Explanatory Note

(Clause 25E of the Environmental Planning and Assessment Regulation 2000)

Draft Planning Agreement

The purpose of this explanatory note is to provide a summary of the proposed planning agreement (PA) prepared jointly between Waverley Council and the Developer under *s7.4 of the Environmental Planning and Assessment Act* 1979 (the Act).

This explanatory note has been prepared as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000.*

1 Parties:

Waverley Council (Council)

657 Holdings Pty Ltd of Suite 6, 8 Wharf Crescent Pyrmont NSW 2009 ACN 638 175 461 (Developer)

2 Description of subject Land:

The whole of the land being Lot 6 in DP 9036 and known as 657 Old South Head Road, Rose Bay, is the subject Land under the Planning Agreement.

3 Description of Development:

The Developer proposes to develop the subject Land. The proposed development will comprise demolition of existing buildings and construction of a four storey shop top housing development containing 6 apartments, ground floor commercial tenancy, basement parking and associated works, as modified.

4 Background:

The Developer is the registered proprietor of the subject Land. A development application was lodged with Council, DA 452/2018, to carry out development on the subject Land. An appeal was lodged with the NSW Land and Environment Court. An offer was made to enter into a Planning Agreement with Council pursuant to section 7.4 of the Act to provide a monetary contribution as the development application provided for additional floor space which exceeds floor space controls permitted for such buildings under Council's planning controls.

The Developer sought to modify the development consent (DA-452/2018/A and DA-452/2018/B) which included modifications to increase floor space among other things. The offer to enter into the Planning Agreement was subsequently clarified and confirmed by the Developer. The offer is in line with Council's Voluntary Planning Agreement Policy 2014.

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

The Planning Agreement will assist Council in achieving its objectives by providing funds which will enable Council to provide a material public benefit to residents of areas close to the Development and the broader community by facilitating the improvement and regeneration of parks and reserves in the Rose Bay/Dover Heights area and provision towards Waverley's Affordable Housing Program.

The Agreement is a binding relationship between Council and the Developer whereby the Developer is to pay a monetary contribution and is a Planning Agreement under section 7.4 and Subdivision 2 of Division 7.1 of Part 7 of the Act.

The Agreement requires the Developer to comply with certain requirements including registration of the Agreement and caveat and to pay the monetary contribution to Council in the amount of $425,640 within six weeks of entering into the Planning Agreement and also prior to the issue of any Occupation Certificate for the Development.

The Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development and the Development Contribution is not to be taken into consideration in determining any development contribution under s7.11 of the Act.

The Agreement contains a number of machinery provisions including in relation to dispute resolution and enforcement.

6 Assessment of the merits of the Draft Planning Agreement:

<u>The Planning Purposes Served by the Draft Planning Agreement</u>

In accordance with s 7.4(2) of the *Environmental Planning and Assessment Act 1979*, the Planning Agreement facilitates the following public purposes:

- The provision of (or recoupment of the cost of providing) public amenities or public services;
- The provision of (or the recoupment of the cost of providing) affordable housing;
- The funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
- The monitoring of the planning impacts of development; and
- The conservation or enhancement of the natural environment.

The Planning Agreement provides a reasonable means of achieving the public purposes set out above.

<u>How the Draft Planning Agreement Promotes the Public Interest</u>

- The public interest is promoted by the provision to Council of funds which it is able to apply towards upgrading and improving parks and reserves nearby the Development in the Rose Bay/Dover Heights area;

- The public interest is promoted by the provision of open space for the surrounding and broader community;

- The upgrading and improvement of parks and reserves in the areas nearby the Development will encourage business within and development of the precinct as an active vibrant community with recreational facilities;

- The contributions made are intended to positively affect the economic and social wellbeing of the precinct incorporating the Development and wider community. Both residents and visitors will benefit from the contributions under the Planning Agreement;

- Public Interest is promoted by virtue of the planning agreement because it increases the provision of affordable housing;

- Provides housing for low income and disadvantaged people within the community;

- Facilitates a diverse social mix;

- Enables diverse social and economic groups to have similar opportunities for accommodation in the area where the Development is situated.

<u>How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act, 1979 (EP&A Act)</u>

The provision of the monetary contribution required under the Planning Agreement will promote the objects of the Act, in particular:

- 1.3(a) “to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources”;

- 1.3(b) “to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment”;

- 1.3(c) “to promote the orderly and economic use and development of land”;

- 1.3(d) “to promote the delivery and maintenance of affordable housing”; and

- 1.3(i) “to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State”.

<u>How the Draft Planning Agreement promotes elements of the Council’s charter under section 8 of the Local Government Act, 1993</u>

- The Draft Planning Agreement provides a means by which the Council shows a regard for the long term and cumulative effects of its decisions. The Council’s decisions impact public areas. The Council is conscious of a need for open space/recreational facilities as well as affordable housing within the public

areas in its local government area and how its decisions and policies impact on seeking to fulfil these needs;

- The Draft Planning Agreement provides a means by which Council shows it bears in mind that it is the custodian and trustee of public assets and seeks to effectively plan for and manage the assets for which it is responsible and facilitates its engaging in long term strategic planning on behalf of the local community.

- In addition as the planning agreement is a means by which the Council can implement its Affordable Housing Policy, in doing so Council exercises community leadership in an area of concern to the wider community.

Conformity with the Council's Capital Works Program

The Draft Planning Agreement is not inconsistent with the Council's Capital Works Program.

Whether the Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes, as detailed above in relation to registration and caveat and to enforce payment of the monetary contribution within six weeks of entering into the Planning Agreement and also prior to the issue of any Occupation Certificate for the Development.

This explanatory note is not to be used to assist in construing the Planning Agreement

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