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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 planning agreement (PA) 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

**MERCURY 21 PTY LTD ACN 168 508 763** (Developer).

#### **2 Description of Subject Land:**

The whole of the land being Lot 1 in DP 575911, Lot A in DP 448076, Lot 1 and 2 in DP 581271, Lot 12 in DP 747297 and Lot 3, 4, 5 and 6 in DP 14097 and known as 109, 113, 117 and 119 Oxford Street, Bondi Junction and 34 and 36 – 42 Spring Street, Bondi Junction, 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 the existing buildings and construction of a new 12 storey mixed use building with basement car parking as modified for approved mixed use development, including provision of two additional floor levels comprising 18 units and an additional basement level.

#### **4 Background:**

The Developer is the registered proprietor of the Subject Land. The Developer lodged a s 96 modification with Council, DA 569/2015/A and with this offered to enter into a Planning Agreement with Council pursuant to section 93F of the Act to provide a monetary contribution as the modified development 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 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 facilitate Council to provide a material public benefit to the Development and the broader community under programs such as the Council's Complete Streets Program directed at infrastructure construction, improvements and maintenance of footpaths, walkways and public areas and provision towards Waverley's Affordable Housing Program.

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 registration of the Agreement, lodgement of caveat and provision of a Bank Guarantee prior to any Construction Certificate issuing for the Development and to pay a monetary Contribution to Council in the amount of \$2,844,438.00 prior to any Occupation Certificate issuing for the Development.

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.

## **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;
- Funding of recurrent expenditure relating to the provision of public amenities or other infrastructure;
- The monitoring of the planning impacts of development;
- The conservation or enhancement of the natural environment;
- The provision of (or the recoupment of the cost of providing) affordable housing;
- The provision of affordable housing so that a socially diverse residential population across all income groups is maintained in the Council Local Government area;
- To provide for housing choices for low income and disadvantaged people in the Council Community;
- To promote and provide for housing schemes which meets the needs of low to moderate income earners;
- To seek to provide a standard of affordable housing that is comparable to other housing in the area where the Development is situated.

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 and in the broader community, in particular the beautifying of road reserves and works towards safe pedestrian-friendly streets, providing good access to public transport and accommodating cyclists;
- The upgrading and improvement of facilities will encourage business and development activity of the precinct;
- 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.

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) “proper 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”.
- 5(a)(viii) “the provision and maintenance of affordable housing”.
- Under Part 4, Division 6, Subdivision 2 (Planning Agreements) of the EP&A Act, Council may enter into a planning agreement for any purpose. The appropriate means of participation in the Affordable Housing Program is by way of a planning agreement as such under the agreement the relevant provisions of the EP&A Act referred to are addressed.

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 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 bank guarantee, caveat and registration prior to the issuing of any construction certificate and to enforce payment of the monetary contribution prior to the issuing of any occupation certificate.

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