

# STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING

A meeting of the STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE will be held in the Randwick Council Chamber, 1st Floor, 90 Avoca Street, Randwick at:

**7.30PM, TUESDAY 3 JULY 2018** 

Peter Monks

**Acting General Manager** 

Pole Morks

Waverley Council
PO Box 9
Bondi Junction NSW 1355
DX 12006 Bondi Junction
Tel. 9083 8000

E-mail: info@waverley.nsw.gov.au

# **Delegations of the Waverley Strategic Planning and Development Committee**

On 10 October 2017, Waverley Council delegated to the Waverley Strategic Planning and Development Committee the authority to determine any matter **other than**:

- 1. Those activities designated under s 377(1) of the *Local Government Act* which are as follows:
  - (a) The appointment of a general manager.
  - (b) The making of a rate.
  - (c) A determination under section 549 as to the levying of a rate.
  - (d) The making of a charge.
  - (e) The fixing of a fee
  - (f) The borrowing of money.
  - (g) The voting of money for expenditure on its works, services or operations.
  - (h) The compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment).
  - (i) The acceptance of tenders to provide services currently provided by members of staff of the council.
  - (j) The adoption of an operational plan under section 405.
  - (k) The adoption of a financial statement included in an annual financial report.
  - (I) A decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6.
  - (m) The fixing of an amount or rate for the carrying out by the council of work on private land.
  - (n) The decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work.
  - (o) The review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the *Environmental Planning and Assessment Act 1979*.
  - (p) The power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194.
  - (q) A decision under section 356 to contribute money or otherwise grant financial assistance to persons,
  - (r) A decision under section 234 to grant leave of absence to the holder of a civic office.
  - (s) The making of an application, or the giving of a notice, to the Governor or Minister.
  - (t) This power of delegation.
  - (u) Any function under this or any other Act that is expressly required to be exercised by resolution of the council.
- 2. Despite clause 1(i) above, the Waverley Strategic Planning and Development Committee does not have delegated authority to accept any tenders.
- 3. The adoption of a Community Strategic Plan, Resourcing Strategy and Delivery Program as defined under sections 402, 403, and 404 of the *Local Government Act*.

# **Live Streaming of Meetings**

Due to the change of location, this meeting will not be live streamed.

# **AGENDA**

#### PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The Chair will read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

"God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.

Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area".

- 1. Apologies/Leaves of Absence
- 2. Declarations of Pecuniary and Non-Pecuniary Interests
- 3. Addresses by Members of the Public
- 4. Confirmation of Minutes

PD/4.1/18.07	Confirmation of Minutes - Strategic Planning and Development Committee
	Meeting - 5 June 20182

5. Reports

PD/5.1/18.07	Cities Power Partnership Pledges14	4
PD/5.2/18.07	Waverley Cycling Advisory Committee	8
PD/5.3/18.07	Planning Agreement Policy 2014 - Review28	8

- 6. Urgent Business
- 7. Meeting Closure

# CONFIRMATION OF MINUTES PD/4.1/18.07

Subject: Confirmation of Minutes - Strategic Planning and

**Development Committee Meeting - 5 June 2018** 

**TRIM No.:** SF18/246

Author: Richard Coelho, Governance and Internal Ombudsman Officer



#### **RECOMMENDATION:**

That the minutes of the Strategic Planning and Development Committee meeting held on 5 June 2018 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

# Introduction/Background

The minutes of the Strategic Planning and Development Committee meeting must be submitted to Strategic Planning and Development Committee for confirmation, in accordance with clause 266 of the *Local Government (General) Regulation 2005*.

#### **Attachments**

1. Strategic Planning and Development Committee Meeting Minutes - 5 June 2018 .



# MINUTES OF THE STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING HELD IN THE RANDWICK COUNCIL CHAMBER, 90 AVOCA STREET, RANDWICK ON TUESDAY, 5 JUNE 2018

#### **Present:**

Councillor Paula Masselos (Chair) **Lawson Ward** Councillor John Wakefield (Mayor) Bondi Ward Councillor Dominic Wy Kanak (Deputy Mayor) Bondi Ward **Councillor Sally Betts Hunter Ward** Councillor Angela Burrill **Lawson Ward** Councillor George Copeland Waverley Ward Councillor Leon Goltsman Bondi Ward **Councillor Tony Kay** Waverley Ward Councillor Elaine Keenan **Lawson Ward Hunter Ward Councillor Steven Lewis** Councillor Will Nemesh **Hunter Ward** Councillor Marjorie O'Neill Waverley Ward

# Staff in attendance:

Peter Monks Acting General Manager

Mitchell Reid Acting Director, Waverley Futures
Emily Scott Director, Waverley Renewal

Annette Trubenbach Acting Director, Waverley Life

Jane Worthy Internal Ombudsman

At the commencement of proceedings at 7.30 pm, those present were as listed above.

The Chair thanked Randwick City Council for allowing Waverley Council to use its Council Chamber.

The Chair also announced that the audio recording of the meeting would be uploaded to Council's website.

## PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The Chair read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.

Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area.

# 1. Apologies/Leaves of Absence

There were no apologies.

# 2. Declarations of Pecuniary and Non-Pecuniary Interests

The Chair called for declarations of interest and the following were received:

- 2.1 Cr Copeland declared a pecuniary interest in Item PD/5.2/18.06 Bondi Pavilion Upgrade and Conservation Project Revised Principal Design Consultant Brief, and informed the meeting that he works for a locker company at the Bondi Pavilion.
- 2.2 Cr Wy Kanak declared a less than significant non-pecuniary interest in Item PD/5.2/18.06 Bondi Pavilion Upgrade and Conservation Project Revised Principal Design Consultant Brief, and informed the meeting that he knows the Bondi Pavilion Stakeholder Committee members.
- 2.3 Cr Betts declared a less than significant non-pecuniary interest in Item PD/7.1/18.06 CONFIDENTIAL REPORT Bondi Baths Reserve Trust (Icebergs), and informed the meeting that she is a member of the Icebergs Club.
- 2.4 Cr Keenan declared a less than significant-non pecuniary interest in Item PD/7.1/18.06 CONFIDENTIAL REPORT Bondi Baths Reserve Trust (Icebergs), and informed the meeting that she is a member of the Icebergs Club.

## 3. Addresses by Members of the Public

- 3.1 A resident PD/5.1/18.06 Bronte Park and Beach Plan of Management Amendments.
- 3.2 E Morel (on behalf of Friends of Bondi Pavilion) PD/5.2/18.06 Bondi Pavilion Upgrade and Conservation Project Revised Principal Design Consultant Brief.
- 3.3 N Bettar PD/5.3/18.06 Draft Waverley Development Control Plan 2012 Amendment No. 6.

## 4. Confirmation of Minutes

PD/4.1/18.06 Confirmation of Minutes - Strategic Planning and Development Committee

Meeting - 1 May 2018 (SF18/246)

MOTION / UNANIMOUS DECISION Mover: Cr Masselos

Seconder: Cr Wakefield

That the minutes of the Strategic Planning and Development Committee Meeting held on 1 May 2018 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

# 5. Reports

PD/5.1/18.06 Bronte Park and Beach Plan of Management - Amendments (SF16/974)

MOTION / DECISION Mover: Cr Masselos

Seconder: Cr Keenan

That Council adopts the Bronte Park and Beach Plan of Management attached to this report subject to the following amendments:

- 1. Clause E4.4 (page 92 in Attachment 2 and page 81 in Attachment 3): include 'Restore the Bronte Pool gate to former white timber in keeping with the heritage values of the heritage listed Bronte Pool' at the end of the clause.
- 2. Delete action B4.7iii (page 79 of Attachment 2 and page 68 of Attachment 3): 'Extend the fixed handrail from the main pool stairs to the ocean access stairway.'
- 3. Insert additional clause at 6.3.1 (page 81 of attachment 2 and page 70 of Attachment 3) to read as follows:

'C1.8 – Investigate the reinstatement of the three picnic shelters on the northern park above the Bronte Surf Club.'

Division

For the Motion: Crs Betts, Copeland, Goltsman, Keenan, Lewis, Masselos, Nemesh, O'Neill,

Wakefield and Wy Kanak

**Against the Motion:** Crs Burrill and Kay.

A resident addressed the meeting.

# PD/5.2/18.06 Bondi Pavilion Upgrade and Conservation Project - Revised Principal Design Consultant Brief (A15/0272)

Cr Copeland declared a pecuniary interest in this item, and informed the meeting that he works for a locker company at Bondi Pavilion. Cr Copeland was not present at, or in sight of, the meeting for the consideration and vote on this item.

Cr Wy Kanak declared a less than significant non-pecuniary interest in this item, and informed the meeting that he knows the Bondi Pavilion Stakeholder Committee members.

Immediately after the meeting, a notice of motion to rescind this decision was lodged with the General Manager. The Rescission Motion will be considered at the Extraordinary Council Meeting on 12 June 2018.

# MOTION / DECISION Mover: Cr Wakefield Seconder: Cr Wy Kanak

# That Council:

- 1. Acknowledges its responsibility under the NSW *Crown Lands Act* to maintain the Bondi Pavilion building for the purpose of public recreation.
- 2. Recognises the significant First Nations, local, state, and national heritage value of Bondi Beach and the Bondi Pavilion Community and Cultural Centre, and acknowledges the important role that the Bondi Pavilion plays as an integral element of the Bondi Beach cultural landscape.
- 3. Commits to the restoration of the Bondi Pavilion as a community and cultural centre.
- 4. Re-titles the project as the 'Bondi Pavilion Restoration and Conservation Project'.
- 5. Notes the three previous reports including diagrams and the associated recommendations from the Bondi Pavilion Stakeholder Committee received and noted at the Council meetings of 20 February 2018, 6 March 2018 and 1 May 2018.
- 6. Endorses the intention to restore the Bondi Pavilion Community and Cultural Centre to achieve a five-star environmental standard with improved and enhanced community space and leased commercial space primarily retained in the ground floor front facade and forecourt areas.
- 7. Adopts the Revised Principal Design Consultant Brief attached to this report subject to the following amendments:
  - (a) Delete reference to a 'demountable seating structure' in the central courtyard.
  - (b) Delete reference to a kiosk on the first floor.
  - (c) Defines financial sustainability as Council's capacity to maintain the fabric and functions of the Bondi Pavilion.
  - (d) Regarding forecourt glass structure/s, commentary only is required to consider the functionality and heritage viability of such structures is requested.
  - (e) (Section on 'The design of the Pavilion must include full asset upgrade of....' p. 21): add new bullet point to read 'consideration of new plumbing and pipework for toilets that remain in their existing locations.'

- (f) (Section on 'The design of the Pavilion must include full asset upgrade of... p. 21): add new bullet point to read 'improved accessibility to the building and functional areas, e.g. toilets, pottery studio, music and recording studios, theatre.'
- (g) (Southern Courtyard Southern Wall p. 21): amend second bullet point to read 'the music and recording studios remain in their current location and be refurbished with consideration being given to accessibility and updating the equipment to a more contemporary standard following advice from an audio consultant experienced in sound studio operations.'
- (h) (Northern Courtyard Western Wall p. 22): amend second bullet point to read 'consideration for optimum location for waste facility noting the need for safe access for trucks from Campbell Parade, no conflict between vehicles and pedestrians, and internal access to the Pavilion users and tenants.'
- (i) (Central Building Ground Floor p. 22): amend fifth bullet point to read 'consideration be given to relocating the lift, adding a second lift or providing a new enlarged lift, removal of internal fire stairs and reduction of amenities footprint to improve circulation within the building, accessibility, and increased community space.'
- (j) (Theatre p. 23); add new bullet point to read 'improve flexibility and movability of performance staging infrastructure, as far as is practicable and achievable'.
- (k) (Theatre p. 23): add new bullet point to read 'include acoustic treatment to mitigate noise from outside sources'.
- (I) (Central Building Top Floor p. 23): add new bullet point to read 'consideration be given for the Seagull Room to be temporarily subdivided into smaller spaces by using moveable, acoustically treated, partitions.'
- (m) (Central Building Top Floor p. 23): amend second bullet point to read 'a functional dance studio be provided within the Seagull Room, ensuring that the room is acoustically treated to mitigate noise spill.'
- (n) (Central Building Top Floor p. 23): amend seventh bullet point to read 'bar area and foyer be retained in their current location with optimal sizing and orientation to be considered including a potential bar servery to the balcony and improved access to and from the balcony for the public.'
- (o) Add a new bullet point in an appropriate place in the brief to read 'Any new or upgraded pottery studio to have an area greater than the existing facility, and a new kiln.'
- (p) (Function Requirements p. 20): amend the second arrow point to read 'ensuring Bondi Pavilion, as a centre of community life, has a vibrant mix of cultural, community, recreation and commercial uses through:...'
- (q) Considers the provision of an enhanced locker facility.
- (r) Investigates where the best accommodation should be for the rangers and their vehicles that are currently accommodated at the Pavilion.
- 8. Notes that the Design Consultant Brief has been developed following extensive community and stakeholder consultation incorporating the recommendations of the Bondi Pavilion Stakeholder Committee (BPSC), and meeting the key objectives of the project contained in the Bondi Park, Beach and Pavilion Plan of Management 2014 (Bondi POM), draft Bondi Pavilion Conservation Management

- Plan and the draft Bondi Beach Cultural Landscape Conservation Management Plan (Conservation plans), and the draft Strategic Asset Management Plan 5 (SAMP 5).
- 9. Notes that the Principal Design Consultant will be provided with the Bondi Pavilion Stakeholder Committee Combined Recommendations on the Uses and Functions of the Bondi Pavilion report in conjunction with the Revised Principal Design Consultant Brief.
- 10. Requests the Principal Design Consultant, Tonkin Zulaikha Greer, to respond to the revised brief by providing one new 'whole-of-building concept design' with particular attention to:
  - (a) The three Stakeholder Committee reports (including diagrams) and the recommendations of those reports, and incorporating the following objectives endorsed by Council at its 20 February 2018 meeting:
    - (i) Retention and refurbishment in their current positions of the music rooms, theatre, bar, High Tide Room and Sea Gull Room.
    - (ii) Renovation of all amenities (toilets and showers, change facilities, etc.) with an increase in female amenities, plus a parents' room, and accessible shower and toilets.
    - (iii) Provision of adequate waste management facilities.
    - (iv) Provision of adequate storage facilities.
    - (v) Future-proofing to provide technological facilities.
    - (vi) Ensuring adequate plumbing for the building.
  - (b) The viability of outdoor festivals, music, film, theatre and other performance in the internal courtyard areas, including the future uses and functions of the current amphitheatre.
- 11. Notes that a business case for the future operations of the Pavilion will be finalised in conjunction with the new concept design.
- 12. Prepares an analysis of the demand for public amenities in and around Bondi Pavilion, noting the approved motions of Council to increase the number of shower heads on the Promenade, and the separate project to identify a location for a new amenities facility at Bondi Beach.
- 13. Prepares an analysis of current and projected passenger, delivery and waste vehicular movement accessing the western side of the Bondi Pavilion.
- 14. Prepares designs for the area of Bondi Park between the Bondi Pavilion and Park Drive guided by all relevant conservation management plans.
- 15. Prepares a policy to achieve best practice waste minimisation by all commercial tenants and for public activities in the Bondi Pavilion, and uses this policy to:
  - (a) Compare to current estimates of waste generation.
  - (b) Project waste generation levels in the restored building when occupied.
  - (c) Revise and re-assess waste management infrastructure in the building, with particular reference to decreasing the previously defined requirement for two waste compacting units in the restored building.

- (d) Use the best practice waste minimisation policy to inform the drafting of future lease contracts with commercial tenants, with hiring policies for users of the Bondi Pavilion and in Council's management of public areas.
- 16. Receives as soon as practical all outstanding reports, designs and the new whole-of-building concept design for the Bondi Pavilion Restoration and Conservation Project.
- 17. Acknowledges and thanks the members of the Bondi Pavilion Stakeholder Committee and Council officers for their commitment and excellent work.
- 18. Commits to additional consultation on the concept plan with the Bondi Pavilion Stakeholder Committee and the wider community prior to submitting a development application, and notes that, after it is submitted, the development application will benefit from a further 28-day public consultation period.

### **Division**

For the Motion: Crs Goltsman, Keenan, Lewis, Masselos, O'Neill, Wakefield and Wy Kanak.

**Against the Motion:** Crs Betts, Burrill, Kay and Nemesh.

subject to the following amendments:

E Morel (on behalf of Friends of Bondi Pavilion) addressed the meeting.

PD/5.3/18.06 Draft Waverley Development Control Plan 2012 - Amendment No.6 (A17/0250)

MOTION / DECISION Mover: Cr Wakefield Seconder: Cr Wy Kanak

That Council exhibits the Draft Waverley Development Control Plan 2012 (Amendment No. 6) attached to this report for a period of 28 days, in accordance with section 3.43 of the *Environmental Planning and Assessment Act 1979* and clause 18 of the *Environmental Planning and Assessment Regulation 2000*,

- 1. Insert new subclause (d) to D2 Outdoor Dining, item 3.1, Hours of Operation and Noise (p. 215 of the DCP) to read as follows:
  - (d) Notwithstanding the hours outlined in table 2, extended dining hours may be granted only on a trial and reviewable basis where the proprietor can demonstrate:
    - (i) There is a need for longer hours to more closely align with the approved operating hours of the premises, and
    - (ii) The premises has not generally been subject to complaints relating to noise and overall operation, and
    - (iii) The additional period will not cause or result in adverse amenity impacts on the neighbourhood.

Extended dining hours will not exceed 10 pm in any case, and any approval will be subject to a reviewable condition that allows the termination of the extended hours at any time.

2. Delete Part B8 Control 8.2.2(i) (p. 72 of the DCP) in order for Council officers to determine the policy position for application of the Resident Parking Scheme to new developments and how best to

implement the policy in the future.

**Division** 

For the Motion Crs Betts, Burrill, Copeland, Goltsman, Keenan, Lewis, Masselos, Nemesh, O'Neill,

Wakefield and Wy Kanak.

**Against the Motion** Cr Kay.

N Bettar addressed the meeting.

PD/5.4/18.06 Current and Projected School Enrolments (A14/0170)

MOTION / UNANIMOUS DECISION Mover: Cr Wakefield

Seconder: Cr Goltsman

# That Council:

1. Notes that a further related report on supply and demand for early education and care services will be coming to Council.

- 2. Supports joint planning and advocacy activities with both Woollahra and Randwick councils to:
  - (a) Improve local school capacity and related infrastructure development, including a new public high school in the eastern suburbs.
  - (b) Investigate opportunities for innovation and design excellence as part of potential partnerships with the Department of Education and Training (DoE) and other agencies around the development of flexible learning spaces (e.g. senior secondary school campus) and integrated community facilities (e.g. out of school hours care).
- 3. Seeks clarification from DoE about planning implications for local school catchment areas/clusters under the new Schools Assets Strategic Plan (SASP).
- 4. Provides input into DoE's new shared use policy to maximise community access opportunities.
- 5. Continues to advocate for Waverley community needs in consultations and planning for improved provision of Out of School Hours Services (OSHS).

PD/5.5/18.06 Bondi Junction Office Market Report (A18/0225)

MOTION / UNANIMOUS DECISION Mover: Cr Wakefield

Seconder: Cr Nemesh

That Council commissions the Property Council of Australia to include Bondi Junction in its Office Market Report from 2019–2021 inclusive.

# 6. Urgent Business

There were no items of urgent business.

#### 7. Closed Session

Before the motion to close the meeting was put, the Chair provided an opportunity for members of the public to make representations as to whether this part of the meeting should be closed. None were received.

