

- F. The development proposed is the demolition of existing buildings and construction of a new multiunit residential development incorporating a retail/commercial use, parking amenities and land dedication for road widening of Church Avenue and Station Square West. The proposal is for the construction of three buildings each being 11 storeys in height with 209 apartments and approximately 1400 square metres of commercial floor space. The proposal is shown in amended architectural plans prepared by Chester and Chester Pty Ltd Architects received by Council on 16 December 2005 with such plans all being dated December 2005 ("Proposed Development")
- G. This agreement has been publicly notified in accordance with Section 93G and Clause 25D of the EP&A Act and Regulations.
- H. Pursuant to Section 93F of the EP& A Act the parties now enter into this agreement ("Planning Agreement")

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. This agreement shall be binding upon the heirs, executors, transferees and assigns of each of the parties.
- 1A. It is acknowledged by the parties that, in entering into this planning agreement, it does not impose any obligation on the Council to grant development consent or to support the Proposed Development as part of the Applicant's current appeal to the Land and Environment Court by proceedings number 11248/2004.
2. The Applicant and the Land Owner acknowledge and agree that:
 - (i) the Proposed Development proposed enjoys the benefits of additional building height and is built on the western boundary with no setback ('development incentives') not otherwise allowable for the developed land under the Mascot Station Precinct DCP.

- (ii) The requirements of proposed conditions 5 and 84A represent a reasonable and appropriate consideration for the development incentives. (A copy of such conditions being annexed hereto and marked "A").
 - (iii) The requirements of the proposed conditions specified in subclause (ii) hereof are solely in consideration for the development incentives and shall not be taken into account when determining the contributions required by the development consent pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.
 - (iv) The Council in supporting the Proposed Development did so in reliance upon the development including the public benefits encompassed by the provisions of conditions 5 and 84A of the development proposed consent and that the Council would not otherwise have supported approval of the Proposed Development.
 - (v) S94(6) of the EP&A Act does not apply with respect of proposed conditions 5 and 84A to any development consent granted for the Proposed Development.
3. The Applicant and the Land Owner covenant and agree with the Council that in the event that development consent is granted for the Proposed Development and is taken up they will comply fully with the requirements of proposed condition 5 and 84A and will not seek any variation, modification or deletion of any of those conditions nor will they seek any reduction of the S94 contribution payment required by S94 of the EP&A Act on account of the public benefits provided in proposed condition 5 and 84A.
- 3A. This agreement does not take effect until consent to the Proposed Development is granted.
4. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of Council existing at law for which Council would otherwise have available to it.
5. In any case any one or more of the provisions contained in this Deed shall be invalid, legal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained therein shall not thereby be affected.

6. The Applicant shall do all things reasonably necessary to ensure that the Land Owner complies with its obligations hereunder.

7. Prior to the issue of an Occupation Certificate in relation to the proposed multiunit residential commercial development on the Developed Land the Land Owner shall:
 - (a) consolidate the existing allotments comprising the Developed Land into one title and dedicate the Public Open Space as public reserve such that the public open space will vest in the Council;
 - (b) Council agrees to accept and will do all things reasonably necessary to allow that dedication to occur;
 - (c) Construct the benches, paving, landscaping and all other works as shown in the approved plans for the Public Open Space.
 - (d) Register over the consolidated title to the Developed land a Positive Covenant in the form annexed hereto and marked "B" ("the Positive Covenant").
 - (e) In the event that the Positive Covenant has not been registered over the consolidated title to the Developed Land at the time a proposed strata plan is prepared Council will be entitled to refuse to endorse its certificate on such strata plan until the Positive Covenant is registered over the title to the land the subject of the strata plan.

8. The Land Owner covenants with the Council on behalf of itself its successors in title and assigns that in respect of the Public Open Space:
 - (a) it shall bear the responsibility for, and shall carry out the cleaning, maintenance and repair work in relation thereto and without derogating from these obligations they shall, in accordance with Council's general requirements, carry out the following cleaning and maintenance work:
 - (i) Maintain all trafficable surfaces, flags, masts, clocks, landscaping, water supply and drainage as well as artificial features and lighting;
 - (ii) To maintain, as required, that area in a clean and tidy condition through regular cleaning, on a minimum of five (5) occasions in a seven (7) day

