

Planning Agreement

This Deed of Agreement made on

26 February, 2007

Between:

Parties

COUNCIL OF THE CITY OF LAKE MACQUARIE of Administrative Centre,
Main Road, Speers Point, New South Wales (Council)

and

FOUNDATION HILL BUSINESS PARK PTY LIMITED ACN 111 442 043
having its registered office at "Glenelg", Paterson Road, Woodville, New South
Wales (Developer)

Background

- A. On 19 October 2005 the Developer made a Development Application to the Council for Development Consent to carry out Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make a Development Contribution towards the Public Facilities if that Development Consent was granted.

Operative Provisions

1. Definitions and Interpretation

- 1.1 In this Agreement the following definitions apply:

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

Contribution is the amount in Australian dollars that is derived from applying the following formula

Contribution = $[BPI_1/BPI_2] \times \text{Shortfall in Carparking Spaces} \times \$13,713.00$
per space x 1.015 where:

"BPI₁" is the index published for the month immediately preceding the month in which the calculation of this contribution occurs and which index is shown in the table of indices in the column headed "BPI" in the Building Price Index published by the NSW Department of Commerce.

"BPI₂" is the index for the month immediately preceding the date of this agreement and which index is shown in the table of indices in the column



headed "BPI" in the Building Price Index published by the NSW Department of Commerce.

1.015 is the rate of LMCC Planning Administration Agreement charge.

Dealing, in relation to the Land or any part of the Land, means, without limitation, a sale, transfer, assignment, mortgage, charge, encumbrance or other dealing with the Land or that part of the Land.

Development means the development described in the Development Application or, if the Council has granted consent to that Application, the development for which consent has been granted by the Council in response to the Development Application.

Development Application means development application DA/2416/2005.

Development Consent has the same meaning as in the Act.

GFA has the same meaning as is ascribed to that term in the Council's Development Control Plan No. 1.

GST has the same meaning as in the GST Law.

GST Law has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means 95 Pacific Highway Charlestown NSW being Lot 1 in DP 234825 and 20 Frederick Street, Charlestown NSW being Lot A in DP 403810.

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

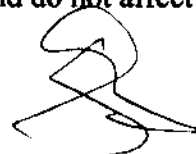
Public Facilities means public car parking facilities in Charlestown NSW.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Shortfall in Carparking Spaces is the difference between the number of carparking spaces the Council requires to be provided for the purposes of the Development (vide Table 4, LMCC DCP No. 1) and the number of carparking spaces that will be actually provided on the Land.

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.



- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word "include" or "including" are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.
- (o) Any dimension given is approximate.



2. Planning Agreement under the Act

The parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

- 3.1 The land to which this agreement applies is the Land defined in clause 1.
- 3.2 The development to which this Agreement applies is the Development.

4. Operation of this Agreement

This Agreement takes effect on the date a Development Consent is granted by the Council for the Development.

5. Development Contribution to be made under this Agreement by the Developer

- 5.1.1 The Developer shall make the Contribution to the Council in accordance with clause 5.4.
- 5.1.2 The nature and extent of the Contribution to be made by the Developer is a one-off payment of a monetary Contribution to be used by the Council for Public Facilities.
- 5.2. To enable understanding of the method of calculating the Shortfall in Carparking Spaces so as to in turn, calculate the Contribution, the parties acknowledge that at the date of this Agreement
 - (a) the Development Application proposes a GFA of 3176.3 metres squared and pursuant to Table 4 of Council's Development Control Plan No. 1 should therefore provide a total of 80 carparking spaces on the Land,
 - (b) the Development Application proposes to provide a total of 58 carparking spaces on the Land and
 - (c) the difference is 22 carparking spaces and that will be the Shortfall in Carparking Spaces.



- 5.3 If:
- (a) the Development is approved with a GFA greater than or less than the area proposed by the Development Application as at the date of this Agreement; or
 - (b) the Development is approved with more or less carparking spaces than the number proposed by the Development Application as at the date of this Agreement,

the Shortfall in Carparking Spaces shall be recalculated in accordance with its definition.

- 5.4 The Contribution will be paid by the Developer to the Council by unendorsed bank cheque drawn in favour of the Council and must be cleared by Council's banking institution, on or before the date of issue of the first construction certificate under the Act in respect of the Development.

6. Application of Development Contribution

The Contribution payable under this Agreement will be used exclusively to fund the provision of Public Facilities.

