

PLANNING AGREEMENT

PARTIES

Burwood Council of Suite 1, Level 2, 1-17 Elsie Street Burwood in the State of New South Wales (Council).

and

Mr Chang Min Hwang and Mrs Chloe Chung-Ihn Hwang of 22 The Boulevard Strathfield NSW 2135 in the State of New South Wales (Developer).

Background

- A. On 13 October 2015, the Developer submitted a Development Application, DA148/2015, to the Council for Development Consent to carry out the Development on the Land.
- B. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if the Development Consent was granted.

Operative Provisions

1. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2. Application of this Agreement

This Agreement applies to both the Land and the Development.

3. Operation of this Agreement

This Agreement shall operate from the date of the approval by the Council of the Development Application 148/2015.

Any approval given by the Council for Development Consent for DA 148/2015 shall not come into effect until this Agreement is executed.

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

Dealing in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means DA 148/2015 issued by the Council in respect of the property know as 22 The Boulevard, Strathfield NSW 2135.

C.M. CH



Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means Lot E in Deposited Plan 401144, known as 22 The Boulevard, Strathfield NSW 2135.

Monetary Contribution means \$ 48,000.00

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

Public Facility means car parking within the Burwood Town Centre for use by the public.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, 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 Agreement.
- (h) An expression importing a natural person including any company, trust, partnership, joint venture, association, body corporate or governmental agency.

Developer 1: Initial Here LN

Developer 2: Initial Here CL

Attorney: Initial Here [Signature]

- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5. Development Contributions to be made under this Agreement

- 5.1 The Developer will pay to the Council a monetary contribution at the sum of Forty Eight thousand dollars (\$48,000.00) on the date of the execution of this Agreement.
- 5.2 The Developer must deliver to Council a bank cheque in a form acceptable to the Council for the amount of the monetary contribution on the date of the execution of this Agreement, which shall occur prior to the issue of any Construction Certificate with respect to the Development.
- 5.3 The Developer each covenant and agree with the Council not to make an application for the issue of any Construction Certificate until the payments required to be made to the Council hereunder have been paid.


6. Application of the Development Contributions

- 6.1 The monetary contributions paid by the Developer under this Agreement will be used by Council to develop Public Facilities.
- 6.2 The Public Facilities will:
 - (a) not be provided to coincide with the conduct or completion of the Development;
 - (b) be constructed at a time determined by Council at its absolute discretion;
 - (c) be available for use by the general public and will not be restricted for use by patrons of the Development.

7. Application of section 94 and section 94A of the Act to the Development

This Agreement does not exclude the application of section 94 or section 94A of the Act to the Development. Benefits under the Planning Agreement are not to be taken into account in determining a development contribution under section 94 or section 94A.

Developer 1: Initial Here 

Developer 2: Initial Here 

Attorney: Initial Here 

8. Registration of this Agreement

8.1 The Developer each further covenant with the Council:

- (a) that prior to the issue of any Construction Certificate for the Development, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this Agreement over the title to the Land pursuant to Section 93H of the Act from all persons who have an interest in the Land;
- (b) that forthwith after receiving the consents specified in subclause (a) hereof they shall cause this Agreement to be registered on the title of the Land;
- (c) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose to sell the Land or any part thereof then it shall:
 - (i) within seven (7) days of listing the Land or any part thereof for sale, either through an agent or privately, notify the Council of such intention;
 - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like agreement to this present Agreement in which substantially the same covenants as set out herein shall apply;
 - (iii) within seven (7) days of exchange of contracts, notify the Council of the sale and provide the Council with a copy of the contract;
 - (iv) within twenty one (21) days of receipt from the Council of a replacement agreement between the Council and the purchaser substantially in the form of this Agreement, have it executed by the purchaser and return it to the Council;
 - (v) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose otherwise than by sale to transfer or assign its interest in the Land or any part thereof to a transferee or assignee, then it shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.

8.2 The Proprietor further covenants and agrees with the Council that pending the registration of this Agreement on the title of the Land as required by clause 8.1, the Council shall be entitled to register a caveat at Land & Property Management Authority over the title to the Land to protect its interest therein pursuant to this Agreement

9. Acknowledgements

9.1 The Developer acknowledge that Council may include a notation on Planning Certificates under section 149(5) of the Act in relation to this Agreement.

