

**Planning Agreement No.                      of 2015**  
**Section 93 of the Environmental Planning and Assessment Act, 1979**

**THIS AGREEMENT is made on the                      day of                      2015**

**PARTIES**

**WAVERLEY COUNCIL ABN 12 505 583 608**

of cnr Paul Street and Bondi Road, Bondi Junction 2022, in the State of New South Wales ("Council")

and

**DAHUA GROUP BONDI PROJECT PTY LTD ABN 55 145 694 793**

of Suite 1, Level 2, 251-253 Elizabeth Street, Sydney 2000, in the State of New South Wales

(the "Developer")

**Background:**

- A. The Developer is the sole owner of the Land having completed the purchase of the Land on 16 December 2014. The previous owner of the Land (the Prior Owner) made or caused to be made a Development Application to the Council for Development Consent to carry out the Development on the Land (known as no. DA 184/2013).
- B. The Development Application included an offer by the Prior Owner to enter into this Agreement to make the Development Contribution to be applied towards the Public Purpose if Development Consent was granted to the Development Application.
- C. The Development Consent was granted by Council on 12 February 2014. The Developer has purchased the Land from the Prior Owner subject to the Development Consent.
- D. The Developer agrees it is bound by the Prior Owner's offer and has confirmed the offer by letter to Council dated 17 February 2015.
- E. Council is the local authority constituted under the *Local Government Act* 1993 and the planning and consent authority constituted under the *Environmental Planning and Assessment Act* 1979 in respect of the Land.

**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 the Land and the Development.

### **3 Operation of this Agreement**

- 3.1 This Agreement takes effect upon execution by the parties as Development Consent has been granted to the Development Application no. DA 184/2013.

### **4 Definitions and interpretation**

- 4.1 In this Agreement the following definitions apply:

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

**Construction Certificate** has the same meaning as in the Act and in this Agreement means any Construction Certificate in respect to the Development.

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

**Development** means the demolition of the dwellings and the construction of a residential flat building comprising 28 residential apartments with basement parking on the Land the subject of the Development Application no. DA 184/2013.

**Development Application** has the same meaning as in the Act and in this Agreement means the application to Council DA184/2013.

**Development Consent** has the same meaning as in the Act and in this Agreement means Development Consent to the Development Application.

**Development Contribution** means a monetary contribution of \$337,092.

**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 the land known as 33-37 Waverley Street Bondi Junction NSW and more particularly described in the Schedule 1 to this Agreement.

**LPI** means the Land & Property Information Office of NSW.

**Party or Parties** means a party or the parties to this agreement, including their respective successors and assigns.

**Public Purpose** means the public works and facilities that the Council intends to carry out in Bondi Junction under its Bondi Junction Complete Streets Programme adopted by Council in June 2013 towards which the Development Contribution is intended to be applied.

**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, Sunday or public holiday 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 reenactment, 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.

## **5 Development Contributions to be made under this Agreement**

- 5.1 The Developer agrees to make and the Council agrees to accept the Development Contribution to be applied towards the Public Purpose.
- 5.2 The Developer must (if it has not already) pay the Development Contribution to the Council by bank cheque upon execution of this Agreement by the Parties and time is essential in this respect. In any event, the contribution must be paid prior to the issue of any Construction Certificate for the Development.

## **6 Application of the Development Contributions**

The Council will apply the Development Contribution towards the Public Purpose as soon as practicable.

## **7 Application of s.94 and s.94A of the Act to the Development**

- 7.1 This Agreement does not exclude s.94 and s.94A and s.94EF of the Act to the Development.
- 7.2 The Development Contribution provided by the Developer will not be taken into consideration in determining any development consent under s.94 of the Act.

## **8 Review of this Agreement**

The parties agree that subject to S.93G of the Act this Agreement can be reviewed and amended at any time by mutual agreement.

## **9 Dispute Resolution**

- 9.1 If any dispute arises out of or in connection with this Agreement, the following procedure must be followed in order to resolve it:
- (a) Either Party may give written notice of the dispute to the other Party. A representative nominated by each Party must meet within five (5) Business Days of receipt of that notice and attempt in good faith to resolve the dispute;
  - (b) If the dispute is not resolved between the nominated representatives within ten (10) Business Days of receipt of the notice referred to in sub clause (a) above then the dispute will be notified to the relevant divisional manager (or office holding the equivalent position) of each party who must meet and attempt in good faith to resolve the dispute within five (5) Business Days of the date of the receipt of that notice;
  - (c) If the dispute remains unresolved within ten (10) Business Days of the receipt of the notice referred to in sub clause (b) above, notice will be given to the chief executive officers (or officers holding equivalent position) of each Party who must meet and attempt in good faith to resolve the dispute within five (5) Business Days of the receipt of that notice; and
  - (d) For the purpose of this clause a meeting may take place by telephone or other means of instantaneous communication.

- 9.2 If the parties fail to resolve the dispute after following the procedures set out in

clause 9.1 then they must agree on the most appropriate method of alternate dispute resolution (which may include expert determination or mediation) with ten (10) Business Days of the date of the final meeting held in accordance with clause 9.1(c)

- 9.3 If the parties select expert determination as the method of resolving the dispute, the expert must act as an expert and not an arbitrator, his determination will be binding upon the parties unless otherwise agreed and his costs must be shared equally between the parties.
- 9.4 If the parties fail to agree on the appropriate method of alternative dispute resolution in accordance with clause 9.2, the dispute must be referred for mediation to a mediator nominated by the then chairman of the Australian Commercial Disputes Centre in Sydney (ACDC) or if ACDC no longer exists the chairman of a reputable commercial dispute resolution body, as agreed between the Council and the Developer or if the same cannot be agreed as nominated by Council. The role of a mediator is to assist in the resolution of the dispute and the mediator may not make a decision which is binding on the parties.
- 9.5 The costs associated with appointing the mediator under clause 9.4 must be shared equally between the Parties.

