

119 Barton Street, Monterey
Lot 2 in Deposited Plan 857520

Development Application No. DA-2021/95

Planning Agreement

Under s 7.4 of the *Environmental Planning and Assessment Act 1979*

Bayside Council

and

Sydney Eastern City Planning Panel

and

Monterey Equity Pty Limited

Table of Contents

Contacts Sheet	4
Parties	5
Background	5
Operative provisions	6
Part 1 - Preliminary	6
1. Definitions and interpretation	6
2. Application of this Agreement	8
3. Status and operation of this Agreement	8
4. Further agreements relating to this Agreement	8
5. Application of s 7.11, s 7.12, s 7.24 of the Act to the Development	8
Part 2 – Development Contributions	9
6. Provision of Development Contributions	9
Part 3 – Other Provisions	9
7. Covenant not to sue	9
8. Enforcement in a court of competent jurisdiction	10
9. Dispute Resolution	10
10. Registration of this Agreement	12
11. Assignment and transfer	12
12. Notices	12
13. Costs	13
14. Entire Agreement	13
15. Further Acts	13
16. Joint and individual liability and benefits	13
17. No fetter	14
18. Representations and warranties	14
19. Severability	14
20. Modification	14
21. Waiver	14
22. Rights cumulative	14

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23.	Duty	15
24.	Effect of Schedules	15
25.	Relationship of the Parties	15
26.	GST	15
27.	Explanatory Note relating to this Agreement	16
	Execution	18
	Schedule 1: (Section 7.4 Requirements)	21
	Schedule 2: The Land	22
	Schedule 3: Development Contribution	23
	Appendix (Explanatory Note)	24

Contacts Sheet

Council:

Name: Bayside Council ABN 80 690 785 443

Address: 444 - 446 Princes Highway, ROCKDALE NSW 2216

Telephone: (02) 9562 1666

Facsimile: (02) 9562 1777

Email: council@bayside.nsw.gov.au

Representative: Peter Barber (Director - City Futures)

Panel

Name: Sydney Eastern City Planning Panel

Address: Mr Carl Scully

Chair, Sydney Eastern City Planning Panel

c/o Mr Stuart Withington, Case Manager

Planning Panels Secretariat

4PSQW, 12 Darcy Street Parramatta NSW 2150

Locked Bag 5022, Parramatta NSW 2124

Telephone: (02) 8217 2060

Email: enquiry@planningpanels.nsw.gov.au

Representative: Carl Scully (Chairperson)

Owner/Developer

Name: Monterey Equity Pty Ltd (ACN 605 980 283)

Address: 17 Frenchmans Road, Randwick, NSW 2031

Telephone: (02) 9314 8500

Representative: Director: Peter Wohl

This Agreement constitutes a planning agreement within the meaning of s 7.4 of the *Environmental Planning and Assessment Act 1979* and facilitates the provision of Development Contributions for the public benefit.

Parties

Bayside Council

ABN 80 690 785 443 of 444 - 446 Princes Highway, ROCKDALE NSW 2216
(Council)

and

Sydney Eastern City Planning Panel

Mr Carl Scully
Chair, Sydney Eastern City Planning Panel
c/o Mr Stuart Withington, Case Manager
Planning Panels Secretariat
4PSQW, 12 Darcy Street Parramatta NSW 2150
Locked Bag 5022, Parramatta NSW 2124
(Panel)

Monterey Equity Pty Ltd

ACN 605 980 283
17 Frenchmans Road,
Randwick NSW 2031
(Owner/Developer)

Background

- A. The Owner/Developer owns the Land identified in Schedule 2, known as 119 Barton Street Monterey.
- B. The Owner/Developer lodged the Development Application (DA-2021/95) seeking development consent under the Act for the Development on the Land.
- C. The Development Application was the subject of the grant of the Development Consent by the Panel.
- D. The Development Application and Development Consent is the subject of the Appeal in relation a condition imposed pursuant to s 7.11 of the Act.
- E. In connection with the Development Application the Owner/Developer has offered to enter into this Agreement in accordance with section 7.4 of the Act to provide the Development Contribution on the terms and conditions of this Agreement.
- F. The Owner/Developer is prepared to make the Development Contribution in connection with carrying out of the Development (including as modified) in accordance with this Agreement.
- G. The Council and Panel is willing to delete the Development Consent Condition on the basis of making the Development Contribution.
- H. The Panel is the relevant consent authority for the Development Application.

