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Willoughby Planning Agreement Policy

2026

WILLOUGHBY CITY COUNCIL
City of Diversity



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7/10/2026	-	Reported draft to Council to proceed with public exhibition alongside the draft Willoughby Growth and Infrastructure Framework and draft Willoughby Local Infrastructure Contributions Plan	

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1 Introduction

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

Alternatively, a developer can choose to provide public infrastructure by entering into Planning Agreement with the Council under s7.4 of the *Environmental Planning and Assessment Act 1979*.

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

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

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

Planning Agreements may address purposes and contributions included in a contributions plan that has been adopted by the Council. They may also address other purposes and contributions that have a wider public benefit, but are not identified in Council's contributions plan.

For this reason, Planning Agreements are more flexible than s7.11 / s7.12 contributions, as they allow alternative scope of public infrastructure, variations to the timing of delivery or potentially secure planning benefits that exceed developer's s7.11 / s7.12 contributions obligation. The *Willoughby Growth and Infrastructure Framework* (2026) identifies where a Planning Agreement might be used and the types of community infrastructure it may fund beyond the contributions plan. The Community Infrastructure Contribution scheme is outlined in Section 5 of this policy.

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

The *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2021* set out basic requirements for the preparation, execution and administration of Planning Agreements. This policy provides detail on the Council's approach to Planning Agreements beyond the minimum legislative requirements.

This policy has been prepared having regard to the current practice notes on Planning Agreements.

This policy is not legally binding. It is intended that Council officers and all persons dealing with Council concerning Planning Agreements will follow this policy to the fullest extent possible.

1.1 Purpose

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

It sets out:

- The different types of agreements that may be offered and which the Council will consider
- Requirements for agreements
- The negotiation, execution and implementation process for agreements

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- Council's preferred agreement terms, that will be contained in a Template Planning Agreement document.

Requirements set out in this policy complement the statutory framework for Planning Agreements – Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* and Division 1 of Part 9 of the *Environmental Planning and Assessment Regulation 2021.*

The aims of this policy are to:

- Establish a consistent, transparent and accountable process during negotiations and for all parties to enter into and execute agreements that meet contemporary probity standards.
- Facilitate the timely delivery of infrastructure that is generated by, or in some way related to, development.
- Where possible and reasonable, work with developers to achieve infrastructure and public benefits for the community where their developments go beyond current planning and generate additional unforeseen impacts, as outlined in the *Willoughby Growth and Infrastructure Framework* (2026).
- Allow developers to directly provide urban infrastructure as part of their developments where this is in the public interest and the infrastructure delivered achieves a net community benefit.
- Minimise Council's financial risk of providing infrastructure through setting out the conditions upon which a developer can deliver that infrastructure instead of the Council.
- Provide flexibility to achieve innovative and tailored development outcomes and public benefits to meet the future infrastructure needs of the LGA including distributing the costs and benefits of development.
- Facilitate the provision of public facilities, services and amenities, including the provision of public benefits by developers out of sequence with Council's broader strategic planning instruments.

1.2 Definitions

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

Table 1. Key terms

Term	Meaning
CC	Construction Certificate
CDC	Complying Development Certificate
Community Infrastructure Contribution scheme	a contribution of money towards the provision of works referred to under the Willoughby Growth and Infrastructure Framework (2026)
Contributions plan	a plan made by a council or councils for the purpose of imposing conditions under s7.11 or s7.12 of the EP&A A
DA	Development Application
Developer	a person who proposes to enter into a Planning Agreement under this policy
DCP	Willoughby Development Control Plan
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
Land Owner	The registered owner of the land to which a planning proposal, development application or planning agreement applies

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LEP	Willoughby Local Environmental Plan
LGA	Local Government Area
Material public benefit	a development contribution other than the dedication of land or the payment of cash
Practice Note	The practice notes published on Department of Planning's website: https://www.planningportal.nsw.gov.au/local-infrastructure-contributions/planning-agreements-practice-note
Public benefit	is the benefit enjoyed by the public as a consequence of a development contribution
Public purpose	Includes (without limitation): ▪ the provision of (or the recoupment of the cost of providing) public amenities or public services, ▪ the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land, ▪ the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure, ▪ the monitoring of the planning impacts of development, ▪ the conservation or enhancement of the natural environment.
S7.11 contribution	a contribution of money or dedication of land free of cost for the provision of local infrastructure that is required by a condition imposed on a DA consent or a CDC and that is authorised under s7.11 of the EP&A Act
S7.12 contribution	a fixed rate levy for the provision of local infrastructure that is required by a condition imposed on a DA consent or a CDC and that is authorised under s7.12 of the EP&A Act
Willoughby Growth and Framework	Identifies how Council, the NSW Government and the development industry will fund and construct infrastructure projects that support the next 15 years of housing and employment growth, the different types of local infrastructure required to support growth, and how it may be delivered

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2 Key considerations for Planning Agreements

2.1 Guiding principles

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

(a) Planning decisions will not be bought or sold through Planning Agreements. Council will only use planning agreements for a proper planning purpose

(b) Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under Planning Agreements.

(c) When considering a planning proposal or development application, Council will not give undue weight to a Planning Agreement

(d) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed Planning Agreement

(e) Broad public benefit in relationship to the locality of the development is preferred, unless the benefit aligns to Council's corporate strategic documents, existing contributions plans or other infrastructure delivery documents adopted by Council

(f) Council will assess the public benefit of the development contribution against Council's strategic land use and infrastructure planning when deciding whether to proceed with a planning agreement. Public benefits may be social, economic, environmental and/or cultural, as outlined in the Willoughby Growth and Infrastructure Framework (2026)

(g) Council will not allow planning agreements to improperly restrict the exercise of its functions under the Act, Regulation or any other act of law

(h) Council will act consistently, fairly and impartially in negotiating planning agreements

(i) Council will ensure that it manages any conflict of interest it has between its role as planning authority and its financial interest in the development, being the subject of a planning agreement

(j) Council will always consider a development proposal on its merits, not based on a planning agreement

(k) Planning agreements should provide for public benefits that have some relationship to the development

(l) Planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls

(m) Value capture would not be the primary purpose of a planning agreement.

2.2 Evaluation criteria and acceptability test

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

(a) Does the proposed Planning Agreement comply with the principles in section 2.1?