## **10 Enforcement**

- 10.1 Nothing in this Agreement (including under clause 9) prevents the Council from exercising any function under the Act or any other act or law relating to the enforcement of any aspect of the Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.
- 10.2 Until such time as the Development Contribution has been paid in full the Developer must:
- (a) notify the Council in writing of the name and contact details of any certifying authority to which it has applied for a construction certificate at the same time that such application is made;
  - (b) at the time it lodges any application for a construction certificate notify the certifying authority in writing of the existence and terms of this Agreement; and
  - (c) procure and provide to Council a written acknowledgement from the certifying authority addressed to Council confirming that the certifying authority will not issue a construction certificate until Council provides written confirmation that the Development Contribution has been paid.
- 10.3 The Developer acknowledges and agrees that the Council has a caveatable interest in the Land from the date of Development Consent and shall be entitled to lodge and maintain a caveat on the title to the Land notifying Council's interest created by this Agreement.
- 10.4 Upon payment of the Development Contribution to Council or surrender of the Development Consent, the Developer will be entitled to withdrawal of any caveat lodged under this clause 10.

## **11 Notices**

11.1 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: Waverley Council

Attention: Mr George Bramis

Address: Corner Paul Street & Bondi Road Bondi Junction NSW 2022

Fax Number: 9387 1820

Email: waver@waverley.nsw.gov.au

Developer: Dahua Group Bondi Project Pty Ltd ABN 55 145 694 793

Attention: Jathan Yu

Address: Suite 1, Level 2, 251-253 Elizabeth Street, Sydney NSW 2000

Fax Number: 9286 3399

Email: jathan@dahuaaustralia.com.au

11.2 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 faxed to the latest address or fax number.

11.3 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, 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.

11.4 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 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

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

## **13 Assignment and Dealings**

Until the Development Contribution is paid in full, the Developer cannot transfer, assign or novate the Land or attempt to do so unless the Developer:

- (a) gives Council prior notice in writing of the proposed transfer, assignment or novation in respect of the Land;

- (b) procures that any buyer, transferee, assignee or novatee promptly executes an agreement in favour of Council whereby such transferee, assignee or novatee becomes contractually bound with Council to perform the Developers obligations under this Agreement in the place of and instead of the Developer;
- (c) pays the Councils reasonable legal costs whereby the Council shall promptly execute an assignment or novation agreement referred to in sub clause (b) and the Council will do all things reasonably required to give effect to the deed.

#### **14 Costs**

The Council's costs of an incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer.

#### **15 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.

#### **16 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.

#### **17 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.

#### **18 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. For the avoidance of doubt this applies to the obligations of each of the companies collectively referred to as the Developer herein.

#### **19 Non fetter**

The Developer acknowledged and agreed that:

- (a) in addition to its obligations under this Agreement the Council is also responsible for the conduct and administration of local government in the Waverley Local Government Area;
- (b) this Agreement in no way affects Council's statutory obligations, functions or powers, including without limitation, its obligations, functions or powers in respect of the Development Application, Development Consent and any other approvals required in respect of the works to be carried out under the

Development Consent;

- (c) nothing which the Council does or fails to do under this Agreement will limit or otherwise affect the Developer's obligations under the Development Consent; and
- (d) nothing which the Council does, fails to do or purports to do in performing the Council's statutory functions or powers will constitute or amount to a breach of this Agreement.

## **20 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.

## **21 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.

## **22 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.

## **23 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.

## **24 GST**

- 24.1 Unless otherwise indicated, all amounts payable by one party to the other party in relation to a supply under this Agreement have been calculated exclusive of any GST which may be imposed on the supply.
- 24.2 If any supply made under this Agreement is, or becomes, subject to GST, the party to whom the supply is made ("Recipient") must pay to the party making the supply ("Supplier"), as consideration, in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a valid tax invoice under GST Law, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- 24.3 Any amount in respect of GST payable under clause 17.2 must be paid to the



Supplier immediately on receipt of the valid tax invoice.

- 24.4 If any party is required to reimburse or indemnify the other party for a cost or expense ("Cost") incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.
- 24.5 If GST is linked with the abolition or reduction of other taxes and charges, all amounts payable by the Recipient to the Supplier under this Agreement (excluding GST) must be reduced by the same proportion as the actual total costs of the Supplier (excluding GST) are reduced either directly as a result of the abolition or reduction of other taxes and charges payable by the Supplier or indirectly by way of any reduction in prices (excluding GST) charged to the Supplier. Both parties must also comply with Part VB of the Trade Practices Act 1974 (Cth).
- 25. Execution in triplicate**  
The Parties hereto shall execute this Agreement in triplicate so as to provide one original signed by all parties for each of the Parties.

#### **Schedule 1 to Planning Agreement No.**

##### **The Land:**

Lot 4, 10, 11 and 15 of Deposited Plan 249532

Lot 10 of Deposited Plan 73724

Executed as an Agreement

**EXECUTED** by **Waverley Council**  
in accordance with Section 683 of the Local  
Government Act 1993 )  
)

.....  
Witness

.....  
Signature of Authorised Public Officer

.....  
Name (please print)

IAN ROBERTS  
Name of Authorised Public Officer

.....  
Address

ACTING INTERNAL OMBUDSMAN  
GOVERNANCE & CIVIC  
Authority of Authorised Public Officer

**EXECUTED** for and on behalf of  
**DAHUA GROUP BONDI PROJECT**  
**PTY LTD** (ABN 55 145 694 793) in  
accordance with Section 127(1) of the  
*Corporations Act 2001* by authority of the  
Directors:

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary