

PLANNING AGREEMENT - Explanatory Note

Environmental Planning and Assessment Regulation 2000 (NSW) (EP&A Regulation 2000)

Planning Agreement for the provision of monetary contribution for public benefit at 28-34 Victoria Street, Burwood NSW 2134

Under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)*

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2) VSD Investments Pty Limited (**Proprietor**)
- (3) VSD Investments Pty Limited (**Developer**)

2. Description of Subject Land

Folio Identifiers: SP 4711, SP 4241 and SP 49414

Location: 28 Victoria Street, 28A-30 Victoria Street and 32-34 Victoria Street, Burwood.

3. Description of Proposed Development

The Developer has lodged a development application (being 91/2019) for the land which proposes “*demolition of the existing structures and the construction of a 30 level mixed use development containing 179 residential units above basement parking*”. The application includes a voluntary planning agreement for material and/or financial contribution to Council as a public benefit. The contribution and this agreement relates specifically to 1908.27m² of gross floor area, proposed as part of the DA, and which is allowed by Clause 4.4A of the Burwood LEP 2012.

4. Summary of Objectives, Nature and Effect of the Planning Agreement

[Clause 25E(1)(a) of the EP&A Regulation 2000]

The intent of the Planning Agreement is to ensure that public benefits are provided in the form of provision, augmentation or improvement of open space, community facilities or other public facilities as proposed by the development application and determined by Council.

The Planning Agreement is proposed to require a monetary contribution for an amount of \$3,337,775 (excluding GST) being \$1750 (excluding GST) per square metre (1907.3m²) of GFA in excess of the permitted GFA limit for the development payable after development consent is granted and before issue of a Construction Certificate.

5. Assessment of the Merits of the Planning Agreement

[Clause 25E(1)(b) of the EP&A Regulation 2000]

The contribution will go towards Council’s funds to deliver community infrastructure which it has identified is necessary for the community.

5.1 The planning purposes served by the Planning Agreement

[Clause 25E(2)(e) of the EP&A Regulation 2000]

The Planning Agreement serves the following planning purpose:

- The monetary contributions paid by the **Developer** under this Planning Agreement will be used by **Council** to provide, augment, or improve open space, community facilities, or other public facilities as determined by Council.

Whether the Planning Agreement provides for a reasonable means of achieving that purpose:

- (i) Council has conducted an Urban Design Study which revealed that in parts of the Burwood Town Centre, including the area in which the subject land is located, there is some potential for a maximum increase of 10% in FSR, or as allowed by Clause 4.4A of the Burwood LEP 2012 which this agreement and the DA generally relies on. Council has also prepared a Burwood Open Space and Community Facilities Study, which identified public benefit requirements in the Burwood Local Government Area .
- (ii) The Planning Agreement will secure a considerable material benefit to the public as the Council is to use, or put the monetary contribution towards, the provision of material benefits such as civil infrastructure, public domain upgrades and facilities for the Burwood Town Centre, which will not only benefit the users and those in the immediate vicinity of the Burwood Town Centre but the wider Burwood population. This is considered to be a substantial public benefit and the Planning Agreement achieves this objective of delivering the benefit.

5.2 Promotion of the public interest

[Clause 25E(2)(a) and (c) of the EP&A Regulation 2000]

The Planning Agreement promotes the public interest by:

- Ensuring the orderly use and development of land by ensuring that public benefits are provided where a development site achieves additional FSR.

The Planning Agreement promotes one or more of the objects of the EP&A Act as follows:

- (i) The proper management and development of land for the purpose of promoting the social and economic welfare of the community and a better environment;
- (ii) The provision and co-ordination of community services and facilities; and
- (iii) Opportunities for public involvement and participation in environmental planning and assessment.

5.3 Promotion of the Council's charter

[Clause 25E(2)(d) of the EP&A Regulation 2000]

The Planning Agreement promotes one or more of the elements of Council's charter under Section 8 of the *Local Government Act 1993* (NSW) as follows [italicised sections come directly from the Charter]:

- (i) Council undertakes to provide *adequate, equitable and appropriate services for the community*. The Planning Agreement provides the monetary resources to assist Council in the provision of civil infrastructure, public domain upgrades and facilities for the augmentation, or improvement of open space, community facilities, and other public

facilities for the Burwood Town Centre and ensures that those *facilities are managed efficiently and effectively*. Council is the *custodian and trustee of public assets* and has a responsibility to *effectively plan for, account for, and manage the assets*.

- (ii) Council undertakes to involve *councillors, members of the public, users of facilities and services, and council staff* in its activities. The Planning Agreement process provides an opportunity for the community and stakeholders to be involved and interested people are invited to make comment during the exhibition period. The public exhibition and the consideration of this matter at Council meetings are intended to *keep the local community informed*.

5.4 Capital Works Program

[Clause 25E(2)(f) of the EP&A Regulation 2000]

Whether Council has a capital works program, and if so, whether the Planning Agreement conforms with or promotes that capital works program:

- Council has in place a capital works program, but the program does not, to date, identify public benefits within the Burwood Town Centre.
- Council has prepared a Burwood Community Facilities and Open Space Study which identifies works and improvements to community facilities and open space to be carried out. These are known as public benefits. This study will inform the capital works program as it is reviewed annually where those public benefits will be included within the capital works program including when and where sufficient funds are available.

6. Whether the draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate is issued.

The Planning Agreement provides that the Monetary Contribution be paid prior to the issue of a construction certificate for the proposed development.