- I. The Panel is required to be a party to the Agreement in accordance with section 7.4(3A) of the Act because this Agreement excludes the application of section 7.11 and 7.12 in respect of the Development.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

- 1.1 In this Agreement the following definitions apply:

Appeal means Land and Environment Court Proceedings No. 2022/0036091 seeking the deletion to or amendment to the Development Consent Condition

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

Agreement means this Planning Agreement under which the Owner/Developer agrees to make the Development Contributions.

Business Day means any day in New South Wales which is not a Saturday, Sunday or any proclaimed public holiday.

Claim includes any claim, demand, damage, loss, expense or liability of any kind (including in respect of interest and including one which is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not the subject of a court order).

Council means Bayside Council, its successors and assigns.

Development means development on the Land the subject of Development Application DA-2021/95 described in the said application as '*Integrated Development - Demolition of existing structures and construction of a part 2 and part 3 storey residential aged care facility comprising of 112 rooms (115 beds), basement level parking, front fencing and signage*', as modified from time to time.

Development Application means development application DA-2021/95 lodged with Council.

Development Consent means the development consent under the Act granted for the Development on the Land by way of the Notice of Determination dated 21 December 2021 granted by the Panel to approve the Development Application.

Development Consent Condition means condition 29 of the Development Consent

Development Contribution means the contribution set out in **Schedule 3** to this Agreement, to be used for, or applied towards, the provision of a Public Purpose as set out in **Schedule 3**.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as 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.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means the land specified and described in **Schedule 2**.

LRS means New South Wales Land Registry Services

Occupation Certificate has the same meaning as in the Act.

Owner/Developer means Monterey Equity Pty Ltd (ACN 605 980 283) and its successors and permitted assigns.

Owner/Developer's obligations means the Owners/Developer's obligations under this Agreement.

Panel means the Sydney Eastern City Planning Panel constituted under the Act.

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

Public Purpose has the same meaning as in s 7.4 of the Act.

Regulation means the Environmental Planning and Assessment Regulation 2021.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or public holiday in Sydney.
- 1.2.3 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.
- 1.2.4 A reference to time is local time in Sydney,
- 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.7 A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.

- 1.2.11 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.
- 1.2.12 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.
- 1.2.13 Reference to the word “include” or “including” are to be construed without limitation.
- 1.2.14 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party’s successors and assigns substituted by novation.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in the Agreement are operative provisions of this Agreement.

2. Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3. Status and operation of this Agreement

- 3.1 This Agreement takes effect and operates from:
 - 3.1.1 the date when Parties have all executed the same copy of this Agreement or each Party has executed separate counterparts of this Agreement and exchanged the counterparts; and
 - 3.1.2
- 3.2 the date the Appeal is determined by the Land and Environment Court (which for the avoidance of doubt includes the determination of the Appeal by way of an agreement between the parties pursuant to s 34 of the *Land and Environment Court Act 1979*) The Parties agree that this Agreement is a Planning Agreement within the meaning of section 7.4 of the Act and is governed by Part 7, Division 7.1, Subdivision 2 of the Act.
- 3.3 This Agreement will remain in force until the obligations of the Parties under this Agreement are completed or this Agreement is terminated either by operation of law or in the event of an event as outlined in Clause 28 of this Agreement

4. Further agreements relating to this Agreement

- 4.1 The Parties may, at any time and from time to time, enter into agreements in writing relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

5. Application of s 7.11, s 7.12, s 7.24 of the Act to the Development

- 5.1 The Parties agree that this Agreement excludes the application of sections 7.11 and 7.12 of the Act in relation to the Development and the Development Consent (including as modified).