(b) Will the Planning Agreement achieve public benefits that are at least equal to or greater than the value of s7.11 or s7.12 contributions?

(c) Does the proposed Planning Agreement provide for public benefits that bear a relationship to the wider community or to the development that are not wholly unrelated to the development

(d) Are there any relevant circumstances that may operate to preclude Council from entering into the proposed Planning Agreement

(e) Can the proposed public benefits be achieved via an alternative, more administratively efficient mechanism such as a condition of development consent (note: any proposed works and services that would normally be provided as a condition of development consent will be deemed to have no value

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under the planning agreement)

(f) What are the likely ongoing operational and maintenance costs of infrastructure included in the Planning Agreement being dedicated to Council, and is it reasonable for the developer to absorb some of those costs

(g) Will the proposed Planning Agreement cause unreasonable, adverse environmental or amenity impacts

(h) Are public benefits offered directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies, policies or infrastructure delivery documents adopted by Council applying to development such as the *Willoughby Growth and Infrastructure Framework* (2026)?

(i) Does the offer provide for the delivery of infrastructure or public benefits not wholly unrelated to the development?

(j) Does the offer produce outcomes that meet the general values and expectations of the public and protect the overall public interest?

(k) Does the Planning Agreement provide for a reasonable means of achieving the desired relevant planning purpose/outcomes and securing the relevant public benefits?

(l) Does the Planning Agreement protect the community against adverse planning decisions?

(m) Is the public benefit proposed appropriate, having regard to the nature of the development?

(n) Does the offer address the demands created by the development for new public infrastructure, amenities or services are addressed?

(o) Does the offer provide for benefits for the community so that the development would deliver a net benefit to the wider community?

2.3 Probity

2.3.1 Council's responsibilities

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

(a) Ensure that Planning Agreements are voluntary for both Council and other parties to the agreement

(b) Comply with our Code of Conduct and inform developers about ethical behaviour appropriate to business dealings with the Council

(c) Provide access to download a copy of this policy for any person who seeks to enter into a Planning Agreement with Council

(d) Follow due process and guidance provided by this document and comply with the key considerations as set out in chapter 2

(e) Work with developers to establish clear timeframes to progress agreements efficiently, and actively communicate the status of the agreement

(f) Ensure as far as practicable that developer works obligations in Planning Agreements are clear, are not open to misinterpretation and include or refer to relevant plans and specifications

(g) Ensure that Councillors and Council staff understand their roles and responsibilities in the Planning Agreement process,

(h) Ensure that Councillors are not involved in any direct negotiations with developers.

(i) Where Council has a commercial interest in a development the subject of a Planning Agreement, take appropriate steps to ensure that conflicts of interest are avoided or managed, which may include the engagement of an independent third party or person in the negotiation and assessment process.

2.3.2 Applicant's responsibilities

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

(a) Conduct themselves in a professional manner

(b) Provide transparent and upfront information to inform the Planning Agreement

(c) Respond to requests for information in a timely manner

(d) Not solicit involvement of Councillors in the negotiations of Planning Agreements

(e) Pay for the Council's costs in drafting and executing the Planning Agreement and any associated costs relating to bringing the Planning Agreement into an enforceable state.

2.4 Types of public purposes Council will seek in Planning Agreements

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

- Public purposes that support Council's Capital Works Program and/or are identified as community infrastructure works under the *Willoughby Growth and Infrastructure Framework* (2026); the strategies and actions in the Local Strategic Planning Statement, Community Strategic Plan, LEP, DCP, and other strategic land use plans and policies
- Contributions of land, money or works that are required under s7.11 / s7.12 contributions plans, but the developer wishes to modify the location, staging or specification of local infrastructure included in those plans
- Conservation of areas with high ecological value
- Provide land, works or monetary contributions for public purposes other than those listed above, where the offer provides better planning outcomes than the sole use of s7.11 or s7.12 contributions.
- Contributions towards the recurrent operation and maintenance costs of public facilities or to maintain infrastructure delivered for a certain period of time after handover. The amount of any recurrent funding contribution sought will depend on the type and value of facilities being handed over and the costs to maintain and operate the facility over its life cycle.
- Public benefits that would provide an opportunity for innovation or technology not anticipated in a Contributions Plan
- Public benefits that would improve or augment past deficiencies in infrastructure provision
- Public benefits that would mitigate or address impact of the relevant development on the public domain and yield a net community benefit.

Public benefits go beyond the normal requirements of the DCP or Design Excellence criteria. Items such as easements on private land or public domain embellishment works on private land or on public land fronting the development site which are expected outcomes to serve the proper functioning of the development are not considered public benefits that serve the wider community.

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3 Planning Agreement negotiation process

Planning agreements will be negotiated by Council officers on behalf of Council under delegation and will generally follow the Practice Notes procedure and process. Developers are encouraged to initiate a conversation with Council staff at an early stage of their intention prior to making an offer.

As a general guide, Council's preferred negotiation process would be the following indicative steps:

Events and Actions	Duration
Commencement and Negotiation of Offer	
1. Submission of a public benefit offer reviewed by Council officers	4 weeks
2. Valuation of the proposed public benefits be assessed by Council officers	
3. Assessment/Consideration of the public benefit offer be reviewed by Council Executives Leadership Team	
4. Council officers draft response to Offering Party and provide preliminary feedbacks on acceptance of offers in part or in full	
5. Council awaits Offering Party to respond	unknown
6. Where Offering Party provides a revised offer, steps 2 – 4 repeat	4 weeks
Drafting of Planning Agreement	
7. Once the offer is formally accepted by Council, Offering Party drafts the 1st version of planning agreement and submits to Council for review.	4-8 weeks
8. Council awaits receipt of 1st draft PA	
9. Council's review of 1st draft of PA. Council's appointed lawyers provides feedback to counter-part(ies).	4-6 weeks
10. Review drafted terms by all parties' appointed lawyers. Depending on complexity of the terms and issues, this review may require back and forth negotiations and the duration of the review may vary.	4-8 weeks
11. Confirmation by all parties of the final draft PA in preparation for Council reporting	1 week
Council Reporting	
12. Council officers to draft council report to seek approval for public exhibition and report to the next available council meeting.	4-6 weeks
13. Once council resolved to support the draft PA, council staff will prepare for public exhibition,	2 weeks
Public Consultation	
14. Public exhibition of the draft PA	28 days

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15. At the close of public exhibition, Council staff considers submissions	2-4 weeks
Council Reporting	
16. Council officers to draft council report for reporting at the next available council meeting to report on community feedback. And where the feedbacks are not controversial, Council staff will seek support on the execution of the PA. (note: If draft PA requires extensive or material changes, 28 days re-exhibition would be required.)	4-6 weeks
Execution	
17. If council resolved to support the PA, council staff will prepare for execution	1-2 weeks
Reports to the Planning Portal	
18. Council staff submits the executed PA onto the Planning Portal for Department's record	0.5 week

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4 Negotiation and operation of Planning Agreements

4.1 Parties to a Planning Agreement

The parties to a Planning Agreement will include:

- The Council
- One or more developers
- If the developer(s) is not the owner of all of the land the subject of the Planning Agreement, the landowner or owners; and
- Sometimes may include another planning authority, such as a State Government agency or another council.

