
Planning Agreement

**Waverley Council
(Council)**

**St Oxford BJV Pty Limited
(Developer)**

**Bolside Pty Limited
Peat Cheon Nominees Pty Limited
Hollywood Investments Pty Limited
Ursula Eleonore Aroney
Jacob Spiros Cassimatis
Tina Cass
Paula Cassimatis Kalligeros
James Aroney
Emanuel Aroney
Renato Giacco
(Owners)**

Date:



Level 16 MLC Centre, 19-29 Martin Place St Sydney NSW 2000
Tel: 61 2 9228 9200 Fax: 61 2 9228 9299 DX 123 Sydney

Level 9, 469 La Trobe St Melbourne VIC 3000
Tel: 61 3 9602 9444 Fax: 61 3 9642 0382 DX 402 Melbourne

Level 40, Central Plaza 1, 345 Queen St Brisbane QLD 4000
Tel: 61 7 3004 3500 Fax: 61 7 3004 3599 DX 248 Brisbane

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Details

Parties

Council	Name	Waverley Council
	ABN	12 505 583 608
	Address	Cnr Bondi Road & Paul Street, Bondi Junction NSW 2022

Developer	Name	St Oxford BJV Pty Limited
	ABN	34 160 298 108
	Address	Ground Floor, 21 Solent Circuit, Baulkham Hills, NSW 2153

Owners	See Schedule 4
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Date of Agreement	day of	2016
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Background

- A. On 4 December 2013 the Joint Regional Planning Panel (JRPP) granted development consent no. DA-501/2012 (**Development Consent**) for the 'Demolition of existing buildings, construction of a 19 storey residential tower (133 apartments), ground level retail and basement level parking' (the **JRPP Approved Development**) on land known as Nos 570 – 588 Oxford Street, Bondi Junction (**Land**).
- B. On 30 October 2015 the Developer made Development Application no. DA-490/2015 for development consent for the **PA Development Proposal** on the Land.
- C. On 2 March 2016 the **PA Development Consent** was granted by the Council for the PA Development Proposal to be carried out on the Land.
- D. The **PA Development Proposal** is for: conversion of the approved mezzanine (approved as a plant area) into commercial office floor space. This will increase the gross floor area by 193.61m which will take the floor space ratio of the JRPP Approved Development to 8.18:1
- E. The Developer / Owners and the Council now wish to enter into a Planning Agreement with respect to the PA Development Consent, to make a Monetary Contribution of \$338,440 AUD in accordance with Waverley Council's *Planning Agreement Policy 2014* to be applied towards Public Purposes which will provide improved public facilities and public benefit for Bondi Junction in accordance with Waverley Council's *Bondi Junction Complete Streets Project*.
- F. The Council wants to enter into this Planning Agreement, subject to the terms in this agreement.

It is agreed

1. Planning Agreement under the Environmental Planning and Assessment Act 1979 (NSW)

- 1.1. The parties agree that this Planning Agreement was made under subdivision 2, Division 6, Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW) (EPAA).

2. Application of this Planning Agreement

- 2.1. This Planning Agreement applies to:
- 2.1.1 the PA Development Consent; and
 - 2.1.2 the PA Development Proposal.

3. Operation of this Planning Agreement

- 3.1. This Planning Agreement operates only if:
- 3.1.1 PA Development Consent is granted for the PA Development Proposal on the Land; and
 - 3.1.2 The agreement is entered into as required by clause 25C (1) of the *Environmental Planning and Assessment Regulation 2000* (NSW) (Regulation).

4. Definitions and interpretation

- 4.1. In this Planning Agreement the following definitions apply:

Agreement means this Planning Agreement.

Bank Guarantee means the bank guarantee to be delivered by the Developer and/or Owners to the Council upon execution of this Agreement in accordance with clause 11.

Business Day means a day other than a Saturday, Sunday or a public holiday in Sydney, New South Wales.

Council means Waverley Council.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Developer means St Oxford BJV Pty Limited.

Development Consent means Development Consent no. DA-501/2012 granted by the Council on 4 December 2013.

EPAA means the *Environmental Planning and Assessment Act 1979* (NSW).

GST has the same meaning as in the *GST Law*.

GST Law has the meaning given to that term 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*.

