



W A V E R L E Y  
C O U N C I L

## STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING

A meeting of the STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE will be held at the  
Boot Factory, Spring Street, Bondi Junction at:

**7.30 PM, TUESDAY 12 NOVEMBER 2024**

A handwritten signature in black ink, appearing to read 'Emily Scott'.

Emily Scott  
**General Manager**

Waverley Council  
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Bondi Junction NSW 1355  
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## 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.
  - (l) 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*.



## **Statement of Ethical Obligations**

Councillors are reminded of their oath or affirmation of office made under section 233A of the Act and their obligations under Council's code of conduct to disclose and appropriately manage conflicts of interest.

## **Live Streaming of Meeting**

This meeting is streamed live via the internet and an audio-visual recording of the meeting will be publicly available on Council's website.

By attending this meeting, you consent to your image and/or voice being live streamed and publicly available.

## 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**

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**6. Urgent Business**

**7. Meeting Closure**

## CONFIRMATION OF MINUTES PD/4.1/24.11



**Subject:** Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 7 May 2024

**TRIM No:** A23/0763

**Manager:** Richard Coelho, Executive Manager, Governance

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### RECOMMENDATION:

That the minutes of the Strategic Planning and Development Committee meeting held on 7 May 2024 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 committee meetings must be confirmed at a subsequent meeting of the committee, in accordance with clause 20.23 of the Code of Meeting Practice.

### Attachments

1. Strategic Planning and Development Committee Meeting Minutes - 7 May 2024 .



**MINUTES OF THE STRATEGIC PLANNING AND DEVELOPMENT COMMITTEE MEETING  
HELD AT WAVERLEY COUNCIL CHAMBERS, CNR PAUL STREET AND BONDI ROAD, BONDI JUNCTION ON  
TUESDAY, 7 MAY 2024**

**Present:**

Councillor Steven Lewis (Chair)	Hunter Ward
Councillor Paula Masselos (Mayor)	Lawson Ward
Councillor Sally Betts	Hunter Ward
Councillor Ludovico Fabiano	Waverley Ward
Councillor Leon Goltsman	Bondi Ward
Councillor Elaine Keenan	Lawson Ward
Councillor Tim Murray	Waverley Ward
Councillor Will Nemesh	Hunter Ward
Councillor Dominic Wy Kanak	Bondi Ward

**Staff in attendance:**

Emily Scott	General Manager
Sharon Cassidy	Director, Assets and Operations
Tara Czinner	Director, Corporate Services
Fletcher Rayner	Director, Planning, Sustainability and Compliance
Ben Thompson	Director, Community, Culture and Customer Experience

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

*Crs Fabiano, Goltsman, Keenan and Wy Kanak attended the meeting by audio-visual link.*

**PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE**

The General Manager 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**

Apologies were received from Cr Angela Burrill, Cr Michelle Gray and Cr Tony Kay.

**2. Declarations of Pecuniary and Non-Pecuniary Interests**

The Chair called for declarations of interest and none were received.

**3. Addresses by Members of the Public**

There were no addresses by members of the public.

**4. Confirmation of Minutes**

**PD/4.1/24.05                      Confirmation of Minutes - Strategic Planning and Development Committee Meeting - 5 March 2024 (A23/0763)**

**MOTION / DECISION**

Mover:        Cr Lewis  
Seconder:    Cr Murray

That the minutes of the Strategic Planning and Development Committee meeting held on 5 March 2024 be received and noted, and that such minutes be confirmed as a true record of the proceedings of that meeting.

**5. Reports**

**PD/5.1/24.05                      Waverley Development Control Plan 2022 (Amendment No. 3) - Excavation - Adoption (A24/0031)**

**MOTION**

Mover:        Cr Lewis  
Seconder:    Cr Nemesh

That Council adopts the Waverley Development Control Plan 2022 (Amendment No. 3) on excavation

controls attached to the report.

THE MOVER OF THE MOTION ACCEPTED THE ADDITION OF NEW CLAUSES 2 AND 3.

THE MOTION AS AMENDED WAS THEN PUT AND DECLARED CARRIED.

## DECISION

That Council:

1. Adopts the Waverley Development Control Plan 2022 (Amendment No. 3) on excavation controls attached to the report.
2. Develops a plain English fact sheet on the amendment for Council's website and distributes it to the Precincts.
3. Officers prepare a report to Council in 12 months' time evaluating the changes and improvements.

## Division

**For the Motion:** Crs Betts, Fabiano, Goltsman, Keenan, Lewis, Masselos, Murray and Nemesh.

**Against the Motion:** Cr Wy Kanak.

## PD/5.2/24.05 Waverley Development Control Plan 2022 (Amendment No. 4) - Oxford Street Mall Standard Trading Hours Extension - Exhibition (A16/0262)

### MOTION / DECISION

Mover: Cr Masselos

Seconder: Cr Keenan

That Council:

1. Publicly exhibits the draft Waverley Development Control Plan 2022 (Amendment No. 4) attached to this report on the extension of standard trading hours in Oxford Street Mall for a minimum of 28 days, in accordance with section 3.43 and clause 5 of schedule 1 of the *Environmental Planning and Assessment Act 1979*.
2. Officers prepare a report to Council following the exhibition period.
3. Evaluates the performance of the extended trading hours within two years, with a report to be prepared to Council on the outcome.

## Division

**For the Motion:** Crs Betts, Fabiano, Goltsman, Keenan, Lewis, Masselos, Murray and Nemesh.

**Against the Motion:** Cr Wy Kanak.

## PD/5.3/24.05 Waverley Local Planning Panel Decisions and Appeals - July-December 2023 (A13/0229)

### MOTION / DECISION

Mover: Cr Lewis

Seconder: Cr Fabiano

That Council notes the development applications determined by the Waverley Local Planning Panel and the Land and Environment Court appeals against the Panel's decisions for the period 1 July 2023 to 31 December 2023, as set out in the attachment to the report.

**PD/5.4/24.05                      Clause 4.6 Variations to Development Standards - January-March 2024  
(A23/0244)**

**MOTION / UNANIMOUS DECISION**

Mover:        Cr Keenan

Seconder:    Cr Murray

That Council notes the clause 4.6 variations to development standards for the period 1 January 2024 to 31 March 2024 attached to the report.

**PD/5.5/24.05                      Sustainability Expert Advisory Panel Meeting - 28 March 2024 - Minutes  
(A22/0310)**

**MOTION / DECISION**

Mover:        Cr Keenan

Seconder:    Cr Murray

That Council notes the minutes of the Sustainability Expert Advisory Panel meeting held on 28 March 2024 attached to the report.

**6.      Urgent Business**

There was no urgent business.

**7.      Meeting Closure**

**THE MEETING CLOSED AT 7.55 PM.**

.....  
**SIGNED AND CONFIRMED**  
**CHAIR**  
**4 JUNE 2024**

**REPORT**  
**PD/5.1/24.11**

**Subject:** Planning Agreement Policy (Amendment No. 5) - Adoption

**TRIM No:** SF23/1066

**Manager:** George Bramis, Executive Manager, Urban Planning, Policy and Strategy

**Director:** Fletcher Rayner, Director, Planning, Sustainability and Compliance

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**RECOMMENDATION:**

That Council adopts the Planning Agreement Policy (Amendment No. 5) attached to the report.

**1. Executive Summary**

The draft amendment 5 to the Planning Agreement Policy 2014 is a housekeeping amendment that proposes:

- Updates to the standardised residential voluntary planning agreement (VPA) benchmark rates applied to development applications in line with current market conditions.
- Housekeeping amendments relating to process improvement.

The draft amendment was placed on public exhibition between 21 June to 2 August 2024. Forty-three people visited the page during this time, but no submissions were received. No post-exhibition changes have been made to the draft amendment.

**2. Introduction/Background**

The Planning Agreement Policy 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 of the *Waverley Local Environmental Plan 2012* (WLEP), and planning proposals seeking an increase in maximum permissible floor space.

The Planning Agreement Policy is based on the principle of value sharing, or value capture, where it is an expectation that a developer gaining a value uplift would share some of this uplift with the community. 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 the Planning Agreement Policy**

Since 1 July 2018, close to \$14 million has been raised. To place this number into context, the section 7.12 developer contributions provided by all development across the Waverley local government area (LGA) for the same period was \$15 million.

Contributions have been dedicated towards several public domain upgrades including Waverley's Complete Streets program in Bondi Junction (for development relating to Bondi Junction) and upgrades to local parks nearby developments. There have been instances where parks directly adjacent to a subject development have been upgraded because of VPA contributions such as Seven Ways at Glenayr Avenue.



To this extent, the policy aims to ensure increases in density are associated with an increase in liveability.

### 3. Relevant Council Resolutions

Meeting and Date	Item No.	Resolution
Council Meeting 18 June 2024	CM/7.13/24.06	That Council: <ol style="list-style-type: none"> <li>Publicly exhibits the draft Planning Agreement Policy (Amendment No. 5) attached to the report.</li> <li>Officers prepare a report to Council following the exhibition period.</li> </ol>
Strategic Planning and Development Committee 5 March 2024	PD/5.2/24.03	EXTRACT That Council: ... <ol style="list-style-type: none"> <li>Officers update the Planning Agreement Policy without delay to prevent 'double dipping' of funds for affordable housing, where a contribution is levied under the Affordable Housing Contribution Scheme and a planning agreement is offered at the same time.</li> </ol>
Strategic Planning and Development Committee 7 November 2023	PD/5.1/23.11	<i>The motion below was lost.</i> That Council: <ol style="list-style-type: none"> <li>Publicly exhibits the draft Planning Agreement Policy (Amendment No. 5) attached to the report.</li> <li>Officers prepare a report to Council following the exhibition period.</li> </ol>
Strategic Planning and Development Committee 5 July 2022	PD/5.2/22.07	That Council adopts the Planning Agreement Policy 2014 (Amendment No. 4) and Public Benefit Register attached to the report, subject to the following amendments: <ol style="list-style-type: none"> <li>The removal of all proposed amendments within the Planning Agreement Policy 2014 (Amendment No.4) relating to the General Manager exercising their delegation to endorse planning agreements so that VPAs continue to be endorsed by the elected Council post-exhibition.</li> <li>Adjusting the Public Benefit Register to include suitable works subject to overview and approval by the elected Council.</li> <li>Mandated VPA payments associated with planning proposals continue to be paid by developers at gazettal.</li> </ol>
Council	CM/7.13/22.02	That Council:

15 February 2022		<ol style="list-style-type: none"> <li>1. Publicly exhibits the draft Planning Agreement Policy 2014 (Amendment No. 4) and the draft Public Benefit Register attached to the report for a minimum period of 28 days.</li> <li>2. Officers prepare a report to Council following the exhibition period.</li> <li>3. Notes that the policy includes updated benchmark rates, housekeeping amendments and the introduction of a Public Benefit Register.</li> </ol>
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#### 4. Discussion

The draft policy is attached to the report, with amendments marked-up. No post-exhibition changes have been made.

##### Updated benchmarks

Standardised benchmark rates were introduced in amendment 2 of the policy and have been in place since August 2018. Since then, the benchmarks have been applied to at least 25 VPAs. The benchmark rates provide certainty for applicants and reduces the administrative burden for Council officers. They also provide certainty to the community as to how benefits are negotiated.

The benchmark rates were introduced on the basis that they would be regularly updated to reflect current market conditions. Attachment 1 outlines the new rates, which vary from a 3% increase to a 24% increase from the previous benchmarks for different suburbs. Detailed market research was undertaken using Realestate.com, NSW Valuer General and the Housing NSW Rent and Sales Report. Recent sales were taken from the December 2023 to May 2024 time period. The methodology is the same as that used to update the benchmark rates actioned under amendment 4 of the Policy.

The benchmarks under amendment 4 of the policy considered 2021-21 financial year sales data, which is no longer an accurate reflection of Waverley's real estate market and hence the level of value uplift that developers are receiving from exceedances to floor space ratio.

##### Housekeeping amendments

Housekeeping amendments include:

- Update of the residential benchmark rates in accordance with market trends.
- Deletion of appendix 7, which contains a copy of Council's Statement of Business Ethics, as the 2014 version included in amendment 4 of the policy is outdated and a current version is now provided online.
- Amendment to delete reference to the contribution only being spent in the Waverley local government area. In certain circumstances it may be appropriate to provide reasonable flexibility for the purpose of delivering affordable housing where there may be an opportunity that is in close proximity to, but outside of, the Waverley LGA boundary.
- Clarification that where both a contribution is levied under the Affordable Housing Contribution Scheme (AHCS) and a VPA is offered, 'double-dipping' of funds for affordable housing will not occur, as per resolution PD/5.2/24.03.

**Double-dipping of funds**

Where a contribution is levied under the AHCS and a VPA is also offered, the proportion of VPA funds dedicated to affordable housing may be reduced by the AHCS amount to prevent the 'double-dipping' of funds for the purposes of affordable housing. The reduced funds will instead be assigned to other public benefits, resulting in less than 25% of the planning agreement contribution going towards affordable housing.

**5. Financial impact statement/Time frame/Consultation**

The draft amendment was placed on public exhibition between 21 June to 2 August 2024. Forty-three people visited the page during this time but no submissions were received. No post-exhibition changes have been made to the draft amendment.

