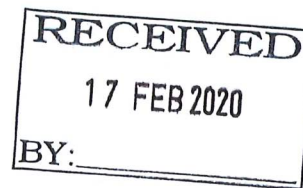


Greg Freeman



lindsaytaylorlawyers

planning • environment • local government

Deed

Footpath – 4 and 8-10 New McLean Street Edgecliff

**Deed of Agreement for Works and Dedication of
Land for Footpath**

Woollahra Municipal Council

Owner's Corporation Strata Plan 19963

Owner's Corporation Strata Plan 20548

Date:

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Deed of Agreement for Works and Dedication of Land for Footpath

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Summary Sheet

Council:

Name: Woollahra Municipal Council
Address: 536 New South Head Road, Double Bay NSW 2028
Telephone: 02 9391 7000
Email: records@woollahra.nsw.gov.au
Representative: The General Manager

Landowner No. 4 New McLean:

Name: Owners' Corporation Strata Plan 19963
Address: Wimbledon, 4 New McLean Street, Edgecliff NSW 2027
Telephone: 02 8216 0425
Email: greg.freeman@picagroup.com.au
Representative: Greg Freeman

Landowner No. 8-10 New McLean:

Name: Owner's Corporation Strata Plan 20548
Address: Cameron Court, 10 New McLean Street, Edgecliff NSW 2027
Telephone:
Email: tonybond57@hotmail.com
Representative: Tony Bond



Deed of Agreement for Works and Dedication of Land for Footpath

Parties

Woollahra Municipal Council ABN 32 218 483 245 of 536 New South Head Road, Double Bay NSW 2028 (**Council**)

and

Owner's Corporation of Strata Plan 19963 ABN 37 069 664 478 of 4 New McLean Street, Edgecliff NSW 2027 (**Landowner 4 New McLean**)

and

Owner's Corporation of Strata Plan 20548 ABN 37 238 513 121 of 10 New McLean Street, Edgecliff NSW 2027 (**Landowner 8-10 New McLean**)

Background

- A Council currently has the benefit of the Easement for the Footpath which traverses the Land.
- B Council resolved on 10 December 2018 to acquire the part of the Land containing the Footpath and adjoining parts of the Land and to incorporate those parts of the Land into the public reserve known as Trumper Park for pedestrian and other use by the public.
- C The Landowners are the owners of the Land and have resolved to dedicate that Land to Council as a public reserve free of cost and to give Council access to the Common Properties for the purpose of carrying out the Works to upgrade the Footpath prior to its dedication to Council.
- D This Deed records the terms of the Parties' agreement.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action including a claim for compensation under the Just Terms Act.

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Conveyancing Act mean the *Conveyancing Act 1919* (NSW).

Conveyancing Regulation means the *Conveyancing (Sale of Land) Regulation 2010* (NSW) and the *Conveyancing (General) Regulation* (NSW).

Common Properties means CP/SP20548 and CP/SP19963 being the common property in the strata schemes comprised in the registered strata plan 20548 and known as 8-10 New McLean Street Edgecliff NSW and the registered strata plan 19963 and known as 4 New McLean Street Edgecliff NSW.

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

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

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

Easement for the Footpath means the easements in gross for the right of footway benefitting Council and burdening the Common Properties.

Effective Date means the date on which the Council becomes the owner of the Public Reserve Lot.

Footpath means the pathway for pedestrians constructed on the Easement for the Footpath.

GST has the same meaning as in the GST Law.

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

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

Land means the Common Properties.

Landowners means the Landowner 4 New McLean and the Landowner 8-10 New McLean.

Law means any Federal, State or Local Government Statute, regulation, rule, guideline, order or direction or the like given by a competent authority arising from such laws, rules or regulations, and any law under the common law or in equity.

Local Government Act means the *Local Government Act 1993* (NSW).

LRS means Land Registry Services.

Plan means the plan which is Annexure A.

Plans of Subdivision means the plans of subdivision to subdivide the Land to create the Public Reserve Lot and dedicate the Public Reserve Lot as a public reserve.

Public Reserve Lot means the lot to be created by registration of the Plans of Subdivision and to be dedicated to Council as a public reserve under the Local Government Act, and which will be generally of the dimensions and in the location of the area shown as 'DENOTES AREA TO BE ACQUIRED FOR PUBLIC ACCESS AND COMMUNITY PURPOSES OVER SP19963' and 'DENOTES AREA TO BE ACQUIRED FOR PUBLIC ACCESS AND COMMUNITY PURPOSES OVER SP20548' on the Plan.

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WH&S Laws means the laws relating to work health and safety that apply to the Works and includes the WH&S Regulation; and

WH&S Regulation means the *Work Health and Safety Regulation 2011* (NSW).

Works means the works to construct, repair and maintain the Footpath for use by pedestrians, to install lighting and to erect structures to regulate use of the Footpath by pedestrians.

- 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 A reference in this Deed to a business hour means an hour in the period between 8am to 6pm on a business day.
 - 1.2.4 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.
 - 1.2.5 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.6 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 Deed, deed or document is to that Deed, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
 - 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.

