T.S.

Objectives of the Plan

The aims and objectives of this Plan are to:

1. Provide Precinct guidelines for 641-653, 655A, 689, 691-693, 695, 699, 701-705 and 745 Pacific Highway Chatswood.
2. Facilitate provision of pedestrian and cycle through site links connecting with adjacent or envisioned future pedestrian and cycle links within the Chatswood CBD.
3. Minimise traffic impacts on the surrounding road network.

2. Precinct Amalgamation

Performance Criteria

1. Amalgamation shall be achieved to:
 - a) Provide the optimum development outcomes envisioned for the Chatswood CBD under the Chatswood CBD Planning and Urban Design Strategy 2036; and
 - b) Satisfy the requirements of Transport for NSW with particular regard to the Pacific Highway.

Controls

1. The Precinct is divided into three Sections, with the following sites required to be amalgamated:
 - a) Section 1
641-653 Pacific Highway and 655A Pacific Highway Chatswood.
 - b) Section 2
689 Pacific Highway. 691-693 Pacific Highway, 695 Pacific Highway and 699 Pacific Highway Chatswood.
 - c) Section 3
701-705 Pacific Highway and 745 Pacific Highway Chatswood.

Refer to Figure 1: Precinct Map

3. Links

Performance Criteria

1. Publicly accessible through site links and open space are to contribute to the liveability of the Chatswood CBD.
2. The Precinct shall provide publicly accessible north / south and east / west through site links and open space.
3. Maximise the amenity of pedestrian and cycle through site links.
4. Encourage via design public use of through site links and public rights of way.
5. The development shall be consistent with Movement and Place principles.
6. Links are to encourage comfortable and safe movement.

Controls

1. The development is to incorporate publicly accessible through site links and open space in accordance with Figure 1 above (being north / south).
2. A minimum 3m wide east / west through site link, connecting the north / south through site link with the Pacific Highway, along the northern boundary, separate of any vehicle egress.
3. A minimum 3m wide east / west through site link, connecting the north / south through site link with the Pacific Highway, between the two towers.
4. Publicly accessible through site links are to be a minimum width of 3m (with greater width encouraged).
5. Through site links are to be the subject of public rights of way.
6. Through site pedestrian links are to:
 - a) Be direct and accessible to all and have a clear line of sight between public places;
 - b) Align with breaks between buildings so that views are extended;
 - c) Be located and orientated to enhance the relationship between built form and open space.
 - d) Be easily identified by users and include wayfinding signage;
 - e) Be clearly distinguished from vehicle accessways and parking;
 - f) Include materials and finishes such as paving materials, tree planting and furniture consistent with the proposed urban quality of the precinct;
 - g) Be clear of both permanent and temporary obstructions or structures, including utility elements, advertising/promotional material, street furniture and outdoor dining.
 - h) Include lighting to provide safety, amenity, character and night time quality appropriate to the link.
 - i) Include potential for feature lighting within landscaped areas.

4. Traffic and Transport

Performance Criteria

1. Development within the Precinct must be designed to provide adequate and safe access.
2. Development within the Precinct must not cause adverse traffic impacts on the surrounding road system.
3. Minimise the number of vehicular ingress and egress points within the Precinct, with particular regard to the Pacific Highway.
4. All vehicle ingress and egress to any site is to be in a forward direction.
5. Traffic and transport solutions are to be physical (not mechanical).
6. Minimise car parking and encourage alternative active transport options.
7. Encourage a street hierarchy that supports sustainable travel behaviour.

Controls

1. For Section 1 (641-653 Pacific Highway and 655A Pacific Highway Chatswood), vehicle ingress and egress is to be via Hammond Lane.
2. Within Section 1, Chatswood Bowling Club vehicle ingress and egress is to be via Hammond Lane. To this end rights of way are to be established.

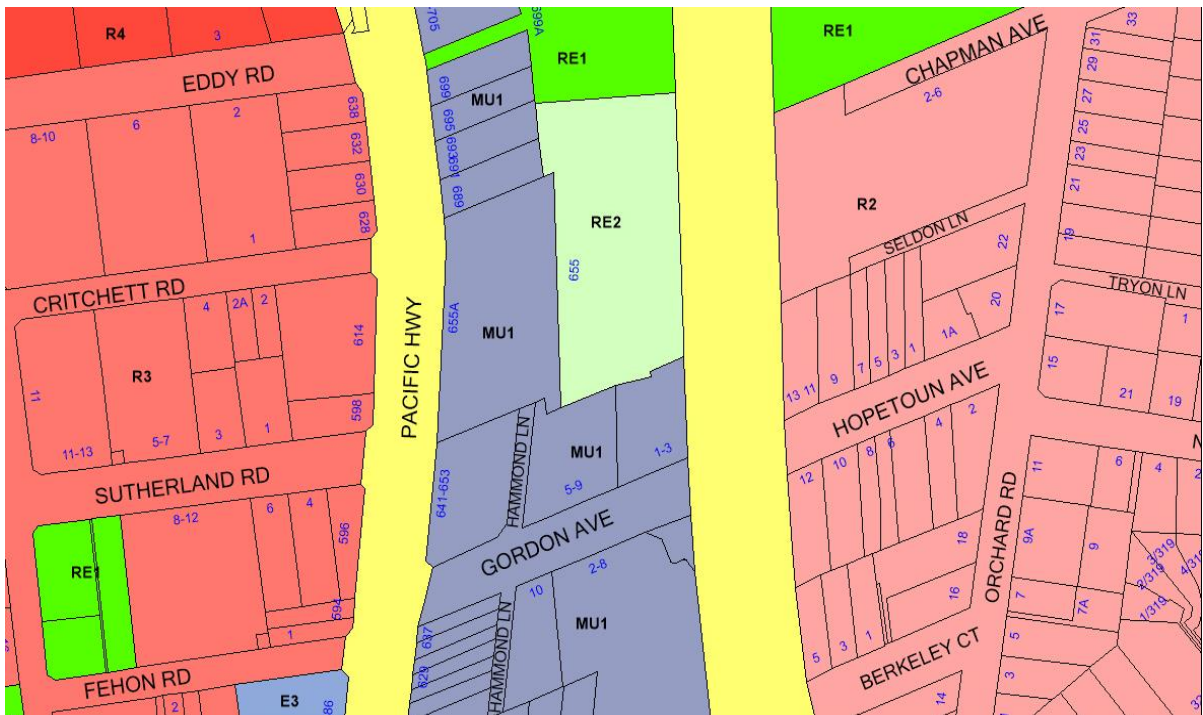
3. For Section 2 (689 Pacific Highway, 691-693 Pacific Highway, 695 Pacific Highway and 699 Pacific Highway Chatswood), vehicle ingress is to be left in via 699 Pacific Highway and egress left out via the existing internal access road located on 655A Pacific Highway. To this end rights of way are to be established.
4. The existing internal egress from 655A Pacific Highway to the Pacific Highway is to be blocked via physical measures for the exclusive use of properties to the north (identified as Section 2 in the Precinct Plan). This is not to be achieved by gates or barriers but by cul-de-sac or a similar solution whereby pedestrians are encouraged onto the site and are able to access through site links. This egress is not in any way to serve 641-653, and 655A Pacific Highway, the Chatswood Bowling Club at 655 Pacific Highway or any other vehicles from Gordon Avenue.
5. For Section 3 (701-705 Pacific Highway and 745 Pacific Highway Chatswood), vehicle ingress and egress is to be via Ellis Street.

