



**Land and Environment
Court**
of New South Wales

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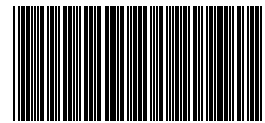
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Your Ref:



D00023UIXL

25 February 2025

NOTICE OF ORDERS MADE

Case number 2024/00046467
Case title DPG Project 38 Pty Ltd v Willoughby City Council

On 19 February 2025 the following orders (and/or directions) were made:

The Court orders:

- (1) The written requests prepared by JV Urban made pursuant to cl 4.6 of the Willoughby Local Environmental Plan 2012 (WLEP) seeking the grant of development consent in contravention of the development standards WLEP is upheld.
- (2) The Applicant is to pay the Respondent's costs as a consequence of the amendments pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979, as agreed or as assessed.
- (3) The appeal is upheld.
- (4) The Development Application DA-2023/166 as amended is determined by the grant of consent for the following at 691-699 Pacific Highway, Chatswood, which is legally known as Lot 1 in DP 187216, Lot 1 in DP 952311 and Lot 2 in DP 952311 subject to the conditions contained at Annexure A:
 - (a) a concept approval for demolition of existing buildings and construction of a 26 storey building with 4 basement levels; Stage 1 operational consent for the construction and use of 89 residential units comprising a mix of 16 x 1-bed; 26 x 2-bed; 45 x 3-bed and 2 x 4-bed and associated parking, through-site links for public use, drainage works and landscaping; and construction only of the remainder of areas marked "communal" in the basement, ground floor, Levels 1 and 2 and strata subdivision.

For the Registrar

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA-2023/166

Development: Concept approval for demolition of existing buildings and construction of a 26-storey building with four basement levels; Stage 1 operational consent for the construction and use of 89 residential units comprising a mix of 16 x 1-bed, 26 x 2-bed, 45 x 3-bed, 2 x 4-bed and associated parking, through-site links for public use, drainage works and landscaping; and construction only of remainder of areas marked “communal” in the basement, ground floor, Levels 1 and 2 and strata subdivision.

Site: 691 – 699 Pacific Highway, Chatswood NSW 2069 (Lot 1 DP 187216, Lots 1 and 2 in DP 952311)

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 19 February 2025

Date from which consent takes effect: Date of determination.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 691 – 699 Pacific Highway, Chatswood NSW 2069 (Lot 1 DP 187216, Lots 1 and 2 in DP 952311).

The conditions of consent are as follows:

REASONS FOR THE GRANT OF CONSENT

Council has considered the contentions raised in the Statement of Facts and Contentions filed on 7 August 2024 in Land and Environment Court proceedings No. 2024/46467 and considers that, for the following reasons, a grant of consent is now appropriate:

- amendments to the design to address issues relating to site isolation and connectivity with a future proposal at the adjoining site 689 Pacific Highway, urban design, waste collection, stormwater and landscaping.
- acceptance by the applicant that a planning agreement registered on title is a satisfactory mechanism to ensure Council receives a monetary contribution towards affordable housing using a mapped percentage of 10%, in accordance with clause 6.8(5) and (7) of the Willoughby Local Environmental Plan 2012.
- acceptance by the applicant that a separate Stage 2 development application will be required for the fit out and use of the areas marked “communal” in the basement, Ground level, and Levels 1 and 2.

SCHEDULE 1

CONDITIONS OF CONSENT

CONSENT IDENTIFICATION

The following condition provides information on what forms part of the Consent.

1. Approved Plan/Details

The development must be in accordance with the following consent plans electronically stamped by Council:

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Cover page	CDA-000	G	18.11.2024	Squillace
List of Amendments	CDA-001			
List of Amendments Sheet 2	CDA-001a			
Façade Concept Materials and Finishes	CDA-002			
Demolition Plan	CDA-010			
Site Plan	CDA-011			
Ground Floor Plan	CDA-100			
Level 1 Floor Plan	CDA-101			
Level 2 Floor Plan	CDA-102			
Level 3-7 Floor Plan	CDA-103			
Level 8-18 Floor Plan	CDA-108			
Level 19-24 Floor Plan	CDA-119			
Level 25 Floor Plan	CDA-125			
Roof Plan	CDA-126			
Lift Roof Plan	CDA-127			
Basement 1 Floor Plan	CDA-130			
Basement 2 Floor Plan	CDA-131			
Basement 3 Floor Plan	CDA-132			
Basement 4 Floor Plan	CDA-133			
Adaptable Layouts – Typical Unit Plans	CDA-150			
Adaptable Layouts – Typical Unit Plans	CDA-151			
Adaptable Layouts – Typical Unit Plans	CDA-152	G	18.11.2024	Squillace

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Section	CDA-200			
Section through vehicle entrance	CDA-210			
West Elevation	CDA-300			
North Elevation	CDA-301			
East Elevation	CDA-302			
South Elevation	CDA-303			
Deep soil calculations	CDA-399			
Landscape area calculations	CDA-400			
Floor space area calculation – Sheet 1 of 2	CDA-401			
Floor space area calculation – Sheet 2 of 2	CDA-402			
Storage calculations	CDA-600			
Proposed Future Access Easement	CDA-800			
Stormwater Drainage Coversheet	SW100	C	-	SGC
Notes & Legend	SW101		13/9/2024	
Erosion & Sediment Control Plan & Details	SW201		13/9/2024	
Stormwater Drainage Design Basement 04 Plan	SW301			
Stormwater Drainage Design Ground Floor Plan	SW302			
Stormwater Drainage Design Level 01 Plan	SW303			
Stormwater Drainage Design Roof Plan	SW304			
Stormwater Drainage Design Details Sheet 01 of 02	SW401			
Stormwater Drainage Design Details Sheet 02 of 02	SW402			
Stormwater Drainage Site Catchment Plan & Details	SW501			
Stormwater Drainage Music Catchment Plan	SW502			
Stormwater Drainage Flood Mitigation Measures	SW601			
Landscape Coversheet	L01	G	13/9/2024	Habit8
Design Philosophy _ Precedent imagery	L02	G	13/9/2024	Habit8

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Landscape Masterplan – Ground floor	L03			
Soil Depth – Ground floor	L04			
Landscape Masterplan – Level 01	L05			
Soil Depth – Level 01	L06			
Landscape Masterplan – Level 02	L07			
Soil Depth – Level 02	L08			
Landscape Masterplan – Level 03-07	L09			
Soil Depth – Level 03-07	L010			
Landscape Sections 01	L11			

the application form and any other supporting documentation submitted as part of the application, except for:

- (a) any modifications which are “Exempt Development” as defined under S.4.1(1) of the *Environmental Planning and Assessment Act 1979*;
 - (b) otherwise provided by the conditions of this consent.
- (Reason: Information and ensure compliance)

2. Approved use

This consent does not grant consent to any use of the ground floor or first floor areas. The use of the ground floor and first floor areas will be the subject of a detailed proposal in a subsequent development application which will seek consent for either:

- (a) Communal areas which are ancillary to the approved residential flat building use; or
- (b) Centre-based child care facilities, community facilities, respite day care centres or any other use that is permissible.

3. WaterNSW

The following General Terms of Approval (GTAs) from WaterNSW must be complied with. **The GTA issued by WaterNSW do not constitute an approval under the *Water Management Act 2000*.** The development consent holder must apply to WaterNSW for the relevant approval **after development consent** has been issued by Council **and before** the commencement of any work or activity.

GT011500001	Groundwater must only be pumped or extracted for the purpose of temporary construction dewatering at the site identified in the development application. For clarity, the purpose for which this approval is granted is only for dewatering that is required for the construction phase of the development and not for any dewatering that is required once construction is completed.
GT011600001	Before any construction certificate is issued for any excavation under the development consent, the applicant must: 1. apply to WaterNSW for, and obtain, an approval under the Water Management Act 2000 or Water Act 1912, for any water supply works required by the development; and 2. notify WaterNSW of the programme for the dewatering activity to include the commencement and proposed completion date of the dewatering activity
GT011600001	Advisory Note: 3. An approval under the Water Management Act 2000 is required to construct and/or install the water supply works. For the avoidance of doubt, these General Terms of Approval do not represent any authorisation for the take of groundwater, nor do they constitute the grant or the indication of an intention to grant, any required Water Access Licence (WAL). A WAL is required to lawfully take more than 3ML of water per water year as part of the dewatering activity. 4. A water use approval may also be required, unless the use of the water is for a purpose for which a development consent is in force.
GT0117-00001	A water access licence, for the relevant water source, must be obtained prior to extracting more than 3ML per water year of water as part of the construction dewatering activity. Advisory Notes: 1. This approval is not a water access licence. 2. A water year commences on 1 July each year. 3. This approval may contain an extraction limit which may also restrict the ability to take more than 3ML per water year without further information being provided to WaterNSW. 4. Note that certain water sources may be exempted from this requirement - see paragraph 17A, Schedule 4 of the Water Management (General) Regulation 2018.

GT0118-00001	If no water access licence is obtained for the first 3ML / year (or less) of water extracted, then, in accordance with clause 21(6), Water Management (General) Regulation 2018, the applicant must: (a) record water taken for which the exemption is claimed, and (b) record the take of water not later than 24 hours after water is taken, and (c) make the record on WAL exemption form located on WaterNSW website "Record of groundwater take under exemption", and (d) keep the record for a period of 5 years, and (e) give the record to WaterNSW either via email to Customer.Helpdesk@waterNSW.com.au or post completed forms to - PO Box 398 Parramatta NSW 2124 (i) not later than 28 days after the end of the water year (being 30 June) in which the water was taken, or (ii) if WaterNSW directs the person in writing to give the record to WaterNSW on an earlier date, by that date.
GT0119-00001	All extracted groundwater must be discharged from the site in accordance with Council requirements for stormwater drainage or in accordance with any applicable trade waste agreement.
GT0120-00001	The design and construction of the building must prevent: (a) any take of groundwater, following the grant of an occupation certificate (and completion of construction of development), by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for
GT0120-00001	unforeseen high water table elevations to prevent potential future inundation; (b) obstruction to groundwater flow, by using sufficient permanent drainage beneath and around the outside of the watertight structure to ensure that any groundwater mounding shall not be greater than 10 % above the pre-development level; and (c) any elevated water table from rising to within 1.0 m below the natural ground surface.
GT0121-00001	Construction phase monitoring bore requirements GTA: a) A minimum of three monitoring bore locations are required at or around the subject property, unless otherwise agreed by WaterNSW. b) The location and number of proposed monitoring bores must be submitted for approval, to WaterNSW with the water supply work application. c) The monitoring bores must be installed and maintained as required by the water supply work approval. d) The monitoring bores must be protected from construction damage.

GT0122-00001	Construction Phase Monitoring programme and content: a) A monitoring programme must be submitted, for approval, to WaterNSW with the water supply work application. The monitoring programme must, unless agreed otherwise in writing by WaterNSW, include matters set out in any Guide published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no Guide is current or published, the monitoring programme must include the following (unless otherwise agreed in writing by WaterNSW): i. Pre-application measurement requirements: The results of groundwater measurements on or around the site, with a minimum of 3 bore locations, over a minimum period of 3 months in the six months prior to the submission of the approval to WaterNSW. ii. Field measurements: Include provision for testing electrical conductivity; temperature; pH; redox potential and standing water level of the groundwater; iii. Water quality: Include a programme for water quality testing which includes testing for those analytes as required by WaterNSW; iv. QA: Include details of quality assurance and control v. Lab assurance: Include a requirement for the testing by National Association of Testing Authorities accredited laboratories. b) The applicant must comply with the monitoring programme as approved by WaterNSW for the duration of the water supply work approval (Approved Monitoring Programme)
GT0123-00001	(a) Prior to the issuing of the occupation certificate, and following the completion of the dewatering activity, and any monitoring required under the Approved Monitoring Programme, the applicant must submit a completion report to WaterNSW. (b) The completion report must, unless agreed otherwise in writing by WaterNSW, include matters set out in any guideline published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no guideline is current or published, the completion report must include the following (unless otherwise agreed in writing by WaterNSW): 1) All results from the Approved Monitoring Programme; and 2) Any other information required on the WaterNSW completion report form as updated from time to time on the WaterNSW website. c) The completion report must be submitted using "Completion Report for Dewatering work form" located on WaterNSW website www.waternsw.com.au/customer-service/waterlicensing/dewatering

GT0150-00001	The extraction limit shall be set at a total of 3ML per water year (being from 1 July to 30 June). The applicant may apply to WaterNSW to increase the extraction limit under this condition. Any application to increase the extraction limit must be in writing and provide all information required for a hydrogeological assessment. Advisory note: Any application to increase the extraction limit should include the following: - Groundwater investigation report describing the groundwater conditions beneath and around the site and subsurface conceptualisation - Survey plan showing ground surface elevation across the site - Architectural drawings showing basement dimensions - Environmental site assessment report for any sites containing contaminated soil or groundwater (apart from acid sulphate soils (ASS)) - Laboratory test results for soil sampling testing for ASS - If ASS, details of proposed management and treatment of soil and groundwater. Testing and management should align with the NSW Acid Sulphate Soil Manual
GT0151-00001	Any dewatering activity approved under this approval shall cease after a period of two (2) years from the date of this approval, unless otherwise agreed in writing by WaterNSW (Term of the dewatering approval). Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
GT0152-00001	This approval must be surrendered after compliance with all conditions of this approval, and prior to the expiry of the Term of the dewatering approval, in condition GT0151-00001. Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
GT0155-00001	The following construction phase monitoring requirements apply (Works Approval): - The monitoring bores must be installed in accordance with the number and location shown, as modified by this approval, unless otherwise agreed in writing with WaterNSW. - The applicant must comply with the monitoring programme as amended by this approval (Approved Monitoring Programme). - The applicant must submit all results from the Approved Monitoring Programme, to WaterNSW, as part of the Completion Report

4. Transport for NSW (Sydney Trains)

The following conditions from Transport for NSW (Sydney Trains) must be complied with:

A.	▪ Prior to the issue of a Construction Certificate, the Applicant shall provide an accurate survey locating the development with respect to the rail boundary and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of Sydney Trains' representative.
B.	▪ Prior to the issue of a Construction Certificate, the Applicant shall undertake a services search to establish the existence and location of any rail services. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within the subject development site, the Applicant must discuss with Sydney Trains as to whether these services are to be relocated or incorporated within the development site.
C.	▪ The Applicant shall prepare an acoustic assessment demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines". The Applicant must incorporate in the development all the measures recommended in the report. A copy of the report is to be provided to the Certifier and Council prior to the issuing of a Construction Certificate. The Certifier must ensure that the recommendations of the acoustic assessment are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.
D.	▪ The design, installation and use of lights, signs, and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of the rail operator. The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
E.	▪ If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
F.	▪ No metal ladders, tapes, and plant, machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and catenary, contact and pull-off wires of the adjacent tracks, and to any aerial power supplies within or adjacent to the rail corridor.