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- 1.2.15 Any schedules, appendices and attachments form part of this Deed.
- 1.2.16 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed contains all the terms of the agreement between the Parties in respect of the Works, the creation of the Public Reserve Lot and the dedication of the Public Reserve Lot as a public reserve.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

Part 2 – Provisions relating to Subdivision and Dedication

4 Subdivision and Dedication of The Public Reserve Lot

- 4.1 Subject to the terms of this Deed, the Landowners agree to subdivide the Common Properties to create the Public Reserve Lot and to dedicate the Public Reserve Lot to Council as a public reserve.
- 4.2 The Council agrees to:
 - 4.2.1 instruct a surveyor to prepare the Plans of Subdivision;
 - 4.2.2 submit the Plans of Subdivision to the Landowners for their approval and execution; and
 - 4.2.3 register the Plans of Subdivision.
- 4.3 The Landowners agree to:
 - 4.3.1 consent to and execute the respective Plans of Subdivision;
 - 4.3.2 produce the respective certificates of title to the Common Properties and any other documents necessary to the LRS to enable Council to register the Plans of Subdivision.
- 4.4 The Parties agree that Council is not required to pay and the Landowners are not entitled to demand any consideration for the Landowners' consent to the Plans of Subdivision or the dedication of the Public Reserve Lot as a public reserve.
- 4.5 Subject to clause 9, the Parties agree that the Landowners are not required to pay and Council is not entitled to demand any consideration for carrying out the Works.



5 Access and Further Actions

- 5.1 The Landowners must do everything reasonably necessary, including giving Council, its servants, agents and consultants access to the Common Properties and executing documents, in order to enable Council to:
 - 5.1.1 enter onto and inspect the Land and the Common Properties to obtain any certificate, survey or report reasonably required by Council for the purposes of this Deed, the Works and the preparation of the Plans of Subdivision, and
 - 5.1.2 apply (if necessary in the name of the Landowners) for any approval, certificate, consent, direction, notice or order that can be given in respect of the Land and the Public Reserve Lot under any law.

6 No Adjustments

- 6.1 Subject to any other provision of this Deed, the Landowners are entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax and all other periodic outgoings payable on the Land up to and including the Effective Date;
- 6.2 After the Effective Date, Council will be entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax and all other periodic outgoings payable in respect of the Public Reserve Lot.
- 6.3 The Parties are not required to make any adjustment on the Effective Date.

Part 3 – Provisions relating to Works

7 Works

- 7.1 The Parties agree to Council carrying out the Works prior to the Effective Date.
- 7.2 Council must give the Landowners 20 business days prior written notice if its intention to commence the Works.
- 7.3 The Landowners grant the Council, Council's contractors, employees and agents:
 - 7.3.1 exclusive occupation of and access to the Land for the purpose of carrying out the Works;
 - 7.3.2 permission to carry out the Works and allow the Works to remain on the Land;
 - 7.3.3 a licence to enter on such parts of the Common Properties as is necessary to carry out the Works; and
 - 7.3.4 permission to use any services such as electricity or water connected to the Common Properties as is necessary to carry out the Works.

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- 7.4 In respect of the Works to be carried out by the Council on the Land which requires the appointment of a Principal Contractor under the WH&S Regulation, the Landowners appoint the Council as the Principal Contractor in respect of the Works and the Council accepts the appointment.
- 7.5 The Council may appoint another person as Principal Contractor for part or all of the Works in place of the Council without obtaining the Landowners' consent but will notify the Landowners of the appointment and the identity of the Principal Contractor.
- 7.6 The Council will keep current in the name of the Council:
 - 7.6.1 a public liability insurance policy for not less than \$20 million; and
 - 7.6.2 any other insurances for the Works which are required by law.

Part 4 – General Provisions

8 Release and indemnity

- 8.1 The Landowners acknowledge that until the Effective Date, the Landowners remain liable for all maintenance of the Footpath, subject to the terms of this Deed.
- 8.2 The Landowners release the Council from any Claim they may have against the Council arising in connection with the Council's performance of its obligations under this Deed, and anything occurring on the Public Reserve Lot prior to the Effective Date, except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 8.3 The Landowners indemnify Council from and against all Claims that may be sustained, suffered, recovered or made against Council arising in connection with the Public Reserve Lot and the Footpath prior to the Effective Date and the performance by Council of its obligations under this Deed, except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 8.4 This clause continues to apply after expiration or termination of this Deed.

9 Costs

- 9.1 The Council will bear the cost of carrying out the Works, preparing this Deed, any other legal documents required to give effect to this Deed, and the Plans of Subdivision and registering the Plans of Subdivision.
- 9.2 Each Party is to pay the Party's own legal costs of, negotiating, executing, stamping, registering and enforcing this Deed, and any document related to this Deed.
- 9.3 The Landowners must each reimburse the Council upon demand in writing for 50% of Council's costs of carrying out the Works, if the Public Reserve Lot is not dedicated to Council as a public reserve within 24 months of the date of this Deed.
- 9.4 This clause continues to apply after expiration or termination of this Deed.



