

# Voluntary Planning Agreement

Under s 7.4 of the Environmental Planning and Assessment Act 1979

## **State Environmental Planning Policy No 64 Advertising and Signage (2001 EPI 199) (SEPP64)**

**Lot 1 DP 777200  
119 ROBESY STREET, MASCOT**

Parties:

**Bayside Council**  
ABN 80 690 785 443  
(Council)

and

**Bishopp Outdoor Advertising Pty Ltd**  
ACN 075 519 121  
(Developer)

and

**Mr. Geoffrey William Keato**  
119 Robesy Street, Mascot  
(Land Owner #1)

and

**Mr. Arthur Leslie Robinson**  
119 Robesy Street, Mascot  
(Land Owner #2)

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**Planning Agreement: Lot 1 DP777200, 119 Robey Street, Mascot**

Date:

Parties: **Bayside Council ABN 80 690 785 443**

**(Council)**

**Bishopp Outdoor Advertising Pty Ltd ACN 075 519 121**

**(Developer)**

**Geoffrey William Keato**

**(Land Owner #1)**

**Arthur Leslie Robinson**

**(Land Owner #2)**

**Recitals**

- A. The Land is jointly owned by Land Owner #1 and Land Owner #2.
- B. The Developer is acting on behalf of Land Owner #1 and Land Owner #2 in relation to the Development.
- C. The Developer has lodged Development Application DA-2019/319 for removal of existing illuminated advertising sign and erection of a new digital illuminated advertising sign which comprises Digital Signage, on the Land.
- D. The terms of this Agreement are consistent with a Letter of Offer dated 9 September 2020.
- E. Council issued the Development Consent on 10 November 2020.
- F. By way of this Agreement, the Developer agrees to provide the Development Contribution in connection with carrying out the Development, on the terms and conditions of this Agreement.
- G. This Agreement between the parties has been entered into for the purposes of satisfying Clause 13 of the *State Environmental Planning Policy No. 64 (Advertising and Signage)* and the Transport Corridor Outdoor Advertising and Signage Guidelines for the provision of the public benefit to be provided in connection with the display of the advertisements in relation to the Development Consent.

**Now it is agreed** as follows:

## **1. Definitions and Interpretation**

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### **1.1 Definitions**

In this Agreement:

**Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*.

**Agreement** means this Voluntary Planning Agreement including all Schedules and the Explanatory Note.

**Business Day** means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purposes a day on which the banks are open for business in Sydney, New South Wales other than a Sunday or public holiday in Sydney, New South Wales.

**Construction Certificate** has the same meaning as in section 6.4(a) of the Act.

**Consumer Price Index** means:

- (a) the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics; and
- (b) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered vary, so as to change the basis of the price index, then any price index the Council selects that, as nearly as practicable, serves the same purpose.

**Development** means the development the subject of the Development Consent.

**Development Application** has the same meaning as in section 1.4 of the Act and specifically in this Agreement means Development Application DA-2019/319 for the removal of the Existing Signage and erection of the Digital Signage on the Land.

**Development Consent** means the consent (referred to in section 1.4 of the Act) given by Council in respect of Development Application DA-1029/319.

**Development Contribution** means the monetary contribution amount required to be paid by the Developer pursuant to this Agreement.

**Digital Signage** means Signage with a Digital Display Area.

**Digital Display Area** means the area of Signage comprising of digital technology (including but not limited to light emitting diode technology) in a screen configuration used, intended to be used or otherwise set aside for the display of advertisements or other signs, notices, content, devices or representations.

**Existing Signage** means the existing illuminated advertising Signage that is on the Land subject to removal in accordance with the Development Consent.

**First Payment** means the first monthly payment of the Development Contribution.

**First Payment Date** means the date which is 28 days after the date of issue of an Occupation Certificate.

**Force Majeure Event** means any of the following events and/or circumstances (and their effects) outside the reasonable control of the Developer:

- (a) any substantive reduction in traffic volume passing the Digital Signage Area which has been affected by road works, changed traffic movements, or any other impact that is not the fault of the Developer that has a sustained duration making continuation of the Digital Signage unviable (as evidenced by the Developer to the Council's satisfaction); or
- (b) the Digital Signage being substantially damaged, destroyed or inoperative due to any cause to the extent that it is rendered inoperative other than the negligent act or omission of the Developer.

**GST** means goods and services tax or similar value added tax levied or imposed In Australia under the GST Law or otherwise on a supply.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**GST Law** has the same meaning as in the GST Act.

**Land** means the Land described in Schedule 1.

**Occupation Certificate** means a certificate (referred to in section 6.4(c) of the Act) issued by Council or such other relevant authority including a private certifying authority in respect of the Development.

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

**Public Purpose** means public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity within or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic and pedestrian matters.

**Signage** means a sign (including digital LED billboard) and infrastructure which supports a sign on which advertisements or content are displayed, and includes the Existing Signage and any Digital Signage use approved by the Development Consent.

**Tax** means all forms of taxes, duties, imposts charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

**Term** means the period commencing on the date of an Occupation Certificate and ending on the earlier of:

- (a) 15 years after the date on which the Development Consent becomes effective and operates in accordance with section 4.20 of the Act;
- (b) any lesser period specified in the Development Consent or as agreed in writing between Parties; or

(c) termination (including deemed termination) of this Agreement.

**Terminating Date** means the earlier of:

- (a) the date of expiration of the Term;
- (b) the date the Parties record in writing, any termination of this Agreement under clause 6.1(c)(i);
- (c) the date this Agreement is deemed to be terminated pursuant to clause 6.1(c)(iii); and
- (d) the date of any termination in accordance with clause 6.2(b) or clause 10.2.

**Year** means each calendar year during the Term commencing on the First Payment Date.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Agreement and references to this Agreement include any recital, schedule or annexure;
- (d) any contract (including this Agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
- (e) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (g) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (h) a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (i) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (j) time is a reference to legal time in Sydney, New South Wales;
- (k) a reference to a day or a month means a calendar day or calendar month;
- (l) a reference to money (including 'AUD' or 'dollars') is to Australian currency,
- (m) unless expressly stated, no Party enters into this Agreement as agent for any other person (or otherwise on their behalf or for their benefit);

- (n) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (o) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (p) headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (s) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (t) where there are two or more persons in a Party each are bound jointly and severally; and
- (u) a provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

## **2. Planning Agreement under the Act**

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- 2.1** The parties mutually acknowledge and agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

## **3. Application of this Agreement**

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- 3.1** This Agreement applies to the Land, the Development Application and to the Development.
- 3.2** Nothing in this Agreement affects the operation of any development consent(s) that are ongoing and in force in respect of the Existing Signage on the Land.

## **4. Operation of this Agreement**

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- 4.1** This Agreement takes effects from the date this Agreement is executed by the Parties.

## **5. Development Contributions**

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- 5.1** **Schedule 2** has effect in relation to the Development Contributions to be made by the Developer under this Agreement in relation to the Development Application.
- 5.2** The Developer must make the Development Contributions (as set out in **Schedule 2**) to Council in accordance with this Agreement including as provided in clauses 5.5, 6.1, 7.1 and 8.1.
- 5.3** For the purposes of clause 5.2:
- (a) the Developer acknowledges that it must lodge a Construction Certificate prior to commencement or works associated with the Development Application (pursuant to section 6.7 of the Act);



- (b) Council acknowledges that the Developer may elect not to take up any development consent granted in relation to the Development Application;
- (c) the Developer must immediately notify Council in writing of the date a Construction Certificate is issued in relation to the Development Application;
- (d) the Developer must immediately notify Council in writing of the date an Occupation Certificate is issued in relation to the Development Application;
- (e) the Developer may not commence use of the Digital Signage approved pursuant to the Development Application without an Occupation Certificate; and
- (f) the Developer must make the First Payment on the First Payment Date.

