

Planning Agreement

China Oriental Investment Pty Ltd ABN 30 617 023 891 ATF
China Oriental Investment Denman Trust

Muswellbrook Shire Council
ABN 86 864 180 944

THIS PLANNING AGREEMENT is made on

2026

BETWEEN:

- (1) **China Oriental Investment Pty Ltd (ABN 30 617 023 891) ATF China Oriental Investment Denman Trust** of Suite 1201, Tower 1, 495 Victoria Avenue, Chatswood NSW 2067 ("**Developer**"); and
- (2) **Muswellbrook Shire Council (ABN 86 864 180 944)** of 60-82 Bridge St, Muswellbrook NSW 2333 (the "**Council**")

(collectively, the "**Parties**")

INTRODUCTION

- (A) The Developer owns the Land and has been granted the Development Consent.
- (B) Pursuant to the terms of the Development Consent, the Developer is required to pay certain monetary development contributions to the Council.
- (C) The Developer has agreed to carry out and provide the Works and, where appropriate, to dedicate the completed Works to the Council as a material public benefit anticipated by the terms of this Agreement.
- (D) Subject to the terms of this Agreement, Council has agreed to accept the completed Works in lieu of the monetary development contributions otherwise payable under the Development Consent

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

1.1 Definitions

The following definitions apply in this document.

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

Agreement means this document and includes any variation or amendment to it agreed to by the Parties.

Business Day means a day other than a Saturday, Sunday or public holiday or bank holiday in New South Wales.

Development means the residential subdivision of the Land as anticipated by the Development Consent as modified.

Development Consent means development consent no. DA92/2022/2 issued by Council on 28 May 2024.

Development Contributions means the contributions to be provided by the Developer as development contributions under this Agreement and the Act as detailed in **Annexure A**.

Dispute Resolution Procedures means the procedures set out in **Annexure B**.

Explanatory Note means the note exhibited with a copy of this Agreement as prepared in accordance with cl.205 of the *Environmental Planning and Assessment Regulation 2021*

(NSW)**Government Authority** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity

(whether local, state or federal).

GST has the same meaning as in the GST Law.

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

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

Land means the property known as 184 Almond Street, Denman being the land comprised in Lot 1 in Deposited Plan 616013.

Law means any constitution or provision, statute, act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, rule, Authorisation, consent or condition of Authorisation or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter.

Modification Application means the application to modify the Development Consent submitted to Council on 24 October 2025.

Subdivision Certificate has the same meaning as in the Act.

Works means the Almond Street civil road works (no allowance for stormwater works) to be carried out by the Developer as detailed in Annexure A

1.2 Interpretation

In this Agreement, headings and bold type are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) word importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(e) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any annexure, exhibit and schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns and, in the case of the Developer, includes any person who at any time owns all or part of the Land;

- (j) a covenant or agreement on the part of 2 or more persons binds them severally;
- (k) a reference to an agreement other than this Agreement includes an undertaking, agreement, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
- (m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind; and
- (n) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

1.3 Inclusive expressions

Specifying anything in this Agreement after the words “includes” or “for example” or similar expressions does not limit what else is included unless there is express wording to the contrary.

1.4 Business Day

Where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Contra preferentum

In the interpretation of this Agreement no rule of construction shall apply to disadvantage one party on the basis that that party put forward the particular covenant term or provision.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement, governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. Application of this Agreement

This Agreement applies to the Development and the Land.

4. Operation of this Agreement

This Agreement operates on and from the date it is made .

5. Development Contributions to be made under this Agreement

(a) The Developer must provide the Development Contributions in accordance with Annexure A.

(b) The Works must be commenced within 18 months of the execution of this Agreement. If the Works are not commenced within 18 months of the execution of this Agreement , Council may terminate this Agreement and the monetary contributions specified in the Development Consent will be payable in accordance with the terms of the Development Consent .

(c) The Works must be completed within 24 months from following the commencement of the Works. If the Works are not completed within 24 months following commencement of the Works , Council may terminate this Agreement and the monetary contributions specified in the Development Consent will be payable in accordance with the terms of the Development Consent.