MOTION / UNANIMOUS DECISION Mover:

Mover: Cr Wakefield Seconder: Cr Goltsman

That:

1. Council moves into closed session to deal with the matter listed below, which is classified as confidential under section 10A(2) of the *Local Government Act 1993* for the reason specified:

PD/7.1/18.06 CONFIDENTIAL REPORT - Bondi Baths Reserve Trust (Icebergs)

This matter is considered to be confidential in accordance with section 10A(2)(c) of the *Local Government Act*, and Council is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest as it deals with information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

- 2. Pursuant to sections 10A(1), 10(2) and 10A(3) of the *Local Government Act 1993*, the media and public be excluded from the meeting on the basis that the business to be considered is classified as confidential under section 10A(2) of the *Local Government Act 1993*.
- 3. The correspondence and reports relevant to the subject business be withheld from the media and public as provided by section 11(2) of the *Local Government Act 1993*.

At 9.12 pm, Council moved into closed session.

# PD/7.1/18.06 CONFIDENTIAL REPORT - Bondi Baths Reserve Trust (Icebergs) (A17/0006)

Cr Betts declared a less than significant non-pecuniary interest in this item, and informed the meeting that she is a member of the Icebergs Club.

Cr Keenan declared a less than significant non-pecuniary interest in this item, and informed the meeting that she is a member of the Icebergs Club.

Mover:

Seconder:

# MOTION / UNANIMOUS DECISION

Cr Wakefield Cr Lewis

#### That:

- Council treats this report as confidential in accordance with section 11(3) of the Local Government
   Act 1993, as it relates to a matter specified in section 10A(2)(c) of the Local Government Act 1993.
   The report contains information that would, if disclosed, confer a commercial advantage on a person
   with whom the Council is conducting (or proposes to conduct) business.
- 2. Council notes the information in this report and informs Crown Lands that it does not wish to become the Reserve Trust Manager of the Bondi Baths R100245 Reserve Trust.
- 3. Council informs Crown Lands that it is interested in becoming a member of a Community Trust for the Bondi Baths R100245 Reserve Trust, subject to the parameters and obligations of this responsibility being provided to Council.
- 4. Council authorises the General Manager to do all things necessary in making further inquiries, negotiating Councils position and lodging applications to become a member of a Community Trust Board for Bondi Baths R100245 Reserve Trust.
- 5. Council authorises the General Manager to enter into discussions directly with the Bondi Icebergs Club Cooperative Ltd and other prospective parties, including Aboriginal traditional owners and Aboriginal land councils, that may be interested in forming part of a Community Trust arrangement, with such discussions to include the exchange of any commercial arrangements on a confidential basis.
- 6. A further report to come back to Council on the result of any discussion or negotiations between the various prospective Community Trust members.

# 8. Resuming in Open Session

PD/8/18.06 Resuming in Open Session

MOTION / DECISIONMover:Cr GoltsmanSeconder:Cr Burrill

That Council resumes in open session.

At 9.27 pm, Council resumed in open session.

# Resolutions from closed session made public

In accordance with clause 253 of the Local Government (General) Regulation 2005, when the meeting resumed in open session the Chair announced the resolutions made by Council, including the names of the movers and seconders, while the meeting was closed to members of the public and the media.

THE MEETING CLOSED AT 9.30 PM.

SIGNED AND CONFIRMED CHAIR 3 JULY 2018

Page 13

# REPORT PD/5.1/18.07

**Subject:** Cities Power Partnership Pledges

**TRIM No:** A17/0645

**Author:** Peter Thrift, Coodinator, Sustainable Energy

**Director:** Mitchell Reid, Acting Director, Waverley Futures



#### **RECOMMENDATION:**

That Council endorse the following five pledges developed as part of our commitment to the Cities Power Partnership (CPP):

- 1. Through the SSROC led bulk renewable energy Power Purchase Agreement, Waverley will procure renewable energy generated from a new off-site large scale solar or wind farm to meet at least 20% of our total electricity supply, with the view to scaling this amount up over time.
- 2. Through the Building Futures program, Waverley Council will provide financial and technical support to building owners of high rise residential buildings in Bondi Junction to help improve their energy efficiency and reduce their greenhouse gas emissions.
- 3. Waverley will seek to increase the uptake of rooftop solar for residential and commercial strata buildings, through the support of existing rooftop solar access models and the development of new innovative programs.
- 4. Council will increase awareness and engagement in the community on energy efficiency, renewable energy and sustainable transport through our Second Nature program. By developing and delivering digital and print communications, targeted behaviour change initiatives, workshops, events and collaboration with community groups and other stakeholders, Second Nature empowers our community to take sustainability actions in their everyday lives.
- 5. Waverley will deliver our "Embedding Sustainability" project to ensure environmental sustainability is systemic across Council's day to day business, services, and operation. The program will involve refining our procurement processes, ensuring our projects are designed and delivered to high environmental sustainability standards, by skilled and engaged staff to increase resource efficiency within Council offices and venues.

# 1. Executive Summary

Waverley joined the Cities Power Partnership (CPP) in August 2017, and by so doing agreed to pledge the delivery of five key sustainability actions. These pledge items are informed by Waverley Council's Environmental Action Plan 2018-2030 and provide the framework for Sustainable Waverley's work program.

# 2. Introduction/Background

The Cities Power Partnership (CPP) seeks to accelerate the clean energy successes of Australian towns and cities by calling upon Mayors, Councillors, and communities to take the next steps towards a sustainable, non-polluting energy future. The CPP is run by the Climate Council which is a non-profit independent organisation which aims to provide clear, independent information on climate change to the Australian community. CPP will provide Waverley Council with resources and support to assist us with the implementation of our pledges, along with a platform to communicate our success, and commitment to addressing climate change at the local level.

70 Local Councils from Australia have signed up to be part of the CPP and the partnership allows Council to share and collaborate on actions to reduce greenhouse gas emissions.

# 3. Relevant Council Resolutions

Council or Committee Meeting and Date	Minute No.	Decision
Council 17 April 2018	CM/7.4/18.04	That Council:  1. Adopts the draft Environmental Action Plan 2018–2030 attached to this report for the purpose of public exhibition for the period 25 April 2018 to 22 May 2018.  2. Notes the inclusion of the draft Environmental Action Plan 2018-2030 as part of Council's resourcing strategy for the
Council 20 March 2018	CM/8.7/18.03	That Council:  1. Notes that Waverley Council was accepted into the second round offer of the Cities Power Partnership in January 2018, and officers are investigating options for inclusion into the (minimum) five pledges required by the Partnership. There are now a total of 70 councils that have been accepted.  2. (a) Supports the development of microgrids and promotes the implementation of this technology within Waverley and across the broader community.  (b) Works with relevant stakeholders to build support for policy updates to encourage and enable a decentralised energy model, and continues to investigate the potential for standalone and embedded microgrids in Waverley.  (c) Officers prepare a report on the opportunities and barriers to the implementation of standalone and embedded microgrids in a brownfields urban area.
		(generally using smart grid technology to balance loads), mainly from rooftop solar photo voltaic cells in an urban environment, but possibly also from other local renewable sources; wind, wave energy or ocean temperature gradients might be a possibility.  4. Notes that microgrids in the Council area is innovative and will increase the resilience of the community by decentralising electricity production and control, by reducing greenhouse gas emissions via using renewable energy, and by reducing

electricity costs via removing the need for extra wires and poles
to handle peak periods.

#### 4. Discussion

Waverley's Environmental Action Plan (EAP) outlines a number of strategies and deliverables through which Council and the local community can reduce our greenhouse gas emissions. Council Officers have proposed five pledges for Council to endorse that are in accordance with the Environmental Action Plan and that will increase the uptake of renewable energy and increase energy efficiency across Council and the community. The pledges selected by Council are not the only activities chosen by Council. For example other deliverables in the draft EAP include the Solar My Schools program, the installation of electric vehicle charging stations and upgrading of our streetlighting. These pledges have been selected as they are highlight items and activities that we will be able to share with other Councils.

The first two pledges will increase renewable energy in Waverley.

- 1. Through the SSROC led bulk renewable energy Power Purchase Agreement, Waverley will procure renewable energy generated from a new off-site large scale solar or wind farm to meet at least 20% of our total electricity supply, with the view to scaling this amount up over time.
- 2. Waverley will seek to increase the uptake of rooftop solar for residential and commercial strata buildings, through the support of existing rooftop solar access models and the development of new innovative programs.

The remaining three pledges involve reducing greenhouse gas emissions in Council and the community through and will involve energy efficiency improvements, increased use of renewable energy and improving the processes and capacity to achieve this.

- 3. Through the Building Futures program, Waverley Council will provide financial and technical support to building owners of high rise residential buildings in Bondi Junction to help improve their energy efficiency and reduce their greenhouse gas emissions;
- 4. Council will increase awareness and engagement in the community on energy efficiency, renewable energy and sustainable transport through our Second Nature program. By developing and delivering digital and print communications, targeted behaviour change initiatives, workshops, events and collaboration with community groups and other stakeholders, Second Nature empowers our community to take sustainability actions in their everyday lives;
- 5. Waverley will deliver our "Embedding Sustainability" project to ensure environmental sustainability is systemic across Council's day to day business, services, and operation. The program will involve refining our procurement processes, ensuring our projects are designed and delivered to high environmental sustainability standards, by skilled and engaged staff to increase resource efficiency within Council offices and venues.

This report is responding to a Councillor motion on promoting and supporting microgrids. While this motion is supported, microgrids have not been included as a pledge item given that there are currently very few (if any) buildings within Waverley that generate a surplus of renewable energy. In the absence of excess renewable energy within a local electricity network, there is no real rationale for creating an energy sharing platform (be it a hardwired microgrid, or virtual net metering arrangement).

It is however recognised that local energy sharing technology will play an increasingly important role in the evolving smart energy network, and Council should remain supportive of, and open to the opportunities this technology offers as it continues to develop.

# 5. Financial impact statement/Timeframe/Consultation

These pledges will be funded through the implementation of the Environmental Action Plan and delivered by the Sustainable Waverley Team.

Work to deliver some of these pledges has already commenced and will continue through the implementation of the EAP. For example the procurement of renewable electricity has already been approved by Council.

Consultation on the delivery of the Environmental Action Plan has occurred across Council. Council Officers have also consulted with Woollahra and Randwick Council who are also making pledges as part of the CPP and a range of pledges are occurred across the three Councils.

# 6. Conclusion

It is recommended that Council endorse the identified pledges as part of our commitment to the CPP, and deliver these as part of the Environmental Action Plan 2018 – 2030.

# 7. Attachments

Nil.

# REPORT PD/5.2/18.07

Subject: Waverley Cycling Advisory Committee

**TRIM No:** A18/0188

**Author:** Carolyn New, Sustainable Transport Officer

**Director:** Mitchell Reid, Acting Director, Waverley Futures



# **RECOMMENDATION:**

#### That Council:

- 1. Adopts the Terms of Reference for the Waverley Cycling Advisory Committee attached to this report.
- 2. Appoints Councillor Wakefield, Councillor [INSERT NAME] and Councillor [INSERT NAME] to the Committee.
- 3. Appoints the following BIKEast members to the Committee:
  - (a) Anish Bhasin.
  - (b) Tanya Bosch.
- 4. Appoints the following community members to the Committee:
  - (a) Bastien Wallace.
  - (b) Wil Meaden.
  - (c) Neil Lessem.
  - (d) Kate Marshall.
  - (e) Mina Nada.
- 5. Notifies unsuccessful candidates that they are welcome to attend the Committee as members of the public.

# 1. Executive Summary

This report responds to the Council resolution of March 2018 to establish a Cycleway and Bike Facilities Advisory Committee.

The Committee is to be called the Waverley Cycling Advisory Committee. Terms of Reference have been developed, and are attached to this report.

Council has made a public call for suitably qualified members to join the Waverley Cycling Advisory Committee. This includes invitations to BIKEast, schools, bicycle shops in Waverley LGA, bike share operators and the general community through Have Your Say Waverley.

# 2. Introduction/Background

Council's transport plan, Waverley's People Movement and Places commits Council to a transport hierarchy that puts pedestrians first, followed by bicycles, public transport, service vehicles, shared mobility and then private vehicles. The transport plan includes a range of signature projects and actions related to cycling including a network of separated cycleways, secure bike parking facilities at Bondi Junction interchange, bike parking throughout the LGA, facilitating active travel to schools and continuing to roll out the Waverley Bike Plan.

In order to implement the cycling-related actions of Waverley's People Movement and Places, Council resolved to establish a Cycleway and Bicycle Facilities Committee.

# 3. Relevant Council Resolutions

Council or Committee	Minute No.	Decision
Meeting and Date		
Council Meeting 20 March 2018	CM/8.9/18.03	1. That Council establishes a Cycleway and Bike Facilities Advisory Committee.
		2. The Committee consists of:
		(a) Three Councillors (Mayor or delegate, two Councillors)
		(b) Two nominees representing BIKEast (one male, one female).
		(3) Five community members.
		3.Council officer establish Terms of Reference for the Committee, which will include, but not be limited to, the purpose of the committee, which is to enhance consultation between Council and the bike riding community, including:
		(a) Reviewing and providing advice on proposed Council bike-related capital work projects.
		(b) Yearly draft budget process by recommending appropriate bike-related projects.
		(c) Cycleway and bike facility issues involving significant planning proposals and development applications before Council.
		(d) The Waverley Council bike plan.
		(e) Regional Cycle Strategy with neighbouring Councils
		(f) Promoting and encouraging cycling at schools.
		4. Council officers report back to Council.

#### 4. Discussion

Terms of reference for the Committee have been developed and are attached to this report.

From the middle of May to the second week of June, applications were sought for members of the Committee for the term up to September 2020. The expression of interest was published on Have Your Say Waverley, and promoted on social media, through environment news, and a flyer distributed through Council offices, local bike shops and other businesses. A letter of invitation was emailed to BIKEast, all schools in the Waverley LGA and bike share operators and distributed to local bike shops.

Two applications from BIKEast members were received before applications closed at 9 am, Monday 12 June. A further application from BIKEast was received after that time.

Ten applications were received for the five community places. These submissions were reviewed and considered by staff members from Strategic Transport. The applications were assessed and prioritised based both on interest, knowledge and experience of cycling issues and connections to the community. All applications were acceptable and after ranking the responses five applicants were selected as proposed members of the Committee.

The first meeting will occur in the last week of August or in the month of September, and all members will be notified.

# 5. Financial impact statement/Timeframe/Consultation

The operation of the Committee requires Councillor, volunteer and staff time.

Council will fund any incidental expenses for the running of meetings from existing budgets.

# 6. Conclusion

Council is requested to adopt the terms of reference, approve community membership of the Committee and nominate councillor membership of the committee, including Chairperson.

#### 7. Attachments

1. Waverley Cycling Advisory Committee - Draft Terms of Reference U.





# Waverley Cycling Advisory Committee

# Terms of Reference

The Waverley Cycling Advisory Committee (Committee) aims to increase cycling participation throughout the local community by advising and assisting Waverley Council to better plan, build, maintain and coordinate its cycling infrastructure and community encouragement programs.

The Committee is advisory-only, with no delegation to make decisions on behalf of Council.

## **Objectives**

The objectives of the Waverley Cycling Advisory Committee are to:

- 1. Ensure better cycling outcomes are achieved for the Waverley community, as measured by:
  - Increased cycling participation throughout the local government area (LGA) and the eastern city district
  - Increased cycling participation amongst women, children, seniors and minority groups.
- 2. Enhance consultation between Council and the bike-riding community to advise and assist Waverley Council to better:
  - Plan for cycling networks, infrastructure and facilities
  - Build and maintain quality cycling infrastructure and facilities
  - Encourage cycling participation across the community including schools, businesses, families, individuals and visitors to the LGA
  - Coordinate efforts across different organisations including state and federal government agencies and representatives, the bicycle industry including share bike operators, neighbouring councils, and non-government organisations.

# **Background**

Council's transport plan, Waverley's People, Movement and Places, commits Council to a transport hierarchy that puts pedestrians first, followed by people on bicycles, public transport, service vehicles, shared mobility and then private motor vehicles. The transport plan includes a range of signature projects and actions related to cycling including a network of separated cycleways, secure bike parking facilities at Bondi Junction interchange, bike parking throughout the LGA, facilitating active travel to schools, and continuing to roll out the Waverley Bike Plan.

Public consultation on the transport plan revealed overwhelming community support for increased cycling infrastructure, in particular for separated cycleways which were ranked by the community as the highest priority transport project for Council.

In order to implement the cycling-related actions of Waverley's People, Movement and Places, Council resolved, in March 2018, to establish a Cycleway and Bike Facilities Committee.

## **Terms of Reference**

These Terms of Reference articulate how the Committee will advise and assist Council to better plan, build and maintain, encourage and coordinate, in order to increase cycling participation across the whole community as follows:

- 1. **PLAN** for a comprehensive network of cycling infrastructure and facilities, including input on:
  - 1.1. Waverley Bike Plan (2013) and Cycling Strategy (forthcoming) as part of Waverley's People, Movement and Places
  - 1.2. Broader regional cycling network with neighbouring councils and relevant state and federal government agencies
  - 1.3. Cycleway and bicycle facility issues involving significant planning proposals and development applications being reviewed by Council
  - 1.4. Recommendations on appropriate bicycle-related projects in the draft budget processes for Council and relevant state government agencies
  - 1.5. Strategies to increase transport mode share of cycling
  - 1.6. Integrate with other modes of transport, such as bike parking at train stations, ride share and so on.
- 2. **BUILD AND MAINTAIN** quality cycling infrastructure, including input on:
  - 2.1. Council's monthly Traffic Committee meetings on cycling-related matters
  - 2.2. Cycling-related capital works projects by Council
  - 2.3. Maintenance of Council and other agencies' infrastructure that may impact on bicycle riders
  - 2.4. Feedback on Council's performance in delivering quality cycling infrastructure, and implementing the transport hierarchy.
- 3. **ENCOURAGE** cycling participation amongst the whole community, including through promoting and encouraging:

- 3.1. Cycling and active travel to all of our primary and secondary schools
- 3.2. The benefits of cycling for residents, businesses, visitors, tourists and the broader community
- 3.3. Cycling for transport within and beyond our LGA
- 3.4. Cycling for healthy lifestyles, recreation and fitness
- 3.5. Increased awareness of cycling infrastructure, services and other support provided by Council
- 3.6. Addressing the needs of the broader community to enable them to cycle, in particular children, teenagers, women, seniors and other minority groups.
- 4. **COORDINATE** efforts of various organisations:
  - 4.1. Champion the needs of the whole community
  - 4.2. Advocate to state and federal government agencies and representatives to ensure better planning and increased funding for cycling infrastructure and facilities
  - 4.3. Work cooperatively with other councils, government agencies, businesses, schools, cycling industry, and the community to coordinate their collective efforts and maximise outcomes
  - 4.4. Advance best practice operations of bike share to maximise benefits to the community.

## Membership

The Committee has the following membership and structure, totalling 10 voting members:

#### Chairperson

a. Waverley Council Mayor or the Mayor's delegate.

### **Committee Members**

- b. Three Waverley Councillors (including the Chairperson).
- c. Two representatives of the local bicycle user group BIKEast. Where a representative is unable to attend, an alternative BIKEast representative, nominated by BIKEast, may attend and vote.
- d. Five community members, including (but not limited to):
  - Representative of schools in the Waverley LGA
  - Representative for walking and/or disability access
  - Representative of the cycling industry such as local bicycle shops or an industry representative for bike share.

A Waverley Council staff member will also attend to provide administrative support.

The community member representatives are members of the public who have a connection to the Waverley LGA and wish to advance the cause of everyday cycling participation throughout our community.

Council will publicly advertise the community member positions and assess the applications for appointment. It is Councils' preference to have a broad representation of a diverse community and will aim for at least 50% representation of women, including those who identify as women, on the Committee. Applicants representing the indigenous community are also encouraged to apply.

The term for community and expert members will be a two-year term.

The Committee may choose to recommend amendments to this structure and membership with a majority vote.