Land means Lot D DP 407377, Lot E 407377, Lot F DP 407377, Lot G DP 407377, Lot 4 DP 262918, Lot 50 DP 788523, Lot 1 DP 73839A, Lot 1 DP 73839B, Lot A, DP 440268 & Lot 1 DP 1198325 known as (Nos. 570-588) Oxford Street, Bondi Junction.

Monetary Contribution means the monetary contributions payable under this Planning Agreement as specified in Schedule 3.

Occupation Certificate means any occupation certificate relating to the PA Development Consent for the purposes of section 109C of the *EPAA*.

Owners mean the registered proprietors of the Land set out in Schedule 4.

PA Development Application means Development Application No. DA-490/2015.

PA Development Consent means Development Consent no. DA-490/2015 granted by the Council on 2 March 2016 for the PA Development Proposal.

PA Development Proposal means the development proposed under the PA Development Application.

Party and/or Parties means a party to this Agreement, including their successors and assigns.

Planning Agreement means this Agreement entered into by the Parties on the date of this Agreement.

Public Facility means a public amenity, a public service, a public facility, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

Public Purposes means Waverley Council's Bondi Junction Complete Streets Project.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

WLEP 2012 means the *Waverley Local Environmental Plan 2012*.

5. Interpretation

- 5.1. In the interpretation of this Planning Agreement, the following provisions apply unless the context otherwise requires:
- 5.1.1 Headings are inserted for convenience only and do not affect the interpretation of this Planning Agreement.
 - 5.1.2 A reference in this Agreement to a business day means a day other than a Saturday, Sunday or public holiday in New South Wales.
 - 5.1.3 If the day on which any act, matter or thing is to be done under this Planning Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 5.1.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 5.1.5 A reference in this Agreement 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.
 - 5.1.6 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 5.1.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - 5.1.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 5.1.9 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.
 - 5.1.10 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.
 - 5.1.11 References to the word 'include' or 'including' are to be construed without limitation.
 - 5.1.12 A reference to this Agreement includes the agreement recorded in this Agreement.

5.1.13 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

5.1.14 Any Schedules and/or attachments form part of this Agreement.

6. Development Contribution to be made under this Planning Agreement

6.1. Subject to the terms of this Agreement, and in respect of the matters and things specified in Schedule 3, the Developer is to make a Monetary Contribution in respect of the PA Development Proposal the subject of the PA Development Consent on the Land in accordance with Schedule 3.

6.2. The Monetary Contribution shall be paid by the Developer to the Council prior to any Occupation Certificate has been issued for the PA Development Consent.

7. Application of sections 94 & 94A of the Environmental Planning and Assessment Act 1979 (NSW)

7.1. This agreement wholly excludes the application of sections 94 and 94A of the EPAA to the PA Development Proposal the subject of the PA Development Consent.

8. Review and modification of this Agreement

8.1. The parties agree that this Agreement may be reviewed or modified and that any review of modification of this Agreement will be conducted in the circumstances and in the manner determined by the parties.

8.2. No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

9. Dispute resolution

Reference to dispute

9.1. If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this clause (**clause 9**).

Notice of dispute

9.2. The Party wishing to commence dispute resolution must notify the other Party in writing of:

9.2.1 the intention to invoke clause 9;

9.2.2 the nature or the subject of the dispute, including a summary of any efforts made to resolve the dispute other than by way of clause 9;

9.2.3 the outcomes which the notifying Party wishes to achieve (if practicable);

9.2.4 any material impact which the dispute has upon the completion of the Development, the Works and/or the issue of an Occupation Certificate(s).

Representatives of Parties to meet

9.3. The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided under subclause 9.2) meet in good faith to attempt to resolve the notified dispute.

9.4. The Parties may, without limitation:

9.4.1 resolve the dispute during the course of that meeting;

9.4.2 agree that further material, expert opinion or consideration is required to effectively resolve the dispute (in which the Parties will, in good faith, agree to a timetable for resolution);

9.4.3 agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is the appropriate for the resolution of the dispute.

Neither Party may constrain

9.5. If:

9.5.1 at least one meeting has been held in accordance with subclause 9.3; and

9.6. the Parties have been unable to reach an outcome identified in sub-subclauses 9.4.1 to 9.4.3; and

9.6.1 either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with the process agreed to under subclause 9.4,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect to the dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

10. Enforcement

10.1. Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.