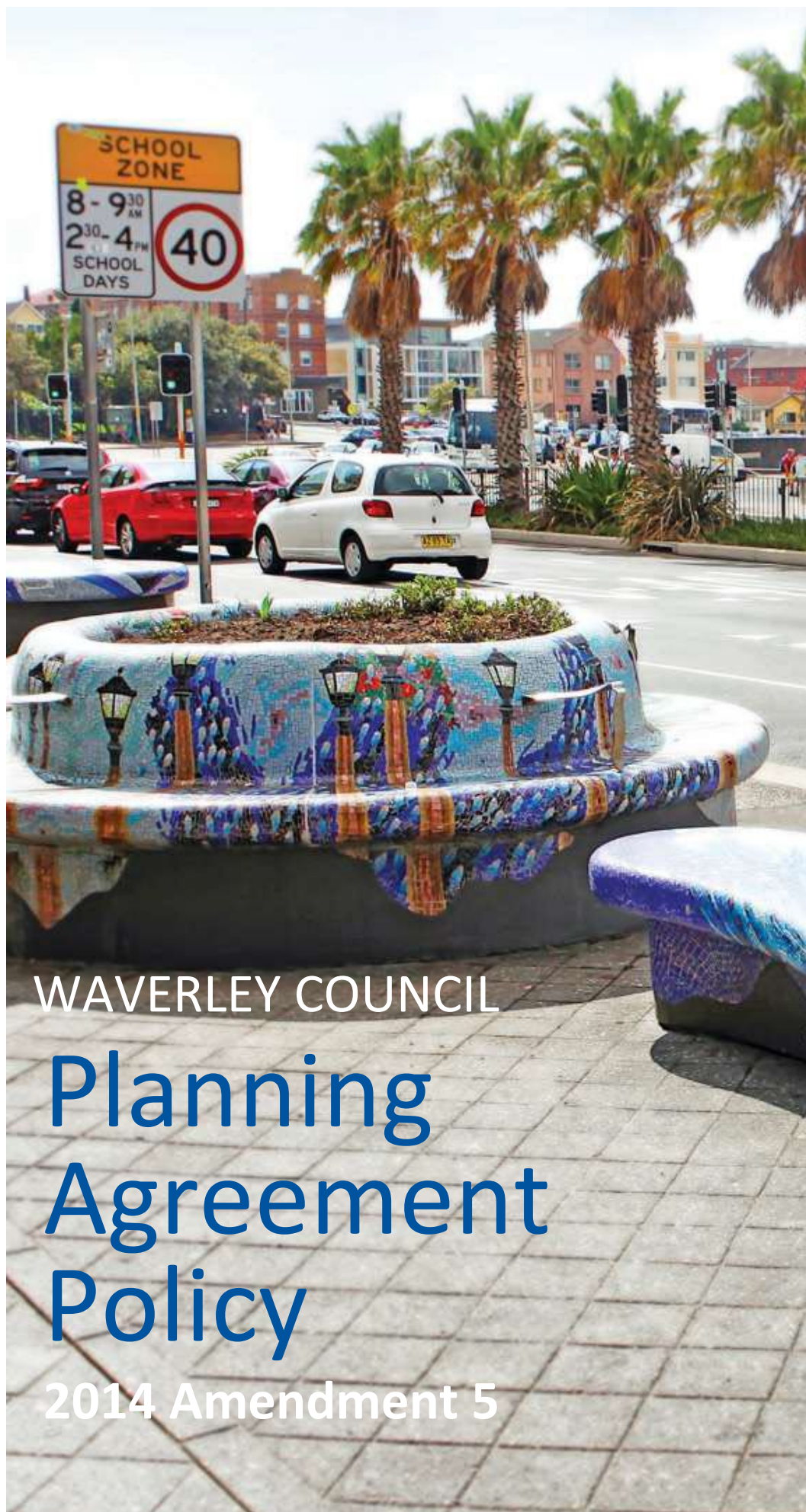
**6. Conclusion**

The draft Planning Agreement Policy (Amendment No. 5) has been drafted in accordance with the relevant legislation and Council's policies, plans and strategies. Subject to Council approval, it proposes to update benchmarks to reflect current housing market conditions and provide housekeeping amendments to ensure the policy remains up to date.

This report recommends that Council adopts the Planning Agreement Policy (Amendment No. 5).

**2. Attachments**

1. Draft Planning Agreement Policy (Amendment No. 5) [↗](#) .



WAVERLEY COUNCIL

# Planning Agreement Policy

2014 Amendment 5

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*Planning Agreement Policy 2014  
(Amendment No. 54)*

**Document Control**

Version	Adopted	Effective
Planning Agreement Policy 2014	7 October 2014	21 October 2014
Amendment 1	20 October 2015	20 October 2015
Amendment 2	21 August 2018	21 August 2018
Amendment 3	1 December 2020	1 December 2020
Amendment 4	5 July 2022	11 July 2022
<u>Amendment 5</u>	<u>TBA</u>	<u>TBA</u>

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## TERMS AND DEFINITIONS USED IN THIS POLICY

In this Policy, the following terminology is used:

**Act** means the *Environmental Planning and Assessment Act 1979*.

**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 (s7.4(11)), 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 *Planning Agreement Practice Note* (February 2021) published by the Department of Planning, Industry and Environment.

**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*.

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## 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 lodged pursuant to ~~the 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”). This policy generally applies to all forms of development with the exception of dwelling houses (a building containing only one dwelling), employment generating development only (i.e. retail and commercial floorspace) and alterations and additions to a single strata subdivided property. A VPA can be provided to offset the loss of affordable housing in lieu of a payment under Part 3 ‘Retention of existing affordable rental housing’ of the Housing SEPP.

This Policy was adopted by resolution of the Council on ~~5 July 2022~~ TBA. The Policy is effective from ~~11 July 2022~~ TBA.

### 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; ~~and~~
- (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.

### 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 and planning proposals associated with changes to ~~WLEP 2012~~ the Waverley Local Environmental Plan 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”) and ~~also~~ considers the *Planning Agreement Practice Note* (February 2021). It should be noted Council must give regard to the Practice Note but is not bound by it.



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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 or as part of a planning proposal will be valued or calculated as set out in 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 in line with strategic priorities as identified in Council's strategies and plans 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 7.1 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 ~~2021~~ 2000*.

Section 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
- c) who has entered into an agreement with or is otherwise associated with a person in one of the above two categories.

### 1.6 Land use and strategic infrastructure planning

Land use planning should occur concurrently with strategic infrastructure planning to ensure that built form provisions and infrastructure contributions deliver both appropriate urban forms and contributions related to the development. Strategic infrastructure planning should be undertaken regularly and address expected growth, infrastructure demand resulting from this growth, and the apportioned cost of these infrastructure provisions. Planning Agreements should be used towards public benefits that are in accordance with the council's infrastructure planning and funding policies and strategies, including this Policy.

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### 1.7 What are the mandatory requirements of a Planning Agreement?

Section 7.4(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:
  - (i) 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 7.11 or 7.12 to the development,
- (e) if the agreement does not exclude the application of section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11,
- (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.

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### 1.8 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:

- a) proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development;
- b) providing for public benefits that bear a relationship to development that are not wholly unrelated to the development and are located in the vicinity of where the development is located;
- c) producing outcomes that meet the general values and expectations of the public and protect the overall public interest;
- d) providing for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits; and
- e) 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. In most cases, by way of safeguard, a 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.

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## PART 2 – PRINCIPLES FOR PLANNING AGREEMENTS

### 2.1 Purposes of Planning Agreements

Section 7.4(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. Planning Agreements are negotiated between planning authorities and developers in the context of applications for changes to environmental planning instruments (planning proposals) or for consent to carry out development (development applications).

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 Community Strategic Plan (CSP), Local Strategic Planning Statement (LSPS) and supporting environmental strategies (as amended from time to time). It is also informed by the mission and values of the Corporate Plan.

When negotiating planning obligations the Council will generally take into account Council's vision and mission statement, the Community Strategic Plan's general priorities set out in the programs to that Plan, the site circumstances and also the obligation preferences of the developer.

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 exceeding the maximum gross floor area permitted under clause 4.4 of WLEP 2012.**

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 Waverley Local Environmental Plan.

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 (e.g. 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 4.15 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 a particular development.
- f) ~~Monetary~~ contributions obtained from Planning Agreements will be spent within the vicinity of the development ~~they~~ relate to.
- ~~f)g) The Council will not take into consideration Planning Agreements that are wholly unrelated to an application, nor will it~~ The Council will not give undue weight to a Planning Agreement.
- ~~g)h)~~ The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed Planning Agreement.
- ~~h)i)~~ The Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under Planning Agreements.
- ~~i)j)~~ Planning Agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls.
- ~~j)k)~~ Planning Agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand.
- ~~k)l)~~ Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population.

The progression of a planning proposal or the approval of a development application should never be contingent on entering into a Planning Agreement.

## 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 and/or public benefit 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.

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~~. However, 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 Council with the determination of the development application/planning proposal and to prepare the Planning Agreement.

## 2.4 Strategic planning context

An important role for Planning Agreements is achieving specific land use planning outcomes with strategic and/or site-specific merit. A Planning Agreement should facilitate the provision of public facilities and amenity outcomes that advance the delivery of Council's corporate and strategic planning objectives and deliver valuable community benefits where appropriate. Long-term strategies including Waverley's Local Strategic Planning Statement (LSPS) and ~~Waverley's~~ Community Strategic Plan ~~(2018-2029)~~ (CSP) and delivery program are based on the outcomes of engagement with the community. The implementation of key aspects of some of these goals, the broader strategic directions and the delivery of key infrastructure areas can be directly or indirectly achieved through Planning Agreements.

The vision and goals established within Council's long-term strategic plans such as the CSP and LSPS flow through to supporting plans that guide Council's medium and short-term priorities:

- Long Term Financial Plan (10 years)
- Delivery Program (4 years)
- Operational Plan (Annual)

Council's ~~Local Strategic Planning Statement, supported by a number of environmental strategies and LSPS~~ considers planning for growth in Waverley, ~~including relevant supporting and is supported by environmental~~ strategies which seek to identify the community's needs for infrastructure such as community facilities, transport, open space, public domain and recreation infrastructure, capital works and infrastructure.

## 2.5 Types of public benefits to be delivered under Planning Agreements

Public benefits received through Planning Agreements contribute to Council's ability to deliver:

- a) infrastructure identified within existing development contributions plans (s7.12 contributions plan);
- b) infrastructure identified within NSW State Government and Council's ~~s~~Strategic plans, e.g. commercial floor space in village centres, affordable housing, and open space acquisition;
- c) infrastructure required directly as a result of density increases experienced or

- expected from the redevelopment of a site. e.g. due to changes in development controls arising from a Planning Proposal<sup>7</sup> and
- d) ~~Land~~ identified in a strategic plan, policy, planning instrument, development control plan or contributions plan for a public purpose, dedication or acquisition.

Examples of public benefits described above are provided at Appendix 5. It is recognised that development contributions that facilitate works in addition to the works listed in Appendix 5 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 5 does not prevent development contributions being negotiated on a case by case basis, particularly where planning benefits are also involved.

In some instances, a particular public benefit may be considered most suitable and supported by the community during public exhibition, however, it may not have been adequately investigated or designed yet due to issues with resourcing and/or preliminary funding by Council. Generally, VPA contribution money cannot be dedicated towards preliminary investigative and design processes because these processes may find that the particular process cannot be delivered after all, and therefore would not actually deliver a public benefit. Despite this, there is opportunity for Council to dedicate funding from elsewhere for the preliminary and feasibility works. The VPA contribution can be held aside and quarantined for a specified period of time and used for the construction of that project if found to be suitable for delivery. If found to be unsuitable/unfeasible, the VPA contribution can be used towards a different project that has been adequately investigated and designed, determined at the same as the first idea is supported as a backup.

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, commercial floor space dedicated in perpetuity to Council or public domain upgrades.

#### Allocation of VPA to affordable housing

It is to be noted that ~~generally~~ at a minimum 25% of all Planning Agreement contributions will form a monetary contribution to generally go towards Waverley's Affordable Housing Contributions Reserve fund to expand Council's affordable housing portfolio by acquiring or developing new stock. ~~Some of this 25% could be used to go towards the Waverley Affordable Housing Program Reserve for the maintenance of properties and.~~

There may be some circumstances where Council will allocate up to 100% of the monetary contribution to ~~Waverley's Affordable Housing Program fund~~ affordable housing. This would be generally examined on a case by case basis and be informed by a number of factors.

There may also be circumstances where Council will allocate less than 25% of the Planning Agreement contribution to affordable housing, occurring when a contribution for the same development is levied under the Waverley Affordable Housing Contribution Scheme (AHCS).

When a contribution is made under the AHCS and there is also a Planning Agreement according to this Policy, the amount allocated for affordable housing from the Planning Agreement funds can be reduced by the AHCS amount. This avoids 'double dipping' of funds intended for affordable housing. The remaining funds will be redirected to other public benefits, ensuring that less than 25% of the Planning Agreement contribution is used for affordable housing.

Furthermore, if a contribution is made under the Waverley Affordable Housing Contribution Scheme and a Planning Agreement is in place according to this Policy, the total amount in the Planning

Agreement will be adjusted. This adjustment reflects that the AHCS contribution impacts the net profit from the additional floor space.

As such, the VPA would be calculated as follows:

<b>Bondi Junction Example</b>	
<u>AHCS Rate</u>	<u>\$18,500/sqm</u>
<u>VPA Rate</u>	<u>\$4,100/sqm</u>
<u>Excess floorspace (above FSR)</u>	<u>100sqm</u>
<u>Total floorspace proposed</u>	<u>1100sqm</u>
<u>AHCS Payable on exceedance</u>	<u>1% x 100sqm x \$18,500 = \$18,500</u>
<u>VPA Payable</u>	<u>100sqm x \$4,100 = \$410,000</u>
<b>Total VPA payable with discount considered</b>	
<u>Step 1: Identify total sales value of exceedance by multiplying the VPA payable by 2</u>	<u>\$410,000 x 2 = \$820,000</u>
<u>Step 2: Deduct the VPA contribution by the AHCS payable on exceedance</u>	<u>\$820,000 - \$18,500 = \$801,500</u>
<u>Step 3: Divide the contribution by 2 to align with the intent of the VPA Policy, which is to capture 50% of the uplift value</u>	<u>\$801,500 / 2 = \$400,750</u>

In the context of a Planning Proposal lead by the private industry resulting in uplift for a site, the applicable AHCS contribution may be considered as a 'soft cost' when calculating a planning agreement contribution in accordance with Appendix 2 of this Policy.

## **2.6 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.

## **2.7 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.

## **2.8 Do other development contributions apply?**

Generally, the Council will not enter a Planning Agreement that excludes the application of s7.11 or s7.12 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.



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However, where the application of s7.11 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 7.11.

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## 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 1 and 2:

#### Planning Proposals

1. Prior to the lodgement of the relevant planning proposal, the Council and proponent (and any other relevant person) will decide whether to negotiate a Planning Agreement.
2. 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.
4. The key issues for negotiation will be identified by the parties, and the negotiations over these issues will take place.
5. If agreement is reached, the Council (and any other relevant party) will prepare the proposed Planning Agreement including the explanatory note, and provide a copy of it to the proponent.
6. 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 proponent may then make the development application/planning proposal to the Council accompanied 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 planning proposal and Planning Agreement in accordance with the Act. The Council may approve the 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.

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#### Development applications

1. Prior to the lodgement of the relevant development application, the applicant will decide whether to offer a Planning Agreement. The applicant should contact Council about how the benchmark rates (Appendix 1) apply to the subject development.
2. The applicant submits the development application with a letter of offer to enter into a Planning Agreement.
3. Development assessment staff independently undertake their assessment of the application.
4. Should the development application be approved, Council officers will prepare the Planning Agreement for notification, reporting to Council and execution.

The parties may be required to undertake further negotiations and, hence, a number of the abovementioned 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.

Note that all costs associated with the negotiation of a Planning Agreement, 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 Sydney Planning Panel (SPP) 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:

- a) Inform any applicant about Council values and business ethics - specifically, about ethical behaviour appropriate to business dealings. A copy of Council's Statement of [Business Ethics Policy](#) (as amended from time to time) ~~is attached at Appendix 8 and available on Council's website~~.
- b) 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.
- c) 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.
- d) Ensure appropriate delegations and separation of responsibilities in considering development applications/planning proposals that involve Planning Agreements – specifically, the need to ensure processes adequately

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address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk.

- e) Ensure that modifications to approved development should be subject to the same scrutiny as the original development application.
- f) Ensure that Councillors and Council staff understand their varied roles, some of which have potential to conflict.
- g) 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 record-keeping. This also allows timely consideration and resolution of any issues raised and facilitates carefully considered decision making by all parties.
- h) 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 Local Planning Panel (WLPP), the Sydney Planning Panel, or any other relevant planning authority.

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## 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. Notification generally involves a public notice in the Wentworth Courier, online at <https://haveyoursay.waverley.nsw.gov.au/> and directly to the relevant precinct committee. 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 depending upon when an outcome is reached following negotiation.

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.

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## 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 Council's 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.