Part 2 – Development Contributions

6. Provision of Development Contributions

- 6.1 **Schedule 3** has effect in relation to the Development Contribution to be made by the Owner/Developer under this Agreement.
- 6.2 The Owner/Developer must make the Development Contribution (as set out in **Schedule 3**) to Council in accordance with this Agreement.
- 6.3 The Council must apply the Development Contribution made by the Owner/Developer under this Agreement towards the Public Purpose for which it is made as set out in Schedule 3.
- 6.4 Despite **clause 6.3**, Council may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 6.5 In the event of any determination by the consent authority to modify the Development Consent under s 4.55 or 4.56 of the Act resulting in a change to the number of beds in the Development, the following variation to the Development Contribution is agreed:
 - 6.5.1 if the number of beds proposed increases then the Monetary Contribution will be increased by \$4,600.00 per bed; and
 - 6.5.2 if the number of beds proposed decreases then the Monetary Contribution will be decreased by \$4,600.00 per bed,and the Parties will use their best endeavours to modify this Agreement under clause 20 so as to reflect the variation to the Development Contribution as set out above.

Part 3 – Other Provisions

7. Covenant not to sue

- 7.1 The Parties will not bring or pursue, or cause or procure a third party to bring or pursue, a Claim against each other in relation to the subject matter of this Agreement, other than a claim for a breach of this agreement.
- 7.2 For the avoidance of doubt, the Owner/Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court NSW involving an appeal against, or questioning the validity of:
 - 7.2.1 conditions of the Development Consent, including as determined by the Land and Environment Court in the Appeal (or any development consent relating to the Land), relating to any matter in respect of Development Contribution; or
 - 7.2.2 conditions of the Development Consent, including as determined by the Land and Environment Court in the Appeal (or any development consent relating to the Land), relating to the payment of development contributions under s 7.11 of the Act; or

7.2.3 this Agreement.

- 7.3 This clause expressly excludes any right the Owner/Development has to commence any proceedings the Owner/Developer might wish to commence in the event Council and/or Panel breach clause 30.3 of this Agreement.

8. Enforcement in a court of competent jurisdiction

- 8.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction within New South Wales.
- 8.2 This Agreement is governed by the law of New South Wales.
- 8.3 Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.
- 8.4 For the avoidance of doubt, nothing in this Agreement prevents:
- 8.4.1 a Party from bringing proceedings in any court of competent jurisdiction within New South Wales to enforce any aspect of this Agreement,
- 8.4.2 Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement.

9. Dispute Resolution

9.1 Notice of Dispute

- 9.1.1 If a Party claims that a dispute has arisen under this agreement (**Claimant**), it must give written notice to the other Party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).
- 9.1.2 This paragraph does not apply to an application for urgent interlocutory relief.

9.2 Response to Notice

Within 20 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

9.3 Negotiation

The nominated representatives must:

- 9.3.1 meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- 9.3.2 use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

9.4 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**).

9.5 Mediation

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- 9.5.1 the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Resolution Institute apply);
- 9.5.2 the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Resolution Institute to appoint a mediator;
- 9.5.3 the Mediator appointed pursuant to this clause 9.5.3 must:
 - (a) have reasonable qualifications and practical experience in the area of the dispute; and
 - (b) have no interest or duty which conflicts or may conflict with her function as mediator, she being required to fully disclose any such interest or duty before her appointment;
- 9.5.4 the Mediator shall be required to undertake to keep confidential all matters coming to her knowledge by reason of her appointment and performance of her duties;
- 9.5.5 the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- 9.5.6 the parties agree to be bound by any mediation settlement and 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;
- 9.5.7 in relation to costs and expenses:
 - (a) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (b) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

9.6 Litigation

If the dispute is not finally resolved in accordance with clause 9.5, either party is at liberty to litigate the dispute.

9.7 Exchange of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 9 for any purpose other than an attempt to settle a dispute between the parties.

9.8 Continue to Perform obligations

Each party must continue to perform its obligations under this agreement, notwithstanding the existence of a dispute.

9.9 Survival of this clause

For the avoidance of doubt this clause survives the completion or termination of this Agreement.