# **Principal responsibilities of Committee Members**

- To contribute to achieving the objectives of the Committee
- To attend Committee meetings as required, either in person or teleconference
- To undertake tasks as determined at the Committee meeting, including contributing through electronic communication
- To undertake other duties that may reasonably be determined and agree by Committee members
- If a member is unable to attend a meeting, they may nominate a representative to attend on their behalf

• A Committee member who has been absent from more than three consecutive Committee meetings may be replaced at the discretion of the Committee.

# **Meetings of the Committee**

- The Committee is to meet in person four times a year, on a nominated weekday outside of standard working hours
- A quorum for a meeting will be a minimum of four representatives, and must include at least one Councillor member of the Committee.
- Decisions will be made by majority vote, being at least 50% of votes taken at a meeting
- Notice of Committee meetings and an invitation to contribute to agenda items will be provided electronically to members at least 10 working days in advance of a meeting
- Meeting agendas and reports will be provided electronically to members at least 5 working days in advance of a meeting
- Meetings will be open to members of the public as observers
- At the discretion of the Chairperson, members of the public or subject experts may be invited to speak or advise the Committee on issues being considered
- Meeting minutes will be documented by the attending Council Officer and provided electronically to Committee members within 10 working days.

# Committee agenda and minutes

- Committee agendas and minutes are public documents and are published on Council's website.
- Committee minutes are reported to Council or Council for information. Minutes may include recommendations to Council for consideration.

# Declaration of pecuniary interests and participation in meetings

A Committee member who has a pecuniary interest in any matter with which the Committee is concerned, and who is present at a meeting of the Committee at which the matter is being considered, must disclose the interest to the meeting as soon as practicable.

The Committee member must not be present at or in sight of the meeting:

- At any time during which the matter is being considered or discussed by the committee, nor
- At any time during which the Committee is voting on any question in relation to the matter.

A person does not breach this clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

# Declarations of non-pecuniary conflicts of interests and participation in meetings

A member of the Committee who has a non-pecuniary conflict of interest in any related matter, and who is present at a meeting of the Committee at which the matter is being considered, must disclose the interest to the meeting as soon as practicable.

If a non-pecuniary conflict of interest has been declared there are various options for managing that potential conflict. The option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest, and the significance of the issue being dealt with, including:

- If appropriate, no action is taken where the potential for conflict is minimal. However, the Councillor or Committee members should provide an explanation of how the conflict of interest will be mitigated or minimised, or
- Have no involvement by leaving the meeting and not taking part in a debate or vote on the issue.

# Media protocol

Members of the Committee are not to speak to the media as if they are representatives of the Committee. Only the Mayor or the Chairperson of the Committee is permitted to speak to the media or broadcast on social media on behalf of the Committee.

A Committee member may promote the efforts of Council on social media and other means, but is not to act as if they are speaking or acting on behalf of the Committee without the Mayor or Chairperson's approval.

# REPORT PD/5.3/18.07

Subject: Planning Agreement Policy 2014 - Review

**TRIM No:** A15/0046

**Author:** Tim Sneesby, Manager, Strategic Planning

**Director:** Mitchell Reid, Acting Director, Waverley Futures



#### **RECOMMENDATION:**

#### That Council:

- Adopts the Waverley Planning Agreement Policy 2014 (Amendment No. 2) attached to this report.
- 2. Notes the purpose of this amendment to the Waverley *Planning Agreement Policy 2014* is to implement pre-scheduled development contribution rates, implement and clarify the process for applying planning agreements to planning proposals in order to fund public infrastructure needs and housekeeping updates.
- 3. Notes that the proposed amendments relating to standardised, pre-scheduled development contribution rates are consistent with the value sharing principles that have been applied to Planning Agreements negotiated to date.
- 4. Notes that the proposed amendments relating to a planning proposal are consistent with the principles which have been applied to planning agreements negotiated for development applications, with the latter providing certainty for the community and development industry.
- 5. Notes that further amendments to the *Planning Agreement Policy 2014* have been made following comments received during public exhibition and the Council workshop on May 29<sup>th</sup> 2018, including an increase to the percentage of VPA funds going towards the Waverley Affordable Housing Program from 10% to 25%.

#### 1. Executive Summary

The Waverley *Planning Agreement Policy 2014* (Amendment No. 2) proposes the following amendments to the policy:

- Update the approach to calculate monetary contributions for Development Applications: from the current case-by-case basis to a series of pre-scheduled, standardised benchmarks.
- Build upon the draft process for applying voluntary planning agreements (VPA) to planning proposals (PP) identified in the 20 October 2015 Council meeting (Amendment 1), which was publicly exhibited but not reported to Council for adoption.
- Housekeeping amendments.

Adopting pre-scheduled, standardised development contribution rates would result in a more efficient, consistent, transparent policy that creates greater certainty for the community, Council and developers. It would also reduce the resource and time intensiveness of the current approach and limit opportunities for the development industry to 'game the system'.

A number of housekeeping amendments have also been identified based on feedback from the public exhibition period, Councillors and Council's solicitor. These have been addressed in Amendment 2 to the Waverley *Planning Agreement Policy 2014*. Amendment 2 therefore incorporates the changes proposed in Amendment 1, standardised benchmarks for Planning Agreements and minor housekeeping amendments.

# 2. Introduction/Background

The Waverley *Planning Agreement Policy 2014* has been successfully utilised to negotiate and draft planning agreements accompanying Development Applications seeking a Clause 4.6 variation to Clause 4.4 Floor space ratio for an additional 15%.

Prior to the adoption of the 'Waverley Planning Agreement Policy 2014', development applications would seek to exceed Council's planning controls, in accordance with clause 4.6 of the LEP, and could be approved with no contributions to community infrastructure. In instances where these applications were refused, they were often subject to lengthy and costly court cases. However, the 'Waverley Planning Agreement Policy 2014' is clear that "development that is unacceptable on planning grounds will not be given consent because of benefits offered by a developer" and that "council will not enter a planning agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in Section 79C of the Act". For instance, Council has refused several development applications and s96 modification applications involving VPAs on the grounds that these would have unacceptable impacts in planning terms. This includes developments seeking two additional storeys that would have contributed VPAs worth \$4.2 million, \$3.2 million and \$1million.

Where development exceeds the established planning controls, and can do so without having an unacceptable impact, then value sharing can provide the community a net benefit from the development in terms of additional infrastructure and amenity.

# Success of Council's policy

The case-by-case value sharing method used in Council's Waverley *Planning Agreement Policy 2014* has been very successful in delivering community benefits. To date, close to \$23 million has been negotiated under the Waverley *Planning Agreement Policy 2014*, with \$2.3 million of this being contributed towards Waverley's affordable housing program (much of this amount will be paid at Occupation Certificate stage). To place this number into context, the development contributions (s94A) provided by all development across Waverley LGA for 2016/17 was \$3.2 million.

Contributions have been dedicated towards a number of public domain upgrades including Waverley's Complete Streets program in Bondi Junction (for development relating to Bondi Junction), the Campbell Parade upgrade in Bondi Beach and a number of upgrades to local parks nearby developments. In particular, there have been a number of instances where parks directly adjacent to a subject development have been upgraded as a result of VPA contributions. To this extent, the VPA policy ensures that increases in density are associated with an increase in liveability, rather than a decrease. On average, monetary contributions have delivered \$3,300 per square metre of additional floor space.

All of the revenue from VPAs has come from development applications and Council has yet to successfully negotiate a planning proposal in accordance with the Waverley *Planning Agreement Policy 2014*.

# 3. Relevant Council Resolutions

Meeting and Date	Minute No.	Decision
Council Meeting	CM/5.1/18.05	That Council:
15 May 2018		1. Prepares educational material for public consultation on the
		process, policy and practice of voluntary planning agreements,
		including an educational program schedule for precincts and
		interested residents to commence in the second half of this year in
		relation to VPAs.
		2. Reviews the potential for variation in the clauses of Council's
		VPA Policy, particularly in regard to increasing the current 10%
		contribution to Council's Affordable Housing Program
		3. Considers the pros and cons of financial versus in-kind
		contributions for VPAs, including the potential for receipt of
		property in perpetuity that contributes to Council programs, such
		as Affordable Housing.
		4. Notes the planned Councillor workshop on the subject of VPAs
		and incorporates consideration of these matters into that
		workshop.
Council Meeting 20	CM/8.4/18.03	That Council:
March 2018		1. Prepare a report setting out all voluntary planning agreements
		(VPAs) adopted by Council from June 2012 to March 2018, with
		the following detail for each VPA:
		(a) The excess floor space.
		(b) The excess height.
		(c) The total dollar amount received by Council.
		(d) A summary of expenditure of income received as a result of the
		VPA against the purpose for which it is was obtained.
		2. Add additional height sought to the Planning Agreement
		Register.
		3. Conduct a Councillor workshop on the report and the Planning
		Agreement Policy prior to the report coming back to Council.
Council Meeting 20	CM/7.6/15.10	That Council:
October 2015		1. Notes the key purpose of this amendment to the 'Waverley
		Planning Agreement Policy 2014' is to identify and capture the
		increase in value arising from a Planning Proposal in order to fund
		public infrastructure needs.
		2. Notes that the proposed amendments relating to a Planning
		Proposal are consistent with the principles which have been
		applied to Planning Agreements negotiated for development
		applications, with the latter providing certainty for the community and development industry.
		3. Further notes that this is the first time a detailed Planning
		Agreement methodology has been proposed for Planning
		Proposals, and it would be valuable to advertise the draft
		amendments to generate community and industry feedback for
		Council's consideration of issues that may arise.
		4. Adopts for the purpose of exhibition the 'Waverley Planning
		Agreement Policy 2014' (Amendment No. 1).
		for a period of 28 days, subject to the following:
		Tot a period of 20 days, subject to the following.
Operations	OC/5.2/14/10	That Council resolves to adopt the 'Waverley Planning Agreement
Committee		Policy 2014' provided at Attachment 1 to this report, which will
Meeting 7 October		replace the Interim Voluntary Planning Agreement Policy 2013.

2014		
Council Meeting 10 December 2013	1312.12.7/13	A. Review Clause 4.4B of Waverley LEP 2012 in conjunction with the Department of Planning and Infrastructure and our legal representatives in order to ensure that  The value of any affordable housing incentive associated with future development is shared equitably between Council and developers
Finance, Ethics & Strategic Planning Committee 5 November 2013	F-1311.7/13	1. That Council resolve to publicly exhibit the Planning Agreement Policy 2013 attached to this report
Council Meeting 18 June 2013	1306.12.8	1. Council adopt the Interim Voluntary Planning Agreement Policy 2013 attached to this report.

#### 4. Discussion

As outlined in the December 2017 Council report, the number of planning agreements being negotiated over the past 12 months has increased significantly, which has led to a strain on Council resources and exposed some shortcomings of the current approach. Disadvantages of the current approach are that it provides a lack of certainty to the community, Council and development industry (in terms of the monetary contribution rate required), it is time and resource intensive and is open to gaming by developers.

This report reviews best practice approaches to calculating VPA amounts which avoid the drawbacks of the current approach, while also delivering community benefits.

Council has sought legal advice on the best way to implement a VPA associated with a planning proposal. Following the exhibition of the Amendment 2, we received detailed comments on the Planning Proposal process and sought further legal advice on the process of when the VPA should be negotiated, entered into and completed. These changes have been incorporated into the updated policy.

# **Mayoral Motion and Council Motion**

A Notice of Motion was adopted by Council at its March 2018 meeting to undertake a number of actions and report these back to Council. Similarly, a Mayoral Motion was carried at the May Council meeting to undertake a number of actions. A discussion of these motions and recommendations is outlined in the below tables.

Motion	Response
1. Prepare a report setting out all voluntary	A response to items (a), (b) an (c) is provided in
planning agreements (VPAs) adopted by Council	Attachment 4. Most of this information can be viewed
from June 2012 to March 2018, with the	on the Planning Agreement Register, which is also
following detail for each VPA:	available on Council's website and is updated
(a) The excess floor space.	approximately every two months.
(b) The excess height.	
(c) The total dollar amount received by Council.	In response to action 1(d), this information is provided
(d) A summary of expenditure of income received	in Attachment 5. A couple of observations are made
as a result of the VPA against the purpose for	about this data. First, VPA income received is higher
which it is was obtained.	than allocated in each year. This is due to the fact that
	the flow of VPAs is difficult to estimate accurately and in
	general we have received more than we had accounted
	for. Second, the VPA amount allocated is higher than
	spent for a number of projects. Discussions with the
	capital works teams in Council suggest that there may

Motion	Response
	be several reasons the funds were not fully expended.
	Some projects may span two or more years, so the
	funding is not all spent in one year and rolled over into
	the next, or the project was delivered under budget or
	the project scope was reduced or the project did not
	proceed in that financial year.
	Furthermore, Finance Waverley indicated that the
	reserve spent is not the final figure. At the end of FY
	Finance undertake a Reserve funding adjustment to
	match the expenditure (within the budget).
2. Add additional height sought to the Planning	As outlined in the Council workshop held on the 29 <sup>th</sup>
Agreement Register.	May, height exceedances are not a consideration in the
	VPA Policy and hence are not considered in conjunction
	with VPAs. There are instances where development
	application's offering VPAs do not exceed the height
	controls and similarly instances where height controls
	are exceeded and no VPA offered. Therefore, adding
	height to the VPA register would potentially lead to
	height exceedances and VPAs being conflated, which
	would be misleading.
3. Conduct a Councillor workshop on the report	Completed on May 29th 2018.
and the Planning Agreement Policy prior to the	
report coming back to Council.	

# Table: Mayoral Motion – May Council meeting

	Response
1. Prepares educational material for public	This educational material will be prepared in the
consultation on the process, policy and practice of	second half of 2018 and can be presented at a
voluntary planning agreements, including an	combined precincts meeting, for example. Beyond
educational program schedule for precincts and	this, the educational material will be added to the
interested residents to commence in the second	Planning Agreements section of Council's website so
half of this year in relation to VPAs.	that it can be viewed by everyone seeking out
	information on Planning Agreements.
2. Reviews the potential for variation in the clauses	This action was discussed in the Councillor workshop
of Council's VPA Policy, particularly in regard to	May 29 <sup>th</sup> 2018. It was a general consensus that the
increasing the current 10% contribution to Council's	10% of VPA funds going towards Waverley's
Affordable Housing Program	Affordable Housing Program should be increased to
	be 25%. This would result in 25% of VPA funds being
	allocated towards affordable housing and 75%
	towards public domain upgrades. Further discussion
	on this change is outlined below in 'Review of the
	current contributions split' and this change has been
	made to the policy in Attachment 1.
3. Considers the pros and cons of financial versus	This was discussed at the Council workshop and
in-kind contributions for VPAs, including the	agreed that in-kind contributions would be supported
potential for receipt of property in perpetuity that	for our policy for programs such as Waverley's
contributes to Council programs, such as	Affordable Housing Program. Caring Waverley, which
Affordable Housing.	manages the Waverley Affordable Housing Program
	were consulted as to whether they would prefer to
	receive cash or in-kind affordable housing

	Pagnanga
	Response
	contributions. The preference from this team was
	cash contributions. This is discussed in further detail
	below the table. At any rate, an update to the
	Planning Agreement Policy had been made to allow
	for in-kind contributions.
	TOT III-KIIIU COTITIDUCIOTIS.
	It was also discussed that other in-kind contributions
	could be made, such as the dedication of office floor
	·
	space in Bondi Junction, for example. With the
	potential loss of the three Grafton Street office
	towers and the HCF tower in Bondi Junction,
	approximately 40,000sqm of office floor space in
	Bondi Junction would be lost, with an associated
	1,600 to 2,000 jobs lost. Likewise, we could also allow
	for in-kind contributions to be made towards public
	domain upgrades, conditional upon applicant's
	complying with the Council's standards. Changes to
	the Policy have been made to allow for in-kind
	contributions such as these.
4. Notes the planned Councillor workshop on the	Completed on May 29 <sup>th</sup> 2018.
subject of VPAs and incorporates consideration of	
these matters into that workshop.	

Further discussion on Item 3 of Mayoral Motion – cash vs. in-kind contributions

Discussions with Caring Waverley reveals that this team has historically argued for the provision of money rather than units for several reasons. Firstly, Council has limited choice as to the units provided and often end up with units that don't work well for affordable housing. Secondly, Council has to pay strata levies for different buildings for all of the units owned, which increases operating costs. However, if Council purchased units or buildings we could provide more appropriate housing at a lower cost.

After the experience of attempting to purchase a building, Caring Waverley observed that in the current Waverley market Council cannot compete with developers – our legal obligations make us slow, and developers are willing to pay too much for buildings because they can re-sell refurbished units for a significant profit. Council/ Bridge made five attempts to purchase buildings over two years – being gazumped by an overseas buyer on the first, and outbid at public or 'friendly' auctions on 3. We secured the fifth building (in Randwick) only because it was sold 'off market'. It is expected that there will now be very few buildings in single ownership in Waverley – there weren't many when we were trying to buy, and there will be even fewer now.

The market is changing, but there is little evidence that prices are declining in Waverley. In this context, Caring Waverley would welcome the contribution of units for the affordable housing program.

# Review of the current contributions split

The current funding split for planning agreements creates a strong nexus between development and the public benefit. The benefits are tangible and are able to be widely used (i.e. park upgrades). However, public domain upgrades can be funded by other sources of revenue, such as rates, and are a depreciating asset. Furthermore, since the 'Waverley Planning Agreement Policy 2014' was developed in 2013 (and implemented in 2014) housing has become increasingly unaffordable with prices increasing 30% since 2013

and rents increasing by 20% in Waverley LGA. Rent increases have increased at a faster rate compared to Greater Sydney (13%) and other Inner City LGAs (11%).<sup>[1]</sup>

There are advantages and disadvantages to the current funding split approach and it is difficult to quantitatively assess which is the 'better' approach. Ultimately, determining the funding split comes down to an assessment of priorities. Given the funding split towards affordable housing is relatively low at 10%, an increase to 25% as discussed at the 29<sup>th</sup> May Councillor workshop would make a positive contribution to Council's ability to purchase new dwellings stock.

Similarly, Amendment 2 could make provision or alternate contribution splits for different developments or different areas. For example, a new apartment development that results in a loss of affordable apartments could require all VPA contributions be dedicated towards affordable housing. Where residential is proposed in the podium of mixed use residential developments in Bondi Junction, Council could seek office floor space instead, dedicated in perpetuity to Council. This office floor space could be used by Council to achieve economic development purposes, such as the creation of an incubator for new start-ups. It would also seek to offset the loss of office floor space (and loss of local jobs) expected with the conversion of office towers to residential.

#### Valuation method

Implementing a standardised benchmark approach for development contribution rates for Development Applications would create a more efficient, consistent, transparent policy resulting in greater certainty for the community, council and developers. It would also improve the resource and time intensiveness of the current approach and limit opportunities for the development industry to 'game the system'.

The updated *Planning Agreement Policy 2014* Amendment 2 (Attachment 1) outlines the rates. Further detail on these rates is outlined in Attachment 2.

# 5. Financial impact statement/Timeframe/Consultation

# **Financial impact**

Funds are not expected to be altered from the levels achieved under the current methodology. However, changing the split of contributions towards public domain works from 90% to 75% will have an impact on public domain works in the Long Term Financial Plan which were anticipated to be funded from future VPA revenue.

#### **Timeframe**

Following Council's adoption of the 'Waverley Planning Agreement Policy 2014' (Amendment No. 2) it is envisaged that the updated policy will be in force shortly after in July 2018.

# Consultation

A Councillor workshop, consultation with Council's solicitor and public exhibition was completed. A number of changes have been made in response to the Councillor workshop including an increase in the split of contributions going towards affordable housing and allowance for in-kind contributions. Consultation with Council's solicitor has also resulted in the refinement of some of the processes outlined in the policy.