10.2. Nothing in this Agreement prevents:

10.2.1 a Party from bringing proceedings in the Land and Environment Court of NSW to enforce any aspect of this Agreement or any matter to which this Agreement relates; and

10.2.2 the Council from exercising any function under the EPAA or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11. Registration and Bank Guarantee

Registration

11.1. The parties agree that this Agreement will be registered on the titles of the Land pursuant to section 93H of the EPAA as soon as reasonably practicable after it is made.

11.2. The Developer and Owners must deliver to Council upon execution of this Agreement all necessary executed documents and promptly perform any action necessary to effect the registration of this Agreement on the titles of the Land.

Release from Registration

11.3. Council will at the request of the Developer release the Land from registration of this Agreement upon payment of the Monetary Contribution and no other money is owing to Council under this Agreement. The obligations of the Council under this clause are satisfied when Council provides the Developer with a signed Land & Property Information Request in registrable form for the release of registration of this Agreement.

Bank Guarantee

11.4. Provision of Bank Guarantee

- (a) The Developer and / or Owners shall upon execution of this Agreement deliver to Council a Bank Guarantee (“**Bank Guarantee**”), which must be:
 - (i) irrevocable and unconditional;
 - (ii) with no expiry date;
 - (iii) issued in favour of the Council;
 - (iv) for an amount equivalent to the Monetary Contribution set out in Schedule 3 (\$338,440.00);
 - (v) drafted to cover all of the Developer’s obligations under this Agreement; and
 - (vi) on the terms otherwise satisfactory to the Council and in a form and from an institution approved by the Council.
- (b) The Developer acknowledges that the Council enters into this Agreement in consideration of the Developer providing the Bank Guarantee as a security for the

performance of all of the Developer's obligations under this Agreement, including without limitation the delivery of the Monetary Contributions to the Council in accordance with Schedule 3.

11.5. Calling on Bank Guarantee

- (a) The Council may call on the Bank Guarantee in the event that the Developer:
 - (i) fails to make a payment of any part of the Monetary Contributions in accordance with Schedule 3 or any other amount payable under this Agreement by its due date for payment; or
 - (ii) breaches any other term or condition of this Agreement, and fails to remedy the relevant failure or breach within 7 days after the Council's notice requiring its rectification.
- (b) If the Council calls on the Bank Guarantee as a result of the Developer's failure to pay any amount due under this Agreement, then the Council will apply the amount received pursuant to its claim on the Bank Guarantee in satisfaction of the Developer's obligation to pay the relevant amount.

11.6. Return of Bank Guarantee

If and when the Developer / Owners have complied with their obligations under this Agreement as to delivery of Monetary Contribution the Bank Guarantee will be returned to the party that has provided it.

12. **Notices**

Delivery

- 12.1. Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

12.1.1 Delivered or posted to that Party at its address set out below.

12.1.2 Emailed to that Party at its email address set out below.

Waverley Council

Attention: The General Manager – Mr Arthur Kyron

Address: Cnr Bondi Road & Paul Street, Bondi Junction, New South Wales 2022

Email: akyron@waverley.nsw.gov.au

St Oxford BJV Pty Limited

Attention: Mr Leigh Manser

Address: Ground Floor, 21 Solent Circuit, Baulkham Hills, NSW 2153

Email: leigh@bennelong.com

Change of details

- 12.2. If a Party gives the other Party 3 Business Days' notice of change of its address or email, any consent, information, application or request is only given or made by that other Party if it is delivered, posted or emails to the latest address.

Giving notice

- 12.3. Any notice, consent, information or request is to be treated as given or made at the following time:

12.3.1 if it is delivered, when it is left at the relevant address.

12.3.2 12.3.2 if it is sent by post, 2 Business Days after it is posted.

12.3.3 12.3.3 If it is emailed, when it is emailed without an error transmission report.

Delivery made outside business hours

- 12.4. If any notice, consent, information, application or request is delivered, posted or emailed on a day that is not a Business Day, or if on a Business Day, after 5.00 p.m. on that day in the place of the Party to whom it was sent, it is to be treated as having been given or made at the beginning of the next business day.