10. Registration of this Agreement

- 10.1 The Parties agree that this Agreement is to be registered for the purposes of section 7.6 of the Act.
- 10.2 The Owner/Developer must lodge this Agreement for registration on the register pertaining to the Land no later than 42 days after the date of this Agreement of this Agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land.
- 10.3 The Owner/Developer must use all reasonable endeavours to obtain such registration as soon as practicable and promptly after registration, deliver to the Council a title search of the Land confirming registration of this Agreement.
- 10.4 For the avoidance of doubt the Owner/ Developer warrants that following execution of this Agreement it will not take any action to grant an interest in the Land to another person so as to prevent registration of this Agreement on the Land, as required by this Agreement.

11. Assignment and transfer

- 11.1 Unless the matters specified in clause 11.2 are satisfied, and whilst the obligations in this Agreement have not been completed, the Owner/Developer is not to do any of the following:
 - 11.1.1 to transfer the Land to any person, or
 - 11.1.2 assign, transfer dispose or novate to any person the Owner/Developer's rights or obligations under this Agreement
- 11.2 The matters required to be satisfied for the purposes of clause 11.1 are as follows:
 - 11.2.1 the Owner/ Developer has, at no cost to Council, first procured the execution by the person to whom the Owner/Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council assigning or novating those rights or obligations to the person on terms satisfactory to Council acting reasonably, and
 - 11.2.2 Council, by notice in writing to the Owner/Developer which will not be unreasonably withheld, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,
 - 11.2.3 the Owner/Developer is not in breach of this Agreement, and
 - 11.2.4 Council otherwise consents to the transfer, assignment or novation in writing, which will not be unreasonably withheld.

12. Notices

- 12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

12.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet.

12.1.2 emailed to that Party at its email address set out in the Contacts Sheet.

12.2 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 emailed to the latest address or email address.

12.3 Any notice, consent, information, application or request is to be treated as given or made if it is;

12.3.1 delivered, when it is left at the relevant address.

12.3.2 sent by post, 2 Business Days after it is posted.

12.3.3 sent via email (unless the sender receives notification to the effect that the email has failed to send), at the time it was sent.

12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 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.

13. Costs

13.1 The Parties agree to bear their own costs of preparing, negotiating and executing this Agreement.

13.2 The Owner/Developer is required to fully indemnify Council in relation to any costs and disbursements associated with any action undertaken to enforce Councils rights under this Agreement in the event of any breach of this Agreement by the Owner/ Developer, including for the avoidance of doubt any action taken by Council to enforce its rights under this agreement.

14. Entire Agreement

14.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.

14.2 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.

15. Further Acts

15.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

16. Joint and individual liability and benefits

16.1 Except as otherwise set out in this Agreement:

16.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

16.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

17. No fetter

17.1 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. Representations and warranties

18.1 Each Party represents and warrants to each other Party 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.

19. Severability

19.1 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.

19.2 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.

20. Modification

20.1 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.

21. Waiver

21.1 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.

21.2 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.

21.3 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.

22. Rights cumulative

22.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

23. Duty

- 23.1 The Owner/Developer is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

24. Effect of Schedules

- 24.1 Each Party agrees to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

25. Relationship of the Parties

- 25.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

26. GST

- 26.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Input Tax Credit has the meaning given by GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under GST Law.

Taxable Supply has the meaning given by GST Law excluding (except where expressly agreed otherwise) a Supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount on GST on that Supply.

- 26.2 Subject to **clause 26.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 26.3 **Clause 26.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 26.4 No additional amount shall be payable by Council under **clause 26.2** unless, and only to the extent that, Council (acting reasonably and in accordance with GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 26.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:

- 26.5.1 To negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 26.5.2 That any amounts payable by each Party in accordance with **clause 26.2** (as limited by **clause 26.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 26.6 No payment of any amount pursuant to this **clause 26**, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note, as the case may be, to the recipient.
- 26.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 26.8 This clause continues to apply after expiration or termination of this Agreement.

27. Status of Voluntary Planning Agreement dated 27 November 2020

- 27.1 For the avoidance of doubt this Agreement does not in any way whatsoever modify, change or impact upon:
- 27.1.1 the status and operation of the Voluntary Planning Agreement entered into between Council and the Owner/ Developer dated 27 November 2020; or
- 27.1.2 the obligations of the Owner/ Developer under the Voluntary Planning Agreement entered into between Council and the Owner/ Developer dated 27 November 2020 including in particular for the avoidance of doubt the obligation to make the monetary contribution under the said agreement.

