



The City of Port Phillip (Council)
St Kilda Community Housing Ltd (St KCH)

Funding Deed Wellington Street Common Ground Project

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Funding Deed

Parties

The City of Port Phillip ABN 21 762 977 945
99a Carlisle Street, ST KILDA VIC 3182 ("**Council**")

St Kilda Community Housing Ltd ABN 20 123 193 117
116 St Kilda Road, ST KILDA VIC 3182 ("**St KCH**")

Background

- A. On 2 September 2020, Council resolved that it will be contributing money and land towards the construction of a 26 unit 'Common Ground' supported social housing project at 28 Wellington Street, St Kilda (**Wellington Street Common Ground Project**).
- B. A Common Ground is a model of supported social housing, targeted at single persons who were previously sleeping rough. The model incorporates a range of support services that aim to maintain these people in housing, reduce the likelihood of them moving back into homelessness and, where possible, move them forward in the housing continuum.
- C. The property at 28 Wellington Street, St Kilda (**Property**) is owned by Director of Housing for Homes Victoria and is currently managed by St KCH under a lease.
- D. The Council and St KCH have a draft Partnership Deed under which subsidiary agreements may be entered into by Council in the furtherance of Council's affordable housing strategy and objectives (**draft Partnership Deed**). This deed will comprise the subsidiary agreement that is defined in the draft Partnership Deed.
- E. This deed sets out the responsibilities of Council to make contributions to the Wellington Street Common Ground Project and the responsibilities of St KCH to deliver the project and manage the housing.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this deed

Business Day means a day on which banks are open for general banking business in Victoria, but does not include Saturdays, Sundays or public holidays.

Property means the property at 28 Wellington Street, St Kilda Victoria 3182 being the land comprised in Volume 7027 and Folio 254.

Road means the road adjoining 26 and 28 Wellington Street, St Kilda being the road comprised in Part Crown Allotment A, Portion 68, Parish of Prahran and also known as Road R3723.

Serious Project Risk means any risk that will significantly impact St KCH's ability to deliver the Wellington Street Common Ground project. Such risks may include, but are not limited to, the builder going bankrupt or going into voluntary administration before the project is completed; St KCH going bankrupt or winding up; or the use of the Property differs from that which is stated in the funding agreement between St KCH and the Director of Housing.

1.2 Interpretation

In this deed:

- (a) headings and clause numbers are for convenience only and do not form part of the document or affect its interpretation;
- (b) the singular number includes the plural and vice versa, unless the context requires otherwise;
- (c) a reference to "includes" or "including" means "includes, without limitation" and "including, without limitation" respectively;
- (d) a reference to the whole includes a part of the whole;
- (e) a reference to a party includes that party's executors, administrators, trustees, successors and permitted assigns;
- (f) a reference to a person includes an individual, corporation, unincorporated association, partnership, joint venture or government body;
- (g) a reference to any statute, ordinance or other law includes all regulations and other instruments under it and all consolidations, amendments, re-enactments or replacements of it;
- (h) money references are in Australian dollars, unless otherwise provided; and
- (i) if a party is a corporation, a reference to that party's authorised officer includes an "officer" of the corporation as defined in the *Corporations Act 2001* (Cth), or any other person authorised to act on its behalf.

1.3 Relationship between parties

This deed is not intended to create a partnership, joint venture or relationship of principal and agent between the parties.

1.4 Governing law and jurisdiction

- (a) This deed is governed by the laws of Victoria.
- (b) The parties submit to the jurisdiction of the courts of Victoria and of the Federal Court of Australia.

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1.5 Confidentiality

The terms of this deed are confidential and must not be disclosed (without the prior written consent of the parties) to any person other than the parties professional advisers or as required by law.

2. Agreement

2.1 Delivery of Wellington Street Common Ground Project

Whereas the parties have agreed to work together to achieve some community benefit in the Wellington Street Common Ground Project, the parties agree that:

- (a) Ownership of the Property will remain with Director of Housing, which has a current lease to St KCH.
- (b) Council will not:
 - (1) acquire any ownership equity in the Property; or
 - (2) bear responsibility or risk for delivering the Wellington Street Common Ground Project; or
 - (3) provide operating subsidy; or
 - (4) manage the property and tenancies, or support services.
- (c) St KCH will apply for town planning approval from Council as the responsible authority, on behalf of Director of Housing.
- (d) St KCH carries all project risks involved in the delivery of the Wellington Street Common Ground Project. In the event of a Serious Project Risk, the Director of Housing may step-in to address the Serious Project Risk.
- (e) St KCH will continue to manage the Property and tenancy under its current lease. St KCH will use reasonable endeavours to secure from the Director of Housing the renewal of the lease.
- (f) St KCH will secure from the Director of Housing a commitment for an operating subsidy for a 4-year period.
- (g) St KCH will provide support services or will contract with support service agencies to provide support services.
- (h) Council and St KCH agree to use reasonable endeavours to secure the performance of any third parties that are not bound by this Deed and which have an interest or role in supporting (financially or otherwise) the Wellington St Common Ground project.