**5.4** The Developer agrees to make and the Council agrees to accept, the Development Contributions to be applied for the Public Purpose by the Council.

**5.5** The Developer and the Council each agree that, on each anniversary of the First Payment Date, the Development Contribution in relation to the Development Consent will be adjusted by the increase in the Consumer Price Index for the prior Year.

**5.6** The Developer shall cease to be liable for payment of the Development Contributions on and from the Terminating Date.

## **6. Adjustment of Development Contribution**

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**6.1** If at any time the use and operation of the Digital Signage by the Developer pursuant to the granted Development Consent permanently ceases for any reason, the Parties acknowledge that:

- (a) the Developer must promptly notify Council in writing of the cessation of the use and operation of the Digital Signage and such notice shall include written evidence to demonstrate that the use and operation of the Digital Signage has permanently ceased;
- (b) Council must, within 15 Business Days after receiving a notice from the Developer under clause 6.1(a), give genuine consideration to any such written notice and written evidence and notify the Developer in writing as to whether or not it is satisfied (acting reasonably) that the use and operation of the Digital Signage by the Developer has permanently ceased;
- (c) if:
  - (i) Council notifies the Developer under clause 6.1(b) that it is satisfied that the use and operation of the whole Digital Signage by the Developer has permanently ceased, the Parties may formally record in writing the permanent ceasing of the operation of the whole Digital Signage and mutually terminate this Agreement;
  - (ii) Council notifies the Developer under clause 6.1(b) that it is not satisfied that the use and operation of the whole Digital Signage by the Developer has permanently ceased, then the Developer may serve a notice on Council that it disputes Council's notice and the dispute resolution provisions of this Agreement shall apply; and

- (iii) Council does not give notice to the Developer of its decision under clause 6.1(b) within 15 Business Days after receiving a notice from the Developer under clause 6.1(a), this Agreement is deemed to be terminated on the date which is 15 Business Days after the Developer's notice to Council under clause 6.1(a).

- 6.2** (a) If at any time the use or operation of the Digital Signage by the Developer pursuant to the Development Consent is disrupted or suspended due to a Force Majeure Event for a continuous period of 5 Business Days:
- (i) the Developer may provide written notice to Council which states the Force Majeure Event causing the disruption or suspension and the period of anticipated disruption or suspension; and
  - (ii) subject to clause 6.2(a)(i), the parties must promptly liaise in good faith to reach written agreement in relation to the nature of such Force Majeure Event and the extent of the anticipated disruption or suspension (**Agreed Force Majeure Event Suspension**); and
  - (iii) subject to clause 6.2(b), the obligation to pay Development Contributions is suspended during, but for no longer than, the period that the Agreed Force Majeure Event Suspension continues and any further period as is agreed between the Parties in writing as being reasonable in the circumstances.
- (b) If the period of any Agreed Force Majeure Event Suspension exceeds 90 days, either Party may, by written notice to the other Party, terminate this Agreement if the other Party consents in writing.

- 6.3** If this Agreement is terminated, the Developer shall not be entitled to reinstatement of the right to use the Signage in the Digital Display Area in accordance with the Development Consent.

## **7. Late Payment**

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- 7.1** Subject to Council issuing tax invoices in accordance with this Agreement, where any payment of a Development Contribution is not made on or before the due date for payment, the unpaid amount will accrue interest at a rate of 2% above the daily Reserve Bank of Australia Cash Rate from the date that payment was due up to and including the date when the overdue amount is paid.
- 7.2** If the Developer has not paid Development Contributions as required under this Agreement for 3 consecutive months, despite Council having issued tax invoices in accordance with this Agreement for each of those 3 months, then the Developer must suspend the use of the Digital Signage the subject of the Development Consent.
- 7.3** Despite a suspension under clause 7.2, the Parties acknowledge and agree that the Developer must, subject to Council issuing tax invoices in accordance with this Agreement, continue to pay Development Contributions as required under this Agreement for the duration of the suspension period under clause 7.2.
- 7.4** If late payment as referred to in clauses 7.1 and 7.2 above is cured, then use of the Digital Signage the subject of the Development Consent may be recommenced for the remainder of the Term (or until such time as a further breach occurs under clause 7.2).

