

**5/12/2024**

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# **Planning Agreement**

**Ku-ring-gai Council (ABN 86 408 856 411)**

**Jun Chao Pty Ltd (ACN 125 425 701)**

**139 Rosedale Road, St Ives**

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## DETAILS

Date: 5 December 2024

### Parties to the Agreement

**(1) Ku-ring-gai Council (Council)**

ABN	86 408 856 411
Address	818 Pacific Highway GORDON NSW 2072
	Locked Bag 1056 PYMBLE NSW 2073
Phone	(02) 9424 0000
Fax Number	(02) 9424 0001
DX	8703 Gordon
Email	krq@krq.nsw.gov.au
Attention	Mr Jamie Taylor

**(2) Jun Chao Pty Ltd (Developer)**

ACN	125 425 701
Address	20 Coronga Crescent KILLARA NSW 2071
Phone	0412 280 183
Fax Number	Not applicable
Email	junchao1@hotmail.com
Attention	Yong Hong Zhou

### Recitals

- A. The Developer is the registered proprietor of the Land.
- B. The Developer lodged a Development Application, for subdivision and associated subdivision works on the Land. Construction of residential buildings on the Land will be the subject of a subsequent separate development application or applications at a future date.
- C. By letter of offer dated 21 June 2022, the Developer, with the consent of the previous landowner, offered to enter into this Agreement for dedication of Road Land as public road to Council. This offer was clarified and confirmed by way of subsequent letter from the Developer dated 28 March 2024 (the **Offer**).
- D. Development Consent was granted on 17 April 2024.
- E. The dedication of Road Land, being an extension of Dorset Drive and associated Works, will facilitate public access to the Land and provide public infrastructure.

## Operative Parts

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### 1. Defined terms and interpretation

#### 1.1 Defined terms

The following definitions apply unless the context requires otherwise.

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

**Approval** includes approval, consent, licence, permission or the like.

**Agreement** means this planning agreement between the Parties.

**Bank Guarantee** means an irrevocable and unconditional undertaking by a trading bank approved by the Council in the sum of \$100,000 without an expiry or end date and containing terms and conditions acceptable to Council and in accordance with clause 12 of this Agreement.

**Business Day** means:

- (a) for the purpose of sending or receiving a Notice, a day which is not a Saturday, Sunday, a bank holiday or a public holiday in the city where the Notice is received; and
- (b) for all other purposes, a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Sydney.

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Agreement.

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

**Defects Liabilities Period** means a period of 12 months from the date of the dedication of the Road Land to Council following completion of the road Works in accordance with this Agreement.

**Details** means, in relation to a Party, the details for that Party set out in this Agreement.

**Development** means the proposed subdivision of the Land into 6 lots, construction of an extension of Dorset Drive St Ives, construction of a cul-de-sac at the end of the Dorset Drive extension and installation of or provision of Services for the new lots.

**Development Application** means the development application, DA0109/23 lodged with Council by the Developer to carry out the Development.

**Development Consent** means the development consent granted in respect to the Development Application and the Development herein and any Modification of same.

**Development Contribution** means the dedication of Road Land and the carrying out of associated Works and their Maintenance for the Maintenance Period.

**Dispute** means a dispute or difference between the Parties under or in relation to this Agreement.

**Explanatory Note** has the same meaning as in Section 205 of the Regulation.

**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 being Lot X in Deposited Plan 442469 and known as 139 Rosedale Road, St Ives, New South Wales.

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b) of this definition.

**LRS** means the New South Wales Land Registry Services and its successors.

**Maintain/Maintenance** means keep in a good state of repair and working order, and includes repair of any damage to the Works.

**Maintenance Period** means a period of 12 months from the completion of Works in accordance with this Agreement and the completion of the dedication of the Road Land to Council in accordance with this Agreement during which the Developer must Maintain the Works.

**Modification** means the approval by Council (or the Land and Environment Court) of any Modification Application lodged under section 4.55 of the Act.

**Modification Application** means an application to Council (or the Land and Environment Court) to modify the Development Consent under section 4.55 of the Act.

**Notice** has the meaning given in clause 14 of this Agreement.

**Party** means either Council, or the Developer, and includes their successors and assigns.

**Public Purpose** means the provision of public infrastructure, namely road, and facilitating public access to land.

**Register of Land** means the Torrens Title register maintained by LRS under the *Real Property Act 1900* (NSW).

**Road Land** means an area totaling 947m<sup>2</sup> with a southern boundary of 25.16m to facilitate garbage truck access as shown and marked (R) in the draft DP Plan prepared by Huy Duc Xuan Thai annexed to the Developer's offer of 28 March 2024 which is Annexure A to this Agreement.

**Road Land Plan** means the plan being Annexure A identifying the Road Land to be dedicated under this Agreement.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021* (NSW) (as amended).