Public exhibition was completed during the month of January 2018. Three responses were provided to the exhibited *Planning Agreement Policy 2014* amendments. The detailed comments and a response to these are outlined in the Attachment 3.

These submissions were generally supportive of the proposed changes with more detailed feedback on the processes outlined in the policy. After consultation with Council's solicitor regarding this feedback, a

<sup>[1]</sup> Housing NSW, Sales and Rent Report, 2017.

number of changes have been made to the *Planning Agreement Policy 2014* Amendment 2. The most substantive feedback highlighted that the pre-scheduled benchmark rates approach should also apply to mixed use development and planning proposals. This logic is consistent with the introduction of the proposed benchmark rates; namely to create certainty, increase transparency, reduce the time and cost to Council and eliminate gaming of the policy.

# Benchmark rates for mixed use developments

Many residential developments have some ground floor retail component and often this floor space has to be valued to determine the appropriate rate. Accordingly benchmark rates have been developed to apply to retail and commercial space in mixed use developments.

Another comment raised during the submission period was that if Council wish to promote retail or commercial development in certain areas, then these rates could be discounted. In response, in the first instance ground floor retail/commercial is required as part of development in a B4 Mixed Use zone. Therefore, this floorspace is required and there shouldn't be any exemptions or discounts as developers have to provide this floorspace regardless. Alternatively, commercial floorspace could be provided as a dedication to Council as the public benefit offer; in line with the valuation of floorspace in accordance with Council's benchmarks. Indeed, this may be a preferred outcome in Bondi Junction where local services and employment opportunities and the commercial sense of address are being diminished with the loss of existing commercial floorspace (see *Bondi Junction Commercial Centre Review*). Notwithstanding, a discount would not be offered to retail/commercial floorspace in a mixed use development.

Similarly, if an applicant is proposing a commercial only building (i.e. no residential floorspace) then to encourage this form of development it is appropriate for the 'Planning Agreement Policy 2014' Amendment 2 not apply to this development type.

# Benchmark rates for planning proposals

A suggestion was made during public exhibition that the benchmark rates should also be applied for Planning Proposals (PP), with some discount to recognise that PPs are a more costly/more time consuming process. Again, this suggestion is consistent with the purpose of introducing benchmark rates to development application and therefore merits consideration. It is however difficult to determine what an appropriate discounted rate for PPs would entail. Analysis of similar rates that are proposed for PPs at the City of Sydney, Parramatta and Randwick reveal rates of \$475sqm, \$375sqm and \$425sqm. Even applying a discount to the benchmark rates of 50% would result in \$/sqm rates that are still significantly above those of City of Sydney, Parramatta and Randwick; but which might facilitate a better result than achieved to date negotiating VPAs for PPs. The idea to discount the benchmark rates applying to PPs has some merit and should be investigated further. However, further analysis needs to be completed before establishing a different VPA rate for PPs. Therefore the *Planning Agreement Policy 2014* Amendment 2 will continue with the current case-by-case approach for PPs and in a future amendment we will seek to apply benchmark rates to PPs.

# 6. Conclusion

The 'Waverley Planning Agreement Policy 2014' (Amendment No. 2) will allow for greater surety in the negotiation of planning agreements for development applications and planning proposals. The policy has been drafted in accordance with legislation, Council's policies, plans and strategies

# 7. Attachments

- 1. Planning Agreement Policy 2014 (Amendment No. 2) U
- 2. VPA Policy Update VPA benchmark rate modelling J.
- 3. VPA Policy Update Summary and consideration of submissions <a href="#">J</a>
- 4. VPA Policy Update VPA details in response to March Council Notice of Motion U
- 5. VPA Policy Update VPA income and expenditure  $\underline{\mathbb{J}}$ .

PD/5.3/18.07 Page 35



(Amendment No. 2)

# **Table of Contents**

Tabl	e of Contents	1
Part	1 - Policy Framework	1
	1.1 Name of this Policy	1
	1.2 Application of the Policy and commencement	1
	1.3 Objectives of this Policy	1
	1.4 What does the Policy set out?	1
	1.5 Statutory framework	2
	1.6 What are the mandatory requirements of a planning agreement?	2
	1.7 Guiding principles	3
	1.8 Terms and definitions used in this Policy	5
Part	2 - Principles for Planning Agreements	6
	2.1 Purposes of planning agreements	6
	2.2 Principles underlying the use of planning agreements	7
	2.3 What matters will the Council consider?	7
	2.4 What will Council require to be provided under planning agreements?	8
	2.5 Recurrent charges	8
	2.6 Pooling of development contributions	8
	2.7 Do other development contributions apply?	9
Part	3 - Negotiation Procedures and Probity	10
	3.1 Introduction	10
	3.2 Steps in the negotiation process	10
	3.3 Probity	11
Part	4 - Notification and Exhibition	13
	4.1 Public notification of planning agreements	13
	4.2 Re-notification	13
	4.3 Public comment on planning agreements	13
Part	5 - Implementation and Conditions	14
	5.1 Preparation of the planning agreement	14
	5.2 When is a planning agreement required to be entered into?	14
	5.3 When will planning obligations arise?	14
	5.4 Implementation agreements	15
	5.5 Monitoring and review of a planning agreement	15
	5.6 Modification or discharge of obligations	15
	5.7 Assignment and dealings by the developer/proponent	15
	5.8 Provision of security under a planning agreement	16
	5.9 Registration of planning agreements	16
	5.10 Dispute resolution	16
	5.11 Methodology for valuing public benefits under a planning agreement	16
	5.12 How will the Council seek to determine the amount of Monetary Contribution	
	that may be payable for Developments with FSR above clause 4.4 of WLEP (the	
	WLEP Provisions)	17
	5.13 How will the Council seek to determine the amount of Monetary Contribution	
	that may be payable for an amendment to the Waverley Local Environmental	17



Appendix 1 Valuation Methodology VPA payable rates for Development Applications

Appendix 2 Valuation Methodology for Planning Proposals

Appendix 3 Planning Agreement Template

Appendix 4 Explanatory Note Template

Appendix 5 Bondi Beach and Bondi Junction Precinct Maps

Appendix 6 Works for Planning Agreements

Appendix 7 Flowchart of Planning Agreement Process for Development Applications

Appendix 8 Waverley Council Statement of Business Ethics



# Part 1 - Policy Framework

# 1.1 Name of this Policy

This Policy is known as the *Waverley Council Planning Agreement Policy 2014* ("the Policy"). It sets out Waverley Council's policy and procedures relating to planning agreements under the *Environmental Planning and Assessment Act 1979*.

#### 1.2 Application of the Policy and commencement

This Policy applies to development applications and applications to modify a development consent lodged pursuant to Waverley Local Environmental Plan 2012 ("WLEP 2012") and planning proposals seeking a change to WLEP 2012 for land and development within the local government area of Waverley Council ("Council") with particular application to the Bondi Junction Precinct and Bondi Beach Precinct Areas. Although Council will consider entering planning agreements in other parts of its local government area it is anticipated that most, if not all, planning agreements will relate to development in Bondi Junction Precinct and Bondi Beach Precinct Areas. This policy generally applies to both new buildings as well as alterations and additions to an existing building for multi-unit dwellings within the R3, R4 (list all relevant zones) all forms of development with the exception of dwelling houses (a building containing only one dwelling) or commercial office only developments.

This Policy was adopted by resolution of the Council on [insert date]. The Policy is effective from [insert date].

# 1.3 Objectives of this Policy

The objectives of this Policy are:

- (a) to establish a fair, transparent and accountable framework governing the use of planning agreements by the Council;
- (b) to explore the range and extent of development contributions made by development towards public facilities and other public benefits in the Council's area;
- (c) to set out the Council's specific policies and procedures relating to the use of planning agreements within the Council's area;
- (d) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits; and
- (e) to facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public benefits.
- (f) to enhance the understanding within Council's area as to possibilities for development and associated public benefits and planning benefits facilitated by planning agreements in the Bondi Junction Precinct Area and Bondi Beach Precinct Area.

# 1.4 What does the Policy set out?

This Policy sets out the Council's approach to the use of planning agreements through negotiation when considering development applications, applications to modify a development consent and applications for a change to WLEP 2012 in the Waverley area. Council is guided by the policy approach set out in the Department of Planning's Practice



Note titled *Planning Agreements* (19 July 2005) ("the Practice Note") although it should be noted Council is not bound to follow the Practice Note.

In particular, this Policy sets out

- timing considerations in respect to planning agreements and procedures for negotiating and entering into planning agreements,
- the circumstances in which the Council may consider entering into a planning agreement,
- the matters ordinarily covered by a planning agreement, the form of development
  contributions which may be sought under a planning agreement. Unless otherwise
  agreed in a particular case, development contributions negotiated as part of a
  development application, application to modify a development consent or as part of a
  planning proposal will be valued or calculated as set out in Sections 5.12 and 5.13 (and
  detailed in Appendix 1 and Appendix 2).
- examples of the kinds of public benefits which may be sought and, in relation to each kind of benefit, whether it involves a planning benefit,
- · the method for determining the value of public benefits,
- whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate,
- when, how and where public benefits may be provided with particular reference to the Bondi Junction Precinct Area and Bondi Beach Precinct Area,
- probity measures, and
- the Council's policies on other matters relating to planning agreements, such as their
  review and modification, the discharging of the developer's obligations under
  agreements, the circumstances, if any, in which refunds may be given, dispute resolution
  and enforcement mechanisms, and the payment of costs relating to the preparation,
  negotiation, execution, monitoring and other administration of agreements.

# 1.5 Statutory framework

The current legal and procedural framework for planning agreements is set in Subdivision 2 of Division 7.16 of the *Environmental Planning and Assessment Act 1979*. Council is also bound by the provisions of Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation* 2000.

Section 93F-7.4 sets out the circumstances under which a planning agreement may be entered into. It provides a planning agreement may be made between a planning authority (or two or more planning authorities) and a person (developer):

- a) who has sought a change to an environment planning instrument (such as a rezoning application); or
- b) who has made or proposes to make a development application; or
- who has entered into an agreement with or is otherwise associated with a person in one of the above two categories.

# 1.6 What are the mandatory requirements of a planning agreement?

Section 93F7.4(3) of the Act requires planning agreements to include provisions specifying:



- (a) a description of the land to which the agreement applies,
- (b) a description of:
  - the change to the environmental planning instrument to which the agreement applies, or
  - (ii) the development to which the agreement applies,
- (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
- (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94-7.11 or 7.1294A to the development,
- (e) if the agreement does not exclude the application of section <u>7.11</u> <u>94</u> to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section <u>7.11</u> <u>94</u>,
- (f) a mechanism for the resolution of disputes under the agreement,
- (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer

The Act does not preclude a planning agreement containing other provisions that may be necessary or desirable in particular cases, except as provided by law. However, Council has prepared a template agreement that will form the basis for a planning agreement and this may be used as the basis for any agreement. This is attached as Appendix 3.

Clause 25E(1) of the Regulation requires that an explanatory note must accompany a planning agreement that:

- summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and
- contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

# 1.7 Guiding principles

The Practice Note sets out guidelines and safeguards in the application of planning agreements. These include determining the planning agreements acceptability and reasonableness. As such attention will be directed towards:

- proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development,
- providing for public benefits that bear a relationship to development that are not wholly unrelated to the development and are located in the precinct area in which the development is located.
- producing outcomes that meet the general values and expectations of the public and protect the overall public interest,
- providing for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits, and
- protecting the community against planning harm.

Generally, negotiations of a planning agreement should commence before lodgment of a development application/submission of a planning proposal to the Gateway so as to ensure a



practical outcome for public notification (see 3.2 and Part 4). In most cases, by way of safeguard, aA planning agreement should be entered into before a planning proposal is submitted to the Gateway.

In addition, by way of safeguard, Council will seek to ensure probity of its processes involving planning agreements by ensuring applications involving planning agreements which involve Council land, or development applications made by or on behalf of Council, are independently assessed by an external planning consultant.



#### 1.8 Terms and definitions used in this Policy

In this Policy, the following terminology is used:

Act means the Environmental Planning and Assessment Act 1979.

Bondi Beach Precinct Area means the area shown in the attached map at Appendix 5.

**Bondi Junction Precinct Area** means the area shown in the attached map at Appendix 5.

Council means Waverley Council.

**developer** is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (s<u>7.493F(11)</u>), or who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person.

development application has the same meaning as in the Act.

**development contribution** means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of any other material public benefit.

**explanatory note** means a written statement that provides details of the objectives, nature, effect and merits of a planning agreement, or an amendment to or revocation of a planning agreement.

*instrument change* means a change to an environmental planning instrument to facilitate a development the subject of a planning agreement.

planning benefit means a development contribution that confers a net public benefit.

public facilities means public infrastructure, facilities, amenities and services.

**planning obligation** means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution.

*planning proposal* means an application to amend the Waverley Local Environmental Plan 2012

proponent means the party that is responsible for lodging a planning proposal with Council.

**Practice Note** means the *Practice Note on Planning Agreements* published by the former Department of Infrastructure Planning and Natural Resources (July 2005).

public includes a section of the public.

public benefit is the benefit enjoyed by the public as a consequence of a development contribution.

Regulation means the Environmental Planning and Assessment Regulation 2000.

WLEP 2012 means the Waverley Local Environmental Plan 2012



# Part 2 - Principles for Planning Agreements

# 2.1 Purposes of planning agreements

Section 7.493F(1) of the Act provides that a planning agreement is a voluntary agreement or other arrangement between one or more planning authorities and a developer under which the developer agrees to make development contributions towards a public purpose.

The Council's approach to the negotiation of planning agreements is based on the planning purpose of furthering the Council's planning vision for the area as set out in the Waverley Strategic Plan and housing strategies (as amended from time to time). It is also informed by the mission and values of the Corporate Plan. The Bondi Junction Precinct Area and Bondi Beach Precinct Area in particular are the subject of a number of policies and plans aimed at upgrading public facilities, including infrastructure upgrading, improving and maintaining public areas including paths, footpaths and landscaping within the Precincts (refer to Appendix 6). When negotiating planning obligations the Council will adopt a flexible approach, generally take ing into account Council's vision and mission statement, the Strategic Plan's general priorities set out in the programs to that Plan, the site circumstances and also the obligation preferences of the developer.

Within the Bondi Junction Precinct Area and Bondi Beach Precinct Area (identified in maps at Appendix 5) as an incentive towards the provision of development contributions to be applied towards public benefits and planning benefits, Council may consider, subject to its statutory obligations and other matters set out in this Policy or any other relevant Council policies, plans or procedures:

a) applications for development up to an additional area of 15% of maximum gross floor area permitted under clause 4.4 of WLEP 2012.

Notwithstanding (a) above Council will consider each proposed planning agreement on a case by case basis. In circumstances where significant variation of applicable development standards is proposed consideration should be given to the preparation of a planning proposal to amend WLEP2012.

The Council may negotiate a planning agreement with a developer/proponent in connection with any proposed application by the developer/proponent for an instrument change (eg rezoning application) or for development consent relating to any land in the Council's area. The Council may also negotiate a planning agreement in association with another Council or another authority where relevant. The negotiation of a planning agreement is at the absolute discretion of the Council.

Council will not enter a planning agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in Section 4.1579C of the Act. Development that is unacceptable on planning grounds will not be given consent because of benefits offered by a developer. It is noted that any exceptions to relevant development standards will be assessed in accordance with the provisions set out in cl.4.6 of WLEP 2012.



#### 2.2 Principles underlying the use of planning agreements

The Council's use of planning agreements will be governed by the following principles:

- (a) Planning decisions will not be bought or sold through planning agreements.
- (b) The Council will not allow planning agreements to improperly fetter the exercise of its functions under the act, regulation or any other act or law.
- (c) The Council will not use planning agreements for any purpose other than a proper planning purpose.
- (d) Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.
- (e) The Council will not seek benefits under a planning agreement that are wholly unrelated to particular development. Development contributions obtained from planning agreements relating to development in the Bondi Junction Precinct Area will be applied in the Bondi Junction Precinct Area and development contributions obtained from planning agreements relating to developments on the Bondi Beach Precinct Area will be applied in the Bondi Beach Precinct Area.
- (f) The Council will not take into consideration planning agreements that are wholly unrelated to an application, nor will the Council give undue weight to a planning agreement.
- (g) The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement.
- (h) The Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements.

# 2.3 What matters will the Council consider?

The matters that the Council may consider in any such negotiation may include, but not be limited to, the following:

- (a) Whether the planning agreement(s) meets the demands created by the development for new public infrastructure, amenities and services.
- (b) If inclusions in the development meet specific planning objectives of the Council.
- (c) If compensation is required for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration.
- (d) Rectification of an existing deficiency in the existing provision of public facilities in the Council's area is made.
- (e) Whether recurrent funding of public facilities is required or provided.
- (f) The extent to which the Council needs to monitor the planning impacts of development.
- (g) Whether planning benefits for the wider community accrue from the planning agreement.

In respect to the Bondi Junction Precinct Area and Bondi Beach Precinct Area the extent to which the development or an amendment to the Waverley Local Environmental Plan 2012 may result in a public benefit and or planning benefit in terms of the public works



contemplated in various Council policies and plans for the Bondi Junction Precinct Area and Bondi Beach Precinct Area or as set out in Appendix 6.

The most important factor in deciding what planning obligations might be required as part of a planning agreement is the size of the development or resulting increase in land value from an amendment to the Waverley Local Environmental Plan 2012, but other factors such as the location or the resulting type of development may be relevant. These will establish core information such as likely increases in population and demand for particular public services.

This information will help the Council as to the determinatione of the development application/planning proposal and to prepare the planning agreement.

# 2.4 What will Council require to be provided under planning agreements?

Existing growth levels place strain on existing infrastructure which cannot be met by s7.1294A contributions and Council has identified a range of infrastructure which either requires substantial upgrade or provision. The programs identified in Appendix 6 address these infrastructure requirements with respect to the Bondi Junction and Bondi Beach Precinct Areas.

It is to be noted that 1025% of all planning agreement contributions will form a monetary contribution to Waverley's Affordable Housing Program fund. This percentage could be higher in some instances, for example, where a redevelopment results in the loss of existing affordable housing.

This policy allows for in-kind contributions to be made to Council in lieu of monetary contributions provided that these are consistent with the calculation methods outlined in Appendix 1 and 2. In-kind contributions could include for example affordable housing or commercial floor space dedicated in perpetuity to Council or public domain upgrades.

Appendix 6 provides an outline of the potential works to which development contributions could be applied. It is also recognised that development contributions that facilitate works in addition to the works listed in Appendix 6 may be appropriate because negotiations for each proposed development will reflect the circumstances of each case and the needs created by the scale of proposed change.

Consequently, Appendix 6 does not prevent development contributions being negotiated on a case by case basis, particularly where planning benefits are also involved.

# 2.5 Recurrent charges

The Council may request developers/proponents, through a planning agreement, to make development contributions towards the recurrent costs of public facilities. Where the public facility primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity.

Where the public facility or public benefit is intended to serve the wider community, the planning agreement may, where appropriate, only require the developer/proponent to make contributions towards the recurrent costs of the facility for a set period which will be negotiated according to the impact of the development.

# 2.6 Pooling of development contributions

Where a proposed planning agreement provides for a monetary contribution by the developer/proponent, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements and applied progressively for the different purposes under those agreements.

Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.



# 2.7 Do other development contributions apply?

Generally the Council will not enter a planning agreement that excludes the application of  $s_{7.1194}$  or  $s_{7.1294A}$  of the Act to development to which the agreement relates. This, however, is a matter for negotiation between the Council and a developer having regard to the particular circumstances of the case.

However, where the application of s<u>7.1194</u> of the Act to development is not excluded by a planning agreement, the Council will generally not agree to a provision allowing benefits under the agreement to be taken into consideration in determining a development contribution under section <u>7.1194</u>.



