

Explanatory Note

194 – 214 Oxford Street and 2 Nelson Street, Bondi Junction Development Application No. DA-400/2021

(Section 205 of the Environmental Planning and Assessment Regulation 2021)

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 section 205 of the *Environmental Planning and Assessment Regulation 2021*.

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**) of the one part and Westgate BJ Pty Ltd (ACN 601 663 343), Bell Vue Pty Ltd (ACN 655 143 641), Bellosh Pty Ltd (ACN 655 103 683) of the other part (**Developer**).

2 Description of subject land

The land to which the Planning Agreement applies is the whole of the land being Lots 10, 11, 12 and 13 in DP 260116, Lot 1 in DP 79947, Lot 16 in DP 68010, Lot 1 in DP 708295 and Lot 1 in DP 583228 known as 194 – 214 Oxford Street and 2 Nelson Street, Bondi Junction (**Land**).

The Developer is the registered proprietor of the Land at the time of entering into the Planning Agreement.

3 Description of Development

The proposed development comprises demolition of existing structures; construction of a shop top housing development, comprising ground floor retail, 10 floors of residential apartments across two buildings (to be known as Oxford Street tower and Nelson Street tower) and four levels of basement parking (**Development**).

4 Background

In March 2015, the Developer lodged a planning proposal with Council seeking to increase maximum building height and FSR and remove local heritage status from

certain lots within the Land. The planning proposal was amended between 2015 and 2017. The Amending LEP was made by the Department of Planning in September 2019.

In September 2021, Westgate BJ Pty Ltd caused the development application to be lodged with Council, being DA-400/2021 (**Development Application**).

Public benefit offers were made by Westgate BJ Pty Ltd throughout the planning proposal process. Westgate BJ Pty Ltd submitted a final revised public benefit offer 29 July 2022 to make a development contribution in connection with the planning proposal and development consent (**Development Consent**).

Development Consent was granted by Council on 18 August 2022 and required that the applicant and the owner of the whole of the Land enter into a planning agreement with the Council in accordance with the final revised public benefit offer made by Westgate BJ Pty Ltd dated 29 July 2022.

The terms of the planning agreement were negotiated and agreed by Westgate BJ Pty Ltd and Council on 21 March 2023 and the planning agreement was executed by Westgate BJ Pty Ltd and Council on 19 June 2023 (**Planning Agreement dated 19 June 2023**) pursuant to the Development Consent granted on 18 August 2022.

Bell Vue Pty Ltd and Bellosh Pty Ltd became registered proprietors of a part of the Land, being 2 Nelson Street, Bondi Junction and as proprietors of a part of the Land, are also required, with Westgate BJ Pty Ltd, to be parties to a planning agreement with Council, to give effect to the condition in the Development Consent.

As such Westgate BJ Pty Ltd, Bell Vue Pty Ltd and Bellosh Pty Ltd (collectively the “**Developer**”) have, on 17 July 2023, made a further revised public benefit offer in the same terms of and confirming the public benefit offer previously made by Westgate BJ Pty Ltd on 29 July 2022, and in accordance with that further revised public benefit offer, wish to enter into a planning agreement with Council on the same terms as the Planning Agreement dated 19 June 2023.

The new planning agreement (**Planning Agreement**) when entered into by the parties will supersede and terminate the Planning Agreement dated 19 June 2023.

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 \$6,300,000 to be applied for public purposes as follows:

Waverley's Affordable Housing Program	\$3,462,500
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Clementson Park Upgrades	\$550,000
St James Park Upgrades	\$350,000
Waverley's Complete Streets Program including trees, upgrades to roads and upgrades to public spaces in the local area	\$787,500
Bondi Junction Gateway Artwork	\$500,000
Replacement	
Mill Hill Heritage Conservation Area	\$500,000
Road and Footpath Upgrades	
Waverley Small Grants Program	\$150,000
Total	\$6,300,000

The monetary contribution is payable to Council prior to the issue of any Occupation Certificate for the Development or on the date of registration of a strata plan on title of the Land, whichever is earlier.

The Planning Agreement also requires the Developer to deliver public works, being, a Public Plaza and Through Site Link. The estimated value of the Public Plaza for the purposes of the Planning Agreement is \$1,150,000.

The Public Plaza and Through Site Link are to be delivered to Council prior to the issue of any Occupation Certificate for the Development or on the date of registration of a strata plan on title of the Land, whichever is earlier.

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 pending registration of the Planning Agreement. 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 public purposes stated above and a public works contribution for public amenity and recreation.

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(d) of the Act, which is to promote the delivery and maintenance of affordable housing and Section 1.3(g), which is to promote good design and amenity of the built environment. These objects are met as the Planning Agreement secures a monetary contribution towards the Waverley Affordable Housing Program, Waverley Small Grants Program as well as other local projects and programs including the upgrade of parks, roads, footpaths and other public spaces and artwork upgrades in Bondi Junction area.

Public interest is promoted by virtue of the Planning Agreement because it assists Council in the upgrading of community spaces and infrastructure for public benefit and enjoyment. The upgrades 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 including families, people of all ages and diverse communities as it secures funds to deliver grants under Waverley Small Grants Program, park upgrades as well as upgrades to roads and public spaces 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 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. The provision of 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 purpose 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 and community infrastructure as well as affordable housing within its local government area and how its decisions and policies impact 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 engagement 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 (Development Consent cannot become operative until registration is effected) and provision of a Bank Guarantee.
- (ii) **An occupation certificate is issued or a strata plan is registered on title of the Land (whichever occurs first):** payment of the monetary contribution and delivery of public works – Public Plaza and Through Site Link.
- (iii) **A subdivision certificate is issued:** registration of easements in respect to the Public Plaza and Through Site Link must be attended to with any subdivision in respect to the Development or by the issuing of an occupation certificate in respect to the Development, whichever occurs first.