(d) The nature and extent of the provisions of Works to be made under this Agreement are set

out in Annexure A.

6. Application of Section 7.11 and Section 7.12 of the Act to the Development

Subject to clauses 5(b) and (c), this Agreement excludes the applications of Sections 7.11 and 7.12 of the Act to the Development. If the Agreement is terminated for any reason, the Developer will pay the monetary contributions under the Development Consent

7. Registration of this Agreement

- (a) The Developer shall do all things reasonably necessary after the date of this Agreement to enable Council to obtain registration of this Agreement on the title to the Land and each part of the Land under Section 7.6 of the Act by the Registrar-General such that on registration of this Agreement, the Registrar-General will have made an entry in the relevant folio of the register kept under the *Real Property Act, 1900* (NSW) in relation to the Land and each part of the Land.
- (b) On the date on which this Agreement is made, the Developer shall deliver to Council all necessary documents in registrable form together with applicable registration and PEXA fees to enable Council to lodge those documents at New South Wales Land Registry Services and obtain registration of this Agreement.
- (c) Subject to the other terms of this Agreement, within 20 Business Days after the date of issue of the final Subdivision Certificate in respect of the Development, Council will execute and provide to the Developer such documents as are reasonably required to remove notation of registration of this Agreement from the title to the Land.
- (d) The Developer will provide Council with all documents required to be executed by Council under clause 7(c) at the time that the Developer lodges an application for the final Subdivision Certificate in respect of the Development with Council.

8. Precondition to Issue of Subdivision Certificate

The Developer must complete all the Works prior to making any application for a Subdivision Certificate in respect of the Development or any part of the Development or Land.

9. Review of this Agreement

- (a) The Parties agree that from time to time, it may become necessary to review this Agreement, but any amendment to this Agreement shall only be effective in writing and signed by all Parties and registered under Section 7.6 of the Act.
- (b) If a Party requires a review, it shall request the other Party to participate in a review and the review shall be undertaken accordingly. If both parties agree to a review, any such review will be conducted in the circumstances and in the manner determined by the Parties. Any amendment to the Agreement must be accepted by both parties in writing.

10. Dispute Resolution

In the event that Council and the Developer cannot agree in relation to any matter relating to this Agreement, then Council or the Developer may give notice and particulars of such matter the subject of the failure to agree to the other and may require that the matter be resolved by the Dispute Resolution Procedures. Neither this clause nor the Dispute Resolution Procedures shall apply to either the Developer's principal obligation to carry out the Works nor the Developer's obligations in relation to the registration of this Agreement on the title to the Land.

11. Notices

- (a) Any notice or other communication, including any request, demand, consent or approval, to or by a Party to this Agreement:
 - (i) must be in legible writing and in English addressed as shown at the commencement of this Agreement or as specified to the sender by any Party by notice;
 - (ii) must be signed by the sender (if a natural person) or an officer or under the common seal of the sender (if a corporation);
 - (iii) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, 5 Business Days from and including the date of postage; or
 - (C) if by email, when transmitted to the relevant email address,but if the delivery or receipt is on a day which is not a Business Day or is after 4pm (addressee's time) it is regarded as received at 9am on the following Business Day; and
 - (iv) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) In this clause 11, a reference to an addressee includes a reference to an addressee's officers, agents or employees.

12. Approvals and non-fetter

- (a) This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development or any application for development consent or any modification to an approval or consent (all referred to in this Agreement as a "**Discretion**").
- (b) No provision of this Agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause 12, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:
 - (i) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied, and
 - (ii) In the event that (i) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect.

13. Assignment and Dealings

- (a) Rights arising out of or under this Agreement are not assignable by one Party without the prior written consent of the other Party
- (b) A Party must not unreasonably withhold its consent.
- (c) It will be reasonable for the Council to withhold its consent to any proposed assignment by the Developer unless the proposed assignee of the Developer's interest:

- (i) is proposed to accept the whole of the Developer's interest under this Agreement;
- (ii) Is proposed to become the registered proprietor of the whole of the Land.; and
- (iii) Is demonstrated by the Developer to be a solvent and reputable person with sufficient resources and experience to enable it to complete the Works and to otherwise carry out the Developer's obligations under this Agreement.