G.	▪ Prior to the issuing of a Construction Certificate the Applicant must submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains' requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains' requirements. The Certifier is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
H.	▪ During all stages of the development, the Applicant must take extreme care to prevent any form of pollution entering the rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
I.	▪ Excess soil is not allowed to enter, be spread, or stockpiled within the rail corridor (and its easements) and must be adequately managed/disposed of.
J.	▪ The Applicant/Developer shall not at any stage block the corridor access gate and should make provision for easy and ongoing 24/7 access by rail vehicles, plant, and equipment to support maintenance and emergency activities.
K.	▪ Sydney Trains advises they have a High Voltage Aerial Transmission Line immediately adjacent to the development site. The proposed development should note the requirements of the below electrical standards/guidelines: - ISSC 20 – Guideline for the Management of Activities within Electricity Easements and Close to Electricity Infrastructure. - The Safe Approach Distances (SADs) in the Sydney Trains Document titled "SMS06-GD-0268 – Working Around Electrical Equipment". - "WorkCover Code of Practice – Work near Overhead Power Lines (The Code)" In addition, all Landscaping should be in accordance with the Sydney Trains High Voltage Powerline Tree Management Plan.
K.	▪ Prior to the issuing of a Construction Certificate, the following final version rail specific items are to be submitted to Sydney Trains for review, comment, and written endorsement: ▪ Machinery to be used during excavation/construction. ▪ Demolition, excavation, and construction methodology and staging. The Certifier is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

M.	▪ Sydney Trains or Transport for NSW, and persons authorised by those entities for the purpose of this condition, must be permitted to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and the requirements of this consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.
N.	▪ The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who: ▪ oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains; ▪ acts as the authorised representative of the Applicant; and ▪ is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.
O.	▪ Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.
P.	▪ Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.
Q.	▪ Copies of any certificates, drawings, approvals/certification, or documents endorsed by, given to, or issued by Sydney Trains or TAHE (Transport Asset Holding Entity) must be submitted to Council for its records prior to the issuing of the applicable Construction Certificate or Occupation Certificate.

4. NSW Police

The following conditions from the NSW Police must be complied with:

A.	The site will need to be clearly identified through a building name or street number and be visible from the street. This will enable all emergency services to locate the premises.
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B.	Appropriate signage should be erected inside and around the perimeter of the entire property to warn of security treatments in place e.g. "This site is under 24 hour video surveillance".
C.	Appropriated modifications should be made where necessary to accommodate the increase in traffic congestion on surrounding streets and intersections.
D.	Any bicycle parking should be in a secure area and covered with CCTV cameras.
E.	Mail boxes and parcel delivery areas should be secure and covered with CCTV cameras. If possible, a secure method for parcel delivery should be set up in the building.
F.	If the site has storage cages they should be made of solid materials that can't be cut open and should be covered by CCTV cameras. Signs should be placed in the area warning residents not to leave valuable items in storage cages.
G.	Lighting within the site will need to be positioned in a way to reduce opportunities for offenders to commit crime i.e vandalism and graffiti. The lighting will need to be sufficient to enable people to identify signs of intoxication and anti social behaviour. The lighting will also need to be sufficient to support images obtained from any CCTV footage. Please note that some low or high pressure lighting is not compatible with surveillance systems.
H.	Doors should be of solid construction and should be fitted with quality deadlock sets that comply with the Building Code of Australia and Australian Standards – Lock Sets AS:4145. Windows within the site should also be of solid construction. These windows should be fitted with quality window lock sets that comply with the Australian Standards – Lock Sets AS:4145. Glass within doors and windows should be reinforced to restrict unauthorised access. The glass can be either fitted with a shatter resistant film or laminated to withstand physical attacks.
I.	An electronic surveillance system should be included to provide maximum surveillance of all areas of the site including entry/exits, car parks, bicycle parking, mail areas and common areas. Cameras should also cover public

	footpath areas around the premises. The system should be capable of recording high-quality images of events. The recording equipment should be locked away to reduce the likelihood of tampering. An emergency control and evacuation plan should be implemented within the site and displayed for the information of residents. All recording made by the CCTV system must be stored for at least 30 days. Ensure that the system is accessible by at least one member of staff at all times it is in operation, and provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector. The CCTV cameras will need to be placed in suitable locations to enhance the physical security and assist in positively identifying an individual, who may be involved in criminal behaviour. “Park Smarter” signage should be displayed in the car park to warn/educate motorists to secure their vehicles and not leave valuable items in their cars. The car park will also need to have adequate lighting. Wheelchair access should at no time be blocked nor impede access to anyone with a disability. The landscaping design around the site needs to be free from potential hiding places and provide sightlines throughout the site and into any surrounding areas such as car parks, playgrounds and recreational amenities. Trees and shrubs should be maintained regularly to reduce concealment opportunities and increase visibility. Avoid the use of landscaping materials which could, when mature, serve as screens or barriers to impede views. The boundaries of the site should be clearly identified to deter unauthorised persons from entering the site.
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(Reason: Ensure compliance)

5. Transport for NSW (TfNSW)

The following conditions from the TfNSW must be complied with:

A	All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Pacific Highway boundary.
B	The design and construction of the kerb and gutter works on the Pacific Highway shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au. Detailed design plans of the proposed gutter crossing and kerb and guttering are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

C	Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon the Pacific Highway are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.
D	The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
E	A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on the Pacific Highway during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf.

6. Sydney Airport

Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.

- a) Pursuant to s. 183 of the Airports Act 1996 and Reg 7 of the Airports (Protection of Airspace) Regulations 1996, the Proponent must apply through the Airport to the Secretary of the Department of Infrastructure and Regional Development for approval of the operation ("controlled activity") set out in the Schedule.
- b) An Application for approval must be given to the Airport at least 28 days before commencement of the operation.
- c) The operation must not commence without approval and must only proceed in compliance with any conditions imposed on such approval.
- d) Sydney Airport has delegated authority from the Secretary to determine "short term" operations (less than 3 months).
- e) The Airport is required to invite submissions from CASA and Airservices regarding the proposed operation.
- f) The Secretary and the Airport, as applicable, may request further information before determining an application.
- g) The Important Notes to Application for Approval of a Crane Operation which is a Controlled Activity as issued by Sydney Airport must be read and accepted.

- h) The Proponent must provide a copy of the application referred to above at (b) to Council.

FOLLOWING DEMOLITION BUT PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

7. Affordable Housing

- (a) Prior to the issue of a Construction Certificate and within 21 days of receiving development consent for DA 2023/166, a planning agreement in the terms annexed hereto and marked 'B' is to be executed by the Applicant in accordance with section 7.4 of the *Environmental Planning and Assessment Act 1979*, and delivered to the Council in registrable form pertaining to Lots Lot 1 DP 187216, Lot 1 DP 952311, and Lot 2 DP 952311.
- (b) The Council must, in response to a reasonable request of the applicant, and at the cost of the applicant take such action that is reasonably necessary to facilitate efforts by the applicant to fulfill the applicant's obligations under these conditions of consent (including promptly signing any necessary documents).
- (c) Following the execution of the annexed VPA marked 'B' by Council and its return/notification to the applicant (or any future owner) they shall at its cost take all necessary steps to register the VPA on the title of the subject site for the purposes of s7.6(1) of the Act, including:
- do such other things as are reasonably necessary to enable registration of this Deed to occur;
 - obtain the written consent of each person referred to in s7.6(1) of the Act to effect that registration; and
 - provide the Council with evidence of registration within 5 days of being notified by the NSW Land Registry Services of such registration.

8. Preparation of a Remedial Action Plan

Preparation of a suitable Remedial Action Plan (RAP) shall be carried out by a suitably qualified and certified contaminated land consultant to demonstrate that remediation can be carried out in an environmentally sustainable and practical way to render the site suitable for the proposed mixed use. The RAP shall be submitted with the Construction Development Application.

(a)

Notes: (i) Contaminated land reports submitted to Council must be prepared, or reviewed and approved by, a certified contaminated land consultant certified under the Environment Institute of Australia and New Zealand – Certified Environmental Practitioner (Site Contamination) (CEnvP (SC)) or the Soil

Science Australia – Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) schemes.

(ii) Contaminated land reports shall be prepared in accordance with:

- State Environmental Planning Policy - (Resilience and Hazards) 2021
- *Contaminated Land Planning Guidelines* (Department of Urban Affairs and Planning and EPA 1998) or updates
- *Consultants reporting on contaminated land – Contaminated Land Guidelines* (NSW EPA 2020)

(Reason: Protection of environment and public health)

9. Submit the Following Information to Willoughby City Council

Prior to the lodgement of an application for a construction certificate, the applicant shall submit plans and specifications satisfying the following requirements to Willoughby City Council for approval. Documentation confirming approval by Willoughby City Council shall then be submitted to the Certifier for the application of a construction certificate.

- (a) Revised Flood Impact Assessment, based on the “For Construction Drawings”, that is to confirm that afflux outside the boundaries of the site is less than 10mm for the 1%AEP event. The report is to include the following”
- Proposed and existing flood levels for the 1%AEP event.
 - Afflux diagram for the 1%AEP event. The diagram is to clearly show the site boundaries and is to clearly demonstrate that any increase in flood levels external to the site does not exceed 10mm
 - Detailed plans of the mitigation works required, including the channel along the southern boundary and the landscaped area to be lowered.
 - Details of the blockage factor applied to the flow path / channel along the southern boundary.
- (b) Though consent is granted to strata subdivision the draft strata plan (Ref: 230770, dated 31/1/24 by Barker Ryan Stewart) is not approved and does not form part of this development consent. An updated strata plan is required to be submitted that accurately reflects the approved architectural plans, including:
- common property free from obstruction associated with “potential future connection to 689 Pacific Highway”,
 - nomination of storage spaces consistent with the approved architectural plans
 - nomination of landscaped areas located throughout the residential tower as common property
 - waste management areas accurately nominated to align with the approved architectural plans.

(Reason: Ensure compliance)

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

10. Damage Deposit

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$183,000** (GST Exempt) to Council against possible damage to Council's assets and any infrastructure within the road reserve/footway during the course of the building works. The deposit will be refundable, following issue of the Final / Whole Occupation Certificate, subject to inspection by Council after the completion of all works relating to the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of **\$260** (GST Exempt) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

Total Payable = \$183,000 + \$260 = \$183,260

(Reason: Protection of public asset)

11. Temporary Ground Anchors

Obtain written permission from all private property owners affected by any encroachment either below ground or the air space above as a result of any proposed temporary ground anchors prior to issue of the Construction Certificate. Permits are to be obtained from Council for any temporary ground anchors to be installed within the road reserve. Copies of the permission shall be sent to Council. A Temporary Ground Anchor Permit is to be obtained from Council for any ground anchors proposed to be installed in Council's Road Reserve. Permits will not be issued for ground anchors beneath a State Road. All works associated with the drilling and stressing of the ground anchors shall be installed in accordance with approved drawings.

(Reason: Encroachment of works)

12. Stormwater Conveyed to Street Drainage

Stormwater runoff from the site shall be collected and conveyed to the street drainage system in accordance with TfNSW and Council's specifications. A grated drainage pit of minimum 600mm x 600mm provided within the property and adjacent to the boundary prior to discharging to the street drainage system. All drainage works shall comply with the requirements described in Part I of Council's DCP, Technical Standards and AS 3500.3. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site shall be shown on the Construction Certificate plans. Approval is to be obtained from TfNSW for the connection to the street drainage pit.

(Reason: Stormwater control)

13. Analysis of Outlet Condition

The capacity of the outlet pipe to the Council system shall be hydraulically evaluated using the Hydraulic Grade Line method to ensure that the outlet from the OSD system is above the downstream water level for the 1%AEP storm event. Full engineering details of the hydraulic evaluations prepared and signed by a practising Civil Engineer shall be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

(Reason: Prevent property damage)

14. Detailed Stormwater Management Plan (SWMP)

Prior to the issue of the Construction Certificate, submit to the Certifier for approval, detailed stormwater management plans in relation to the on-site stormwater management and disposal system for the development. The construction drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and be in accordance with SGC Engineers drawings SW100/C, SW101/C, SW301/C, SW302/C, SW303/C, SW304/C, SW404/C, SW402/C, SW501/C, SW502/C and SW601/C. Access from the loading dock area to the area above the OSD tank shall be via an access stair as shown on Architectural Plan CD-100/G and not a ladder as detailed on the stormwater plans. All drawings shall comply with Part I of Council's Development Control Plan and Technical Standard 1, AS/NSZ3500.3 – *Plumbing and Drainage Code* and National Construction Code.

(Reason: Ensure compliance)

15. Basement Pumpout Drainage System

Prior to the issue of the Construction Certificate, the applicant shall submit, for approval by the Certifier, detailed stormwater management plans in relation to the pump-out drainage system. The construction drawings and specifications shall be generally in accordance with the approved stormwater management plans with the following requirements:

- (a) The pumpout drainage system shall comprise with two (2) submersible type pumps. The two pumps shall be designed to work on an alternative basis to ensure both pumps receive equal use and neither remains continuously idle.
- (b) Each pump shall have a minimum capacity of 10L/s or shall be based on the flow rate generated from the 1% Annual Exceedance Probability storm event 5-minutes duration of the area draining into the system, whichever is greater.
- (c) An alarm warning device (including signage and flashing strobe light) shall be provided for the pump-out system to advise the occupant of pump failure. The location of the signage and flashing strobe light shall be shown on the stormwater management plans.
- (d) The volume of the pump-out tank shall be designed with a minimum storage capacity equivalent to the runoff volume generated from of the area draining into the tank for the 1% Annual Exceedance Probability storm event for 2-hours duration.