13. Assignment and Dealings

Dealings with Land

- 13.1. The Developer and the Owners agree that the Owners will not sell or complete any Dealing in relation to the whole of the Land the subject of the Development and the Development Consent unless they:

13.1.1 first inform the proposed assignee, purchaser or other party (the Incoming Party) of this Agreement;

13.1.2 provide the Incoming Party with a copy of this Agreement

- 13.1.3 enter into a novation deed with the Incoming Party and the Council, whereby the Incoming Party agrees to perform the obligations of the Developer and Owners under this Agreement; and
- 13.1.4 pays the Council's reasonable costs in relation to the assignment and novation.
- 13.2. The Council will promptly execute the novation deed referred to in sub-subclause 13.1.3 and will do all things reasonably required to give effect to that deed.
- 13.3. The provisions set out in subclauses 13.1 and 13.2 do not relate to the sale of any Bonus Floor Space Units.

Release

- 13.4. If the Developer and Owners, in engaging in any Dealing, satisfied the requirements of subclause 13.1, the Developer and Owners will be released from their obligations under this Agreement except as to the provisions of this Agreement relating to the Bank Guarantee provided as security for obligation herein (unless a replacement Bank Guarantee is accepted by Council).

14. Costs

- 14.1. The costs in connection with the following shall be paid by the Developer and deducted from the Monetary Contribution payable under Schedule 3 within 10 Business Days of the Occupation Certificate being issued:
 - 14.1.1 Negotiation, preparation and execution of this Agreement for the agreed amount of \$6,500 (plus GST); and
 - 14.1.2 Advertising and exhibiting this Agreement in accordance with the EPAA and Regulation, to a maximum of \$1,500.00.

15. Entire Agreement

- 15.1. This Agreement (and attached Schedules) contains everything to which the Parties have agreed in relation to the matters it deals with. 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 Agreement was executed, except as permitted by law.

16. Further acts

- 16.1. Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

17. Governing law and jurisdiction

- 17.1. This Agreement is governed by the laws of the State of New South Wales. The Parties submit to the non-exclusive jurisdiction of courts and courts of appeal (Courts) from them. The parties will not object to the exercise of the jurisdiction by those Courts on any basis.

18. Joint and individual liability and benefits

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

19. No fetter

- 19.1. Nothing in this Agreement shall be construed as requiring the 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. Representations and warranties

- 20.1. The Parties represent and warrant that they have the power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in a breach of the law.

21. Severability

- 21.1. If a clause or part of a clause of this Agreement 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. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of that clause shall be treated as removed from this Agreement, but the rest of the Agreement shall not be affected.

22. Waiver

- 22.1. The fact that Party fails to do, or delays in doing, something that Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A

written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of that obligation or breach in relation to any other occasion.

23. Goods and Services Tax (GST)

23.1. Construction

In this clause

23.1.1 words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;

23.1.2 GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act); and

23.1.3 any reference to GST payable or an entitlement to an input tax credit includes a reference, as appropriate, to GST payable by, or an input tax credit entitlement of, the representative member of a GST group.

23.2. Intention of the Parties

Without limiting the operation of this clause 23, as at the date of this Agreement, the Parties intend that:

23.2.1 Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement;

23.2.2 no tax invoices will be exchanged between the Parties; and

23.2.3 no additional amount will be payable to a Supplier (as defined in subclause 23.4 below) on account of GST.

23.3. Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

23.4. Payment of GST- additional payment required

23.4.1 If an entity (Supplier) makes a taxable supply under or in connection with this Agreement (Relevant Supply), then, subject to sub-subclause 23.4.4, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (Recipient) must pay an additional amount to the Supplier (GST Amount), as calculated under sub-subclauses 23.4.2, 23.4.3 and 23.4.5 (as appropriate).

23.4.2 To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under sub-subclauses 23.4.3 and 23.4.5), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.

23.4.3 To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:

- (i) a payment of money; nor
- (ii) a taxable supply,

(Non-taxable non-monetary consideration),

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST inclusive market value of the Non-taxable non-monetary consideration.

23.4.4 To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding sub-subclause 23.4.1 and subject to sub-subclause 23.4.5, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.

23.4.5 Notwithstanding sub-subclause 23.4.4, if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (Supplier's taxable supply) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (Recipient's taxable supply) then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.

23.4.6 The recipient will pay the GST Amount referred to in this subclause 23.4 in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

23.5. Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under subclause 23.4. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

23.6. Tax invoice

23.6.1 The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under subclause 23.4. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

23.7. Adjustment event

23.7.1 If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under clause subclause 23.4 will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

23.8. Reimbursements

23.8.1 Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (i) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party is entitled; and
- (ii) any additional amount payable under subclause 23.4 in respect of that reimbursement.

