

Planning Agreement

Dynamic Plus Rendering & Construction Pty Ltd
ABN 16 092 762 242

and

Everlast Rendering & Construction Pty Limited
ABN 71 076 038 456

and

The Hills Shire Council
ABN 25 034 494 656

8-10 Boundary Road, Carlingford

Signed
23/7/10
FR.

Planning Agreement

Date 2010

Parties

Dynamic Plus Rendering & Construction Pty Ltd ABN 16 092 762 242 and **Everlast Rendering & Construction Pty Limited** ABN 71 076 038 456 (trading together as **M.H Developments**) having their registered offices at c/o- Kekatos & Partners, 35A Burwood Road, Burwood NSW 2134 ("**Developer**")

and

The Hills Shire Council ABN 25 034 494 656 of 129 Showground Road, Castle Hill NSW 1765 ("**Council**")

Background

- A In 2004, the Developer lodged Development Application No. 2682/2004/HB with Council seeking development consent for the erection of a four storey residential flat building containing 14 units at Lot 54 SP75860, 8-10 Boundary Road, Carlingford ("the DA").
- B On 14 September 2004 Council gave notice of its decision to determine the DA by way of granting development consent subject to conditions ("the Consent").
- C Condition No 41 of the Consent required the payment of contributions by the Developer pursuant to Section 94 of the Environmental Planning and Assessment Act 1979. A contribution of \$21,944.81 was paid by the Developer to Council pursuant to Condition No 41.
- D On 14 July 2009 the Developer lodged a further Development Application (DA63/2010/HB) with the Council seeking development consent for an additional four levels with an additional 14 residential apartments to the existing approved residential flat development and associated basement works and landscape works ("Current DA").
- E The Developer has offered to Council to enter into this planning agreement to make the Development Contributions towards public facilities ("the Agreement").

Operative Provisions

1. Definitions and interpretation

1.1 In this Agreement the following definitions apply:

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

Development means the development on the property substantially similar to the DA and the Current DA.

Development Contributions means \$279,300.00.

GST has the same meaning as in the GST Law.

GST Law has the same 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 54 on SP75860, known as 8-10 Boundary Road, Carlingford.

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

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

- 1.2 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 includes 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 a reference to any gender denotes the other genders.
 - (k) References to the word 'include' or 'including' are to be construed without limitation.
 - (l) A reference to this Agreement includes the agreement recorded in this 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.

2. Planning agreement under the Act

- 2.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.
- 2.2 It has been acknowledged and agreed that this Agreement is in the terms of the offer made by the Developer in connection with the Current DA.

3. Application of this Agreement

- 3.1 This Agreement applies to land at 8-10 Boundary Road, Carlingford.
- 3.2 This Agreement takes effect on the date on which it is made. This Agreement ceases to have effect upon the provisions of Clause 4 being complied with by the parties.

4. Payment of the Development Contributions

- 4.1 The Developer will pay the Development Contributions upon the making of this Agreement.
- 4.2 The Council will pool the Development Contributions with future funds collected by the adopted Contributions Plan No. 14- Carlingford Precinct when commenced.
- 4.3 If the Current DA is refused, or development consent is granted for a number of apartments less than that sought pursuant to the Current DA, the Council will re-pay to the Developer the sum of \$19,950.00 for each apartment for which Development Consent is not granted by the Council pursuant to the Current DA.

5. Application of s94 and s94A of the Act to the Development

This Agreement excludes the application of s.94 and s.94A of the Act from the Current DA.

6. Dispute Resolutions

If a dispute or lack of certainty between the parties arises in connection with this Agreement or its subject matter (a dispute), then either party must give to the other a notice of dispute in writing identifying and providing details of the dispute.

The parties must continue to perform their obligations under the Agreement if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if not resolved in favour of the indemnifying party.

Any dispute between the parties arising out of this Agreement or its subject matter must first be the subject of mediation by a mediator agreed by the parties, and if the parties cannot agree within 7 business days, then by a mediator appointed by the Lawyers Engaged in Alternative Dispute Resolution.

If mediation does not result in settlement of the dispute, either party may by notice in writing require the matter to be determined by an independent expert in the relevant field either:

- a. Agreed between and appointed jointly by the parties; or
- b. If not agreed within 7 business days after the date of notice provided under paragraph 10, appointed by a senior officer for the time being of the body administering or expert in the relevant field.

If the parties fail to agree as to the relevant field within 7 business days after the date of providing notice, either party may refer the matter to the president of the NSW Bar Association whose decision as to the relevant field is final and binding on the parties.

The expert appointed to determine the dispute must inform the parties prior to his or her appointment of the extent of his or her understanding of each parties' business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the approval of the parties.

In reaching a determination in respect of a dispute, the independent expert must give affect to the intent of the parties entering into this Agreement and the purposes of this Agreement.

The expert must act as an independent expert and not as an arbitrator, and may proceed in any manner as he or she thinks fit.

