

Planning Agreement

Isak Investments Pty Ltd

and

Bayside Council

Ref BO:975230 1 June 2022

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Planning Agreement

Date 2022

Parties **Isak Investments Pty Ltd (Developer)**
ACN 075 768 339 of 127 Baxter Road, Mascot NSW 2020

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

Recitals

A. The Developer is the owner of the Developer's Land and the Existing Signage is situated on the Developer's Land. The Developer lodged the Current Development Application DA-2019/403 to extend the operation of the Existing Signage, which comprises Digital Signage, on the Developer's Land.

B. The Current Development Application DA-2019/403 was approved by the Bayside Local Planning Panel on 27 April 2021 subject to conditions. The status of the satisfaction of two of those conditions, was affected by the Coronavirus pandemic, necessitating lodgement of the Subsequent Modification Application DA-2019/403/A which seeks approval to correct the Digital Display Area from 33.0 sqm to 40.8 sqm residing within the Developer's Land for the operation of the Digital Signage.

C. There are arrears of signage fees payable by the Developer to the Council under the Prior Signage Agreement, the consent for which under DA-10(244), lapsed on 12 February 2019.

D. By way of this Agreement, the Developer agrees to pay the unpaid signage fees and provide the Development Contributions on the terms and conditions of this Agreement pursuant to section 7.4 of the Act in relation to the Current Development Application (DA-2019/403) (as modified by the Subsequent Modification Application (DA-2019/403/A), and any further modifications).

E. This Agreement between the Parties has been entered into for the purposes of satisfying Clause 3.11 of State Environmental Planning Policy (Industry and Employment) 2021, Chapter 3 Advertising and Signage and the Transport Corridor Outdoor Advertising and Signage Guidelines for the provision of the public benefit to be provided in connection with the display of the advertisements in relation to the Current Development Application (as modified by the Subsequent Modification Application).

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this Agreement:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Agreement	means this Agreement (including Schedule 1, Schedule 2 and the Explanatory Note).
Bank Guarantee	means the bank guarantees to be provided in accordance with clause 16.
Business Day	means: <ul style="list-style-type: none">(a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and(b) for any other purposes a day on which the banks are open for business in Sydney, New South Wales other than a Sunday or public holiday in Sydney, New South Wales.
Construction Certificate	has the same meaning as in section 6.4(a) of the Act.
Consumer Price Index	means: <ul style="list-style-type: none">(a) the All groups Consumer Price Index (CPI) Sydney published by the Australian Bureau of Statistics; and(b) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered vary, so as to change the basis of the price index, then any price index the Council selects that, as nearly as practicable, serves the same purpose.
Current Development Application	means Development Application No DA-2019/403, (as modified by the Subsequent Modification Application DA-2019/403/A and any future modification applications) for the Development of the extension of operation of the Existing Signage, on the Developers' Land, which comprises Digital Signage, for a further 10-year period.

Developers' Land	means the Land described in Schedule 1.
Development	means the development sought to be approved under the Current Development Application and the Subsequent Modification Application which includes extension in the operation of the Existing Signage, which comprises Digital Signage, for a further 10-year period.
Development Application	has the same meaning as in section 1.4 of the Act.
Development Consent	has the same meaning as in section 1.4 of the Act.
Development Consent DA-10(244)	means the approval on 3 November 2010 of Development Application DA-10(244) in relation to the Existing Signage.
Development Contribution	means the monetary contributions required to be paid by the Developer pursuant to this Agreement.
Digital Signage	means Signage with a Digital Display Area.
Digital Display Area	means the area of Signage comprising of digital technology (including but not limited to light emitting diode technology) in a screen configuration used, intended to be used or otherwise set aside for the display of advertisements or other signs, notices, content, devices or representations.
Existing Signage	means the Signage that is on the Developers' Land as at the date of this Agreement as approved under Development Consent DA-10(244).
GST	means goods and services tax or similar value added tax levied or imposed In Australia under the GST Law or otherwise on a supply.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Law	has the same meaning as in the GST Act.
Occupation Certificate	has the same meaning as in the Act.
Party	means a party to this Agreement including their successors and assigns.
Payment Date	means the date which is 28 days after the date of execution of this Agreement.