## **8. Consolidation of Payment Dates**

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- 8.1** Without limiting the generality of clause 20.7 of this Agreement, the Parties acknowledge that they may, from time to time, negotiate and execute a variation of this Agreement so as to make provision for the date or dates on which recurrent payments of Development Contributions required by this Agreement are due to be consolidated (with appropriate adjustments) so as to make provision for a recurrent consolidated payment of the total Development Contribution payable.
- 8.2** Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that the Developer has no liability, and Council has no entitlement to the payment of the Development Contribution for any period after the expiration of the Term or termination of this Agreement. For the avoidance of doubt, any amounts paid by the Developer in excess of its liability for payment of the Development Contribution under this Agreement shall be paid by Council to the Developer within 14 days of written demand.

## **9. Allocation of Display Time**

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- 9.1** In addition to the Development Contributions, subject to clause 9.2, the Developer agrees to allocate (during the whole Term) five percent (5.0%) of the annual display time on the Digital Signage which is the subject of Development Consent to Council to advertise Council events and community information.
- 9.2** The Developer's obligation under clause 9.1 is subject to the following conditions:
- (a) Council shall be entitled to upload ten (10) new advertisements each Year. If Council request more than ten (10) new advertisements in each Year, Council must pay any production or service costs (including the Developer's standard charges) in connection with any additional artwork changes or uploads applicable to each additional advertisement.
  - (b) the right to display an advertisement on Digital Signage is personal to Council and cannot be transferred or sold to another person or exchanged for any other benefit or for cash;
  - (c) the use of the allocated display time by Council shall be on an annual basis, that is, Council will have 5% of the annual display time to utilise each Year. For the avoidance of doubt, once the allocated time for any one Year has been fully utilised or exhausted by Council in a given Year, Council (as the case may be) may not request use of the Digital Signage until the following Year;
  - (d) if at any time during the Term Council does not use its annual allocated display time (or any part thereof) to display an advertisement, then that unused display time is immediately forfeited to the Developer and does not accrue for future use;
  - (e) Council must ensure that any advertisement displayed on the Digital Signage does not include the logo or branding of any third party, infringe any third party's intellectual property rights or breach any law or regulation, except that, subject to the Developer's prior consent, Council may include the logo or branding of a third party to identify it as a sponsor of the Council event being advertised;
  - (f) Council must provide, seven (7) days' prior written notice to the Developer requesting use of the Digital Signage for the purpose set out in clause 9.1. Upon receipt of the notice from Council, the Developer will, at its discretion and

subject to the Developer's operational requirements, allocate the display time on the Digital Signage in accordance with clause 9.1.

## **10. Council's Obligations in respect of the Development**

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**10.1** Subject to clause 10.2 and clause 12, Council must:

- (a) not erect, install, plant or otherwise place, or grant to itself or any third party any licence, consent or approval to erect, install, plant or otherwise place, any plant or equipment, vegetation, structure, object, building or work on land owned, managed or controlled by Council which has or will have the effect of obscuring or obstructing visual access to the Signage from any public road for the duration of the Term; and
- (b) provide the Developer with at least one (1) month's prior written notice if it intends to install any plant or equipment, vegetation, structure, object, building or work within the vicinity of the Land.