23.9. No Merger

23.9.1 This clause 23 does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

23.10. Inconsistency

23.10.1 To the extent that there is any inconsistency between this clause 23 and any provision in a document executed under or pursuant to this Agreement, this clause 23 will prevail.

24. Counterparts

24.1. This Agreement is not to be executed in counterparts.

Execution

Executed as an Agreement.

EXECUTED for **WAVERLEY COUNCIL**
(ABN 12 505 583 608) by its duly appointed
officer in the presence of:

Witness

Officer

Name of Witness

Name of Officer

EXECUTED for and on behalf of **ST**
OXFORD BJV PTY LIMITED (ABN 34 160
298 108) in accordance with Section 127(1)
of the *Corporations Act 2001 (Cth)*:

Company Secretary/Director

Director

Name of Company Secretary/Director

Name of Director

EXECUTED for and on behalf of **Bolside**
Pty Limited (ABN 94 562 177 156) in
accordance with Section 127(1) of the
Corporations Act 2001:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

EXECUTED for and on behalf of **Peat Cheon Nominees Pty Limited** (ABN 94 562 177 156) in accordance with Section 127(1) of the *Corporations Act 2001*:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

SIGNED for **Hollywood Investments Pty Ltd** (ACN 090 528 493) by its duly authorised Attorney who warrants that the Power of Attorney, registered Book 4644 No 931, has not been revoked:

Signature of Witness

Signature of Niall Chang/Chris Herbert

Name of Witness

Name of Niall Chang/Chris Herbert

SIGNED for and on behalf of **Ursula Eleonore Aroney** by a duly appointed attorney pursuant to power of attorney registered Book 4642 No 854 in the presence of:

Signature of witness

Signature of James Aroney/Ross Cass (I have no notice of revocation of the power of attorney under which I sign this document)

Name of witness (please print)

Name of James Aroney/Ross Cass (please print)

SIGNED for and on behalf of **Jacob Spiros Cassimatis** by a duly appointed attorney pursuant to power of attorney registered Book 4642 No 854 in the presence of:

Signature of witness

Signature of James Aroney/Ross Cass (I have no notice of revocation of the power of attorney under which I sign this document)

Name of witness (please print)

Name of James Aroney/Ross Cass (please print)

SIGNED for and on behalf of **Tina Cass** by a duly appointed attorney pursuant to power of attorney registered Book 4642 No 854 in the presence of:

Signature of witness

Signature of James Aroney/Ross Cass (I have no notice of revocation of the power of attorney under which I sign this document)

Name of witness (please print)

Name of James Aroney/Ross Cass (please print)

SIGNED for and on behalf of **Paula Cassimatis Kalligeros** by a duly appointed attorney pursuant to power of attorney registered Book 4647 No. 320 in the presence of:

Signature of witness

Signature of James Aroney/Ross Cass (I have no notice of revocation of the power of attorney under which I sign this document)

Name of witness (please print)

Name of James Aroney/Ross Cass (please print)

SIGNED for and on behalf of **James Aroney** by a duly appointed attorney pursuant to power of attorney registered Book 4642 No 854 in the presence of:

Signature of witness

Signature of James Aroney/Ross Cass (I have no notice of revocation of the power of attorney under which I sign this document)

Name of witness (please print)

Name of James Aroney/Ross Cass (please print)

SIGNED for and on behalf of **Emanuel Aroney** by a duly appointed attorney pursuant to power of attorney registered Book Book 4642 No 854 in the presence of:

Signature of witness

Signature of James Aroney/Ross Cass (I have no notice of revocation of the power of attorney under which I sign this document)

Name of witness (please print)

Name of James Aroney/Ross Cass (please print)

SIGNED SEALED & DELIVERED by **Renato Giacco** in the presence of:

Signature of Witness

Signature

Name of Witness

Schedule 1 (Section 93F requirements)

