

**Our Ref: AQL 31-37 Herbert St. St. Leonards**

**Ms. D. Just,**

**GENERAL MANAGER  
WILLOUGHBY CITY COUNCIL  
31 VICTOR STREET,  
CHATSWOOD  
NSW 2067**

15 August, 2016

Dear Ms Just,

**LETTER OF OFFER  
VOLUNTARY PLANNING AGREEMENT – 31-37 HERBERT STREET, ST. LEONARDS.**

Aqualand Projects Pty Ltd (Aqualand) has submitted a Planning Proposal requesting an amendment to Willoughby LEP 2012 in respect of land known as 31-37 Herbert Street, St. Leonards.

The Planning Proposal seeks to change the zoning, height limit and FSR of the land in order to lodge a development application for a mixed use development.

Aqualand proposes to offer to Willoughby Council the opportunity to enter into a voluntary planning agreement under Section 93F of the Environmental Planning and Assessment Act to deliver community benefits that provide for, or can be applied towards, a public purpose.

The site is currently zoned for industrial purposes however the current and previous uses on the site have generally been office type uses and retail uses that are ordinarily associated with a business zone. The land from the southern boundary of the site to the Forum is zoned R4 for high density residential purposes and the land to the east of the railway corridor is zoned R3 for medium density residential development. The property adjoins the north shore railway line on its eastern boundary and to the west is a Telstra data centre and the Australia Post Distribution Centre.

The Aqualand team consider that the property at 31-37 Herbert Street has potential for a mixed use development that includes residential, retail, office and a child care centre. The non-residential uses will maintain an employment base on the site. Aqualand has engaged FJMT, Architects to prepare a concept scheme for the site to illustrate how the development might address the site and its context. The concept scheme for the site will be reflected in the Planning Proposal.

This Letter of Offer proposes public benefits that can be delivered through a Voluntary Planning Agreement (VPA) linked to the Planning Proposal.

The key items to be offered through the VPA are:

- 1. A monetary contribution of \$1,200,000 to install synthetic grass on Naremburn Oval. This will reduce the Council's long term recurrent maintenance cost for the oval and support its use by sporting clubs and for training purposes;**

2. A monetary contribution of \$2,000,000 to undertake park improvement works as outlined in the Council's Naremburn Park Masterplan;
3. Dedication to Council of an additional 2% of the residential gross floor area for affordable housing on top of the standard 4% that is required in accordance with Council's Affordable Housing Policy;
4. A covenant will be registered on title prior to the issue of a Construction Certificate for any work on the land, restricting the maximum height of the northern building to 105 metres, the maximum height of the centre building to 80 metres and the southern building to a maximum height of 67 metres as shown in the Planning Proposal; and
5. A covenant will be registered on title prior to the issue of a Construction Certificate for any work on the land, restricting the maximum FSR for the site to be 5.5:1 for residential accommodation and a non-residential component of 1:1 with a total FSR of 6.5:1.

Aqualand will bear the costs of registering the VPA and covenants referred to in Items 4 and 5 above on title. In the event that the VPA does not proceed, each party shall bear their own costs.

Aqualand acknowledges that obligations listed above are relevant considerations for Council or any other consent authority when determining any future Development Application or Modification Application and that a failure to comply with those obligations or any inconsistency with the requirements in those obligations may constitute a reason for refusal of any such application.

Aqualand proposes that the public benefit items be in addition to the Section 94A Contribution of 1% that would be applicable to the project if the project proceeds to a development application following approval of a Planning Proposal. However, if a Special Infrastructure Contribution is levied under s93EF of the Act or an increased s94A Contribution levy is imposed at the time of the payment of the VPA contributions, then the total value of the VPA will be reduced accordingly.

A draft VPA and Explanatory Note based on the items listed above has been prepared and accompanies this letter of offer.

We would be pleased to discuss with you and the Council the proposed items being offered as part of the Planning Proposal for the site.

If you have any queries in relation to the above, please contact our office on (02) 92281888.