**10.2** If Council installs any plant or equipment, vegetation, structure, object, building or work which obscures or obstructs the Signage or is in breach of clause 10.1(a), then:

- (a) the Developer may provide written notice to Council requesting Council to remove the obstruction;
- (b) the Development Contribution shall not be payable for the period that the Signage is obscured or obstructed, or Council is in breach of clause 10.1(a); and
- (c) if the obstruction or breach continues for a period of five (5) Business Days after the date of the Developer's notice in clause 10.2(a), the Developer may, by written notice to Council, terminate this Agreement.

**10.3** Clause 10.1 does not limit or fetter in any way Council's ability to exercise its rights and responsibilities in relation to road safety or functions as a roads authority under the *Roads Act 1993* including, without limitation, the installation or display of a prescribed traffic control device pursuant to the *Road Transport Act 2013* or otherwise installing or erecting signs or devices related to traffic and pedestrian safety or the regulation of pedestrians and traffic.

## **11. Assignment and Transfer**

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**11.1** Unless the matters specified in clause 11.2 are satisfied, the Developer is not to assign, transfer, dispose or novate to any person the Developer's rights or obligations under this Agreement.

**11.2** The matters required to be satisfied for the purposes of clause 11.1 are as follows:

- (a) the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned, transferred or novated, of an agreement in favour of Council on terms that are no less favourable to Council than the terms of this Agreement;
- (b) the Developer has provided evidence to Council to show that the assignee, transferee or novatee is reasonably capable of performing its obligations under the Agreement; and
- (c) the Developer is not in breach of a material term of this Agreement.

**11.3** Any purported dealing in breach of this clause is of no effect.

## 12. Council's Acknowledgement

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**12.1** Subject to clause 12.2, Council acknowledges and agrees that for the duration of the Term:

- (a) the payment of the Development Contribution and the allocation of display time pursuant to clause 9 is in substitution for the payment of any other fees, rates, charges or levies (Levy Payments) which Council could or may seek to impose on the Developer and its successors or assigns in respect of the Existing Signage and the Development (including any Signage erected or installed on the Land pursuant to the Development Consent);
- (b) Council releases the Developer and its successors or assigns from all liability for Levy Payments in respect of the Existing Signage and the Development (including any Signage erected or installed on the Land pursuant to the Development Consent); and
- (c) Council will not seek to impose levies to the same effect as the Development Contributions.

**12.2** Nothing in clause 12.1 limits or fetters in any way Council's power to impose fees, rates, charges or levies under any Act (including but not limited to the *Local Government Act 1993*), regulation, statutory rule or similar which the Council could or may seek to impose:

- (a) on the owner(s) of the Land; or
- (b) as a standard application fee, lodgement fee or other administrative or processing fee or charge that is payable to Council in connection with any Development Application, modification application, application for a Construction Certificate or similar.

## 13. No Fetter

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**13.1** Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**13.2** For the avoidance of doubt, nothing in this Agreement shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty in relation to:

- (a) assessment and determination of the Development Application;
- (b) the exercise of Council's functions as a roads authority under the *Roads Act 1993*; or
- (c) the exercise of Council's functions under the *Road Transport Act 2013* including but not limited to the installation or display of prescribed traffic control devices pursuant to that Act; or
- (d) any other statutory power or functions relating to installing or erecting signs or devices with respect to traffic and pedestrian safety or the regulation of traffic and pedestrians generally.

## **14. Application of sections 7.11 & 7.12 of the Act to the Development**

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**14.1** This Agreement excludes the application of Sections 7.11 and 7.12 of the Act to the Development.

## **15. Registration of this Agreement and caveatable interest**

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**15.1** The Parties agree that this Agreement will not be registered for the purposes of section 7.6 of the Act.

**15.2** The Parties agree that on execution of this Agreement Council will during the Term have a caveatable interest in the Land and may maintain a registered caveat against the title of the Land, for the sole purpose of protecting against assignment or transfer of the Land in breach of clause 11.1.