7. Application of s94 and s94A of the Act to the Development

- 7.1 This Agreement does not, wholly or partly, exclude the application of Section 94 or section 94A of the Act to the Development.
- 7.2 Benefits under this Agreement will not be taken into consideration in determining a development contribution under Section 94 of the Act.

8. Registration of this Agreement – s93H of the Act

The parties shall do all things reasonably necessary after the date of the grant of Development Consent to the Development to enable the Council to obtain registration of this Agreement under section 93H 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 Folios of the Registrar kept under the Real Property Act 1900 in relation to the Land.

9. Review of this Agreement

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 93H of the Act.



10. Dispute Resolution

- 10.1 If a dispute arises out of or relates to this agreement, including any dispute as to breach or termination of this agreement or as to any claim in tort, in equity or under any legislation, a party cannot commence any court proceedings relating to the dispute unless that party has complied with the following clauses except where that party seeks urgent interlocutory relief.
- 10.2 A party claiming that a dispute has arisen must serve a notice specifying the nature of the dispute.
- 10.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or similar techniques agreed by them.
- 10.4 If the parties do not agree within 7 days of service of the notice, or any further period agreed in writing by them, as to:
- 10.4.1 the dispute resolution technique and procedures to be adopted;
 - 10.4.2 the timetable for all steps in those procedures; and
 - 10.4.3 the selection and compensation of the independent person required for that technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

11. Enforcement

- 11.1 The Developer must comply with its obligations under clause 5.4 and the bank cheque required by this must be paid and cleared by Council's banking institution before the first construction certificate is issued under the Act in respect of the Development.
- 11.2 In order to ensure compliance with the Developer's obligations under this Agreement, and for so long as there is an obligation remaining under this Agreement to be performed by the Developer, then the Developer will appoint the Council as the person to issue construction certificates for the Development and as the principal certifying authority for the Development.

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 below.

12.1.2 faxed to that Party as its fax number set out below.

Council

Attention: Development Contributions Co-Ordinator

Address: Administrative Centre

126-138 Main Road, Speers Point 2284

Fax Number: 4958 7257

Developer

Attention: Mr Glen Greedy

Address: c/- McDonald Johnson Lawyers
Level 2, 14 Watt Street
NEWCASTLE NSW 2300
Ref: J. Griffiths

Fax Number: 4926 4113

- 12.2 If one Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- 12.3.1 if it is delivered, when it is left at the relevant address.
- 12.3.2 if it is sent by post, 2 business days after it is posted.
- 12.3.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 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. Approvals and Consent

Except as otherwise set out in this Agreement and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14. Assignment and Dealings

After Development Consent is granted in respect of the Development until this Agreement is registered under 93H of the Act, the Developer shall not be a party to a Dealing unless it first obtains a written undertaking from the other party to the Dealing to the effect that that party accepts the terms of this Agreement and agrees to comply with its terms so far as such compliance is consistent with its interest in the Land.

15. Costs

Each party shall bear its own costs of and incidental to the preparation, execution and stamping of this Agreement. Council will bear the cost of registration of this Agreement. The Developer is to pay any duty payable to the Office of State Revenue as a consequence of this Agreement or any document stamped and pursuant to it. Otherwise any obligation to be performed by the Developer shall be performed at no cost to the Council.

16. Entire Agreement

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

17. Further Acts

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

18. 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.



19. Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20. No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

21. 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.

22. Severability

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

23. Waiver

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

24. GST

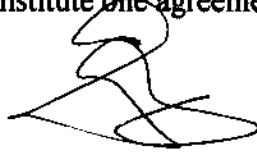
If any Party is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.



25. Counterparts

25.1 This Agreement may consist of a number of counterparts.

25.2 The counterparts taken together constitute one agreement.

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned below the text of clause 25.2.

Execution

Executed as a Deed:

EXECUTED under COMMON SEAL by)
COUNCIL OF THE CITY OF LAKE)
MACQUARIE in the presence of:)

Brian Bee
.....

kpall
.....
Witness Signature

KIM PATRICK
.....
Witness Full Name (block letters)

126-138 MAIN ROAD, SPEERS POINT
.....
Witness Address (block letters)

EXECUTED by FOUNDATION HILL)
BUSINESS PARK PTY LIMITED)
ACN 111 442 043 pursuant to section 127)
of the Corporations Act in the presence of:)

[Signature]
.....
Authorised Officer

.....
Authorised Officer

LUEN LREEDY
SOLE DIRECTOR