**Services** means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under the Development Consent or by a statutory authority and which are necessary or desirable for the construction, operation or occupation of the Development.

**Subdivision Certificate** means a subdivision certificate as defined under section 6.4 of the Act.

**Subdivision Works Certificate** means a subdivision works certificate as defined under section 6.4 of the Act.

**Works** means the road and footpath works, landscaping works including tree plantation, and all associated works including but not limited to constructing pavement, kerb and gutter, nature strip and drainage infrastructure designed to Council's satisfaction and constructed by the Developer in accordance with the Development Consent, Council's specifications for roads and drainage works and otherwise to the satisfaction of Council.

1.2 In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) other grammatical forms of a defined word or expression have a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedule and annexure;
- (d) a reference to a document or agreement, includes the document or agreement as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney Eastern Standard Time (EST);
- (g) a reference to a year (other than a financial year) or a month means a calendar year or calendar month respectively;
- (h) a reference to a Party is to a Party to this Agreement, and a reference to a Party to a document includes the Party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, firm, body corporate, trust, joint venture, association, governmental or local authority or agency or other entity;
- (j) a reference to a person includes a reference to the person's executor, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (n) if a Party is required to do something, that includes a requirement to cause that thing to be done and if a Party is prohibited from doing anything, it is also prohibited from doing or omitting to do anything which allows or causes that thing to be done;

- (o) any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (p) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it;
- (q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (r) unless otherwise specified in this Agreement, a word defined in the Act has the same meaning in this Agreement;
- (s) headings are for ease of reference only and do not affect the interpretation of this Agreement; and
- (t) the recitals are part of this Agreement.

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## **2. Planning Agreement Under the Act**

- 2.1 The Parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.

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## **3. Application of this Agreement**

- 3.1 This Agreement applies to:
- (a) the Land (including the Road Land); and
  - (b) the Development.

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## **4. Operation of this Agreement**

- 4.1 This Agreement takes effect on its execution by the Parties but the Parties agree that the Developer is not required to make the Development Contribution in accordance with clause 6 of this Agreement unless and until such time it has obtained a Development Consent for the Development.
- 4.2 This Agreement will remain in force until the earlier of:
- (a) when all obligations under the Agreement are performed or satisfied; or
  - (b) when any Development Consent obtained by the Developer to carry out the Development has lapsed or been surrendered.

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## **5. Application of s7.11, s7.12 and s7.24 of the Act to the Development**

- 5.1 This Agreement does not exclude the application of section 7.11, 7.12 or 7.24 of the Act to the Development.
- 5.2 The Development Contribution made under this Agreement is not to be taken into account when determining any contribution under s 7.11 or 7.12 of the Act.

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## **6. Development Contributions to be made under this Agreement**

- 6.1 The Developer is to make the Development Contributions to Council in accordance with this Agreement.

- 6.2 The Developer will obtain all necessary consents and approvals from Sydney Water required by registered Easement Q422375 and carry out the Works at no cost to Council in accordance with the Development Consent, this Agreement and to the satisfaction of Council, before the issue of any Subdivision Certificate for the Development. The Works will only be considered to have been delivered to Council once the dedication of the Road Land to Council is complete.
- 6.3 During the Defects Liability Period, the Developer shall attend to any defects notified by Council at its own cost in accordance with clause 6.14 herein.
- 6.4 During the Maintenance Period, the Developer shall attend to ongoing Maintenance of the Works at the Developer's own cost, in accordance with clause 6.11, 6.12 and 6.13 herein.
- 6.5 The Developer is to dedicate the Road Land as public road to Council:
- (a) at no cost to Council;
  - (b) subject to clause 6.8 free of any encumbrances (other than existing encumbrances for Services which are underground only);
  - (c) to the satisfaction of Council; and
  - (d) in accordance with the Development Consent and this Agreement.
- 6.6 The dedication of the Road Land is to be included in a plan of subdivision and associated Subdivision Certificate for the Development and is to be delivered simultaneously with the registration of any plan of subdivision for the Development.
- 6.7 Notwithstanding any other provision herein, the Developer shall not commence the Works or lodge any plan of subdivision for registration with LRS which includes the dedication of the Road Land, unless it has consulted with and obtained written agreement from Council as to specifications for the Works and final area and dimensions of the Road Land.
- 6.8 The Developer must comply with any directions by the Council relating to the Road Land, including but not limited to the creation of any encumbrances over the Road Land.
- 6.9 Prior to the dedication of the Road Land and delivery of the Works to Council, the Developer is responsible for:
- (a) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Council or the Developer liable; and
  - (b) taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Council or the Developer liable; and
  - (c) must enter into a maintenance deed ("Maintenance Deed") with Council, on terms satisfactory to Council, containing provisions for on-going maintenance and servicing of the Road Land and associated Works during the Maintenance Period at no cost to Council, in accordance with provisions of this Agreement and such Maintenance Deed shall bind the Developer and any Successors in title to the Land.
- 6.10 Inspection prior to completion of Works
- (a) Council may enter the Land to inspect the progress of the Works, subject to:
    - (i) giving reasonable notice to the Developer;
    - (ii) complying with all reasonable directions of the Developer;