- period including removal of graffiti and conditions that may be dangerous to the public;
- (iii) Periodic replacement of surfaces, elements, features and the like that have deteriorated through ~~were~~ wear and tear.
- (b) it shall maintain at all times with an insurance company and upon terms approved the by the Council, a policy of insurance in the joint names of the Land Owner and the Council in respect of public liability in the sum of \$10million or such other amount as may reasonably be required by the Council from time to time. The Land Owner shall provide to the Council evidence that it has complied with this provision when requested to do so by the Council. The Land Owner shall notify the Council immediately if the insurance policy is cancelled or an event occurs which may allow a claim or affect rights under the insurance policy in connection with the Public Open Space.
- (c) If the Planning Agreement is not registered on the title to the Developed Land and, if it should propose to sell the Developed Land then it shall;
- (i) within seven (7) days of listing the Developed Land for sale either through an agent or privately, notify the Council of such intention;
- (ii) as a condition of any sale require that the incoming purchaser enter into with the Council a like agreement to this present agreement in which the same covenants as set out herein shall apply;
- (iii) within seven (7) days of exchange of contracts notify the Council of the sale and provide the Council with a copy of the contract;
- (iv) within 21 days of receipt from the Council of a replacement agreement between the Council and the purchaser substantially in the same form as this agreement have it executed by the Purchaser and return it to the Council;
- (d) If the Planning Agreement is not registered on the title to the Developed Land and, if it should propose otherwise than by sale to transfer or assign its interest in the Developed land or any part thereof to a transferee or assignee then it shall before effecting any such assignment or transfer, have the incoming assignee or transferee enter into an agreement with the Council substantially in the form of

this present agreement in so far as concerns the interest of the Land Owner assigned or transferred and provide same to the Council.

- (e) It will not allow hawkers, buskers, street traders, exhibitions and the like or any construction work, repair of work, or repair work by any person or utility authority without obtaining the prior approval of the Council.
9. The Applicant and the Land Owner shall do all things reasonably necessary to obtain the consent to the registration of this Planning Agreement over the title to the Developed Land pursuant to S93H, prior to the issuing of the Construction Certificate or such further time frame as agreed to in writing between the parties, from all persons who have an interest in the Developed Land.
10. (a) The Land Owner agrees that, in the event that the agreement from all persons who have an interest in the Developed Land cannot be obtained as required by clause 9, that the Council shall be entitled to register a Caveat at the Land and Property Information NSW over the title to the Developed Land.
- (b) Once the land is dedicated for open space and road widening and the public Positive Covenant is registered over the title to the Developed Land, Council will remove any caveat it has registered over the title to the Developed Land.
11. The Land Owner shall pay the Council's reasonable Solicitor/Client costs in preparing this Planning Agreement and the cost of Council registering the Planning Agreement or Caveat over the title to the Developed Land. Further, should it be necessary for Council to consent to the registration of any lease, mortgage, consolidation of title, strata plan or other document as a result of a Caveat being registered on the title to the Developed Land and the Land Owner shall pay the Council's reasonable solicitor/client costs of obtaining Council's consent to such registration. The Land Owner shall also pay the Council's reasonable Solicitor/Client costs of preparing the Positive Covenant and having it registered over the title to the Developed Land (excepting the Public Open Space Land). The Land Owner shall also pay Council's reasonable costs of

preparing any substitute Planning Agreement with any incoming purchaser, assignee or transferee of the Developed Land..

12. Should the Land Owner be in breach of any terms of this Planning Agreement, and without any prior warning being given, Council shall be entitled, at its option, to enforce by way of injunctive relief in the Supreme Court any provisions of this agreement which have been breached, or to seek damages or seek to enforce the provisions of any development consent which relate to the Developed Land whether by way of order under Section 121B of the Environmental Planning and Assessment Act, Class 4 proceedings in the Land and Environment Court or otherwise.
13. Any amendment or variation to this agreement is not effective unless it is in writing and signed by all the parties.
14. The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.
15. In the event of any disagreement arising between the parties hereto arising out the provisions of this Planning Agreement which they are unable within a reasonable time to settle amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation.
- 14A. It is acknowledged by the parties that the Land Owner has been joined to the provisions of this Planning Agreement as a means of ensuring and guaranteeing that the Developer will honour the obligations contained within this Planning Agreement and thus if the Developer breaches any of its obligations in this Planning Agreement the Land Owner will in any event be obliged to meet those obligations.
16. Any goods and services tax (GST) payable in connection with any taxable supply made by either party under this agreement or pursuant to any of the conditions that the

BETWEEN:

BOTANY BAY CITY COUNCIL

AND:

AND:

CASUMO CONSTRUCTIONS PTY LTD

DEED

HOUSTON DEARN O'CONNOR

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