Draft Amendments to Willoughby Local Environmental Plan 2012

641-653 and 655A Pacific Highway Chatswood

Mapping Amendments

Land Zoning Map



MU1 Mixed Use

Height of Buildings Map



AB2 = 90m

Floor Space Ratio Map



AA = 6:1

Lot Size Map



W = 5,500m²

Active Street Frontages Map



Active Street Frontage to Pacific Highway, Gordon Avenue and Hammond Lane

Special Provisions Map



Area 5: Refer to CI 6.23 Design Excellence at certain sites at Willoughby

Area 8: Minimum lot sizes for commercial development in Chatswood CBD

Affordable Housing Map



Area 1: 4%



WILLOUGHBY

Local Planning Panel

PLANNING PROPOSAL RECORD OF ADVICE

DATE OF ADVICE	14 November 2023
PANEL MEMBERS	Graham Brown (Chair), Trevor Bly, Darren Troy and Robert Freestone.
DECLARATIONS OF INTEREST	None

Electronic meeting held at Willoughby City Council on 14 November 2023.

PLANNING PROPOSAL

The proposal **PP-2022/1** seeks to amend *WLEP 2012* regarding 641-653 & 655A Pacific Highway, Chatswood NSW 2067, to facilitate a mixed use development based on the Chatswood CBD Strategy.

PANEL DISCUSSION

The Panel considered a number of issues including:

- Compliance with the strategic framework,
- Ground level public domain embellishment,
- Connection to a wider pedestrian and cycle network,
- Relationship of site with the Chatswood Bowling Club,
- Adequacy of the percentage of affordable housing to be provided,
- Precinct Plan and wider transport issues,
- Approach to vehicle access and egress,
- Traffic capacity of Gordon Avenue,
- Site access from the south, and
- Car parking and traffic generation.

PANEL ADVICE

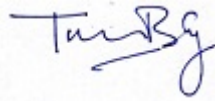
The Panel advises it is satisfied that the planning proposal is worthy of being forwarded to the DP&E for a Gateway consideration having demonstrated strategic and site specific merit. The Panel notes that the plans and documentation provided have been superseded and are to include amendments to reflect recent changes to the Council planning controls. The Panel advises the Council that it supports forwarding the planning proposal to the DP&E for a Gateway consideration as set out in the Officer's report for the following reasons:

- a) The proposal is to be consistent with Council's CBD strategy public domain vision with regard to through site links and open space embellishment.
- b) The design of the podiums should be in accordance with the podium heights in the site specific development control plan, and involve stepping and articulation to address amenity considerations for through site links and open space and achieve design excellence.
- c) The non-residential areas adjoining through site links and open space areas are to be designed to create visual interest, amenity and pedestrian activity
- d) The design of the towers should consider location (with particular regard to key public spaces), articulation, potential shadow and achieve design excellence.
- e) All parking related to the development and the Chatswood Bowling Club to be located on-site.
- f) Vehicle access and egress involving the site is to be consistent with the Precinct Plan developed by Council in consultation with Transport for NSW. In this regard the existing Pacific Highway egress point on 655A Pacific Highway is not to be utilised by the subject site, is to be consistent with the Precinct Plan and therefore utilised solely by properties to the north via a right of way.
- g) The physical blocking of the internal vehicle access from Hammond Lane through to the Pacific Highway for 641-655A Pacific Highway is to involve measures that continue to invite pedestrian access to publicly accessible through site links and open space (cul-de-sac or similar and not barriers or gates).

PANEL MEMBERS



GRAHAM BROWN (CHAIR)



TREVOR BLY



DARREN TROY



ROBERT FREESTONE

Deed

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

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

Willoughby City Council

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

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

Executed Date: [Insert Date]

Signature of Council CEO

** Electronic signature of me,

affixed by me, or at my direction,
on _____

Signatures of Landowner 1

* Electronic signature of me,

affixed by me, or at my direction, on

Signatures of Landowner 2

* Electronic signature of me,

affixed by me, or at my direction,
on _____

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

Table of Contents

Table of Contents	2
Summary Sheet	5
Regulatory Compliance Tables.....	6
Parties	9
Background	9
Operative provisions	9
Part 1 – Preliminary	9
1 Interpretation	9
2 Status of this Deed	13
3 Commencement	13
4 Application of this Deed	14
5 Warranties	14
6 Further agreements.....	14
7 Surrender of right of appeal, etc.....	14
8 Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development	14
9 Provision of Development Contributions	14
Part 2 – Provisions relating to monetary contributions	15
10 Payment of monetary Development Contributions	15
Part 3 – Provisions relating to Public Access Easement and Egress Easement	15
11 Preparation of registrable form of instrument.....	15
12 Procedure for registration of easements	16
13 Acquisition of easement	16
Part 4 – Provisions relating to carrying out of Work	17
14 Not used	17
15 Not used	17
16 Not used	17
17 Not used	17
18 Not used	17
19 Not used	17
20 Not used	17
21 Not used	17
22 Not used	17
23 Not used	17
24 Not used	17
Part 5 – Dispute Resolution.....	17
25 Dispute resolution – expert determination	17

