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## 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 voluntary planning agreement (VPA) prepared jointly between Waverley Council and the Developer under s93F 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) and

**New East End Pty Ltd** A.C.N. 144 913 459(Developer)

#### 2 Description of Subject Land:

The whole of the land being Lot 1 in Deposited Plan 178089 and Lot 1 in Deposited Plan 177771 and known as 227-229 Old South Head Road, Bondi, is the Subject Land under the Planning Agreement.

#### 3 Description of Development:

The Developer proposes to develop the Land. The proposed development will comprise a residential flat building with 21 apartments with basement carparking.

#### 4 Background:

The Developer is the registered proprietor of the Development Site. The Developer lodged a modification application with Council on 19 November 2013 and with this offered to enter into a Voluntary Planning Agreement with Council pursuant to section 93F of the Act to provide a monetary development contribution as the modification application provided for additional floor space which exceeds floor space controls permitted for such buildings under Council's planning controls. The offer is in line with Council's Voluntary Planning Agreement Interim Policy 2013. The Developer has already entered into a Voluntary Planning Agreement dated 23 July 2013 which is registered upon the title to the Land, Dealing Number A1655624 (**the Prior VPA**). The Prior VPA is unaffected by the current proposed Voluntary Planning Agreement.

#### 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 facilitate Council to provide a material public benefit to residents of areas close to the Development and the broader community under Council's policies and programs directed at infrastructure construction, improvements and maintenance and improving and upgrading playgrounds, parks / reserves and public areas.

The Planning Agreement is made in connection with an offer to make provision towards any public purpose, including the purposes referred to above, as the

proposed development includes a building which exceeds the floor space permitted for residential flat buildings under Council's planning controls.

The Agreement is a contractual relationship between Council and the Developer whereby the Developer is to pay a Monetary Contribution and is a Planning Agreement under subsection 2 of Division 6 of Part 4 of the Act.

The Agreement requires the Developer to comply with certain requirements including to pay a monetary Development Contribution to Council in the amount of \$150,000.00 on the date of the Agreement.

The Agreement does not exclude the application of sections 94, 94A or 94EF of the Act to the Development and the Development Contribution is not to be taken into consideration in determining any development contribution under s94 of the Act.

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

Without limitation, but in particular in relation to enforcement, the Agreement provides that the Monetary Development Contribution is to be paid upon execution of the Agreement and further until such time as the monetary Development Contribution is paid in full, a construction certificate in respect of the Modified Development Consent must not be issued and the Developer must not rely on any construction certificate in respect to the Development.

## **6 Assessment of the merits of the Draft Planning Agreement:**

### The Planning Purposes Served by the Draft Planning Agreement

In accordance with S.93F(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 funding of recurrent expenditure relating to the provision of public amenities or public services or other infrastructure;
- The monitoring of the planning impacts of development,
- The conservation or enhancement of the natural environment.

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

### How the Draft Planning Agreement Promotes the Public Interest

- The public interest is promoted by the provision to Council of funds which it is able to apply towards upgrading and improving infrastructure and facilities nearby the Development in particular open space adjoining it to the south and along New Street, Bondi and Thomas Hogan Reserve in the Waverley Local Government Area;
- The upgrading and improvement of facilities 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;

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

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

- 5(a)(i) "property management development and conservation of natural and artificial resources including natural areas, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment".
- 5(a)(v) "the provision of community services and facilities".

How the Draft Planning Agreement promotes elements of the Council's charter under section 8 of the Local Government Act, 1993

- 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 infrastructure and facilities within the public areas in its local government area and how its decisions and policies impact on seeking to fulfil this need;
- 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.

Conformity with the Council's Capital Works Program

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

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 enforcement in relation to the issuing of a construction certificate.

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