Prior Signage Agreement	means the agreement in relation to the Existing Signage made in or about November 2009 between The Council of the City of Botany Bay and the Developer in accordance with Condition 10 of Development Consent DA-10(244).
Public Purpose	means public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity within or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic and pedestrian matters.
Signage	means a sign (including digital LED billboard) and infrastructure which supports a sign on which advertisements or content are displayed and includes the Existing Signage and any Digital Signage use approved by the Current Development Application or as modified accordingly.
Subsequent Modification Application	means the modification application DA-2019/403/A lodged in respect to the 27 April 2021 approval of the Current Development Application DA-2019/403
Tax	means all forms of taxes, duties, imposts charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.
Term	means the period that a Development Consent granted in relation to the Current Development Application is in force for, being: <ul style="list-style-type: none">(a) 10 years after the date on which the Development Consent becomes effective and operates in accordance with s 4.20 of the Act; or(b) any lesser period specified in the Development Consent or as modified under any approval of the Subsequent Modification Application or any future modification application.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the others;

- (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital. Schedule or annexure to this agreement and references to this agreement include any recital, schedule or annexure;
 - (iv) any contract (including this agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
 - (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
 - (x) time is a reference to legal time in Sydney, New South Wales;
 - (xi) a reference to a day or a month means a calendar day or calendar month;
 - (xii) a reference to money (including AUD' or 'dollars') is to Australian currency,
- (b) unless expressly stated, no party enters into this agreement as agent for any other person (or otherwise on their behalf or for their benefit);
 - (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
 - (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
 - (e) headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation;
 - (f) if a period of time is specified and dates from a given day or the day of an act or event. it is to be calculated exclusive of that day;

- (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (i) where there are two or more persons in a party each are bound jointly and severally; and
- (j) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or the inclusion of the provision in this Agreement.

2. Planning Agreement under the Act

The parties mutually acknowledge and 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

- 3.1 This Agreement applies to the Developer's Land, Development Consent DA-10(244) and the Current Development Application DA-2019/403, (as modified by the Subsequent Modification Application DA-2019/403/A and any future modification applications).
- 3.2 Nothing in this Agreement affects the operation of the Development Consent(s) that are ongoing and in force in respect of the Existing Signage on the Developer's Land.

4. Operation of this Agreement

- 4.1 This Agreement takes effects from the date this Agreement is executed by the Parties.
- 4.2 Subject to payment in accordance with clause 5.2, the Council releases and discharges the Developer from all obligations under the Prior Signage Agreement.

5. Development Contributions - the Prior Signage Agreement and the Current Development Application

- 5.1 Item A of Schedule 2 specifies the unpaid amount payable by the Developer to the Council under the Prior Signage Agreement as at 26 April 2021.
- 5.2 Subject to the Council issuing an invoice to the Developer for such an amount, simultaneously upon execution of this Agreement, the Developer must pay to the Council:

- (a) \$51,368.37 calculated in accordance with Item A of Schedule 2; and
 - (b) \$28,560.00 calculated in accordance with Item B1 of Schedule 2.
- 5.3 Item B1 and B2 of Schedule 2 has effect in relation to the Development Contributions to be made by the Developer under this Agreement in relation to the Current Development Application DA-2019/403 approved on 27 April 2021 (as modified by the Subsequent Modification Application DA-2019/403/A).
- 5.4 By the Payment Date and each anniversary of the Payment Date, the Developer must make the Development Contribution calculated in accordance with Item B2 of Schedule 2, (as indexed in accordance with cl 5.7), to the Council in accordance with this Agreement including as provided in clauses 5.6, 6.1, 7.1, and 8.1.
- 5.5 For the purposes of Clause 5.1:
- (a) The parties acknowledge that as the Current Development Application (as modified by the Subsequent Modification Application) seeks to extend the operation of the Existing Signage which comprises Digital Signage, the Current Development Application (as modified by the Subsequent Modification Application) does not propose any buildings works and no Construction Certificate or Occupation Certificate is required under the Act.
 - (b) The Developer has been deemed by Council to have commenced use of the Digital Signage approved pursuant to the Current Development Application as the Signage has been operating as from 14 days after the date on which Development Consent was granted being the 27 April 2021.
- 5.6 The Developer agrees to make, and the Council agrees to accept, the Development Contribution in relation to the Current Development Application DA-2019/403 (as modified by the Subsequent Modification Application DA-2019/403/A), to be applied for the Public Purpose by the Council.
- 5.7 The Developer and the Council agree that on 27 of April each year, the Monetary Contribution in relation to Schedule 2 B2, will be indexed by the increase in the corresponding Consumer Price Index for the previous year.