# Part 3 - Negotiation Procedures and Probity

#### 3.1 Introduction

The Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable. Council will seek to ensure that the final negotiation of planning agreements runs in parallel with applications for instrument changes or development applications so as not to unduly delay the approval.

Where possible Council will publicly notify a planning agreement in the same manner and at the same time as the application for the instrument change or the development application to which it relates.

Council's preference is therefore to have the planning agreement negotiated and documented before it is publicly notified as required by the Act and Regulation. It is also preferable that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.

# 3.2 Steps in the negotiation process

The negotiation of a planning agreement will generally involve the following key steps which are outlined in Appendix 7:

- Prior to the lodgement of the relevant application by the developer/planning proposal by the proponent, the Council and developer/proponent (and any other relevant person) will decide whether to negotiate a planning agreement. The initial point of contact to discuss a planning agreement with Council will be the Director of Waverley Futures.
- The parties will decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, and appoint such person.
- 3. A timetable for negotiations and the protocols and work practices governing their negotiations will be agreed between the parties.
- The key issues for negotiation will be identified by the parties, and the negotiations over these issues will take place.
- If agreement is reached, the Council developer (and any other relevant party) will
  prepare the proposed planning agreement including the explanatory note statement,
  and provide a copy of it to the developer / proponent Council.
- The parties may undertake further negotiation on the specific terms of the proposed planning agreement as necessary.
- 7. Once agreement is reached on the terms of the proposed planning agreement, the developer/proponent may then make the development application/planning proposal to the Council accompanied either by a copy of the proposed agreement or by an offer to enter into such an agreement with specifics of the agreement set out in detail.
- 8. The Council will publicly exhibit the development application/planning proposal and planning agreement in accordance with the Act. The Council may approve the development application/planning proposal and set out the conditions for the agreement or, if an agreement has been executed, set out in the consent/determination the terms of the agreement.



The parties may be required to undertake further negotiations and, hence, a number of the above mentioned steps mentioned may need to be repeated as a result of the public notification process or its formal consideration by the Council in connection with the relevant application. For further information please see the flow chart set out in Appendix 7.

Note that all costs associated with the negotiation of a planning agreement, such as including the appointment of an independent person, are to be borne by the developer.

It is also noted that where the value of the development exceeds \$20 million the development application will be dealt with by the independent Joint Regional Sydney Planning Panel or any other relevant planning authority.

# 3.3 Probity

Public probity is important to Waverley Council and it will ensure that the negotiation of any planning agreements is fair, transparent and is directed at achieving public benefits in an appropriate manner free of corruption.

In this regard, Council will:

- Inform any applicant about Council values and business ethics specifically, about ethical behaviour appropriate to business dealings. A copy of Council's Statement of Ethics Policy (as amended from time to time) is attached at Appendix 8.
- Ensure that its communities understand the system and the Council's role specifically, how the planning agreements system operates and how Council will deal with developments/ planning proposals objectively.
- Notify planning agreements to ensure they are open and transparent specifically, achieving maximum public awareness of the matters contained in a planning agreement(s) and the potential benefits of an agreement.
- Ensure appropriate delegations and separation of responsibilities in considering development applications/planning proposals that involve planning agreements – specifically, the need to ensure processes adequately address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk.
- Ensure that modifications to approved development should be subject to the same scrutiny as the original development application.
- Ensure that Councillors and Council staff understand their varied roles, some of which have potential to conflict.
- Complete negotiations via written correspondence, rather than face-to-face meetings, to
  ensure that all discussions are clearly documented to ensure the highest level of
  transparency, accountability and ease of filingrecord-keeping. This also allows due-timely
  consideration and resolution of any issues raised and facilitates carefully considered
  more deliberated decision making by all parties.
- Take every step to ensure that conflicts of interest are ameliorated to the greatest extent
  possible specifically, independent assessment by third parties where Council has an
  interest and not entering into any contractual arrangement which purport to guarantee
  outcomes that are subject to separate regulatory processes.

Apart from the above procedures, further procedures that will be implemented to address these matters may also include, but not be limited by, the following procedures:

(a) The Councillors will not be involved in the face to face negotiation of the agreement but will ultimately execute the planning agreement as part of their duties as Councillors.



- (b) A Council officer with appropriate delegated authority will negotiate a planning agreement on behalf of the Council in accordance with this Policy.
- (c) The Council will, in all cases, ensure that Council staff with key responsibility for providing advice on approvals, approving applications or ensuring compliance, do not have a role in the assessment of the commercial aspects of the agreement nor on the conditions of the planning agreement except where advice is required on matters relating to the conditions of consent for a particular proposal.
- (d) The Council may involve an independent person(s) to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome.
- (e) The Council will ensure that all negotiations with a developer/proponent and their consultants are sufficiently separated and documented.
- (f) Where the Council has a commercial stake in development the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development.
- (g) Where Council is the consent authority and an applicant has proposed to enter into a Planning Agreement, the development application must be determined by the Waverley Development Assessment Panel (WDAP), the Sydney Joint Regional Planning Panel (JRSPP), or any other relevant planning authority unless the matter is of minor significance as determined by the Director, Waverley Futures.



# Part 4 - Notification and Exhibition

# 4.1 Public notification of planning agreements

In accordance with the Act, a planning agreement must be publicly notified and available for public inspection for a minimum period of 28 days. The Council may decide to notify a planning agreement for a longer period or shorter period as permitted by the Act.

The Council will also notify the application to which a planning agreement relates in accordance with the Act.

# 4.2 Re-notification

The Council may publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in the Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the agreement or the application, or their formal consideration by the Council, or for any other reason.

# 4.3 Public comment on planning agreements

The Council encourages the public to make submissions on planning agreements. This will allow the Council to better understand local needs and permit fine tuning of the planning obligations set out in any planning agreement.

In the case of development applications, whilst Council aims to advertise the planning agreement at the same time as the development application it may be advertised separately to the development application—<u>depending upon when an outcome is reached following</u> negotiation<del>once satisfactory negotiations have taken place</del>.

In the case of planning proposals, it would be expected that the proponent would provide a detailed offer which would incorporate specifics as to the public benefit and an undertaking to pursue and enter into a negotiated planning agreement prior to gazettal notification. the planning agreement will be advertised before the planning proposal is sent to the Gateway or at the same time as the planning proposal during the formal exhibition period.



# Part 5 - Implementation and Conditions

# 5.1 Preparation of the planning agreement

The Council will prepare a planning agreement relating to a particular application for an instrument change or development application. The Council uses a standard form of planning agreement on which every planning agreement is based which reflects the policies and procedures set out in this document (refer Appendix 3). This planning agreement will include an explanatory note (refer Appendix 4).

The Council will require a planning agreement to make provision for payment by the developer of the Councils costs of and incidental to negotiating, preparing and entering into the agreement as well as administering and enforcing the agreement.

# 5.2 When is a planning agreement required to be entered into?

A planning agreement is entered into when it is signed by all of the parties. The Council will usually require a planning agreement to be entered into as a condition of granting development consent to the development to which the agreement relates or as part of the Gateway process for a planning proposal. However, a planning agreement can be entered into at any time after the agreement is publicly notified in accordance with the Act and Regulation.

# 5.3 When will planning obligations arise?

# 5.3.1 Development Applications

The Council will generally require a planning agreement to provide that the developer's obligations in relation to securing the delivery of development contributions must be met prior to the issuing of any construction certificate related to the subject development application. Delivery of the development contribution may be prior to occupation certificate. As such CPI increases will generally be applied to the calculation of the development contribution.

# 5.3.2 Planning Proposals

There are a number of possible scenarios which are to be detailed in the terms of the planning agreement to ensure that the obligations of the agreement are fulfilled by the proponent of the planning proposal.

(a) Generally, the developer's obligations in relation to caveat and registration of the PA must be met as soon as possible after gateway determination and prior to gazettal notice, bank guarantee must be delivered to Council upon gazettal notice and delivery of the contribution (e.g. payment of monetary contribution), prior to the issuing of any construction certificate related to the subject development application otherwise, generally the delivery of the contribution will be upon gazettal notice.

Note: there may be a significant time gap between the gazettal of the planning proposal and the issuing of a construction certificate for any subsequent development of the subject site. Timing must be a key consideration during the negotiation of the planning agreement terms. As such a mechanism such as CPI increases may will generally be applied to the calculation of the development contribution.

(b) If the proponent of the planning proposal intends to sell the site it must immediately notify Council in writing. Generally, the proponent must meet the obligations of the planning agreement, particularly the delivery of developer contributions (e.g. payment of monetary contribution), on or before settlement of the sale of the land. Generally, take is to be secured through registration of the planning agreement, caveat against the title of the land and provision of bank guarantee as required under (a).



#### 5.4 Implementation agreements

The Council may require an implementation agreement that provides for matters such as:

- (a) The timetable for provision of planning obligations under the planning agreement.
- (b) The design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer.
- (c) The manner in which a work is to be handed over to the council.
- (d) The manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

#### 5.5 Monitoring and review of a planning agreement

The Council will continuously monitor the performance of the developer's/proponent's obligations under a planning agreement and report them in accordance with the Act.

# 5.6 Modification or discharge of obligations

The Council may agree to a provision in a planning agreement permitting the developer's/proponent's obligations under the agreement to be modified or discharged in the following circumstances:

- (a) The developer's/proponent's obligations have been fully carried out in accordance with the agreement, or
- (b) The development consent to which the agreement relates has lapsed, or
- (c) The development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate, or
- (d) The performance of the planning agreement has been frustrated by an event or events beyond the reasonable control of the parties, or
- (e) The developer/proponent has fully and completely assigned the developer's/proponent's interest under the agreement in accordance with its terms, or
- (f) Other material changes affecting the operation of the planning agreement have occurred, or
- (g) The Council and the developer/proponent otherwise agree to the modification or discharge of the agreement.

Such a provision will require the modification or revocation of the planning agreement in accordance with the Act and Regulation.

# 5.7 Assignment and dealings by the developer/proponent

The Council will not generally permit the assignment of any or all of the developer's/proponent's rights or obligations under the agreement, nor will the Council permit any dealing in relation to any part or the whole of the land the subject of the agreement unless. However the Council may agree to an assignment when:

(a) The developer/proponent has, at no cost to the Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of the Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement, and



- (b) If the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, such documents provide for an agreement by the person to the effect that they, and any receiver appointed by them, will not enjoy rights greater than those of that party, and
- (c) The party is not in breach of theis Agreement.

This does not affect the operation of any of other requirements of the agreement.

#### 5.8 Provision of security under a planning agreement

The Council will generally require a planning agreement to make provision for security to cover the developer's/proponent's obligations under the agreement. The A form of security will generally be an unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's/proponent's obligations under the Agreement and on terms otherwise acceptable to the Council. Other security will generally be required.

# 5.9 Registration of planning agreements

The Council may require a planning agreement to contain a provision requiring the developer/proponent to agree to registration of the agreement pursuant to s93H of the Act if the requirements of that section are satisfied.

#### 5.10 Dispute resolution

The Council will require a planning agreement to provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

#### 5.11 Methodology for valuing public benefits under a planning agreement

Subject to section 2.4, unless otherwise agreed in a particular case, public benefits will be valued as follows:

# 5.11.1 Provision of land or units for a public purpose

Where the benefit under a planning agreement is the provision of land for a public purpose, or units given to Council in perpetuity, the value of the benefit will be determined by an independent valuer who is experienced in valuing land in New South Wales (and who is acceptable to Council), on the basis of a scope of work which is prepared by Council. All costs of the independent valuer in carrying out such a valuation will be borne by the developer/proponent.

# 5.11.2 Carrying out of works for a public purpose

Where the benefit under a planning agreement is the carrying out of works for a public purpose, the value of the benefit will be determined by an independent quantity surveyor (who is acceptable to Council), on the basis of the estimated value of the completed works being determined using the method that would ordinarily be adopted by a quantity surveyor. Council will prepare the scope of work for the independent quantity surveyor. All costs of the independent quantity surveyor in carrying out the work will be borne by the developer/proponent.

# 5.11.3 Other public benefit

Where the benefit under a planning agreement is the provision of public benefit other than under 5.11.1 or 5.11.2, Council and the Developer/proponent will negotiate the manner in which the benefit is to be valued for the purposes of the agreement.



# 5.12 How will the Council seek to determine the amount of Monetary Contribution that may be payable for Developments with FSR above clause 4.4 of WLEP (the WLEP Provisions)

The Council and the Developer will negotiate in this regard. Generally the value of 50% of the increase in net value to the development arising from an increase in FSR beyond WLEP 2012 provisions in clause 4.4 may be considered an appropriate contribution. A series of standardised development contribution rates have been developed to streamline negotiations and provide fairness, predictability and certainty to the community, Council and developers. These pre-scheduled development contribution rates are based on average 50% value upliftapply to for different suburbs in the Waverley LGA. These rates are located in Appendix 1 and will be applied to Development Applications. These rates will be updated annually.

The value of the benefit will be determined by an independent valuer who is experienced in valuing land in New South Wales (and who is acceptable to Council). All costs of the independent valuer in carrying out such a valuation will be borne by the Developer. The methodology used to determine net value will generally be calculated by determining the gross-sale value of the proposed additional lots less the costs of construction.

# 5.13 How will the Council seek to determine the amount of Monetary Contribution that may be payable for an amendment to the Waverley Local Environmental Plan 2012

The Council and the proponent will negotiate in this regard. Generally the value of 50% of the net value from the planning proposal may be considered an appropriate contribution. The net value will be determined by an independent valuer who is experienced in valuing land in New South Wales (and who is acceptable to Council). All costs of the independent valuer in carrying out such a valuation will be borne by the proponent. The methodology used to determine the net value will generally be calculated by determining the Residual Land Value resulting from the planning proposal less the Base Case.

# APPENDIX 1

Valuation Methodology for Development Applications under Waverley Council's Planning Agreement Policy 2014VPA payable rates

The VPA payable rates per square metre <u>for residential floor space</u> are outlined in the following table. VPA payable rates have not been calculated for Bronte, Tamarama, Waverley or Queens Park as there have been few VPAs offered in these areas. If a VPA is offered in these suburbs, then it should be calculated based on the 'Average LGA' rate. For <u>mixed use</u> developments <u>commercial office and retail benchmark rates should be used.</u> that are largely non-residential the 'Methodology applying to development that is largely non-residential' approach should be taken.

# RESIDENTIAL BENCHMARK RATES

Area	\$/sqm
Bondi Junction	\$3,900
Bondi	\$3,700
Bondi Beach	\$4,300
North Bondi	\$4,200
Dover Heights, Rose Bay & Vaucluse	\$3,000
Average LGA	\$3,820

n.b. these rates will be updated on an annual basis based on sales prices.

# BENCHMARK RATES FOR OFFIC AND RETAIL IN MIXED USE DEVELOPMENTS

Area and type	\$/sqm
Bondi Junction retail core <sup>1</sup>	\$3,000
Bondi Junction retail fringe <sup>2</sup>	\$2,500
Bondi Junction office	\$2,500
Bondi Road, Bondi	\$3,500
Campbell Pde, Bondi <sup>3</sup>	\$4,500
Hall Street, Bondi <sup>4</sup>	\$3,900
Fringe	\$3,500

- 1. Oxford Street between Newland and Adelaide St; Spring Street east of Newland
- St, Bronte Rd north of Ebley St; Waverley Mall.
- 2. Bronte Rd south of Ebley St; Oxford St west of Denison; Ebley St and elsewhere.
- 3. Between Beach Rd and Lamrock Ave.
- 4. Between O'Brien and Campbelll Parade.
- n.b. these rates will be updated on an annual basis based on sales prices.

For any other development type that is not residential or retail or office the following methodology should be used.

# METHODOLOGY APPLYING TO OTHER DEVELOPMENT THAT IS LARGELY NON-RESIDENTIAL TYPES

There are two components that will make up the valuation. These are:

1. The valuation (end sale value) of the bonus (marginal) floor space; and

 Assessment of the marginal costs (to be deducted from the marginal revenue in order to calculate marginal profit);

Component 1 must be done by fully qualified Valuers. It is recommended that two Valuers are appointed, one on behalf of Council and the other on behalf of the applicant. The costs of the commissioning should be shared between Council and the applicant. The adopted valuation figures is to be the average of the two valuations, where these valuations are reasonably close.

Component 2 must be done by fully qualified quantity surveyors (QS). It is recommended that two consultants are appointed, one on behalf of Council and the other on behalf of the applicant. The costs of the commissioning should be shared between Council and the applicant. The adopted cost estimates is to be the average of the two QS estimates, where these valuations are reasonably close.

The principles of valuation of the two components are detailed below:

#### 1. Component 1 - Value of Floor Space Bonus

- 1.1. The Valuer is to provide the end sale value of the bonus floor space. This refers to the additional apartments plus their ancillary car parking spaces.
- 1.2. Where there was a bonus on the height of the building then the bonus apartments will be on the upper most levels of the building. Alternatively it may be on the levels immediately below the penthouse and sub-penthouse levels (given that a premium may be attached to the penthouse and sub-penthouse levels refer to example in Paragraph 1.6 below).
- 1.3. The marginal value (or value of the bonus floor space measured in dollars per square metre) should not be less than average value (the building's total value divided by total floor area).
- 1.4. The bonus floor space does not necessarily have to be identified in "whole" apartments. It can be identified in fractions of apartments or even in square metres.
- 1.5. The valuation is to take into consideration the specification and quality of finish of the bonus apartments.
- 1.6. An acceptable method of measure is the difference between the total value of the apartments without the bonus floor space and the total value of the apartments with the bonus floor space.

In the example below a bonus floor space provides an additional increase in the internal leasable area of 14.9% through an increase of building height (one additional floor) plus a slight widening of the building. The result is an increase in the end value by 15.8%.

**Building Without Bonus Floor Space** 

Level	Sqm	\$/sqm	\$m
11	300	12,000	3.6
10	400	11,000	4.4
9	500	10,000	5.0
8	500	9,800	4.9
7	500	9,600	4.8
6	500	9,400	4.7
5	500	9,200	4.6
4	500	9,000	4.5
3	500	8,500	4.3
2	500	8,000	4.0
1	500	7,500	3.8
TOTAL	5,200		48.5

**Building With Bonus Floor Space** 

Level	Sqm	\$/sqm	\$m
12	300	12,000	3.6
11	425	11,000	4.7
10	525	10,200	5.4
9	525	10,000	5.3
8	525	9,800	5.1
7	525	9,600	5.0
6	525	9,400	4.9
5	525	9,200	4.8
4	525	9,000	4.7
3	525	8,500	4.5
2	525	8,000	4.2
1	525	7,500	3.9
TOTAL	5,975		56.2
Margin	775	•	7.7
% Increase	14.9%		15.8%

- 1.7. The marginal value shall be the actual price exchanged. Where the apartments have not been exchanged then the market value should be the listed or asking price. If there are no listed or asking prices then the value shall be estimated by the Valuer based on market evidence.
- 1.8. Market evidence should include any pre-sales in the building and/or recent sales and presales of comparable apartments in other buildings in the locality.
- 1.9. The Valuer shall deduct (from the end value of the bonus floor space) GST at one eleventh of the gross end sale value and any other costs on sale such as sales commission and legal costs. Generally these costs will be no more than 3.0% of gross end sale value.
- 1.10. The result is the expected marginal net sale proceeds from the bonus floor space.

# 2. Component 2 - Marginal Cost to Design and Construct

- 2.1. The QS shall provide an estimate of the marginal cost of construction relating to the bonus floor space and bonus car parking spaces. Generally, Council will not accept exaggerated costs that are significantly higher than the development cost indicated on the submitted DA.
- 2.2. This simplest method to calculate marginal cost is the pro-rata of the total building cost based on bonus floor space divided by total GFA plus a pro-rata of the car parking cost based on number of parking spaces allocated to the bonus units divided by total car parking spaces.
- 2.3. Various site costs including, but not limited to, landscaping, driveways, fencing and external works shall be excluded since these costs are not marginal.
- 2.4. The QS and/or Valuer shall then add the marginal design costs, application fees, marketing and advertising costs and other ancillary costs. Again this would be a pro-rata of total costs. Evidence of these costs should be provided.