The expert must not accept verbal submissions unless both parties are present and he or she must ensure that a copy of any submissions received from one party are promptly provided to the other party.

The expert must issue a draft certificate stating his or her intended determination giving each party 7 business days to make further submissions.

The independent expert must issue a final certificate stating his or her determination.

The parties must comply with any directions given by the independent expert and must within any timeframe stipulated by the expert, provide him or her with:

- i. A Statement of Facts;
- ii. A brief description of the dispute; and
- iii. Copies of any documents or records which are required by the independent expert.

The independent expert must hold a meeting for the parties to discuss a dispute. The parties acknowledge that such a meeting is not an arbitration.

If mediation has not resulted in settlement of the dispute and has been terminated, and the matter has not been referred to an independent expert for determination, either party may take whatever action they consider necessary to resolve the dispute.

The parties agree that any mediator or independent expert agrees as a condition of his or her appointment to keep confidential all documents, information and other material disclosed to him or her during or in relation to the mediation or expert determination, and that he or she will not disclose any confidential documents, information or other material unless required by law to do so.

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any other proceedings, any views expressed by a party or the mediator or any independent expert during the expert determination or mediation relating to the dispute.

If an independent expert does not make a determination as to payment of costs, each party is equal or responsible for the expert's costs in making the determination.

The dispute resolution provisions in this Agreement do not prevent any party from seeking urgent injunctive or dilatory relief.

7. Enforcement

If any party fails to perform or fulfil any obligation under this Agreement, a party not in default may recover upon demand from the party in default the whole of the money due to the party not in default and not paid by the party in default.

8. **Notices**

8.1 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) Emailed to that party at its email address set out below.

Council

Attention: Matthew Pearce
Address: 129 Showground Road
Castle Hill NSW 2154
Fax Number: 02 9843 0409
Email: mpearce@thehills.nsw.gov.au

Developer

Attention: Youssef Mouawad and Antoine Nahra
Address: c/o- Kekatos & Partners
35A Burwood Road
Burwood NSW 2134

Fax Number:

Email:

8.2 If a party gives the other party 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 faced to the latest address or fax number.

8.3 Any notice, consent, 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, 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 machine a report of an error free transmission to the correct fax number.

9. **Approvals**

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 obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

10. **Assignment and Dealings**

The rights and obligations of the Developer cannot be assigned, charged or otherwise dealt with or transferred.

11. **Costs**

The Developer agrees to pay the Council's legal costs and disbursements on an indemnity basis arising out of the negotiation, preparation and execution of this

Agreement, and any advertising or exhibition fees payable to the Department of Planning associated with the Agreement. Any duties payable or in connection with this Agreement must also be paid for by the Developer.

12. **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.

13. **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.

14. **Joint and Individual Liability and Benefits**

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

15. **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 construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

16. **Representations and Warranties**

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

17. **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.

18. **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.

19. **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 obligation of, or breach of obligation 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.

20. **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, the

recipient of the supply must pay an additional amount equal to the GST on that supply.

Executed as an Agreement:

Executed by
DYNAMIC PLUS RENDERING & CONSTRUCTION PTY LTD
as a deed in accordance with section 127 of the Corporations Act by its authorised officer:

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)
)
)
)

Signature of sole director and sole secretary

YOUSSEF MOUAWAD
Name

Executed by
EVERLAST RENDERING & CONSTRUCTION PTY LIMITED
as a deed in accordance with section 127 of the Corporations Act by its authorised officer:

)
)
)
)
)

Signature of sole director and sole secretary

ANTOINE NAKRA
Name

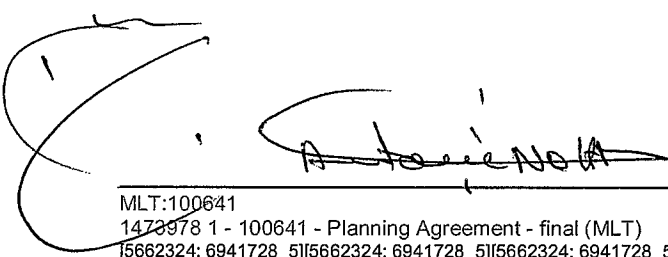
Executed by
THE HILLS SHIRE COUNCIL
as a deed in accordance with section 127 of the Corporations Act by its authorised officers:

Signature of director

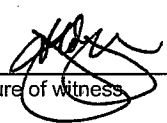
Name

Signature of director/secretary

Name



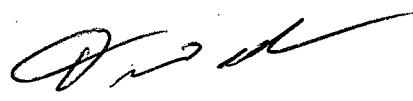
EXECUTED by **THE HILLS SHIRE**)
COUNCIL as a deed by its duly authorised)
officer in the presence of:)



Signature of witness

MICHAEL EDGAR

Name of Witness



Signature of General Manager

D Walker

Name of General Manager