

## **Planning Agreement**

### **Environmental Planning and Assessment Act 1979**

7 Osborne Avenue, Dundas Valley NSW 2117

Telopea Precinct

**Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)**

**Yunfei Jiang**

AND

**Jiaojie Chen**

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This deed is dated

**Parties:**

**Minister**

**Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468)  
c/- NSW Department of Planning and Environment  
of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta, NSW 2150

**Developer**

**Yunfei Jiang** of 7 Osborne Avenue, Dundas Valley NSW 2117

**AND**

**Jiaojie Chen** of 7 Osborne Avenue, Dundas Valley NSW 2117

**Introduction:**

- A** The Developer owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer has made a Development Application to the Consent Authority in respect of the Land.
- D** Clause 8.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 8.1 of the LEP.
- E** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

**It is agreed:**

**1. Definitions and interpretation**

**1.1 Definitions**

In this **deed**, unless the context clearly indicates otherwise:

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

**Address for Service** means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

**Authority** means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

**Base CPI** means the CPI number for the quarter ending 31 March 2022.

**Business Day** means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

**Consent Authority** has the same meaning as in the Act.

**CPI** means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

**Current CPI** means the CPI number as provided for in clause 4.1.

**Developer** means Yunfei Jiang and Jiaojie Chen.

**Development** means the demolition of existing dwelling structures, and construction of an attached dual occupancy with Torrens Title subdivision of the Land (to create 1 additional residential lot), generally in accordance with DA. DA/913/2021 lodged with City of Parramatta Council.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the contributions to be provided by the Developer in accordance with clause 4.

**Explanatory Note** means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act.

**GST** means any form of goods and services tax payable under the GST Legislation.

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

**Land** means the land described in Schedule 3.

**LEP** means *Parramatta Local Environmental Plan 2011*.

**Plan of Subdivision** means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Minister** means the Minister administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Secretary's nominee.

**Secretary** means the Secretary of the Department of Planning and Environment (including that Department if renamed) or, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, the head of any other Department or other Public Service agency that includes that group of staff.

**Super Lot** means a lot that forms part of the Land which, following the registration of a Plan of Subdivision, is intended for further subdivision (including community title subdivision but excluding strata subdivision) for Residential Accommodation, but does not include a Residue Lot.

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2. Operation and application of this deed**

### **2.1 Operation**

This deed commences on the date that this deed is signed by all the parties.

### **2.2 Planning agreement under the Act**

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

### **2.3 Application**

This deed applies to:

- (a) the Land; and
- (b) the Development.

## **3. Application of sections 7.11, 7.12 and 7.24 of the Act**

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in Schedule 1.

## **4. Development Contribution**

### **4.1 Developer to provide Development Contribution**

- (a) The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution of \$12,000 on or prior to the commencement of this deed.
- (b) If the Development Contribution is paid between 1 July and 31 December (inclusive) in any calendar year, the amount payable is to be adjusted by multiplying the Development Contribution that would have been payable before 1 July by an amount equal to the Current CPI divided by the Base CPI.
- (c) For the purposes of this clause 4.1, the Current CPI is:
  - (i) if the Development Contribution is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
  - (ii) if the Development Contribution is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

### **4.2 Acknowledgement**

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and

- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

## **5. Dispute Resolution**

### **5.1 Written notice of dispute**

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

### **5.2 Attempt to resolve**

On receipt of notice under clause 5.1, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

### **5.3 Referral to the Secretary**

Should the matter not be resolved under clause 5.2, the matter shall be referred to the Secretary whose determination of the disagreement shall be final and binding on the parties.

## **6. GST**

### **6.1 Definitions**

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

### **6.2 Intention of the parties**

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

### **6.3 Reimbursement**

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

### **6.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 6.

## **6.5 Additional Amounts for GST**

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

## **6.6 Non monetary consideration**

Clause 6.5 applies to non-monetary consideration.