9.2 The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Act and other legislation.

10. Dispute resolution

10.1 If a party believes that there is a dispute in respect of this Agreement then:

Developer 1: Initial Here G.M

Developer 2: Initial Here C.H

Attorney: Initial Here *[Signature]*

- (a) the party must give notice in writing to the other party stating that there is a dispute (the Dispute Notice); and
- (b) the Dispute Notice must outline:
 - (i) what the party believes the dispute to be;
 - (ii) what the party wants to achieve;
 - (iii) what the party believes will settle the dispute; and
 - (iv) who will be the party's representative to negotiate the dispute.

10.2 Within fifteen (15) business days of a Dispute Notice served, the representatives of each of the parties must meet in order to resolve the dispute.

10.3 Both parties must adhere to the dispute resolution procedure set out in this Agreement. The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.

10.4 If the parties cannot resolve the dispute after adhering to the dispute resolution procedure set out in this Agreement then either party may seek any other avenues available to it in order to resolve the dispute.

11. Enforcement

11.1 This Agreement may be otherwise enforced by either party in any court of competent jurisdiction.

11.2 For the avoidance of doubt, nothing in this Agreement prevents:


- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) the Council from exercising any function under the Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11.3 The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of the Council existing at law or which the Council would otherwise have available to it.

12. Notices

12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (c) Email to that Party at its email address set out below.

Developer 1: Initial Here 

Developer 2: Initial Here 

Attorney: Initial Here 

Council

Attention: The General Manager
Address: Suite 1, Level 2, 1-17 Elsie Street Burwood 2134
Post: PO Box 240, Burwood NSW 1805
Fax Number: 9911 9900
Email: council@burwood.nsw.gov.au

Developer

Attention: Mr Chang Min Hwang & Mrs Chloe Chung-Ihn Hwang
Address: Unit 3701, 101 Bathurst Street, Sydney NSW 2000
Email: changmin.hwang@gmail.com

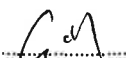
- 12.2 If a party gives the other Party three (3) business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, two (2) business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machines a report of an error-free transmission to the correct fax number.
- 12.4 If any notice, consent, information, application or request is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5.00pm on that day on the place of the Party to whom it is sent, its is to be treated as having been given or made at the beginning of the next business day.

13. Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14. Assignment and dealings

The Developer agrees that this Agreement shall be binding upon the Developer and upon their respective transferees, assignees or successors.

Developer 1: Initial Here 

Developer 2: Initial Here 

Attorney: Initial Here 

15. Costs

The Developer shall bear the Council's costs directly related, and incidental, to negotiating, preparing, executing, stamping and registering the Agreement, including any costs of lodging/removing caveats on the title to the Land.

16. Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

17. Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

18. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19. Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two (2) or more persons binds them jointly and each of them individually, and any benefit in favour of two (2) or more persons is for the benefit of them jointly and each of them individually.

20. No fetter

Nothing in this Agreement shall be construed as requiring 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 constructed as limiting or fettering in any way the exercise of any statutory discretion or duty.

21. Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

22. Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

Developer 1: Initial Here GM

Developer 2: Initial Here CH

Attorney: Initial Here [Signature]

23. Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

24. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligations of, or breach of obligations by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25. The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.

26. GST

26.1 All words in this clause which are also defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("the GST Act") have a corresponding meaning to that in the GST Act.

26.2 The consideration for any supply under this Planning Agreement excludes GST;

26.3 Where a party to this Planning Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment;

26.4 The maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply;

26.5 Despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Planning Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

27. Confidentiality

The terms of this Agreement are not confidential and this agreement may be treated as a public document and exhibited or reported without restriction by any party.

28. Once the Council is satisfied that the Developer have fully complied with all of their obligations under this Planning Agreement, the Council agrees to provide a full release and discharge of this Planning Agreement with respect of the whole of the Land. In such circumstances Council will do all things reasonably necessary, including the execution of any documents to enable the Proprietor to remove any caveat and the notation of this Planning Agreement on the title to the Land.

Developer 1: Initial Here GA


Developer 2: Initial Here CH

Attorney: Initial Here [Signature]

EXECUTED AS AN AGREEMENT 18/5/16

Signed for and on behalf of **Burwood Council** by its attorney, **Michael Gerard McMahon**, under power of attorney dated 6 July 2011 registered book 4615 number 590, in the presence of:


Signature of Witness


Signature of Attorney

Mark Young Vera Karpowicz
.....
(Print) Name of Witness

Michael Gerard McMahon
.....
Full Name of Attorney

17 15 / 16
.....
Date

18/5/2016 Level 2, 1 - 17 Elsie Street, Burwood, New South Wales, 2134
.....
Address

By executing this document, the attorney certifies that he has not received notification of revocation of the power of attorney.

Signed by Mr Chang Min Hwang:


Signature of Developer

CHANG MIN, HWANG
.....
Print Full Name of Developer

16 May 2016
.....
Date

Signed by Mrs Chloe Chung-Ihn Hwang:


Signature of Developer

Chloe Chung-Ihn Hwang
.....
Print Full Name of Developer

16/05/16
.....
Date

Explanatory Note

Planning Agreement for the provision of monetary contribution in lieu of Visitor Parking spaces at 22 The Boulevard Strathfield New South Wales Under Section 93F of the Environmental Planning and Assessment (EP&A) Act 1979

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2) Mr Chang Min Hwang (**Developer**)
- (3) Mrs Chloe Chung-Ihn Hwang (**Developer**)

2. Description of Subject Land

The land to which the Planning Agreement relates is as follows:

Folio Identifiers: E/401144
Location: 22 The Boulevard Strathfield NSW 2135

3. Description of Proposed Change to Development

The Developer has lodged a Development Application (being DA 148/2015) which provides a shortfall of One (1) Visitor Parking spaces.

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

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

The offer made by the **Developer** as set out in the Planning Agreement is based on the parking provision of Burwood Council's Development Control Plan and is consistent with that provision.

The intent of the Planning Agreement is to ensure that the parking needs of the incoming population into the Burwood local government area are met.

The monetary contributions to be provided by the **Developer** under the Planning Agreement is an amount of \$48,000.00 payable on the date of execution of the agreement and before issue of any Construction Certificate.

5. Assessment of the Merits of the Planning Agreement

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

5.1 The planning purposes served by the Planning Agreement

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

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The Planning Agreement serves the following planning purpose:

The monetary contributions paid by the **Developer** under this Planning Agreement will be used by **Council** to develop public carparking facilities within the Strathfield Town Centre.

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

The planning provision enabling monetary contributions in lieu of parking on-site is contained within Burwood Development Control Plan, a publically exhibited document which was initially adopted by Council on 12 February 2013. The mechanism allows the aggregation of funds by Council for the provision of efficient and sensitively located public carparking facilities.

5.2 Promotion of the public interest

[Section 25E(2)(a) of the EP&A Regulation 2000]

The Planning Agreement promotes the public interest by:

Ensuring the orderly use and development of land by ensuring that the location and design of public carparking facilities function effectively and safely. The Planning Agreement provides for the provision of public carparking in lieu of private-use Visitor Parking.

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

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

5.3 Promotion of the Council's charter

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

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

Council undertakes to provide *adequate, equitable and appropriate services for the community*. The Planning Agreement provides the monetary resources for Council to assist in the provision of additional public carparking and ensure that those *facilities are managed efficiently and effectively*. Council is the *custodian and trustee of public assets* and has a responsibility to *effectively plan for, account for, and manage the assets*.

Council undertakes to involve *councillors, members of the public, users of facilities and services, and council staff* in its activities. The Planning Agreement process provides an opportunity for the community and stakeholders to be involved and interested people are invited to make comment during the exhibition

period. The public exhibition and the consideration of this matter at Council meetings is intended to *keep the local community informed*.

Council seeks to ensure that it *acts consistently and without bias*, which is why Council's provisions for Planning Agreements which allow for contributions in lieu of parking is set out in its Development Control Plan.

5.4 Capital Works Program

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

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

Council has in place a capital works program, but the program does not, to date, identify additional public carparking facilities within the Strathfield Town Centre. The capital works program is subject to annual review and any proposal for additional public carparking would be initiated where sufficient funds are available.

Signatories:

Burwood Council (**Council**)


General Manager


Print Name of General Manager

18/5/16
Date

Mr Chang Min Hwang (**Developer**)


Developer

CHANG MIN, HWANG
Print Name of Developer

16 May 16
Date

Mrs Chloe Chung-Ihn Hwang (**Developer**)


Developer

Chloe Chung-Ihn Hwang
Print Name of Developer

16/05/16
Date