**15.3** Council must at its cost, promptly consent (but no later than three (3) Business Days after the Developer makes a written request) to the registration of any dealing lodged (or to be lodged) by the Developer which does not deprive Council's right under clause 15.2 to be protected against an assignment or transfer of the Land in breach of clause 11.1.

**15.4** On the expiration of the Term, Council's caveatable interest will lapse, and Council must do everything reasonably required in order to remove any such caveat from the title of the Land in a timely manner.

## **16. Dispute Resolution**

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### **16.1 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).

### **16.2 Response to Notice**

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

### **16.3 Negotiation**

The nominated representatives must:

- (a) meet to discuss the dispute in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

### **16.4 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 a resolution of the dispute (Dispute Notice).

### **16.5 Mediation**

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

- (a) the Parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Resolution Institute apply);
- (b) the appointment of a Mediator will be agreed between the Parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either Party may request the Resolution Institute apply to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 16.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his/her function as mediator, he/she being required to fully disclose any such interest or duty before his/her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his/her knowledge by reason of his/her appointment and performance of his/her duties;
- (e) the Parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the Parties agree to be bound by any 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; and
- (g) in relation to costs and expenses:
  - (i) each Party will bear their own professional and expert costs incurred in connection with the mediation; and
  - (ii) 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 costs of the mediation to be borne by that Party.

## **16.6 Litigation**

If the dispute is not finally resolved at mediation, either Party may commence proceedings in court to litigate the dispute.

## **16.7 Exchange of Information**

The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the Parties. No Party may use any information or documents obtained through the dispute resolution process established by this clause 16 for any purpose other than an attempt to settle a dispute between the Parties.

## **16.8 Continue to Perform Obligations**

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

## **17. Not used**

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## **18. GST**

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### **18.1 Defined GST terms**

In this clause 18, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

### **18.2 GST to be added to amounts payable**

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive. Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

### **18.3 Tax Invoice**

If a Party is liable for GST on any payments made under this Agreement, the other Party must issue a tax invoice (or an adjustment note) to the liable Party for any GST payable under this Agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

### **18.4 GST obligations to survive termination**

This clause 18 will continue to apply after expiration of termination of this Agreement.

## **19. Notices**

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### **19.1 Service of Notices**

A notice, consent, approval or other communication under this Agreement (Notice) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in clause 19.3; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by facsimile or email, or any other lawful means.

### **19.2 Effect of receipt**

A Notice given in accordance with this clause 19.1 is treated as having been given and received:

- (a) if personally delivered, on delivery;
- (b) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia);



- (c) if sent by facsimile, when the sender's fax machine produces a transmission report stating that the transmission of the entire Notice was complete; and
- (d) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that if the delivery, receipt or transmission, is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

### **19.3 Addresses**

- (a) The particulars for delivery of Notices are initially:

#### **Bayside Council**

Name: Bayside Council  
Attention: General Manager  
Officer: John Furestad  
Address: 444-446 Princes Highway, Rockdale NSW 2216  
PO Box 21, Rockdale NSW 2216  
Email: [council@bayside.nsw.gov.au](mailto:council@bayside.nsw.gov.au)  
Email: [john.furestad@bayside.nsw.gov.au](mailto:john.furestad@bayside.nsw.gov.au)

#### **Bishopp Outdoor Advertising Pty Ltd**

Name: Brad Bishopp, Nick McAlpine  
Address: 25 Bishop St, Kelvin Grove, QLD 4059  
PO BOX 3391, Newmarket QLD 4051  
Email: [brad@bishopp.com.au](mailto:brad@bishopp.com.au)  
Email: [nick@bishopp.com.au](mailto:nick@bishopp.com.au)

#### **Land Owner #1**

Name: Mr. Geoffrey William Keato  
Address: 119 Robey Street, Mascot  
Email:

## **Land Owner #2**

Name: Mr. Arthur Leslie Robinson

Address: 119 Robey Street, Mascot

Email:

- (b) A Party may change its address for the delivery of Notices by notifying that change to each other Party. The notification is effective on the later of the date specified in the Notice and 5 Business Days after the Notice is given.

