

PLANNING AGREEMENT

PARTIES

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

and

Coronation Club Limited ACN 000 191 659 of 86 Burwood Road, Burwood in the State of New South Wales (**Proprietor**).

and

The Bay Group Pty Limited ACN 160 702 189 of 18 Tivoli Avenue, Rose Bay in the State of New South Wales (**Developer**).

Background

- A. On 15 May 2014, the Developer submitted a Development Application (DA75/2014) 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 DA75/2014.

Any approval given by the Council for Development Consent for DA75/2014 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 DA75/2014 issued by the Council in respect of the property known as 42-44 Meryla Street and 84-86 Burwood Road, Burwood.

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 1 DP 103766, Lot 2 DP 881542 and Lot 3 DP 881542, known as 42-44 Meryla Street and 84-86 Burwood Road, Burwood.

Monetary Contribution means $4 \times \$46,500.00 \times 0.80 = \$148,800.00$.

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.
- (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 in the sum of One Hundred and Forty Eight Thousand Eight Hundred Dollars (\$148,800.00) (being 4 X \$46,500.00 x 0.80) prior to the commencement of construction pursuant to the Development Application.
- 5.2 The Developer and/or the Proprietor must deliver to the 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.

6. Application of the Development Contributions

- 6.1 The monetary contributions paid by the Proprietor and/or 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

- 7.1 This Agreement does not exclude the application of section 94 or section 94A of the Act to the Development.
- 7.2 The Monetary Contribution under this Agreement is not to be taken into consideration in determining any development contribution under section 94 or section 94A of the Act.

8. Acknowledgements

- 8.1 The Developer and the Proprietor acknowledge that Council may include a notation on Planning Certificates under section 149(5) of the Act in relation to this Agreement.
- 8.2 The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Act and other legislation.

9. Review of this Agreement

If a party believes that there is a need to review this Agreement, the party must give notice in writing to the other party requesting review (the Review Notice). If the parties agree upon the outcome of the review then each party shall endeavour to modify this Agreement consistent with that outcome.

10. Dispute resolution

- 10.1 If a party believes that there is a dispute in respect of this Agreement then:
- (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.
 - (b) Faxed to that Party at its fax number set out below.
 - (c) Email to that Party at its email address set out below.

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

Proprietor

Attention: Ms Carolynne Williams

Address: 86 Burwood Road, Burwood NSW 2134

Fax Number: 9745 1373

Email: ceo@coronationclub.com.au

Developer

Attention: Michael Issa

Address: 18 Tivoli Avenue, Rose Bay NSW 2029

Fax Number: N/A

Email: hoteldesign@yahoo.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 Proprietor and the Developer agrees that this Agreement shall be binding upon the Proprietor and the Developer and upon their respective transferees, assignees or successors.

15. Costs

The Proprietor and/or the Developer shall bear the Council's costs directly related, and incidental, to negotiating, preparing, executing and stamping the Agreement.

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 constructed 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.

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. GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.

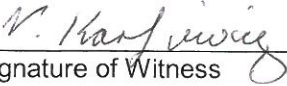
26. Confidentiality

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.

EXECUTED AS AN AGREEMENT

On behalf of Burwood Council:

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

V. Karpowicz
Print Full Name of Witness

Date: 6/7/2015


Signature of Attorney

Michael Gerard McMahon
Suite 1, Level 2, 1-17 Elsie Street,
Burwood, NSW 2134

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

On behalf of Coronation Club Limited:

Coronation Club Limited (ACN 000 191 659) executed this agreement pursuant to section 127 of the Corporations Act in the presence of:


Signature of Director

ALAN WHELPTON
Print Full Name of Director

Date: 2/7/15


Signature of Director/Secretary

CAROLYNNE WILLIAMS
Print Full Name of Director/Secretary

On behalf of The Bay Group Pty Limited:

The Bay Group Pty Limited (ACN 160 702 189) executed this agreement pursuant to section 127 of the Corporations Act in the presence of:


Signature of Director

ALEXZANDRA ISSA
Print Full Name of Director

Date: 2/7/15


Signature of Director/Secretary
witness

MICHAEL-S. ISSA
Print Full Name of Director/Secretary
witness