Yours faithfully,



Nick Tobin

**GENERAL MANAGER**  
**AQUALAND PROJECTS PTY LTD**  
[nick.tobin@aqualand.com.au](mailto:nick.tobin@aqualand.com.au)

**Date:**

**DRAFT**

## **Voluntary Planning Agreement**

31-37 Herbert Street, St Leonards

### **Willoughby City Council**

ABN 47 974 826 099

and

### **Aqualand St Leonard Development Pty Ltd**

ABN 29 602 539 088

Aqualand St Leonard Development No 2 Pty Ltd

ABN 87 611 961 258

---

# Contents

<b>1.</b>	<b>Planning agreement under the EP&amp;A Act</b>	<b>6</b>
1.1	Section 93F	6
1.2	Application	6
<b>2.</b>	<b>Operation</b>	<b>6</b>
2.1	Commencement	6
2.2	Planning Proposal and Development Consent	7
<b>3.</b>	<b>Definitions</b>	<b>7</b>
<b>4.</b>	<b>Interpretation</b>	<b>8</b>
4.1	Governing Law and Jurisdiction	8
4.2	Persons	9
4.3	Joint and Several	9
4.4	Legislation, Business Day, Clauses and Headings	9
<b>5.</b>	<b>No Fetter</b>	<b>10</b>
5.1	Discretion	10
5.2	No Fetter	10
5.3	Conflict	10
<b>6.</b>	<b>Registration and Release</b>	<b>11</b>
6.1	Registration	11
6.2	Release	11
<b>7.</b>	<b>EP&amp;A Act Application</b>	<b>11</b>
7.1	Section 94A of the EP&A Act	11
<b>8.</b>	<b>Public Benefits</b>	<b>11</b>
i)	the installation of a synthetic grass surface on one of the Naremburn Ovals to a total contribution of \$1,200,000;	12
ii)	improvement of facilities at Naremburn Park generally in accordance with the 2008 Naremburn Park masterplan to a total contribution of \$2,000,000;	12
8.1.2	The Developer shall construct and dedicate affordable housing to the Council equivalent in floor area to 2% of the residential gross floor area of the development being in addition to the affordable housing required through Council's Affordable Housing provisions under Willoughby Local Environmental Plan 2012 so long as the additional % for the Affordable Housing is also not	

counted as gross floor area for the purposes of calculating the floor space ratio of the development.	12
<b>9. Timing for delivery of Affordable Housing</b>	<b>12</b>
<b>10. Timing of Public Open Space Contribution</b>	<b>12</b>
<b>11. Restriction on the Issue of an Occupation Certificate</b>	<b>13</b>
11.1.1 In accordance with section 109H (2) of the Act, the following obligations must be satisfied prior to the issue of an Occupation Certificate for any future building or development on the Land:	<b>13</b>
(i) provision of the Monetary Contributions in accordance with clause 8; and	<b>13</b>
(ii) completion, to the Council's satisfaction acting reasonably, of the construction and dedication of the Affordable Housing in accordance with clause 8; and	<b>13</b>
(ii) registration of covenants on the title to the land restricting-	<b>13</b>
<b>12. Dispute Resolution</b>	<b>13</b>
12.1 Notice of Dispute	13
12.2 Claim Notice Response	13
12.3 Negotiation	13
12.4 Further Notice	13
12.5 Mediation	14
<b>13. GST</b>	<b>14</b>
<b>14. Notices</b>	<b>15</b>
14.1 Service of Notice	15
14.2 Particulars for Service	15
14.3 Time of Service	15
<b>15. Representations and Warranties</b>	<b>16</b>
<b>16. General</b>	<b>16</b>
16.1 Amendment	16
16.2 Entire Understanding	16
16.3 Further Assurance	16
16.4 Assignment	16

16.5 Waiver and Exercise of Rights	16
16.6 Time of the Essence	16
16.7 No Relationship	17
16.8 Costs	17
The Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same must be borne by the Developer	17

---

# Planning Agreement

Dated

---

## Parties

Name	<b>Willoughby City Council</b> <b>ABN 47 974 826 099</b>
Address	Level 4/31 Victor Street, Chatswood, NSW 2067
Facsimile	
Short name	<b>Willoughby (WCC)</b>

Name	<b>Aqualand St Leonard Development Pty Ltd and</b> <b>ABN 29 602 539 088; and</b> <b>Aqualand St Leonard Development No 2 Pty</b> <b>Ltd</b> <b>ABN 87 611 961 258</b>
Address	Unit 5 Level 29, 225 George Street, SYDNEY NSW 2000
Facsimile	(02) 9228 1899
Short name	<b>Developer</b>

---

## Background

- A The Developer is the owner of the Land.  
The Developer has lodged a Planning Proposal with WCC to rezone the Land to permit a mixed use residential and commercial development.
- B The Developer has sought:
- a) a change to the Height of Buildings Map of Willoughby LEP 2012 to introduce maximum building heights of RL 179 on the northern part of the Land, a maximum

height of RL 153.9 for the central part of the Land and a maximum height of RL 141.3 on the southern part of the Land;

b) a change to the Floor Space Ratio Map of Willoughby LEP 2012 to include a maximum floor space ratio of 6.5:1 for the Land; and

c) a change to the zoning of the Land from Industrial IN2 to Business B4.