All drawings shall be prepared by a suitably qualified and experienced civil engineer and shall comply with Part I of Council's Development Control Plan, Technical Standard 1, AS/NZS 3500.3 – *Plumbing and Drainage Code* and the National Construction Code.

(Reason: Prevent nuisance flooding)

16. Overland Flow/Flood Level

A suitably qualified and experienced civil engineer must certify that:

- (a) The finished floor levels of the proposed building have a minimum freeboard of 500mm above the 1% AEP flood event, which is conveyed through the site.
- (b) All access points to the basement have a minimum level of 500mm above the 1% AEP flood event or the PMF level, whichever is higher.

- (c) In the 1%AEP flood event, any increase in flood levels external to the site are less than 10mm.
- (d) The existing boundary fences within the extent of the overland flow path will be replaced with open type fencing to allow unimpeded passage of overland flow
- (e) No structures, walls, fill or other items will be constructed to impede the 1% AEP overland flow path within the identified flood zone, other than works detailed in the approved flood report.
- (f) The proposed works comply with the requirements of Technical Standard 2 Floodplain Management.

The engineer must undertake an assessment of the critical flows as determined necessary to satisfy this condition. Where floor levels need to be raised or other flood protection measures are deemed necessary, details must be submitted and approved by the Certifying Authority prior to the issue of the Construction Certificate.

(Reason: Prevent property damage)

17. Construction Management Plan (CMP)

Prior to the issue of the Construction Certificate, submit, for approval by the Certifier, detailed Construction Management Plan (CMP). The CMP shall address:

- (a) Construction vehicles access to and egress from the site
 - (b) Parking for construction vehicles
 - (c) Locations of site office, accommodation and the storage of major materials related to the project
 - (d) Protection of adjoining properties, pedestrians, vehicles and public assets
 - (e) Location and extent of proposed builder's hoarding and Work Zones
 - (f) Tree protection management measures for all protected and retained trees.
- (Reason: Compliance)

18. Design of Works in Public Road (Roads Act Approval)

Prior to issue of any Construction Certificate, the applicant must submit, for approval by Council as a road authority, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works:

- (a) Construction of 2.0 metres wide footpath (max. 2.5% crossfall) towards the kerb for the full frontage of the development site in Pacific Highway in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (b) Reconstruction of existing kerb and gutter for the full frontage of the development site in Pacific Highway in accordance with TfNSW requirements.
- (c) Construction of a new vehicular crossing in accordance with TfNSW and Council's requirements. The crossing is to have a separate entry and exit and be angled to provide left in and left out. The width is to be minimised, while providing access for the design vehicle to the site (minimum Council's 10.5m waste vehicle)
- (d) Connection of the site drainage system to the stormwater drainage pit in Pacific Highway.
- (e) Any other works in the road reserve required for the development or as required to satisfy the conditions of consent.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). A minimum of three (3) weeks will be required for Council to assess the *Roads Act* submissions. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to issue of the approved plans.

Approval must be obtained from Willoughby City Council as the road authority under the *Roads Act 1993* for any proposed works in the public road prior to the issue of any Construction Certificate.

Prior to final approval from Council for the plans, concurrence is to be obtained from TfNSW for the public domain works.

(Reason: Ensure compliance)

19. Driveway Longsection

Prior to issue of the Construction Certificate and in order to assess the susceptibility of vehicles to scraping as they pass over the proposed access driveway the applicant shall submit longitudinal sections for approval by Council along each side of the proposed vehicular access path drawn at 1:20 Scale. The longitudinal sections shall include the following: -

- (a) Horizontal distance from the centreline of the road to 12m within the site, including provision of TfNSW standard layback.
- (b) Both existing and proposed levels (in AHD) and gradients represented in percentage (%) of the vehicular crossing and driveway.

- (c) Crossfall on road pavement shall be shown on long sections.

The design shall be prepared by a suitably qualified civil engineer. All driveway grades and transitions shall comply with AS/NZS 2890.1, AS 2890.2, and TfNSW and Council's specifications.

The footpath/footpath zone which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb. For the design levels of the vehicular crossing at the property boundary, the following shall be complied with, unless written approval is gained from Council for alternate levels:

- (a) At back of layback – 100 mm above and parallel to the gutter invert.
(b) At property boundary – 170mm above and parallel to the gutter invert.

The suitability of the grade of driveway inside the property is the sole responsibility of the applicant and the required alignment levels fixed by Council may impact upon these levels.

(Reason: Safe vehicular access)

20. Flood Risk Management Plan

A Flood Risk Management Report prepared by a qualified civil engineer experienced in flood analysis and management and complying with the requirements in Part I of the Willoughby DCP and Technical Standard No. 2, "Floodplain Management" and the NSW Government's Flood Risk Management Manual, shall be submitted with the application for Construction Certificate. All measures contained in the report shall form part of any Construction Certificate issued.

(Reason: Managing Flood Risk)

21. OSD/Rainwater Tank Design

The design of all rainwater/OSD tanks shall comply with the requirements of the NSW Work Health and Safety Regulation 2017, to minimise risks associated with confined spaces. The design shall also consider "Safety in Design" requirements. Prior to issue of a Construction Certificate, a suitably qualified person shall certify that the design meets these requirements.

(Reason: Safe access to tanks)

22. Vehicle Access and Manoeuvring – Engineer's Certification

Prior to the issue of the Construction Certificate, the Applicant shall submit, for approval by the Principal Certifier, certification from a suitably qualified and experienced Traffic Engineer relating to the design of vehicular access and manoeuvring for the development. This certification must be based on the architectural drawings and the structural drawings, and must make specific reference to the following:

- (a) That finished driveway gradients and transitions comply with AS/NZS 2890.1 and AS 2890.2 and will not result in scraping to the underside of cars.
(b) That the proposed vehicular path and parking arrangements comply in full with AS/NZS 2890.1, AS 2890.2 and AS 2890.6 in terms of minimum dimensions provided and grades on parking spaces.
(c) That the headroom clearance of minimum 2.2 metres between the basement floor and any overhead obstruction (including overhead services) is provided for compliance with Section 5.3.1 of AS/NZS 2890.1 and Section 2.7 of AS 2890.6.

- (d) That the headroom clearance of minimum 2.5 metres is provided to all parking spaces for people with disabilities for compliance with Section 2.7 of AS 2890.6.
- (e) That the headroom clearance required in AS 2890.2 for the largest vehicle using the site (minimum 4.5m) has been provided for the loading area and the path to and from the loading area.
- (f) That accessible parking spaces, including those for adaptable units, are provided with shared zones and bollards as per the requirements of AS 2890.6.
- (g) Simultaneous manoeuvring of B99 and B85 vehicles at all ramps and ramp ends including the clearance lines for each vehicle, in accordance with AS2890.1, is complied with.
- (h) Simultaneous manoeuvrability of the largest vehicle using the site (minimum Council's 10.5m waste vehicle) and a passenger vehicle including clearance in accordance with AS2890.1 and AS2890.2, is provided between the site entry and the loading dock.
- (i) That sight triangles in accordance with Figure 3.3 of AS/NZS 2890.1 will be provided at the vehicle exit from the site and that landscaping within the sight triangles will not impact sight lines.

(Reason: Ensure compliance)

23. Finish Surface Levels Along the Street Boundary

Prior to the issue of a Construction Certificate, finished surface levels for all internal works along the street boundary, including finish floor levels, driveways, car spaces, landscaping, drainage structures etc., must be shown on the plans issued for construction. The development's internal surface levels along the street boundary must be consistent with the public domain civil works plans approved by Council under the *Roads Act (1993)*. Any changes required to the finish floor levels approved under this development consent may require an application under S4.55 of the EP&A Act.

(Reason: Ensure compliance)

24. Grease Arrestor for Potential Food Businesses

Provision shall be made in the design of the development in the Construction Development Application for a grease arrestor room of adequate dimensions to house the necessary tanks and plant equipment to pre-treat oil, grease and fats prior to discharge to Sydney Water's sewer in accordance with that authority's requirements. The grease arrestor room shall be located somewhere in the development that facilitates easy access by waste contractor vehicles.

(Reason: Environmental protection/public health and safety)

25. Exhaust Ventilation for Potential Food Businesses

Provision shall be made in the design of the development in the Construction Development Application to convey kitchen exhaust from potential food businesses through the buildings to discharge in a vertical direction above the roof level in such a way as to prevent a nuisance to the public and occupiers of the development.

26. Tree Protection Plan

- (a) Submit to the registered certifier a Tree Protection Plan for approval prior to issue of a construction certificate.
- (b) The Tree Protection Plan is to be prepared by a qualified Arborist with minimum qualification AQF Level 5.
- (c) Tree Protection Plan shall address tree protection and management of all trees (including those on adjoining properties) in accordance with AS 4970-2009 'Protection of trees on development sites' and clearly mark tree protection zones as well as tree protection measures and fencing.

(Reason: Tree protection)

27. S7.11 Contribution

Prior to the issue of the Construction Certificate, a monetary contribution is to be paid to in accordance with section 7.11 of *Environmental Planning and Assessment Act, 1979* in the amount of \$1,245,705.67 for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

Active transport and public domain facilities	\$53,126.32
Open space and recreation facilities	\$976,405.95
Plan administration	\$18,409.49
Recoupment - community facilities	\$187,780.21
Recoupment - open space and recreation	\$9,983.70
Total	\$1,245,705.67

Indexation

The monetary contribution must be indexed between the date of this Development Consent and the date of payment in accordance with the following formula:

$$\frac{\$C_o \times CPI_p}{CPI_c}$$

Where:

\$C_o = the contribution amount shown in this Development Consent expressed in dollars

CPI_p = the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics (ABS) at the quarter immediately prior to the date of payment

CPI_c = the Consumer Price Index (All Groups Index) for Sydney as published by the ABS at the quarter ending immediately prior to the date of imposition of the condition requiring payment of a contribution

Deferred payments of contributions will not be accepted.

Prior to payment Council can provide the value of the indexed levy.

Copies of the *Willoughby Local Infrastructure Contributions Plan* are available for inspection online at www.willoughby.nsw.gov.au

(Reason: Statutory requirement)

28. External Finishes – Solar Absorptance

The external roofing, glazing and walls of the proposed dwelling are to be of minimal reflectance so as to avoid nuisance in the form of glare or reflections to the occupants of nearby buildings, pedestrians and/or motorists. Details demonstrating compliance are to be submitted with the Construction Certificate application.
(Reason: Visual amenity)

29. Certification of Gross Floor Area

Prior to the issue of a Construction Certificate, a Registered Surveyor shall submit to the Certifier for approval, a floor space ratio (FSR) calculation plan demonstrating that the proposed gross floor area of all buildings on the site is in accordance with the approved plans listed in Condition 1 of this Consent. The calculation must be undertaken in accordance with the definition for gross floor area under Willoughby Local Environmental Plan.
(Reason: Bulk and scale control/compliance)

30. BASIX

Under Section 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in the BASIX Certificate for the development are fulfilled.

31. Access, Mobility and Adaptable Housing

Prior to the issue of a Construction Certificate, to provide suitable access for people with disabilities, the development shall comply with Disability (Access to Premises – Buildings) Standards 2010. Details demonstrating compliance must be submitted with the Construction Certificate application.
(Reason: Access and Compliance)

32. Adaptable Units

Adaptable residential units for disabled persons are to be provided at a rate of 50% of units (total 45 units). Each adaptable unit is to be nominated on the Construction Certificate drawings and adaptable units are to be provided with an accessible car space that accords with AS 2890.6 at a rate of 1 accessible space per 4 adaptable residential unit (therefore minimum 12 accessible spaces required).
(Reason: Compliance, universal design)

33. Accessible car parking for visitors

Minimum 1 accessible space shall be provided for visitors in accordance with Willoughby Development Control Plan 2023 Part F Table 5. Details demonstrating compliance must be submitted with the Construction Certificate
(Reason: Compliance)

34. Motorcycle spaces

One of the motorcycle spaces is to be identified for visitor use, in accordance with Willoughby Development Control Plan 2023 Part F Table 2. Details demonstrating compliance must be submitted with the Construction Certificate
(Reason: Compliance)

35. Shared Path and Right-of-Way

Prior to the issue of the Construction Certificate the Architectural and Landscape Plans are to be amended to show a 3m wide shared path along the Pacific Highway frontage, commencing at a point 1.5m from the kerb, in accordance with Council's Shared Path Policy. Planting within the verge setback (from the kerb to a point 1.5m from the kerb) must be planting that achieves approximately 1m in height at maturity, so as to preserve sightlines for vehicles. The plans shall also notate that a right-of- way for public use is to be registered over all that part of the site within 4m of the front boundary (fronting Pacific Highway) including the shared path, and that this right-of-way will be registered prior to the issue of the Occupation Certificate. The wording of the right-of- way must be provided to Council and written approval obtained from Council prior to the issue of the Construction Certificate.
(Reason: Compliance and Public Amenity)

36. Undergrounding

All existing aerial cables which may include for electricity, communications and other cables connecting to street poles and buildings around the site shall be removed and installed underground in accordance with the requirements of the relevant service authorities. Ausgrid lighting poles are to be provided to the requirements of Ausgrid for street lighting and shall be positioned compatible to the landscaping design around the site.
(Reason: Compliance)

37. Residential waste storage areas

The developer must provide following residential waste storage areas:

- Basement bin storage area for residents of at least 68m²
- HRV accessible bin collection holding area of at least 65m²,
- Bulky waste storage area for residents of at least 22 m²
- HRV accessible collection holding area of at least 20 m².
- Residential on-floor chute room incorporating a recycling bin or with a recycling bin in an adjacent room to the chute room on every residential level.

(Reason: environmental protection/waste reduction/public health and safety)

38. Services and Fire Hydrant Enclosure

Prior to the issue of a Construction Certificate for works above Ground/Podium slab level, the Certifying Authority is to be provided with plans indicating that all Services (Gas meter, water meter & fire hydrant and sprinkler booster valves and the like) are enclosed in a manner that complements the building and in accordance with the requirements of EP1.3 & EP1.4 of the BCA.