#### 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 the execution of a Planning Agreement must be met as soon as possible after gateway determination and prior to gazettal notice. A clause is to be included within the Planning Agreement indicating that the obligations under the Planning Agreement are only required to be met in the event of the associated Planning Proposal being successfully gazetted. The delivery of the contribution (e.g. payment of any monetary contribution) must be paid at gazettal. The Letter of Offer issued by the developer in relation to a Planning Proposal should reflect the above process.
- b) Generally, the developer's obligations in relation to the execution of a Planning Agreement associated with a Planning Proposal should not be linked to any current or future Development Application for the site.
- c) 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 any monetary contribution), on or before settlement of the sale of the land. Generally, this 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. 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.

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### **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. 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 the 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. 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. An insurance bond may also be deemed acceptable. 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.



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#### *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)**

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 apply to 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.

#### **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**

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 – VPA PAYABLE RATES

The VPA payable rates per square metre for residential floor space 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 mixed use developments commercial office and retail benchmark rates should be used.

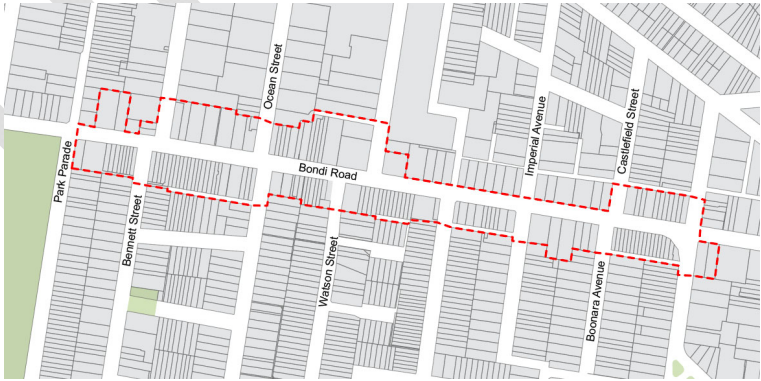
If the existing building already exceeds the maximum FSR permitted on the site, the VPA will be calculated using the additional GFA above the existing non-compliance. For example, for a site with a max FSR of 0.9:1, an existing FSR of 1:1 and a proposed FSR of 1.2:1, the VPA will only be calculated on the GFA between 1:1 and 1.2:1.

Note: These rates will be updated on an annual basis based on sales prices.

BENCHMARK RATES FOR RESIDENTIAL

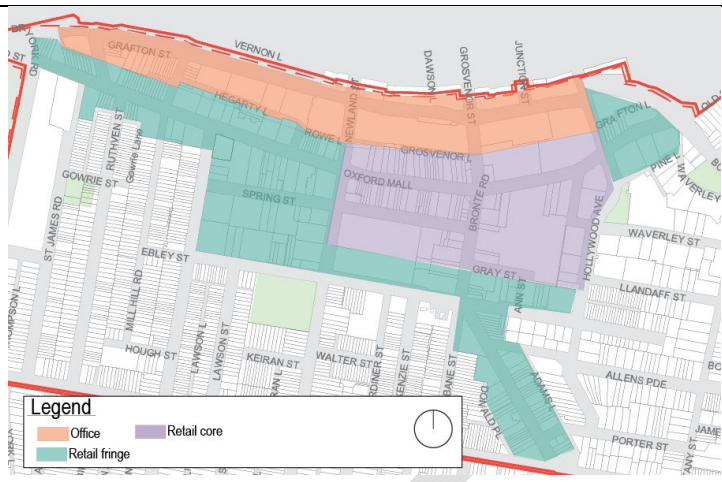

Area and type	Rate \$/sqm
Bondi Junction	<del>\$4,000</del> 4,100
Bondi	<del>\$4,000</del> 4,200
Bondi Beach	<del>\$4,300</del> 5,200
North Bondi	<del>\$4,400</del> 5,100
Dover Heights	<del>\$3,200</del> 3,400
Rose Bay	<del>\$3,300</del> 4,100
Vaucluse	<del>\$3,100</del> 3,800
Other Suburbs (Average)	<del>\$3,800</del> 4,200

BENCHMARK RATES- FOR NON-RESIDENTIAL

Area and type	Rate \$/sqm	Location it applies
Bondi Road Centre	\$2,400	
Bondi Junction retail core	\$2,800	

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Bondi Junction retail fringe	\$2,600	
Bondi Junction office	\$2,600	
Campbell Pde, Bondi	\$4,100	
Hall Street, Bondi	\$3,600	
Fringe	\$3,000	All other areas for non-residential development not specified in this table.

### PRO RATA BENCHMARKS

Where a Development Application including any modification or amendment offering a Voluntary Planning Agreement contains both residential and non-residential floor space, generally a pro rata approach is to be taken and both benchmark rates should be used proportionately to their percentage of gross floor area within the entire development.

For example, if 20% of the total gross floor area of a development is non-residential and 80% of a total gross floor area of a development is residential, then the non-residential benchmark rate should be used for 20% of the gross floor area exceedance above the maximum permitted under the maximum Floor Space Ratio, and the residential benchmark rate for 80%. If the gross floor area exceedance were 50 square metres, then 40sqm would be multiplied by the residential rate and 10sqm against the non-residential rate.

This approach may be varied where additions to an existing building (which contains both residential and non-residential uses) are proposed, and the new works only add gross floor area of one of the uses. For example, an additional floor containing residential floor space only is being added above a shop top housing development and the ground floor commercial space is not being reduced or increased. In this instance it would be appropriate to use only the residential benchmark rate.

**ALTERNATE VALUATION METHODOLOGY**

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
2. 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 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 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				Building With Bonus Floor Space			
Level	Sqm	\$/sqm	\$m	Level	Sqm	\$/sqm	\$m
	11		300	12		300	12,000
	10		400	11		425	11,000
	9		500	10		525	10,200
	8		500	9		525	10,000
	7		500	8		525	9,800
	6		500	7		525	9,600
	5		500	6		525	9,400
	4		500	5		525	9,200
	3		500	4		525	9,000
	2		500	3		525	8,500
	1		500	2		525	8,000
	1		500	1		525	7,500
TOTAL			5,200	TOTAL		5,975	56.2
			48.5	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 pre-sales 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:  
  
$$\text{Interest Cost} = (\text{Total Project Costs excluding land \& GST}) \times (\text{Interest Rate} / 12) \times (\text{Months of Construction}) \times 50\%.$$
- 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

PLANNING AGREEMENT NO. \_\_\_\_\_

*Section 7.4 of the Environmental Planning and Assessment Act, 1979*

THIS AGREEMENT is made on DATE THAT AGREEMENT IS ENTERED INTO

PARTIES

WAVERLEY COUNCIL of Cnr Paul Street and Bondi Road, Bondi Junction NSW 2022 ABN 12 502 583 608 (“Council”)

AND

DEVELOPER NAME (ACN #) of Address (“Developer”)

BACKGROUND/RECITALS

- 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. On DATE the Developer made (or caused to be made) the Development Application to Council for Development Consent to carry out the Development on the Land.
- D. The Development Application was accompanied by an offer dated DATE by the Developer to enter into this Agreement to make the Development Contribution to be applied towards a public purpose in accordance with Council’s Planning Agreement Policy if development consent was granted.
- E. The Development Consent was granted on DATE.
- F. This Agreement is consistent with the Developer’s offer referred to in Recital D.

OPERATIVE PROVISIONS:

1 PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement governed by Section 7.4 and Subdivision 2 of Division 7.1 of Part 7 of the Act.

2 APPLICATION OF THIS AGREEMENT

This Agreement applies to the Land and to the Development proposed in the Development Application, as may be modified.

3 OPERATION OF THIS AGREEMENT

This Agreement shall take effect on and from the date of this Agreement. The parties must execute and enter into this Agreement as soon as possible after the Development Consent is grant and prior to any Construction Certificate issuing for the Development.

## 4 DEFINITIONS AND INTERPRETATION

### 4.1 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;

**“Caveat Form”** means an irrevocable authority to Waverley Council to register and maintain a caveat on the Land, in a form acceptable to Council and executed by the owner of the Land, or such other form of owner’s consent to caveat as may be required by Council; **“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 Land is located within; **“Construction Certificate”** means any construction certificate as referred to in s 6.4 of the Act in respect of the Development Consent;

**“Development”** means the development the subject of the Development Application described in item 4 of the Schedule;

**“Development Application”** means the development application referred to in item 3 of the Schedule;

**“Development Consent”** means the development consent granted in respect 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; [NOTE: For monetary contributions]

**“Development Contribution Date”** means the time the Development Contribution is to be paid as specified to in item 7 of the Schedule; [NOTE: For monetary contributions] **“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;

**“Occupation Certificate”** means any occupation certificate as referred to in s 6.4 of the Act in respect of the Development Consent;

**“Party”** means a party to this Agreement including their successors and assigns;

**“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 7.6 of the Act in a form approved by the Registrar General;

**“Schedule”** means the schedule to this Agreement.

## 4.2 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;
- (j) 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;
- (l) A reference to this Agreement includes the agreement recorded in this Agreement;
- (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; and
- (n) Any schedules and attachments form part of this Agreement.

## 5 DEVELOPMENT CONTRIBUTION TO BE MADE UNDER THIS AGREEMENT

- 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. [NOTE: For monetary contributions]

## 6 APPLICATION OF THE DEVELOPMENT CONTRIBUTION

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

## 7 APPLICATION OF S7.11 AND S7.12 OF THE ACT TO THE DEVELOPMENT

- 7.1 This Agreement does not exclude the application of Sections 7.11, 7.12 or 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 7.11 or 7.12 of the Act.

## **8 REGISTRATION OF THIS AGREEMENT**

- 8.1 The Parties agree this Agreement is to be registered by the Registrar-General as provided for in section 7.6 of the Act.
- 8.2 The Developer warrants that they have done everything necessary to enable this Agreement to be registered under section 7.6 of the Act.
- 8.3 Without limiting clause 8.2, the Developer warrants that they have obtained the express written consent to the registration of this Agreement under section 7.6 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 possession of an estate or interest in the Land.
- 8.4 As soon as possible after entering into this Agreement and in any event prior to the issue of a Construction Certificate, the Developer will at their cost arrange and effect registration of this Agreement under s7.6 upon the title to the Land and as soon as possible will:
- (a) deliver to the Council the Registration Application in registrable form noting the Council as applicant and executed by the owner of the Land and any other person the subject of the warranty in clause 8.3;
  - (b) produce or cause to be produced the title deed with NSW Land Registry Services and advise Council of the production number or provide a copy of the CoRD Holder Consent as may be applicable;
  - (c) provide the Council with a cheque in favour of NSW Land Registry Services, NSW for the registration fees for registration of this Agreement, or deliver funds electronically as Council may direct; and
  - (d) provide the Council with a cheque in favour of the Council for its reasonable 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 any 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 in writing 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 the Developer pays all reasonable 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 upon 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 nor provide the Bank Guarantee in accordance with clause 9.1.

- 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) Subject to clause 8.8, prior to the issue of a Construction Certificate, the Developer must deliver to the Council a Bank Guarantee, which must be:
- (i) in a form and from an institution approved by the Council;
  - (ii) irrevocable and unconditional;
  - (iii) with no expiry date;
  - (iv) issued in favour of the Council;
  - (v) for an amount equivalent to the Development Contribution set out in Item 6 of the Schedule;
  - (vi) drafted to cover all of the Developer's obligations under this Agreement; and
  - (vii) on the terms otherwise satisfactory to 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:
- (i) fails to make a payment of any part of the Development Contribution 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 towards the Developer's obligation to pay the relevant amount and will deduct that amount from the total amount payable under this Agreement. In those circumstances, the Developer will be required to pay to the Council any outstanding balance of the Development Contribution and other amounts payable under this Agreement.

### **9.3 Return of Bank Guarantee**

Subject to clause 9.2, provided that the Developer has complied with its obligations under this Agreement, to pay the Development Contribution or any other amount payable under this Agreement, the Council will return the Bank Guarantee to the Developer.

## **10 REVIEW OF THE AGREEMENT**

Any amendment or review of this Agreement shall be by agreement in writing and in compliance with section 7.5 of the Act.

## **11 DISPUTE RESOLUTION**

### **11.1 Notice of dispute**

If a Party claims that a dispute has arisen under this Agreement ("Claimant"), it must give written notice to the other Party ("Respondent") stating the matters in dispute and designating as its representative a person to negotiate the dispute ("Claim Notice"). No Party may start Court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause.

### **11.2 Response to notice**

Within ten business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

### **11.3 The nominated representative must:**

- (i) Meet to discuss the matter in good faith within five business days after services by the Respondent of notice of its representatives;
- (ii) Use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

### **11.4 Further notice if not settled**

If the dispute is not resolved within 15 business days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute ("Dispute Notice") by mediation under clause 11.5 or by expert determination under clause 11.6.

### **11.5 Mediation**

If a Party gives a Dispute Notice calling for the dispute to be mediated:

- (i) The Parties must agree to the terms of reference of the mediation within five business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules and the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (ii) The mediator will be agreed between the Parties, or failing agreement within five business days of receipt of the Dispute Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (iii) The mediator appointed pursuant to this Clause 11.5 must:
  - (a) Have reasonable qualifications and practical experience in the area of disputes; and
  - (b) Have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (iv) The mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (v) The Parties must within five business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation.
- (vi) The Parties agree to be bound by a mediation settlement and may only initiate

judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.

- (vii) In relation to costs and expenses
  - (a) Each Party will bear their own professional and expert costs incurred in connection with the mediation; and
  - (b) The cost for the mediator will be shared equally by the Parties unless the mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation to be borne by that Party.

#### **11.6 Expert Determination**

If the dispute is not resolved under clause 11.3 or 11.5 the dispute may, by agreement between the Parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (i) The dispute must be determined by an independent expert in the relevant field:
  - (a) Agreed upon and appointed jointly by the Council and the Developer; or
  - (b) In the event that no agreement is reached or appointment made within 30 business days, appointed on application of a Party by the then current President of the Law Society of New South Wales;
- (ii) The expert must be appointed in writing and terms of the appointment must not be inconsistent with this clause;
- (iii) The determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and containing reasons for the determination;
- (iv) The expert will determine the rules of the conduct for the process, but must conduct the process in accordance with the rules of natural justice;
- (v) Each Party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (vi) Any determination made by an expert pursuant to this clause is final and binding upon the Parties except where the determination is in respect of, or relates to, termination or purported termination of this Agreement by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

#### **11.7 Litigation**

If the dispute is not finally resolved in accordance with this clause 11, either Party is at liberty to litigate the dispute.

#### **11.8 Continue to Perform Obligations**

Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

### **12 ENFORCEMENT**

- 12.1 Nothing in this Agreement 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.