- 2.5. The QS and/or Valuer shall then add the monetary contributions under Section 94A in relation to the bonus floorspace (if paid or is to be paid).
- 2.6. The QS and/or Valuer can then add finance and interest costs again using the pro-rata method. The method for showing interest calculation must be provided using cash flow or other appropriate method of calculation.
- 2.7. Land cost and profit margins are not to be included as these are not marginal costs.
- 2.8. GST on costs is to be excluded since this will be returned to the developer in the form of input credits.
- 2.9. The result is the total estimated cost in delivering the marginal floor space.

The formula for calculating the profit from the bonus floor space is: Marginal net sale proceeds less Marginal cost to Construct

50% of the profit from the bonus floor space is to be provided as a negotiated form of public benefit through a Planning Agreement.

# APPENDIX 2 Valuation Methodology for Planning Proposals under Waverley Council's Planning Agreement Policy 2014

There are two components that will make up the valuation. These are:

- 1. The Base Case; and
- 2. Residual Land Value.

Both components must be done by suitably qualified Valuers. It is recommended that two Valuers are appointed, one on behalf of Council and the other on behalf of the applicant. The costs of commissioning the Valuers should be shared between Council and the applicant. The adopted valuation figure is to be the average of the two valuations.

The principles of valuation of the two components are detailed below:

#### 1. Component 1 - Base Case

- 1.1. The Base Case is the value of the land under the current zoning (assuming in perpetuity). The value under the base case should be assessed on the site's highest and best use permissible under the current zoning. The highest and best use may, or may not be, the current use of the land.
- 1.2. The Valuer is required to test and determine the highest and best use of the land. The base case is to assume that the current zoning on the land and the development standards under the current instruments will remain in perpetuity. The planning proposal itself must not affect the base case.
- 1.3. Standard valuation practices shall apply and at least two methods of valuation should be used. Comparable sales should be one of the methods applied unless there is insufficient evidence. When using comparable sales evidence the Valuer must ensure that the sale prices are not affected by planning proposals or draft instruments that are not related to the base case or at least make reasonable allowances / adjustments.
- 1.4. If the subject site was sold recently then the purchase price can be adopted provided that the price was not inflated as a result of the planning proposal.

# 2. Component 2 - Residual Land Value

- 2.1. The Valuer shall estimate the value of the land under the planning proposal using the residual land valuation (RLV) method. The preferred method for calculating the RLV is discounted cash flow modelling using proprietary software like Estate Master DF or similar. A simple developer's profit model may be acceptable for small-scale single-staged developments.
- 2.2. The assumptions in the RLV calculations must be reasonable and based on industry averages.

- 2.3. If there are no listed or asking prices then the end sale values shall be estimated by the Valuer based on comparable market evidence.
- 2.4. Market evidence should include any recent pre-sales in the building and/or recent sales and pre-sales of comparable apartments in other buildings in the locality.
- 2.5. Estimated construction costs must be supported by a Quantity Surveyor's report. Construction contingency should be no greater than 5%. Soft costs may be included such as design costs, application fees, authority fees, development management, marketing and advertising and finance establishment costs.
- 2.6. In calculating the RLV the project start date should assume the land is zoned appropriately (i.e. the zone that is being proposed).
- 2.7. The RLV should exclude any discounting during the rezoning period as the payment under the VPA will not be made until occupation certificate. A typical development program should be assumed that allows reasonable time for development approval, certification and construction. Council will not accept a program that appears conservative or pessimistic. The table below provides a suggested range of project lives for a single stage project. Any significant departure in project life requires supporting evidence.

Construction Cost	Approvals and Documentation (months)	Construction (months)
Under \$20m	8-9	10-14
\$20m to \$40m	9-11	14-17
Above \$40m	10-12	18-20

- 2.8. It is recognised that these timeframes can vary and are impacted by building height and number of basement levels.
- 2.9. For a short single staged development a developer's profit or "back of envelope" method rather than a cash flow model may be acceptable. Using this method the RLV will be derived from the target profit/risk margin. If this method is used the interest should be calculated as follows:

Interest Cost = (Total Project Costs excluding land & GST) X (Interest Rate / 12) X (Months of Construction) X 50%.

2.10. The RLV model should preferably show both the development margin and Project Internal Rate of Return (IRR) on the cash flow before interest. Reasonable industry standard hurdle rates should be applied. Generally a target margin (on project costs) of 15% to 25% and a target IRR of 16% to 20% should apply but this depends upon the levels of market risk and other project risks.

The formula for calculating the net value from the planning proposal is:

\*\*Residual Land Value minus the Base Case\*\*

50% of the net value from the planning proposal is to be provided as a negotiated form of public benefit through a Planning Agreement.

# APPENDIX 3 (Clause 1.6) Planning Agreement Template

Section <del>93F</del> - <u>7.4</u> of the Environmen	tal Planning and Assessment Act, 1979
THIS AGREEMENT is made on	20 <del>175</del>
PARTIES	
WAVERLEY COUNCIL of Cnr Paul Street and Bond	li Road, Bondi Junction NSW 2022 ( <b>Council</b> ")
AND	

# **BACKGROUND**

- **A.** The Developer is the registered proprietor of the Land.
- **B.** The Council is the local authority constituted under the *Local Government Act* 1993 and the planning and consent authority constituted under the Act.
- C. The Developer has made or caused to be made a Development Application to the Council for the Development Consent to carry out the Development on the Land.
- D. The Development Application was accompanied by an offer by the Developer to enter into a voluntary planning agreement to make the Development Contribution to be applied by the Council towards the Public Purpose if the Development Consent was granted.
- **E.** This Agreement is consistent with the Developer's offer referred to in Recital D.

# **OPERATIVE PROVISIONS:**

- 1 DEFINITIONS AND INTERPRETATION
- 1.1 Definitions

In this Agreement unless the context otherwise requires:

"Act" means the Environmental Planning and Assessment Act 1979 (NSW)

"Agreement" means this agreement;

"Bank Guarantee" means an irrevocable and unconditional undertaking by a trading bank approved by the Council to pay the Development Contribution amount on demand without an expiry or end date and containing terms and conditions acceptable to Council and in accordance with clause 9 of this Agreement.

"Business Day" means a day that is not a Saturday, Sunday or public holiday, on which banks are open for general services in Sydney, New South Wales;

"Certifying Authority" means any accredited private certifier including where appropriate, a Principal Certifying Authority (PCA) appointed or to be appointed to certify the Development or any aspect of it;

"Council" means Waverley Council and herein includes any local government authority with which that Waverley Council may merge or any other local government authority responsible for a local government area that the Lot Burdened is located within.

"Construction Certificate" means any construction certificate in respect of the Development Consent:

"Development" means the development the subject of the Development Application and which is described in Item 4 of the Schedule;

"Development Application" means the development application described in Item 3 of the Schedule;

"Development Consent" has the same meaning as in the Act and means Council's approval of the Development Application described in Item 3 of the Schedule;

"Development Contribution" means the amount of money referred to in Item 5 of the Schedule.

"Development Contribution Date" means the time the Development Contribution is to be paid as specified in Item 8 of the Schedule;

"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 the land described in Item 2 of the Schedule.

"Development Application" means the application referred to in Item 4 of the Schedule.

"Development Consent" means Council's approval of the Development Application.

"Party" means a party to this Agreement including their successors and assigns.

"Planning Proposal" means an application to amend the Waverley Local Environmental Plan 2012

"Proponent" means the party that is responsible for lodging a planning proposal with Council.

"Public Purpose" for the purpose of this Agreement means the public purpose described in Item 6 of the Schedule.

"Registration Application" means an application for registration of this Agreement as a planning agreement on the title of the Land pursuant to Section 93H of the Act in a form approved by the Registrar General.

"Schedule" means the schedule to this Agreement.

# 1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales;
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day;
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (e) 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;
- (f) A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced;
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

- (i) 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;
- 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;
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (I) A reference to this Agreement includes the agreement recorded in this Agreement; and
- (m) 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.

# 2 PLANNING AGREEMENT UNDER THE ACT

The Parties to this Agreement agree that it is a planning agreement governed by Subdivision 2 of Division 6-7.1 of Part 4-7 of the Act.

# 3 APPLICATION OF THIS AGREEMENT

This Agreement applies to the Land and the Development.

# 4 OPERATION OF THIS AGREEMENT

- 4.1 This Agreement does not take effect until the Development Consent is granted by the Council.
- 4.2 If they have not already done so the Parties must execute this Agreement as soon as possible after the Development Consent is granted and prior to any Construction Certificate issuing.

# 5 DEVELOPMENT CONTRIBUTION

- 5.1 The Developer agrees to make, and the Council agrees to accept, the Development Contribution to be applied for the Public Purpose.
- 5.2 The Developer must pay the Development Contribution to the Council by bank cheque on or before the Development Contribution Date and time is essential in this respect.

# 6. APPLICATION OF DEVELOPMENT CONTRIBUTION

6.1 The Council will apply the Development Contribution towards the Public Purpose as soon as practicable.

# 7. APPLICATION OF SECTIONS 94-7.11 AND 94A-7.12 OF THE ACT TO THE DEVELOPMENT

- 7.1 This Agreement does not exclude the application of Sections 947.11, 7.1294A or 94EF-7.24 of the Act to the Development.
- 7.2 The Development Contribution provided by the Developer will not be taken into consideration in determining any development contribution under Section 94-7.11 of the Act.

# 8 REGISTRATION OF THIS AGREEMENT

- The Parties agree this Agreement is to be registered by the Registrar General as provided for in section 93H-7.6 of the Act.
- The Developer warrants that it has done everything necessary to enable this Agreement to be registered under section 7.6 93H of the Act.
- 8.3 Without limiting clause 8.2, the Developer warrants that it has obtained the express written consent to the registration of this Agreement under section 7.6 93H of the Act from:
  - (a) If this Agreement relates to land under the *Real Property Act 1900*, each person who has an estate or interest in the Land registered under that Act; or
  - (b) If this Agreement relates to land not under the Real Property Act 1900, each person who is seized or in possessed of an estate or interest in the Land.
- 8.4 Prior to the issue of a Construction Certificate, the Developer will at its cost arrange and effect registration of this Agreement under <u>7.6 s93H</u> upon the title to the Land and as soon as possible following execution of this Agreement:
  - (a) deliver to the Council the Registration Application in registrable form noting the Council as applicant and executed by the Developer and any other person the subject of the warranty in clause 8.3;
  - (b) lodge or cause to lodged the title deed with LPI and advise Council of the production number;
  - (c) provide the Council with a cheque in favour of Land & Property Information, NSW for the registration fees for registration of this Agreement; and
  - (d) provide the Council with a cheque in favour of the Council for its costs, expenses and fees incurred or to be incurred in connection with the preparation of this Agreement and any documents, form or instrument created or to be created in accordance with the provisions of this Agreement.
  - (e) and take any other necessary action so as to ensure this Agreement is registered on the title to the Land prior to the issue of a Construction Certificate.

- 8.5 Upon compliance with clause 8.4 by the Developer the Council will promptly lodge the Registration Application with the Registrar General.
- 8.6 The Parties will co-operate with each other to ensure that the Agreement is registered by the Registrar General.
- 8.7 Upon payment of the Development Contribution or surrender of the Development Consent, the Developer may request the removal of the dealing created by registration of the Agreement from the title to the Land. The Council will not withhold its consent to such removal, provided that the terms of this Agreement have been complied with and the Developer pays all costs, expenses and fees of the Council relating to such removal.
- 8.8 Should payment of the Development Contribution or surrender of the Development Consent occur on or before the date of this Agreement and prior to issue of a Construction Certificate, then there will be no obligation to register this Agreement in accordance with this clause.
- 8.9 Upon registration of this Agreement by the Registrar General, this Agreement is binding on, and is enforceable against the owner of the Land from time to time as if each owner for the time being had entered into this Agreement.

# 9 BANK GUARANTEE

# 9.1 Provision of Bank Guarantee

- (a) On the date of this Agreement and before any application for any Construction Certificate the Developer must deliver to the 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 Development Contribution set out in item 5 of the Schedule;
  - (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 Development Contribution to Council in accordance with this Agreement.

# 9.2 Calling on Bank Guarantee

- (a) The Council may call on the Bank Guarantee in the event that the Developer:
  - fails to make a payment of any part of the Monetary Contributions in accordance with this Agreement 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.
- (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.

#### 9.3 Return of Bank Guarantee

Provided that the Developer has complied with its obligations under this Agreement including payment to the Development Contribution the Council will return the Bank Guarantee to the Developer.

# 10 REVIEW OF THE AGREEMENT

10.1 The Parties agree that, subject to section <u>93G-7.5</u> of the Act, this Agreement can be reviewed and amended at any time by mutual agreement.

# 11 DISPUTE RESOLUTION

- 11.1 If any Dispute arises out of or in connection with this Agreement, the following procedure must be followed in order to resolve it:
  - either party may give written notice of the dispute to the other party. A
    representative nominated by each party must meet within five (5) Business Days of
    receipt of that notice and attempt in good faith to resolve the dispute;
  - (b) if the dispute is not resolved between the nominated representatives within ten (10) Business Days of receipt of the notice referred to in clause 11.1(a), then the dispute will be notified to the relevant divisional manager (or officer holding the equivalent position) of each party who must meet and attempt in good faith to resolve the dispute within five (5) Business Days of the date of receipt of that notice; and

- (c) if the dispute remains unresolved within ten (10) Business Days of receipt of the notice referred to in clause 11.1(b), notice will be given to the Chief Executive Officers (or officer holding an equivalent position) of each party who must meet and attempt in good faith to resolve the dispute within five (5) Business Days of the receipt of that notice.
- (d) For the purposes of this clause, a meeting may take place by telephone or other means of communication.
- 11.2 If the parties fail to resolve the dispute after following the procedures set out in clause 11.1, then they must agree on the appropriate method of alternative dispute resolution (which may include expert determination or mediation) within ten (10) Business Days of the date of the final meeting held in accordance with clause 11.1(c).
- 11.3 If the parties select expert determination as the method of resolving the dispute, the expert must act as an expert and not an arbitrator, his determination will be binding upon the parties unless otherwise agreed and his costs must be shared equally between the parties.
- 11.4 If the parties fail to agree on the appropriate method of alternative dispute resolution in accordance with clause 11.2, the dispute must be referred for mediation to a mediator nominated by the then current Chairman of the Australian Commercial Disputes Centre in Sydney (ACDC), or, if ACDC no longer exists, the chairman of a reputable commercial dispute resolution body, as agreed between the council and the Developer, or if same cannot agree, nominated by the Council. The role of the mediator is to assist in the resolution of the dispute and the mediator may not make a decision which is binding on the parties.
- 11.5 The costs associated with appointing the mediator under clause 11.4 must be shared equally between the parties.

#### 12. ENFORCEMENT

- 12.1 Nothing in this Agreement (including Clauses 10 and 11) prevents the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.
- 11.2 Until such time as the Development Contribution has been paid in full, an Occupation Certificate must not be issued and the Developer must:
  - (a) notify the Council in writing of the name and contact details of any Certifying Authority to which it has applied for an Occupation Certificate at the same time that such application is made;
  - (b) at the time it lodges any application for an Occupation Certificate notify the Certifying
     Authority in writing of the existence and terms of this Agreement;
  - (c) procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue an Occupation Certificate until Council provides written confirmation that the Development Contribution has been paid; and
  - (e) not rely on any Occupation Certificate in respect to the Development.
- 11.3 The Developer acknowledges and agrees that Council has a caveatable interest in the Land from the date of the Development Consent and shall be entitled to lodge and maintain a caveat on the title to the Land notifying Council's interest created by this Agreement until the Development Contribution is paid in full.

# 13. NOTICES

- 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:
  - (a) delivered or posted to that Party at its address set out in Item 9 of the Schedule;
  - (b) faxed to that Party at its fax number set out in Item 9 of the Schedule; or
  - (c) emailed to that Party at its email address set out in Item 9 of the Schedule.

- 13.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- Any notice, consent, information, application or request is to be treated as given or made at the following time:
  - (a) if it is delivered when it is left at the relevant address;
  - (b) if it is sent by post, 2 business days after it is posted; and
  - (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to who it is sent, it is to be treated as having been given or made at the beginning of the next business day.

#### 14. APPROVALS AND CONSENT

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

#### 15. ASSIGNMENT AND DEALINGS

Until the Development Contribution is paid in full, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so.

#### 16. ENTIRE AGREEMENT

This Agreement 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.

#### 17. FURTHER ACTS

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.

#### 18. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

#### 19. JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

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.

#### 20. REPRESENTATIONS AND WARRANTIES

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

#### 21. SEVERABILITY

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 party of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement but the rest of this Agreement is not affected.

#### 22. MODIFICATION

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

#### WAIVER

The fact that a Party fails to do, or delays in doing, something the 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 wavier 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 any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### 24. NON FETTER

The Developer acknowledges and agrees that:

- in addition to its obligations under this Agreement the Council is also responsible for the conduct and administration of local government in the Waverley Local Government Area;
- (b) this Agreement in no way affects Council's statutory obligations, functions or powers, including without limitation, its obligations, functions or powers in respect of the Development Application, Development Consent and any other approvals required in respect of the works to be carried out under the Development Consent;
- (c) nothing which the Council does or fails to do under this Agreement will limit or otherwise affect the Developer's obligations under the Development Consent; and
- (d) nothing which the Council does, fails to do or purports to do in performing the Council's statutory functions or powers will constitute or amount to a breach of this Agreement.

#### 25. GOODS & SERVICES TAX REPRESENTATIONS AND WARRANTIES

- 25.1 The Parties unless otherwise indicated, all amounts payable by one party to the other party in relation to a supply under this Agreement have been calculated exclusive of any GST which may be imposed on the supply.
- 25.2 If any supply made under this Agreement is, or becomes, subject to GST, the party to whom the supply is made ("Recipient") must pay to the party making the supply ("Supplier"), as consideration, in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

- 25.3 Any amount in respect of GST payable under clause 24.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.
- 25.4 If any party is required to reimburse or indemnify the other party for a cost or expense ("Cost") incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.
- 25.5 If GST is linked with the abolition or reduction of other taxes and charges, all amounts payable by the Recipient to the Supplier under this Agreement (excluding GST) must be reduced by the same proportion as the actual total costs of the Supplier (excluding GST) are reduced either directly as a result of the abolition or reduction of other taxes and charges payable by the Supplier or indirectly by way of any reduction in prices (excluding GST) charged to the Supplier. Both parties must also comply with Part VB of the *Trade Practices Act* 1974 (Cth).

#### 26. COSTS

The Council's costs of an incidental to the preparation and execution of this Agreement and any related documents and registration of same must be borne by the Developer.

#### 27. EXECUTION IN DUPLICATE

The Parties shall execute this Agreement in duplicate so as to provide one original signed by both parties. This Agreement will be dated on the day of execution by all Parties.