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

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

Normally public benefits in planning agreements are additional to contributions required under a Contributions Plan. Where s7.11 / s7.12 contributions apply to the development the subject of the Planning Agreement, Council will generally not agree to allowing public benefits to be provided under the Planning Agreement to be taken into consideration in calculating the s7.11 / s7.12 contributions. By exception, a planning agreement may partly or fully exclude the application of section 7.11 or 7.12 contributions to development the subject of a planning agreement. This may be in consideration of land dedication or works in kind.

Use Council's template terms for reflecting the inclusion or exclusion of s7.11 or s7.12 in a Planning Agreement.

4.3 Structuring the Letter of offer

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

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

(a) Land affected by the agreement

(b) Parties to the agreement and where necessary, authority to act on behalf of other parties

(c) The Planning Proposal, DA or CDC to which the proposed Planning Agreement relates

(d) Whether the proposed agreement excludes the application of section 7.11, 7.12 or 7.24 of the EP&A Act to the development

(e) Details of public purposes and public benefits to be provided by the developer:

   i. the nature and extent contributions (including works, material public benefits, land or monetary contribution) proposed to be provided by the developer

   ii. a description of the components of the works that are works in kind (i.e. works that in accordance with the relevant contributions plan(s)), and the components which are not works in kind

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iii. plans demonstrating the location and areas of works and land dedications

iv. concept designs of any proposed works

(f) The key commercial terms it proposes relating to any specific public benefits offered

(g) The form of security to be provided relating to the public benefits offered

(h) Propose the timing of the delivery of the public benefits;

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

- The amount of GFA being sought by the developer
- The total value of the Community Infrastructure offer using the latest rates for additional GFA
- The breakdown of the total value of the Community Infrastructure offer in terms of the value of works, land, or monetary contributions.
- Timing of instalments relating to development phases

4.4 Agreement drafting and implementation costs

The developer is responsible for all costs related to a Planning Agreement, including the Council's costs of preparing, negotiating, executing and stamping Planning Agreements, and any land or works valuations. Refer to Council's template terms.

4.5 Specification of works

The specifications for any proposed works in a Planning Agreement will be determined in consultation with Council staff representatives. The specifications will need to be confirmed and detailed as part of preparing the agreement. Specifications will also need to address the following:

(a) The estimated value of each of the contributions documented by a Quantity Surveyor or appropriately qualified designer

(b) The proposed staging / timing of those contributions, by reference to triggers or thresholds for the delivery of each works items, land dedication and monetary payment

(c) The projected lifecycle costs to Council of any works or land in stratum, including operation or ongoing service delivery, as well as the likely maintenance and replacement costs.

In the event that the costs incurred for any works provided by a landowner/developer exceed the value attributed in a planning agreement:

a. Council will not agree for those additional costs to be:

   i. refunded to the developer; or

   ii. off-set against any development contributions required to be made by the developer; and

b. The developer will not be able to make any further claim against the City for those additional costs.

4.6 Approvals for works or material public benefits

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

Entering into a Planning Agreement for works does not provide development approval for those works.

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Where development approval(s) is required, this must be obtained prior to works commencing. The type of approval(s) required – such as a DA, CDC or CC - will depend on the location, type and scale of the works involved. Council's Development Assessment Team can be contacted to determine the approvals required.

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

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

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

4.7 Valuation of land, works and material public benefits

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

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

Land included in a Planning Agreement will be valued by an independent registered valuer with at least ten years' experience in valuing land in NSW. Valuation be carried out in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

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

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

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

4.8 Security and insurance

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

- Contract works insurance
- Public liability insurance
- Workers' compensation insurance as required by law
- Any other insurance required by law.

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

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Type of contribution	Security that Council will seek under the Agreement
Works	Cash deposit, bank guarantee or bond that is 115% of the agreed value of each of the works in a Planning Agreement. The security must be lodged before a CC is issued for each work. Upon completion of the agreed works to Council's satisfaction, part of the security equivalent to 100% of the value of the work. The remaining security equivalent to 15% of the value of the work will be retained by Council as a security bond. To assist in more timely release of securities, Council will accept two separate securities equivalent to 100% and 15% of the value of works. The bond shall be returned: ▪ after the defects liability and maintenance periods have lapsed, and ▪ Council's Manager of Design and Infrastructure has certified in writing that all obligations and works have been undertaken and completed to the standard as detailed in the Agreement and relevant approval. Council will also seek to include a provision in the Planning Agreement that will allow the Council to step-in and remedy any breach in carrying out works at the developer's cost.
Dedication of land and easements	The dedication or transfer of land will be tied to either: ▪ if the land contains works that are included in an executed Agreement – the satisfactory completion of those works, and the completion of the defects liability and maintenance periods related to those works, or ▪ if the land does not contain works in an Agreement - the issuing of a specified kind of Part 6 Certificate, which will usually be a subdivision certificate or, in the case of a strata lot, a strata subdivision certificate. Council will include a provision in any Planning Agreement allowing Council to compulsorily acquire the land to be dedicated or transferred for a nominal sum if the landowner defaults. Compulsory acquisition by Council is provided for in the *Land Acquisition (Just Terms Compensation) Act 1991*. The provision in the Planning Agreement will constitute a pre-acquisition agreement between the landowner and Council for the purposes of that Act. Council may either require, in appropriate cases, the creation of a charge over land, and may require the landowner to agree to not object to Council lodging caveats on the title of all or any of the land the subject of the Planning Agreement. In particular, Council will generally require a Planning Agreement to include provisions acknowledging Council has a caveatable interest over: ▪ The whole of the land that relates to the Planning Agreement until the it is registered; and Any land to be dedicated to Council, once the relevant portion of land has been created when the Planning Agreement is registered on the title of the land, Councils caveatable interest will be withdrawn.
Payment of a monetary contribution	The Agreement will require any monetary contributions to be paid before the issuing of a specified kind of Part 6 Certificate, which will usually be a subdivision certificate (where subdivision of land is involved), or a construction certificate for built form that proceeds before subdivision. Under special circumstances where landownership cannot be obtained for all affected lands, Council may either: ▪ request the proponent's agreement on Council to register a caveat for a charge over land on the title of any or some of the affected lands until such time when Council is satisfied that the proponent's obligations for (partial or full) monetary contributions payment have been met, or ▪ require the proponent to provide a financial security such as a bond or bank guarantee or assets equal to the full monetary contributions amount.