- 12.2 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; and
  - (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;
  - (d) not rely on any Occupation Certificate in respect to the Development.
- 12.3 The Developer acknowledges and agrees that:
- (a) the Land is charged with the payment to Council of the Development Contribution until the Development Contribution is paid in full to Council; [NOTE for monetary contributions]
  - (b) Council has a caveatable interest in the Land from the later of the date of the Development Consent and this Agreement until the Development Contribution and any other monies due to Council under this Agreement are paid in full to Council;
  - (c) Council has the right to lodge and maintain a caveat against the title to the Land to notify of and protect its interest created by this Agreement (including the charge in (a), until the Development Contribution and any other monies due to Council under this Agreement are paid in full to Council;
  - (d) unless the Development Contribution is paid to Council by the Developer upon entering into this Agreement, the Developer shall provide Council with the Caveat Form; and
  - (e) Upon payment of the Development Contribution or surrender of the Development Consent, the Developer may request in writing the removal of the caveat from the title to the Land. The Council will not withhold its consent to such removal, provided the Developer pays all reasonable costs, expenses and fees of the Council relating to such removal and has complied with all its obligations under this Agreement.
- 13 NOTICES**
- 13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that Party at its address set out below in Item 8 of the Schedule;
  - (b) faxed to that Party at its fax number set out below in Item 8 of the Schedule;
  - (c) emailed to that Party at its email address set out below in Item 8 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.
- 13.3 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.
- (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 faxnumber.

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 whom 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 COSTS**

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer. The Developer shall be responsible to pay its own costs and any stamp duty arising from this Agreement or its preparation.

**17 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.

**18 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.

**19 GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of New South Wales. The Parties submit to the nonexclusive 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.

**20 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.

**21 NON FETTER**

The Developer acknowledges and agrees that:

- (a) 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.

**22 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.

**23 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 part 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.

**24 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.

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

**26 GOODS & SERVICES TAX**

- 26.1 The Parties agree and acknowledge, all amounts payable by one party to the other party in relation to a supply under this Agreement have been calculated exclusive of GST which may be imposed on the supply.
- 26.2 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.

- 26.3 Any amount in respect of GST payable under clause 26.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.
- 26.4 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.

## **27 EXECUTION IN TRIPLICATE**

The Parties shall execute this Agreement in triplicate so as to provide one original signed by both parties and a further copy for registration of the Agreement under s7.6 of the Act. This Agreement will be dated on the day of execution by all Parties.

DRAFT

**SCHEDULE**

<u>Item Number</u>	<u>Particulars</u>	<u>Description</u>
1	Developer	NAME (ACN #)
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	<a href="mailto:info@waverley.nsw.gov.au">info@waverley.nsw.gov.au</a>

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

\_\_\_\_\_  
**EMILY SCOTT**

General Manager

\_\_\_\_\_  
**CLR PAULA MASSELOS**

Mayor

**EXECUTED by**

**NAME**

**(ACN #)**

In accordance with section 127 of the  
Corporations Act 2001

\_\_\_\_\_  
**NAME**

Director/Secretary

\_\_\_\_\_  
**NAME**

Director

# APPENDIX 4 – EXPLANATORY NOTE TEMPLATE

## Explanatory Note

(Clause 205E of the Environmental Planning and Assessment Regulation 202100)

## Draft Planning Agreement

The purpose of this explanatory note is to provide a summary of the proposed Planning Agreement (PA) prepared jointly between Waverley Council and the Developer under s7.4 of the *Environmental Planning and Assessment Act 1979* (the Act).

This explanatory note has been prepared as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

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

**1 Parties:**

Waverley Council (Council) and

Developer (ACN #) of Address (Developer)

**2 Description of subject land:**

**3 Description of Development:**

**4 Background:**

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

**6 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 Public Interest

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

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

Conformity with the Council’s Capital Works Program

Whether the Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

## APPENDIX 5 – TYPES OF PUBLIC BENEFITS DELIVERED BY PLANNING AGREEMENTS

Public benefits delivered by Planning Agreements must be consistent with the *Planning Agreement Practice Note (February 2021)* publication and Part 2 of the ~~the~~ *Waverley Planning Agreement Policy 2014*.

Examples of public benefits include, but are not limited to:

- Affordable housing
- Transfer of land identified on the WLEP 2012 Land Reservation Acquisition Map to Council at no cost to Council for a public purpose
- Dedicated land or floorspace for a public purpose
- Publicly accessible through site links
- Amenity upgrades in parks
- Public E-bike infrastructure (parking hubs/ev charging points)
- Publicly accessible recreation (e.g. tennis courts, indoor play, swimming) and youth facilities
- Publicly accessible play space
- Cultural Infrastructure - music performance space / gallery / exhibition space / artist run initiative (ARI) space / spaces for artist residencies
- Open space acquisition opportunities identified in the Open Space and Recreation Strategy
- Temporary or permanent creative urban interventions
- Streetscape upgrades as outlined in the Our Liveable Places Centres Strategy.
- Works funded by the 7.12 Contribution where there are no obvious infrastructure upgrades in the vicinity of the development.

To assist in delivering public benefits that are expected to be most useful at the time of Planning Agreement drafting, Council officers will consider the *Waverley Public Benefit Register* available for public viewing on Council's website.

The *Waverley Public Benefit Register* is an iterative and non-exhaustive list of possible specific public benefits which includes items presented by both members of the community and Council officers, subject to meeting listing criteria, and being overviewed and approved by the elected Council. The *Waverley Public Benefit Register* and the assessment of proposed items against the listing criteria is managed by Waverley Council's Strategic Town Planning team. The *Waverley Public Benefit Register* is available on Council's website.

The listing criteria includes, but is not limited to items:

- Currently unfunded by the Long Term Financial Plan (LTFP) or grant funding;
- Provides a clear public benefit and/or response to a community need; and
- Related to a Council-endorsed strategy or plan



## APPENDIX 6 – LETTER OF OFFER TEMPLATE

[Developer letterhead]

The General Manager  
Waverley Council  
Cnr Bondi Road & Paul Street  
BONDI JUNCTION NSW 2125

Dear General Manager

Development Application No. \_\_\_\_\_ for  
Property and full title particulars: \_\_\_\_\_

\_\_\_\_\_ Pty Limited ("Developer") has made the above development application in respect of the above property.

This letter constitutes an offer by the Developer to enter into a voluntary Planning Agreement (VPA) with Waverley Council in connection with the above development application ("DA") which has been made by the Developer.

The Developer offers the following to be implemented by way of voluntary Planning Agreement:

1. The parties to the VPA will be the Developer, the registered owner of the Land and the Council.
2. The VPA will apply to the above property and will be registered on title within 14 days of the VPA being executed by all parties.
3. The VPA will apply to the development the subject of any consent granted to the DA including any modification, alteration, or extension to that development whether it be via a construction certificate, a modification to the consent or consent to a further development application ("Development").
4. The provision to be made under the VPA will be the payment of a monetary contribution to Council at the rate of \$ \_\_\_\_\_ per sqm of gross floor area proposed by the Development which exceeds the specified floor space ratio for the property under Waverley LEP 2012.
5. For the avoidance of doubt the Development proposes an additional \_\_\_\_\_ sqm of gross floor area which equates to a contribution of \_\_\_\_\_.
6. The monetary contribution would be payable prior to the issue of any occupation certificate in respect of the Development.
7. (a) In the event that the gross floor area of the Development increases from that in the DA consent via any construction certificate, then an additional monetary contribution shall be made to the Council calculated at the rate of \$ \_\_\_\_\_ per sqm of gross floor area which exceeds the gross floor area of the DA consent and such contribution will be payable on or before the issue of any occupation certificate in respect of the Development.

(b) In the event that the gross floor area of the Development increases from that in the DA consent via any modification to the DA consent or a consent to amend the DA consent, then the Developer further offers in accordance with this paragraph 7(b), to enter into a new Planning Agreement in accordance with Council's Planning Agreement Policy 2014 Amendment No. 4 and make an additional monetary contribution to the Council calculated at the rate of \$ \_\_\_\_\_ per sqm of gross floor area which exceeds the gross floor area of the DA consent. Such contribution will be payable on or before the issue of any occupation certificate in respect of the Development. The Developer will repeat the offer in accordance with this paragraph 7(b) in writing at the time it lodges any application for modification or amendment of the DA consent

which would result in an increase in the gross floor area.

8. The VPA shall not exclude the application of section 7.11, 7.12 or 7.24 of the EP&A Act.
9. The monetary contribution shall not be taken into consideration in determining a development contribution under section 7.11.
10. The monetary contribution shall be used for the provision of (or the recoupment of the cost of providing) affordable housing or any other public purpose agreed by the Developer and Waverley Council.
11. The VPA will provide for security in the form of the provision to Council prior to the issue of any construction certificate for the Development of a Bank Guarantee to secure the payment of the Monetary Contribution prior to the issue of any Construction Certificate for the Development which is:
  - In a form acceptable to Council and from an institution acceptable to Council,
  - Irrevocable,
  - Unconditional, and
  - With no end date.
12. The VPA will be otherwise in accordance with Council's Planning Agreement Policy 2014 Amendment No. 54.

Yours faithfully

[Developer signature]



# Statement of Business Ethics

<b>LINKS TO COMMUNITY STRATEGIC PLAN &amp; DELIVERY PROGRAM</b>
<b>Direction G1</b> — Inspiring community leadership is achieved through decision making processes that are open, transparent, corruption resistant and based on sound integrated planning.
<b>Strategy G1a</b> — Develop and maintain a framework of plans and policies that ensures open and transparent operations that facilitate equitable benefit sharing and progress towards sustainability.
<b>AUTHOR:</b> Michael Simmons
<b>DEPARTMENT:</b> Governance & Integrated Planning
<b>DATE CREATED:</b> August 2006
<b>DATE REVISED:</b> April 2014
<b>DATE APPROVED BY EXECUTIVE TEAM:</b>
<b>DATE ADOPTED BY COUNCIL:</b> 6 May 2014
<b>NEXT REVIEW DATE:</b> April 2016
<b>TRIM FILE REF:</b> A06/1397

## Statement of Business Ethics

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### How we do business at Waverley

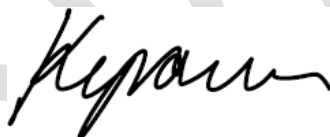
Our community expects high ethical standards in the provision of Council services and in everything else we do. How we manage our relationships is key to maintaining the community's trust and confidence. Council has set out an ethical framework in which it operates and what we expect from staff.

Our Statement of Business Ethics provides clear guidelines on what to expect from Waverley Council, our obligations and expected behaviours. These standards comply with the NSW Government guidelines for procurement and contracting.

Our principles and policies are an integral part of good business practice.

If at any time you feel that Council is not meeting its standards, please contact my office.

I encourage you to become familiar with our policies, and trust that this Statement helps you in your interactions with Council.



Athanasios (Arthur) Kyron  
**General Manager**

1. Who does this Business Ethics Statement refer to?

<del>We, us, our</del>	<del>Council's staff, councillors, contractors, subcontractors, consultants, delegates and (to the extent practicable) volunteers, as appropriate to the context</del>
<del>Council's staff</del>	<del>Council's staff, contractors, subcontractors, consultants, delegates and (to the extent practicable) volunteers</del>
<del>You, your</del>	<del>People or organisations that deal or wish to deal with Council in business matters</del>
<del>Code of Conduct</del>	<del>Council's Code of Conduct and the Code of Conduct Procedure for Councillors &amp; General Manager and the Code of Conduct Procedure for Staff, Delegates &amp; Volunteers as it applies to Councillors, council staff, consultants, delegates and volunteers</del>

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## 2. Why comply with a Business Ethics Statement?

When you comply with this Statement, you will find that doing business with Council is easier and more effective. You can be sure that you are not disadvantaged because we require others who deal with us to do the same.

By doing business ethically, you will also find it easier to deal with other government bodies because they have similar policies. Ethical practice makes good business sense.

On the other hand, corrupt or unethical behaviour can lead to significant legal, financial and reputational consequences for yourself and Council.

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## 3. What are our Values?

Our values are set out in our Delivery Program and Operational Plan and apply to everything we do. We pride ourselves on bringing the following values alive in our daily activities:

### **Great Leadership**

Great leadership is having the courage to make difficult decisions when they are for the benefit of the whole community and having the skills to engage our teams in providing quality service.

### **Great Customer Service**

Great Customer Service is the willingness and ability to give priority to customers, delivering high quality services which meet their needs.

### **Respect for All**

Respect for all is; treating each other and all members of the community in a friendly, fair and equitable way.

### **Working Ethically**

Ethical behaviour is acting in ways that are consistent with the expectation of the organisation to be corruption free and transparent.

**Working Together**

~~Working Together is about everyone working in partnership (internally and with the community) to achieve common or shared goals.~~

**Getting the Job Done Safely, Sustainably and On Time**

~~Getting the job done means providing a service efficiently, effectively and in the safest possible manner within agreed timeframes and due regard for the environment.~~

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## **4. What are our Key Business Principles?**

~~Our Key Business Principles overlap with our Values, and target our relationships with suppliers.~~

**Ethics**

~~We have to comply with Council's Code of Conduct. This means we need to uphold high standards of conduct and ethics in everything we do for Council. We expect the private sector to apply similarly high standards when dealing with Council.~~

~~We will:~~

- ~~\* act with integrity;~~
- ~~\* avoid personal and professional conflicts;~~
- ~~\* respect and follow the letter and spirit of Council's policies and procedures;~~
- ~~\* use public resources effectively and efficiently;~~
- ~~\* make decisions solely on merit; and~~
- ~~\* give reasons for decisions (where appropriate).~~

**Value for Money**

~~We will always try to obtain the best possible value for money in any business arrangement. This does not simply mean the lowest or highest price.~~

~~Apart from initial and ongoing costs, we will normally consider other aspects such as your ability to provide suitable goods or services, quality, safety, environmental sustainability, reliability and timely performance.~~

~~The lowest or highest bid may be the 'best value' if it meets the requirements we believe are needed.~~

### **Fairness**

~~We will be fair by being objective, reasonable and even-handed. This does not mean that we will always ask for competitive bids or that we will ask for bids from suppliers that have performed poorly in the past.~~

~~On the other hand, we will rarely deal exclusively with a particular supplier, and then only where we have strong reasons to do so.~~

~~Sometimes our decision will have a negative effect on a person or organisation, but that does not necessarily mean it is unfair.~~

~~We will only request business proposals (by tender or any other method) if we intend to award a contract. If we make a change to our request, we will advise all the affected bidders so that they can respond before a decision is made.~~

~~All of our business dealings are open and transparent, where legally appropriate, including the surrounding process. The exception is where we need to maintain confidentiality or protect privacy.~~

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## **5. What should you expect from Council?**

~~Council will ensure that all policies, procedures and practices related to approvals, tendering, contracting and the procurement of goods and services are consistent with best practice and the highest standards of ethical conduct. You should expect Council's staff and councillors to:~~

- ~~\* act honestly, openly, fairly and ethically in all their dealings with you;~~
- ~~\* be friendly, courteous, respectful and professional in their dealings with you;~~
- ~~\* respect confidentiality of commercial information and privacy of individuals;~~
- ~~\* prevent actual, potential or perceived conflicts of interest;~~
- ~~\* comply with the law including legislation and regulations;~~
- ~~\* comply with Council's policies and procedures including the Code of Conduct and purchasing policies;~~



- ~~assess all business proposals objectively by considering only relevant factors;~~
- ~~seek value for money;~~
- ~~promote fair and open competition;~~
- ~~protect privilege, confidentiality and privacy;~~
- ~~respond promptly to reasonable requests for information;~~
- ~~never request gifts or other benefits;~~
- ~~decline gifts or other benefits for doing their job unless the gifts or benefits are nominal or token, or otherwise allowed under the Council's *Code of Conduct*. Please note that Waverley Council staff who have a financial delegation are prohibited from receiving gifts of any value; and~~
- ~~clear probity standards are established.~~