28. Surrender of this Agreement in the Event of Surrender or Lapse of the Development Consent

- 28.1 The parties agree that this Agreement will cease to be in force in the event of the following:
- 28.1.1 the surrender of the Development Consent (as approved or modified) in accordance with the Act and Regulation; or
- 28.1.2 on the lapsing of the Development Consent (as approved or modified) in accordance with the Act.

29. Explanatory Note relating to this Agreement

- 29.1 The **Appendix** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 29.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in **Appendix** is not to be used to assist in construing this Agreement.

30. Amendment to Development Consent and 7.11 contribution

- 30.1 The parties agree that this Agreement is entered into in lieu of the imposition of the Development Consent Condition.
- 30.2 The parties acknowledge and agree that the Development Consent Condition will be deleted from the conditions of the Development Consent by way of a relevant agreement between the parties pursuant to s 34 of the *Land and Environment Court Act* 1979 in the Appeal and that this Agreement will only take effect and operate from the making of any s 34 agreement by the Land and Environment Court as referred to in clause 3.1.
- 30.3 The Council and Panel acknowledge and agree that the effect of this Agreement is that a further condition requiring the payment of a s7.11 or s7.12 contribution under the Act in the event that any modification application is made in relation to the Development Consent is not to be imposed otherwise than as provided for pursuant to clause 6.5 of this Agreement.
- 30.4 In the event that the Council or Panel breach clause 30.3 of this Agreement then they fully indemnify the Owner/Developer in respect of any costs associated with any action undertaken to enforce their rights under this Agreement including any action to delete any such condition of any further consent.
- 30.5 The parties acknowledge and agree that suitable conditions of consent consistent with this Agreement will be added to the Development Consent in the Appeal via an agreement pursuant to s 34 of the *Land and Environment Court Act* 1979.

Execution

Executed as an Agreement

date:

2023

Executed on behalf of Bayside Council ABN 80 690 785 443 by its authorised delegate pursuant to section 377 of the *Local Government Act 1993* in the presence of:

General Manager (sign)

Witness (sign)

Meredith Wallace

Name of General Manager (print)

Witness – Name/Position (print)

Executed on behalf of Sydney Eastern City Planning Panel c/- Planning Panels Secretariat,
320 Pitt Street, Sydney NSW 2000

in the presence of:

Chairperson (sign)

Panel Member (sign)

Carl Scully

Name of General Manager (print)
(print)

Panel Member– Name/Position

DRAFT

Executed by Monterey Equity Pty Ltd (ACN 605 980 283) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Full name (print)

Signature of Director

Full name (print)

DRAFT

Schedule 1: (Section 7.4 Requirements)

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) Sought a change to an environmental planning instrument	No
(b) Made, or proposes to make, a Development Application	Yes
(c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
Description of the land to which this Agreement applies	The Land described in Schedule 2 to this agreement
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 7.43)(c))	See Schedule 3
Applicability of Sections 7.11, 7.12 and 7.24 of the Act	See clause 5
Benefits under the Agreement considered for Section 7.11 purposes – (Section 7.4(3)(e)),	See clause 6 and Schedule 3
Dispute Resolution – (Section 7.4(3)(f))	See clause 9
Enforcement of this Agreement – (Section 7.4(3)(g))	See clause 8
Registration of the Agreement – (Section 7.6)	Yes, see clause 10

Schedule 2: The Land

The Land

Lot 2 in Deposited Plan 857520, known as 119 Barton Street, Monterey

DRAFT

Schedule 3: Development Contribution

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
Monetary Contribution	Monetary Contribution for public purposes relating to the upgrading and/ or embellishment of open space, recreation and/ or public infrastructure in Monterey	<p>\$527,000.00</p> <p>This contribution is to be increased at the time of payment to Council as follows:</p> <p>(a) no interest/ indexing for a period of twenty-four (24) months from the date of the execution of this Agreement; and</p> <p>(b) at a rate of 3.5% per annum compounding yearly from the date which is twenty -four (24) months after the date of the execution of this Agreement.</p>	Prior to the issue of any Occupation Certificate in relation to the Development Consent.