Provision of the EPAA	This Agreement
Under section 93F(1), the Developer has	
<ul style="list-style-type: none"> sought a change to an environmental planning instrument. 	(a) No.
<ul style="list-style-type: none"> made, or proposes to make, a development application. 	(b) Yes.
<ul style="list-style-type: none"> entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	(c) No.
Description of the land to which this Agreement applies – (Section 93F(3)(a))	Lot D DP 407377, Lot E 407377, Lot F DP 407377, Lot G DP 407377, Lot 4 DP 262918, Lot 50 DP 788523, Lot 1 DP 73839A, Lot 1 DP 73839B, Lot A, DP 440268 & Lot 1 DP 1198325 known as Nos. 570-588 Oxford Street, Bondi Junction.
Description of the development to which this Agreement applies - (Section 93F(b)(ii))	Conversion of the approved mezzanine floor (approved as a plant area) into commercial office floor space – the PA Development Proposal under the PA Development Application.
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See clause 6 and Schedule 3.
Application of Section 94 of the EPAA – (Section 93F(3)(d))	The application of section 94 of the EPAA is excluded in respect of all of the PA Development Proposal
Applicability of Section 94A of the EPAA – (Section 93F(3)(d))	The application of section 94A of the EPAA is excluded in respect of all of the PA Development Proposal
Applicability of Section 93EF of the EPAA – (Section 93F(3)(d))	The application of section 94EF of the EPAA is excluded in respect of all of the PA Development Proposal
Applicability of Section 93F(3)(e) of the EPAA	Not applicable
Mechanism for Dispute resolution – (Section 93F(3)(f))	See clause 9 to this Agreement.
Enforcement mechanism – (Section 93F(3)(g))	Clause 10, Schedule 3 and Clause 11.

Schedule 2 (Explanatory Note)

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

1. Parties

Waverley Council (Council)

St Oxford BJV Pty Limited (Developer)

Bolside Pty Limited

Peat Cheon Nominees Pty Limited

Hollywood Investments Pty Limited

Ursula Eleonore Aroney

Jacob Spiros Cassimatis

Tina Cass

Paula Cassimatis Kalligeros

James Aroney

Emanuel Aroney

Renato Giacco

(Owners)

2. Description of Subject Land

Lot D DP 407377, Lot E 407377, Lot F DP 407377, Lot G DP 407377, Lot 4 DP 262918, Lot 50 DP 788523, Lot 1 DP 73839A, Lot 1 DP 73839B, Lot A DP 440268 & Lot 1 DP 1198325 known as Nos. 570-588 Oxford Street, Bondi Junction

3. Description of Proposed Change to Environmental Planning Instrument

Not Applicable.

4. Description of PA Development Proposal

The PA Development Proposal under the PA Development Application and PA Development Consent is to convert the approved mezzanine (approved as a plant area) into commercial office floor space.

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

The Draft Planning Agreement assists Council in achieving its objectives in respect to the Bondi Junction Precinct Area programs and policies as referred to in its Planning Agreement Policy 2014 in particular the Bondi Junction Complete Streets Program.

The Draft Planning Agreement is made in connection with an offer to make provision towards a public purpose under Council's Planning Agreement Policy and Bondi Junction

Precinct Area programs and policies, as the proposed development includes a mezzanine floor which exceeds the floor space ratio permitted under Council's planning controls.

The Draft Planning 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 Environmental Planning & Assessment Act, 1979 (the Act).

The Monetary Contribution to be paid by the developer comprises a payment of \$338,440.00 (as required by condition no: 8 of the Development Consent No: DA-490/2015).

Certain measures to secure the Monetary Contribution are provided in the Draft Planning Agreement including provision of a Bank Guarantee and registration of the Agreement upon the title to the Land.

6. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

- The provision of improved public facility/public amenity in the Council Local Government area;
- To seek to provide a standard for road reserves that is comparable to other road reserves in the local government area;
- The Draft Planning Agreement achieves these purposes by ensuring that the Monetary Contributions are paid to Council prior to occupation of the new development, and by requiring Council to apply the funds towards the Bondi Junction Complete Streets Program as soon as practicable.

7. Promotion of the Objects of the EPAA

By providing a Development Contribution towards the provision of local infrastructure, the Planning Agreement promotes the following objects of the EPAA:

- 7.1. the promotion and co-ordination of the orderly and economic use and development of land; and
- 7.2. the provision of public purposes.

The Development Contribution made under the Planning Agreement will promote these objects by providing an effective delivery method for the provision of public purposes, enhancing the public amenities serving the Bondi Junction Town Centre Area.

More specifically, through the powers of Council to address matters relating to road reserves – the Agreement promotes Object 5(a)(v) of the Act which is to encourage the provision and co-ordination of community services and facilities and Object 5(c) which is to provide increased opportunity for public involvement and participation in environmental planning and assessment. Under Part 4, Division 6, Subdivision 2 (Planning Agreements) of the EP&A Act, Council may enter into a Draft Planning Agreement for any purpose consistent with its Planning Agreement Policy. An appropriate means of meeting the said objectives under the Act and of participation in the Council's Policies and Programs relating to the Bondi Junction Precinct is by way of a Planning Agreement, as such, under the Draft Planning Agreement, the relevant provisions of the Act are addressed.