14. Costs

Each Party is to pay its own costs associated with the preparation and registration of this Agreement.

15. Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, the Explanatory Note, anything said or done by another Party, or by an Authorised Officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

16. Further Acts

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

17. Governing Law and Jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

18. Joint and Individual Liability and Benefits

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

19. 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.

20. Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

21. Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

22. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

EXECUTED as an agreement.

EXECUTED for and on behalf of **China Oriental Investment Pty Ltd (ACN 617 023 891) ATF China Oriental Investment Denman Trust** pursuant to s 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name of director

Name of signatory

Signed for and on behalf of **MUSWELLBROOK SHIRE COUNCIL** ABN 86 864 180 944 by its authorised delegate under section 377 of the *Local Government Act 1993* in the presence of:)
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)

.....
Signature of Witness

.....
Derek Finnigan, General Manager

.....
Print name of Witness

Annexure A

Development Contributions

Annexure B

Dispute Resolution Procedures

1.1 Dispute Resolution Procedure

- (a) Council and the Developer agree that in the interests of expeditiously resolving any dispute or difference which arises between them under or in connection with this Agreement (**Dispute**) they will use their best endeavours to resolve the Dispute by procuring the directors of The Developer and the General Manager of Council to enter into good faith negotiations within 10 Business Days (or such other period that the Parties may agree) of the Dispute arising.
- (b) If the Dispute cannot be resolved within the period stipulated in or agreed pursuant to clause 1.1(a) above, the Parties may, subject to clause 1.1(c), submit to the process of adjudication set out in clauses 1.2 – 1.5.
- (c) However, nothing in this Annexure B prevents either Party seeking final or interlocutory relief from a court in connection with a Dispute the subject of this Agreement without first having to attempt to negotiate and determine the Dispute in accordance with this Annexure B.

1.2 Either Party may issue a notice of dispute to the other within 14 days of the first occurrence or manifestation of the said Dispute or difference or act or omission if the Dispute or difference involves an act or omission. The notice is to set out the nature of the Dispute or difference and an outline of that Party's contentions in respect of the same with such reasonable particularity as is appropriate in the circumstances to allow the other Party to understand the matter in dispute and what is being contended.

1.3 Within 7 days of receiving such notice of Dispute, the receiving Party shall issue to the other a response, setting out what it believes the nature of the Dispute is (if this is different to that set out in the notice of Dispute) and an outline of its contentions with such reasonable particularity as is appropriate in the circumstances to allow the Party who issued the notice of Dispute what the receiving Party contends in relation to the Dispute.

1.4 The directors of the Developer and the General Manager of Council may direct that the Dispute be resolved by the process of expert determination as set out in sub-clause 1.7 below and the Dispute is then referred to expert determination. Such a direction is and will be final and binding and not in itself subject to a notice of Dispute.

1.5 In every other case, the Dispute is to be resolved by arbitration pursuant to the provisions of the Commercial Arbitration Act, 2010.

1.6 Where such Dispute fails to be resolved by expert determination, such a determination shall be conducted in accordance with and subject to the Resolution Institute Determination Rules and an appropriately qualified expert is to be appointed, subject to the reasonable objection by either Party, by the Chairman of the NSW Chapter of the Institute.

1.7 Subject to clause 2 below, where such Dispute or difference is to be resolved by arbitration, the arbitration shall be conducted in accordance with and subject to the Resolution Institute Rules for the Conduct of Commercial Arbitrations with the arbitrator to be appointed, subject to reasonable objection by either Party, by the Chairman of the NSW Chapter of the Institute.

1.8 In respect of all questions of procedure for any arbitration or expert determination the Parties shall participate in the same in good faith and do all and agree to do all things as are appropriate so as to achieve expedition in determination of the issues so referred.

2 Continuing liability

The reference of any Dispute for resolution under this Agreement will not relieve either Party

from any liability for the due and punctual performance of that Party's duties and obligations under this Agreement.