#### SCHEDULE

Item Number	Particulars/Description		
1	Developer	NAME (A.C.N. #)	
2	Land	Street Address (Lot&DP)	
3	Development Application	DA#	
4	Development (description)		
5	Development Contribution		
6	Public Purpose		
7	Development Contribution Date		
	(Payment date for the		
	Development Contribution)		
8	Developer Address		
	Developer Fax		
	Developer Email		
	Council Address	CORNER PAUL STREET AND BONDI ROAD,	
		BONDI JUNCTION NSW 2022	
	Council Fax	(02) 9387 1820	
	Council Email	info@waverley.nsw.gov.au	

EXECUTED by WAVERLEY COUNCIL with Common Seal of Waverley Council affixed pursuant to a resolution of Waverley Council on

ROSS MCLEOD CATHY HENDERSON AR	THUR K	YRON	CLR JOHN WAKEFIELD SALLY BETTS
Acting General Manager		Mayor	
EXECUTED by	)		
NAME			
(A.C.N. #)	)		
in accordance with section 127 of the	)		
Corporations Act 2001	)		
Director / Secretary		Directo	or
Name of Director / Secretary:		Name	of Director:

## APPENDIX 4 Explanatory Note Template

#### **Explanatory Note**

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

[Note: To be completed upon finalisation of Planning Agreement]

#### **Draft Planning Agreement**

Under <u>s93F-s7.4</u> of the *Environmental Planning and Assessment Act* 1979

1 Parties

Waverley Council

## (Developer)

- 2 Description of Subject Land
- 3 Description of Proposed Change to Environmental Planning Instrument/Development Application
- 4 Summary of Objectives, Nature and Effect of the Draft Planning Agreement
- 5 Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Objects of the *Environmental Planning and Assessment Act* 1979

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

- (a) How the Draft planning Agreement Promotes the Elements of the Council's Charter
- (b) Whether the Draft Planning Agreement Conforms with the Council's Capital Works

  Program

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public Other Matters

Signed and Dated by All Parties

### APPENDIX 5 Bondi Beach and Bondi Junction Precinct Area Maps

## APPENDIX 6 Works for Planning Agreements

#### Possible requirements:

The following is a list of possible requirements that the Council may have for planning agreements. They are not exhaustive and developers are encouraged to discuss these or other requirements that may be included in a planning agreement.

	Project Cost
Council Requirement	Estimate
Bondi Junction Public Domain and Transport Infrastructure	
Improvements	\$21,000,000
Bondi Beach Public Domain Improvements	TBD
Contributions to the Waverley Affordable Housing Program	On going

Note: <u>1025</u>% of all planning agreement contributions will form a monetary contribution to Waverley's Affordable Housing Program fund

## APPENDIX 7 Flowchart of Planning Agreement Process for Development Applications

# APPENDIX 8 Waverley Council Statement of Business Ethics (as amended from time to time)

#### Attachment 2 - VPA benchmark rate modelling

The modelling of the VPA benchmark rates initially considered two different approaches. Firstly, calculating the profit from hypothetical developments across the selected suburbs of the Waverley LGA. This would be calculated by subtracting development costs from valuations. The second approach was to simply derive a value sharing rate based on a proportion of development valuations (i.e. sales prices), similar to the approach adopted by the City of Melbourne. Given the significant variance that can exist for development costs and considering that the cost side of the equation is where developers have been gaming the existing VPA policy approach, the second approach was adopted. This approach is simpler, more transparent, can be more readily updated and verified and effectively eliminates the potential for developers to undermine Council's VPA rates.

To determine a suitable ratio between the VPA rate payable and valuations, recently negotiated VPAs were examined (Table 1). The average VPA rate as a percentage of valuation for each development was found to be 19%. For simplicity purposes this was rounded to 20% to determine future VPA payable rates as a proportion of valuations.

Table 1: VPA rates as a proportion of valuation amounts

Address	Valuation	VPA amount (sqm)	VPA amount % of valuation
157 Military Rd	\$11,000	\$1,941	18%
91-93 Glenayr	\$17,151	\$2,747	16%
41 O'Donnell	\$17,982	\$3,654	20%
637-639 OSH Rd	\$13,708	\$3,053	22%
6 Edward St (s96)	\$15,510	\$2,953	19%
110 Bronte Road	\$12,000	\$1,994	17%
304-308 Oxford St	\$17,500	\$3,519	20%
344-354 Oxford St	\$18,500	\$3,644	20%
701-707 OSH Rd	\$15,022	\$2,737	18%
695 OSH Rd	\$15,367	\$3,105	20%
2 Warners Ave	\$18,629	\$3,570	19%
59-69 Oxford Street	\$20,896	\$5,578	27%
109 Oxford Street	\$18,597	\$2,876	15%
362-374 Oxford St	\$18,597	\$3,002	16%

Recent sales data was collected for individual apartment sales in each suburb, focussing on those suburbs where VPAs have been negotiated. The sales analysis reviewed individual sales of relatively new products and refurbishments in each suburb (to ascertain like-for-like products with subject VPA developments) as well as the average sale prices of all 1 and 2 bedroom apartments across each relevant suburb for the past year. A new development 'premium' of 20% was added to the average sale price to derive a higher average which is comparable to the higher sales prices of new product. The analysis focussed on sales from 2017 and collected data from realestate.com.au and RP Data. For some suburbs including Dover Heights, Rose Bay, Vaucluse and North Bondi there was an insufficient volume of modern development sales from which to draw averages.

Table 2: VPA rates calculations

	Selec	ct sales	Total sales		Approximate	VPA amount
	Average w. view	Average no view	Avg. 1BR	Avg. 2BR	average valuation	(20% of valuation)
Bondi Junction	\$20,566	\$18,187	\$20,640	\$19,360	\$19,500	\$3,900
Bondi	\$19,075	\$18,920	\$19,560	\$17,280	\$18,500	\$3,700
Bondi Beach	\$29,821	\$21,767	\$20,880	\$21,640	\$21,500	\$4,300
North Bondi	n.a.	n.a.	\$20,232	\$21,880	\$21,000	\$4,200
Dover Heights	n.a.	n.a.	n.a.	\$14,400	\$15,000	\$3,000
Rose Bay	n.a.	n.a.	\$15,960	\$16,800	\$15,000	\$3,000
Vaucluse	n.a.	n.a.	n.a.	n.a.	\$15,000	\$3,000

Note: 'Approximate average valuation' is the gross sales price. 'VPA amount' equals 20% of the 'Approximate average valuation'. 'Average w. views' was excluded from 'Approximate average' as few VPAs being negotiated contain views.

An approximate average valuation rate was taken by rounding the averages of the total sales and select sales without views. The approximate average rates were multiplied by the 20% figure to determine VPA payable rates. The summary rates are outlined in the below table.

Table 3: Summary residential VPA rates

VPA payable benchmarks			
Bondi Junction	\$3,900		
Bondi	\$3,700		
Bondi Beach	\$4,300		
North Bondi	\$4,200		
Dover Heights, Rose Bay & Vaucluse	\$3,000		

n.b. these rates will be updated on an annual basis based on sales prices.

A similar exercise was completed to office and retail valuations to determine VPA payable rates for this floor space. These figures are provided in Table 4 below.

Table 4: Summary commercial office and retail VPA rates for mixed use development

Average VPA rate	
Bondi Junction retail core <sup>1</sup>	\$3,000
Bondi Junction retail fringe <sup>2</sup>	\$2,500
Bondi Junction office	\$2,500
Bondi Road, Bondi	\$3,500
Campbell Pde, Bondi <sup>3</sup>	\$4,500
Hall Street, Bondi <sup>4</sup>	\$3,900
Fringe	\$3,500

<sup>1.</sup> Oxford Street between Newland and Adelaide St; Spring Street east of Newland St, Bronte Rd north of Ebley St; Waverley Mall.

<sup>2.</sup> Bronte Rd south of Ebley St; Oxford St west of Denison; Ebley St and elsewhere.

<sup>3.</sup> Between Beach Rd and Lamrock Ave.

<sup>4.</sup> Between O'Brien and Campbelll Parade.

Attachment 3 - Summary and consideration of submissions

No.	Submission comment	Council officer response
1	I think the move to a fixed rate is a good one as it gives the applicant some certainty, reduces the time required to examine VPA calculations, which will speed up timing and approval of DAs, as well as eliminates arguments over revenues/costs.	Noted.
2	Regular review of rates The proposed benchmark rates listed in the Policy need to be reviewed regularly (say yearly) by a registered property/development site valuer (such as Colliers or Knight Frank) who is familiar with the area, and the benchmark rates should be adjusted accordingly for market conditions such as inflation, land values, construction costs, profit/risk expectations, etc, which are all factored into present value calculations by the valuer from time to time.	The rates are anticipated to be reviewed annually in line with changes to house prices.
3	Calculation of contribution It is unclear what date the benchmark rate is to be applied to a proposed VPA? Is it as at the date of lodgement? Or as at the date of approval? Some development applications can take up to 18-24 months. Planning proposals can take up to 5 years. This will need to be clarified.  If the benchmark rates are being reviewed annually then the market/benchmark rates may change considerably due to market conditions or in response to government regulatory provisions such as interest rates/banking regulation/gst/taxes, etc between date of lodgement and date of consent. I suggest date of lodgement of DA is the fairest date.	For development applications, the benchmark rate will be applied at the time of lodgement; similar to how the DCP and LEP of the time should be used to assess a DA. For Planning Proposals this will occur prior to Gateway Determination.  The Policy has been updated accordingly to notate this timing.
4	Calculation method It is also noted that the revised VPA Policy, in certain circumstances, still considers the transacted purchase price of a property as the "cost of the property" (which includes improvements upon it that are to be demolished) and this is used as the basis for calculating certain costs and marginal profits. For example, this is so in the case of non-residential development calculations.  This assumption does not adequately provide for the reality that some developers/land owners have owned land for 10/20 years or more and have a low cost base. Also does not provide for 10/20 years of holding costs. These developers are unnecessarily penalised by this method which have the impact of overstating marginal profits.  Also, the same type of argument applies to those developers who do not require finance and hence do not have any interest/finance costs and hence are penalised as Council then share in the 50% of a higher profit figure.  In both cases above the Council benefits from the applicant's lower costs by virtue of their long term holdings or no requirement of bank funding, by sharing in greater profits, which are unique to that particular owner/developer.	The issue of profit being affected by long-term ownership of the site is noted. Long-term owners do have lower or no holding costs for sites and hence due to these lower costs, their profit will be larger. At the same time, long-term owners have also benefited from significant windfall gains in property prices in recent years.  Notwithstanding, the introduction of benchmark rates will resolve any perceived unfairness associated with this issue.

A fixed benchmark rate somewhat resolves this unfairness and creates a "level' playing field for everyone.		
If the VPA Policy continues to assess VPAs based on calculation of "marginal profits" and not adopt benchmark rates then the unimproved land value of the property as per the valuer-general valuation for stamp duty/land tax purposes should be used as it more accurately represents the <u>unimproved</u> value of the land.		
5. GST – the payment of a VPA contribution to Council is not an acquisition of residential land or a going concern,		
and hence is GST free. This means the developer cannot use the margin scheme calculation to apply to sales, and thus must pay the full 10% GST on these sales.	This issue has been noted and Planning	
Normally, if the developer buys (for example) residential houses for say \$2M, and sales of the end product equal \$10M, then GST is only charged (under the margin scheme) on the margin of \$8M. Whereas, if we pay a VPA of \$2M, and sales represent \$10M, then GST is charged on the full \$10M. This is a genuine cost to the developer not provided for under the VPA contribution.	Agreements are a form of development contribution, rather than the sale of property or a going concern. Advice was sought from Financial Waverley and we believe that VPAs cannot be considered within the margin ambit	
Maybe the VPA document can be worded differently so that it falls within the margin scheme ambit. This will need legal/tax advice. Otherwise a discount on the proposed benchmark rate to the developer is justified where the developer would otherwise be able to claim the margin scheme.	scheme of the GST system.	
The requirement for the provision of Bank Guarantee (or other bank security), or cash payment of the full VPA		
developer. Waverley Council is sufficiently secured by way of a caveat or other interest registered on the title of the land (consented to by the land owner) and Council can enforce the agreement by not releasing the title (such as needed for strata registration and final Occupation Certificate registration, etc) until the VPA amount is paid at the end of the project. This is ample security.	The provision of a Bank Guarantee as a security mechanism is consistent with Clause 7.4 of the Environmental Planning and Assessment Act 1979.	
Use of CPI  It further goes on (in Part 5 of the document) to speak about how there may be a significant time gap between the	The argument is that VPA contributions should remain unindexed based on the fact that they	
gazettal (in the case of a planning proposal) or granting of DA and the receipt of payment. Implying that a mechanism such as CPI increases in the agreed VPA contribution amounts should be further be considered. This	represent point in time valuations and costs, which can vary – both upwards and downwards	
would open it up to also consider CPI increases in construction costs, interest rates/finance costs, etc., over the same period, which would contribute to reduction in land value and hence reduction in VPA amounts, not increase	- over time. However, CPI would only affect the VPA contribution amount in nominal, rather than real terms. In other words, CPI accounts for	
	If the VPA Policy continues to assess VPAs based on calculation of "marginal profits" and not adopt benchmark rates then the unimproved land value of the property as per the valuer-general valuation for stamp duty/land tax purposes should be used as it more accurately represents the <u>unimproved</u> value of the land.  5. GST – the payment of a VPA contribution to Council is not an acquisition of residential land or a going concern, and hence is GST free. This means the developer cannot use the margin scheme calculation to apply to sales, and thus must pay the full 10% GST on these sales.  Normally, if the developer buys (for example) residential houses for say \$2M, and sales of the end product equal \$10M, then GST is only charged (under the margin scheme) on the margin of \$8M. Whereas, if we pay a VPA of \$2M, and sales represent \$10M, then GST is charged on the full \$10M. This is a genuine cost to the developer not provided for under the VPA contribution.  Maybe the VPA document can be worded differently so that it falls within the margin scheme ambit. This will need legal/tax advice. Otherwise a discount on the proposed benchmark rate to the developer is justified where the developer would otherwise be able to claim the margin scheme.  The requirement for the provision of Bank Guarantee (or other bank security), or cash payment of the full VPA amount up front, prior to Construction Certificate (CC) is a costly and unnecessary burden on the cashflow of the developer. Waverley Council is sufficiently secured by way of a caveat or other interest registered on the title of the land (consented to by the land owner) and Council can enforce the agreement by not releasing the title (such as needed for strata registration and final Occupation Certificate registration, etc) until the VPA amount is paid at the end of the project. This is ample security.  Use of CPI  It further goes on (in Part 5 of the document) to speak about how there may be a significant time gap between the gazettal (in the case of a planning proposal)	

8

#### diminish over time in real terms. Benchmark rates and definition of development These arguments are valid and some of the

What is the definition of "largely residential"? It may be worthwhile defining the percentage so there is no arguments later, for example say if over 80% of the development is residential, then residential rates apply. Or use the LEP zonings instead to describe the type of development, for example these benchmark rates could apply to R2,R3, R4 zones, etc. Then B3, B4 could be classed as mixed, etc.

Also, I think there should be a fixed rate for the "non-residential" portion of the development (or for wholly nonresidential developments) as well (see below point 10), otherwise its back to the old marginal profits (revenues/costs) debates and engaging valuations and QS reports - another unnecessary cost.

I think there should also be separate benchmark rates for the commercial and retail portions of any development, like for residential. These are relatively easy to establish by a professional/experienced valuer. I think it would be even easier to come up with a benchmark rate then for residential. For example as a rule of thumb in Bondi Junction is Commercial sales rates are approx. 1/2 residential rates, and retail rates approx. 3/4 residential. It would be a shame that the move to simplifying the Policy still leaves a level of uncertainty in this respect if commercial and retail portions of the development are still left to be calculated under the old regime as 50% of "marginal profits".

Also, if Council wish to promote retail/commercial development in certain areas these rates can be used as a tool to do this, and further discount these rates.

issues raised for this point have been considered to create benchmark rates for retail and commercial uses as part of mixed use developments. This logic is consistent with the introduction of the proposed benchmark rates; namely to create certainty, increase transparency, reduce the time and cost to Council and eliminate gaming of the policy.

the time value of money and only ensures that the value of the VPA contribution does not

These rates are explored in the Council report and have been added to the amended policy.

Regarding the last comment about discounting the rates for retail/commercial – in the first instance, if retail/commercial is required as a development in a B4 zone, then this floorspace is required and there shouldn't be any exemptions or discounts as developers have to provide this floorspace regardless. Alternatively, commercial floorspace could be provided as a dedication to Council as the public benefit offer; in line with the valuation of the floorspace in accordance with Council's benchmarks. Indeed, this may be a preferred outcome in Bondi Junction where local services and employment opportunities and the commercial sense of address are being diminished with the loss of existing commercial floorspace (see Bondi Junction Commercial Centre Review). Nonetheless, a discount would

PD/5.3/18.07- Attachment 3 Page 86

		not be offered to retail/commercial floorspace.
		In a similar vein, if an applicant is proposing a commercial only building (i.e. no residential floorspace) then to stimulate this form of development it may be appropriate for the Planning Agreement Policy 2014 to not apply to this floorspace.
9	What happens in the event that there is no extra FSR, just extra height? I don't think I saw discussion about this in the VPA Policy Update document.	The VPA policy only applies for floor space exemptions. Height exceedances aren't considered in the Planning Agreement Policy.
10	For the purpose of simplicity I think the same benchmark rates for each relevant suburb and the same VPA Policy can also be applied for Planning Proposals (PP), with some discount to recognise that PPs are a more costly/more time consuming process. At the very least the residential benchmark rates that should be applied should be those rates at the commencement of the PP process (not at the end), especially as some PPs can take up to 3-5 years. This would eliminate the need for extensive negotiations, delays and uncertainty.	To date Council has yet to successfully apply a VPA to Planning Proposals. It is difficult to ascertain why this has been the case – it may be that there is less acceptance of VPAs at the Planning Proposal stage or the quantum of floorspace uplift associated with a Planning Proposal is so significant that the current contribution rate would affect development feasibility (albeit this would only occur if developers has 'overpaid' for a site).  Given the current lack of success of applying a VPA to a Planning Proposal, a discounted benchmark rate may be a preferred approach compared to the current situation. The idea to discount the benchmark rates applying to PPs has some merit and should be investigated further. However, further analysis needs to be completed before establishing a different VPA rate for PPs. Therefore the <i>Planning Agreement Policy 2014</i> Amendment 2 will continue with the current case-by-case approach for PPs and in a future amendment we will seek to apply benchmark rates to PPs.
11	Does the policy only apply to medium-high density developments? Or also to single dwellings and sub-divisions?	The policy does not apply to single dwellings or

		as these do not have the impact on local infrastructure that apartment developments do.  The policy has been updated to make this clear.	
		The policy has been apaated to make this clear.	
12	Construction costs/rates differ vastly across differing ground conditions (sand/rock, soft/hard, de-watering, etc), small/large sites also result in (dis)economies of scale, high-rise vs low-rise construction rates differ and hence any construction costs should not be a VPA consideration in any policy document calculation.	Noted, the new rates address this issue.	
13	From a current market perspective it is noted that we have found that sales rates have come back substantially in the last 6 months and finance costs have increased substantially in that period, yet there is no mechanism for adjustment in VPAs that have already been agreed/decided at the higher amounts. Without having the benefit of knowing how each benchmark rate has been calculated I am unable to comment on the appropriateness of the actual rates proposed. If they are simply an average of the VPAs agreed over the past 12-24 months then my comment is that the market is approx.	The rates were based on 2017 sales records for these suburbs. These will be updated annually.	
14	Planning Agreements have become a standard part of planning and delivering infrastructure with housing and other projects and a clear process for their negotiation and finalisation is supported.	Noted.	
15	Exhibition of draft Planning Agreements Section 4.3 suggests exhibiting draft Planning Agreements before Gateway and before any revisions are made in Step 4. This would be inefficient, and potentially confusing, as the draft Planning Agreement at that early stage is unlikely to match the final Planning Proposal exhibited in Step 5.  Accordingly, it is recommended that the final Policy require the public exhibition of draft Planning Agreements	Noted. However it is important that Council ensures that any public benefits are locked in at an early stage. If any changes are made to a PP that requires updates to the VPA, then the VPA can be re-exhibited.	
	after Gateway determination at Step 5, and only in conjunction with the Planning Proposal.		
	Executing a Planning Agreement It is potentially inefficient for the parties to execute a Planning Agreement prior to Council forwarding a Planning Proposal for Gateway determination as suggested in Section 5.2.		
16	Council and the proponent must resolve the draft Planning Agreement fundamental components prior to Gateway as it is a key element of the Planning Proposal.	Noted. As above, it is important that Council ensures that any public benefits are locked in at an early stage. However, this section does allow	
10	However, a lot of time and money is required to finalise and execute Planning Agreements. This would be wasted if the executed Planning Agreement has to be revised, re-finalised and re-executed during Step 6. While this may please both parties' legal representatives, it is an inefficient approach.	for flexibility for when a VPA can be entered into.	
	Accordingly, it is recommended that the final Policy stipulate that the proponent must execute the Planning Agreement prior to Council resolving to also execute and forward the amended LEP amendment for gazettal.		
17	Registration on title It is potentially inefficient and unnecessary to register a Planning Agreement on title before gazettal as required by Section 5.3.2. If the gazetted LEP amendment is not as expected the registration must be removed, and the	Noted. As above, it is important that Council ensures that any public benefits are locked in at an early stage and that security mechanisms are	