4.9 When will the developer's obligations arise?

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

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

(a) In the case of a monetary contribution under a Planning Agreement that relates to a planning proposal:

   i. 10% at the gazettal of any Local Environmental Plan (LEP) for the subject planning proposal (or within 21 days after the gazettal date) where applicable,

   ii. 45% of the contribution prior to Construction Certificate, and

   iii. 45% of the contribution prior to the issue of an Occupation Certificate (interim or final) or prior to the registration of a Strata plan, whichever is earlier.

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

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

(b) In the case of works, prior to the issue of the first occupation certificate for development on the land. Council will require any works on land to be dedicated (for example embellishment of a public reserve) to be completed prior to dedication.

(c) In the case of other land dedication, prior to occupation of the development or the issue of an occupation certificate for the development. This timing may be varied depending on how the development will be staged and the location of the land to be dedicated. Council will require this information from developers so that it can be properly informed when negotiating the likely timing for the dedication of the land.

(d) Dedication of public reserves or public roads can be made on registration of a subdivision plan creating the lot to be dedicated in accordance with the relevant provisions of the Local Government Act 1993 or the Roads Act 1993.

4.10 Commencing and carrying out works

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

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

4.11 Practical completion of works

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

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

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4.12 Defects liability and maintenance period

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

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

4.13 Dedication of land and easements

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

Planning Agreements may involve the dedication / transfer of land:

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

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

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

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

4.14 Dispute resolution

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

4.15 Modification of Planning Agreements

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

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

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

4.16 Transferring Planning Agreement responsibilities to a new landowner

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

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

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

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

Refer to Council's Novation Deed template.

4.17 Public notification and consideration of submissions

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

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

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

Public notice will be given at the same time as the development application or planning proposal or as soon as possible after the public notice of the development application or planning proposal, in accordance with section 204 of the *Environmental Planning and Assessment Regulation 2021*.

4.18 Pooling of monetary contributions

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

4.19 Council may co-contribute toward infrastructure

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

4.20 Registration of Planning Agreements on land title

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

Council will seek to include a provision in the Planning Agreement that requires the Planning Agreement to be registered on the land title immediately on commencement of the Planning Agreement.

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

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

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

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

The registration of the Planning Agreement against the title to land can be removed once all the contributions have been satisfied. Where contributions are to be satisfied after the registration of a subdivision or strata plan, Council may agree to removal of the Planning Agreement from the title to final lots (lots that are not to be further subdivided), subject to adequate security being provided to Council for any outstanding contributions to be delivered.

This may include:

(a) A requirement to register the Planning Agreement against the title to the common property:

(b) Caveats to be registered over any land to be dedicated to Council; and

(c) Bank guarantees or bonds to secure the cost of any works and/or monetary contributions that remains outstanding.

4.21 Notes on planning certificates

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

4.22 Public information and reporting

Council will provide public information on Planning Agreements as required by section 7.5 of the EP&A Act and clause 206 of the EP&A Regulation. This includes Planning Agreements to which the Council is not a party but which have been provided to the Council under section 7.5(4) of the EP&A Act.

The relevant information is summarised below.

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

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

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

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

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5 Community Infrastructure Contribution scheme

This chapter outlines Council's Community Infrastructure Contribution scheme as identified in the *Willoughby Growth and Infrastructure Framework* (2026). It describes how development in high growth areas such as Chatswood CBD can provide Community infrastructure as part of their development.

5.1 When does the scheme apply?

The Community Infrastructure Contribution scheme is the mechanism for developers proposing development that goes above and beyond the current land use zoning and planning controls to provide an additional monetary contribution towards infrastructure to service that additional growth. The provision of Community infrastructure is formalised through a Planning Agreement.

These agreements are generally limited to instances when a proposed development:

- Generates a unique or specific need or opportunity, including accelerating growth
- Requires land to be dedicated to Council
- Could help to fast-track an enabling piece of infrastructure such as road or intersection upgrades adjoining the site.

An example might be where a developer in Chatswood CBD seeks a rezoning via a Planning Proposal or State-led pathway to increase building height and density above the current controls and alter the land use mix to introduce more residential accommodation than is permitted. In this case, a contribution would be required to support the additional unplanned uplift in development potential.

5.2 What is Community infrastructure?

Community infrastructure is the civil infrastructure, public domain and physical facilities that is required to support the higher intensity of land use and built environment than is permitted under the planning controls. Community Infrastructure may also benefit the wider resident, worker and visitor population.

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

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

Community infrastructure is listed in the 'Infrastructure works list' within the *Willoughby Growth and Infrastructure Framework* (2026) (refer to Chapter 4) as updated from time to time.

5.3 How does the scheme apply?

This Community Infrastructure Contribution scheme typically applies to proponents seeking approval for additional Gross Floor Area (GFA) and/or height than is currently permitted. In these cases, the proponent would be required to make a monetary contribution or delivery infrastructure commensurate with the additional need generated.

An applicant can prepare and lodge a Planning Proposal to Council that proposes to change the maximum floor space ratio and / or maximum height controls under Willoughby LEP 2012.

The Planning Proposal must be acceptable on merit and be consistent with the Ministerial Directions for

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Council to agree to the provision of Community infrastructure. That is, it must:

- Be acceptable in terms of environmental capacity, and
- Comply with other relevant development controls, and
- Have little or no adverse impact on the amenity of adjoining properties and surrounding area.