## ~~6. What does Council expect from you?~~

~~We expect you to:~~

- ~~act honestly, openly, fairly and ethically in all your dealings with Council and in all your dealings on behalf of Council;~~
- ~~treat our customers in a friendly, courteous, respectful and professional way in all your dealings on behalf of Council;~~
- ~~ensure that environmental sustainability is a key element of your business practice;~~
- ~~respect confidentiality of commercial and Council information and privacy of individuals;~~
- ~~prevent actual, potential or perceived conflicts of interest and declare these as soon as possible if they occur;~~
- ~~comply with the law including legislation and regulations;~~
- ~~provide working conditions for your employees that comply with industrial relations laws and regulations;~~
- ~~not be involved in the exploitation of child labour;~~
- ~~uphold Equal Employment Opportunity principals;~~
- ~~comply with this Statement and Council's other policies and procedures including the *Code of Conduct*, purchasing policies, secondary employment and post separation-employment policies;~~
- ~~provide value for money;~~
- ~~protect privilege, confidentiality and privacy;~~
- ~~respond promptly to reasonable requests for information;~~

- ~~respect the fact that Council's staff and councillors must comply with this Statement and Council's other policies and procedures;~~
- ~~ensure that you do not offer, and refuse requests for, gifts or benefits to Council's staff or councillors for doing their job, unless you are offering gifts or benefits that are nominal or token or otherwise allowed under the Code of Conduct;~~
- ~~ensure that you do not lobby or seek to influence Council's staff or councillors while business proposals are being considered;~~
- ~~ensure that you are not involved in collusive practices including attempting to influence or pressure Council's staff or councillors to perform their public duties improperly;~~
- ~~obtain Council's consent before discussing Council's business with the media;~~
- ~~assist Council to prevent unethical practices in our business relationships;~~
- ~~advise the General Manager if you believe any person has breached the law, this Statement or Council's other policies and procedures.~~

If you are employed/contracted by us, you must ensure that in your dealings with members of the public, you:

- ~~comply with the values and meet the standards set out in this Statement and in council's codes and policies;~~
- ~~act reasonably and professionally at all times;~~
- ~~provide information about how they can make a complaint about you or your operations and how their complaint will be dealt with including how we will be advised of the complaint and its resolution.~~

---

## ~~7. Why you need to comply~~

~~All of Council's providers of goods and services are required to comply with this statement. The principles of this Statement are consistent with the ethical requirements of other public sector agencies. Therefore you must be careful when you deal with us, because we are public officials.~~

~~Council will not tolerate corrupt conduct in any form, such as trying to influence the outcome of a tender. Council's standard tendering invitations, for example, state that any action or contact that may be considered as an attempt to~~

~~influence a decision of Council's staff or councillors will automatically disqualify the relevant tender.~~

~~People and businesses who engage in corrupt conduct are committing a crime. Penalties for certain acts under the Independent Commission Against Corruption Act 1988 and the Crimes Act 1900 can include imprisonment.~~

~~Non-compliance with the requirements of this Statement resulting in demonstrated corrupt or unethical conduct could lead to:~~

- ~~• Termination of contracts~~
- ~~• Loss of future work~~
- ~~• Loss of reputation~~
- ~~• Investigation for corruption~~
- ~~• Matters being referred for criminal investigation~~
- ~~• Disqualification of tender~~

## ~~8. Additional information to assist you~~

### ~~Gifts or other benefits~~

~~Council awards contracts and determines applications based solely on merit. Gifts must NOT be given in connection with any prospective business dealings and Council officials are not permitted to ask for any reward or incentive for doing their job.~~

~~The acceptance of gifts of a token value by Councillors and staff is permitted in certain circumstances. All gifts accepted and all offers of gifts whether token or not are required to be disclosed and are required to be recorded in Council's Gift Register. Waverley Council staff that have a financial delegation are prohibited from receiving gifts of any value.~~

~~References to 'gifts' normally include other benefits or cash. Gifts or benefits to Council's staff and Councillors that have a nominal or token value and do not create a sense of obligation, may be acceptable. Cash is never acceptable. All gifts must be declared and entered in Council's gift register.~~

~~Council's Code of Conduct contains further information.~~

### ~~Communication~~

~~You must communicate with us clearly and directly at all times, and account for all communications. This will ensure~~

~~that there is a minimal risk of appearing to influence Council's staff or councillors inappropriately.~~

### **Confidentiality**

~~All Council information is considered confidential and cannot be disclosed unless Council has agreed otherwise in writing, or the information is public knowledge, or the law requires it to be disclosed.~~

### **Conflict of Interest**

~~Council's staff and councillors must disclose any actual, potential or perceived conflict between their personal interests and their professional duties. This includes both pecuniary and non-pecuniary interests and is equally important.~~

### **Sponsorship**

~~From time to time, Council seeks financial or in-kind sponsorship from the private sector to support Council's activities or events. Council also regularly provides sponsorships or grants to community organisations for their activities or events.~~

~~Council has a *Sponsorships, Grants and Donations Policy* that sets out the procedures and considerations that apply in these situations. Sponsorships, grants or donations must not interfere with Council's ability to carry out its functions, and the process of seeking and providing sponsorships, grants and donations must be open and transparent.~~

### **Contractors, Sub-Contractors, Consultants and Delegates**

~~You must ensure that any person who is engaged in your work for Council complies with this Statement. This applies to all delegates including your staff, contractors, sub-contractors, consultants and any other persons or organisations. We must ensure that any person who acts for Council complies with this Statement.~~

~~All delegates of Council must also comply with Council's Code of Conduct for Staff, Delegates and Volunteers.~~

### **Secondary and Post-Separation Employment**

~~Council's staff members have a duty to maintain public trust.~~

~~If a Council staff member works as an employee outside Council, this is called 'secondary employment'. Running a business or acting as a consultant is also considered 'secondary employment', even if the staff member is not strictly an employee in the other business.~~

~~The General Manager can prohibit Council's staff from secondary employment where there is, or might be, a conflict of interest.~~

~~Council's staff must apply for the General Manager's approval of secondary employment if there is a risk of conflict of interest.~~

~~Council's staff must not use their access to commercially-sensitive information they gain at Council to assist them into secondary employment or into new employment, business or consultancy after they leave Council. This includes detailed knowledge of Council policies, procedures, practices and information unless these are public knowledge.~~

~~Council's staff must also not allow themselves or their work to be influenced by plans for, or offers of, new employment, business or consultancy.~~

~~Council's Code of Conduct contains further information.~~

**Intellectual Property**

~~You must respect Council's intellectual property and Council must respect your intellectual property. Access, licence or use must be agreed in writing.~~

**Use of Resources**

~~Council's resources must only be used for official purposes.~~

~~Council's Code of Conduct contains further information.~~

**Political Donations**

~~The law requires that persons who have a financial interest in, or have made a submission in relation to a Development application or a planning instrument, must disclose certain information about political donations and other gifts. This is a mandatory requirement if a donation or gift has been made to a Councillor or council employee within the previous two years of the application or submission.~~

**Reporting Unethical Behaviour**

~~Council is committed to promoting ethical behaviour. Reports of unethical behaviour, fraud, corruption, maladministration or waste can be made to the General Manager or Council's Public Officer on 02 9369 8000.~~

~~External reports can be made to the:~~

<del>Independent Commission Against Corruption</del>	<del>02 8281 5999</del>
<del>NSW Ombudsman</del>	<del>02 9286 1000</del>
<del>NSW Department of Local Government</del>	<del>02 4428 4100</del>

~~Public officials, including Council's staff and councillors, who report corrupt conduct, maladministration or serious waste of public funds can be protected by the *Protected Disclosures Act 1994*. This Act protects public officials disclosing corruption related matters from reprisal or detrimental action and ensures that disclosures are properly investigated and dealt with.~~

~~9. Who should you contact?~~

~~If you have questions or comments concerning this Statement, or have information on suspected corruption, maladministration or serious waste of funds, please contact the General Manager's office by letter, phone, fax or email. The details are below.~~

~~If you would like a copy of Council's *Code of Conduct for Staff, Code of Conduct for Councillors or Sponsorships, Grants and Donations Policy*, visit [www.waverley.nsw.gov.au](http://www.waverley.nsw.gov.au) or contact our Public Officer.~~

<del>FOR MORE INFORMATION OR TO OBTAIN COUNCIL POLICIES...</del>	<del>TO REPORT CORRUPTION, MALADMINISTRATION OR WASTE...</del>
<del>CONTACT The Public Officer, Waverley Council</del>	<del>CONTACT The General Manager, Waverley Council</del>
<del>PHONE 9369 8000</del>	<del>PHONE 9369 8000</del>
<del>FAX 9369 1820</del>	<del>FAX 9369 1820</del>
<del>ONLINE <a href="http://www.waverley.nsw.gov.au">www.waverley.nsw.gov.au</a></del>	<del>ADDRESS PO BOX 9, BONDI JUNCTION NSW 1355</del>
<del>EMAIL <a href="mailto:info@waverley.nsw.gov.au">info@waverley.nsw.gov.au</a></del>	<del>EMAIL <a href="mailto:info@waverley.nsw.gov.au">info@waverley.nsw.gov.au</a></del>

**REPORT**  
**PD/5.2/24.11**

**Subject:** Social Media Policy and Media Policy - Exhibition

**TRIM No:** A24/1019

**Manager:** Adam Hassan, Executive Manager, Customer Experience and Communications

**Director:** Ben Thompson, Director, Community, Culture and Customer Experience

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**RECOMMENDATION:**

That Council:

1. Publicly exhibits the draft Social Media Policy attached to the report for 28 days.
2. Publicly exhibits the draft Media Policy attached to the report for 28 days.
3. Officers prepare a report to Council following the exhibition period.

**1. Executive Summary**

Council's Media Policy and Social Media Policy have both been reviewed for the new term of Council. The Office of Local Government (OLG) issues model policies for media and social media and it is proposed that Council adopts the model policies given they are viewed as best practice.

The Media Policy provides a framework for Councillors and all Council staff (including volunteers, contractors and advisory committee members) to uphold our reputation and promote Council. It clearly indicates Council's authorised spokespersons to ensure that media coverage of Council matters is accurate, fair and reliable.

The Social Media Policy provides a framework for Councillors and all Council staff with guidance when using social media. The policy also ensures responses to issues raised through Council's social media channels are addressed in a consistent and timely manner and referred to the correct business area.

**2. Introduction/Background**

OLG has provided model policies for media and social media to all councils in NSW. A new term of Council provides the opportunity to adopt the model policies for both in line with best practice.

While the principles remain the same, it provides clear guidance on management of media and social media at Council.

Council attracts significant year-round media attention and undertakes regular community engagement through social media.

**3. Relevant Council Resolutions**

Nil.

#### 4. Discussion

The decision to review our Social Media and Media Policies to align with the model policies from OLG is driven by the following key factors.

- Standardisation and consistency

Adopting OLG's model policy ensures standardisation across our communication practices, enhancing clarity and professionalism. Consistent messaging will strengthen public trust, ensuring stakeholders receive reliable information.

- Enhanced behavioural guidelines

The model policy includes comprehensive behavioural guidelines that address respectful and responsible communication. By incorporating these details, we proactively mitigate issues related to online conduct and misinformation, fostering accountability and respect within our council.

#### 5. Financial impact statement/Time frame/Consultation

Nil.

#### 6. Conclusion

Officers recommend adopting the model policies provided by OLG, with the new term of Council an opportune time to put the policies in place to manage media and social media for Council.

It is proposed that the proposed policies be put on public exhibition for 28 days, with a report to be prepared to Council outlining the outcome of community consultation for Council's consideration.

#### 7. Attachments

1. Draft Social Media Policy [↓](#)
2. Draft Media Policy [↓](#) .





# Social Media Policy



Department	Communications and Engagement
Approved by	
Date approved	
File reference	
Next revision date	Four years from approval date
Relevant legislation	Local Government Act 1993
Related policies/ procedures/guidelines	Social Media Policy 2013 Social Media Policy 2019 Council’s Code of Conduct Council’s Records Management Policy
Related forms	

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## 1. Principles

We, the councillors, staff and other officials of Waverley Council, are committed to upholding and promoting the following principles of social media engagement:

<b>Openness</b>	Our social media platforms are places where anyone can share and discuss issues that are relevant to our Council and the community we represent and serve.
<b>Relevance</b>	We will ensure our social media platforms are kept up to date with informative content about our Council and community.
<b>Accuracy</b>	The content we upload onto our social media platforms and any other social media platform will be a source of truth for our Council and community and we will prioritise the need to correct inaccuracies when they occur.
<b>Respect</b>	Our social media platforms are safe spaces. We will uphold and promote the behavioural standards contained in this policy and our Council's code of conduct when using our social media platforms and any other social media platform.

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## 2. Platforms

2.1 Council will maintain a presence on the following social media platforms:

- Instagram
- Meta (Formerly Facebook)
- LinkedIn
- X (formerly Twitter)
- Youtube

### Establishment and deletion of Council social media platforms

- 2.2 A new council social media platform, or a social media platform proposed by a council related entity (for example, a council committee), can only be established or deleted with the written approval of the General Manager or their delegate.
- 2.3 Where a council social media platform is established or deleted in accordance with clause 2.3, the General Manager or their delegate may amend clause 2.1 of this policy without the need for endorsement by the Council's governing body.

### Appointment and role of the Social Media Officer

- 2.4 The General Manager will appoint a member of council staff to be the council's Social Media Officer (SMO). The SMO should be a senior and suitably qualified member of staff.

- 2.5 The General Manager may appoint more than one Social Media Officer.
- 2.6 The Social Media Officer's role is to:
- a) approve and revoke a staff member's status as an authorised user.
  - b) develop and/or approve the training and/or induction to be provided to authorised users.
  - c) maintain a register of authorised users.
  - d) maintain effective oversight of authorised users.
  - e) moderate the Council's social media platforms in accordance with Part 5 of this policy.
  - f) ensure the Council complies with its record keeping obligations under the *State Records Act 1998* in relation to social media.
  - g) ensure the Council adheres to the rules of the social media platform(s).
  - h) coordinate with the Council's Communications and Engagement teams to ensure the Council's social media platforms are set up and maintained in a way that maximises user friendliness and any technical problems are resolved promptly.
- 2.7 The Social Media Officer may delegate their functions under paragraphs (e) and (f) of clause 2.6 to authorised users.
- 2.8 The Social Media Officer is an authorised user for the purposes of this policy.

### Authorised users

- 2.9 Authorised users are members of council staff who are authorised by the Social Media Officer to upload content and engage on social media on the Council's behalf.
- 2.10 Authorised users should be members of council staff that are responsible for managing, or have expertise in, the events, initiatives, programs or policies that are the subject of the social media content.
- 2.11 The General Manager, along with the Social Media Officer will appoint authorised users when required.
- 2.12 An authorised user must receive a copy of this policy and induction training on social media use and Council's obligations before uploading content on Council's behalf.
- 2.13 The role of an authorised user is to:
- a) ensure, to the best of their ability, that the content they upload onto social media platforms is accurate
  - b) correct inaccuracies in Council generated content
  - c) engage in discussions and answer questions on Council's behalf on social media platforms
  - d) keep the Council's social media platforms up to date

- e) where authorised to do so by the General Manager and Social Media Officer:
    - i) moderate the Council's social media platforms in accordance with Part 5 of this policy
    - ii) ensure the Council complies with its record keeping obligations under the *State Records Act 1998* in relation to social media.
- 2.14 When engaging on social media on Council's behalf (such as, but not limited to, on a community social media page), an authorised user must identify themselves as a member of Council staff but they are not obliged to disclose their name or position within the Council.
- 2.15 Authorised users must not use Council's social media platforms for personal reasons.