## **20. General**

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### **20.1 Legal Costs**

- (a) Each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.
- (b) The Developer must pay upon demand, all legal costs (assessed on an indemnity basis) and out of pocket disbursements reasonably incurred by Council to enforce Council's rights under this Agreement.

### **20.2 Governing Law and Jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### **20.3 Severability**

- (a) Subject to clause 20.3, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) Clause 20.3(a) does not apply if severing the provision:
  - (i) materially alters the:
    - (A) scope and nature of this Agreement; or
    - (B) the relative commercial or financial positions of the parties; or
  - (ii) would be contrary to the public policy.

### **20.4 Rights Cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

## **20.5 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise or a right.

## **20.6 Survival**

The rights and obligations of the Parties do not merge on:

- (a) completion of any transaction under this Agreement; or
- (b) termination or expiration of the Agreement.

## **20.7 Amendment**

This Agreement may be varied, from time to time, pending legal advice on the nature of the amendments pursuant to section 7.5(1) of the Act and any such amendments are to be agreed in writing between the Parties.

## **20.8 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.

## **20.9 Entire Understanding**

- (a) This Agreement contains the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
  - (i) affects the meaning or interpretation of this Agreement; or
  - (ii) constitutes any collateral Agreement, warranty or understanding between any of the Parties.

Executed as an Agreement on:

2021

**EXECUTED** for and on behalf of )  
**Bishopp Outdoor Advertising Pty Ltd** )  
**A.C.N. 075 519 121** in accordance with )  
Section 127(1) of the *Corporations Act* )  
2001:

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Signature of Sole Director/Secretary

Bradley Gerard Bishopp

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Name of Sole Director/Secretary

**EXECUTED** for and on behalf of )  
**Bayside Council ABN 80 690 785 443** )  
**BRANCH 003** in the presence of: )  
)

*Liz Rog*

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Signature of Witness

*Meredith Wallace*

Meredith Wallace (Jan 13, 2022 10:49 GMT+11)

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Meredith Wallace

Signature of General Manager

Liz Rog

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Name of Witness

Meredith Wallace

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Name of General Manager

**EXECUTED by Arthur Leslie Robinson** )  
in the presence of: )  
)  
)  
)

---

Signature of Witness

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Signature of Arthur Leslie Robinson

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Name of Witness

**EXECUTED by Geoffrey William Keato** )  
in the presence of: )  
)  
)  
)

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Signature of Witness

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Signature of Geoffrey William Keato

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Name of Witness

**Schedule 1 – The Land**

Land	First Schedule (owner of the Land)	Registered Dealing Number of leasehold interest in Land (if applicable)
Lot 1 DP 777200 119 ROBESY STREET, MASCOT	Mr. Geoffrey William Keato Mr. Arthur Leslie Robinson	

**Schedule 2 – Development Contributions**

Column 1	Column 2	Column 3	Column 4
Development Application	Signage Details	Monetary Contribution (per annum for the duration of the Term)	Timing of Payment
DA-2019/319	Dimensions: 39.94 square meters (sqm)	\$555/sqm x 39.94 sqm = \$22,166.70  (as adjusted in accordance with clause 5 and clause 6)	Provided that Council has issued an invoice to the Developer for the amount payable, the Developer must pay the Monetary Contribution in relation to DA-2019/319 in advance in equal monthly instalments on and from the First Payment Date until the end of the Term.

## Explanatory Note

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Pursuant to clause 25E of the *Environmental Planning and Assessment Regulation 2000*

### 1. Introduction

#### 1.1 Purpose

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed planning agreement (Planning Agreement) prepared in accordance with Subdivision 2, Division 7.1, Part 7 of the *Environmental Planning and Assessment Act 1979 (Act)*.