(Reason: To ensure essential services are appropriately screened)

39. Sydney Water ‘Tap In’

Prior to the issue of the Construction Certificate, the approved plans must be submitted online to “Sydney Water Tap In” to determine whether the development will affect Sydney Water’s sewer and water mains and to see if further requirements need to be met.

An approval receipt will need to be obtained prior to release of the Construction Certificate.

(Reason: Ensure compliance)

40. Fibre-Ready Facilities and Telecoms Infrastructure

Prior to the issue of a Construction Certificate, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifier that arrangements have been made for:

- (a) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.

and

- (b) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note: *Real estate development project* has the meanings given in section 372Q of the *Telecommunications Act*).

41. Internal Noise Levels Residential

To minimise the noise intrusion from any external noise source, all new building work shall be designed and constructed to comply with recommendation of section 5 of Noise Impact Assessment (PWNA, Report No. 220120-42 Archer St, Chatswood-Noise Impact Assessment-R1, 17 June 2022) and any addendum reports and the following criteria with windows and doors closed:

Internal Space	Time Period	Criteria L_{Aeq} (period)
Living Areas	Any time	40 dB(A)
Sleeping Areas	Day (7am – 10pm)	40 dB(A)
	Night (10pm – 7am)	35 dB(A)

Note:

- The above criteria do not apply to kitchens, bathrooms, laundries, foyers, hallways, balconies or outdoor areas.
- The above criteria define the minimum acceptable levels. Buildings may be built to a better than average standard by applying more stringent criteria.

Certification from an appropriately qualified acoustic consultant that the building has been designed to meet these criteria shall be submitted to the Certifier prior to issue of the Construction Certificate.

(Reason: Amenity, environmental compliance and health)

42. Building Ventilation

To ensure that adequate provision is made for ventilation of the building, mechanical and/or natural ventilation shall be provided. These shall be designed in accordance with the provisions of:

- (a) The National Construction Code:
 - (i) AS1668.1, AS1668.2 and AS3666.1 as applicable; and/or
 - (ii) Alternative solution using an appropriate assessment method

Details of all mechanical ventilation and exhaust systems, and certification provided by an appropriately qualified person verifying compliance with these requirements, shall be submitted to the Certifier prior to the issue of the Construction Certificate.

(Reason: Health and compliance)

43. Noise Mechanical Services

To minimise the impact of noise onto receivers on surrounding land, all mechanical services shall be designed to comply with the noise emission criteria contained in the EPA's Noise Policy for Industry 2017. Details of the proposed equipment, siting, appropriate noise criteria and any attenuation required shall be prepared by an appropriately qualified acoustic consultant and accompany the application for a Construction Certificate.

(Reason: Amenity, environmental compliance and health)

44. Not Used

45. Not Used

46. Construction Traffic Management Plan

Prior to issue of the Construction Certificate, a detailed Construction Traffic Management Plan shall be prepared for pedestrian and traffic management and be submitted to the relevant road authority for approval. The plan shall: -

- (a) Be prepared by a TfNSW accredited consultant.
- (b) Be in accordance with the current version of AS1742.3 and its associated handbook; and the TfNSW's Traffic Control at work site manual.
- (c) Implement a public information campaign to inform any road changes well in advance of each change. The campaign shall be approved by the Traffic Committee.
- (d) Nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
- (e) Confine temporary road closures to weekends and off-peak hour times and shall be the subject of approval from Council. Prior to implementation of any

road closure during construction, Council shall be advised of these changes and a Traffic Guidance Scheme shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

(Reason: Public safety and amenity)

47. Traffic Work

Prior to issue of the Construction Certificate, any proposals for changes to the carriageway of a public road including shared paths, involving traffic arrangements shall be referred to the Local Traffic Committee for approval. All work shall be designed in accordance with RMS Technical Directives and Guidelines.

(Reason: Public safety and amenity)

PRIOR TO COMMENCEMENT

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. All of these conditions are to be complied with prior to the commencement of any works on site.

48. Ausgrid

The following conditions from Ausgrid must be complied with.

The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network asset:

a) Ausgrid Underground Cables are in the vicinity of the development

Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Dial Before You Dig (DBYD).

In addition to DBYD the proponent should refer to the following documents to support safety in design and construction:

- SafeWork Australia – Excavation Code of Practice.
- Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration:

- I. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.
- II. Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

b) Ausgrid Overhead Powerlines are in the vicinity of the development

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The “as constructed” minimum clearances to the mains must also be maintained.

These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer’s cost.

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances “Working Near Ausgrid Assets - Clearances”. This document can be found by visiting the following Ausgrid website:
www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

For new connections or to alter the existing electrical connection to the property from the Ausgrid network, the proponent should engage an Accredited Service Provider and submit a connection application to Ausgrid as soon as practicable.

Visit the Ausgrid website for further details:

<https://www.ausgrid.com.au/Connections/Get-connecte>
(Reason: Ensure compliance)

49. Spoil Route Plan

Submit a “to and from” spoil removal route plan to Council prior to the commencement of excavation on the site. Such a route plan should show entry and exit locations of all truck movements.

(Reason: Public amenity)

50. Site Management

A Site Management Plan shall be submitted to and approved by the Certifier prior to commencement of work. The Site Management Plan shall include the following measures as applicable.

- (a) Details and contact telephone numbers of the owner, builder and developer;

- (b) Location and construction details of protective fencing to the perimeter of the site;
- (c) Location of site storage areas, sheds and equipment;
- (d) Location of stored building materials for construction;
- (e) Provisions for public safety;
- (f) Dust control measures;
- (g) Site access location and construction;
- (h) Details of methods of disposal of demolition materials;
- (i) Protective measures for tree preservation;
- (j) Provisions for temporary sanitary facilities;
- (k) Location and size of waste containers and bulk bins;
- (l) Soil and Water Management Plans (SWMP); comprising a site plan indicating the slope of land, access controls, location and type of sediment controls and storage/control methods for material stockpiles;
- (m) Construction noise and vibration management.

The site management measures shall be implemented prior to the commencement of any site works and maintained during the construction period. A copy of the approved Site Management Plan shall be conspicuously displayed, maintained on site and be made available to the Certifier/Council officers upon request.
(Reason: Environment protection, public health and safety)

51. Asbestos Sign to be Erected

On sites involving demolition or alterations and additions to building where asbestos cement is being repaired, removed or disposed of a standard commercially manufactured sign not less than 400mm x 300mm containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" is to be erected in a prominent visible position on the site. The sign is to be erected prior to the commencement of works and is to remain in place until such time as all asbestos cement has been removed from the site to an approved waste facility.

(Reason: Public Health and safety/Ensure compliance)

52. Neighbour Notification of Asbestos Removal

The applicant/builder is to notify anyone occupying premises in the immediate vicinity of the site, five working days prior to demolition works involving removal of asbestos. Such notification is to be clearly written, giving the date work will commence.

As a minimum, this notification is to be placed in the letterbox of every property (including every residential flat or unit) either side and immediately at the rear of the site.

(Reason: Public health)

53. Dilapidation Report of Council's Property

Submit a dilapidation report including photographic record of Council's property extending to a distance of 50m from the development, detailing the physical condition of items such as, but not exclusively to, the footpath, roadway, nature strip, and any retaining walls. The Croquet greens are to be included in this report.

The developer may be held liable to any recent damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition prior to the commencement of works. In this regard, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

This dilapidation report shall be submitted to Council and the Certifier advised of the submission prior to commencement of work.
(Reason: Protection of Council's infrastructure)

54. Dilapidation Report of Adjoining Properties

Prior to commencement of work, submit a photographic survey and report of each of the adjoining properties (including each strata lot): 689 Pacific Highway legally known as 2/DP187216, 701-705 Pacific Highway legally known as SP39536, 655A Pacific Highway legally known as SP57067 and Chatswood Bowling Club greens legally known as 2/DP861346 to the Certifier and all owners of these adjoining properties. Such photographic survey and report shall be prepared by a suitably qualified person, detailing the physical condition of these properties, both internal and external including items as walls, ceilings, roof, structural members and other items as necessary.

In the event of a property owner refusing to allow access to carry out the photographic survey, the proponent must demonstrate in writing to the Certifier, and provide a copy to Council, that the purpose of the survey was made clear to the property owner and that reasonable attempts to obtain access were made.
(Reason: Protection of adjoining owners)

55. Permits and Approvals Required

Application is to be made to Council's Infrastructure Services Division for the following approvals and permits as appropriate:

- (a) Permit to erect Builder's hoarding where buildings are to be erected or demolished within 3.50m of the street alignment. Applications are to include current fees and are to be received at least 21 days before commencement of the construction.
- (b) Permit to stand mobile cranes and/or other major plant on public roads. Applications are to include current fees and security deposits and are to be received at least seven days before the proposed use. It should be noted that the issue of such permits may also involve approval from the NSW Police Force and TfNSW. A separate written application to work outside normal hours must be submitted for approval.

It should also be noted that, in some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.

- (c) Permit to open public roads, including footpaths, nature strip, vehicular crossing or for any purpose whatsoever. All applications are to include current fees. (Minimum one (1) weeks' notice required.)
- (d) Permit to place skip/waste bin on footpath and/or nature strip. (Maximum three (3) days).
- (e) Permit to work and/or place building materials on footpath and/or nature strip. (Maximum two (2) weeks).
- (f) Permit to establish Works Zone on Public Roads adjacent to the Development including use of footpath area. Applications must be received by Council at least twenty-one days prior to the zone being required. The application will then be referred to the Council's Local Traffic Committee for approval, which may include special conditions.
- (g) Permit to construct vehicular crossings over Council's footpath, road or nature strip.
- (h) Permit to install ground anchors beneath the road reserve.

The public footway must not be obstructed at any time unless written approval has been granted by Council. Council's footpath and footway shall be maintained in a safe condition for pedestrians and the general public at all times.

(Reason: Legal requirements)

56. Application for Vehicle Crossing

Submit an application with fees to Council for the construction of a plain concrete vehicular crossing.

(Reason: Protection of public asset)

57. Adjustment to Street Lighting

Prior to commencement of work, consult with utility authorities to determine the requirements of relocation/adjustment of electricity supply and street lighting services fronting the property at Pacific Highway as necessary for the proposed development. Such street lighting shall also conform to Council's standard specifications.

(Reason: Public amenity)

58. Underground Utility Services

Where excavation is proposed, locate and establish the size and levels of all utility services in the footpath and road reserve. Contact "Dial Before You Dig" Service" prior to commencement of any works.

All adjustments to public utilities' mains and services as a consequence of the development and associated construction works shall be at the full cost to the applicant.

(Reason: Protection of utilities)

59. Removal of Trees in Public Areas

Prior to the commencement of work,

- (a) Written notification is to be provided to Council giving a minimum of 7 days warning prior to undertaking the removal of any trees approved for removal in public areas
- (b) Removal of approved trees is to be undertaken by a qualified Arborist (Minimum qualification AQF Level 3) with suitable public liability insurance.

(Reason: Management of Public Land)

60. Project Arborist

- (a) A Project Arborist is to be appointed prior to commencement of works on site;
- (b) The Project Arborist is to have a minimum qualification AQF Level 5;
- (c) The Project Arborist is to oversee and authorise all tree protection works detailed in the approved Tree Protection Plan, AS4970-2009 *Protection of trees on development sites* and relevant conditions of consent;
- (d) The Project Arborist is to certify that all tree protection measures have been installed prior to commencement of works.

(Reason: Safety, environmental protection, landscape amenity)

61. Adjustment to Street Lighting

Prior to commencement of work, consult with utility authorities to determine the requirements of relocation/adjustment of electricity supply and street lighting services fronting the property to suit the new development. Such street lighting shall also conform to Council's standard specifications.

(Reason: Public amenity)

62. Hazardous Building Material Assessment

A hazardous building material assessment shall be undertaken by an appropriate qualified person and is to be submitted to the Certifier for approval prior to the issue of the Construction Certificate. The assessment shall identify any likely hazardous materials within any structure to be demolished and provide procedures on how to handle and dispose of such materials.

(Reason: Environmental protection/public health and safety)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

The following conditions are to be complied with throughout the course of site works including demolition, excavation and construction.

63. Hours of Work

All construction/demolition work relating to this Development Consent within the City, unless varied by an Out of Hours Work Permit, must be carried out only between the hours of 7 am to 5 pm Mondays to Fridays and 7 am to 12 noon on Saturdays. No work is permitted on Sundays or Public Holidays.

An application for an Out of Hours Work Permit to allow variation to these approved hours must be lodged with Council at least 48 hours prior to the proposed commencement of the work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and must be accompanied by the required fee. One (1) permit is required for each variation to the approved working hours within any 24 hour period.

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 4.55 of the *Environmental Planning and Assessment Act 1979* must be lodged with Council at least twenty-one (21) days in advance of the proposed changes to the hours of work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and be accompanied by the required fee. Note: This Section 4.55 application may require re-notification in some circumstances.

(Reason: Ensure compliance and amenity)

64. Building Site Fencing

Public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

A temporary safety fence is to be provided to protect the public, located to the perimeter of the site (unless the site is separated from the adjoining land by an existing structurally adequate fence, having a minimum height of 1.5m). Temporary fences are to have a minimum height of 1.8m and be constructed of cyclone wire or similar with fabric attached to the inside of the fence to provide dust control.

Fences are to be structurally adequate and be constructed in a good and workmanlike manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible. All parts of the fence, including the fencing blocks shall be located wholly within the property boundaries.

The public safety provisions and temporary fences must be in place and be maintained throughout construction.

(Reason: Safety)

65. Provide Erosion and Sediment Control

Where work involves excavation or stockpiling of raw or loose materials, erosion and sediment control devices shall be provided wholly within the site whilst work is being carried out in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the *Protection of Environment Operations Act 1997* and the Department of Environment, Climate Change and Water guidelines. The control devices are to be maintained in a serviceable condition AT ALL TIMES.

(Reason: Environmental protection)

66. Demolition Work AS 2601-2001

Any demolition must be carried out in accordance with AS 2601 – 2001, *The demolition of structures*.