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

Willoughby City Council

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

26	Dispute Resolution - mediation	18
Part 6 - Enforcement		18
27	Security for performance of obligations.....	18
28	Not used	19
29	Not Used	19
30	Not used	19
31	Breach of obligations.....	19
32	Enforcement in a court of competent jurisdiction	20
Part 7 – Registration & Restriction on Dealings		20
33	Registration of this Deed	20
34	Restriction on dealings	21
Part 8 – Indemnities & Insurance		22
35	Risk.....	22
36	Not used	22
37	Not used	22
38	Not used	22
Part 9 – Other Provisions		22
39	Confidentiality	22
40	Annual report by Landowner	23
41	Review of Deed	23
42	Notices	23
43	Approvals and Consent.....	24
44	Costs	24
45	Entire Deed	24
46	Further Acts.....	24
47	Notations on section 10.7(2) Planning Certificates	24
48	Governing Law and Jurisdiction	25
49	Joint and Individual Liability and Benefits	25
50	No Fetter	25
51	Illegality	25
52	Severability.....	25
53	Amendment.....	25
54	Waiver	26
55	GST	26
56	Explanatory Note.....	27
57	Electronic Execution.....	27
Schedule 1		29

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

Willoughby City Council

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

Schedule 2 31

Schedule 3 33

Schedule 4 34

Schedule 5 39

Schedule 6 45

Execution 57

DRAFT

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

Willoughby City Council

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

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

Summary Sheet

Council:

Name: Willoughby City Council

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

Telephone: (02) 9777 1000

Email: email@willoughby.nsw.gov.au

Representative: Chief Executive Officer (CEO)

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

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

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

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

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

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

Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S7.4(1)	'Planning Authority'	Council
	'Developer'	Landowner
	Development Contributions	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(1), (2)	Public Purpose	See column 2 of Schedule 2
S7.4(3)(a)	Land	See Definition of 'Land' in clause 1.1
S7.4(3)(b)(i)	Instrument Change	See definition of 'LEP Amendment' in clause 1.1
S7.4(3)(b)(ii)	Development	See definition of 'Development' in clause 1.1
S7.4(3)(c)	Details of Developer's Provision	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(3)(d)	Whether s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act Apply to the Development	See clause 8
S7.4(3)(e)	Whether Benefits under this Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11	The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development' See clause 8
S7.4(3)(f)	Mechanism for the Resolution of Disputes under the Agreement	See Part 5
S7.4(3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See clause 13 and Part 6
S7.4 (10)	Conformity of Agreement with Act, Environmental Planning	Yes

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

Willoughby City Council

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

	Instruments, & Development Consents Applying to the Land	
S7.5	Public Notice & Public Inspection of Draft Agreement	Yes
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?	No
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?	Yes

Table 2 – Provisions of Regulation

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

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

Willoughby City Council

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

2021	work is issued?	
Clause 48 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021	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?	Yes

Table 3 – Ministerial Directions

Direction	Requirement	Compliance
N/A	N/A	N/A

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

Willoughby City Council

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

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

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

Parties

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

and

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

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

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

Background

- A A Planning Proposal has been lodged to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land.
- B Future Development Applications are proposed to be lodged to carry out the Development on the Land.
- C The Landowner offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the carrying out of Development.

Operative provisions

Part 1 – Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like and includes, without limitation, a Development Consent and a Certificate under Part 6 of the Act.

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

Willoughby City Council

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

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council on terms acceptable to the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

Construction Certificate has the same meaning as in the Act.

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

Contribution Rate means \$765 per square metre

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

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

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

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

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

Willoughby City Council

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

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

Final Lot means:

- (a) any lot created in the Development for separate occupation and disposition, or
- (b) any lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council.

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

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

GST has the same meaning as in the GST Law.

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

Gross Floor Area has the meaning as the LEP.

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

Land means the land specified or described in Item 1 of Schedule 1, being Strata Plan 12238 and Strata Plan 57067.

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

LEP means the *Willoughby Local Environmental Plan 2012*.

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

Map means the map in Schedule 3.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Plan of Subdivision means:

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

Willoughby City Council

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

- (a) a plan of subdivision within the meaning of s195 of the *Conveyancing Act 1919*, or
- (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes Development Act 2015*

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

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

Rectify means rectify, remedy or correct.

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

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

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

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

Subdivision Certificate has the same meaning as in the Act.

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

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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

- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of Cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

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

4 Application of this Deed

4.1 This Deed applies to the LEP Amendment , Land and to the Development.

5 Warranties

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

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

7 Surrender of right of appeal, etc.

7.1 Subject to clause 7.2 the Landowner is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

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

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

8.1 This Deed does not exclude the application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development to the extent provided for in Items 4, 5 and 6 in Schedule 1 respectively.

8.2 The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development. Refer to item 7 in Schedule 1.

9 Provision of Development Contributions

9.1 The Landowner is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.

9.2 [Not used.]

9.3 [Not used.]

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

- 9.4 The Council is to apply each Development Contribution made by the Landowner under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.5 Despite clause 9.4, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

Part 2 – Provisions relating to monetary contributions

10 Payment of monetary Development Contributions

- 10.1 The parties acknowledge and agree that, as at the date of this Deed:
 - 10.1.1 if the LEP Amendment takes effect in its current form as at the date of this Deed, 22,400 square metres of Residential GFA will be available on the Land in addition to what is currently permitted under the LEP; and
 - 10.1.2 the Development Contributions specified in Schedule 2 have been calculated on the basis of the Contribution Rate and that 22,400 square metres of additional Residential GFA is capable of being approved by a Development Consent applying to the Land if the LEP Amendment takes effect.
- 10.2 Notwithstanding anything in clause 10.1, the Landowner is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part.
- 10.3 The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with the index specified in Item 9 of Schedule 1.
- 10.4 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

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

11 Preparation of registrable form of instrument

- 11.1 The Landowner is to register the Public Access Easement and Egress Easement free of Cost to the Council in the manner and at the time or times specified in Part C of Schedule 2.
- 11.2 Prior to lodging the Public Access Easement or Egress Easement for registration, the Landowner is to provide to the Council, for the Council's approval:
 - 11.2.1 the registrable form of the instrument creating the Public Access Easement or Egress Easement duly executed by the registered proprietor of the Land and all persons required by the Registrar-General to sign such instrument; and

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

11.2.2 the written consent of such persons as required by the Registrar-General to give consent to the registration of the easement.

11.3 The Landowner is not to lodge the registrable form of the instrument creating the Public Access Easement or Egress Easement for registration unless and until it has obtained the Council's written approval to the instrument. Council is to act reasonably and promptly in providing the written approval to the instrument.

12 Procedure for registration of easements

12.1 The Public Access Easement and Egress Easement are registered for the purposes of this Deed when a deposited plan and accompanying instrument under s88B of the Conveyancing Act, as set out in Schedule 4 and 5, has been registered with the Registrar-General on the title of the Land creating the easement.

12.2 The parties are to do all things reasonably necessary to enable registration of the relevant instrument to occur, including attending to any steps required in electronic form, if required.