C The Developer has made an offer to WCC to enter into a planning agreement to provide public benefits in connection with the Planning Proposal.

D The Parties wish to enter into this planning agreement to formalise the Developer's obligations:

(i) to pay a monetary contribution for the installation of a synthetic grass surface at a Naremburn Oval;

(ii) to pay a monetary contribution to undertake improvements to Naremburn Park as outlined in the Naremburn Park Masterplan

(iii) to construct and dedicate affordable housing to the Council in addition to the apartments required through Council's Affordable Housing provisions under Willoughby Local Environmental Plan 2012; and

on the terms and conditions of this planning agreement.

---

## **1. Planning agreement under the EP&A Act**

### **1.1 Section 93F**

The parties agree that this document is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the EP&A Act.

### **1.2 Application**

The planning agreement constituted by this document applies to the Development proposed on the Land pursuant to the Planning Proposal.

The Planning Proposal was accompanied by an offer by the Developer on (insert date of offer) to enter into this Planning Agreement to provide the Public Benefits in connection with the Planning Proposal.

---

## **2. Operation**

### **2.1 Commencement**

The parties agree that this planning agreement takes effect on the signature of this planning agreement by the parties to it.



## 2.2 Planning Proposal and Development Consent

2.2.1 This planning agreement will be at an end and taken to have been revoked and neither party will have any obligation to the other if:

- (a) the Instrument Change does not occur within 1 year of the date of this agreement; and
- (b) a development consent relying on the Instrument Change is not granted within 2 years of the date of this agreement, lapses by the effluxion of time or is surrendered.

2.2.2 Each party will sign all documents and do all things reasonably required to procure the removal of this planning agreement as an encumbrance on the Register by appropriate notification or request if the Instrument Change does not occur, development consent is not granted or lapses or is surrendered in accordance with above clause 2.2.1.

---

## 3. Definitions

In this planning agreement unless expressed or implied to the contrary:

**Business Day** means any day on which trading banks are open for business in New South Wales other than a Saturday, Sunday or a public holiday in New South Wales.

**Claimant** has the meaning given to that term in clause 12.1.

**Claim Notice** has the meaning given to that term in clause 12.1.

**Concept Plans** mean the concept plans in Schedule 1.

**Consent** means any consent granted in accordance with the *Environmental Planning and Assessment Act 1979* in relation to a Development Application.

**Consent Authority** means the governmental agency having the function to determine a development application.

**Construction Certificate** means a construction certificate as defined under s109C of the Act

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics

**Development** means the demolition of existing buildings on the Land and the erection of mixed retail / commercial / residential buildings with a maximum building height of RL 180 and maximum FSR of 6.5:1 generally as shown on the Concept Plans.

**Development Application** means a development application lodged with WCC in respect of the Development.

**Development Contribution** means a monetary contribution, the dedication of land free or the cost of the provision of a material public benefit.

**Developer** means Aqualand St Leonard Development Pty Ltd and Aqualand St Leonard Development No 2 Pty Ltd

**Discretion** has the meaning given to that term in clause 5.1.

**Dispute Notice** has the meaning given to that term in clause 12.4.

**EP&A Act** means the *Environmental Planning & Assessment Act 1979* (NSW).

**GST** has the same meaning as GST law, that is, the meaning given to that term in *A New Tax System (goods and Services Tax) Act 1999* (Cwth) and any other Act or regulation to the imposition or administration of the GST.

**Instrument Change** means a change to Willoughby LEP 2012 to provide for a B4 Business zone over the Land, a maximum floor space ratio of 6.5:1 for the Land, a maximum building height of RL 179 on the northern part of the Land, a maximum building height of RL 153.9 for the central part of the Land and a maximum building height of RL 141.3 on the southern part of the Land.