## **6.7 Assumptions**

The Developer acknowledges and agrees that in calculating any amounts payable under clause 6.5 the Developer must assume the Minister is not entitled to any input tax credit.

## **6.8 No merger**

This clause does not merge on completion or termination of this deed.

# **7. Capacity**

## **7.1 General warranties**

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

## **7.2 Power of attorney**

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

# **8. General Provisions**

## **8.1 No fetter**

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

## **8.2 Counterparts**

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### 8.3 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

### 8.4 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable valuation costs, legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 8.4(a) and (b):
  - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
  - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

### 8.5 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
  - (i) hand delivered; or
  - (ii) sent by prepaid ordinary mail within Australia; or
  - (iii) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
  - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
  - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
  - (iii) sent by email:
    - (A) before 5 pm on a Business Day, on that Day;
    - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
    - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

## 8.6 Electronic execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
  - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
  - (ii) insertion of the person's name on to the deed; or
  - (iii) use of a stylus or touch finger or a touch screen to sign the deed,provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;
  - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
  - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

## Schedule 1

**Table 1 - Requirements under section 7.4 of the Act (clause 2.2)**

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Planning instrument and/or development application – (section 7.4(2))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) No</li> <li>(b) Yes</li> <li>(c) No</li> </ul>
<b>Description of land to which this deed applies – (section 7.4(3)(a))</b>	See Schedule 3
<b>Description of development to which this deed applies – (section 7.4(3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))</b>	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))</b>	See clause 4
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b>	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
<b>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</b>	The application of section 7.24 of the Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 7.11 applies – (section 7.4(5))</b>	No
<b>Mechanism for Dispute Resolution – (section 7.4(3)(f))</b>	See clause 5
<b>Enforcement of this deed – (section 7.4(3)(g))</b>	Not required
<b>No obligation to grant consent or exercise functions – (section 7.4(10))</b>	See clause 8.1

Table 2 – Other matters

Requirement under the Act	This deed
<b>Registration of the Planning Agreement –</b> (section 7.6 of the Act)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (section 6.15(1)(d) of the Act)	No

## Schedule 2

### Address for Service (clause 1.1)

#### Minister

**Contact:** The Secretary, Department of Planning and Environment

**Address:** Department of Planning and Environment  
4 Parramatta Square, 12 Darcy Street  
PARRAMATTA NSW 2150

**Email:** [planningagreements@planning.nsw.gov.au](mailto:planningagreements@planning.nsw.gov.au)

#### Developer

**Contact:** Yunfei Jiang and Jiaojie Chen

**Address:** Suite 1703, Tower B, 799 Pacific Highway  
Chatswood NSW 2067

**Email:** [Jane.c@hrkplus.com.au](mailto:Jane.c@hrkplus.com.au)

**Schedule 3****Land (clause 1.1)****1. Lots proposed for development**

<b>Lot</b>	<b>Deposited Plan</b>	<b>Folio Identifier</b>
<b>406</b>	<b>36692</b>	<b>406/36692</b>

Execution page

**Executed** as a deed

**Signed, sealed and delivered** by the **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468) in the presence of:

.....  
Signature of witness

.....  
Signature of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....  
Name of witness in full

.....  
Name of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....  
Address of witness

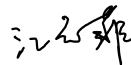
\*By signing this deed, the witness states that they witnessed the signing of this deed by [NAME] over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

**Signed sealed and delivered**

by **Yunfei Jiang** in the presence of:



.....  
Signature of witness



.....  
Signature of **Yunfei Jiang**

Jane Chen

.....  
Name of witness in full

Suite 1703, Tower B, 799 Pacific Highway Chatswood

.....  
Address of Witness

**Signed sealed and delivered**

by **Jiaojie Chen** in the presence of:



.....  
Signature of witness



.....  
Signature of **Jiaojie Chen**

Jane Chen

.....  
Name of witness in full

Suite 1703, Tower B, 799 Pacific Highway Chatswood

.....  
Address of Witness