- (iii) being accompanied by the Developer or its nominee, or as otherwise agreed.
  - (b) Council may, within 14 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance. Such work may include, but is not limited to:
    - (i) removal of defective or non-complying material from the Land;
    - (ii) demolishing defective or non-complying work;
    - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
    - (iv) not delivering any defective or non-complying material to the site of the Works.
- 6.11 The Developer undertakes the Maintenance of the Works in accordance with this Agreement entirely at its own risk.
- 6.12 The Developer must ensure that there are effected and maintained insurance policies covering such risks, and on terms, reasonably acceptable to the Council (acting reasonably) including:
- (a) physical loss, damage or destruction of each aspect of the Works (including any associated temporary works);
  - (b) third party liability;
  - (c) contractors; and
  - (d) professional indemnity insurance.
- 6.13 The insurance policies must provide cover for the period from the date of the commencement of construction of the Works until the end of the Defects Liability Period and Maintenance Period for each and every aspect of the Works and during the Defects Liability Period or Maintenance Period, for the purpose of providing insurance cover in respect of the Developer's defects liability and maintenance obligations under this Agreement.
- 6.14 Rectification during Defect Liability Period
- (a) At any time during the Defects Liability Period (in respect of the Work), the Council may inspect the Work for the purpose of ascertaining what defects and omissions (if any) in the Work are required to be made good by the Developer.
  - (b) The Council may, acting reasonably, give notice to the Developer that:
    - (i) states that part of the Work that is defective, giving details;
    - (ii) specifies the works which the Council considers are required to rectify the defect; and
    - (iii) allows the Developer a reasonable period to rectify such works.
- The Developer must attend to any such rectification to the satisfaction of Council.
- 6.15 The Council may, acting reasonably, during the Maintenance Period, give notice to the Developer that:
- (i) states what Maintenance undertaken is deficient, giving details;
  - (ii) specifies what the Council considers the Developer must do to remedy the deficiency; and
  - (iii) allows the Developer a reasonable period to remedy such deficiency.
- The Developer must attend to any such rectification to the satisfaction of Council.
- 6.16 The Developer acknowledges that the Bank Guarantee may be retained by Council until the

Developer's obligations in respect to the Defect Liability Period and Maintenance Period herein have been met.

- 6.17 The Developer acknowledges that the Road Land Plan annexed to this agreement is for the purposes of identifying the Road Land to be dedicated, being a Development Contribution herein, and does not address the Council or Development Consent requirements as to provision of drainage infrastructure and associated easements (including inter-allotment).

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## **7. Registration of this Agreement**

- 7.1 The Developer represents and warrants that it is the registered proprietor of the Land.
- 7.2 The Developer will procure the registration of this Agreement on the relevant folios of the Register of Land in accordance with section 7.6 of the Act.
- 7.3 The Developer, at its expense, will promptly, after this Agreement comes into operation, in accordance with clause 4.1, take all practical steps and otherwise do anything that Council reasonably requires to procure:
- (a) the consent of each person who:
    - (i) has an estate or interest in the Land; or
    - (ii) is seized or possessed of an estate or interest in the Land; and
  - (b) the execution of any documents; and
  - (c) the production of the relevant duplicate certificates of title,
- to enable the registration of this Agreement in accordance with this clause 7.
- 7.4 The Developer consents to the registration of this Agreement and shall take all practical steps to facilitate registration of this Agreement in accordance with this clause 7.
- 7.5 The Developer at its own expense, will take all practical steps, and otherwise do anything that Council reasonably requires:
- (a) to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement is executed but in any event, no later than **30 Business Days** after that date and prior to commencement of any works under the Development Consent. No Subdivision Works Certificate is to issue unless registration of this Agreement is effected; and
  - (b) to procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register of Land as soon as reasonably practicable after this Agreement is lodged for registration.
- 7.6 This Agreement is to be removed from the Register of Land in accordance with clause 9 of this Agreement.

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## **8. Manner of Delivery**

- 8.1 A requirement to register any instrument, including this Agreement, on the Register of Land will be satisfied when the Developer provides to Council a copy of the relevant title showing the registration of the instrument or this Agreement.
- 8.2 The dedication of the Road Land will be taken to have been delivered for the purposes of this

Agreement, when written notice of the registration on the Register of Land of a plan of subdivision bearing the statement of intention to dedicate the Road Land as a public road, is received by Council.

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## **9. Removal from Register of Land**

- 9.1 The Parties agree that this Agreement must be removed from the Register of Land (or any part of it) when the Development Contribution has been delivered and the Developer has complied with all of its obligations under this Agreement, in accordance with this Agreement.
- 9.2 Council agrees to do all things reasonably necessary to remove this Agreement from the Register of Land under the terms of this Agreement within **20 Business Days** of receipt of a written notice and a completed LRS Request Form from the Developer requesting removal of this Agreement from the Register of Land.
- 9.3 For avoidance of doubt, the removal of this Agreement from the Register of Land under clause 9.1 does not constitute a release or discharge of the Parties from the obligations under this Agreement unless Council has acknowledged in writing that it does constitute such release or discharge.

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## **10. Dispute Resolution**

- 10.1 If a Dispute arises between the Parties in relation to this Agreement, the Parties must not commence any Court or arbitration proceedings unless the Parties to the Dispute have complied with this clause 10, except where a Party seeks urgent interlocutory relief.
- 10.2 The Party wishing to commence the dispute resolution processes must give written notice (Notice of Dispute) to the other Party of:
- (a) the nature of the Dispute;
  - (b) the alleged basis of the Dispute; and
  - (c) the position which the party issuing the Notice of Dispute believes is correct.
- 10.3
- (a) The representatives of the Parties must promptly (and in any event within **15 Business Days** of the Notice of Dispute) meet in good faith in an attempt to resolve the notified Dispute.
  - (b) The Parties may, without limitation:
    - (i) resolve the Dispute during the course of that meeting;
    - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the Dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); or
    - (iii) agree that the Parties are unlikely to resolve the Dispute and, in good faith, agree (subject to clause 10.4) to a form of alternative dispute resolution (including expert determination or mediation) which is appropriate for the resolution of the relevant Dispute.
- 10.4 If the Dispute is not resolved within 28 Business Days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the Dispute (Determination Notice) by mediation under clause 10.5 or by expert determination

under clause 10.6.

10.5 If a Party gives a Determination Notice calling for the Dispute to be mediated:

- (a) The Parties must agree to the terms of reference of the mediation within **5 Business Days** of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the Parties, or failing agreement within **5 Business Days** of receipt of the Determination Notice, either Party may request that the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the Dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The Parties must within **5 Business Days** of receipt of the Determination Notice notify each other of their representatives that will be involved in the mediation (except if a resolution of Council is required to appoint a representative, Council must advise of the representative within **5 Business Days** of the resolution);
- (f) The Parties agree to be bound by a mediation settlement, and unless waived by the Parties, may only initiate judicial proceedings in respect of a Dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) each Party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the mediator will be shared equally by the Parties unless the mediator determines that a Party has engaged in unreasonable behaviour in which case the mediator may require the full costs of the mediation to be borne by that Party.

10.6 If the Dispute is not resolved under clause 10.3 or clause 10.5, or the Parties otherwise agree that the Dispute may be resolved by expert determination, the Parties may refer the Dispute to an expert, in which event:

- (a) the Dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by Council and the Developer; and
  - (ii) in the event that no agreement is reached or no appointment is made within **30 Business Days** of the agreement to refer the Dispute to an expert, appointed on application of a Party by the then President of the Law Society of New South Wales;

- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause 10.6;
  - (c) the determination of the Dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
  - (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of procedural fairness;
  - (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
  - (f) any determination made by an expert pursuant to this clause 10.6 is final and binding upon the Parties except unless:
    - (i) within **20 Business Days** of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
    - (ii) the determination is in respect of, or relates to, termination or purported termination of this Agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.
- 10.7 If the Dispute is not finally resolved in accordance with this clause 10, then either Party is at liberty to litigate the Dispute.
- 10.8 Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the Parties' obligations under this Agreement.

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## 11. Enforcement

- 11.1 If Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice to the Developer:
- (a) specifying the nature and extent of the breach;
  - (b) requiring the Developer to rectify the breach if Council reasonably considers it is capable of rectification; or
  - (c) specifying the period within which the breach is to be rectified being a period that is reasonable in the circumstances.
- 11.2
- (a) Without limiting any other provision of this Agreement, and subject to the dispute resolution provisions set out at clause 10 of this Agreement, the Parties may enforce this Agreement in a Court of competent jurisdiction.
  - (b) For avoidance of doubt, nothing in this Agreement prevents:
    - (i) a party from bringing proceedings in the Land and Environment Court of New South Wales to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
    - (ii) Council from exercising any function under the Act or any other applicable Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.
- 11.3 Notwithstanding any other provision of the Agreement, the Developer acknowledges and

agrees that in the event that the Road Land is not dedicated in accordance with the terms of this Agreement, the Council can, in its absolute discretion, acquire it for \$1 under section 30 of the Land Acquisition (Just Terms Compensation) Act 1991. The Developer will be responsible to pay all costs associated with the acquisition. This provision does not derogate from Council's rights to seek enforcement of all other terms and conditions of this Agreement including clause 12 as to Bank Guarantee.