13 Acquisition of easement

13.1 If the Landowner does not register the Public Access Easement or Egress Easement at the time at which it is required to be registered, the Landowner consents to the Council compulsorily acquiring the Public Access Easement or Egress Easement (as the case may be) for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.

13.2 The Council is to only acquire the Public Access Easement or Egress Easement pursuant to clause 13.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to register the Public Access Easement or Egress Easement as the case may be.

13.3 The Landowner agrees that:

13.3.1 clause 13.1 is an agreement between the Council and the Landowner for the purposes of section 30 of the Just Terms Act; and

13.3.2 in clause 13.1, the Landowner has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

13.4 If, as a result of the acquisition referred to in clause 13.1, the Council is required to pay compensation to any person other than the Landowner the Landowner is to reimburse the Council that amount, upon a written request being made by the Council.

13.5 The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

13.6 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause, including without limitation:

13.6.1 signing any documents or forms,

13.6.2 giving land owner's consent for lodgement of any Development Application,

13.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and

13.6.4 paying the Council's Costs arising under this clause 13.

Part 4 – Provisions relating to carrying out of Work

14 Not used

15 Not used

16 Not used

17 Not used

18 Not used

19 Not used

20 Not used

21 Not used

22 Not used

23 Not used

24 Not used

Part 5 – Dispute Resolution

25 Dispute resolution – expert determination

25.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:

25.1.1 the Parties to the Dispute agree that it can be so determined, or

25.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.

- 25.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 25.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 25.6 Each Party is to bear its own Costs arising from or in connection with the appointment of the expert and the expert determination.
- 25.7 The Parties are to share equally the Costs of the President, the expert, and the expert determination.

26 Dispute Resolution - mediation

- 26.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 25 applies.
- 26.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 26.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 26.6 Each Party is to bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.
- 26.7 The Parties are to share equally the Costs of the President, the mediator, and the mediation.

Part 6 - Enforcement

27 Security for performance of obligations

- 27.1 The Landowner is to provide the Council with Security in the amount specified in Item 12 of Schedule 1 to secure the performance of such of the Landowner's obligations under this Deed as are specified or described in Item 13 of Schedule 1.
- 27.2 The Security is to be provided at the time specified in Item 14 of Schedule 1.
- 27.3 The amount of the Security is to be indexed from the date of this Deed in accordance with the index specified in Item 15 of Schedule 1.

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

Willoughby City Council

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

- 27.4 The Council is to release and return the Security or any unused part of it to the Landowner within 14 days of compliance by the Landowner of its obligations specified or described in Item 13 of Schedule 1 to this Deed to the reasonable satisfaction of the Council.
- 27.5 The Landowner may at any time provide the Council with a replacement Security.
- 27.6 On receipt of a replacement Security, the Council is to release and return to the Landowner, as directed, the Security it holds that has been replaced.
- 27.7 The Council may call-up the Security if it reasonably considers that the Landowner has not complied with its obligations under this Deed specified in Item 13 of Schedule 1.
- 27.8 However, the Council is not to call-up the Security unless:
- 27.8.1 it has given the Landowner not less than 30 days' notice of its intention to do so and particulars of why it intends to do so, and
- 27.8.2 the Landowner has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 27.9 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any Costs incurred by it in remedying the non-compliance including but not limited to:
- 27.9.1 the reasonable Costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 27.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 27.9.3 all legal Costs and expenses reasonably incurred by the Council, by reason of the Landowner's non-compliance.
- 27.10 If the Council calls-up the Security, it may, by notice in writing to the Landowner, require the Landowner to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 27.11 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.

28 Not used

29 Not Used

30 Not used

31 Breach of obligations

- 31.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Deed, it may give a written notice to the Landowner:
- 31.1.1 specifying the nature and extent of the breach,
- 31.1.2 requiring the Landowner to:
- (a) Rectify the breach if it reasonably considers it is capable of rectification, or

- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 31.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 31.2 If the Landowner fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Landowner, call-up the Security provided under this Deed and apply it to remedy the breach.
- 31.3 Any Costs incurred by the Council in remedying a breach in accordance with clause 31.2 may be recovered by the Council by either or a combination of the following means:
 - 31.3.1 by calling-up and applying the Security provided under this Deed, or
 - 31.3.2 as a debt due in a court of competent jurisdiction.
- 31.4 For the purpose of clause 31.3, the Council's Costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
 - 31.4.1 the Costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 31.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 31.4.3 all legal Costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.5 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Landowner, including but not limited to seeking relief in an appropriate court.

32 Enforcement in a court of competent jurisdiction

- 32.1 Subject only to clauses 25 and 26, the Parties may enforce this Deed in any court of competent jurisdiction.
- 32.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 32.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 32.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 7 – Registration & Restriction on Dealings

33 Registration of this Deed

- 33.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 33.2 On the date of commencement of this Deed, the Landowner is to deliver to the Council in registrable form:

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

Willoughby City Council

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

- 33.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner and any other person required by the Registrar-General to execute such instrument, and
- 33.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 33.3 The Landowner at its Cost is to:
 - 33.3.1 subject to clause 33.5, lodge the instrument requesting registration of this Deed with NSW Land Registry Services for registration within 5 business days of the commencement of this Deed,
 - 33.3.2 do such other things as are reasonably necessary to enable registration of this Deed to occur, and
 - 33.3.3 provide the Council with evidence of registration within 5 days of being notified by the NSW Land Registry Services of such registration.
- 33.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 33.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 33.4.2 in relation to any other part of the Land, once the Landowner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.
- 33.5 If NSW Land Registry Services notifies the Council or the Landowner in writing that it requires Council to lodge the request for registration, then Council is to lodge the request and do such other things as are reasonably necessary to enable registration of this Deed to occur at the Landowner's Cost.

34 Restriction on dealings

- 34.1 The Landowner is not to:
 - 34.1.1 sell or transfer the Land, other than a Final Lot, or
 - 34.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed, to any person unless:
 - 34.1.3 the Landowner has, at no Cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Landowner's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council generally in the terms of the Novation Deed included in Schedule 6, and
 - 34.1.4 the Landowner is not in breach of this Deed, and
 - 34.1.5 if the proposed assignee or transferee is not Goldfields Central No. 4 Pty Ltd the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 34.2 Subject to clause 34.3, the Landowner acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 34.1.
- 34.3 Clause 34.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale or to a sale, transfer or assignment to another Landowner.

Part 8 – Indemnities & Insurance

35 Risk

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

36 Not used

37 Not used

38 Not used

Part 9 – Other Provisions

39 Confidentiality

39.1 The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.

39.2 The Parties acknowledge that:

39.2.1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and

39.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.