Appendix (Explanatory Note)

Environmental Planning and Assessment Regulation 2021

(clause 205)

Explanatory Note: Proposed Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979*

1. Parties

Bayside Council

ABN 80 690 785 443 of 444 - 446 Princes Highway, ROCKDALE NSW 2216

(Council)

and

Monterey Equity Pty Ltd (ACN 605 980 283)

(Owner/Developer)

2. Description of the Land to which the proposed Planning Agreement applies

- (a) Lot 2 in Deposited Plan 857520, known as 119 Barton Street, Monterey (**Land**)
- (b) The Owner/Developer is the owner of the Land.

3. Description of the Development

- (a) *'Integrated Development - Demolition of existing structures and construction of a part 2 and part 3 storey residential aged care facility comprising of 112 rooms (115 beds), basement level parking, front fencing and signage',* (**Development**).

4. Summary of objectives, nature and effect of the proposed Planning Agreement

4.1 Objectives of proposed Planning Agreement

- (a) The objectives of the proposed Planning Agreement are to:
 - Provide Development Contributions for the benefit of the public in the form of the payment by the Owner/Developer to Council of a monetary contribution in the sum of \$527,000
 - Achieve the provision of this Development Contribution with greater certainty, less risk and less cost to Council.
 - Dispense with the need for the payment of a s7.11 or s7.12 contribution under the Act allowing for more certainty for the Council and Owner/Developer who is developing a development under the relevant Seniors Housing SEPP

4.2 Nature of proposed Planning Agreement

- (a) The Planning Agreement is a planning agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979* (**Act**). The Planning Agreement

is a voluntary agreement under which the Development Contribution (as defined in clause 1.1 of the Planning Agreement) are made by the Owner/Developer for public purposes (as defined in section 7.4(2) of the Act).

4.3 Effect of proposed Planning Agreement

The Planning Agreement:

- (a) Provides for the payment of a monetary contribution by the Owner/Developer to Council in the sum of \$527,000
- (b) Achieves the provision of this Development Contribution with greater certainty, less risk and less cost to Council.

5. Assessment of the merits of the proposed Planning Agreement

5.1 The Public Purposes served by the proposed Planning Agreement

- 5.2** The proposed Planning Agreement promotes the provision of and recoupment of the cost of providing public amenities and public services, in this case public amenities and public services relating to the upgrading and/ or embellishment of open space, recreation and/ or public infrastructure in Monterey.

5.3 How the proposed Planning Agreement promotes the Public Interest and the objects of the Act

- (a) The Planning Agreement promotes the public interest and the objects of the Act as set out in section 1.3 the Act, including:
 - (i) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
 - (ii) to promote the orderly and economic use and development of land,
 - (iii) to promote good design and amenity of the built environment.
- (b) The Planning Agreement promotes the provision of and recoupment of the cost of providing public amenities and public services, in this case public amenities and public services relating to the upgrading and/ or embellishment of open space, recreation and/ or public infrastructure in Monterey

5.4 How the proposed Planning Agreement promotes the Elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by providing for the ultimate delivery of appropriate infrastructure, public amenities and services for the local community, which enables the Council to carry out its functions in a way that facilitates local communities that are strong, healthy and prosperous.

5.5 How the proposed Planning Agreement promotes the objects (if any) of the Local Government Act 1993

The proposed Planning Agreement promotes the objects of the *Local Government Act 1993* by allowing Council to provide infrastructure, public amenities and services appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

5.6 Whether the proposed Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The proposed Planning Agreement specifies that the Owner/Developer must make the Development Contribution prior to the issue of any Occupation Certificate.

5.7 Whether the proposed Planning Agreement conforms with the authority's capital works program

The proposed Planning Agreement conforms to Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.

6. Further Information

6.1 Interpretation

Note: This explanatory note is a summary only of the proposed Planning Agreement, is not to be relied upon as a complete description of the proposed Planning Agreement, and is not to be used as an aid in construing the proposed Planning Agreement.

6.2 Further Information

Copies of the proposed Planning Agreement are available on the Council website, and at the offices of Council.