(Reason: Safety)

67. Temporary Toilet Facilities

Temporary toilet facilities shall be provided to the satisfaction of the Certifier.

The provision of toilet facilities must be completed before any other work is commenced on site. NOTE: Portable toilet facilities are not permitted to be placed on public areas without prior approval having been obtained from Council.

(Reason: Health and amenity)

68. Survey Certificate

Certification of the following shall be submitted to the Certifier by a registered surveyor:

- (a) Prior to the construction of footings or first completed floor slab (i.e. prior to pouring of concrete) showing the area of the land, building under construction and boundary setbacks;
- (b) At each level indicating the level of that floor to Australian Height Datum;
- (c) Upon completion of the roof framing, before the roofing is laid, indicating the ridge height to Australian Height Datum;
- (d) At roof slab level indicating the level of that slab to Australian Height Datum;
- (e) At completion indicating the relation of the building and any projections to the boundaries, and that the building has been erected to the levels approved in the Development Application.

(Reason: Ensure compliance)

69. Tree Removal

Approval is given for the removal of trees as identified on Landscape Masterplan – Ground Floor Rev G Dwg. No. L03 dated 13.09.2024 prepared by Habit8 Landscape Architecture.

(Reason: Site development)

70. Tree Trunk, Branch and Root Protection

- (a) Retain and protect the following trees and vegetation throughout the demolition and construction period: All trees not approved for removal.
- (b) The above protected trees must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.
- (c) Tree protection measures must comply with the approved Tree Protection Plan and AS 4970-2009 Protection of trees on development sites with particular reference to Section 4 Tree Protection Measures.
- (d) Tree protection measures in accordance with (c) above are to be certified by the Project Arborist prior to commencement of works.
- (e) Tree roots greater than 25mm diameter are not to be removed unless approved by The Project Arborist on site.
- (f) All structures are to bridge over or tunnel bore under roots unless directed by The Project Arborist on site.

(Reason: Tree management)

71. No Access through Public Open Space

Site access is not approved for construction of the development through adjacent public reserve land.

(Reason: Safety, landscape amenity, tree protection)

72. Storage of Materials on Council Land Prohibited

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in the Council reserve is prohibited, unless written consent of Council is obtained.

(Reason: Safety, environmental protection)

73. Temporary Ground Anchors – Supervision

A professional Geotechnical Engineer shall be on site to supervise the piling, excavation and finally the installation and stressing of any ground anchors. On completion of these works, a report from the Geotechnical Engineer shall be submitted to Council for record purposes.

A Chartered Professional Engineer shall monitor adjoining public infrastructures to detect any ground heaving or settlement during and after the installation of the piling and ground anchors. A rectification report shall be submitted to Council should unacceptable displacements occur within the zone of influence.

(Reason: Protection of public assets)

74. Sweep & Clean Pavement

Sweep and clean pavement surface adjacent to the ingress and egress points of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council.

(Reason: Legal requirement)

75. Street Signs

The applicant is responsible for the protection of all regulatory / parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works are to be replaced at full cost to the applicant.

(Reason: Protection of public assets)

76. Maintenance of Nature Strip

Where a nature strip and/or footpath is located directly adjacent to the property, the nature strip must be maintained during the construction period to ensure the turf/vegetation is no higher than 75mm in height and the public footpath is kept free of all rubbish, weeds and debris to ensure safe public access.

(Reason: Public amenity and safety)

77. Hazardous Materials – Clearance Certificate

Following completion of the removal of any identified hazardous material associated with demolition works, a clearance certificate shall be issued by an appropriately qualified occupational hygienist and submitted to the Certifier. The clearance certificate shall verify that the site is free from any hazardous materials from the demolished buildings.

(Reason: Health and safety)

78. Dust Control

The following measures must be taken to control the emission of dust:

- (a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- (b) Any existing accumulation of dust (e.g. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter.
- (c) All dusty surfaces and activities must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system. Activities could include, but are not limited to, rock-breaking, excavation, earth moving, drilling, and angle grinding, cutting, jack hammering and chiselling of concrete or masonry.
- (d) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
- (e) Demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.

(Reason: Amenity and environmental protection)

79. Loading and Unloading During Construction

The following requirements apply:

- (a) All loading and unloading associated with construction must be accommodated on site.
- (b) The structural design of the building must permit the basement and/or the ground floor to be used as a loading and unloading area for the construction of the remainder of the development.
- (c) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (d) In addition to any approved Works Zone, provision must be made for loading and unloading to be accommodated on site once the development has reached ground level.
- (e) If a Works Zone is warranted an application must be made to Council prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need of the site for such facility at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- (f) Application for a Works Zone must be submitted to Council a minimum 8 weeks prior to being required. Works application form is available on the City's Website.

(Reason: Public safety and amenity)

80. Noise Monitoring Plan

Construction noise shall be controlled to comply with the requirements as set out in the EPA Draft Construction Noise Guideline. Noise levels shall not exceed the rated background level by more than 10dB(A) at the most sensitive receiver during the standard construction hours. A noise monitoring plan shall be implemented during

construction. Where noise levels may be exceeded appropriate measures to control excessive noise shall be implemented immediately.
(Reason: Amenity)

81. Construction Noise & Vibration

Construction noise and vibration shall be controlled to comply with the requirements as set out in the EPA Interim Construction Noise Guideline (ICNG) and the criteria stated below. Noise levels shall not exceed the following noise criteria during the standard construction hours:

- (a) Affected residential properties (during ICNG recommended standard hours)
– Noise affected level of RBL + 10dB and Highly noise affected level (i.e. noise level above which there may be strong community reaction) $\leq 75\text{dB(A)}_{\text{Leq}(15\text{mins})}$.
- (b) Affected commercial premises (i.e. office, retail outlets etc.) – $70\text{dB(A)}_{\text{Leq}(15\text{mins})}$.

The vibration limit of adjacent structures must not exceed 8.0mm/s (VSPPV) as described in the Douglas Partners Report on Geotechnical Investigation Proposed Residential Development 42 Archer Street, Chatswood prepared for Willow Capital Pty Ltd dated 18 January 2024 filed 12 February 2024 in Land and Environment Court Proceedings 2022/343917 during standard construction hours and must not exceed 2.0mm/s at 38B Albert Avenue, Chatswood (being the building presently occupied by Presmed Australia Pty Ltd).

A noise and vibration monitoring plan shall be implemented and testing carried out by a suitably qualified acoustic engineer during construction. Where noise or vibration levels exceed criteria, appropriate measures to control excessive noise shall be implemented immediately. Copies of the plan and any testing shall be submitted to Council on the request of an Authorised Officer under the *Protection of the Environment Operations Act 1997*.
(Reason: Amenity)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

The following conditions of consent must be complied with prior to the issue of an occupation certificate.

82. Public Art

a) Detailed Public Art Plan

The detailed public art plan must be developed and implemented in accordance with Council's Public Art Policy and Procedures and Guidelines.

The Detailed Public Art Plan should include the public art concept/s illustrated in such a way that the form, dimensions, materials and location of the proposed artwork are clearly communicated. It should include a brief statement explaining the rationale behind the artwork and should demonstrate how the proposed work will relate to the proposed development and site.

It should provide a program for documentation, fabrication and installation and integration with the construction program for the development. It should also provide engineer's drawings, expected maintenance requirements and deaccessioning agreements.

The Public Art Plan will be reviewed by the Public Art Advisory Panel for comment and any recommendations will be recorded and passed on to the developer.

b) Final Public Art Report to be submitted at Occupation Certificate Stage

Prior to the release of the Occupation Certificate, the written consent of Council's Planning and Infrastructure Director must be obtained that confirms the public art has been delivered in accordance with the Public Art Plan.

The Final Public Art Report should provide information about the artworks and artist, the fabrication and installation of the work, the documentation and engineers' drawings, the maintenance requirements, any additional relevant information regarding ownership, and copyright of the work.
(Reason: Ensure compliance with Council's Public Art Policy)

83. Street Numbering

Prior to the issue of any Occupation Certificate, written application shall be made to the Geospatial Services Section of Council for the allocation of street numbering for each of the newly created strata lots and/or allotments. Documentary evidence of the allocated numbering issued by Council is to be lodged with the Subdivision Certificate Application and Linen Plans.

(Reason: Ensure compliance with Council's House-Property Numbering Policy)

84. Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained prior to the issue of a Final Occupation Certificate. An application must be made either directly to Sydney Water or through a Sydney Water accredited Water Service Coordinator. For details go to www.sydneywater.com.au/section73 or call 1300 082 746.

The Section 73 Certificate must be submitted to the Certifier.

(Reason: Ensure statutory compliance)

85. Public Tree Maintenance

Prior to the issue of any relevant Occupation Certificate, the Project Arborist is to certify that:

- (a) All trees required to be retained on public land have been adequately maintained, that there has been no net deterioration in health and condition, and that any remedial work complies with AS 4970-2009 "Protection of trees on development sites" and AS 4373 - 2007 "Pruning of Amenity Trees".
- (b) All new and replacement public trees are of the required species, container size, planting locations, planting standards, and have been grown and supplied

from a recognised nursery complying to AS 2303:2018 Tree stock for landscape use.

(Reason: Tree management, public asset management)

86. Planting as per Landscape Plans

Prior to the issue of a Whole Occupation Certificate, trees (including street trees), shrubs and ground-covers are to be planted in accordance with Landscape Plans Rev G Dwg. Nos. L01 through to L14 dated 13.09.2024 prepared by Habit8 Landscape Architecture. Trees are to be of pot size as nominated on the Landscape Plans.

(Reason: Landscape amenity)

87. Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Project Arborist is to certify in writing that all tree protection measures and remediation works have been complied with as per conditions of consent.

(Reason: Protection of trees required to be retained)

88. Completion of Landscape Works

Prior to the issue of a Whole Occupation Certificate, any approved landscape works shall be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards, and certified in writing by a qualified horticulturalist, landscape architect or landscape designer.

(Reason: Landscape amenity)

89. BASIX Certificate

Prior to the issue of the relevant Occupation Certificate, a completion certificate is to be submitted to the Certifier demonstrating the manner in which the measures committed to in the latest BASIX Certificate have been satisfied.

(Reason: Environmental sustainability)

90. Access for the Disabled - Disability Discrimination Act

The building/development must comply with the requirements of the Disability Discrimination Act.

It should be noted that this approval does not guarantee compliance with this Act and the applicant/owner should investigate their liability under this Act.

(Reason: Access and egress)

91. Fire Safety Certificate Forwarded to NSW Fire and Rescue

Prior to the issue of any Occupation Certificate and upon completion of the building work, a Fire Safety Certificate shall be furnished by the owner to Council, and the owner must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be forwarded to the Commissioner of New South Wales Fire and Rescue, and must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building in accordance with *Environmental Planning and Assessment (Development Certification and Fire Safety)*

Regulation 2021 in respect to each essential fire safety measure included in the Schedule attached to the Construction Certificate.
(Reason: Safety)

92. State Survey Marks

Prior to the issue of a Whole Occupation Certificate, the Applicant shall reinstate any existing State/Permanent Survey Marks damaged by the works to the specification of the Land and Property Management Authority. A copy of the Location Sketch Plan of PM/SSM including reduced level (AHD) shall be submitted by a registered Surveyor. The degree of horizontal and vertical accuracy shall be acceptable to the NSW Land Registry Services.
(Reason: Public amenity)

93. Temporary Ground Anchors – Destressing

Prior to the issue of any Occupation Certificate, all damages to Council's infrastructures due to the works associated with the piling and installation of any ground anchors shall be restored to the requirements of Willoughby City Council at no cost to Council. All ground anchors shall be de-stressed by the removal of the anchor heads and protruding tendons on completion of the works. A certificate issued by a professional Geotechnical Engineer verifying that all ground anchors have been decommissioned shall be submitted to Council.
(Reason: Destressing of ground anchors)

94. On-site Water Management System

Prior to the issue of any Occupation Certificate, the stormwater runoff from the site shall be collected and disposed of to the street drainage system via an approved OSD system with a minimum volume of 83m³, which restricts peak flow from the site in the 1%AEP event to 33L/s and a water quality improvement system. The system shall be in accordance with AS/NZS3500.3, Part I of Council's DCP and Technical Standards 1 and 2. The construction of the stormwater drainage system of the proposed development shall be in accordance with the approved detailed stormwater drawings required under this development consent and Council's specification (AUS-SPEC).
(Reason: Prevent nuisance flooding)

95. Sign for On-site Stormwater Detention System

Prior to the issue of any Occupation Certificate pertaining to any works requiring an On-Site Detention System (OSD), an aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the OSD tank or basin.

The wording for the plaque shall state *"This is the on-site stormwater detention system required by Willoughby City Council. It is an offence to alter any part of the system without written consent from Council. The registered proprietor shall keep the system in good working order by regular maintenance including removal of debris"*.
(Reason: Prevent unlawful alteration)

96. Confined Space Sign

Prior to the issue of any Occupation Certificate, securely install standard confined space danger signs in a prominent location within the immediate vicinity of access

points to on site stormwater detention systems, rainwater tanks and confined spaces in accordance with the requirements of NSW Work Health and Safety Regulation 2017.
(Reason: Safe access to tank)

97. Certification of OSD

Prior to the issue of any Occupation Certificate, a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify on Council's standard certification form that the as-built OSD system is in accordance with the approved plans and complies with Council's DCP and Technical Standards. Council's standard certification form is available in Appendix 2 of Council's Technical Standard No. 1.
(Reason: Legal requirement)

98. Certification of the Basement Pumpout Drainage System

Prior to the issue of any Occupation Certificate and upon completion of the pump-out system, the following shall be submitted to the Certifier.

- (a) A suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify that the as-built pumpout system complies with Part I of Council's DCP Technical Standard 1, all relevant codes and standards and the approved stormwater management plans.
- (b) Work-as-executed plans based on the approved pump-out system plans from a registered surveyor to verify that the volume of storage and pump capacity are in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved pump-out system plans.
- (c) Certification from a licensed plumber to ensure that the constructed pump-out system complies with the current plumbing requirements of Sydney Water and AS/NZS3500.3.