#### **Administrative tone**

- 2.16 Authorised users upload content and engage on social media on the Council's behalf. Authorised users must use language consistent with that function and avoid expressing or appearing to express their personal views when undertaking their role.
- 2.17 Authorised users may use more personal, informal language when engaging on Council's social media platforms, for example when replying to comments.

#### **Register of authorised users**

- 2.18 The Social Media Officer will maintain a register of authorised users. This register is to be reviewed regularly to ensure it is fit-for-purpose.

#### **Ceasing to be an authorised user**

- 2.19 The Social Media Officer may revoke a staff member's status as an authorised user, if:
- a) the staff member makes such a request.
  - b) the staff member has failed to comply with this policy.
  - c) the Social Media Officer is of the reasonable opinion that the staff member is no longer suitable to be an authorised user.

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### **3. Administrative framework for councillors' social media platforms**

- 3.1 For the purposes of this policy, councillor social platforms are not council social media platforms. Part 2 of this policy does not apply to councillors' social media platforms.
- 3.2 Councillors are responsible for the administration and moderation of their own social media platforms (in accordance with Parts 3 and 5 of this policy), and ensuring they comply with the record keeping obligations under the *State Records Act 1998* and council's records management policy in relation to social media.

- 3.3 Clause 3.2 also applies to councillors in circumstances where another person administers, moderates, or uploads content onto their social media platform.
- 3.4 Councillors must comply with the rules of the platform when engaging on social media.

### Induction and training

- 3.5 Councillors who engage, or intend to engage, on social media must receive induction training on social media use. Induction training can be undertaken either as part of the councillor's induction program or as part of their ongoing professional development program.

### Identifying as a councillor

- 3.6 Councillors must identify themselves on their social media platforms in the following format:  
*Councillor "First Name and Last Name".*
- 3.7 A councillor's social media platform must include a profile photo which is a clearly identifiable image of the councillor.
- 3.8 If a councillor becomes or ceases to be the mayor, deputy mayor, or the holder of another position (for example, chairperson of a committee), this must be clearly stated on the councillor's social media platforms and updated within two months of a change in circumstances.

### Other general requirements for councillors' social media platforms

- 3.9 Councillor social media platforms must specify or provide a clearly accessible link to the 'House Rules' for engaging on the platform.
- 3.10 A councillor's social media platform must include a disclaimer to the following effect:  
*"The views expressed and comments made on this social media platform are my own and not that of the Council".*
- 3.11 Despite clause 3.10, mayoral or councillor media releases and other content that has been authorised according to the Council's media and communications protocols may be uploaded onto a councillor's social media platform.
- 3.12 Councillors may upload publicly available Council information onto their social media platforms.
- 3.13 Councillors may use more personal, informal language when engaging on their social media platforms.

### Councillor queries relating to social media platforms

- 3.14 Questions from councillors relating to their obligations under this policy, technical queries relating to the operation of their social media platforms, or managing records on social media



may be directed to the Executive Services in the first instance, in accordance with Council's councillor requests protocols.

#### Other social media platforms administered by councillors

- 3.15 A councillor must advise the General Manager of any social media platforms they administer on which content relating to the Council or council officials is, or is expected to be, uploaded. The councillor must do so within:
- a) Two months of becoming a councillor, or
  - b) Two months of becoming the administrator.

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## 4. Standards of conduct on social media

- 4.1 This policy only applies to council officials' use of social media in an official capacity or in connection with their role as a council official. The policy does not apply to personal use of social media that is not connected with a person's role as a council official.
- 4.2 Council officials must comply with the Council's code of conduct when using social media in an official capacity or in connection with their role as a council official.
- 4.3 Council officials must not use social media to post or share comments, photos, videos, electronic recordings or other information that:
- a) is defamatory, offensive, humiliating, threatening or intimidating to other council officials or members of the public.
  - b) contains profane language or is sexual in nature.
  - c) constitutes harassment and/or bullying within the meaning of the *Model Code of Conduct for Local Councils in NSW*, or is unlawfully discriminatory.
  - d) is contrary to their duties under the *Work Health and Safety Act 2011* and their responsibilities under any policies or procedures adopted by the Council to ensure workplace health and safety.
  - e) contains content about the Council, council officials or members of the public that is misleading or deceptive.
  - f) divulges confidential Council information.
  - g) breaches the privacy of other council officials or members of the public.
  - h) contains allegations of suspected breaches of the Council's code of conduct or information about the consideration of a matter under the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*.



- i) could be perceived to be an official comment on behalf of the Council where they have not been authorised to make such comment.
- j) commits the Council to any action.
- k) violates an order made by a court.
- l) breaches copyright.
- m) advertises, endorses or solicits commercial products or business.
- n) constitutes spam.
- o) is in breach of the rules of the social media platform.

4.4 Council officials must:

- a) attribute work to the original author, creator or source when uploading or linking to content produced by a third party.
- b) obtain written permission from a minor's parent or legal guardian before uploading content in which the minor can be identified.

4.5 Council officials must exercise caution when sharing, liking, retweeting content as this can be regarded as an endorsement and/or publication of the content.

4.6 Council officials must not incite or encourage other persons to act in a way that is contrary to the requirements of this Part.

4.7 Councillors must uphold and accurately represent the policies and decisions of the Council's governing body but may explain why they voted on a matter in the way that they did. (see section 232(1)(f) of the *Local Government Act 1993*).

---

## 5. Moderation of social media platforms

5.1 Council officials who are responsible for the moderation of the Council's or councillors' social media platforms may remove content and 'block' or ban a person from those platforms. Such actions must be undertaken in accordance with the house rules.

5.2 For the purposes of this Part, 'social media platform' and 'platform' means both the Council's and councillors' social media platforms.

### House Rules

5.3 This page will be regularly monitored by Council staff.

5.4 Inappropriate or offensive information and disinformation will result in content being removed or 'hidden', or a person being blocked or banned from this page.

5.5 For the purposes of this clause, third parties engaging on social media platforms must not post or share comments, photos, videos, electronic recordings or other information that:

- a) is defamatory, offensive, humiliating, threatening or intimidating to council officials or members of the public,
- b) contains profane language or is sexual in nature
- c) constitutes harassment and/or bullying within the meaning of the *Model Code of Conduct for Local Councils in NSW*, or is unlawfully discriminatory
- d) contains content about the Council, council officials or members of the public that is misleading or deceptive
- e) breaches the privacy of council officials or members of the public
- f) contains allegations of suspected breaches of the Council's code of conduct or information about the consideration of a matter under the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*,
- g) violates an order made by a court
- h) breaches copyright
- i) advertises, endorses or solicits commercial products or business,
- j) constitutes spam
- k) would be in breach of the rules of the social media platform.

#### Removal or 'hiding' of content

- 5.6 Where a person uploads content onto a social media platform that, in the reasonable opinion of the moderator, is of a kind specified under clause 5.5, the moderator may remove or 'hide' that content.
- 5.7 Prior to removing or 'hiding' the content, the moderator must make a record of it (for example, a screenshot).
- 5.8 If the moderator removes or 'hides' the content under clause 5.6, they must, where practicable, notify the person who uploaded the content that it has been removed and the reason(s) for its removal and their rights of review.
- 5.9 A person may request a review of a decision by a moderator to remove or 'hide' content under clause 5.6. The request must be made in writing to the General Manager and state the grounds on which the request is being made.
- 5.10 Where a review request is made under clause 5.9, the review is to be undertaken by the Communications & Engagement Manager or a member of staff nominated by the General

Manager who is suitably qualified and who was not involved in the decision to remove or 'hide' the content.

### **Blocking or banning**

- 5.11 If a person uploads content that is removed or 'hidden' under clause 5.6 of this policy that person may be blocked or banned from the social media platform.
- 5.12 A person may only be blocked or banned from a Council social media platform with the approval of the General Manager. This clause does not apply to blocking or banning a person from a councillor's social media platform.
- 5.13 Prior to blocking or banning a person from a social media platform, the person must, where practicable, be advised of the intention to block or ban them from the platform and be given a chance to respond. Any submission made by the person must be considered prior to a determination being made to block or ban them.
- 5.14 The duration of the block or ban is to be determined by the General Manager, or in the case of a councillor's social media platform, the councillor.
- 5.15 Where a determination is made to block or ban a person from a social media platform, the person must, where practicable, be notified in writing of the decision and the reasons for it. The written notice must also advise the person which social media platforms they are blocked or banned from and the duration of the block or ban and inform them of their rights of review.
- 5.16 Despite clauses 5.11 to 5.15, where a person uploads content of a kind referred to under clause 5.5, and the moderator is reasonably satisfied that the person's further engagement on the social media platform poses a risk to health and safety or another substantive risk (such as the uploading of defamatory content), an interim block or ban from the platform/all platforms may be imposed on the person immediately for a period no longer than two months.
- 5.17 A person who is blocked or banned from the platform/all platforms under clause 5.16 must, where practicable, be given a chance to respond to the interim block or ban being imposed. Any submission made by the person must be considered when determining whether the interim block or ban is to be removed or retained under clauses 5.11 to 5.15.
- 5.18 A person may request a review of a decision to block or ban then from a social media platform. The request must be made in writing to the General Manager and state the grounds on which the request is being made.
- 5.19 Where a review request is made under clause 5.18, the review is to be undertaken by the General Manager or a member of staff nominated by the General Manager who is suitably qualified and who was not involved in the decision to block or ban the person. Where the

decision to block or ban the person was made by the General Manager, the review must be undertaken by another senior and suitably qualified member of staff who was not involved in the decision.

- 5.20 Where a person that is the subject of a block or ban continues to engage on a social media platform(s) using an alternative social media account, profile, avatar, etc., a moderator may block or ban the person from the platform(s) immediately. In these circumstances, clauses 5.11 to 5.19 do not apply.

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## 6. Use of social media during emergencies

- 6.1 During emergencies, such as natural disasters or public health incidents, the Communications & Engagement Manager, Social Media Officer and Senior Media Advisor will be responsible for the management of content on the Council's social media platforms.
- 6.2 To ensure consistent messaging both during and after an emergency, authorised users and council officials must not upload content onto the Council's or their own social media platforms which contradicts advice issued by the agency coordinating the emergency response, or agencies supporting recovery efforts.
- 6.3 Training on social media use during emergencies should be included in training and/or induction provided to authorised users and councillors.

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## 7. Records management and privacy requirements

### Records management

- 7.1 Social media content created, sent and received by council officials (including councillors) acting in their official capacity is a council record and may constitute open access information or be subject to an information access application made under the *Government Information (Public Access) Act 2009*. These records must be managed in accordance with the requirements of the *State Records Act 1998* and the Council's approved records management policies and practices.
- 7.2 You must not destroy, alter, or remove social media content unless authorised to do so. If you need to alter or remove social media content, you must do so in accordance with this policy, and consult with the Council's records manager and comply with the requirements of the *State Records Act 1998*.
- 7.3 When/if a councillor's term of office concludes, the councillor must contact the Council's records manager to manage/transfer records of social media content created during their term of office and comply with the requirements of the *State Records Act 1998*.

- 7.4 In fulfilling their obligations under clauses 7.1 to 7.3, council officials should refer to any guidance issued by the State Archives and Records Authority of NSW relating to retention requirements for councils' and councillors' social media content<sup>1</sup>.

### Privacy considerations and requirements

- 7.5 Social media communications are in the public domain. Council officials should exercise caution about what personal information, if any, they upload onto social media.
- 7.6 The *Privacy and Personal Information Protection Act 1998* applies to the use of social media platforms by the Council and councillors. To mitigate potential privacy risks, council officials will:
- a) advise people not to provide personal information on social media platforms
  - b) inform people if any personal information they may provide on social media platforms is to be used for official purposes
  - c) moderate comments to ensure they do not contain any personal information
  - d) advise people to contact the Council or councillors through alternative channels if they have personal information they do not want to disclose in a public forum.
- 7.7 Council officials must ensure they comply with the *Health Records and Information Privacy Act 2002* when engaging on and/or moderating social media platforms. In fulfilling their obligations, council officials should refer to any guidance issued by the Information and Privacy Commission of NSW, such as, but not limited to, the Health Privacy Principles.

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## 8. Private use of social media

### What constitutes 'private' use?

- 8.1 For the purposes of this policy, a council official's social media engagement will be considered 'private use' when the content they upload:
- a) is not associated with, or does not refer to, the Council, any other council officials, contractors, related entities or any other person or organisation providing services to or on behalf of the Council in their official or professional capacities, and
  - b) is not related to or does not contain information acquired by virtue of their employment or role as a council official.
- 8.2 If a council official chooses to identify themselves as a council official, either directly or indirectly (such as in their user profile), then they will not be deemed to be acting in their private capacity for the purposes of this policy.

## Use of social media during work hours

- 8.3 Council staff who access and engage on social media in their private capacity during work hours must ensure it does not interfere with the performance of their official duties.

## 9. Concerns or complaints

- 9.1 Concerns or complaints about the administration of a council's social media platforms should be made to the council's Customer Service team in the first instance.
- 9.2 Complaints about the conduct of council officials (including councillors) on social media platforms may be directed to the General Manager.
- 9.3 Complaints about a General Manager's conduct on social media platforms may be directed to the Mayor.

## 10. Definitions

In this Model Social Media Policy, the following terms have the following meanings:

Term	Definition
<b>authorised user</b>	members of council staff who are authorised by the General Manager or SMC to upload content and engage on the Council's social media platforms on the Council's behalf
<b>council official</b>	in the case of a council - councillors, members of staff and delegates of the council (including members of committees that are delegates of the council); in the case of a joint organisation – voting representatives, members of staff and delegates of the joint organisation (including members of committees that are delegates of the joint organisation)
<b>minor</b>	for the purposes of clause 4.4(b) of this policy, is a person under the age of 18 years
<b>personal information</b>	information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
<b>SMO</b>	is a council's social media officer appointed under clause 2.7 of this policy
<b>social media</b>	online platforms and applications - such as but not limited to social

networking sites, wikis, blogs, microblogs, video and audio sharing sites, and message boards - that allow people to easily publish, share and discuss content. Examples of social media platforms include, but are not limited to Facebook, Twitter, Snapchat, LinkedIn, Yammer, YouTube, Instagram, Flickr and Wikipedia

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WAVERLEY  
COUNCIL

## Media Policy





Department	Communications and Engagement
Approved by	
Date approved	
File reference	
Next revision date	Four years from approval date
Relevant legislation	Local Government Act 1993
Related policies/ procedures/guidelines	Council’s Code of Conduct Media Policy 2024 Council’s Records Management Policy
Related forms	

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## 1. Principles

- 1.1 We, the councillors, staff, and other officials of Waverley Council, are committed to upholding and promoting the following principles of media engagement:

**Openness** We will ensure that we promote an open exchange of information between our council and the media.

**Consistency** We will ensure consistency by all councillors and staff when communicating with the media.

**Accuracy** The information we share with the media will be a source of truth for our council and community and we will prioritise the need to correct inaccuracies when they occur.

