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14 February 2014

Natasha Harris
Department of Planning
23-33 Bridge Street
Sydney NSW 2000

By fax 02 9228 6455

By email natasha.harris@planning.nsw.gov.au

Dear Ms Harris

Section 75W request by Earljest Pty Ltd
Department Reference: MP10_0101 MOD 2 ('the s.75W Application')
Property: 21-35 Treacy Street, Hurstville NSW

We act for Earljest Pty Ltd in connection with its s.75W application to modify Concept Plan Approval MP 10_0101 for a mixed-use residential and retail development at 21 – 35 Treacy Street, Hurstville (**the Site**). I refer to our letter of 19 December 2013.

The purpose of this letter is:

- (a) to confirm to the Department that our client's s75W application includes an offer to enter into a voluntary planning agreement (VPA) with Hurstville City Council (**Council**) for the provision of additional section 94 contributions that may be applied towards the provision or improvement of public amenities and services; and
- (b) to provide you with a draft VPA which would be subject to public exhibition post determination of the s.75W application; and
- (c) to invite the Minister (or his delegate) to impose, as a condition of the s.75W approval, a requirement for the proponent to enter into a VPA with Council, generally consistent with the terms of our client's offer (subject to refinement of the details via the usual legal process), prior to the commencement of any works authorised by a subsequent project approval.

These matters are further explained below.

VPA offer

On 6 December 2013 our client submitted to Hurstville Council an offer to enter into a VPA with Council. We confirm that **this offer does form part of our client's s75W application**. The offer is to make a monetary contribution of \$540,000, to allow Council to invest significantly in providing additional infrastructure (subject to agreement with Council as to the specific infrastructure).

We note that the s.75W application proposes only 45 additional apartments, and therefore this offer equates to a voluntary contribution of \$12,000 per additional apartment, **in addition to** the s.94 contributions that will also be payable under Council's s.94 contributions plan, and the 200sqm community space that is currently to be provided by the applicant as part of the Concept Approval.

We note that this is a matter than can be conditioned by the consent authority (including the PAC) pursuant to s.93I of the Act.

As such, we **enclose** a draft VPA, so that a condition can be imposed requiring the proponent to enter into a VPA on the same or similar terms, as envisaged by s.93I of the Act.

Such a condition would typically require that the applicant 'use its best endeavours to' enter into a VPA with the Council, consistent with offers that had been made, before the commencement of the first project approval – thereby giving the Council an opportunity to accept the applicant's VPA offer, in the event that the PAC approves the s.75W application (see for example the recent approval by the PAC of the Transitional Part 3A Concept Plan for the Kirrawee Brick Pit site – MP10_0076, where precisely this arrangement was conditioned, via the Statement of Commitments, in circumstances where Council was an objector to the Concept Plan application).

As you will be aware, the VPA would then need to be publicly exhibited, but only at the time of (and in connection with) the subsequent detailed project application. As such, the draft VPA is provided for indicative purposes, rather than for exhibition purposes. Exhibition of a subsequent version would occur in conjunction with the later detailed project / development applications.

Yours sincerely



Anthony Whealy
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Accredited Specialist Local Government & Planning
for **Gadens Lawyers**