(Reason: Ensure compliance)

99. Works-As-Executed Plans - OSD

Prior to the issue of any Occupation Certificate and upon completion of the OSD System, the following shall be submitted to the Certifier:

- (a) Work-as-Executed plans based on the approved stormwater management plans from a registered surveyor to verify that the volume of storage, PSD, water and floor levels are constructed in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved stormwater plans.
- (b) Engineer's certification of the OSD system together with the completed Council's standard form for On-Site Detention Record of Installation.

(Reason: Record of works)

100. S88B/S88E(3) Instrument

Create Positive Covenant and Restriction on the Use of Land on the Title in favour of Council as the benefiting authority for the as-built on-site stormwater detention (OSD) system and stormwater treatment system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the *Conveyancing Act 1919* for newly created lots. For an existing lot, the instruments can be created under Section 88E(3) of the *Conveyancing Act 1919* using Form 13PC and 13RPA respectively. The size and relative location of the OSD system and stormwater treatment system, in relation to the building footprint and property boundary, must be shown on the final plan of subdivision/strata plan or must be shown on the scale sketch, attached as an annexure to the request 13PC and 13RPA forms. The S88B instrument or 13PC/13RPA forms shall be lodged with Council's Standard S88B/S88E Lodgement Form with all supporting documentations listed in the Form. Council's Standard Form is available from Council upon requested. Council's costs, including legal fees associated with reviewing, approving and executing the Positive Covenant and Restriction of Use together with associated PEXA fees must be paid by the Applicant. The Applicant is responsible for any stamp duty payable in respect of the dealing.

Documentary evidence of registration of these instruments with the NSW Land Registry Services shall be submitted to the Certifier and Council prior to issue of any Occupation Certificate.

(Reason: Maintenance requirement)

101. Documentary Evidence of Positive Covenant, Engineers Certificate

Prior to the issue of any Occupation Certificate, the following documentary evidence of the completed drainage works shall be submitted to Certifier and Council: -

- (a) Registered Positive Covenant and Restriction on the Use of Land by way of the Title Deed.
- (b) Certification from a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) for the as-built OSD system.
- (c) Work-as-Executed plans highlighting in red any variations based on the approved stormwater management plans from a registered surveyor for the as-built OSD system.

(Reason: Public record)

102. Creation of a Floodway Restriction

Prior to the issue of any Occupation Certificate, create a Restriction on the Use of the Land on the title of the subject property under Section 88E(3) of the *Conveyancing Act 1919* by using Form 13RPA obtainable from the NSW Department of Lands. The restriction is to be placed over the 1%AEP flood path identified in the flood report by SGC Engineers. The extent of the identified overland floodpath within the subject site, shall be shown on a scale sketch, attached as an annexure to the request forms.

The wording for the restriction shall state "*No placement of any structures, walls, fences, fill or other items which may impede the 1% Annual Exceedance Probability flood path within the identified flood zone shall be permitted*".

Willoughby City Council shall be the authority empowered to release, carry or modify the restriction. Documentary evidence of registration of the instrument with the NSW Land Registry Services shall be submitted to Council and the Certifier. Council's costs, including legal fees associated with reviewing, approving and executing the Restriction of Use together with associated PEXA fees must be paid by the Applicant. The Applicant is responsible for any stamp duty payable in respect of the dealing.

(Reason: Ensure unimpeded floodwater conveyance)

103. Construction of Kerb & Gutter

Prior to the issue of any Occupation Certificate, construct a new kerb and gutter together with any necessary associated pavement restoration in accordance with Council's specification for the full frontage of the development site in Pacific Highway with associated pavement restoration as required by TfNSW.

(Reason: Public amenity)

104. Concrete Footpath

Prior to the issue of any Occupation Certificate, construct a 2.0m wide concrete footpath for the full frontage of the development site in Pacific Highway

All works shall be carried out in accordance with Council's standard specifications and drawings.

(Reason: Public amenity)

105. Street Lighting and Furniture

Prior to the issue of any Occupation Certificate, provide approved street lighting as required to suit the new development in accordance with Australian Standard AS/NZ 1158.(2005).

Reason: Public amenity)

106. Vehicular Crossing

Construct a new vehicular crossing including the replacement of the existing layback and/or gutter and any associated road restoration as directed by Council's Engineers. All works shall be carried out in accordance with TfNSW requirements, Council's specification AUS-SPEC C271 and Council's Standard Drawing SD105 - Council Vehicular Footpath Crossing and Kerb and Gutter details and any approved longitudinal sections. A separate application for the crossing including current fees and charges is to be submitted for approval by Council.

The crossing is to be as per the approved public domain drawings and is to be constructed in plain concrete. The new crossing shall be located no closer than 1 metre from any power pole and 2 metres from any street tree unless otherwise approved by Council.

For the design levels of the vehicular crossing at the property boundary, the following shall be complied with unless written approval is gained from Council for alternate levels:

- (a) At back of layback – 100 mm above and parallel to the gutter invert.
- (b) At property boundary – 170 mm above and parallel to the gutter invert.

The footpath which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb.

The suitability of the grade of driveway inside the property is the sole responsibility of the applicant and the required alignment levels fixed by Council may impact upon these levels.

All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant. All driveway grades and transitions must comply with AS/NZS 2890.1.

Vehicular Crossing Formwork Inspection Sheet shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier prior to issue of any Occupation Certificate.
(Reason: Public amenity)

107. Removal of Redundant Crossings

Remove all redundant crossings together with any necessary works and reinstate the footpath, nature strip and kerb and gutter accordingly. Such work shall be carried out in accordance with Council's specification and TfNSW requirements.

Vehicular Crossing Formwork Inspection Sheet shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier prior to issue of any Occupation Certificate.
(Reason: Public amenity)

108. Inspection of Civil Works on Road Reserves

All required road pavement, footpath, kerb and gutter, drainage works and/or any necessary associated works on the road reserve shall be completed in accordance with the Council approved drawings, conditions and specification (AUS-SPEC).

Pursuant to Section 138 of the *Roads Act 1993*, all works carried out on the road reserve shall be inspected and approved by Council's Engineer. Upon completion, Work-as-Executed drawings prepared by a registered surveyor shall be submitted to Council for record purposes. The Work-as-Executed drawings shall be based on the Council approved drawings with all changes marked in red. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier prior to the issue of any Occupation Certificate. Concurrence from TfNSW will be required prior to issue of the Completion Certificate.
(Reason: Ensure compliance)

109. Performance Bond

Prior to the issue of any Occupation Certificate, the Applicant shall lodge with the Council a performance bond of **\$80,000** against defective public civil works undertaken by the main Contractor for a period of twelve (12) months from the date of the completion certificate issued by Council as the road authority under the *Roads Act 1993*. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.
(Reason: Ensure compliance and specification)

110. Turfing of Nature Strip

Prior to the issue of a Whole Occupation Certificate and in the event of damages to the grass verge during works, trim the strip of land between the property boundary and the road, spread topsoil on top of the trimmed surface and lay approved turfing on the prepared surfaces. The turf shall be protected from vehicular traffic and kept watered until established.

(Reason: Public amenity)

111. Public Infrastructure Restoration

Prior to the release of the Damage Deposit, any damaged public infrastructure caused as a result of the construction and development works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) must be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

(Reason: Protection of public assets)

112. Vehicle Access and Manoeuvring – Construction & Certification

Prior to the issue of any Occupation Certificate, the Applicant shall submit, for approval by the Principal Certifier, certification from a suitably qualified and experienced Traffic Engineer relating to the construction of vehicular access and manoeuvring for the development. This certification must be based on a site inspection of the constructed vehicle access, manoeuvring and vehicle accommodation areas, with dimensions and measurements as necessary, and must make specific reference to the following:

- (a) That the as-constructed carpark complies with the approved Construction Certificate plans.
- (b) That finished driveway gradients and transitions comply with AS/NZS 2890.1 and AS 2890.2 and will not result in scraping to the underside of cars.
- (c) Aisle widths throughout basements comply with AS/NZS 2890.1.
- (d) That the constructed vehicular path and parking arrangements comply in full with AS/NZS 2890.1, AS 2890.2 and AS 2890.6 in terms of minimum dimensions provided and grades on parking spaces.
- (e) That headroom clearance of minimum 2.2 metres between the basement floor and any overhead obstruction (including overhead services) is provided for compliance with Section 5.3.1 of AS/NZS 2890.1 and Section 2.7 of AS 2890.6.
- (f) That headroom clearance of minimum 2.5 metres is provided to all parking spaces for people with disabilities for compliance with Section 2.7 of AS 2890.6.
- (g) That the headroom clearance required in AS 2890.2 for the largest vehicle using the site ((minimum 4.5m) has been provided for the loading area and the path to and from the loading area.
- (h) That accessible parking spaces, including those for adaptable units, are provided with shared zones and bollards as per the requirements of AS 2890.6.
- (i) Simultaneous manoeuvring of B99 and B85 at all ramps and ramp ends including clearances for each vehicle as per AS/NZS 2890.1 is achieved.
- (j) Access and manoeuvrability of the largest vehicle accessing the site and simultaneous manoeuvrability of the largest vehicle using the site and a passenger vehicle including clearances in accordance with AS/NZS 2890.1 and AS 2890.2 is achieved.

- (k) That sight triangles in accordance with Figure 3.3 of AS/NZS 2890.1 have been provided at the vehicle exit from the site and that landscaping within the sight triangles will not impact sight lines.

(Reason: Ensure compliance)

113. Stormwater Maintenance Plan

Prior to the issue of an Occupation Certificate, submit to the certifying authority approval a Maintenance Plan for the stormwater management system. The plan is to be in accordance with recommendations of "Guidelines for the Maintenance of Stormwater Treatment Measures" published by Stormwater NSW or other relevant guidelines or publications.

(Reason: Ensure operation of system complies)

114. Certification of Water Quality Improvement System

Prior to the issue of an Occupation Certificate, a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify that the as built water quality improvement system is in accordance with the approved plans and complies with the requirements of Technical Standard 1.

(Reason: Legal requirement)

115. Overland Flow Path – Engineers Certification

Prior to the issue of any Occupation Certificate, submit to Council written certification, prepared by a suitably qualified and experienced civil engineer (generally CP Eng), that:

- (a) The finished floor levels of the building have a minimum freeboard of 500mm above the 1% AEP flood event, which is conveyed through the site.
- (b) All access points to the basement have a minimum level of 500mm above the 1% AEP flood event or the PMF level, whichever is higher.
- (c) The existing boundary fences within the extent of the overland flow path have been replaced with open type fencing to allow unimpeded passage of overland flow
- (d) No structures, walls, fill or other items have been constructed to impede the 1% AEP overland flow path within the identified flood zone, other than works detailed in the flood report by SGC Engineers approved under this consent.
- (e) All mitigation works detailed in the approved Flood Impact Report have been constructed / implemented.
- (f) The as-constructed works comply with the requirements of Technical Standard 2.

(Reason: Ensure compliance)

116. Overland Flow Path – Work As Executed Plans

Upon completion of the development, work-as-executed (WAE) plans, based on the approved plans, shall be prepared by a registered surveyor and submitted to Council. The plans shall show the extent of works and finished ground levels within the overland flow path. Any minor changes or variations to the approved plans shall be highlighted in red.

(Reason: Record of works)

117. Flood Evacuation Plan

Prior to the issue of any Occupation Certificate, submit a Flood Evacuation Plan to the Certifying Authority for approval. The plan shall be prepared by a qualified civil engineering (typically CPEng) experienced in flood management. It shall include

- (a) The areas of the site affected by flooding.
 - (b) Details of measures to be undertaken at the site to protect inhabitants and visitors from flooding, including any measures provided to prevent / limit access to H4-H6 areas.
 - (c) The evacuation route from the site.
 - (d) When evacuation is to occur.
 - (e) Emergency contact numbers, such as Police and SES.
- (Reason: Protection from floodwaters)

118. Overland Flow Path – Boundary Fencing

Open type fencing shall be provided within the extent of the 1%AEP flood zone to allow for passage of floodwaters. The open style fencing shall extend from ground level to a minimum of the 1%AEP flood level, and shall consist of fencing such as palisade or mesh.

(Reason: Passage of overland flow)

119. Noise Emission – Equipment

Prior to the issue of any relevant Occupation Certificate, certification shall be provided from a suitably qualified acoustic engineer certifying that the development complies with the acoustic report prepared Resonate N (Ref: S220617RP1 Rev A, dated 28 April 2023)) and any addendum reports. This shall include all sound producing plant, equipment, machinery and/or mechanical ventilation system complies with the relevant noise criteria.

(Reason: Amenity, environmental compliance and health)

120. Certification – Ventilation

Prior to the issue of any relevant Occupation Certificate, certification shall be provided from a suitably qualified mechanical engineer certifying that all work associated with the installation of the mechanical and/or natural ventilation systems has been carried out in accordance with the relevant Australian Standards and or alternative solution.

(Reason: Amenity, environmental compliance and health)

121. Waste Collection Agreement with Council

Prior to the issue of any Occupation Certificate, the developer is to enter into a formal agreement with Council for the utilisation of Council's Waste Collection Service. This is to include Council being provided an easement for unimpeded access to and from the waste collection locations for Council and its servants/contractors to enter and exit for the purpose of waste/recycling collection. The development is also required to indemnify Council and its servant/contractors against claims for loss or damage or wear and tear of access roads or other parts of the building.

Note: By entering into an agreement with Council for waste collection, the

development will be required to operate in full compliance with Council's Waste Management collection requirements.

The provision of Council's waste collection service will not commence until formalisation of the agreement.

(Reason: Legal Requirement)

123. Development Application for Communal Use

A Development Applications is required for the separate fitout use of the areas notated as "communal" at basement level, ground level and Levels 1 and 2.

124. Through-site link to be registered as Right of Way

Prior to the issue of any Occupation Certificate, a right-of-way must be registered for the purposes of a publicly accessible through-site link, with Land Registry Services over:

- 1 metre from the front boundary and parallel with the front boundary, from the northern boundary to the southern end of the substation
- All that part of the site located between the northern boundary and the north-facing glassline of the building at ground floor level, though such right of way shall contain terms of the easement which allow for tables and chairs for outdoor dining and the proposed landscaping along the northern boundary (the wording is attached and marked annexure 'A' to these conditions)
- for all that part of the site located between the eastern boundary for a distance of 3m into the site parallel to this boundary.
- The right-of-way is to allow public pedestrian and cycle use of these portions of the land.