**Timeliness** We will ensure that we respond to media enquiries in a timely manner.

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## 2. Appointment and the role of the Senior Media Advisor

- 2.1 The General Manager will appoint a member of council staff to be the Council's Senior Media Advisor. The Senior Media Advisor should be a suitably qualified member of staff.
- 2.2 The General Manager may appoint more than one Senior Media Advisor.
- 2.3 The Senior Media Advisor's role is to:
- a) be the lead point of contact for all media enquiries, requests for interviews, requests to film or photograph council staff, facilities or events for news and current affairs purposes
  - b) be responsible for preparing all media statements prior to their release
  - c) liaise with relevant staff members within the organisation where appropriate.
  - d) ensure that media statements are approved by the Mayor and/or General Manager prior to their release
  - e) develop and/or approve media training and/or induction to be provided to relevant staff and/or councillors
  - f) maintain a record of all media enquiries and responses
  - g) ensure that media organisations and their representatives are treated professionally, equally and without bias
  - h) ensure that media enquiries are dealt with promptly

- i) provide guidance to councillors approached by the media for comment to avoid communication of misinformation, and
- j) ensure that all media releases are published on the Council's website.

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### 3. Who can engage with the media

#### The General Manager

- 3.1 The General Manager is the official spokesperson for the Council on operational and administrative matters.
- 3.2 The General Manager may delegate to other council staff to speak on their behalf where appropriate, (for example, where the delegated staff member has professional expertise regarding the subject matter, or the general manager is unavailable).

#### The Mayor

- 3.3 The Mayor is the principal member and spokesperson of the governing body of the Council, including representing the views of the Council as to its local priorities (section 226(c) of the Local Government Act 1993).
- 3.4 If the Mayor is unavailable, the Deputy Mayor may act as the Council's spokesperson.
- 3.5 The Mayor may delegate their role as spokesperson to other councillors where appropriate, (for example, where another councillor is best placed to comment, because the issue is of particular interest to them, or it is within their particular area of expertise).

#### Councillors

- 3.6 As a member of the governing body and as a representative of the community, councillors are free to express their personal views to the media.
- 3.7 When engaging with the media councillors:
  - 3.8 must not purport to speak for the Council unless authorised to do so.
  - 3.9 must clarify when speaking to the media that they are expressing their personal views as an individual councillor and that they are not speaking for the Council (unless authorised to do so)
  - 3.10 must uphold and accurately represent the policies and decisions of the Council
  - 3.11 must not disclose council information unless authorised to do so, and
  - 3.12 must seek information and guidance from the Senior Media Advisor where appropriate before providing comment to the media to ensure they have the most up-to-date and relevant information and have considered reputational or other risks.
- 3.13 In the interests of promoting a positive, safe and harmonious organisational culture, councillors should endeavour to resolve personal differences privately and must not prosecute them publicly

through the media.

- 3.14 Where councillors (including the Mayor) become aware of potential issues that could result in media interest, they should provide this information to the Senior Media Advisor.

### **Councillors**

- 3.15 Council staff must not speak to the media about matters relating to the Council unless authorised by the Senior Media Advisor to do so.
- 3.16 If Council staff receive a media enquiry or they are invited to comment to the media on a matter relating to the Council, they must refer the enquiry to the Senior Media Advisor.
- 3.17 Council staff are free to express their personal views to the media on matters that do not relate to the Council, but in doing so, must not make comments that reflect badly on the Council or that bring it into disrepute.
- 3.18 If authorised to speak to the media, Council staff:
- 3.19 must uphold and accurately represent the policies and decisions of the Council
- 3.20 must not disclose Council information unless authorised to do so by the Senior Media Advisor, and
- 3.21 must seek information and guidance from the Senior Media Advisor where appropriate before providing comment to the media to ensure they have the most up-to-date and relevant information and have considered reputational or other risks
- 3.22 Where Council staff become aware of potential issues that could result in media interest, they should provide this information to the Senior Media Advisor.

### **Council Staff**

- 3.23 Council staff must not speak to the media about matters relating to the Council unless authorised by the Senior Media Advisor to do so.
- 3.24 If Council staff receive a media enquiry or they are invited to comment to the media on a matter relating to the Council, they must refer the enquiry to the Senior Media Advisor.
- 3.25 Council staff are free to express their personal views to the media on matters that do not relate to the Council, but in doing so, must not make comments that reflect badly on the Council or that bring it into disrepute.
- 3.26 If authorised to speak to the media, Council staff:
- 3.27 must uphold and accurately represent the policies and decisions of the Council
- 3.28 must not disclose Council information unless authorised to do so by the Senior Media Advisor, and
- 3.29 must seek information and guidance from the Senior Media Advisor where appropriate before providing comment to the media to ensure they have the most up-to-date and relevant information and have considered reputational or other risks

- 3.30 Where Council staff become aware of potential issues that could result in media interest, they should provide this information to the Senior Media Advisor.

### **Tone**

- 3.31 All media engagement by council officials must be conducted in a professional, timely and respectful manner.

### **Induction and Training**

- 3.32 The Council must provide training to Council officials who engage or are authorised to engage with the media.
- 3.33 Media engagement training will be provided to councillors as part of their induction or refresher training or as part of their ongoing professional development program.

### **Councillor's questions about media engagement**

- 3.34 Councillors must direct any questions about their obligations under this policy to the Senior Media Advisor.

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## **4. Standards of conduct when engaging with the media**

- 4.1 Council officials must comply with the Council's code of conduct when engaging with the media in an official capacity or in connection with their role as a council official.
- 4.2 Council officials must not share information or make comments to the media through either direct or indirect mechanisms that:
- a) are defamatory, offensive, humiliating, threatening, or intimidating to other council officials or members of the public
  - b) contains profane language or is sexual in nature
  - c) constitutes harassment and/or bullying within the meaning of the Model Code of Conduct for Local Councils in NSW, or is unlawfully discriminatory
  - d) is contrary to their duties under the Work Health and Safety Act 2011 and their responsibilities under any policies or procedures adopted by the Council to ensure workplace health and safety
  - e) contains content about the Council, council officials or members of the public that is misleading or deceptive
  - f) divulges confidential Council information
  - g) breaches the privacy of other council officials or members of the public
  - h) contains allegations of suspected breaches of the Council's code of conduct or information about the consideration of a matter under the Procedures for the Administration of the Model

#### Code of Conduct for Local Councils in NSW

- i) could be perceived to be an official comment on behalf of the Council where they have not been authorised to make such comment
- j) commits the Council to any action
- k) violates an order made by a court
- l) breaches copyright
- m) advertises, endorses, or solicits commercial products or business.

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## 5. Use of media during emergencies

- 5.1 During emergencies, such as natural disasters or public health incidents, the Senior Media Advisor and Communications & Engagement Manager will be responsible for coordinating media releases and statements on behalf of the Council.
- 5.2 Councillors, Council staff and other Council officials must not provide comment or information to the media that is inconsistent with official advice issued by the Council and any other agency coordinating the emergency response.
- 5.3 Training on media engagement during emergencies will be provided to councillors and relevant staff and other Council officials.

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## 6. Media engagement in the lead up to elections

- 6.1 This policy does not prevent the mayor or councillors who are candidates at a council or any other election from providing comment to the media in their capacity as candidates at the election.
- 6.2 Any media comment provided by the mayor or councillors who are candidates at a council or another election must not be provided in an advertisement, newspaper column, or a radio or television broadcast paid for by the council or produced by the council or with council resources.

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## 7. Records management requirements

- 7.1 Media content created and received by council officials (including councillors) acting in their official capacity is a council record and may be subject to information access applications made under the Government Information (Public Access) Act 2009. These records must also be managed in accordance with the requirements of the State Records Act 1998 and the Council's approved records management policies and practices.

## 8. Definitions

- 8.1 Media content created and received by council officials (including councillors) acting in their official capacity is a council record and may be subject to information access applications made under the Government Information (Public Access) Act 2009. These records must also be managed in accordance with the requirements of the State Records Act 1998 and the Council's approved records management policies and practices.

Term	Definition
<i>Council official</i>	in the case of a council – means councillors, members of staff and delegates of the council (including members of committees that are delegates of the council); in the case of a county council – means members, members of staff and delegates of the council (including members of committees that are delegates of the council); in the case of a joint organisation – means voting representatives, members of staff and delegates of the joint organisation (including members of committees that are delegates of the joint organisation)
<i>Social Media Advisor</i>	Means a person appointed under clause 1.3 of this policy
<i>media</i>	means print, broadcast and online media used for communicating information to the public, including, but not limited to, newspapers, magazines, internet publishers, radio, and television broadcasters
<i>personal information</i>	means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion
<i>social media</i>	means online platforms and applications, such as but not limited to social networking sites, wikis, blogs, microblogs, video and audio sharing sites, and message boards, that allow people to easily publish, share and discuss content. Examples of social media platforms include, but are not limited to Facebook, Twitter, Snapchat, LinkedIn, YouTube, Instagram and Wikipedia

## 9. Review of Policy

- 9.1 This policy will be reviewed every four years or as required in the event of legislative changes or requirements. The policy may also be changed as a result of other amendments. Any amendments to a community facing policy must be way of a Council resolution, and any amendments to an



organisational facing policy must be approved by the General Manager.

- 9.2 Council staff and members of the public may provide feedback about this document by emailing [communications@waverley.nsw.gov.au](mailto:communications@waverley.nsw.gov.au).

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## REPORT

### PD/5.3/24.11



**Subject:** Sponsorship Policy - Exhibition

**TRIM No:** A24/0140

**Manager:** Tanya Goldberg, Executive Manager, Arts, Culture and Events

**Director:** Ben Thompson, Director, Community, Culture and Customer Experience

#### RECOMMENDATION:

That Council:

1. Publicly exhibits the draft Sponsorship Policy attached to the report for 28 days.
2. Officers prepare a report to Council following the exhibition period.

#### 1. Executive Summary

Council last adopted its Sponsorship Policy in December 2019. The policy has been reviewed and updated and is presented here for Council's review and endorsement.

It is recommended that Council places the draft Sponsorship Policy on public exhibition for 28 days to seek feedback on the proposed amendments.

#### 2. Introduction/Background

Council last adopted its Sponsorship Policy in December 2019. The policy was created as a separate policy from the then-Sponsorship, Grants and Donations Policy to provide sufficient and specific guidance to officers in seeking, assessing and entering into sponsorship agreements to enhance existing Council programs for the benefit of the Waverley community.

The policy provided clarity and addressed inconsistencies in approaches to sponsorship-seeking activities across Council.

Officers have updated the existing policy to ensure it remains relevant to Council's current activities and enables officers to explore potential for sponsorship opportunities that can further support revenue opportunities that provide ongoing benefits to the Waverley community.

#### 3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Operations and Community Services Committee 3 December 2019	OC/5.4/19.12	That Council: <ol style="list-style-type: none"> <li>1. Adopts the Sponsorship Policy attached to this report, subject to the following amendments:               <ol style="list-style-type: none"> <li>(a) Section 4.11 – Approval for Sponsorship:</li> </ol> </li> </ol>

		<p>(i) The fourth bullet point to read:</p> <p>‘In urgent circumstances (where a proposed Inbound sponsorship above \$20,000 needs to be determined before the next available Council or Committee meeting) – Mayor and General Manager; noting that Councillors are to be emailed details of the proposed sponsorship prior to any decision taken by the Mayor and General Manager, and sponsorship details are to be reported to the next available Council or Committee meeting after the decision.’</p> <p>(ii) The seventh bullet point be deleted.</p> <p>2. Notes that:</p> <p>(a) A Community Grants Policy was adopted by Council on 19 November 2019.</p> <p>(b) A new Donations Policy is being developed for the consideration of Council.</p> <p>(c) Until such time as the new policy referred to in clause 2(b) above is adopted, the relevant provisions of the existing Sponsorship, Grants and Donations Policy will apply.</p>
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#### 4. Discussion

Council researches, develops and delivers quality activities, events and programs to enhance the vibrancy of its community. This activity requires the substantial resourcing of staff expertise, staff time and the high cost of program delivery. Through in-bound financial and in-kind sponsorship, these activities can be expanded and enhanced to provide a greater benefit to the community.

Council also provides outbound sponsorship to community organisations, groups and individuals to support activity for the benefit of the community.

This policy outlines the principles of sponsorship for Council and establishes a coordinated, transparent approach to the way Council seeks, secures, provides and manages all sponsorship arrangements.

Key changes from the previous version of this policy:

- Provision for Council to create packages of assets, events and activities to attract sponsorships that could span an agreed period or physical area.
- Provision for Council to take a flexible approach to respond current market approaches to sponsorships provided there is tangible public benefit.
- Provision for Council to assign temporary, bespoke designations to sponsorship arrangements for example but not limited to ‘official beach safety partner’, ‘official summer partner’, ‘official community partner’ etc.

- Alignment with Council's existing agreements and obligations, including planning controls and the requirement for Council to approve third-party commercial activities. This includes activities of a sponsorship or advertising nature undertaken in Council-managed properties, including those falling under the *Crown Lands Management Act 2016*.
- Provision for Council staff to attract potential sponsorships in various ways.
- Alignment of inbound sponsorship agreement approvals with the tender threshold under s 55 of the *Local Government Act*, allowing the General Manager to approve agreements with a value of less than \$250,000.
- Applying a suitable framework for the assessment of all sponsorship proposals.

Key changes in the draft policy are identified in red text in Attachment 1.

The alignment of this policy with planning controls is timely, as Council is looking to amend the *Waverley Local Environment Plan* (LEP) to best support current community uses, needs and benefits of public spaces through their effective management and control.

## **5. Financial impact statement/Time frame/Consultation**

### **Financial impact statement**

Council offers a wide range of financial supports to the community including through the Small Grants program, Local Creative Collaborations financial support and venue hire fee waivers, grants and donations. Seeking revenue through aligned sponsorship is an important and necessary way that Council can ensure its ongoing financial sustainability and fiscal responsibility.

There is significant potential for enhanced revenue opportunities through inbound sponsorship arrangements, enabling officers to attract revenue to Council that can be directly returned as a benefit to the community through enhanced activities and new programs, and can offset Council's substantial investment in financial support to community.

This activity will have an impact on staff time so that staff can appropriately service and manage the negotiation and implementation of any sponsorship agreements. The policy does mitigate this impact, however, stipulating that the value of inbound sponsorship must be sufficiently greater than the cost to Council in time and resources of obtaining the sponsorship.

There is no financial impact to the placement of this draft policy on public exhibition.

### **Time frame**

Public exhibition is proposed for 28 days, Council's standard period for community consultation via Have Your Say.

Following public exhibition and Council approval, the policy update can be executed and implemented immediately.

### **Consultation**

The changes to the policy are considered consistent with the existing policy and forthcoming reviews of planning controls. It is recommended that Council publicly exhibits these draft amendments for 28 days so that community feedback may be captured.

Following this period, officers will prepare a report to Council detailing any feedback received to the proposed amendments. If no material feedback is received, the report will recommend Council adopt the draft policy.