**Land** means Lots 1 and 2 in DP 744175 and Lot 3 in DP 772072 known as 31-35 Herbert Street and Lot 1 in DP 115615 known as 37 Herbert Street, St. Leonards

**Law** means:

- (a) the common law including the principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws, or consents by a governmental agency.

**Occupation Certificate** means an Occupation Certificate issued in accordance with Part 4A of the EP&A Act.

**Parties** means WCC and the Developer.

**Planning Proposal** means the Planning Proposal entitled '*Request to Prepare a Planning Proposal Nos 31-37 Herbert Street St. Leonards– Submitted to Willoughby City Council – On behalf of Aqualand St Leonard Development Pty Ltd*' dated August 2016 prepared by Urbis Pty Ltd.

**Public Benefits** means the Development Contributions comprising the Public Open Space Contributions and the construction and dedication of the Affordable Housing referred to in clause 8 of this planning agreement.

**Register** means the Torrens Title register held by the New South Wales office of Land and Property Information and/or the Department of Planning and Infrastructure.

**Respondent** has the meaning given to that term in clause 12.1.

**Schedule** means any schedule to this agreement.

**WCC** means Willoughby City Council.

**Willoughby LEP 2012** means Willoughby Local Environment Plan 2012 as amended.

---

## 4. Interpretation

### 4.1 Governing Law and Jurisdiction

This agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

## 4.2 **Persons**

4.2.1 In this agreement, a reference to:

- (a) a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- (b) a person includes the legal personal representatives, successors and permitted assigns of that person; and
- (c) any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

## 4.3 **Joint and Several**

If a party consists of more than one person, this agreement binds them jointly and each of them severally.

## 4.4 **Legislation, Business Day, Clauses and Headings**

4.4.1 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 Planning;
- (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;
- (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 thin 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, deed or document is to that agreement, deed 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 planning 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 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 planning 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. No Fetter**

### **5.1 Discretion**

This agreement is not intended to and does not operate to unlawfully fetter any statutory role or the exercise of any statutory role or function including the exercise of any role as a consent authority within the meaning of that term under the EP&A Act referred to in this agreement as a '**Discretion**'.

### **5.2 No Fetter**

5.2.1 If, contrary to the operation of this clause 5, any provision of this agreement is held by Court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause 5 is substantially satisfied;
- (b) in the event that clause 5.1 cannot be achieved without giving rise to unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to any provision of this agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant Court judgement.

### **5.3 Conflict**

In the event of any conflict between the exercise of a Discretion and the performance or obligations under this agreement, the former prevails.

---

## **6. Registration and Release**

### **6.1 Registration**

6.1.1 Subject to the provisions of section 93H of the EP&A Act, the Developer must at its cost:

- (a) procure registration of this agreement on the Register pertaining to the Land no later than 20 Business Days after the date of this agreement in accordance with this clause 6 including obtaining the consent of any mortgagee or other person who has an interest in the Land; and
- (b) deliver to WCC a title search of the Land confirming registration of this agreement.
- (c) remove from the title of the land registration of this agreement and deliver to WCC a title search of the land confirming same if the provisions of Clause 6.2 apply.

### **6.2 Release**

6.2.1 WCC agrees to provide a release and discharge of this agreement with respect to any part of the Land and will sign all documents and do all things reasonably required to procure the removal of this planning agreement from the Register if:

- (a) the Developer requests a release and discharge of this agreement; and
- (b) the Developer has complied with its obligations under Clauses 9, 10 and 11 of this agreement.

---

## **7. EP&A Act Application**

### **7.1 Section 94A of the EP&A Act**

7.1.1 By executing this agreement, the parties agree that a levy of 1% under section 94A of the EP&A Act does apply to the Development.

7.1.2 The value of the Development Contributions provided by the Developer will be taken into account in determining any contribution under Section 93EF of the Act or a section 94A contribution in excess of 1%

---

## **8. Public Benefits**

8.1.1 The Developer shall pay to WCC monetary contributions for Public Open Space Contributions toward:

- i) the installation of a synthetic grass surface on one of the Naremburn Ovals to a total contribution of \$1,200,000;
- ii) improvement of facilities at Naremburn Park generally in accordance with the 2008 Naremburn Park masterplan to a total contribution of \$2,000,000;

8.1.2 The Developer shall construct and dedicate affordable housing to the Council equivalent in floor area to 2% of the residential gross floor area of the development being in addition to the affordable housing required through Council's Affordable Housing provisions under Willoughby Local Environmental Plan 2012 so long as the additional % for the Affordable Housing is also not counted as gross floor area for the purposes of calculating the floor space ratio of the development.