Similarly, Development Applications that vary Council's planning controls and/or require supporting infrastructure must be acceptable on merit for Council to agree to the provision of Community infrastructure.

Applicants following State-led development pathways should still prepare that proposal with reference to the Community Infrastructure Contribution scheme and approach Council separately regarding the infrastructure provision proposed.

The proposed Community infrastructure provision must:

- Be acceptable to Council
- Be consistent with the social, physical and environmental vision for Willoughby
- Must be a type of Community infrastructure identified in the 'infrastructure works list' in the *Willoughby Growth and Infrastructure Framework* (2026), or as updated from time to time.

Applicants are encouraged to discuss these public benefits with Council early in the planning process to ensure they are acceptable and equitable. As a guide, Council's previous Planning Agreement Policy applying to Chatswood CBD sought a rate of $900 per m² of additional residential floor space.

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

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APPENDIX A: Planning Agreement template

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Deed

[Insert Name] Planning Agreement

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

Willoughby City Council

[Insert Name of Developer]

[Insert Name of Landowner]

Executed Date: [Insert Date]

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Instructions for drafting this Deed:

Please state **"not used"** next to any unused clause instead of deleting them from this template.

Example:

Part 3 - Provisions relating to dedication of land - Not used

11 Dedication of Dedication Land - Not used

1.1 not used

[Insert Name] Planning Agreement

Summary Sheet

Council:

Name: Willoughby City Council

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

Telephone: (02) 9777 1000

Email: email@willoughby.nsw.gov.au

Representative: General Manager (GM)

Developer:

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

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

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

TEMPLATE

Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S7.4(1)	**'Planning Authority'**	Council
	'Developer'	Developer
	Development Contributions	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(1), (2)	**Public Purpose**	See column 2 of Schedule 2
S7.4(3)(a)	**Land**	See Definition of '*Land*' in clause 1.1
S7.4(3)(b)(i)	**Instrument Change**	[Insert either: '*See definition of LEP Amendment in clause 1.1*' or '*N/A*']
S7.4(3)(b)(ii)	**Development**	See definition of '*Development*' in clause 1.1
S7.4(3)(c)	**Details of Developer's Provision**	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(3)(d)	**Whether s7.11, s7.12 and 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**	[If s7.11 is excluded, then insert *'N/A'*] Or [If s7.11 is not excluded, then insert *'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'*] Or [If s7.11 is not excluded and this Deed is related to Works-In-Kind / Land Dedication to be offset from s7.11, then insert *'The benefits under this Deed are **to be** taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development'*] See clause 8
S7.4(3)(f)	**Mechanism for the Resolution of Disputes under the Agreement**	See Part 5

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S7.4(3)(g)	**Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer**	See clause 13 and Part 6
S7.4 (10)	**Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land**	Yes
S7.5	**Public Notice & Public Inspection of Draft 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?**	[Insert '*Yes*' or '*No*' and identify the relevant provision of the Agreement]
S6.9(1)	**If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?**	[Insert '*Yes*' or '*No*' and identify the relevant provision of the Agreement]

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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 2021	**If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued?**	[Insert '*Yes*' or '*No*' and identify the relevant provision of the Agreement]
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?**	[Insert '*Yes*' or '*No*' and identify the relevant provision of the Agreement]

Table 3 – Ministerial Directions

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

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[Insert Name] of Planning Agreement]

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

Parties

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

and

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

and

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

Background

A The Developer has requested the Council to adopt a Planning Proposal to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land. [Delete if not applicable]

B The Developer has made or proposes to make a Development Application to carry out the Development on the Land.

C The Developer offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the carrying out of Development.

Operative provisions

Part 1 – Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

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

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.

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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.

Charge means the charge referred to in clauses 28, 29 and 30.

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

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

(a) is by its nature confidential;

(b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);

(c) any Party knows or ought to know is confidential; or

(d) is information which may reasonably be considered to be of a confidential nature.

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

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

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

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

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

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

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

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

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

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

Final Lot means:

(a) any lot created in the Development for separate occupation and disposition, or

(b) any lot of a kind or created for a purpose that is otherwise agreed by the Parties,

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

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

(a) which arises from a cause beyond the reasonable control of a party, including:

  (i) an act of God,

  (ii) strike, lockout, other industrial disturbance or labour difficulty,

  (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,

  (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine, or

  (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation;

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

(c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

GST has the same meaning as in the GST Law.

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

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

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

LEP means the *Willoughby Local Environmental Plan 2012*.

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

Map means the map in Schedule 3.

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

Occupation Certificate has the same meaning as in the Act.

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Part 6 Certificate means a certificate under Part 6 of the Act

Party means a party to this Deed.

Plan of Subdivision means:

(a) a plan of subdivision within the meaning of s195 of the *Conveyancing Act 1919*, or

(b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes 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. [Delete if not applicable]

Rectification Notice means a notice in writing:

(a) identifying the nature and extent of a Defect,

(b) specifying the works or actions that are required to Rectify the Defect,

(c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

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

Subdivision Certificate has the same meaning as in the Act.

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

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

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

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

1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

1.2.4 A reference in this Deed to dollars or $ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

1.2.5 A reference in this Deed to a $ value relating to a Development Contribution is a reference to the value exclusive of GST.

1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.

1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

TEMPLATE

1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

1.2.12 References to the word *'include'* or '*including*' are to be construed without limitation.

1.2.13 A reference to this Deed includes the agreement recorded in this Deed.

1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.

1.2.15 A reference to '*dedicate*' or '*dedication*' in relation to land is a reference to dedicate or dedication free of cost.

1.2.16 Any schedules, appendices and attachments form part of this Deed.

1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

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

3 Commencement

3.1 This Deed commences and has force and effect on and from the date when the Parties have:

3.1.1 all executed the same copy of this Deed, or

3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.

3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

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

5 Warranties

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

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

6 Further agreements

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

TEMPLATE

7 Surrender of right of appeal, etc.

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

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

8.1 This Deed excludes / 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 to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development to the extent provided for in Item 7 in Schedule 1.

9 Provision of Development Contributions

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

9.2 A Contribution Value specified in this Deed is to be indexed from the date of this Deed in accordance with the index specified in Item 8 of Schedule 1. [Include this clause only if Contribution Values are specified in this Deed].