39.3 Subject to clause 39.4 and 39.5, each Party agrees:

39.3.1 not to disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and

39.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access.

39.4 A Party may disclose Confidential Information in the following circumstances:

39.4.1 in order to comply with the Law, or

39.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.

39.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

40 Annual report by Landowner

- 40.1 The Landowner is to provide to the Council by no later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 40.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

41 Review of Deed

- 41.1 The Parties agree to review this Deed periodically as specified in Item 17 of Schedule 1, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 41.2 For the purposes of clause 41.1, the relevant changes include (but are not limited to):
 - 41.2.1 any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development,
 - 41.2.2 where the maximum Residential GFA approved by a Development Consent for the Development differs by more than 20% (whether higher or lower) from the additional 22,400 square metres of Residential GFA available on the Land following the LEP Amendment, ,
 - 41.2.3 the lapsing of the Development Consent to the Development pursuant to section 4.53 of the Act,
 - 41.2.4 a Party becoming unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this Deed.
- 41.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 41.1 the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 41.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 41.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 41.1 (but not 41.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

42 Notices

- 42.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 42.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 42.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 42.2 If a Party gives the other Party 3 business days' notice of a change of its address, or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, or emailed to the latest address.
- 42.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

- 42.3.1 delivered, when it is left at the relevant address,
 - 42.3.2 sent by post, 2 business days after it is posted, or
 - 42.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 42.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

43 Approvals and Consent

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

44 Costs

- 44.1 The Landowner is to pay Council all reasonable Costs of preparing, negotiating, executing, stamping and registering this Deed, and any charge, caveats or other documents related to this Deed within 28 days of a written demand by the Council for such payment. If required, Council can provide an estimate of its legal Costs and provide updates of the associated Costs as the matter progresses.
- 44.2 The Landowner is also to pay to the Council the Council's reasonable Costs of implementing, monitoring and enforcing this Deed within 28 days of a written demand by the Council for such payment.

45 Entire Deed

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

46 Further Acts

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

47 Notations on section 10.7(2) Planning Certificates

- 47.1 The Landowner acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under

section 10.7(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.

48 Governing Law and Jurisdiction

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

49 Joint and Individual Liability and Benefits

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

50 No Fetter

- 50.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

51 Illegality

- 51.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

52 Severability

- 52.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 52.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

53 Amendment

- 53.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 203(5) of the Regulation.

54 Waiver

- 54.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 54.2 A waiver by a Party is only effective if it:
- 54.2.1 is in writing,
 - 54.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 54.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 54.2.4 is signed and dated by the Party giving the waiver.
- 54.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 54.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 54.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

55 GST

- 55.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 55.2 Subject to clause 55.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 55.3 Clause 55.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 55.4 No additional amount shall be payable by the Council under clause 55.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

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

- 55.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 55.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 55.5.2 that any amounts payable by the Parties in accordance with clause 55.2 (as limited by clause 55.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 55.6 No payment of any amount pursuant to this clause 55, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 55.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 55.8 This clause continues to apply after expiration or termination of this Deed.

56 Explanatory Note

- 56.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.
- 56.2 Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

57 Electronic Execution

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

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

Willoughby City Council

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

provided that in each of the above cases, words to the effect of '*Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]*' are also included on the Deed; or

57.3.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Deed; or

57.3.5 as otherwise agreed in writing between the Parties.

DRAFT

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

Willoughby City Council

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

Schedule 1

(Clause 1.1)

Item 1	Land	The land identified as such on the Map, which includes all of the land subject to Strata Plan 12238 and Strata Plan 57067.
Item 2	Planning Proposal	<p>Planning proposal (Council's Ref: PP2022/1; ePlanning Portal Ref: PP-2022-822) which seeks to amend the <i>Willoughby Local Environmental Plan 2012</i> as it applies to the Land including as follows:</p> <ul style="list-style-type: none"> • Land is rezoned from R3 Medium Density to MU1 Mixed Use. • maximum building height development standard is amended from 12 metres to 90 metres. • maximum Floor Space Ratio (FSR) development standard is amended from 0.9:1 to 6:1. • Land is identified as subject to clause 4.4A(14) of the Comprehensive LEP Amendment. This clause requires land zoned MU1 Mixed Use to contain a minimum non-residential floor space component calculated at 17% of the maximum FSR. • Land is identified on the LEP Affordable Housing Map such that clause 6.8 (Affordable Housing) applies. This clause requires development for the erection of residential accommodation to provide affordable housing dwellings (or payment of a monetary contribution to the consent authority) equivalent to 4% of the accountable total floor space (being the residential component) • Land is identified as within "Area 5" on the LEP Special Provisions area Map such that clause 6.23 (design excellence at certain sites in Willoughby) applies. • Land as identified on the LEP lot size map requiring minimum lot size of 5,500m² • Land is identified on the Active Street Frontages Map to provide active street frontages to Gordon Avenue and Hammond Lane.
Item 3	Development	The development proposed on the Land the subject of the Planning Proposal, being a mixed-use development comprising residential and commercial uses authorised by Development Consent and permitted as a consequence of the LEP Amendment.
Item 4	Application of S7.11	Section 7.11 of the Act is not excluded.
Item 5	Application of S7.12	Section 7.12 of the Act is not excluded.
Item 6	Application of Division 7.1, Subdivision 4,	Division 7.1, Subdivision 4, of the Act is not excluded.
Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development	<p>The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development</p> <p>See clause 8</p>

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

Willoughby City Council

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

	Contribution under s7.11	
Item 8	Indexation of Contribution Values	N/A
Item 9	Indexation of Monetary Development Contributions	<p>The monetary Development Contributions specified in Schedule 2 of this Deed will be indexed quarterly from the date of this Deed (the "Indexation Date").</p> <p>This will be done in accordance with the following formula:</p> <p>Indexed monetary contribution = $A \times B/C$</p> <p>Where A is the value of the monetary Development Contribution applicable immediately before the Indexation Date</p> <p>B is the CPI last published at the quarter ending immediately before the date of payment; and</p> <p>C is the CPI last published at the quarter ending immediately before the Indexation Date</p>
Item 10	Access to Council owned or controlled land	N/A
Item 11	Defects Liability Period	N/A
Item 12	Security	\$1,199,520.
Item 13	Obligations to which Security Relates	For registration of this Deed on title and payment of first instalment of monetary Development Contributions.
Item 14	Timing of Security	Upon commencement of this Deed.
Item 15	Indexation of Security	Security to be indexed in the same way that monetary Development Contributions are indexed in Item 9 of this schedule except that references to 'monetary Development Contributions' are replaced with a reference to 'Security'
Item 16	Costs	See Clause 44
Item 17	Review of Deed	Every 2 years

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

Schedule 2

(Clause 9)

Development Contributions

Table

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

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

Willoughby City Council

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

C. Registration of Easements

1. Registration of Public Access Easement

Public Access

The granting and registration of a Public Access Easement on title to the Land.