8.1.3 The Public Open Space Contributions referred to in clause 8.1.1 are to be increased on an annual basis by a percentage equal to the percentage movement in the Consumer Price Index from the date of execution of this agreement to the date immediately prior to the date of payment of the Contributions.

8.1.4 (e) The Developer and the Landowner agree and acknowledge that the obligations under this Agreement at clause 8.1.1 and clause 8.1.2 are relevant considerations for the Council or any other consent authority when determining any future Development Application or Modification Application and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of any such application.

---

## **9. Timing for delivery of Affordable Housing**

The Affordable Housing referred to in clause 8 shall be constructed and dedicated by the Developer prior to the issue of the first Occupation Certificate in relation to the Development.

---

## **10. Timing of Public Open Space Contribution**

The whole of the Development Contribution referred to in clause shall be paid by the Developer to WCC prior to the issue of the first Occupation Certificate in relation to the Development.

---

## 11. Restriction on the Issue of an Occupation Certificate

11.1.1 In accordance with section 109H (2) of the Act, the following obligations must be satisfied prior to the issue of an Occupation Certificate for any future building or development on the Land:

- (i) provision of the Monetary Contributions in accordance with clause 8; and
- (ii) completion, to the Council's satisfaction acting reasonably, of the construction and dedication of the Affordable Housing in accordance with clause 8; and
- (ii) registration of covenants on the title to the land restricting-
  - (a) the FSR of development on the land to a maximum of 5.5:1 for residential accommodation and 1:1 for non-residential purposes;
  - (b) the maximum height of the northern building to be RL 179, the maximum height of the central building to be RL 153.9 and the maximum height of the southern building to be RL 141.3.

---

## 12. Dispute Resolution

### 12.1 Notice of Dispute

If a party claims that a dispute has arisen under this planning agreement (**Claimant**), it must give notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).

### 12.2 Claim Notice Response

Within 20 Business Days of receiving any Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

### 12.3 Negotiation

The nominated representatives must:

- (a) Meet to discuss the matter in good faith within 10 Business Days after the Respondent has given a notice advising of its representatives; and
- (b) Use reasonable endeavours to settle or resolve a dispute within 15 Business Days after they have met.

### 12.4 Further Notice

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a notice calling for the termination of the dispute (**Dispute Notice**).

## 12.5 Mediation

12.5.1 The parties agree that a dispute will be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree to the terms of reference for the mediation within 5 Business Days of receipt of the Dispute Notice. The terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) the mediator will be agreed by the parties, or failing agreement within 5 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;

12.5.2 The mediator appointed pursuant to clause 12.5.1(b) must:

- (a) have reasonable qualifications and practical experience in the area of the dispute;
- (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose and such interest or duty before his appointment; and
- (c) undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties

12.5.3 The parties must within 5 Business Days of receipt of the Dispute Notice notify each other if their representatives will be involved in the mediation;

12.5.4 The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which the subject of the mediation settlement for the purpose of enforcing that mediation settlement;

12.5.5 In relation to costs and expenses:

- (a) each party will bear its own professional and expert costs incurred in connection with the mediation; and
- (b) the costs of 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 be borne by that party.

---

## 13. GST

13.1.1 In this clause 13 words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

13.1.2 Except as otherwise provided by this clause 13, all consideration payable under this agreement in relation to any supply is GST inclusive.



13.1.3 If GST is payable in respect of any supply made by a supplier under this agreement, subject to clause 13.1.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this planning agreement.

13.1.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under this clause 13.

---

## **14. Notices**

### **14.1 Service of Notice**

- (a) A notice or other communication required or permitted, under this planning agreement, to be served on a person must be in writing and may be served:
- (b) personally on the person;
- (c) by leaving it at the person's current address for service;
- (d) by posting it by prepaid post addressed to that person at the person's current address for service; or
- (e) by facsimile to the person's current number for service.

### **14.2 Particulars for Service**

14.2.1 The particulars for service of each party are set out on page four of this planning agreement under the heading 'parties'.