#### 1.2 Preparation

This Explanatory Note has been prepared jointly by the Parties to the Planning Agreement in accordance with clause 25E(3) of the *Environmental Planning and Assessment Regulation 2000 (Regulation)*.

### 2. Parties to the Planning Agreement

Bayside Council  
ABN 80 690 785 443  
(Council)

And

Bishopp Outdoor Advertising Pty Ltd  
ACN 075 19 121  
(Developer)

And

Mr. Geoffrey William Keato  
119 Robey Street, Mascot  
(Land Owner #1)

And

Mr. Arthur Leslie Robinson  
119 Robey Street, Mascot  
(Land Owner #2)



### **3. Description of the Subject Land**

The Planning Agreement applies to the Land known as Lot 1 DP 777200 known as 119 Robey Street, Mascot.

### **4. Description of the Development Application**

The Planning Agreement applies to Development Application No. DA-2019/319 (Development Application).

The Development Application seeks to the removal of the existing illuminated advertising sign and the erection of a new digital illuminated advertising sign which comprises Digital Signage, on the Land.

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

The objective of the Planning Agreement is to record the terms of the offer made by the Developer and its obligation to provide public benefits in connection with the display of the advertisements in accordance with clause 13(3) of State Environmental Planning Policy No. 64 — Advertising and Signage and the Depart of Planning and Environment 'Transport Corridor Outdoor Advertising and Signage Guidelines'.

The Planning Agreement provides that the Developer is to make monetary contributions to Council calculated by reference to the digital display area used for the display of advertisements and the like at a rate of \$555 per square metre.

If development consent is granted to the Development Application, the Planning Agreement requires payment of the first monetary contribution within 28 days of issue of the occupation certificate, as follows:

DA-2019/319: \$555/sqm x 39.94 sqm = \$22,166.70 per annum (plus GST if applicable)

The above monetary contribution for the Development Application are to be paid for the balance of the time that the relevant development consent is effective and operational (15 years unless decreased) and the Digital Signage is operated or used by the Developer, adjusted in accordance with the Consumer Price Index.

The money received by Council is to be applied towards the public purpose of public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport, transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity with or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic and pedestrian matters.

### **6. Assessment of Merits and Purpose of the Planning Agreement**

The Planning Agreement serves the public purpose and promotes object (a) of the Environmental Planning and Assessment Act 1979 (Act) by securing the provision of Development Contributions in the nature of monetary payments for the purposes of public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport, transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity within or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic and pedestrian and matters.

### **7. How the Planning Agreement promotes one or more of the objects of the Local Government Act 1993**

The Planning Agreement promotes the principles of local government under the Local Government Act 1993 (see former section 8 of the Local Government Act 1993) by:

- providing appropriate services and facilities for the community in the form funding for such service as a result of the monetary contributions;
- providing for the needs of children by providing funding for school safety infrastructure and programs; and
- properly managing, restoring and enhancing the environment of the area in a manner that is consistent with and promotes the principles of ecologically sustainable development through the provision of funding for improving or providing public amenity within or adjacent to roads, and enhancing the existing road network.

#### **8. Planning Purposes served by the Planning Agreement**

The planning purpose of the Planning Agreement is to provide funds to the Council for the purposes of public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport, transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity within or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic and pedestrian and matters. The Planning Agreement provides for a reasonable means of achieving that purpose.

#### **9. The Council's capital works program**

The proposed Planning Agreement accords with Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation

#### **10. Requirements prior to the issue of construction, occupation or subdivision certificates**

The Planning requires payment of the Development Contribution after the issuing of an occupation certificate, and if no occupation certificate is issued, after such use commences.

#### **11. Interpretation of Planning Agreement**

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

# Council Execution Version - Planning Agreement - 119 Robey Street Mascot

Final Audit Report

2022-01-13

Created:	2022-01-11
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