(Reason: Compliance, urban design)

PRIOR TO THE RELEASE OF LINEN PLANS/SUBDIVISION CERTIFICATE/STRATA APPROVAL

The following are to be complied with prior to the issue of the Subdivision Certificate / Strata Approval and the release of the Linen Plans for registration at the Land and Property Information Office.

125. General Easement/ROW Provision and Certification

The creation of drainage easements, service easements and/or rights-of carriageway shall be carried out as required (including rights-of-way that benefit 689 Pacific Highway, Chatswood for access and waste management purposes). A registered surveyor is to certify prior to the release of the subdivision certificate that all interallotment drainage lines, services or driveways are fully contained within the proposed allotment and/or that future provisions of such are fully covered by the proposed burdens. Alternatively if the surveyor is of the opinion that no easements and/or rights-of-carriageway are required then certification to this effect from the surveyor is to be submitted.

(Reason: Ensure compliance)

125A. Strata Plan

The draft strata plan (Ref: 230770, dated 31/1/24 by Barker Ryan Stewart) is not approved and does not form part of this development consent. An updated strata plan is required to be submitted that accurately reflects the approved architectural plans, including:

- common property free from obstruction associated with “potential future connection to 689 Pacific Highway”,
- nomination of storage spaces consistent with the approved architectural plans
- nomination of landscaped areas located throughout the residential tower as common property
- waste management areas accurately nominated to align with the approved architectural plans.

The strata plan is to accurately reflect the approved architectural plans prior to its registration with Land Registry Services.
(Reason: Ensure compliance)

126. Location of On-Site Detention System

The locations of the as-built on-site stormwater detention system(s) shall be shown on the final plan of subdivision/strata plan. Access to the system, including access points to any underground tank, shall be located in common areas.
(Reason: Ensure compliance)

127. Section 88B Instrument

A Section 88B Instrument is to be submitted with the Linen Plan for subdivision in respect to any proposed easements, rights-of-way and positive covenants.
(Reason: Ensure compliance)

ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.

128. Remedial Action Plan

For the purposes of public health, any Remedial Action Plan (if applicable), where on going requirements or maintenance or up keep is required, is to be undertaken for the life of the development.

(Reason: Public Health)

129. Stormwater Treatment System – Ongoing Maintenance

The registered proprietor of the land shall take full responsibility for the ongoing maintenance of the Stormwater Treatment System constructed on the land. The maintenance of the system is to be undertaken in accordance with the recommendations of “Guidelines for the Maintenance of Stormwater Treatment Measures” published by Stormwater NSW or other relevant guidelines or publications.
(Reason: Ensure compliance)

130. Vehicle Access

All vehicles shall enter and exit the site in a forward direction. No vehicle shall reverse over the boundary.
All vehicles access to the site shall be left turn in and left turn out onto Pacific Highway.
(Reason: Public protection)

131. Trees on Adjoining Properties

No approval is given for the removal or pruning of trees on adjoining reserves or neighbouring private land.
(Reason: Environmental protection)

132. Landscaping to be maintained by Owners Corporation

Landscaping is to be maintained by the Owners Corporation, including landscaping located within private strata lots .

133. Public Art

For the purposes of contributing to the social, cultural and economic vitality of the Willoughby LGA, the public art will be maintained and managed in accordance with Council’s Public Art Policy.
(Reason: Ensure compliance with Council’s Public Art Policy)

134. Ongoing Compliance with the Waste Management Plan

The Applicant is required to maintain compliance with the submitted Waste Management Plan (EC Sustainable Waste Plan Demolition, Construction and Operational Phases, Revision B v251024b, 25 October 2024) unless otherwise conditioned.
(Reason: environmental protection/waste reduction/public health and safety)

135. Annual Fire Safety Statement

Attention is directed to the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* regarding the submission of an Annual Fire Safety Statement in relation to each essential fire safety measure implemented in the building or on the land on which the building is situated.
(Reason: Safety)

136. Noise Control – Offensive Noise and Vibration

To minimise the noise and vibration impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to an “offensive noise” as defined under the provisions of the *Protection of the Environment Operations Act 1997*.

(Reason: Amenity)

137 Noise Levels from Common Open Spaces

To minimise the noise intrusion from Common Open Spaces on the amenity of the residential occupants, a Common Open Spaces Management Plan is to be drawn up, establishing controls. These include: Limiting times of use to 7am to 10pm; No high noise generating activities large gatherings, playing of loud music, parties; No amplified music or use of electrically amplified electronic sound equipment allowed; prominent notices on display to remind residents of these requirements and minimise noise.

(Reason: Amenity, environmental compliance and health)

138. Waste Management Collection Policy

The development must operate in full compliance with Council’s Waste Management collection requirements for Council’s onsite residential waste service. This includes collection by Council HRV rear-loader, currently on the following bins and frequencies:

- Garbage:
 - 3 x 1,100L bins compacted and collected twice per week; or
 - 6 x 1,100L bins uncompacted and collected twice per week.
- Recycling: 10 x 1,100L bins collected once per week, and
- Garden organics: 45 x 240L bins collected once per week, which also provides contingency space for other bins.
- Bulky waste: booked or scheduled service

(Reason: environmental protection/waste reduction/public health and safety)

PRESCRIBED CONDITIONS

The following conditions are prescribed by Section 4.17 of the Environmental Planning & Assessment Act for developments involving building work.

139. Compliance with National Construction Code

All building works must be carried out in accordance with the performance requirements of the National Construction Code.

(Reason: Compliance)

140. Support for Neighbouring Buildings

- (a) If development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work

within a road or rail corridor) on an adjoining property, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the building, structure or work from possible damage from the excavation, and
 - (ii) if necessary, underpin and support the building, structure or work to prevent any such damage, and
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (b) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (c) In this clause, "allotment of land" includes a public road and any other public place.

(Reason: Safety)

STATUTORY REQUIREMENTS

The following advisory notes are statutory requirements of the Environmental Planning & Assessment Act and the Environmental Planning & Assessment Regulations and are provided to assist applicants.

141. Construction Certificate

This consent IS NOT an approval to carry out any building works. A Construction Certificate may be required PRIOR TO ANY WORKS BEING COMMENCED.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 9777 1000.

(Reason: Ensure compliance and statutory requirement)

142. Notify Council of Intention to Commence Works

In accordance with the provisions of Section 6.6 of the *Environmental Planning and Assessment Act 1979* the person having the benefit of the development consent shall appoint a Certifier and give at least 2 days' notice to Council, in writing, of the person's intention to commence the erection of the building.

(Reason: Information and ensure compliance)

143. Notify Council of Intention to Commence Works

In accordance with the provisions of Section 6.6 of the *Environmental Planning and Assessment Act 1979* the person having the benefit of the development consent shall appoint a Certifier and give at least 2 days' notice to Council, in writing, of the person's intention to commence the erection of the building.

(Reason: Information and ensure compliance)

144. Occupation Certificate

The building/structure or part thereof shall not be occupied or used until an occupation certificate has been issued in respect of the building or part.

(Reason: Safety)

Annexure A to Conditions of Consent

For the purpose of providing pedestrian access from west to east along the northern boundary pursuant to Section 88A of the Conveyancing Act 1919, the landowner grant to Council and every person authorised by it (including the public) the right to go, pass and repass on foot over the proposed easement site at all times and for all purposes without animals (except dogs on leashes) or vehicles (including bicycles of every description) provided that at all times, the landowner and every person authorised by it may leave planter boxes, outdoor tables and chairs and billboards within the easement site.

Deed

691-699 Pacific Highway, Chatswood

Planning Agreement

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

Willoughby City Council

DPG Project 38 Pty Ltd

Executed Date:

691-699 Pacific Highway, Chatswood Planning Agreement**Willoughby City Council****DPG Project 38 Pty Ltd**

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Willoughby City Council

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**691-699 Pacific Highway, Chatswood
Planning Agreement**

Summary Sheet

Council:

Name: Willoughby City Council

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

Telephone: (02) 9777 1000

Email: email@willoughby.nsw.gov.au

Representative: Chief Executive Officer (CEO)

Developer:

Name: DPG Project 38 Pty Ltd

Address: C/- Develotek, Level 10, 97-99 Bathurst Street, Sydney NSW 2000

Telephone: 0451 173 699

Email: robert@develotek.com.au

Representative: Robert Sargis

691-699 Pacific Highway, Chatswood Planning Agreement**Willoughby City Council****DPG Project 38 Pty Ltd****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 ' <i>Land</i> ' in clause 1.1
S7.4(3)(b)(i)	Instrument Change	N/A
S7.4(3)(b)(ii)	Development	See definition of ' <i>Development</i> ' in clause 1.1
S7.4(3)(c)	Details of Developer's Provision	See clause 9, Part 2, Part 3, Part 4 and Schedule 2
S7.4(3)(d)	Whether s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act Apply to the Development	See clause 8
S7.4(3)(e)	Whether Benefits under this Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11	The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development
S7.4(3)(f)	Mechanism for the Resolution of Disputes under the Agreement	See Part 5
S7.4(3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See clause 13 and Part 6
S7.4 (10)	Conformity of Agreement with Act,	Yes

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	Environmental Planning Instruments, & Development Consents Applying to the Land	
S7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	Yes. See Schedule 2.
S6.9(1)	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	Yes. See Schedule 2.

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 A
Clause 21 of Environmental Planning and Assessment (Development Certification)	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be	No.

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and Fire Safety) Regulation 2021	complied with before a construction certificate for the work is issued?	
Clause 48 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	Yes. See Schedule 2.

Table 3 – Ministerial Directions

Direction	Requirement	Compliance
Section 7.9 of the Environmental Planning and Assessment Act 1979	Environmental Planning and Assessment (Planning Agreements) Direction 2019	Yes.

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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

DPG Project 38 Pty Ltd ABN 82 620 543 553 of Suite 1003, Level 10, 97-99 Bathurst Street, Sydney NSW 2000 (**Developer**)

Background

- A The Developer has made or proposes to make a Development Application to carry out the Development on the Land.
- B 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.
- C The Developer has options over the lots within the Land and the Developer expects to exercise those options and become the registered proprietor of those lots if the Development Application is approved.

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.

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,

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- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

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

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

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

Construction Certificate has the same meaning as in the Act

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

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

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

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

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,

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- (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.

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

Map means the map in Schedule 3.

Novation Deed means the draft Deed set out in Appendix B.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

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.

- 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.

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- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word '*include*' or '*including*' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to '*dedicate*' or '*dedication*' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

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

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 all executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the 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.

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6 Further agreements

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

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.
- 7.2 Clause 7.1 does not affect the Developer's ability to commence and/or conduct any Class 1 proceedings (as set out in section 17 of the Act) in relation to the Land and, in doing so, the Developer may rely on this Deed as a matter for consideration under section 4.15(1)(a)(iiiaa) of the Act, provided that the validity or reasonableness of, or need for this Deed, or a condition requiring this Deed to be entered into or complied with, is not questioned by the Developer in those proceedings.

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

- 8.1 This Deed does not exclude the application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development to the extent provided for in Items 4, 5 and 6 in Schedule 1 respectively.
- 8.2 The benefits under this Deed are 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.
- 8.3 The parties agree that, as a consequence of entering into this Deed and payment of the affordable housing contributions pursuant to this deed, clause 6.8 of the *Willoughby Local Environmental Plan 2012* will not apply to the Development.

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 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.
- 9.3 Despite clause 9.2, 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.

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Part 2 – Provisions relating to monetary contributions

10 Payment of monetary Development Contributions

- 10.1 The Developer is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part.
- 10.2 The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with the index specified in Item 9 of Schedule 1.
- 10.3 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

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Part 3 – Provisions relating to dedication of land

11 Dedication of Dedication Land – Not Used

12 Procedure for Dedication of Dedication Land – Not Used

13 Acquisition of land required to be dedicated – Not Used

Part 4 – Provisions relating to carrying out of Work

14 Carrying out of Work – Not Used

15 Variation to Work – Not Used

16 Access to land by Developer – Not Used

17 Access to land by Council - Not Used

18 Council's obligations relating to Work – Not Used

19 Protection of people, property & utilities – Not Used

20 Repair of damage – Not Used

21 Completion of Work – Not Used

22 Rectification of defects – Not Used

23 Works-As-Executed-Plan – Not Used

24 Removal of Equipment – Not Used

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Part 5 – Dispute Resolution

25 Dispute resolution – expert determination

- 25.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 25.1.1 the Parties to the Dispute agree that it can be so determined, or
- 25.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 25.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 25.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 25.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

26 Dispute Resolution - mediation

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

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Part 6 - Enforcement**27 Security for performance of obligations**

- 27.1 Nothing in this clause 27 confers a substantive right on the Council to avoid returning Security (or the value of Security) it is not otherwise entitled to:
- 27.1.1 If the Council's entitlement is disputed by the Developer, once the dispute has been conclusively determined; or
- 27.1.2 In any case, if the Council's asserted entitlement (together with any costs, expenses or interest on such entitlement) is less than the value of the Security called-up
- 27.2 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.
- 27.3 The Security is to be provided at the time specified in Item 14 of Schedule 1.
- 27.4 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.
- 27.5 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 of its obligations under this Deed to the reasonable satisfaction of the Council.
- 27.6 The Developer may at any time provide the Council with a replacement Security.
- 27.7 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.
- 27.8 The Council may call-up the Security if it reasonably considers that the Developer has not complied with its obligations under this Deed specified in Item 13 of Schedule 1.
- 27.9 However, the Council is not to call-up the Security unless:
- 27.9.1 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
- 27.9.2 the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 27.10 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:
- 27.10.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- and
- 27.10.2 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 27.11 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.
- 27.12 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.

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28 Grant of Charge – Not Used

29 Caveat and Discharge – Not Used

30 Priority – Not Used

31 Breach of obligations

- 31.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 31.1.1 specifying the nature and extent of the breach,
 - 31.1.2 requiring the Developer 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 fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Developer, call-up the Security provided under this Deed and apply it to remedy the breach.
- 31.3 Any costs incurred by the Council in remedying a breach in accordance with clause 31.2 may be recovered by the Council by either or a combination of the following means:
- 31.3.1 by calling-up and applying the Security provided under this Deed, or
 - 31.3.2 as a debt due in a court of competent jurisdiction.
- 31.4 For the purpose of clause 31.3, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
- 31.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 31.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 31.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.5 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, 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.