2.2 Obligations of Council

- (a) Council will make a cash contribution of \$4 million to St KCH towards the construction of the Wellington Street Common Ground Project facility. The cash contribution will be paid in four instalments as follows:

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- (1) \$1M within 14 days of Council entering into the Partnership Deed and the Funding Deed with St Kilda Community Housing Ltd. This is estimated to occur on or around August 2022.
 - (2) \$1 million on completion of the ground floor slab to the satisfaction of Council's municipal building surveyor or alternatively of St KCH's appointed building surveyor. This is estimated to occur on or around January 2023.
 - (3) \$1 million on completion of the first-floor slab to the satisfaction of Council's municipal building surveyor or alternatively of St KCH's appointed building surveyor. This is estimated to occur on or around April 2023.
 - (4) \$1 million within 14 days of issue of the Certificate of Occupancy. This is estimated to occur on or around December 2023.
- (b) The balance of required capital funding for construction of \$3.7 million is to be funded by Director of Housing or its related entities.
- (c) If the project does not proceed at any stage, any unspent Council funding contributions at that point that has been advanced by Council to St KCH will revert back to Council.
- (d) Council will also contribute the Road valued at an estimate of \$400,000 as at September 2020, and formally valued at \$364,980 in 2022, which currently forms part of the driveway access to the Property.
- (1) The Road will be subject to a statutory road discontinuation and disposal process under the Local Government Act 1989 before it is transferred to Director of Housing. Council will arrange for a title to be created for the Road prior to it being transferred.
 - (2) When the Road is transferred, Council will direct the Director of Housing to have it consolidated into the title for the Property.
 - (3) Notwithstanding anything in the above, nothing in this deed shall be read as fettering Council's discretion in relation to the forthcoming statutory process for closure and transfer of the Road, subject first to Council completing the statutory public consultation process in relation to the closure and transfer of the Road.

2.3 Obligations of St KCH

The parties agree that St KCH will:

- (a) use the land for supported social housing under the Common Ground model;
- (b) deliver a 26 self-contained bedsitter unit facility by 31 December 2023, or any reasonably later date agreed between the Council and St KCH;
- (c) house persons who are predominantly on the Port Phillip Zero Project's 'By-Name List', and allocated in conjunction with the Port Phillip Zero Service Coordination Group; where no appropriate referrals are forthcoming, St KCH will house an alternative person, sourced from the Port Phillip Zero Service Coordination Group, who is on the Priority Housing list of the Victorian Housing Register and has experienced homelessness.

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- (d) provide on-site concierge services, consisting of a staffed reception desk providing security and supervision;
- (e) provide a range of support service facilities relevant to the persons housed, which are anticipated to include the following:
 - (1) Medical services including drug and alcohol, mental health, nursing and dental; and allied health services, including counselling, case management and occupational therapy. Medical and allied health services are proposed to be provided primarily in a consulting room located on the ground level of the Wellington Street Common Ground Project facility, with St KCH sharing office space in the facility with these services to support the provision of the services;
 - (2) Social skills training and skill development, such as nutrition and cooking skills, pathways to independence living skills, and art classes; and
 - (3) Other services such as employment and income support services, legal services, and National Disability Insurance Scheme (NDIS) services.
- (f) Ensure that the operation of the Common Ground facility will broadly be informed and guided by the *Common Ground Housing Model Practice Manual*, prepared by the Australian Housing & Urban Research Institute (2021).
- (g) meet the generic performance measures and reporting requirements as set out in the draft Partnership Deed, which are applicable to the Common Ground Project, including evidence that persons housed are predominantly from the Port Phillip Zero Project's 'By-Name List', and have been allocated in conjunction with the Port Phillip Zero Service Coordination Group.

3. GST

3.1 Consideration GST-exclusive

It is the intention of the parties that any consideration for a supply under this deed be received by the supplier exclusive of GST.