14.2.2 A party may change the address, facsimile or email number for service by giving notice to the other party.

14.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

### **14.3 Time of Service**

14.3.1 A notice or other communication is deemed served:

- (a) if served personally or left at the person's address, upon service;
- (b) if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;
- (c) if served by facsimile, subject to clause 1.1(d), at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- (d) if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

---

**15. Representations and Warranties**

The parties represent and warrant that they have the power to enter into this planning agreement and comply with their obligations under this planning agreement and that entry into this planning agreement will not result in the breach of any Law.

---

**16. General****16.1 Amendment**

This planning agreement may only be varied or replaced by a Planning Agreement duly signed by the parties.

**16.2 Entire Understanding**

This planning agreement contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this planning agreement and have no effect.

**16.3 Further Assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this planning agreement.

**16.4 Assignment**

- (a) A Party may assign, novate or otherwise transfer its rights and/or obligations under this Agreement if the other Party has provided its prior written consent.
- (b) Consent under this clause 16.4 may not be unreasonably withheld.

**16.5 Waiver and Exercise of Rights**

16.5.1 A single or partial exercise or waiver of a right relating to this planning agreement does not prevent any other exercise of that right or the exercise of any other right.

16.5.2 No party will be liable for any loss or expenses incurred by the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

**16.6 Time of the Essence**

Time is of the essence as regards all dates, periods of time and times specified in this planning agreement.

## 16.7 **No Relationship**

16.7.1 No party to this planning agreement has the power to obligate or bind any other party.

16.7.2 Nothing in this planning agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the Parties.

16.7.3 Nothing in this planning agreement will be deemed to authorise or empower a party to act as agent for the other party.

## 16.8 **Costs**

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

**Schedule 1**

***[insert Concept Plans]***

---

## Signing Page

**Executed** by the parties

**THE OFFICIAL SEAL** of **WILLOUGHBY CITY COUNCIL** was affixed in the presence of

and the sealing is attested by:

\_\_\_\_\_

General Manager

\_\_\_\_\_

Mayor

\_\_\_\_\_

Name of General Manager

\_\_\_\_\_

Name of Mayor

**SIGNED** by the Directors for **AQUALAND ST. LEONARD DEVELOPMENT PTY LTD (ABN 29 602 539 088)** and **Aqualand St Leonard Development No 2 Pty Ltd (ABN 87 611 961 258)**

dated

in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Directors

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Directors

# EXPLANATORY NOTE

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

**Voluntary Planning Agreement-** Lots 1 and 2 in DP 744175 and Lot 3 in DP 772072 known as 31-35 Herbert Street and Lot 1 in DP 115615 known as 37 Herbert Street, St. Leonards  
**(the Land)**

The purpose of this Explanatory Note is to provide a summary of the proposed Voluntary Planning Agreement (VPA) prepared jointly between Willoughby Council and the Developer under Section 93F of the Environmental Planning and Assessment Act (the Act).

This Explanatory Note has been prepared as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 in connection with a Planning Proposal for Land known as 31-35 and 37 Herbert Street, St. Leonards.

## 1. Parties

**Willoughby Council (Council)** and  
**Aqualand Projects Pty Ltd** ABN 73 169 346 810 (Developer)

## 2. Description of the Subject Land

The whole of the land being Lots 1 and 2 in DP 744175 and Lot 3 in DP 772072 known as 31-35 Herbert Street and Lot 1 in DP 115615 known as 37 Herbert Street, St. Leonards is the Subject Land under the Planning Agreement.

## 3. Description of Planning Proposal and Development

The Developer is requesting an amendment to Willoughby LEP 2012 to change the zoning of the Land from Industrial IN2 to Business B4 zone, to change the FSR applying to the Land from 1:1 to 6.5:1 and to introduce maximum building height limits on the Land of RL 179 on the northern part of the Land, a maximum height of RL 153.9 for the central part of the Land and a maximum height of RL 141.3 on the southern part of the Land. The Developer proposes to lodge a development application, subject to the Planning Proposal being adopted, to develop the Land with a mixed use development for residential accommodation, retail uses, offices, a plaza area on the ground floor and a child care centre.

## 4. Background

The Developer is acting for the registered proprietors of the Land being Aqualand St Leonard Development Pty Ltd (ABN 29 602 539 088) and Aqualand St Leonard Development No 2 Pty Ltd (ABN 87 611 961 258). The Developer has lodged a Planning Proposal with Willoughby Council and with that application, offered to enter into a Voluntary Planning Agreement (VPA) with Council pursuant to Section 93F of the Act. The VPA proposes to provide public benefits as the Planning Proposal provides for a change in the zoning, an increase in the permissible FSR and introduces height limits on the Land.