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## **12. Security**

12.1 The Developer acknowledges and agrees that no Subdivision Certificate is to issue in respect to the Development and the Land unless the Road Land to be dedicated is incorporated a plan of subdivision and associated Subdivision Certificate for the Development and the Works are completed in accordance with the Development Consent and this Agreement. Further without limitation to any other provision herein, for the sake of clarity, no Subdivision Works Certificate or Subdivision Certificate in respect to the Development and the Land unless the provisions of clause 7 as to registration and clause 12 as to provision of Bank Guarantee have been complied with.

### **12.2 Provision of a Bank Guarantee**

- (a) Upon entering into this Agreement, the Developer must deliver to the Council a Bank Guarantee, which must be:
  - (i) in a form and from an institution approved by the Council;
  - (ii) irrevocable and unconditional;
  - (iii) with no expiry date;
  - (iv) issued in favour of the Council;
  - (v) for an amount prescribed by Council;
  - (vi) drafted to cover all of the Developer's obligations under this Agreement; and
  - (vii) on the terms otherwise satisfactory to the Council.
- (b) The Developer acknowledges that the Council enters into this Agreement on the proviso of the Developer providing the Bank Guarantee as a security for the performance of all of the Developer's obligations under this Agreement, including without limitation the delivery of the Development Contribution to the Council in accordance with this Agreement.

### **12.3 Calling on Bank Guarantee**

- (a) Notwithstanding any other provision herein, the Council may call on the Bank Guarantee in the event that the Developer:
  - (i) fails to make the Development Contribution in accordance with this Agreement; or
  - (ii) breaches any other term or condition of this Agreement and fails to remedy the relevant failure or breach within 7 days after the Council's notice.
- (b) If the Council calls on the Bank Guarantee as a result of the Developer's failure to comply with its obligations herein at no cost to Council under this Agreement, then the Council will apply the amount received pursuant to its claim on the Bank Guarantee towards:
  - (i) the Council's costs and expenses the Developer is responsible to pay under clause 18.2 together with the costs and expenses incurred by Council rectifying any default by the Developer under this Agreement; and

- (ii) carrying out any works required to achieve the Public Purpose.
- (c) If the Council calls on the Bank Guarantee and the costs incurred in clause 12.3(b) exceed the amount of the Bank Guarantee, then the amount that exceeds the amount of the Bank Guarantee will be a debt owed by the Developer to the Council and payable immediately upon demand.

#### 12.4 Return of Bank Guarantee

Subject to clause 12.3 and 6.16 herein, provided that the Developer has complied with all of its obligations under this Agreement, including provision of the Development Contribution, the Council will return the Bank Guarantee to the Developer within 14 days of the Developer's written request once the Developer has complied with all their obligations under this Agreement.

12.5 The Parties acknowledge and agree that the following provide sufficient security for the performance of the Developer's obligations under this Agreement:

- (a) the Bank Guarantee provided under this clause 12;
- (b) the requirements under clause 7 for registration of this Agreement on the relevant folios of the Register for Land; and
- (c) the restrictions on assignment of this Agreement under clause 13.

#### 12.6 Caveat Right

The Developer acknowledges and agrees that:

- (a) the Land is charged with the cost of the obligations to Council as to delivery of the Development Contribution until the Development Contribution is delivered in full to Council;
- (b) Council has a caveatable interest in the Land from the later of the date of the Development Consent and this Agreement until the Development Contribution is delivered in accordance with this Agreement and any other monies due to Council under this Agreement are paid in full to Council;
- (c) Council has the right to lodge and maintain a caveat against the title to the Land to notify of and protect its interest created by this Agreement (including the charge in (a)), until the Development Contribution and any other monies due to Council or obligations of the Developer under this Agreement have been met in full;
- (e) Upon delivery of the Development Contributions in accordance with this Agreement or surrender of the Development Consent, the Developer may request in writing the removal of the caveat from the title to the Land. The Council will not withhold its consent to such removal, provided the Developer pays all reasonable costs, expenses and fees of the Council relating to such removal and has complied with all its obligations under this Agreement.

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### 13. Assignment and Dealings

13.1 If the Developer enters into an agreement with a third party (**Incoming Party**) to sell, transfer, assign or novate, encumber or similarly deal with its right, title or interest in the Land (if any) or rights or obligations under the terms of this Agreement (**Transaction**), the Developer may not complete that Transaction, unless before completion of the Transaction, the Developer:

- (a) at no cost to Council, has first procured the execution by the Incoming Party of an

agreement in favour of Council on the same terms as this Agreement as if the Incoming Party were a Party to this Agreement; and

- (b) satisfies Council that it is not in breach of its obligations under this Agreement at the time of completion of the Transaction.

13.2 The Parties agree that clause 13.1 of this Agreement does not operate in the following circumstances:

- (a) where the Road Land has been dedicated to Council and all Works have been undertaken in accordance with this Agreement;
- (b) the Defects Liability Period and Maintenance Period have ended and the Developer has met their obligations herein in relation to same;
- (c) the Transaction is by way of a mortgage or charge.

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## 14. Notices

14.1 Subject to clause 14.2, any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:

(i) to Council:

**Attention:** Mr Jamie Taylor

**Address:** 818 Pacific Highway, Gordon, NSW 2072; or  
Locked Bag 1056, Pymble, NSW, 2073

**Fax Number:** (02) 9424 0880

(ii) to the Developer:

**Attention:** Yong Hong Zhou

**Address:** 20 Coronga Crescent, Killara NSW 2071

**Fax Number:** N/a

- (c) is taken to be given and made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, **3 Business Days** after the date of posting (if posted to an address in the same country) or **7 Business Days** after the date of posting (if posted to an address in another country); and
  - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause 14.1(c) a Notice would be taken to be given or made on a day that



is not a Business Day in the place to which the Notice is sent, or later than 4 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

#### 14.2 Notices sent by email

- (a) A party may serve a Notice by email if the Notice:
- (i) includes a signature block specifying:
    - (A) the name of the person sending the Notice; and
    - (B) the sender's position within the relevant party;
  - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
  - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement;
  - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
    - (A) to Council  
**Attention:** Mr Jamie Taylor  
**Email:** krg@krg.nsw.gov.au
    - (B) to the Developer  
**Attention:** Yong Hong Zhou  
**Email:** junchao1@hotmail.com
- (b) The recipient of a Notice served under clause 15.2(a) must:
- (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice.
- (c) Failure to comply with clause 15.2(b) does not invalidate service of a Notice under this clause.

#### 14.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 14.2 is taken to be given or made:
- (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
  - (ii) when the Notice enters an information system controlled by the recipient;  
or
  - (iii) when the Notice is first opened or read by the recipient,

whichever occurs first.

- (b) If under clause 15.3(a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

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**15. Explanatory Note**

- 15.1 The Explanatory Note must not be used to assist in construing this Agreement.

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**16. Review and modification**

- 16.1 This Agreement may be reviewed or modified and any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- 16.2 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.
- 16.3 A party will not be in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a Party in or as a consequence of the Review.

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**17. GST**

- 17.1 The terms used in this clause 17 have the same meaning as provided for in the GST Law.
- 17.2 If a Supply under this Agreement is subject to GST, then:
- (a) the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
- (b) the Recipient must pay the additional amount to the Supplier at the same time as the other consideration is paid.
- 17.3 The Recipient need not pay the additional amount under this clause 17 until the Supplier provides the Recipient a Tax Invoice.

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**18. General Provisions**

**18.1 Approvals and consents**

Except where this Agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

**18.2 Costs**

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer. The Developer shall be responsible to pay its own costs and any stamp duty arising from this Agreement or its preparation.

**18.3 No merger**

Except where this Agreement expressly states otherwise, the rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

**18.4 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.

**18.5 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.

**18.6 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.

**18.7 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.

**18.8 Severability**

If the whole or any part of a provision of this Agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this Agreement is not capable of being read down, it is to be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

**18.9 Waiver**

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a Party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

**18.10 Relationship**

This Agreement does not create a relationship of employment, trust, agency or partnership between the Parties.

**18.11 Governing Law**

This Agreement will be governed by and construed in accordance with the Law for the time being in force in New South Wales and the Parties, by entering into this Agreement, are deemed to have submitted to the non-exclusive jurisdiction of the Courts of that State.

**18.12 Exercise of rights**

A Party may exercise a right, at its discretion and separately or concurrently with another right.

Executed as an agreement:

The Common Seal of Ku-ring-gai Council )  
was affixed on the 5 day of DECEMBER 2024 )  
pursuant to the resolution of the Council made )  
on the 13 day of August 2024 in the )  
presence of : )



*David Marshall*

Signature of General Manager

*David Marshall*

Name  
(BLOCK LETTERS)

*David Marshall*

Signature of Mayor

*Christine Kay*

Name  
(BLOCK LETTERS)

Executed by Jun Chao Pty Ltd ACN 125 425 )  
701 in accordance with Section 127 of the )  
Corporations Act 2001 (Cth) )

*Yong Hong Zhou*

Yong Hong Zhou

Sole Director/Secretary

# Annexure A – Road Land Plan

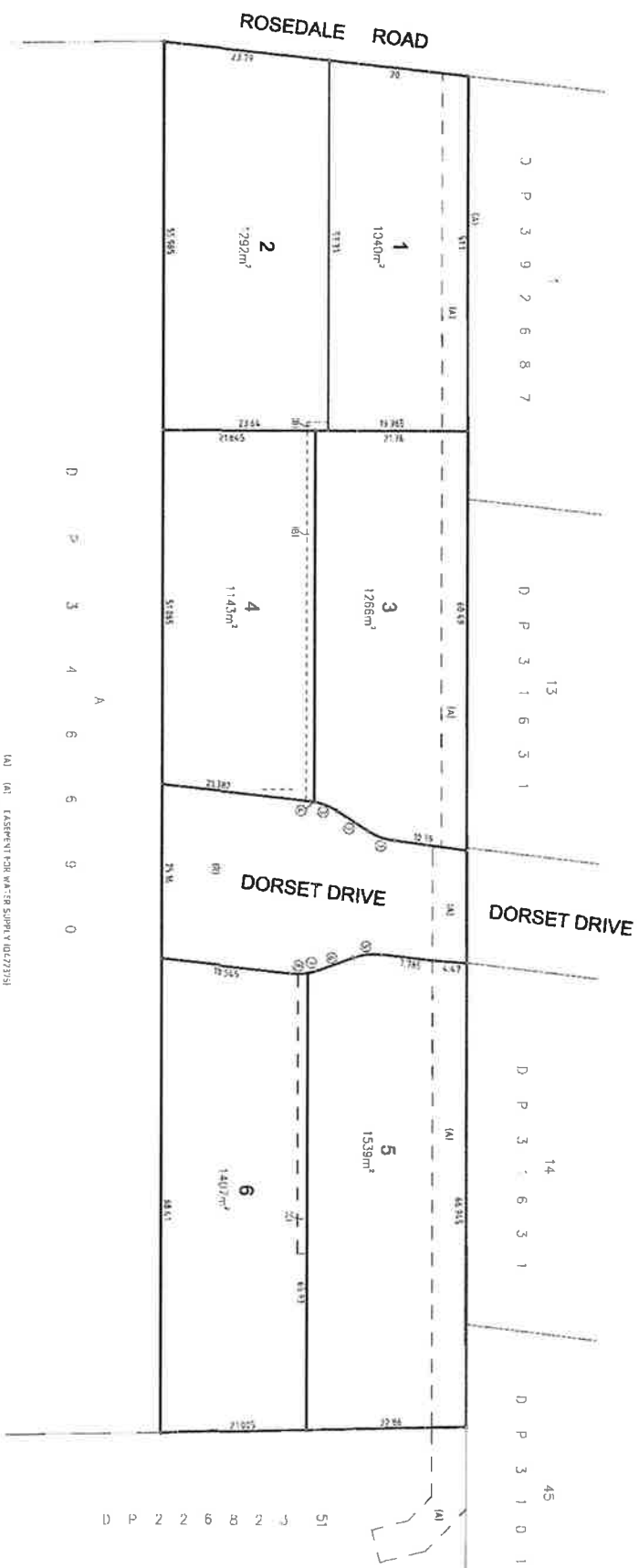
PLAN NO. 211/896-DP

WITHIN CHANGING LOCALITY WILL LEAD TO SECTION

SHEET 1 OF 1 SHEETS

COORDINATE SCHEDULE					
MARK	LOCAL COORDINATES	CLASS	PU	ORIGIN	STATE
PM 10302	320 764.293	120-N-44-2	B	4.01	EGAD
SM 14693	323 105.571	120-N-44-2	B	0.01	EGAD
SM 14692	323 693.711	120-N-44-2	B	0.01	EGAD
DATE OF SAINS COORDINATES: 17.08.2022 MAX ZONE: 56					
COMBINED SCALE FACTOR = 0.999835					

LOT LAND AND UNDERING ARE SUBJECT TO OTHER DA APPROVALS  
 LAND ACQUISITION AND AREAS ARE CHANGED AND APPROVALS ARE  
 SUBJECT TO FINAL SURVEY AND DEVELOPMENT APPROVAL. THE PLAN IS A  
 DRAFT. ALL DIMENSIONS MAY BE REVISOR FROM 10/15/2015. ALL PLANTS AND  
 RESERVATIONS.