Prior to the issuing of the first Occupation Certificate that authorises the occupation or use of any floor area which forms part of the Residential GFA of the Development on the Land or registration of a new Strata Plan for the Development on the Land whichever is the earlier, or such other time agreed by Council in writing.

2. Registration of Egress Easement

Public Access

The granting and registration of an Egress Easement on the title to the Land.

Prior to the issuing of the first Occupation Certificate that authorises the occupation or use of any floor area which forms part of the Residential GFA on the northern boundary of the Development, or such other time agreed by Council in writing

DRAFT

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

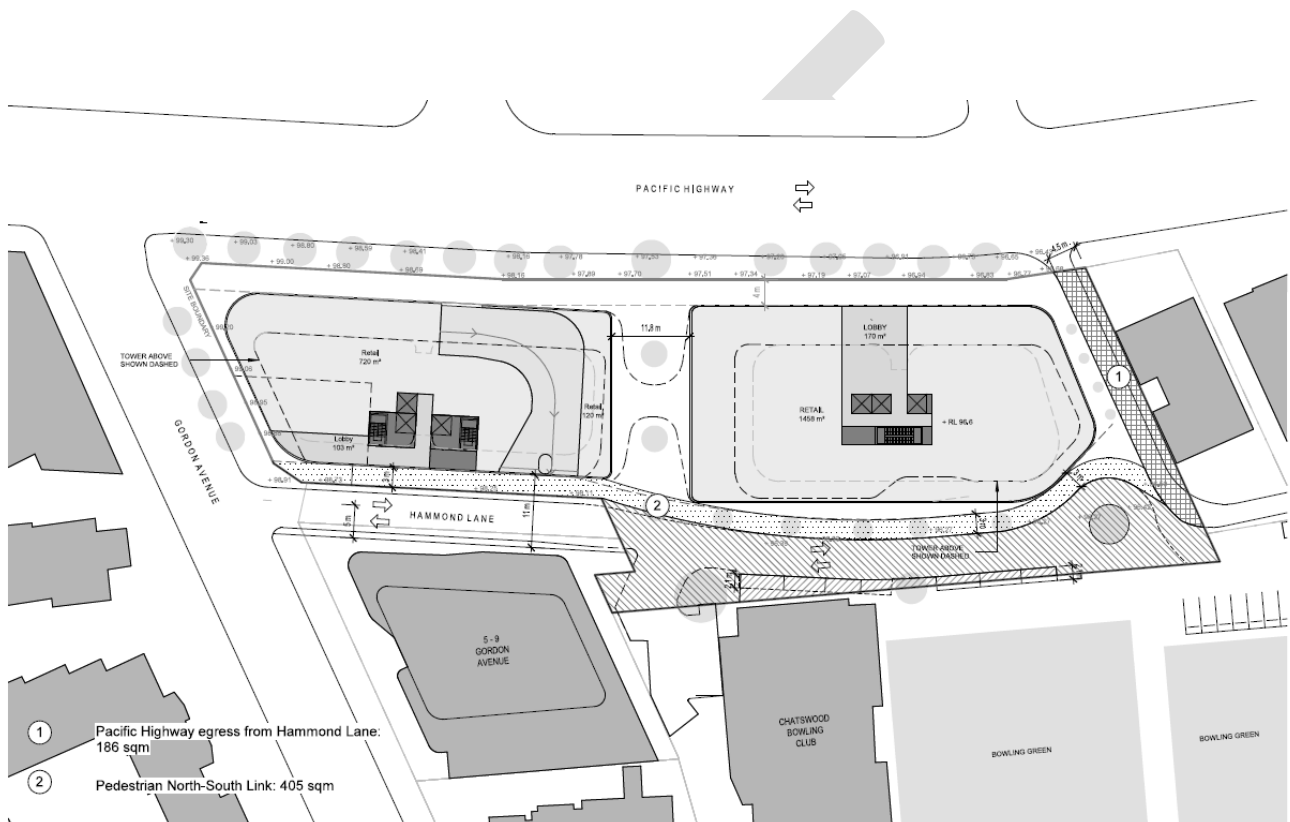
Willoughby City Council

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

Schedule 3

(Clause 1.1)

Map



641 & 655A Pacific Highway,
Chatswood

Drawing:
Drawing no:
Issue:
Scale @ A3:
Date:

Annexure B plan
A22
1 : 500
07/09/23



Architectus Sydney
Level 18 MLC Centre
19 Martin Place
Sydney NSW 2000
sydney@architectus.com.au

architectus

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

Schedule 4

Public Access Easement Terms

88B Instrument

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

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

Plan: *[Insert new deposited plan name]*

Full name and address of the owner of the land

Lot *[#]* in Deposited Plan *[##]* *[Insert the name of the landowner]*

[Insert address of the landowner]

Part 1 (Creation)

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

Part 2 (Terms)

1 DICTIONARY

1.1 Interpretation

In this instrument:

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

1.1 Risk

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

1.2 Successors bound

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

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

Willoughby City Council

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

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

1.3 Statutory discretion

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

1.4 Notice to Grantor and Occupiers

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

1.5 Severability

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

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

2.1 Easement

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

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

Willoughby City Council

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

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

2.2 Varying the easement etc.

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

The Grantor and the Council jointly.

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

Willoughby City Council

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

3 Terms of restriction on use numbered 2 in the plan

3.1 Restriction on use

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

3.2 Release etc.

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

Council.

DRAFT

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

Schedule 5

Egress Easement Terms

88B Instrument

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

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

Plan:

[Insert new deposited plan name]

Full name and address of the owner of the land

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

[Insert the name of the landowner]

[Insert address of the landowner]

Part 1 (Creation)

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

Part 2 (Terms)

1 DICTIONARY

1.1 Interpretation

In this instrument:

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

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

Willoughby City Council

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

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

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

1.2 Successors bound

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

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

1.3 Statutory discretion

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

1.4 Notice to Grantor and Occupiers

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

1.5 Severability

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

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

Willoughby City Council

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

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

2.1 Grant of Easement

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

2.2 Commencement of Easement

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

2.3 Easement

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

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

Willoughby City Council

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

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

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

2.4 Varying terms of the easement etc.

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

Grantor and Council jointly.

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

Willoughby City Council

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

3 Terms of restriction on use numbered 2 in the plan

3.1 Restriction on use

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

3.2 Release, etc.

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

Council.

DRAFT

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

Schedule 6

(clause 34)

Novation Deed

(see following pages)

DRAFT

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

Deed of Novation

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

Willoughby City Council

and

[Insert name of Existing Party]

and

[Insert name of Incoming Party]

and

[Insert name of Continuing Party]

Dated:

[Insert Date]

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

Summary Sheet

Council:

Name: Willoughby City Council

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

Telephone: (02) 9777 1000

Email: email@willoughby.nsw.gov.au

Representative: Chief Executive Officer (CEO)

Existing Party:

Name: [Drafting Note: Insert name]

Address: [Drafting Note: Insert address]

Telephone: [Drafting Note: Insert contact number]

Email: [Drafting Note: Insert contact email]

Representative: [Drafting Note: Insert name]

Incoming Party:

Name: [Drafting Note: Insert name]

Address: [Drafting Note: Insert address]

Telephone: [Drafting Note: Insert contact number]

Email: [Drafting Note: Insert contact email]

Representative: [Drafting Note: Insert name]

Continuing Party:

Name: [Drafting Note: Insert name]

Address: [Drafting Note: Insert address]

Telephone: [Drafting Note: Insert contact number]

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

Willoughby City Council

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

Email: [Drafting Note: Insert contact email]

Representative: [Drafting Note: Insert name]

DRAFT

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

Willoughby City Council

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

Deed of Novation

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

Parties

Council

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

Existing Party

[Insert details]

Incoming Party

[Insert details]

Continuing Party

[Insert details of any continuing party]

Background

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

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

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

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

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

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

Operative provisions

1 Definitions & Interpretation

Definitions

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

Table

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

Interpretation

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

2 Commencement

- 2.1 This Deed commences and has effect on and from the date when the Parties have:
- 2.1.1 all executed the same copy of this Deed, or
 - 2.1.2 each executed separate counterparts of this Deed and exchanged, whether by physical or electronic transmission of, the counterparts.
- 2.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

3 Novation of Planning Agreement

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

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

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

Willoughby City Council

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

3.2 With effect from the Effective Date:

3.2.1 all references to the Existing Party in the Planning Agreement are construed as references to the Incoming Party, and

3.2.2 the Council must address all notices and communications given or made by it under the Planning Agreement to the Incoming Party using the address noted on the Summary Sheet to this Deed for the Incoming Party.

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

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

3.3.1 the Incoming Party taken to be a party to the Planning Agreement,

3.3.2 the Incoming Party is bound by the Planning Agreement to perform all of the obligations imposed on the Existing Party in the Planning Agreement,

3.3.3 the Incoming Party is entitled to the benefit of the Planning Agreement as if the Incoming Party was a Party to the Planning Agreement when it was entered into.

3.4 With effect from the Effective Date:

3.4.1 the definition of 'Landowner' in the Planning Agreement is taken to include the Incoming Party, and

3.4.2 the Council must address all notices and communications given or made by it under the Planning Agreement to the Incoming Party using the address noted on the Summary Sheet to this Deed for the Incoming Party.

4 Affirmation of Planning Agreement

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

4.2 Subject to this Deed:

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

4.2.2 until the Effective Date, the Existing Party must continue to properly and punctually observe and perform all of the Existing Party's obligations both future, actual and contingent under the Planning Agreement.

5 Council Satisfaction

5.1 For the purposes of clause 34.1.3 of the Planning Agreement, the Council confirms that:

5.1.1 this Deed is the deed in favour of the Council referred to in that clause,

5.1.2 the Council is satisfied that the Incoming Party is reasonably capable of performing the obligations under the Planning Agreement.

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

6 Representations & Warranties

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

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

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

8 General

Costs and Stamp Duty

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

GST

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

Further acts

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

Entire Deed

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

Amendment

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

Governing law and jurisdiction

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

Severability

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

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

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

Electronic Execution

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

Execution

Executed as a Deed.

Dated:

Executed by the Council:

[Insert execution clause]

Executed by the Existing Party:

[Insert execution clause]

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

Willoughby City Council

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

Executed by the Incoming Party:

[Insert execution clause]

Executed by the Continuing Party:

[Insert execution clause]

[End of Novation Deed]

DRAFT

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

Willoughby City Council

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

Execution

Executed as a Deed

Dated:

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

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

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

Signature of CEO

Signature of Witness

Name of CEO

Name of Witness

Address of Witness

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

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

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

Willoughby City Council

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

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

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

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

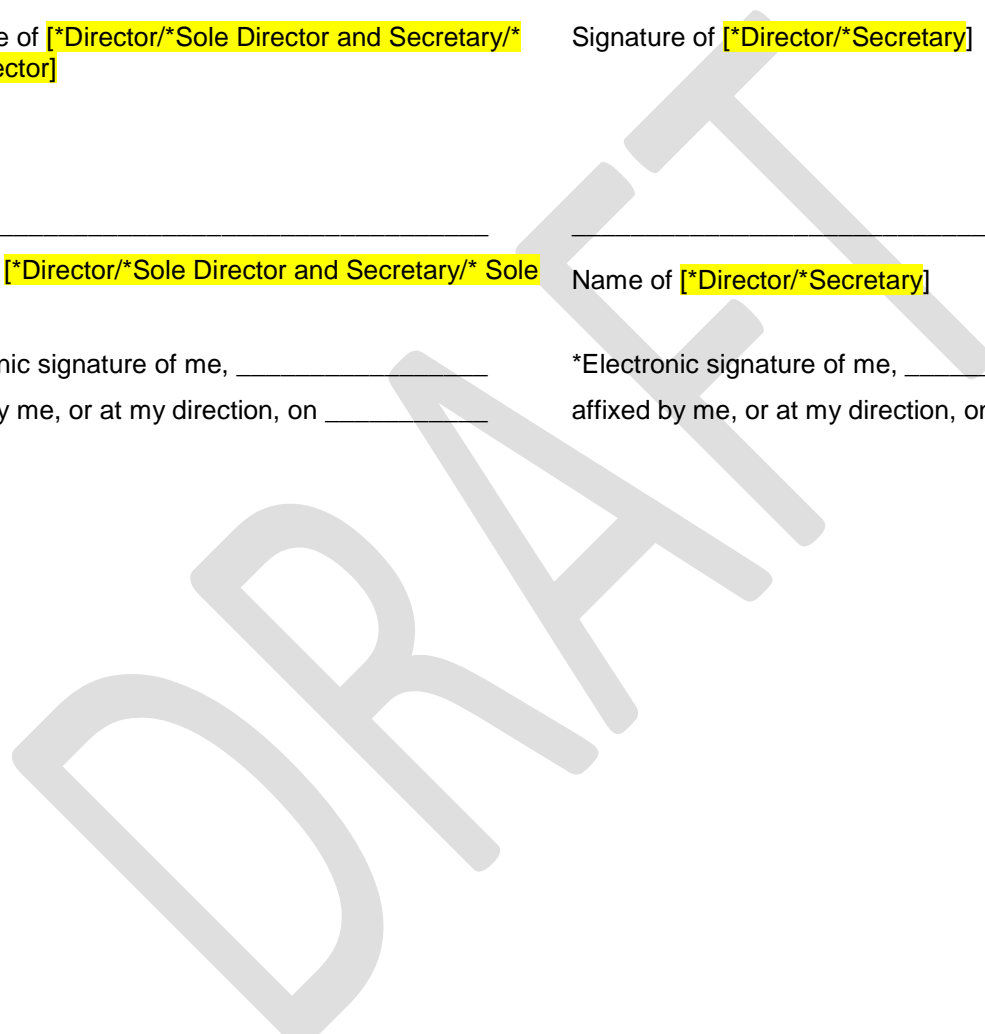
Signature of [*Director/*Secretary]

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

Name of [*Director/*Secretary]

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

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



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

Willoughby City Council

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

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

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

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

Signature of [*Director/*Secretary]

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

Name of [*Director/*Secretary]

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

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

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

Explanatory Note

Environmental Planning & Assessment Regulation 2021 (clause 205)

Draft Planning Agreement

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

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

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

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

Parties

Willoughby City Council

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

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

Description of the Land to which the Draft Planning Agreement Applies

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

Description of Proposed Development

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

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

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

Willoughby City Council

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

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

(Planning Proposal)

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

Objectives of Draft Planning Agreement

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

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

Nature of Draft Planning Agreement

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

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- is in connection with an amendment to the LEP relating to the Planning Proposal
- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Landowners,
- does not exclude the application of s7.11, s7.12 or Division 7.1, Subdivision 4 of the Act to the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- provides for the payment of monetary contributions by the Landowners in instalments

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

Willoughby City Council

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

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

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development,
- provides for additional monetary contributions by a developer to the Council to be used for public purposes, in addition to other development contributions under s7.11 or s7.12 and Division 7.1, Subdivision 4 of the Act required for the proposed Development on the land to which it applies.
- Provides for easements to improve public access.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3 of the Act.

Impacts of the Planning Agreement on the Public

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

For Planning Authorities:

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

N/A

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

N/A

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

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

- keeping the local and wider community informed about its activities,
- providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

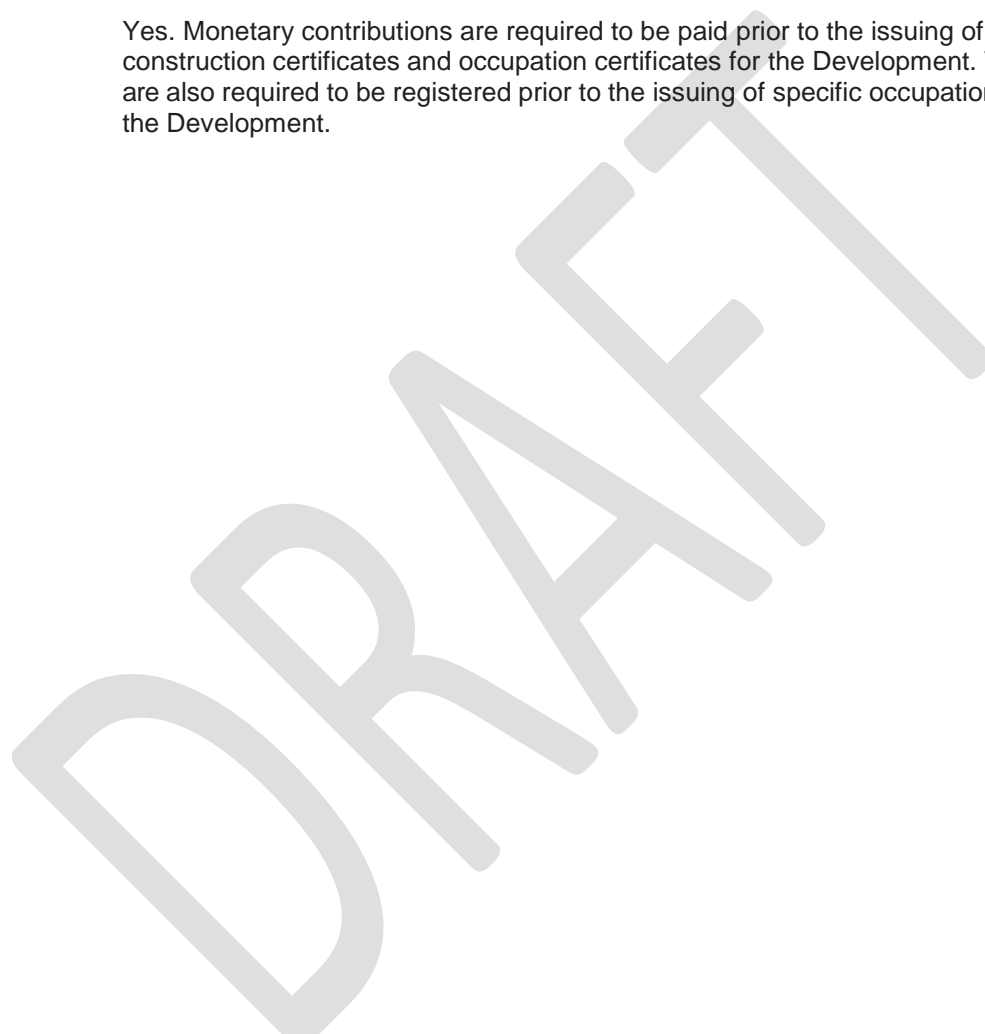
[Drafting Note: Landowners of 641-655 and 655A Pacific Highway Chatswood as at the date of execution, being either The Owners – Strata Plan No. 12338 and The Owners - Strata Plan No. 5707 or Goldfields Central No. 4 Pty Ltd ACN 632 246 327]

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

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

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

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



Signature of Council CEO

** Electronic signature of me,

affixed by me, or at my direction,
on _____

Signatures of Landowner 1

* Electronic signature of me,

affixed by me, or at my direction, on

Signatures of Landowner 2

* Electronic signature of me,

affixed by me, or at my direction, on