6. Adjustment of Development Contribution

- 6.1 If at any time the use and operation of any of the Signage by the Developer pursuant to any Development Consent granted for the Current Development Application (as modified by the Subsequent Modification Application) permanently ceases for any reason, including on the redevelopment of the Land, the parties acknowledge that:
- (a) the Developer may provide written evidence to the Council to demonstrate that the use and operation of particular Signage by the Developer has permanently ceased; and
 - (b) if the Digital Signage has been removed or its use permanently ceased such that no party can utilise it under the Current Development Application (as

modified by the Subsequent Modification Application), on request of the other party, the parties must promptly negotiate a termination to this Agreement to formally record the ceasing of operation of the Digital Signage and end of this Agreement.

7. Late Payment

- 7.1 At the discretion of Council, where any payment of a Development Contribution is not made on or before the due date for payment, the unpaid amount will accrue interest at a rate of 2% above the daily Reserve Bank of Australia Cash Rate from the date that payment was due up to and including the date when the overdue amount is paid.

8. Consolidation of Payment Dates

- 8.1 Without limiting the generality of Clause 19.7 of this Agreement, the parties acknowledge that they may, from time to time, negotiate and execute a variation of this Agreement so as to make provision for the date or dates on which recurrent payments of the Development Contribution required by clause 5.3 and Item B2 of Schedule 2 of this Agreement are due to be consolidated (with appropriate adjustments) so as to make provision for a recurrent consolidated payment of the total Development Contribution payable.

9. Council's Obligations in respect of the Development

- 9.1 Subject to Clause 9.2 and Clause 11, Council must not erect, install, plant or otherwise place, or grant to itself or any third party any licence, consent or approval to erect, install, plant or otherwise place, any plant or equipment, vegetation, structure, object, building or work on land owned, managed or controlled by Council which has or will have the effect of obscuring or obstructing visual access to the Signage from any public road for the duration of the Term.
- 9.2 Clause 9.1 does not limit or fetter in any way Council's ability to exercise its rights and responsibilities in relation to road safety or functions as a roads authority under the *Roads Act 1993* including, without limitation, the installation or display of a prescribed traffic control device pursuant to the *Road Transport Act 2013* or otherwise installing or erecting signs or devices related to traffic and pedestrian safety or the regulation of pedestrians and traffic.

10. Assignment and Transfer

- 10.1 Unless the matters specified in Clause 10.2 are satisfied, the Developer is not to assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement.

- 10.2 The matters required to be satisfied for the purposes of Clause 10.1 are as follows:
- (a) the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned, transferred or novated, of an agreement in favour of the Council on terms that are no less favourable to Council than the terms of this Agreement;
 - (b) Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee, transferee or novatee, is reasonably capable of performing its obligations under the Agreement; and
 - (c) the Developer is not in breach of this Agreement.
- 10.3 Any purported dealing in breach of this clause is of no effect.

11. Council's Acknowledgement

- 11.1 Subject to Clause 11.2, Council acknowledges and agrees that for the duration of the Term:
- (a) the payment of the Development Contribution is in substitution for the payment of any other fees, rates, charges or levies (**Levy Payments**) which Council could or may seek to impose on the Developer and its successors or assigns in respect of the Existing Signage and the Development;
 - (b) Council releases the Developer and its successors or assigns from all liability for Levy Payments in respect of the Existing Signage and the Development; and
 - (c) Council will not seek to impose levies to the same effect of the Development Contributions.
- 11.2 Nothing in Clause 11.1 limits or fetters in any way Council's power to impose fees, rates, charges or levies under any Act (including but not limited to the *Local Government Act 1993*) regulation, statutory rule or similar which the Council could or may seek to impose:
- (a) on the owner of the Developer's Land; or
 - (b) as a standard application fee, lodgement fee or other administrative or processing fee or charge that is payable to Council in connection with any Development Application, Modification application, application for a Construction Certificate or similar.

