

Explanatory Note

157 – 159 Military Road, Dover Heights Development Application No. DA-316/2015/B

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

Planning Agreement

The purpose of this explanatory note is to provide a summary to support the notification of a draft Planning Agreement under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

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

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

1 Parties

The parties to the Planning Agreement are Waverley Council (**Council**), ROIA Development Pty Ltd (ACN 646 765 648) and IOMT Developments Pty Ltd (ACN 646 590 221) collectively referred to as the Developer (**Developer**).

2 Description of subject land

The land to which the Planning Agreement applies is the whole of the land being Lot 1 in DP 126719 and known as 157 – 159 Military Road, Dover Heights (**Land**).

The Developer is the registered proprietor of the Land.

3 Description of Development

The proposed development comprises demolition of existing building, construction of mixed use building with basement car parking and strata subdivision as modified to alter internal layout, relocation of bicycle parking, modification of residential entry and various other external alterations (**Development**).

4 Background

On 14 August 2020, a development application, DA-316/2015/B, was lodged with Council to modify DA-316/2015 (**Development Application**). An offer was made by in connection with the Development Application to enter into a Planning Agreement with Council and to make a monetary contribution to be used for a public purpose, as the Development Application provided for additional floor space, which exceeds floor

space controls permitted for such buildings under Council's Planning Controls. The offer was clarified and confirmed on 17 June 2021. Development Consent was granted on 1 December 2020.

A previous planning agreement was entered into in respect to DA-316/2015 in 2017. This Planning Agreement does not impact or supersede the 2017 planning agreement.

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

The objective of the Planning Agreement is to secure a public benefit in connection with the Development Application so that the Development delivers a community benefit.

The Planning Agreement requires the Developer to pay to Council a monetary contribution in the amount of \$54,320 to be applied towards the Waverley Affordable Housing Program (25%) and upgrading and improvement of parks and reserves in Dover Heights and Rose Bay (75%). The monetary contribution is payable to Council prior to any Occupation Certificate issuing for the Development.

The Planning Agreement is a binding relationship between Council and the Developer. The Planning Agreement requires the Developer to comply with certain requirements including registration of the Planning Agreement, provision of a Bank Guarantee and registration of a Caveat. The Planning Agreement contains a number of machinery provisions including in relation to dispute resolution and enforcement.

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

The effect of the Planning Agreement is a monetary contribution towards the Waverley Affordable Housing Program and upgrading and improvement of parks and reserves in Dover Heights and Rose Bay.

6 Assessment of the merits of the Planning Agreement

(a) How the Planning Agreement promotes the public interest and the objects of the Act

The Planning Agreement promotes the objects of the Act, in particular Section 1.3(a) of the Act, which is 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 and 1.3(d) of the Act, which is to promote the delivery and maintenance of affordable housing. The objects are satisfied as the Planning Agreement secures a monetary contribution towards the Waverley Affordable Housing Program and towards upgrading and improvement of parks and reserves in Dover Heights and Rose Bay.

Public interest is promoted by virtue of the Planning Agreement because it assists Council in upgrading and improving parks and reserves in Dover Heights and Rose Bay. The upgrading of parks and reserves will encourage business within and development of the precinct as an active, vibrant community with recreational facilities.

Further, public interest is promoted by virtue of the Planning Agreement because it assists Council in the provision of affordable housing and housing for low income and disadvantaged people within the community.

In addition, it assists in facilitating a socially diverse and inclusive community and enabling diverse social and economic groups to have similar opportunities for accommodation in the Waverley Local Government Area.

(b) The impact of the Planning Agreement on the public or any relevant section of the public

The Planning Agreement will benefit the public and local community as it seeks secure funds to upgrade parks and reserves in Dover Heights and Rose Bay which will positively affect the social and economic wellbeing of the precinct incorporating the Development and wider community. Both residents and visitors will benefit from the contribution under the Planning Agreement.

In addition, the Planning Agreement will benefit the public and local community as it seeks to improve and maintain access to affordable housing in the Waverley Local Government Area and facilitates a diverse social mix.

There is considered to be no negative impact on the public arising from the Planning Agreement.

(c) The planning purpose(s) served by the Planning Agreement

The Planning Agreement facilitates the provision of (or the recoupment of the cost of providing) affordable housing and public amenities and/or the funding of recurrent expenditure relating to the provision of affordable housing and public amenities. In addition, the Planning Agreement facilitates the conservation or enhancement of the natural environment. Affordable housing, public amenities and conservation or enhancement of the natural environment are public purposes under Section 7.4(2) of the Act.

The Planning Agreement implements Council policy and legislative provisions around affordable housing, public amenities and conservation or enhancement of the natural environment.

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

(d) How the Planning Agreement promotes the guiding principles for Councils (previously referred to as Council's Charter) under section 8A of the Local Government Act 1993

The 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 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.

(e) Whether the Planning Agreement conforms with the Council's Capital Works Program

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

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

The following requirements of the Planning Agreement must be complied with before:

- (i) A construction certificate is issued:** registration of the Planning Agreement, provision of a Bank Guarantee and registration of a Caveat.
- (ii) An occupation certificate is issued:** payment of the monetary contribution.
- (iii) A subdivision certificate is issued:** Not applicable.