	Planning Agreement revised and re-executed.	in place before the LEP amendment is gazetted.
	It is recommended that the final Policy require registration on title within 20 business days of the amended LEP provisions being gazetted, and prior to obtaining a Development Approval, subject to the LEP provisions being consistent with the Planning Agreement obligations.	
	It is recommended the final Policy include provisions for the removal of Planning Agreement registration from the title, as described in the Department's 2017 draft Practice Note: Planning Agreements	
	Timing of contributions It is noted that the proposed benchmark rates assumes payment/or a commitment to pay at Construction Certificate stage, which effectively represents 50% of "developers marginal profit". This up front payment/commitment is actually a PRE-payment of profits which is presumed to be earned by the developer (if all goes well) at some time in the future (18-24 months away) and this arrangement is risk free to Council. The timing of the payment is unfair and unreasonable.	
	Given that it does not take into account a variety of development risks such as potential increase in costs, reduction in sales rates, etc and general economic uncertainties over the course/life of the development then it is normal that there be a discounted rate (or reward) for a commitment/certainty of payment up front. Otherwise if Council want the full extent of the 50% marginal profit then it is only fair they should also take on all the risks of that development up until completion/settlement, when profit realisation occurs (whenever this may be), or take units in the finished development in lieu of cash.	The policy states that a contribution must be paid prior to Occupation Certificate.
18	Alternatively, payment of the VPA contribution at Occupation Certificate stage is much more appropriate timing and more financeable with a lender.	In reference to 5.3.2(a), the policy takes sufficient caution to ensure the public benefit
	Section 5.3.2 requires the provision of guarantees in respect of the proponent's obligations simultaneously with gazettal.	outcome is secured. However, Section 5.3.2 describes how the process would "generally" take place and allows for flexibility where
	Prior to Development Approval, banks and financial institutions will not provide a full debt facility, which prevents payment of cash contributions. The provision of security for Planning Agreement obligations at gazettal is therefore premature.	circumstances may not suit the process outlined in the policy.
	Therefore, it is recommended that the final Section 5.3.2 require satisfaction of obligations according to the following timetable:	
	1. Provision of a guarantee to secure monetary contributions, WIK and land dedications prior to issuing a Construction Certificate.	
	2. Completion of the following prior to issuing an Occupation Certificate and/or Subdivision Certificate:	

	☐ Dedication of land, easement or allotments.	
	☐ Dedication & Affordable Rental Housing.	
	☐ Payment of monetary contributions.	
	Calculating Contributions	In accordance with Clause 7.4 of the
	Planning Agreement obligations will potentially be unreasonable, as the requirement for obligations to be	Environmental Planning and Assessment Act
	equivalent to 50% of the 'value uplift' does not:	1979 all planning agreement contributions will
	☐ Address infrastructure requirements that are clearly linked to the project, its site or its locality.	be used for a public purpose including (without
	☐ Fairly apportion costs accordig to the unique circumstances of each project, site and locality, given the	limitation), for example, funding public
	suggested 50% is to be universally applied, and the \$rate/m2 applies to a suburb.	amenities or public services, affordable housing,
	☐ Facilitate an evidence based, clear and transparent approach, as it is an aim of Section 5.13 onegate the need to	transport or other infrastructure relating to land
	consider the unique circumstances of each project, site and locality.	and the conservation or enhancement of the
		natural environment.
	Meet a clearly understood planning purpose, as there is no plan, scope of works, budget or time frame to explain	
	how any monetary component will be spent, and obligations will not be limited to usual planning purposes such as	The public purpose can be those items identified
	mitigating project impacts, or providing local infrastructure.	in the policy such as Complete Streets or the
		Campbell Parade upgrade, those identified in the
		s94A policy or they may be focussed on a local
		park upgrade outside of these policies in
		accordance with the nexus principle.
19		
		The draft Practice Note does state that Planning
	Contrary to the Department's draft Practice Note, the requirements of Section 5.13 can be considered a form of	Agreements should not be based on windfall
	taxation, as the aims include sharing the project profit with the community and addressing a 'fundamental equity	gain. Council and many other organisations, such
	issue'. These matters are not provided for in the EP & A Act.	as the Planning Institute of Australia, did not
	Control of the Contro	support this element of the draft Practice Note.
	Contrary to the draft Practice Note, the requirements of Section 5.13 are 'explicitly imposed to capture windfall	Furthermore, consistent with the draft
	gain in connection with the making of planning decisions under the EP&A Act, in particular in relation to changes to	Ministerial Direction, Council's only 'must have
	planning instruments'.	regard to' the Practice Note. This suggests that
	It is recommended that draft Section 5.13 be replaced in the final Policy. The obligations contained in Planning	Councils may have regard to the Practice Note but still may choose a different approach.
	Agreements should be based on ensuring reasonable material public benefits, that are related to the project, site	but still may choose a unierent approach.
	and locality, that are proportionate to the scale of the project and the demand for the public benefits it generates,	
	and are associated with a recognizable, planning purpose.	
	and and accordance with a recognization planning purposes	
	Material public benefits would include Affordable Rental Housing, public domain works, parking, landscaping, land	
	dedications, open space, physical infrastructure and utilities, potentially community services, and items included in	
	Council's Section 94A Contribution plan.	

#### Probity

Draft Section 3.3 prohibits all face-to-face meetings, and requires the conduct of negotiations by letter.

20 It is recommended that face-to-face meetings be permitted in the final Policy, subject to maintenance of an auditable paper trail through written and agreed agendas and minutes, which have the documents referenced in the meeting attached.

The intention of this amendment was to limit meetings which do little to further the negotiation of VPAs and create an unnecessary cost to Council.

The wording of this section will be amended to allow for meetings only where necessary.

Attachment 4 - VPA details in response to March Council Notice of Motion

DA	Address	Details of proposal	Additional FSR sought	DA Approval Date	Height exceedance (m)
DA-547/2014	87-89 Glenayr Avenue, Bondi Beach	Demolition of existing buildings and		Approved through	
		proposed 3-4 storey mixed use	59%	s34 agreement - 1	3.3
		building		February 2016	
		Demolition of existing buildings and		29 June 2016 -	
		proposed residential flat building of 5	13%	deferred	Compliant
DA-164/2015	41 O'Donnell Street, North Bondi	units with basement car parking.		commencement	
		Modification of approved residential			
		flat building, including extension of			
		north-western corner of first floor level	4%	27 September	Compliant
		of the building to convert Unit G.03	476	2017	Compilant
		into a 2 bedroom apartment; increase			
DA-164/2015/B	41 O'Donnell Street, North Bondi (s96)	of roof parapet			
DA-419/2015	110 -116 Bronte Road, Bondi Junction	Demolition of existing building and		Approved through	
		construction of shop top housing	3%	s34 agreement -	5.4
				31 August 2016	
DA-89/2016	362 - 374 Oxford Street, Bondi	Demolition of existing building and			
	Junction	construction of mixed used building inc	15%	24 August 2017	14.1
		resi, serviced apartments & ground	15%	24 August 2017	14.1
		floor retail			
DA-206/2015	67A Roscoe Street, Bondi Beach	Construction of a 4 storey residential		Approved through	
		flat building with 10 units, basement	66%	s34 agreement -	0.4
		car park and strata subdivision	00%	15th December	0.4
				2016.	
DA 585/2015/B	59-69 Oxford Street, Bondi Junction	Partial demolition of existing		26th July 2017	
		structures and construction of a new			
		fourteen storey mixed use			
		development with basement car park,	19%		1.9
		pub at ground floor, commercial space			
		and residential units at first floor and			
		residential units on all levels above			
DA-482/2016	701-707 Old South Head Rd, Vaucluse	Demolition of the four dwellings and		26th July 2017	
		construction of a new three level			
		residential flat building with 17 units,	13%		Compliant
		associated basement parking,			
		landscape works and strata subdivision			
DA-586/2015	2 Warners Avenue, North Bondi	Demolition of the existing dwelling &	28%	28th March 2017	0.8

DA	Address	Details of proposal	Additional FSR sought	DA Approval Date	Height exceedance (m)
		structures. Construction of 3 storey			
		residential building comprising 5 x 2			
		bedroom units. Aluminium cladding			
		charcoal, timber cladding, board			
		marked concrete walls, blade render,			
		masonry brick. Basement carparking			
		for 5 vehicles. Associated landscaping.			
DA-82/2016	629-631 Old South Head Road, Rose	Demolition of existing buildings ,		26th April 2017	
	Bay	amalagamation of 2 torrens title lots,		·	
		construction of a 4 storey residential	4404		2.4
		flat building comprising 12 units and	11%		2.1
		basement carparking and strata			
		subdivision			
DA-531/2015/A	67-69 Penkivil Street, Bondi	Modifiation to approved RFB including			
		internal reconfiguration, additional bay			
		windows, enlarged basement and	15%	6 March 2018	1
		attice level with offer to enter a			
		Planning Agreement.			
DA-68/2017	16 Llandaff Street, Bondi Junction	TBA	16%	Awaiting	Compliant
D. 101/2017	and the second	D by C to by by by		determination	,
DA-101/2017	20 Llandaff Street, Bondi Junction	Demolition of existing buildings and			
		construction of new RFB with 32 units,	15%	28 March 2018	3.9
		basement parking and offer to enter			
		into a planning agreement.			
DA-578/2015/A	17 Isabel Avenue, Vaucluse	Demolition of existing building,		02-Jun-17	
		construction of a three storey			
		residential flat building with basement	9%		Compliant
		parking and strata sub-division as modified			
	252 C	Demolition of buildings and	TBD		
	252 Campbell Pde	construction of a 4-5 storey mixed use	IBD		
		building with basement parking and		28 March 2018	2.1
DA-560/2016		roof terraces			
DA-360/2016 DA-193/2017	60 Lamrock Avenue Bondi Beach	Alterations and additions to a dual	14%	18-Apr-18	
DM-193/201/	oo Lamrock Avenue bondi beach	occupancy to create a residential flat	14%	18-Apr-18	
					0.5
		building containing four units, front			0.5
		hardstand parking, swimming pool and strata subdivision			
		Strata Subdivision			]

DA	Address	Details of proposal	Additional FSR sought	DA Approval Date	Height exceedance (m)
DA-12/2018	80-82 Halli Street	Demolition of existing building and construction of four storey shop top housing containing two levels of basement parking, ground level retail and 10 apartments above.	15%	Awaiting determination	Not yet determined
DA-334/2016/A	82-84 Curlewis Street	Modification to boarding house including additional boarding room, alterations to building footprint and building height.	10%	Awaiting determination	0.2
DA-541/201/A	9 Penkivil Street Bondi	Modification to add an additional unit and alterations to car stacker/parking of approved residential flat building.	15%	Awaiting determination	Compliant
Completed Planning Agreements					
DA-503/2014/A	304-308 Oxford Street, Bondi Junction	Modification to approved mixed use building including two additional stories.	15%	16 December 2016.	10.7
DA-101/2014/B	344-354 Oxford Street, Bondi Junction	Modification to approved mixed use building including one additional storey.	5%	30th June 2017	2.5
DA-316/2015	157-159 Military Road, Dover Heights	Demolition of existing building and construction of mixed use building with basement car parking.	15%	24 March 2016 - deferred commencement	0.8
DA-569/2015/A	109 Oxford Street, Bondi Junction	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	15%	28 August 2017	11.5
DA-520/2014/A	6 Edward Street, Bondi Junction	Modification to internal layout & other alts	11.59% (in addition to approved 15%)	4th July 2016	Compliant
DA-156/2016	695 Old South Head Road, Vaucluse	Demolition of current improvements and development of a three storey,	15%	3rd January 2017	Compliant

DA	Address	Details of proposal	Additional FSR sought	DA Approval Date	Height exceedance (m)
		five apartment development with			
		basement parking.			
DA-184/2013/C	33-37 Waverley Street, Bondi Junction	Conversion of two Lv. 8 apartments	20/	16 December	0.4
		into one apartment.	2%	2016.	0.4
DA-571/2015	89 Bondi Road, Bondi	Alts & adds to existing commercial		6 June 2016 -	
		premises & construction of rear	15%	deferred	Compliant
		addition for use as a boarding house		commencement	
				27 April 2016 -	
		Demolition of existing building and	32%	deferred	1.4
DA-169/2015	91-93 Glenayr Avenue, Bondi Beach	venue, Bondi Beach construction of shop top housing commencement			
DA-575/2015	637-639 Old South Head Road, Rose	Demolition of existing buildings,		20 April 2016 -	
	Bay	construction of a residential flat	10%	deferred	Compliant
		building with basement parking.		commencement	
DA-598/2008/E	310-330 Oxford Street, Bondi Junction	Part demolition of existing buildings,	~2% -	21 June 2012	
		construction of 12-13 storey mised use	Equivalent of		Two stories above
		building with basement car parking.	2 storeys		
DA-294/2011/B	227-229 Old South Head Road, Bondi	Modification to apartment		25 September	
		configuration and parking of approved	8.20%	2014	3.5
		residential flat building and inclusion	0.20%		5.5
		of a Planning Agreement.			
DA-81/2013	241-247 Oxford Street, Bondi Junction	Demolition of existing building,		4 December 2013	
		construction of a 20 storey mixed use	15%		8.7
		building with basement car park.			
DA-184/2013	33-37 Waverley Street, Bondi Junction	Demolition of existing buildings,		12 February 2014	
		construction of 9 storey residential flat	9.10%		Compliant
		building with basement car parking.			
		Demolition of existing building and			
		construction of residential flat building	15%		Compliant
		with 4 apartments and basement car	15%		Compilant
DA-520/2014	6 Edward Street, Bondi Junction	parking		28 October 2015	
DA-490/2015	570 Oxford Street, Bondi Junction	Conversion of approved mezzanine	1.8% (in	2 March 2016	
		into commercial floor space.	addition to		Existing approved height unchanged
			approved		Existing approved neight unchanged
			15%)		
DA-363/2011/B	50 Waverley Street, Bondi Junction	Additional 2 storeys and basement car		29 May 2015	
		parking level to approved 9 storey	~15%		3.7
		residential flat building.			
Others					

DA	Address	Details of proposal	Additional FSR sought	DA Approval Date	Height exceedance (m)
DA-263/2014	570-588 Oxford Street, Bondi Junction	Amending development application	12%		
		proposing two additional levels			
		(totalling 21 storeys) to the approved		Refused	12.9
		19 storey building (DA-501/2012/A)			
		and a Planning Agreement.			
DA-417/2014	10-14 Hall Street, Bondi Beach	6 storey mixed use building with 2	~15%	Refused	11.4
		levels of basement car parking.		Refused	11.4
			11% from		
			previously	Refused	12
		Amending DA for two additional levels	approved	Refuseu	12
DA-628/2014	253 Oxford Street, Bondi Junction	for approved mixed use building.	15% 4.4b		
DA-26/2017	48-50 Penkivil Street, Bondi	Additional two levels to approved	15%	Refused	Compliant
		Residential Flat Building (DA753/2003)		Refused	Compliant
	701-707 Old South Head Rd, Vaucluse	Section 96 Modification including 3			
		additional units, extending, approved	22%	Refused	Compliant
		units and addition of 6 car parking	2270	Kerusea	Compilant
DA-482/2016/A		spaces			

#### Attachment 5 - VPA income and expenditure

VPA funds expended

Project Number	2017/18 Revised Budget	2017/18 Actuals	2016/17 Revised Budget	2016/17 Actuals	2015/16 Total Budget	2015/16 Actuals
Grand Total	(3,663,061)	(1,123,777)	(1,338,220)	(340,599)	(1,967,326)	(1,539,974)
7253 - Transfer from PA Reserve						
C0021 - Bondi Junction Cycleway / Streetscape	(2,594,194)	(498, 181)	0	0	0	(117,807)
C0022 - Oxford Mall - signage/ pavement stencils advising slow bicyc	0	0	0	0	(4,000)	0
C0023 - Oxford St (Newland St - Denison St) - street design as per C	0	0	(240,838)	(240,838)	(792,358)	(526,152)
C0024 - East Bondi Junction Streetscape	0	0	(250,000)	(24,782)	(124,626)	(23,483)
C0025 - Birrell St bike path	0	0	0	0	(15,203)	0
C0026 - Waverley St - street design as per Complete Streets	0	0	0	0	0	0
C0027 - BJ PAMP - Pram Ramps	(22,278)	(12,985)	(38,589)	(16,311)	(206,512)	(161,823)
C0028 - Complete Streets - Pop Ups	(41,714)	(37,639)	(59,476)	(17,762)	(100,000)	(40,524)
C0046 - Bronte Road, BJ Streetscpe Upgrade	(79,875)	0	(79,875)	0	0	0
C0120 - Blake Street Neighborhood Centre	(250,000)	(195,000)	(195,000)	0	0	0
C0147 - Public Art installation - Roscoe Street	(15,000)	(15,000)	0	0	0	0
C0210 - Thomas Hogan Park-Landscaping	0	0	(40,333)	(40,333)	(80,000)	(39,667)
C0238 - Brisbane Street Plaza	0	0	(14, 109)	(573)	(574,796)	(560,687)
C0239 - Complete Street - Street Lighting	0	0	0	0	(14,831)	(14,831)
C0262 - New St Park upgrade	0	0	0	0	(55,000)	(55,000)
C0290 - Oxford St (Syd Einfeld Drv - Hollywood Ave) - road reserve w	0	0	0	0	0	0
C0291 - Denison St (Spring St - Ebley St) - street design as per Com	0	0	0	0	0	0
C0292 - Newland St (Ebley St - Oxford St) - street design as per Com	0	0	0	0	0	0
C0293 - Grafton St -street design as per Complete Streets	0	0	0	0	0	0
C0294 - Bronte Rd (Ebley St - Birrell St) Stage 1 - street design as	0	0	0	0	0	0

Project Number	2017/18 Revised Budget	2017/18 Actuals	2016/17 Revised Budget	2016/17 Actuals	2015/16 Total Budget	2015/16 Actuals
C0355 - Seven Ways Public Domain Upgrade	(160,000)	(63,134)	0	0	0	0
C0368 - Waverley Mall Public Artwork	(5,000)	0	0	0	0	0
C0417 - Roscoe Street Streetscape Upgrade	(343,059)	(300,649)	(420,000)	0	0	0
C0425 - North Bondi Landscaping and Shower hub project	(1,941)	0	0	0	0	0
C0442 - Oxford Street Tree Planting	(150,000)	(1,190)	0	0	0	0
Total 7253 - Transfer from PA Reserve	(3,663,061)	(1,123,777)	(1,338,220)	(340,599)	(1,967,326)	(1,539,974)

#### VPA Income received

Natural Account	2017/18 YTD Actuals	2016/17 Total Actuals	2015/16 Total Actuals	2014/15 Total YTD Actual
Strategic Planning	(6,001,590)	(4,289,027)	(598,111)	(517,069)
1267. Voluntary Planning Agreement Contributions	(6,001,590)	(4,289,027)	(598,111)	-517,069