12. No Fetter

- 12.1 Nothing in this Agreement shall be construed as requiring the 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.
- 12.2 For the avoidance of doubt, nothing in this Agreement shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty in relation to:
- (a) assessment and determination of the Current Development Application;
 - (b) the exercise of Council's functions as a roads authority under the *Roads Act 1993*; or
 - (c) the exercise of Council's functions under the *Road Transport Act 2013* including but not limited to the installation or display of prescribed traffic control devices pursuant to that Act; or
 - (d) any other power or functions relating to installing or erecting signs or devices with respect to traffic and pedestrian safety or the regulation of traffic and pedestrians generally.

13. Application of sections 7.11 & 7.12 of the Act to the Development

- 13.1 This Agreement excludes the application of Sections 7.11 and 7.12 of the Act to the Development.

14. Registration of this Agreement and caveatable interest

- 14.1 The Parties agree that:
- (a) this Agreement will not be registered for the purposes of section 7.6 of the Act; and
 - (b) this Agreement gives the Council no caveatable interest in the Developer's Land

15. Dispute Resolution

15.1 Notice of Dispute

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).

15.2 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.

15.3 Negotiation

The nominated representatives must:

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

15.4 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).

15.5 Mediation

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

- (a) 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 Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) 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 Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator;
- (c) the Mediator appointed pursuant to this Clause 15.5 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 her function as mediator, she being required to fully disclose any such interest or duty before her appointment;
- (d) 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;
- (e) 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;
- (f) 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; and
- (g) in relation to costs and expenses:
 - (i) each party will bear their 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 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.

15.6 Litigation

If the dispute is not finally resolved in accordance with clause to litigate the dispute.

15.7 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 15 for any purpose other than an attempt to settle a dispute between the Parties.

15.8 Continue to Perform Obligations

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

16. Bank Guarantee

- 16.1 Within 28 days of the execution of this Agreement, the Developer must deliver to Council an irrevocable and unconditional Bank Guarantee in favour of Council equivalent to one (1) year of the Development Contribution (non-indexed) required to be

paid under Clause 5.3 and Item B1 of Schedule 2 (**\$28,560**) of this Agreement in relation to the Current Development Application.

- 16.2 The Council must return the Bank Guarantee referred to in Clause 16.1 to the extent not called upon at the end of the Term of the Development Consent granted in relation to the Current Development Application.
- 16.3 If the Development Contribution payable under clause 5.3 and Item B2 of Schedule 2 is adjusted in accordance with Clause 6, the Developer must within one (1) month from the date of such adjustment, substitute the Bank Guarantee for the amount equivalent to one (1) year of the adjusted Development Contribution then payable under this Agreement.
- 16.4 If the Developer does not comply with any of its obligations under this Agreement, the Council may after 14 days' notice, call on the Bank Guarantee.
- 16.5 If the Council calls upon the Bank Guarantee, the Developer must, within 28 days of Council calling upon the Bank Guarantee, provide to Council a further Bank Guarantee for the requisite amount so that that Council continues to hold a Bank Guarantee or Bank Guarantees in the amount specified by, and in accordance with, clause 16.1 of this Agreement (as increased in accordance with clause 16.3).

17. GST

17.1 Defined GST terms

In this Clause 17, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

17.2 GST to be added to amounts payable

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. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

17.3 Tax Invoice

If a Party is liable for GST on any payments made under this Agreement, the other Party must issue a tax invoice (or an adjustment note) to the liable Party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

17.4 GST obligations to survive termination

This Clause 17 will continue to apply after expiration of termination of this Agreement.

18. Notices

18.1 Service of Notices

A notice, consent, approval or other communication under this agreement (Notice) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in Clause 18.3; and
- (b) delivered by personal service, sent by pre-paid mail or transmitted by facsimile or email, or any other lawful means.