9.3 Any Contribution Value specified in this Deed in relation to a Contribution Item comprising a Work to be carried out or Dedication Land does not serve to define the extent of the Developer's obligation to make the Development Contribution [Include this clause only if Contribution Values are specified in this Deed].

9.4 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

9.5 Despite clause 9.4, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

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

Part 2 – Provisions relating to monetary contributions

10 Payment of monetary Development Contributions

10.1 The Developer is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part.

TEMPLATE

10.2 The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with the index specified in Item 9 of Schedule 1.

10.3 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

10.4 If the Development Consent for the Development is modified to allow for additional [Insert relevant details e.g. dwellings/Final Lots] after [Insert timing, which may, for example, be the issuing of the first relevant certificate under Part 6 of the Act [e.g. Construction Certificate/Subdivision Certificate] for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional [Insert relevant details e.g. dwellings/Final Lots] not later than 7 days after the Development Consent has been modified.

Part 3 – Provisions relating to dedication of land

11 Dedication of Dedication Land

11.1 The [Developer/Landowner]* [Delete whichever is inapplicable] is to dedicate the Dedication Land free of cost to the Council in the manner and at the time or times specified in Part C of Schedule 2.

11.2 Before any Dedication Land is dedicated to the Council, the [Developer/Landowner]* is to do all things reasonably necessary to enable the Council to enter upon the Dedication Land for the purposes of inspecting that land.

11.3 After the Dedication Land is dedicated to the Council, the [Developer/Landowner]* is to do all things reasonably necessary to enable the Council to gain access to the Dedication Land by passing through any adjoining or adjacent land owned, occupied or otherwise controlled by [Developer/Landowner]*.

11.4 The [Developer's/Landowner's]* obligations under clause 11.2 and 11.3 are subject to the Council giving the [Developer/Landowner]* reasonable prior notice of its intention to enter upon or gain access to the Dedication Land.

12 Procedure for Dedication of Dedication Land

12.1 Dedication Land is dedicated for the purposes of this Deed when:

12.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or

12.1.2 the Council is given:

(a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the [Developer/Landowner]* [Delete whichever is inapplicable] as transferor that is effective to transfer the title to the Dedication Land to the Council when executed by the Council as transferee and registered,

(b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and

TEMPLATE

(c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.

12.2 The [Developer/Landowner]* is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

12.3 The [Developer/Landowner]* is to ensure that the Dedication Land is dedicated to the Council free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

12.4 If, having used all reasonable endeavours, the [Developer/Landowner]* cannot ensure that the Dedication Land is dedicated to the Council free from all encumbrances and affectations, the [Developer/Landowner]* may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

12.5 Despite any other provision of this Deed, if the [Developer/Landowner]* is required to dedicate land to the Council on the Developer is required to carry out a Work under this Deed, the [Developer/Landowner]* is to comply with clause 12.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

13 Acquisition of land required to be dedicated

13.1 If the [Developer/Landowner]* [Delete whichever is inapplicable] does not dedicate the Dedication Land at the time at which it is required to be dedicated, the [Developer/Landowner]* consents to the Council compulsorily acquiring that land for compensation in the amount of $1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.

13.2 The Council is to only acquire the Dedication Land pursuant to clause 13.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the [Developer/Landowner]* to dedicate that land.

13.3 The [Developer/Landowner]* agrees that:

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

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

13.4 If, as a result of the acquisition referred to in clause 13.1, the Council is required to pay compensation to any person other than the [Developer/Landowner]*, the [Developer/Landowner]* is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.

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

13.6 The [Developer/Landowner]* is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause, 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

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

Part 4 – Provisions relating to carrying out of Work

14 Carrying out of Work

14.1 The Developer is to carry out and complete Work specified in Part B of Schedule 2 in the manner and at the time or times specified in that Part.

14.2 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out to the satisfaction of the Council in accordance with:

14.2.1 a Development Consent or other Approval authorising the carrying out of the Work as modified or varied from time to time,

14.2.2 to the extent not inconsistent with such a Development Consent or Approval:

(a) this Deed, and

(b) any further agreement that is entered into by the Parties under clause 6,

(c) any design or specification specified or approved by the Council,

(d) any reasonable requirements and directions notified in writing by the Council to the Developer.

14.3 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

15 Variation to Work

15.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed

15.2 Without limiting clause 15.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

15.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 15.2.

15.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.

15.5 The Developer is to comply promptly with a direction referred to in clause 15.4 at its own cost.

16 Access to land by Developer

16.1 The Council authorises the Developer to enter, occupy and use the land specified in Item 10 of Schedule 1 for the purpose of performing its obligations under this Deed.

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16.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.

16.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 16.1 or 16.2.

17 Access to land by Council

17.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.

17.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 17.1.

18 Council's obligations relating to Work

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

19 Protection of people, property & utilities

19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:

19.1.1 all necessary measures are taken to protect people and property,

19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

19.1.3 nuisances and unreasonable noise and disturbances are prevented.

19.2 Without limiting clause 19.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

20 Repair of damage

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

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

21 Completion of Work

21.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.

21.2 The Council is to inspect the Work the subject of the notice referred to in clause 21.1 within 14 days of the date specified in the notice for completion of the Work.

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21.3 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.

21.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 21.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.

21.5 Before the Council gives the Developer a notice referred to in clause 21.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.

21.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 21.5.

22 Rectification of defects

22.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

22.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.

22.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 22.1

23 Works-As-Executed-Plan

23.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.

23.2 The Developer, being the copyright owner in the plan referred to in clause 23.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

24 Removal of Equipment

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

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

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

Part 5 – Dispute Resolution

25 Dispute resolution – expert determination

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

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

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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.

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Part 6 - Enforcement

27 Security for performance of obligations

27.1 The Developer is to provide the Council with Security in the amount specified in Item 12 of Schedule 1 to secure the performance of such of the Developer's obligations under this Deed as are specified or described in Item 13 of Schedule 1.

27.2 The Security is to be provided at the time specified in Item 14 of Schedule 1.

27.3 The amount of the Security is to be indexed from the date of this Deed in accordance with the index specified in Item 15 of Schedule 1.

27.4 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of compliance by the Developer [Insert '*and Landowner'* here if applicable] of its obligations under this Deed to the reasonable satisfaction of the Council.

27.5 The Developer may at any time provide the Council with a replacement Security.

27.6 On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.

27.7 The Council may call-up the Security if it reasonably considers that the Developer [Insert '*or Landowner'* here if applicable] has not complied with its obligations under this Deed specified in Item 13 of Schedule 1.