3.2 Payment of GST

The recipient of a supply must pay the supplier an amount equal to the supplier's GST on the consideration at the same time as the consideration is paid. The supplier must issue a tax invoice before the recipient is obliged to pay the GST.

4. Notices

4.1 Form

A notice or other communication connected with this deed ("**Notice**") must be in writing and given by a party, its authorised officer or its lawyer.

4.2 Delivery

A Notice must be:

- (a) delivered to the recipient's address or registered office;

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- (b) posted to the recipient's address or registered office by prepaid ordinary post (or airmail, if posted to or from a place outside Australia).

as set out in this deed, or notified from time to time.

4.3 Address for service

Details of the parties addresses for service of notices are set out below:

- (a) The City of Port Phillip:
 - Address: 99a Carlisle Street, St Kilda VIC 3182
 - Attention: Gary Spivak, Affordable Housing Program Coordinator
 - Email: Gary.Spivak@portphillip.vic.gov.au
- (b) St Kilda Community Housing Ltd:
 - Address: 116 St Kilda Road, St Kilda VIC 3182
 - Attention: Andrew D'Arcy – Chief Executive Officer
 - Email: adarcy@stkch.org.au

4.4 Service

- (a) Service of a Notice is deemed to have occurred, if sent:
 - (1) as a delivered letter – at the time it is delivered;
 - (2) as a posted letter – on the 2nd Business Day after posting (or the 7th, if posted to or from a place outside Australia);
 - (3) by email – on the next Business Day, unless the sender receives a failure of delivery notification.
- (b) If a Notice is served after 5.00 pm on a Business Day, it is deemed to have been served on the next Business Day.

4.5 Party's lawyer

A Notice may be:

- (a) given and signed by a party's lawyer; or delivered to a party's lawyer by any of the means listed in clause 4.2, or to the lawyer's business address.

5. Dispute Resolution

5.1 Mediation by ADC

If a dispute arises out of or relates to:

- (a) this deed or the breach, termination, validity or subject matter thereof; or
- (b) any related claim in restitution or at law, in equity or under any statute,

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the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre ("ADC") before having recourse to arbitration or litigation.

5.2 In accordance with ADC guidelines

The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation ("**Guidelines**") operating at the time the dispute is referred to ADC.

5.3 Content of Guidelines

The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

5.4 Incorporation of Guidelines

The Guidelines are incorporated into this deed.

5.5 No merger

This clause survives termination of this deed.

6. General

6.1 Assignment

(a) Rights arising out of or under this deed may only be assigned by a party with the prior written consent of the other party.

(b) A party must not unreasonably withhold its consent to assignment.

6.2 Consent

A party may give or withhold its approval or consent under this deed in its absolute discretion, unless otherwise stated.

6.3 Severance

If a clause is void, illegal or unenforceable, it may be severed without affecting the other provisions in this.

6.4 Entire agreement

This deed replaces all previous agreements about its subject matter and constitutes the entire agreement between the parties.

6.5 Variation

A variation of this deed must be in writing and signed by the parties.

6.6 Waiver

(a) No right under this deed is waived or deemed to be waived, except by written notice signed by the party waiving the right, or its authorised officer.

(b) A party does not waive its rights under this deed by granting an extension or forbearance to another party.

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6.7 Costs and expenses

Each party must pay its own costs and expenses arising from this deed and any related documents, unless otherwise set out in this.

6.8 Time of performance

- (a) If a payment is made or something is done after 5.00 pm on any Business Day, it is deemed to have been made or done on the next Business Day.
- (b) If this deed requires something to be done on a day that is not a Business Day, it must be done on the next Business Day.

6.9 Further action

Each party must take all necessary further action to give full effect to this deed.

6.10 Counterparts

This agreement may be executed in any number of counterparts.

6.11 Survival

The terms of this agreement survive its termination to the extent permitted by law.

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Executed on

2022

THE COMMON SEAL of Port Phillip City Council was hereunto affixed on _____ in the presence of:
Mayor
Chief Executive Officer

DRAFT

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**Signed, sealed and delivered by St Kilda
Community Housing Ltd ABN 20 123 193**
117 in accordance with section 127 of the
Corporations Act 2001:

Signature:

Signature:

Name:

Name:

PLEASE PRINT

PLEASE PRINT

Director

Director/Secretary *

*** Delete as appropriate**

DRAFT