18.2 Effect of Receipt

- (a) A Notice given in accordance with this Clause 18.1 is treated as having been given and received:
 - (i) if personally delivered, on delivery;
 - (ii) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia);
 - (iii) if sent by facsimile, when the sender's fax machine produces a transmission report stating that the transmission of the entire Notice was complete; and
 - (iv) if sent by email, at the top of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that if the delivery, receipt or transmission, is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

18.3 Addresses

- (a) The particulars for delivery of Notices are initially:

Isak Investments Pty Ltd

Name: Theo Isak
Address: 127 Baxter Road, Mascot NSW 2020
Email: mascotinn@bigpond.com

Bayside Council

Name: Bayside Council
Contact: John Furestad
Address: 444-446 Princes Highway, Rockdale NSW 2216
Phone: (02) 9562 1667
Email: John.Furestad@bayside.nsw.gov.au
Generic Email: council@bayside.nsw.gov.au

- (b) A party may change its address for the delivery of Notices by notifying that change to each other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

19. General

19.1 Legal Costs

- (a) Except as expressly stated otherwise in this Agreement, the Developer must pay the Council's legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.
- (b) The Developer must pay all legal costs (assessed on an indemnity basis) and out of pocket disbursements incurred by the Council in relation to enforcing the Developer's obligations under this Agreement.

19.2 Governing Law and Jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which

have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

19.3 Severability

- (a) Subject to this Clause 19.3, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) Clause 19.3(a) does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) the relative commercial or financial positions of the parties; or
 - (ii) would be contrary to the public policy.

19.4 Rights Cumulative

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

19.5 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

19.6 Survival

The rights and obligations of the Parties do not merge on:

- (a) Completion of any transaction under this Agreement; or
- (b) Termination or expiration of the Agreement.

19.7 Amendment

This Agreement may only be varied or replaced by an agreement executed by the Parties.

19.8 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.

19.9 Entire Understanding

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral Agreement, warranty or understanding between any of the parties.

Schedule 1 The Developer's Land

Land	First Schedule (owner of the Land)	Registered Dealing Number of leasehold interest in Land (if applicable)
PT 1 DP 1190559	Isak Investments Pty Ltd	

Schedule 2 Arrears under the Prior Signage Agreement and Development Contributions - the Current Development Application (as modified by the Subsequent Development Application)

A. Prior Signage Agreement

The amount equivalent to \$22,644.00 per annum for the period from and including 13 February 2019 up to and including 26 April 2021, increased in accordance with clause 5.7, calculated below:

Column 1	Column 2	Column 3	Column 4
Development Application	Signage Details	Monetary Contribution (per annum)	Timing of Payment
DA-10(244)	Dimensions: 40.8 Square metres	Base rate of \$555/m ² x 40.8m ² = \$22,644.00per annum. (Increased by CPI annually as per cl 5.7 as provided below)	Provided that Council has issued an invoice to the Developer for the amount payable, the Developer must pay the Schedule 2 A. Prior Signage Agreement Total Monetary Contribution Amount in relation to DA-10(244) upon the date of execution of this Agreement as per cl 5.2).
13 February 2019 - 12 February 2020		\$23,379.95	
13 February 2020 - 12 February 2021		\$23,264.78	
13 February 2021 - 26 April 2021		\$4,723.63	
Schedule 2 A. Prior Signage Agreement Total Monetary Contribution Amount:		\$51,368.36 (GST Exempt)	

B. Current Development Application (as modified by the Subsequent Modification Application)

Column 1	Column 2	Column 3	Column 4
Development Application	Signage Details	Monetary Contribution (per annum for the duration of the Term)	Timing of Payment
Contribution B1 DA-2019/403	Dimensions: 40.8 Square metres	Base rate of \$700/m ² x 40.8m ² = \$28,560.00 per annum. (Not Indexed)	Provided that Council has issued an invoice to the Developer for the amount payable, the Developer must pay the Schedule 2 B1. Current Development Application Monetary Contribution Amount in relation to DA-2019(403) upon the date of execution of this Agreement as per cl 5.2).
27 April 2021 – 26 April 2022		\$28,560.00	
Schedule 2 B1. Current Development Application Monetary Contribution Amount:		\$28,560.00 (GST Exempt)	
Contribution B2 DA-2019/403 and as modified under DA-2019/403/A	Dimensions: 40.8 Square metres	Base rate of \$700/m ² x 40.8m ² = \$28,560.00 per annum. (Increased by CPI annually as per cl 5.7) (GST Exempt)	Provided that Council has issued an invoice to the Developer for the amount payable, the Developer must pay the Monetary Contribution on or prior to the Payment Date and each anniversary of the Payment Date in relation to DA-2019/403 and as modified under DA-2019/403/A in annual instalments as indexed on 27 April each year.