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

The Planning Agreement will assist Council in achieving its objectives by providing funds which will enable Council to provide material public benefits to the local and broader community. Those objectives relate to infrastructure upgrades, affordable housing, improvements to playgrounds, parks and reserves as well as improving public open space, particularly for public recreation purposes.

The Agreement is a contractual relationship between Council and the Developer whereby the Developer is to pay monetary contributions and dedicate affordable housing and is a Planning Agreement under subsection 2 of Division 6 of Part 4 of the Act.

The Agreement requires the Developer to comply with certain requirements including to pay to Council a monetary contribution in the total amount of \$3,200,000 and to dedicate 25 apartments from the future development of the Land for the purposes of affordable housing.

The Agreement does not exclude the application of Section 94A and the Development Contributions under the Agreement are not to be taken into account in determining the development contribution under s94A being a 1% fixed levy. However, if the s94A contribution percentage increases at any time and if a Special Infrastructure Contribution under section 94EF is imposed at any time then those additional contributions will be taken into account in reducing the amount of the Development Contributions under the Agreement.

The Agreement contains a number of machinery provisions including in relation to dispute resolution and enforcement.

Without limitation, but particularly in relation to enforcement, the Development Contributions (including the monetary contributions and dedication of affordable housing) are to be provided to Council prior to the issue of any Occupation Certificate in respect of a development consent for the Development of the Land based on the Planning Proposal.

## **6. Assessment of the Merits of the Draft Planning Agreement**

### The Planning Purposes Served by the Draft Planning Agreement

In accordance with s 93F (2) of the Environmental Planning and Assessment Act, the Planning Agreement facilitates the following public purposes:

- The provision (or recoupment of the cost of providing) affordable housing;
- The funding of recurrent expenditure relating to the provision of public amenities or public services or other infrastructure;
- The monitoring of the planning impacts of development;
- The funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure.

The Planning Agreement provides a reasonable means of achieving the public purposes set out above.

### How the Draft Agreement Promotes the Public Interest

- The public interest is promoted by the provision to Council of funds which it is able to apply towards upgrading and improving infrastructure and facilities near to the Land in particular Naremburn Oval and Naremburn Park;



- The upgrading and improvement of recreation facilities at Naremburn Park and the Naremburn Oval will enhance the amenity of the local area as well as promote the health and the well-being of local residents and the broader community;
- The dedication of apartments for affordable housing will enable the Council to manage the housing to provide additional accommodation for essential workers or residents on lower incomes.

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

The provision of the monetary contributions and dedication of affordable housing required under the Planning Agreement will promote the Objects under section 5 of the Act, in particular:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (v) the provision and co-ordination of community services and facilities, and
- (viii) the provision and maintenance of affordable housing.

#### How the Draft Planning Agreement promotes elements of the Council's Charter under Section 8 of the Local Government Act, 1993

- The draft Planning Agreement provides a means by which the Council shows a regard for the long term and cumulative effects of its planning decisions. The Council's decisions impact on public areas as well as the social and economic well-being of the community. There is a need for improved infrastructure, affordable housing and recreation facilities within the City and Council is aware of how its planning decisions and policies impact on fulfilling these needs.
- The draft Planning Agreement provides a means by which Council shows how it is the custodian and steward of public assets and seeks to effectively plan for and manage the assets for which it is responsible and facilitates in long term strategic planning for the betterment of the local community.

#### Conformity with the Councils Works Program and Policies

The draft Planning Agreement is not inconsistent with the Council's Asset Works Programs as reflected by the Masterplan for improvements to Naremburn Park and by seeking to reduce ongoing asset maintenance costs for Naremburn Oval. The provision of additional affordable housing is consistent with Council's Local Housing Policy pursuant to clause 6.8 of Willoughby LEP 2012.

#### Whether the Agreement specifies that Compliance with certain requirements Prior to Issue of Construction, Occupation or Subdivision Certificates

The Contributions under the Planning Agreement, being the monetary contributions and dedication of the affordable housing, must be provided in accordance with the timing set out in Clause 11 of the Planning Agreement.

**This Explanatory Note is not to be used to assist in construing the Planning Agreement**