**6. Conclusion**

It is recommended that Council publicly exhibits the draft Sponsorship Policy for 28 days.

**7. Attachments**

1. Draft Sponsorship Policy [↓](#) .



WAVERLEY  
COUNCIL

# Sponsorship Policy



Department	Arts, Culture and Events
Approved by	<Council >
Date approved	<xx >
File reference	A18/0478
Next revision date	<Four years from approval date>
Relevant legislation	NSW Local Government Act 1993 NSW Crown Lands Management Act 2016
Related policies/ procedures/guidelines	Waverley Community Strategic Plan Waverley Arts and Culture Plan
Related forms	

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## 1. Background

Waverley Council researches, develops and delivers quality activities, events and programs to enhance the vibrancy of its community. This activity requires the substantial resourcing of staff expertise, staff time and the high cost of program delivery. Through in-bound financial and in-kind sponsorship, these activities can be expanded and enhanced to provide a greater benefit to the community.

Waverley Council also provides outbound sponsorship to community organisations, groups and individuals to support activity for the benefit of the community.

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## 2. Purpose

This policy outlines the principles of sponsorship for Waverley Council and establishes a coordinated, transparent approach to the way Council seeks, secures, provides and manages all sponsorship arrangements.

The policy:

- Outlines a framework and general principles for managing Waverley Council's inbound and outbound sponsorships, whether monetary or in-kind.
- Outlines considerations in identifying, pursuing, securing, approving, receiving, distributing and managing inbound sponsorship.
- Outlines considerations in identifying, assessing, approving and managing outbound sponsorship.
- Ensures that all sponsorship is dealt with in a fair, transparent and equitable manner.
- Outlines responsibilities of all parties involved in a sponsorship arrangement.
- Specifies criteria to guide decisions to seek or support sponsorship opportunities, including considerations for public probity, policy conformity and the avoidance of conflicts of interest.

Waverley Council considers prospective sponsorship to be a mechanism with which to value-add to existing activities, projects or programs, or to introduce new projects.

Council will continue to provide its services and commitments to the community regardless of whether sponsorship support is received or provided but it is acknowledged that aligned sponsorship can uniquely amplify the investment Council makes in its services to the Community.

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### 3. Scope

This policy applies to all inbound and outbound sponsorship arrangements entered by Waverley Council. It does not apply to grants and donations. The Policy supersedes the Sponsorship related sections of the Grants, Donations and Sponsorship Policy (2013).

This Policy applies to all Waverley Council elected representatives and employees, including permanent, temporary and casual staff, contractors and consultants engaged by Waverley Council.

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### 4. Content

#### 4.1 Sponsorship principles

Any sponsorship arrangement that is offered or sought by Waverley Council must:

- Benefit Council, the residents, businesses and/or visitors of the Waverley Local Government Area.
- Align with and help deliver Council's Community Strategic Plan and other Council Plans and Policies.
- Not create a conflict of interest.
- Pass a suitability assessment.
- Pass a Risk and Probity assessment.
- Not interfere with Council's ability to exercise its obligations under the Local Government Act 1993 or any other relevant legislation that Council relies on to perform its duties and deliver services.

#### 4.2 Suitable items for sponsorship

Sponsorship may be inbound (received by Council), or outbound (offered by Council) and can be funded and/or in-kind.

##### 4.2.1 Suitable activities for inbound sponsorship

The types of events/activities that Council may consider suitable for inbound sponsorship generally include:

Temporary or recurring activities or events such as:

- Public and ticketed events, festivals and event programs.
- Arts and Culture activities and programs of a limited time period or ongoing e.g. exhibitions, performing arts offerings, cultural programs, creative development programs.

- Public conferences, seminars and workshops e.g. business forums.
- Training and education or opportunities for scholarships.
- Community or industry awards.
- Environmental sustainability projects.
- Community awareness and education campaigns.
- Or any other deemed appropriate including combinations of multiple activities or events.

Council assets including but not limited to:

- Buildings, facilities, parks, sporting facilities, bus shelters, fleet or other infrastructure and possible combinations thereof.

Waverley Council may create packages of temporary or recurring activities or events and/or Council assets to attract sponsorship arrangements that, for example, span an agreed period, an agreed physical area or an agreed suite of programs and events.

Waverley Council takes a flexible approach to events/activities and assets that can be combined into packages of benefits for various suitable sponsorship arrangements that may attract temporary partnership designations and are responsive to current market approaches to partnership building.

#### 4.2.2 Suitable activities for outbound sponsorship

The types of events/activities that Council may consider suitable for outbound sponsorship generally include:

- Cultural or community events and/or projects.
- Community education programs.
- Sporting projects and/or programs.
- Conferences.
- Scholarships.
- Awards.
- Research and publications.
- Or any other deemed appropriate.

#### 4.3 Benefits to sponsors (inbound sponsorship)

The specific benefits of an inbound sponsorship arrangement to the sponsor are determined in collaboration and agreement with Waverley Council and may be restricted by legislation and public policy. Benefits must be agreed upon in advance and included in the sponsorship agreement. The extent of benefits will depend on the level and nature of the sponsorship and may include but is not limited to:

- Ability to use Council's branding, content and imagery in connection with the sponsored activity and the ability to develop co-branded material.

- Ability to use temporary partnership designations, for example but not limited to “Official beach safety partner”, “Official summer partner”, “Official community partner” etc.
- Branding exposure on print and digital materials and collateral, media, social media, direct marketing, and Council’s public Wi-Fi platform.
- Exposure at events through signage and integration into events programs where feasible and appropriate, acknowledgement by the emcee or speakers.
- Opportunity to speak publicly at the sponsored event or activity.
- In-kind event coordination support and event advisory/logistics support.
- Event hospitality including invitation to events, invitation to VIP functions, temporary car parking spaces for events and preferential seating.
- Naming rights or category sponsorship for major events.
- Award or trophy in the sponsor’s name and publicly presented.
- Designated spaces whether internal or external on a case by case basis.
- Display of goods and other material merchandising of goods at selected points of sale.
- Sponsors name, logo or other relevant design displayed on Council assets e.g., fleet vehicles, or recognition in connection with the asset.
- Council fee waivers or agreement to meet costs associated with services it would otherwise charge for, as listed in the advertised Fees and Charges e.g. installation of street banners.

#### 4.4 Benefits to Council (outbound sponsorship)

Specific benefits to Waverley Council for outbound sponsorships will be determined as part of the development of any outbound sponsorship agreement. The extend of benefits will depend on the level and nature of the sponsorship and may include but is not limited to providing, creating or maintaining:

- Alternate avenues for Council to provide social and cultural benefit to, and meet the needs of, the Waverley Community.
- Positive media, promotion and publicity opportunities across a range of media platforms.
- A mechanism to return economic benefit to the Waverley local government area by the leveraging of proportionally lower contributions.
- Opportunities for Council to have visible and meaningful participation in events and activities that enhance the image and reputation of the local government area.
- Valuable strategic alliances for Council

#### 4.5 Sponsorships not permitted under this policy

Sponsorships will not be offered or sought that:

- May adversely impact Waverley Council’s reputation and brand.
- Impede or potentially impede Council’s ability to carry out its functions fully and impartially.
- Are inconsistent with the objectives outlined in Waverley Council’s Community Strategic Plan, or other plans, strategies and policies of Council including Plans of Management.
- Give rise to a conflict of interest.
- Pose a conflict between the objectives and values of Council and those of the other party.

Waverley Council will not consider sponsorship arrangements with other parties that Council deems:

- Could compromise or be seen to compromise Council's ability to exercise its regulatory and planning functions. Further, other parties must have a clear understanding that any arrangements have no bearing on Council's capability to exercise such functions.
- Have not fulfilled the requirements of a previous sponsorship arrangement.
- To be of a political nature (e.g. political parties).
- Relate to adult services or adult content production or distribution.
- Promote or are associated with the sale of tobacco.
- Promote or are associated with gambling products or services.
- Promote or are associated with weapons manufacture and sale.
- Discriminate by way of race, religion, gender, sexual orientation including in employment, marketing or advertising practices.

#### 4.6 Conflict of interest

Every sponsorship arrangement proposal will be assessed as to whether it gives rise to or may give rise to a conflict of interest (either real or perceived). Council has the discretion to refuse or terminate such arrangement in any case where, during the life of the sponsorship agreement, the other party (including related parties, parent companies and subsidiaries):

- Has a current development application or planning matter before Council, or Council is aware of a possible future application and planning matter.
- Is or is likely to be subject to regulation or inspection where Council may impose conditions.
- May limit Council's ability to carry out its functions fully and impartially or may be perceived to do so.
- Or for any other reason.

There should be no suggestion, either explicitly or implicitly, that any individual, organisation or company will be given any favourable or special treatment because of providing sponsorship support to Council.

No elected representative, employee or agent of Waverley Council is to receive, or solicit, a personal benefit from a sponsorship agreement with Council. This would constitute a breach of Council's Code of Conduct.

Prospective sponsors will be required to sign a Conflict of Interest Declaration as part of the acceptance and approval process.

#### 4.7 Partner organisations and third-party sponsorship

From time to time, Waverley Council may partner with an external organisation to deliver a program or event. Conditions associated with the partnership arrangement will be outlined in an agreement.

Partners seeking sponsorship to events and programs run in conjunction with Council should adhere to the criteria outlined in this policy for assessing the suitability of potential sponsorships. Council must be notified of potential sponsorship arrangements by partner organisations and retains the right to reject potential sponsorship arrangements that it deems to be inappropriate, or to impose conditions of the sponsorship offering and arrangement.

Any third-party commercial activity that is undertaken in Council-managed properties, including those falling under the Crown Lands Management Act, is subject to Council approval. This includes activities of a sponsorship or advertising nature undertaken by third parties such as local surf life saving clubs or venue hirers.

#### 4.8 Retainment of discretion to reject sponsorship

When determining and evaluating a sponsorship proposal, Waverley Council retains the discretion not to accept a sponsorship proposal. Council will assess proposals according to the framework in section 4.10 of this policy.

Council retains the discretion to reject third-party sponsorship proposals undertaken in Council-managed properties, including those falling under the Crown Lands Management Act as outlined in clause 4.7.

#### 4.9 Attracting Sponsors

Sponsorship opportunities may be sought through various approaches. Waverley Council may offer or seek sponsorship opportunities through:

##### 4.9.1 Expressions of interest

Expressions of interest will typically be invited through advertisement to ensure the business community and other relevant government and non-government organisations can participate in relevant sponsorship opportunities.

##### 4.9.2 Pitching a sponsorship

Council may identify potential sponsor/s for a specific sponsorship opportunity and may initiate direct contact with the potential sponsor/s where there is a strategic alignment between the prospective sponsor/s and the activity or project for which sponsorship is being sought.

##### 4.9.3 Unsolicited proposals

Unsolicited proposals for sponsorship should only be accepted where a significant strategic alignment exists between the sponsor and the target sponsorship offering.

#### 4.9.4 Solicited proposals

Council staff may identify and investigate sponsorship alignments with potential partners through the application of their subject matter expertise and/or using dedicated service providers to provide benefits to the Waverley community.

#### 4.9.5 A combination of the above

Council seeks to be responsive to market trends and variations to maximise opportunities to provide the greatest possible benefit to the Waverley community through flexible approaches to potential sponsors.

### 4.10 Approval of Sponsorship

Approval for sponsorship arrangements is as follows:

#### 4.10.1 Inbound

**\$249,999 and below** – approval by the General Manager in consultation with the Executive Leadership Team.

**Above \$250,000 and above** – approval by Council.

Sponsorship proposals from property developers – approval by Council.

In urgent circumstances (where a proposed inbound sponsorship valued at **\$250,000** or above needs to be determined before the next available Council or Committee meeting) approval may be provided by the Mayor and General Manager; noting that Councillors are to be emailed details of the proposed sponsorship prior to any decision taken by the Mayor and General Manager, and sponsorship details are to be reported to the next available Council or Committee meeting after the decision.

Approval is granted after consideration of the proposal with respect to the criteria laid out in section 4.11 below.

#### 4.10.2 Outbound

**\$5,000 and below** – approval by the General Manager in consultation with the Executive Leadership Team.

**Above \$5,000** – approval by Council.

Assessments of sponsorship proposals will be undertaken against the criteria for appropriateness outlined in this policy and will assess and take account of any risk and probity considerations including potential conflict of interest situations.

Any sponsorship arrangement must be formalised with a written agreement. This agreement should be the entire arrangement between the parties, and no privileges for either party shall exist outside the agreement, unless approved by both parties.

#### 4.11 Assessment framework

The following provides a framework for assessing all sponsorship proposals.

Consideration	Evaluation
<i>Alignment with Council's vision and values</i>	
<i>Alignment with Council's strategic objectives</i>	
<i>Alignment with Council policies and relevant legislation</i>	
<i>Proposal provides tangible community benefit</i>	
<i>The value of the sponsorship proposal is greater than the cost to Council is time and resources spent obtaining it</i>	

#### 4.12 Managing sponsorships

A sponsorship agreement must be entered into for each sponsorship arrangement. The sponsorship agreement must not impose or imply conditions that would limit, or appear to limit, Council's ability to carry out its functions fully and impartially.

The agreement will set out:

- The nature of benefits, including economic and in-kind benefits, available to Council and the other party.
- The agreed form or forms of sponsorship acknowledgement.
- The term of the sponsorship and any conditions regarding renewal.
- Financial accountability requirements.
- **Agreed KPIs for the sponsorship.**
- Provision for termination or suspension of the agreement.

#### 4.13 Reporting Requirements

All sponsorship arrangements are to be documented through a sponsorship proposal, sponsorship agreement and reported to the community via Council's Annual Report for the respective financial year. A register of sponsorship will be made available on request.

### 5. Review

This policy will be reviewed every four years or as required in the event of legislative changes or requirements. The policy may also be changed because of other amendments. Any amendments to a community facing policy must be by way of a Council resolution.



## 6. Definitions

Term	Definition
<i>Community benefit</i>	The return or benefit to the community that flows from Council's sponsorship activity.
<i>Conflict of interest</i>	Can arise if it is likely that a private interest could conflict, or be seen to conflict, with carrying out a person's public or professional duties.
<i>Donation</i>	A provision of cash or other items of value with no return benefits expected. The person or organisation providing these may request a modest acknowledgement or that the provision be used for a particular purpose. These are not sponsorships or grants.  Council, an individual or an organisation may make a donation, except that only an individual can make a bequest.
<i>Grant</i>	Cash or value-in-kind support provided to applicants for a specified project or purpose with terms and conditions defined but not commensurate with a direct reciprocal benefit received by Council. Grants made by Council are expected to achieve community benefit.
<i>Inbound sponsorship</i>	A financial or in-kind contribution to Council made from an individual, organisation or business.
<i>Outbound sponsorship</i>	A financial or in-kind contribution from Council made to an individual, organisation or business.
<i>Property Developer</i>	As defined by the <a href="#">Electoral Funding Act 2018 Section 53</a>
<i>Sponsorship</i>	A commercial arrangement in which one party, a sponsor, provides a financial and/or in kind contribution to support an activity in return for certain specified benefits.  Sponsorship can be provided to or received from the corporate sector, private sector, private individuals as well as community groups and not for profit organisations.