Appendix A – LED Sign Survey



HARRISON FRIEDMANN & ASSOCIATES PTY LTD

INCORPORATING THE PRACTICE OF MICHAEL J. STYNES

ABN 69 001 953 331

SURVEYORS, ENGINEERS, PLANNERS
WATER SERVICING CO-ORDINATOR FOR SYDNEY WATER

DIRECTORS:

R.G. HARRISON OAM JP B SURV. F.I.S. NSW
REGISTERED SURVEYOR, NSW

A. PRASAD B.E. CIVIL, Grad IE Aust.
CIVIL ENGINEER & WATER SERVICE COORDINATOR

CONSULTANTS:

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DATE: 27th May, 2021
REF: 69911RH CORR1

The Manager
Isak Developments
C/- City Planning Works
P.O Box 636
BONDI JUNCTION NSW 1355

RE : **LED DISPLAY SIGN AT 210 O'RIORDAN ST, 133-137 BAXTER ST
& 118 ROBEY STREETS, MASCOT**

We have measured the internal "display" area of the large LED sign at the above site and have found it to be 40.8 sq.m.



Yours faithfully,
HARRISON FRIEDMANN & ASSOC. PTY LTD

R.G. Harrison
Registered Surveyor



THIS COMPANY UTILISES A QUALITY ASSURANCE PROGRAM
www.hfasurveyors.com.au

Liability limited by a scheme approved under
Professional Standards Legislation

Explanatory Note

Pursuant to clause 25E of the *Environmental Planning and Assessment Regulation 2000*

1. Introduction

1.1 Purpose

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed planning agreement (Planning Agreement) prepared in accordance with Subdivision 2, Division 7.1, Part 7 of the *Environmental Planning and Assessment Act 1979 (Act)*.

1.2 Preparation and Parties to the Planning Agreement

This Explanatory Note has been prepared jointly by the Parties to the Agreement:

Isak Investments Pty Ltd
ACN 075 768 339
(Developer)

Bayside Council
ABN 80 690 785 443
(Council)

2. Description of the Subject Land

The Planning Agreement applies to the Land known as PT 1 DP 1190559 known collectively as 210 O'Riordan Street, and 133-137 Baxter Road, Mascot.

3. Description of the Development Application

This Agreement applies to the Developer's Land, Development Consent DA-10(244) and the Current Development Application DA-2019/403, (as modified by the Subsequent Modification Application DA-2019/403/A) and any future modification applications.

The Development Application seeks to extend the temporary use for an existing LED advertising sign originally approved under DA-210(244). The Development Application does not include the construction of any structures or dwellings.

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

The objective of the Planning Agreement is to record the negotiated terms based on an original Offer dated 22 October 2019 made to Council by the Developer and their obligation to provide public benefits in connection with the display of the advertisements in accordance with clause 3.11 of the State Environmental Planning Policy (Industry and Employment) 2021, Chapter 3 Advertising and Signage and the Department of Planning and Environment 'Transport Corridor Outdoor Advertising and Signage Guidelines'.

The Planning Agreement objective is to provide a public benefit outcome utilised from annual monetary contributions paid to Council from the Developer.