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- 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 Upon the Developer or its nominee(s) becoming registered proprietor(s) of the lots within the Land, 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 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 Council must, in response to a reasonable request of the Developer, and at the cost of the Developer take such action that is reasonably necessary to facilitate efforts by the Developer to fulfill the Developer's obligation under clause 33.3 (including promptly signing any necessary documents).
- 33.5 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:
- 33.5.1 in so far as the part of the Land concerned is a Final Lot, or
 - 33.5.2 in relation to any other part of the Land, once the Developer 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 is not to:
- 34.1.1 sell or transfer its interest in the Land, other than a Final Lot, or
 - 34.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed, to any person unless:

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- 34.1.3 the Developer 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 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 such a notice must not be unreasonably withheld), and
- 34.1.4 the Council has given written notice to the Developer [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 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 The Council, on giving consent under clause 34.1.6 must enter into the deed of novation referred to in clause 34.1.3.
- 34.3 Subject to clause 34.4, the Developer 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.
- 34.4 Clause 34.1 does not apply in relation to any sale or transfer of an interest in the Land if this Deed is registered on the title to the relevant parcel of Land at the time of the sale.
- 34.5 If the whole or any part of the Land is transferred from the Developer to a third party without a Novation Deed being entered into (**Transferred Land**), and this Deed is registered on the title, then this Deed is deemed to include the provisions of the Novation Deed as if it had been entered into:
- 34.5.1 by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
- 34.5.2 by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
- 34.5.3 by the Council;
- on that basis that the Effective Date is either:
- 34.5.4 if the New Developer was not a party of the Agreement until the transfer of the Transferred Land, the date of the New Developer became a party under section 7.6(3) of the Act; or
- 34.5.5 if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.
- 34.6 For the avoidance of doubt:
- 34.6.1 The Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of the Developer's rights, powers, title, benefit and/or interest in, to, under or derived from the Land, this Deed and/or any other asset or property of the Developer to or in favour of any financier or creditor of the Developer (or to or in favour of any agent or trustee of or for any such financier or creditor); and
- 34.6.2 The Developer may enter into any agreement to sell, transfer, option or lease which, if exercised, results in the formation of an agreement to sell, transfer or lease any Final Lot comprised in or forming part of the Development

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This clause 34.6 takes precedence over the other provisions in this clause 34.

Part 8 – Indemnities & Insurance

35 Risk

35.1 The Developer performs this Deed at its own risk and its own cost.

36 Release

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

38 Insurance – Not Used

Part 9 – Other Provisions

39 Confidentiality

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

39.2 The Parties acknowledge that:

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

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

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

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

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

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

39.4.1 in order to comply with the Law, or

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

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

40 Annual report by 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.

40.3 This clause 40 ceases to apply once the Developer has completed its substantive obligations under this Deed.

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.

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42 Notices

- 42.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 42.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 42.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 42.2 If a Party gives the other Party 3 business days' notice of a change of its address, or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, or emailed to the latest address.
- 42.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 42.3.1 delivered, when it is left at the relevant address,
 - 42.3.2 sent by post, 2 business days after it is posted, or
 - 42.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 42.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

43 Approvals and Consent

- 43.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's 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 14 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 14 days of a written demand by the Council for such payment.
- 44.3 The Council's reasonable costs in clauses 44.1 and 44.2 are limited to reasonable costs of third-party fees or service providers engaged by the Council and do not include the costs of the Council's use of its own staff or resources.

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45 Entire Deed

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

46 Further Acts

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

47 Notations on section 10.7(2) Planning Certificates

- 47.1 The Developer 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.

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51 Illegality

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

52 Severability

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

53 Amendment

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

54 Waiver

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

55 GST

- 55.1 In this clause:

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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.
- 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 Appendix A 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 is identified as Lot 2 DP 952311, Lot 1 DP 187216 and Lot 1 DP 952311 known as 691, 693, 695 and 699 Pacific Highway, Chatswood and identified on the Map.
Item 2	Planning Proposal	N/A
Item 3	Development	The development on the Land the subject of Development Application DA-2023/166; and any future development application on the Land generally consistent with the approval of DA 2023/166 or the subject of a permissible use under any applicable environmental planning instrument at the time of lodgement.
Item 4	Application of S7.11	Section 7.11 of the Act is not excluded.
Item 5	Application of S7.12	Section 7.12 of the Act is not excluded.
Item 6	Application of Division 7.1, Subdivision 4	Division 7.1, Subdivision 4 of the Act is not excluded
Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s7.11	The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development. See clause 8.
Item 8	Indexation of Contribution Values	N/A
Item 9	Indexation of Monetary Development Contributions	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 = $A \times B/C$ 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

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		C is the CPI last published at the quarter ending immediately before the Indexation Date
Item 10	Access to Council owned or controlled land	Not used
Item 11	Defects Liability Period	Not Used
Item 12	Security	\$868,524.750, being 10% of the value of the monetary development contributions required under this Deed
Item 13	Obligations to which Security Relates	Payment of the monetary development contributions and registration of this Deed.
Item 14	Timing of Security	Within 90 days of the commencement of this Deed.
Item 15	Indexation of Security	Security to be indexed in the same way that monetary Development Contributions are indexed in Item 9 of this schedule except the references to 'monetary Development Contributions' are replaced with a reference to 'Security'
Item 16	Costs	See Clause 44
Item 17	Review of Deed	Every five years

Schedule 2

(Clause 9)

Development Contributions

Table

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
\$8,685,247.50	The provision of (or the recoupment of the cost of providing) affordable housing which may be required under cl 6.8 of the <i>Willoughby Local Environmental Plan 2012</i> (including Amendment No 34) (section 7.4(2)(b) of the Act).	Payable in three lump sums following grant of development consent to the Development as per the timing schedule specified in column 4.	20% is to be paid prior to the issue of a Construction Certificate for below ground level works and the issue, pursuant to section 6.6 of the Act, of a notice of commencement of the below ground level works for the Development is notified; 30% is to be paid prior to the issue of a Construction Certificate for above level ground works for the Development; and 50% is to be paid prior to the issue of an Occupation Certificate for the Development.

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Schedule 3

(Clause 1.1)

Map



Execution

Executed as a Deed

Dated:

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

Chief Executive Officer (CEO)	Witness
(Name:)	Position:
	(Name:)

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

Position: Director	Position: Director/Secretary
(Name: Robert Sargis)	(Name: John Fernandes)

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Appendix A

(Clause 56)

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Explanatory Note

Draft Planning Agreement

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

Parties

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

DPG Project 38 Pty Ltd ABN 82 620 543 553 of Suite 1003 Level 10 97-99 Bathurst Street, Sydney NSW 2000 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

- a. 695 Pacific Highway, Chatswood (Lot 2 DP 952311);
- b. 691 – 693 Pacific Highway, Chatswood (Lot 1 DP 187216); and
- c. 699 Pacific Highway, Chatswood (Lot 1 DP 952311)

Description of Proposed Development

The Draft Planning Agreement is in connection with development application DA-2023/166 for a residential flat building including basement parking, communal open space at ground level, first and second floor levels as well as strata subdivision.

The Deed also applies to future development applications for the Site for residential flat buildings.

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

It is noted that the *Willoughby Local Environmental Plan 2012 (Amendment No 34)* commenced on 30 June 2023. It introduced a 10% affordable housing contribution to the Site under clause 6.8.

The Application was lodged prior to the commencement of the *Willoughby Local Environmental Plan 2012 (Amendment No 34)* and therefore, by virtue of clause 1.8A(2) of the *Willoughby Local Environmental Plan 2012*, the Application is saved from the amendments made including the affordable housing contribution requirements.

Notwithstanding the savings provision, Council and the Joint Regional Planning Panel, which is the consent authority for the Application, have indicated that any determination of the Application will require consideration of an affordable housing contribution.

The objectives of this Planning Agreement is to provide for an affordable housing contribution.

Nature of Draft Planning Agreement

The Planning Agreement provides for a monetary contribution to be used for or applied towards a public purpose, being for the recoupment of the cost of providing affordable housing.

Payment of a monetary contribution for affordable housing valued at the equivalent to 10% of the residential component of the net saleable area is to be made.

The monetary contribution is calculated as \$8,685,247.50 in accordance with cl 6.8 of the *Willoughby Local Environmental Plan 2012 (Amendment No 34)*.

The timing for the payment is (if executed by Council and registered) as follows:

- 20% is to be paid prior to the issue of a Construction Certificate for below ground level works and the issue, pursuant to section 6.6 of the Act, of a notice of commencement of the below ground level works for the Development is notified;
- 30% is to be paid prior to the issue of a Construction Certificate for above level ground works for the Development; and
- 50% is to be paid prior to the issue of an Occupation Certificate for the Development.

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 Developer
- 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,

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- provides for enforcement of the agreement by a suitable means if there is a breach by the Developer.

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,
- promotes the provision and maintenance of affordable housing.

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(c) and s 1.3(d) 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

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

- keeping the local and wider community informed about its activities, and
- Providing adequate, equitable and appropriate service and facilities for the community and to ensure that those services and facilities are managed efficiently.

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

Yes. The proposed contributions are consistent with the community infrastructure identified in the Council's *Planning Agreements Policy - Procedures Manual* and aligns with Council's capital works program.

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

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The Draft Planning Agreement specifies that a monetary development contribution must be paid in the following manner:

- 20% is to be paid prior to the issue of a Construction Certificate for below ground level works and the issue, pursuant to section 6.6 of the Act, of a notice of commencement of the below ground level works for the Development is notified;
- 30% is to be paid prior to the issue of a Construction Certificate for above level ground works for the Development; and
- 50% is to be paid prior to the issue of an Occupation Certificate for the Development.

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Appendix B

(Clause 1.1)

Deed of Novation

691-699 Pacific Highway, Chatswood Planning Agreement

Willoughby City Council

DPG Project 38 Pty Ltd

Deed of Novation

Willoughby City Council

[Insert name of existing developer]

[Insert name of new developer]

Deed of Novation

Dated

Parties

1. Willoughby City Council ABN 47 974 826 099 of Level 4, 31 Victor Street, Chatswood, NSW 2067 (Council)
2. [Drafting Note: insert details of Transferor] (Existing Developer)
3. [Drafting Note: insert details of Transferee] (New Developer)
4. [Drafting Note: insert details of each of the continuing developers] (Continuing Developer)

Background

- A. The Council, the Existing Developer and the Continuing Developer(s) have entered into the Agreement.
- B. The Existing Developer intends to transfer [Insert title reference(s)] to the New Developer.
- [If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]
- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. The Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and those parties have agreed to enter into this Deed to give effect to their common intentions.
- E. The Continuing Developer(s) agree to enter into this Deed to give effect to the common intentions of the Council, the Existing Developer and the New Developer
- [If, as a result of the transfer, the Existing Developer will still own part of the Land:]
- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. The Council has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and those parties have agreed to enter into this Deed to give effect to their common intentions.
- E. The Continuing Developer(s) agree to enter into this Deed to give effect to the common intentions of the Council, the Existing Developer and the New Developer.

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Operative provisions

1 Defined meanings

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2 Novation

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

[If, as a result of the transfer, the Existing Developer will still own part of the Land:]

With effect on and from the Effective Date:

- (a) The New Developer is taken to be a party to the Agreement and the definition of Developer in clause 16.1 of the Agreement is taken to include the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

3 Consent

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- (c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

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[If, as a result of the transfer, the Existing Developer will still own part of the Land:]

With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- (b) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

4 Release and Indemnity

[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]

4.1 Release and Discharge (the Council)

On and from the Effective Date, the Council and the Continuing Developer(s) release the Existing Developer from all Rights and Obligations and from all Claims that they may have against the Existing Developer under or in respect of the Agreement.

4.2 Release and Discharge (the Existing Developer)

On and from the Effective Date, the Existing Developer releases the Council and the Continuing Developer(s) from all their obligations under the Agreement and from all Claims that it may have against the Council or Continuing Developer(s) under or in respect of the Agreement.

4.3 Indemnity

On and from the Effective Date, the New Developer indemnifies the Existing Developer and the Continuing Developer(s) from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Land]

5 Representations and Warranties

5.1 Power

Both the Existing Developer, the New Developer and the Continuing Developer(s) represent and warrant to the Council and to each other that:

- (a) it is an individual or corporation validly existing under the laws of Australia;
- (b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- (c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

5.2 Reliance by the Council

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The Existing Developer, the New Developer and the Continuing Developers each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

6 General provisions

6.1 Developer Costs

The Existing Developer, the New Developer and the Continuing Developers must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.2 The Council's Costs

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable costs in relation to this Deed.

6.3 GST

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

6.4 Duties

- (c) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (d) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

6.5 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

6.6 Notices

- (e) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender. [Insert address for notices for each of the parties]
- (f) Any notice to or by a party under this Deed must be in writing and signed by either:
 - (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.

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- (g) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

6.7 Governing law and jurisdiction

- (h) This Deed is governed by and construed under the law in the State of New South Wales.
- (i) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (j) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

6.8 Amendments

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

6.9 Third parties

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

6.10 Pre-contractual negotiation

This Deed:

- (k) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (l) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

6.11 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

6.12 Continuing performance

- (m) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (n) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (o) Any indemnity agreed by any party under this Deed:
 - (a) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
 - (b) survives and continues after performance of this Deed.

6.13 Waivers

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

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6.14 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

6.15 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

6.16 Party acting as trustee

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (p) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (q) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (r) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

7 Definitions and interpretation

7.1 Definitions

In this Deed unless the context otherwise requires:

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Agreement means the voluntary planning agreement between the Council and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure **A**.

Deed means this Deed and includes any Annexures to this Deed.

Effective Date means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Liabilities include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

Rights and Obligations means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

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7.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

Executed as a deed.

[Insert relevant attestation clauses]

[Insert the executed planning agreement that is the subject of the novation as Annexure A.]