27.8 However, the Council is not to call-up the Security unless:

27.8.1 it has given the Developer not less than 30 days' notice of its intention to do so and particulars of why it intends to do so, and

27.8.2 the Developer Insert '*or Landowner'* here if applicable] has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.

27.9 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:

27.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

27.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and

27.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.

27.10 If the Council calls-up the Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.

27.11 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.

28 Grant of Charge

28.1 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the part of the Land in respect of which the Developer is the registered proprietor, to secure:

28.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and

28.1.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer

28.2 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the part of the Land referred to in clause 28.1.

28.3 If the part of the Land referred to in clause 28.1 comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 28.2 is required to be given, the Developer is

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to give the Council an instrument that charges a greater area of the Land which includes the whole of that part of the Land.

28.4 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

28.5 In respect of any part of the Land that is not owned by the Developer on the date of execution of this Deed, on and from the date the Developer becomes registered proprietor of any part of that Land, clauses 28.1-28.4 apply to that part subject to:

28.5.1 the words in clause 28.1 '*On the date of execution of this Deed'* are replaced with '*On the date the Developer becomes registered proprietor',*

28.5.2 the words in clause 28.2 '*Upon the execution of this Deed'* are replaced with '*Upon the Developer becoming the registered proprietor'.*

29 Caveat and Discharge

29.1 The Developer agrees that:

29.1.1 the Council may lodge a caveat on the title of the Land to which the Charge applies,

29.1.2 the Council is to release the caveat from any part of the land to which the Charge applies that is not the subject of the Charge once that part of the land is contained in a separate lot to the Land the subject of the Charge, and

29.1.3 the Council cannot be required to have the caveat removed from the title to the Land other than in accordance with clause 29.2.

29.2 In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.

29.3 For the purposes of clause 29.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.

29.4 Nothing in this Deed prevents the registration of a Plan of Subdivision in respect of the Land nor the creation of a Final Lot from the Land.

30 Priority

30.1 The Developer is not to create any mortgage or charge over the Land or grant any other interest in the Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

30.2 The Council is not to withhold its written approval under clause 30.1 if:

30.2.1 before the Developer creates any mortgage or charge or grants any other interest in the Land to which the Charge applies, it has provided to Council evidence to the Council's satisfaction, of:

(a) the market value of the Land to which the Charge applies,

(b) the amount secured by any existing mortgage, charge or other interest in the Land to which the Charge applies,

(c) the amount to be secured by the mortgage, charge or other interest to be created or granted in the Land to which the Charge applies, and

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30.2.2 the Council is satisfied that the market value of the Land to which the Charge applies is sufficient to secure all of the following:

(a) the monetary Development Contributions to be paid under this Deed,

(b) any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer,

(c) the amount secured by any existing mortgage, charge or other interest, and

(d) the amount to be secured by the mortgage, charge or other interest to be created or granted.

31 Breach of obligations

31.1 If the Council reasonably considers that the Developer [Insert '*or Landowner'* here if applicable] is in breach of any obligation under this Deed, it may give a written notice to the Developer [Insert '*or Landowner, as the case may be'* here if applicable]:

31.1.1 specifying the nature and extent of the breach,

31.1.2 requiring the Developer [Insert '*or Landowner, as the case may be'* here if applicable] to:

(a) rectify the breach if it reasonably considers it is capable of rectification, or

(b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

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 Developer [Insert '*or Landowner, as the case may be'* here if applicable] fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Developer [Insert '*or Landowner, as the case may be'* here if applicable], call-up the Security provided under this Deed and apply it to remedy the breach.

31.3 If the Developer [Insert '*or Landowner, as the case may be'* here if applicable] fails to comply with a notice given under clause 31.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the [Developer/Landowner]* [Delete whichever is inapplicable] and any Equipment on such land for that purpose.

31.4 Any costs incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:

31.4.1 by calling-up and applying the Security provided under this Deed, or

31.4.2 as a debt due in a court of competent jurisdiction.

31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:

31.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

31.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

31.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

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31.6 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer [Insert '*or Landowner, as the case may be'* here if applicable], including but not limited to seeking relief in an appropriate court.

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 commencement of this Deed, the Developer is to deliver to the Council in registrable form:

33.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the [Developer/Landowner]* [Delete whichever is inapplicable] and any other person required by the Registrar-General to execute such instrument, and

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 Developer at its cost is to:

33.3.1 do such other things as are reasonably necessary to enable registration of this Deed to occur, and

33.3.2 provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information 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 Developer [Insert 'and Landowner' if applicable'] has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

34 Restriction on dealings

34.1 The Developer [Insert '*and Landowner'* here if applicable] is not to:

34.1.1 sell or transfer the Land, other than a Final Lot, or

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34.1.2 assign the Developer's [Insert '*and Landowner's*' here if applicable] rights or obligations under this Deed, or novate this Deed, to any person,

unless:

34.1.3 the Developer [Insert '*and Landowner*' here if applicable] has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's [Insert '*and Landowner's*' here if applicable] rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

34.1.4 the Council has given written notice to the Developer [Insert '*and Landowner*' here if applicable] stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

34.1.5 the Developer [Insert '*and Landowner*' here if applicable] is not in breach of this Deed, and

34.1.6 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 Developer [Insert '*and Landowner*' here if applicable] acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 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.

Part 8 – Indemnities & Insurance

35 Risk

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

36 Release

36.1 The Developer [Insert '*and Landowner*' here if applicable] releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's [Insert '*and Landowner's*' here if applicable] obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

37 Indemnity

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

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38 Insurance

38.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the end of the Defects Liability Period for the final Work to have been completed in accordance with this Deed:

38.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,

38.1.2 public liability insurance for at least $20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,

38.1.3 workers compensation insurance as required by law, and

38.1.4 any other insurance required by law.

38.2 If the Developer fails to comply with clause 38.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:

38.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or

38.2.2 recovery as a debt due in a court of competent jurisdiction.

38.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 38.1.

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:

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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 Developer

40.1 The Developer 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 the lapsing of the Development Consent to the Development pursuant to section 4.53 of the Act,

41.2.3 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.

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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 absolute discretion 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 Developer 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 7 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 Developer is also to pay to the Council the Council's reasonable costs of implementing, monitoring and enforcing this Deed within 7 days of a written demand by the Council for such payment.