The Planning Agreement provides that the Developer is to make monetary contributions to Council calculated by reference to the digital display area (40.8 sqm) used for the display of advertisements as per the following:

- a base reference rate of \$555 per square metre (sqm) in relation to DA-10(244) contributions in arrears under the Prior Signage Agreement for the period from and including 13 February 2019 up to and including 26 April 2021:
 $\$555 \times 40.8\text{sqm} = \$22,644$
 increased in accordance with the Consumer Price Index (CPI) All Groups – Sydney on each 27 April anniversary:
 13 February 2019 - 12 February 2020 = \$23,379.95
 13 February 2020 - 12 February 2021 = \$23,264.78
 13 February 2021 - 26 April 2021 = \$4,723.63

Prior Signage Agreement Total Monetary Contribution Amount:
= \$51,368.36 (GST Exempt)

Payable upon execution of the Planning Agreement

- a base reference rate of \$700 per square metre (sqm) in relation to the Current Development Application contributions DA-2019/403 and DA-2019/403/A:
 $\$700/\text{m}^2 \times 40.8\text{sqm} = \$28,560$:

1) 27 April 2021 - 26 April 2022 = **\$28,560.00 (GST Exempt)**

Payable upon execution of the Planning Agreement

2) 27 April 2022 – 26 April 2023 = **\$28,560.00 +CPI (GST Exempt)**

Payable on or prior to the Payment Date defined as 28 days after the date of execution of this Agreement and each anniversary of the Payment Date. First payment due in 2022 with CPI indexation to be applied on 27 April 2022 and then ongoing yearly over the Term of the Agreement (10 years unless reduced otherwise).

Security for performance under the Planning Agreement is by way of the Developer issuing Council with an **irrevocable and unconditional Bank Guarantee** in favour of Council equivalent to one year of the Development Contribution (non-indexed) **\$28,560 within 28 days of execution of this Agreement.**

The money received by Council is placed into a restricted reserve and is to be applied, and can only be applied towards the public purpose of public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport, transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity with or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic and pedestrian matters.

5. Assessment of Merits and Public Purpose of the Planning Agreement

The Planning Agreement serves the public purpose and promotes object (a) of the *Environmental Planning and Assessment Act 1979* (Act) by securing the provision of

Development Contributions in the nature of monetary payments for the purposes of public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport, transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity within or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic and pedestrian and matters.

6. How the Planning Agreement promotes one or more of the objects of the *Local Government Act 1993*

The Planning Agreement promotes the principles of local government under the *Local Government Act 1993* (see former section 8 of the *Local Government Act 1993*) by:

- providing appropriate services and facilities for the community in the form of funding for such service as a result of the monetary contributions;
- providing for the needs of children by providing funding for school safety infrastructure and programs; and
- properly managing, restoring and enhancing the environment of the area in a manner that is consistent with and promotes the principles of ecologically sustainable development through the provision of funding for improving or providing public amenity within or adjacent to roads, and enhancing the existing road network.

7. Planning Purposes served by the Planning Agreement

The planning purpose of the Planning Agreement is to provide funds to the Council for the purposes of public benefit works in relation to transport and traffic matters of a public nature, including but not limited to public transport, transport safety, transport amenity improvements, pedestrian safety, improving traffic safety (road, rail, bicycle and pedestrian), providing or improving public transport services, improving or providing public amenity within or adjacent to roads, school safety infrastructure and programs, or other community benefits relating to transport, traffic and pedestrian and matters. The Planning Agreement provides for a reasonable means of achieving that purpose.

8. The Council's capital works program

Not applicable. Council is preparing a Project Plan in relation to Advertising and Signage contributions. These works may appear in a future Capital Work's Program.

9. Requirements prior to the issue of construction, occupation or subdivision certificates

The Planning does not require payment of the Development Contribution after the issuing of an occupation certificate, and if no occupation certificate is issued, after such use commences.

10. Interpretation of Planning Agreement

This Explanatory Note is not intended to be used to assist in construing the Planning Agreement.

Signing page

Executed as an agreement

**Executed by Isak Investments Pty Ltd
ACN 075 768 339** in accordance with
section 127(1) of the *Corporations Act 2001*
(Cth) by:



Signature of Director

THEO ISAK

Full name (print)



Signature of Director/Company Secretary

SPIRO ISAK

Full name (print)

**Executed for and on behalf of Bayside
Council ABN 80 690 785 443 BRANCH
003** in the presence of:

Signature of witness

Full name of witness (print)

General Manager

Meredith Wallace

Name of General Manager