8. Promotion of the Council's charter under the Local Government Act 1993 (NSW)

The Developer's contribution towards the provision of local infrastructure is consistent with the Council's long-term strategic planning for the local community; and will facilitate the provision of improved services in the Waverley Council local government area.

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 is conscious of a need for and the upgrade of streets in its Local Government area and how its decisions and policies impact upon seeking to fulfil this need.

The Draft Planning Agreement allows Council to effectively plan for and manage public assets for which it is responsible.

In addition, the Draft Planning Agreement is a means by which the Council can implement its programs in respect to the Bondi Junction Precinct Area and the Council's Planning Agreement Policy 2014. In doing so, Council exercises community leadership in an area of concern to the local and wider community.

9. Conformity with the Council's Capital Works Program

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

10. Compliance with certain requirements prior to the issue of construction, occupation or subdivision certificates

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

- (i) any occupation certificate is issued:
 - the Monetary Contribution is to be paid to Council.

This explanatory note has been prepared by Waverley Council and the Developer and Owners jointly. This explanatory note is not to be used to assist in construing the Draft Planning Agreement.

Schedule 3 (Development Contribution)

Development Contribution (Monetary contribution)

11. Developer's obligation to pay Monetary Contribution.

- 11.1. The Developer will pay the Council a notional Monetary Contribution of \$338,440 AUD \ (Monetary Contribution).
- 11.2. The Monetary Contribution will be paid to the Council prior to any Occupation Certificate being issued for the PA Development Consent.
- 11.3. Payment of the Monetary Contribution may be made by bank cheque or electronic bank transfer to Council's nominated bank account.

Schedule 4 Owners

Name	Bolside Pty Limited ACN 003 416 144
ABN	94 562 177 156
Address	Tower 2, Level 24, 101 Grafton Street, Bondi Junction NSW 2022
Registered Proprietor of	Folio Identifiers D/407377, E/407377, F/407377 and G/407377
Name	Peat Cheon Nominees Pty Limited ACN 001 613 430
ABN	94 562 177 156
Address	c/- Arthur Tang & Co Pty Ltd, Suite 2, Level 3, 12 Thomas Street, Chatswood NSW 2067
Registered Proprietor of	Folio Identifiers D/407377, E/407377, F/407377 and G/407377
Name	Hollywood Investments Pty Limited ACN 090 528 493
ABN	19 120 569 317
Address	Level 3, 12 Thomas Street, Chatswood NSW 2067
Registered Proprietor of	Folio Identifiers 4/262918, 50/788523 and 1/1198325
Name	Ursula Eleonore Aroney
ABN	60 668 509 025
Address	5 Olphert Avenue, Vaucluse NSW 2030
Registered Proprietor of	Folio Identifiers 1/73839A and 1/1198325
Name	Jacob Spiros Cassimatis
ABN	60 668 509 025
Address	1/14 Alfred Street, Ramsgate Beach NSW 2217
Registered Proprietor of	Folio Identifiers 1/73839B and 1/1198325
Name	Tina Cass
ABN	60 668 509 025
Address	3 Warrego Avenue, Sylvania Waters NSW 2224
Registered Proprietor of	Folio Identifiers 1/73839B and 1/1198325
Name	Paula Cassimatis Kalligeros
ABN	60 668 509 025
Address	Goudianika, Kythera 8100, Greece
Registered Proprietor of	Folio Identifiers 1/73839B and 1/1198325
Name	James Aroney
ABN	60 668 509 025
Address	1 Burrabirra Avenue, Vaucluse NSW 2030
Registered Proprietor of	Folio Identifiers 1/73839B and 1/1198325

Name	Emanuel Aroney
ABN	60 668 509 025
Address	1/17 Macdonald Street, Vaucluse NSW 2030
Registered Proprietor of	Folio Identifiers 1/73839B and 1/1198325

Name	Renato Giacco
ABN	88 645 838 195
Address	PO Box 297, Bondi Junction, NSW, 2026
Registered Proprietor of	Folio Identifiers A/440268 and 1/1198325

END OF AGREEMENT