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.

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47 Notations on section 10.7(2) Planning Certificates

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

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.

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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.

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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.

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Schedule 1

(Clause 1.1)

Item 1	**Land**	**The land identified as such on the Map**
Item 2	**Planning Proposal**	[Describe by reference to proposed LEP amendments; otherwise insert 'N/A']
Item 3	**Development**	The development on the Land the subject of [Insert details of relevant Development Application; otherwise describe the proposed development]
Item 4	**Application of S7.11**	[Insert 'Section 7.11 of the Act is excluded' or 'Section 7.11 of the Act is not excluded' or If the Deed only partially excludes the application of s7.11 the particulars of the exclusion must be provided]
Item 5	**Application of S7.12**	[Insert 'Section 7.12 of the Act is excluded' or 'Section 7.12 of the Act is not excluded' or If the Deed only partially excludes the application of s7.12 the particulars of the exclusion must be provided]
Item 6	**Application of Division 7.1, Subdivision 4**	Division 7.1, Subdivision 4 of the Act is not excluded [or insert 'Division 7.1, Subdivision 4 of the Act is excluded', but only if the Minister or a development corporation designated by the Minister has given approval under s7.4(5A) to such an exclusion.]
Item 7	**Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11**	[If s7.11 is excluded, then insert *'N/A'*] Or [If s7.11 is not excluded, then insert *'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'*] Or [If s7.11 is not excluded and this Deed is related to Works-In-Kind / Land Dedication **to be** offset from s7.11, then insert *'The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development'*] See clause 8

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Item 8	**Indexation of Contribution Values**	**[Specify index;** otherwise insert 'N/A' or insert the following**]** The monetary Development Contributions specified in Schedule 2 of this Deed will be indexed quarterly from the date of this Deed (the "Indexation Date"). This will be done in accordance with the following formula: Indexed monetary contribution = A x B/C Where A is the value of the monetary Development Contribution applicable immediately before the Indexation Date B is the CPI last published at the quarter ending immediately before the date of payment; and C is the CPI last published at the quarter ending immediately before the Indexation Date
Item 9	**Indexation of Monetary Development Contributions**	**[Specify index;** otherwise insert 'N/A' or insert the following**]** The monetary Development Contributions specified in Schedule 2 of this Deed will be indexed quarterly from the date of this Deed (the "Indexation Date"). This will be done in accordance with the following formula: Indexed monetary contribution = A x B/C Where A is the value of the monetary Development Contribution applicable immediately before the Indexation Date B is the CPI last published at the quarter ending immediately before the date of payment; and C is the CPI last published at the quarter ending immediately before the Indexation Date
Item 10	**Access to Council owned or controlled land**	**[Insert title details of Council owned or controlled land which the Developer may enter, occupy and use for the purpose of performing its obligations under this Deed.]**
Item 11	**Defects Liability Period**	**The period of [Insert number] [insert 'year' or 'months'] commencing on the day immediately after the Work is taken to be completed for the purposes of this Deed.**
Item 12	**Security**	**$[Insert amount being not less than 10% of the value of development contributions to be provided under this Deed;** otherwise insert 'N/A'.]
Item 13	**Obligations to which Security Relates**	**[Specify or describe obligations;** otherwise insert 'N/A'**]**
Item 14	**Timing of Security**	**[Insert timing;** otherwise insert 'N/A'**]**
Item 15	**Indexation of Security**	**[Specify index;** otherwise insert 'N/A' or insert the following**]** Security to be indexed in the same way that monetary Development Contributions are indexed in Item 9 of this schedule

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		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 [Insert number] years**

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Schedule 2

(Clause 9)

Development Contributions

Table

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Timing	Column 5 Contribution Value Include this column only if Council will provide any offset or credit arrangement under this Deed.]
A. Monetary Development Contributions				
1. $[Insert amount]	[Specify]	[Specify amount and whether payable as a lump sum or payable in instalments or otherwise]	[Insert timing. For example: Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in the Development.]	$[Insert amount]
B. Carrying out of Work				
1. [Insert description]	[Specify]	[Specify details and specifications of Work and identify location of Work on the Map]	[Insert timing. For example: Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in the Development.]	$[Insert amount. to be determined in accordance with the Council's Planning Agreement Policy.]
C. Dedication Land				
1.[Insert description]	[Specify]	[Specify details and identify location of land on the Map]	[Insert timing. For example: On or before the registration of the Plan of Subdivision that creates the first Final Lot in the Development or at	$[Insert amount, to be determined in accordance with the Council's Planning

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			such other time agreed by the Council in writing.]	Agreement Policy.]

D. Other material public benefit

1. [Specify]	[Specify]	[Specify]	[Specify]	$[Insert amount]

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Schedule 3

(Clause 1.1)

Map

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

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Execution

Executed as a Deed

Dated:

Executed on behalf of the Council pursuant to s377 of Local Government Act 1993

_____	_____
General Manager (GM)	**Witness**
(Name:)	**Position:**
	(Name:)
	(Address of Witness:)

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

_____	_____
Developer	**Witness**
(Name:)	**(Name:)**
	(Address of Witness:)

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

_____	_____
Position:	**Position:**
(Name:)	**(Name:)**

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

_____	_____
Landowner (Name:)	**Witness (Name:)**
	(Address of Witness:)

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

_____	_____
Director (Name:)	**Director / Secretary**
	(Name:)

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Appendix

(Clause 56)

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Explanatory Note

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Draft Planning Agreement

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

Parties

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

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

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

Description of the Land to which the Draft Planning Agreement Applies

[Insert]

Description of Proposed Development

[Insert]

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

Objectives of Draft Planning Agreement

[Specify]

Nature of Draft Planning Agreement

[Specify]

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the [Landowner/Developer],
- [does/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,
- [Specify additional effects]

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

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

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3[specify relevant subsections] of the Act.

For Planning Authorities:

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

N/A

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

N/A

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

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

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

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

[Answer '*Yes*' or '*No*']

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

[Specify]

TEMPLATE

WILLOUGHBY
CITY COUNCIL

Contact Us

Willoughby City Council
Address: 31 Victor Street Chatswood NSW 2057
PO Box 57 Chatswood, NSW 2057
Phone: 02 9777 1000
Email: email@willoughby.nsw.gov.au