10 Joint and Individual Liability and Benefits

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

11 Notices

- 11.1 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:
 - 11.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 11.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 11.2 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 or fax number.
- 11.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 11.3.1 delivered, when it is left at the relevant address,
 - 11.3.2 sent by post, 2 business days after it is posted, or
 - 11.3.3 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.
- 11.4 If any notice, consent, information, application or request is sent or delivered 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 on the next business day.

12 Entire Deed

- 12.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 12.2 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.

13 Further Acts

- 13.1 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.



14 Governing Law and Jurisdiction

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

15 Representations and Warranties

- 15.1 The Parties warrant to each other that they:
 - 15.1.1 have full capacity to enter into this Deed, and
 - 15.1.2 are able to fully comply with their obligations under this Deed.
- 15.2 The Landowners represent and warrant that they are the owners of the Land, and that they have taken all necessary steps and obtained all necessary resolutions to comply with their obligations under this Deed and to enable the Public Reserve Lot to be created and dedicated to Council as a public reserve.
- 15.3 The Parties are not bound by any warranty, representation, unregistered encumbrance, collateral or other agreement or implied term under any Law in relation to the Land unless:
 - 15.3.1 that warranty, representation, agreement, unregistered encumbrance or term is contained in the express terms of this Deed; or
 - 15.3.2 it is an implied term or warranty imposed by a statute which is mandatory and cannot be excluded by the Parties' agreement.
- 15.4 Subject to the express terms of this Deed, in entering into this Deed, each party:
 - 15.4.1 has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Deed made by any person; and
 - 15.4.2 has relied entirely on its own enquiries in relation to the subject matter of this Deed.
- 15.5 This clause continues to apply after expiration or termination of this Deed.

16 Severability

- 16.1 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.
- 16.2 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.



17 Amendment

- 17.1 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.

18 Waiver

- 18.1 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.
- 18.2 A waiver by a Party is only effective if it:
- 18.2.1 is in writing,
 - 18.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 18.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 18.2.4 is signed and dated by the Party giving the waiver.
- 18.3 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.
- 18.4 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.
- 18.5 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.

19 No Fetter

- 19.1 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.

20 GST

- 20.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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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.

- 20.2 Subject to clause 20.4, 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.
- 20.3 Clause 20.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 20.4 No additional amount shall be payable by the Council under clause 20.2 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.
- 20.5 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, the Parties agree:
 - 20.5.1 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;
 - 20.5.2 that any amounts payable by the Parties in accordance with clause 20.2 (as limited by clause 20.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 20.6 No payment of any amount pursuant to this clause 20, 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.
- 20.7 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.
- 20.8 This clause continues to apply after expiration or termination of this Deed.

Part 5 – Dispute Resolution

21 Dispute resolution – expert determination

- 21.1 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:

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- 21.1.1 the Parties to the Dispute agree that it can be so determined, or
- 21.1.2 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.
- 21.2 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.
- 21.3 If a notice is given under clause 21.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 21.4 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.
- 21.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 21.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 21.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

22 Dispute Resolution - mediation

- 22.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 21 applies.
- 22.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 22.3 If a notice is given under clause 22.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 22.4 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.
- 22.5 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.
- 22.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 22.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

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Deed of Agreement for Works and Dedication of Land for Footpath
Woollahra Municipal Council
Owner's Corporation Strata Plan 19963
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Execution

Executed as a Deed

Dated: 27 March 2020



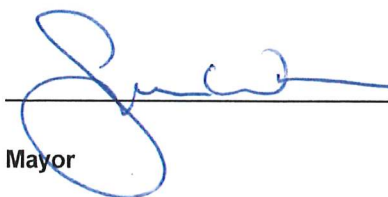
Executed on behalf of the Council



General Manager



Witness



Mayor



Witness

Executed on behalf of the Landowner 4 New McLean

THE COMMON SEAL of the Owner's Corporation of Strata Plan 19963 (ABN: 37 069 664 478)
is affixed in accordance with Section 127(2) of the ²¹³ ~~Corporations Act 2001~~ ^{STRATA SCHEMES} ~~MANAGEMENT ACT 2015~~



Signature of authorised person



Signature of authorised person



Name of authorised person



Name of authorised person



Office held

AUTHORISED SIGNATORY
BCS STRATA MANAGEMENT PTY LTD

Office held

9/3/2020.

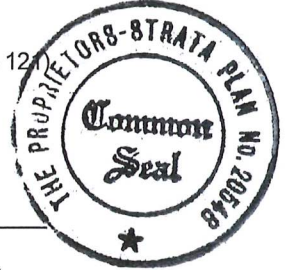


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Owner's Corporation Strata Plan 19963
Owner's Corporation Strata Plan 20548



Executed on behalf of the Landowner 8-10 New McLean

THE COMMON SEAL of the Owner's Corporation of Strata Plan 20548 (ABN: 37 238 513 121)
is affixed in accordance with Section 127(2) of the *Corporations Act 2001*:



PRH

Signature of authorised person

Patrick Rust

Name of authorised person

Strata Manager

Office held

Sarkis Morawad

Signature of authorised person

SARKIS MORAWAD

Name of authorised person

Strata Manager

Office held

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Woollahra Municipal Council
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Annexure A

Plan