SCHEDULE OF STREET DIMENSIONS

No	ST. NAME	WIDTH
1	ROSEDALE ROAD	12.00
2	DORSET DRIVE	12.00
3	LOT 1	12.00
4	LOT 2	12.00
5	LOT 3	12.00
6	LOT 4	12.00
7	LOT 5	12.00
8	LOT 6	12.00

- (A) EASEMENT FOR WATER SUPPLY (0.2731)
- (B) EASEMENT TO DRAIN WATER 1.2 WIDE
- (C) EASEMENT TO DRAIN WATER 1.6 WIDE
- (D) DEPOSITS ROAD DESIGNATION AREA (0.4187)

SURVEYOR Name: HOY DUC KHUAN THAI Date: XX.DX.XX2X Reference: 211/896-DP DRAFT A	PLAN OF SUBDIVISION OF LOT 1 IN DP 442/89	L.O.A. KULRING-GAI Locality: ST VICES Reduction Ratio: 1:400 Lengths are in metres	REGISTERED	DP DRAFT
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Environmental Planning and Assessment Regulation 2021  
(Section 205)

**Explanatory Note**

**Draft Planning Agreement**

The purpose of this explanatory note is to provide a summary of the proposed planning agreement (PA) prepared jointly between Ku-ring-gai Council and the Developer under s7.4 of the *Environmental Planning and Assessment Act 1979* (the Act).

This explanatory note has been prepared as required by clause 25E of the *Environmental Planning and Assessment Regulation 2021*.

**1. Parties**

- a. Ku-ring-gai Council (**Council**)
- b. Jun Chao Pty Ltd (**Developer**)

**2. Description of Subject Land**

Land being Lot X in Deposited Plan 442469 and known as 139 Rosedale Road, St Ives, New South Wales (**Land**).

**3. Description of Development**

The proposed development will comprise a subdivision of the Land into 6 lots, construction of an extension of Dorset Drive St Ives, construction of a cul-de-sac at the end of the Dorset Drive extension and installation of or provision of Services for the new lots.

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

The Planning Agreement provides for the dedication to the Council and at no cost to the Council of an area of 947m<sup>2</sup> with a southern boundary of 25.16m for a turning area at the south end for public infrastructure, namely road (**Road Land**), and facilitating public access to land and waste collection, associated road works and maintenance for the period of 12 months.

The Planning Agreement requires the Developer to comply with certain requirements including registration of the Planning Agreement on the title of the Land and provision of a bank guarantee to secure the contribution under the Agreement. The dedication of Road Land to Council is to be delivered to Council simultaneously with the registration of any plan of subdivision for the

Development and associated road works are to be completed prior to the issue of any Subdivision Certificate for the Development.

The Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development and the Development Contribution under this Planning Agreement is not to be taken into consideration in determining any contribution under s 7.11 or 7.12 of the Act.

The Agreement contains a number of standard provisions including in relation to dispute resolution and enforcement.

## **5. Assessment of the Merits of the Draft Planning Agreement**

### **5.1 How the Draft Planning Agreement Promotes the objects of the Act and Public Interest**

The dedication of land and associated works required under the Planning Agreement will promote the objects of the Act, in particular:

- 1.3(c) the promotion and co-ordination of the orderly and economic use and development of land; and
- 1.3(g) the promotion of good design and amenity of the built environment.

The dedication of Road Land and associated road works will encourage:

- the proper management and development of an urban precinct which will promote economic welfare of the community;
- the promotion and co-ordination of the orderly and economic use and development of land; and
- the provision of land for public purposes.

### **5.2 The Impact of the Draft Planning Agreement on the Public or any section of the Public**

- The dedication of the Road Land and associated road works will have a positive impact on the members of the public. It will facilitate public access to in the immediate urban precinct, and create a new turning circle in a cul-de-sac that will allow vehicle to turn without executing a multi-point turn and will facilitate waste collection. It will facilitate further future road extension south of the Road Land which will reduce traffic and noise on Rosedale Road.
- There is considered to be no negative impact on the public arising from the planning agreement.

### **5.3 The Planning Purposes Served by the Draft Planning Agreement**

In accordance with section 7.4(2) of the *Environmental Planning and Assessment Act 1979*, the Planning Agreement facilitates the following public purposes:

- the provision of public amenities (public road and footpath); and

- the provision of infrastructure relating to land.

**5.4 How the Draft Planning Agreement Promotes the Council's Principles for Local Government**

The dedication of Road Land and associated road works are in accordance with the Council's adopted planning policies and demonstrates effective planning and decision making which is providing the best value for residents and rate payers. Council is carrying out part of its functions to achieve desired outcomes and continuous improvement. Council is also managing land and assets so that current and future local community needs can be met in an affordable way. The dedication of the land at no cost to the Council assists with the principles of sound financial management.

**5.5 Whether the Draft Planning Agreement conforms with the Authority's Capital Works Program**

The dedication of Road Land and associated road works are not inconsistent with the Council's Capital Works Program.

**5.6 Whether the Draft Planning Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate are issued**

- (i) **Before a subdivision works certificate is issued:** A Subdivision Works Certificate cannot be issued unless the Agreement is registered and bank guarantee security provided.
- (ii) **Before a subdivision certificate is issued:** Road Works must be completed in accordance with the Development Consent and the Agreement. The Road Land dedication must be incorporated in a subdivision plan the subject of any Subdivision Certificate.

**This explanatory note is not to be used to assist in construing the Planning Agreement**