

PLANNING AGREEMENT

PARTIES

The Council of The City of Lake Macquarie
Of 126 – 138 Main Road, Speers Point, New South Wales

(Council)

AND

TIA Properties Pty Limited
Of 1 Glenwood Drive, Thornton, New South Wales

(Developer)

BACKGROUND

- A On, 3rd January 2006, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land. The Development Application was given number DA/2/2006 by the said Council.
- B That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

OPERATIVE PROVISIONS

1. 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.

2. Application of this Agreement

The land and Development to which the Agreement applies is the construction of commercial premises at 250 Pacific Hwy, Charlestown being land contained in Lot 1 DP 624885.

3. Operation of this Agreement

This agreement takes effect upon execution, such execution by both parties shall be affected forthwith.

4. Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

Dealing in relation to the Land means without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means the construction of Commercial Premises on land known as 250 Pacific Hwy, Charlestown being land contained in Lot 1 DP 624885.

Development Application has the same meaning in the Act and refers to Development Application DA/2/2006.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

GST Law has the 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 Lot 1 DP 624885, known as 250 Pacific Hwy, Charlestown.

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

Public Facilities means three (3) car parking spaces.

Regulation means the Environmental Planning and Assessment Regulation 2000.

4.2 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 included any statutory modification, amended 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, notated, 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 they party's successors and assigns.
- n) Any schedules and attachments form part of this Agreement.

5. Development Contributions to be made under this Agreement

The Developer will pay Development Contributions to the Council in a total amount of \$97,500.00 for the provision of public facilities being three car

parking spaces in the Charlestown Parking Area – North. Such payment being made prior to the issue of any Construction Certificate associated with Development Application DA/2/2006 and shall be by bank cheque. The amount payable by the Developer is to be indexed and adjusted in accordance with the Consumer Price Index published by the Australian Bureau of Statistics.

6. Application of the Development Contributions

Contributions for non exclusive use of three (3) car parking spaces located in the Charlestown Parking Area – North.

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

This Agreement does not exclude the Application of s94 of the Environmental Planning and Assessment Act.

8. Registration 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 if in writing and signed by all Parties and registered under Section 93H of the Act

9. Review of this Agreement

9.1 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.

9.2 A party claiming that a dispute has arisen must serve a notice specifying the nature of the dispute.

9.3 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.

9.4 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:

9.4.1 The dispute resolution technique and procedures to be adopted;

9.4.2 The timeline for all steps in those procedures; and

9.4.3 The selection and compensation of the independent person requires 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.

10. Dispute Resolution

10.1 Until the Development Contribution payable has been paid to the Council by the Developer, the Developer shall not be entitled to require the release by anyone of any Construction Certificate associated with DA/2/2006, to any person, including the Developer.

10.2 Prior to the issue of any Construction Certificate for the Development, the Developer will lodge with the Council a bank guarantee in an amount equivalent to the amount required to be paid by the Developer to the Council. The bank guarantee shall be issued by an Australian Trading Bank irrevocable up until registration of the plan of subdivision relating to that particular stage. The purpose of the bank guarantee is to secure the Council against any failure by the Developer to comply with the conditions of this Planning Agreement.

In the event of any failure by the Developer to perform and/or observe a term or condition of this Agreement, the Council shall be entitled, without further notice to the Developer, to immediately call upon such guarantee to satisfy the cost incurred by the Council (which cost includes the Development Contribution payable by the Developer in relation to that particular stage) in remedying the failure of the Developer.

11. Notices

11.1 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:

- a) Delivered or posted to the party at its address set out below.
- b) Faxed to that Party at its fax number set out below
- c) Emailed to that Party at its email address set out below

Council

Attention: Development Contributions Coordinator,
Administrative Centre

Address: 126-138 Main Road, Speers Point NSW 2284

Fax Number: (02) 49 587 257

Developer

Attention: Mr David Searle
C/- TIA Properties Pty Ltd

Address: 1 Glenwood Drive, Thornton NSW 2312

Fax Number: (02) 49 668 988

- 11.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 11.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- a) If it is delivered, when it is left at the relevant address.
 - b) If it is sent by post, 2 business days after it is posted.
 - c) 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.
- 11.4 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.

12. 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.

13. Assignment and Dealings

Not Applicable

14. 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.

Each party shall pay their own costs relating to 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, 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.

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 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.

19. 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.

20. 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.

21. 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.

22. 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.

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 reasonably decides that it 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.

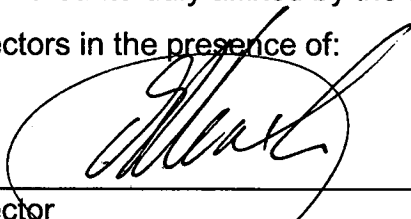
EXECUTION

Executed as a Deed

Date: 28 NOVEMBER 2007

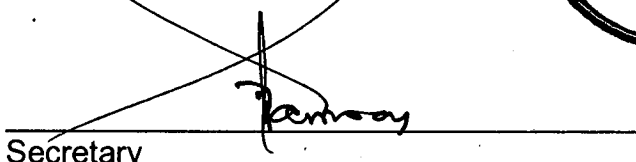
THE COMMON SEAL of TIA PROPERTIES PTY LIMITED

was hereunto duly affixed by the authority of the Board of
Directors in the presence of:



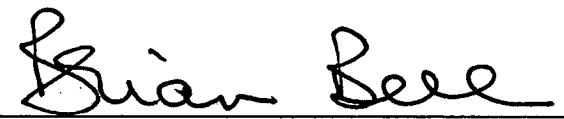
Director





Secretary

Executed by the PROPER OFFICER on behalf of
THE LAKE MACQUARIE CITY COUNCIL



Proper Officer

GENERAL MANAGER

