



Maddocks

Date / /2009

Planning Agreement Under Section 93F of the Environmental Planning & Assessment Act 1979

**Subject Land: 60 Charlotte Street, Clemton Park (The Former
Sunbeam Site)**

Canterbury City Council
ABN 55 150 306 339
and

Parkview Sydney Developments Pty Ltd
ABN 97 096 297 942

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60 Charlotte Street, Clemton Park (The Former Sunbeam Site) – Planning Agreement

DATE / /2009

BETWEEN

Canterbury City Council ABN 55 150 306 339
of 137 Beamish St
Campsie 2194

(Council)

and

Parkview Sydney Developments Pty Ltd ABN 97 096 297 942
of Lot 1, Pier 8/9, 23 Hickson Road, Millers Point NSW 2000

(Developer)

Background

- A. The Minister is the consent authority pursuant to the Act for the Development.
- B. The Minister has delegated to the Council the function of entering into the Planning Agreement with the Developer.
- C. The Developer has lodged a Preferred Project Report in relation to Project Land with the Minister, seeking consent for the Development.
- D. The Developer has offered to provide various public benefits as part of the Development, including Dedicated Roads to Council in respect of the Development, as well as providing Open Space, which is to be owned and maintained by the Developer.
- E. The Developer has offered to carry out the Works in respect of the Development.

THE PARTIES AGREE

1. Definitions

In this document unless expressed or implied to the contrary:

Act means the Environmental Planning & Assessment Act 1979, as amended.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Business Day means Monday to Friday excluding public holidays in New South Wales.

Preferred Project Report means an application pursuant to section 75M of the *Environmental Planning & Assessment Act 1979* made by the Developer to the Minister in respect of the Project Land on insert date.

Consent Authority means, in relation to the Development, the Authority having the function to determine the Preferred Project Report.

Council means Canterbury City Council (ABN 55 150 306 339) of 137 Beamish Street, Campsie NSW 2194.

Dedicated Roads means the roads identified as "Proposed Road" in the Plan of Subdivision.

Development means the development on the Project Land substantially similar to the development proposed in the Preferred Project Report.

Minister means the Minister for Planning.

Modification means a "modification" of the Preferred Project Report within the meaning of section 75W of the *Environmental Planning & Assessment Act 1979*.

Open Space means the public reserve in the Development and being Lot 23 in the Plan of Subdivision over which the public will have rights unlimited in duration:

- (a) to access (go, pass, and repass); and
- (b) of passive recreation.

Open Space Instrument means an instrument creating an easement, covenant or other interest over or in respect of the Open Space (including without limitation a right of access and creating a capacity for public passive recreation).

Plan of Subdivision means the draft plan of subdivision of Lot A in Deposited Plan 431356 and Lot 1 in Deposited Plan 721721, prepared by Dunlop Thorpe & Co Pty Ltd dated 2 October 2008, forming Schedule 1 of this Agreement.

Project Land means the land known as 60 Charlotte Street, Clemton Park, being Lot 1 in Deposited Plan 721721 and Lot A in Deposited Plan 431356.

Works mean those works encompassing landscaping of the Open Space.

2. Application of agreement

- 2.1 The land to which this Agreement applies is the Project Land.
- 2.2 The development to which this Agreement applies is the Development.

3. Specific obligations of the Developer

3.1 Open Space

- 3.1.1 The Developer agrees to provide to the community Open Space. The Open Space must when provided:
 - (a) be available for use as a public open space and a public park; and
 - (b) be improved by the landscaping set out in Schedule 2.
- 3.1.2 The Developer must (at its cost) cause the Open Space Instrument to be prepared to the reasonable satisfaction of Council and registered against the title to the Open Space.
- 3.1.3 The Developer must comply with any reasonable directions by the Council in respect of:

- (a) the drafting of the Open Space Instrument in accordance with the following clause 3.1.4; and
- (b) the registration of the Open Space Instrument upon the title to the Open Space.

3.1.4 The parties acknowledge and agree that the Open Space Instrument is intended to achieve the following:

- (a) the Open Space is to be publicly accessible;
- (b) the Open Space is to be uncovered and embellished to blend to the immediate surrounding area;
- (c) no signs, advertising material or other insignia which may detract from the publicly accessible nature of the Open Space will be installed without Council's prior written approval, such approval to be given as the authority benefited by the rights registered on title and not as a planning authority;
- (d) Council may (but is not obliged) to arrange the installation of benches, garbage bins or temporary displays, in order to ensure a continuity between the Open Space and the surrounding public domain;
- (e) the standard on which the land owner must maintain the open space; and
- (f) the land owner must hold and maintain appropriate insurances, including public risk insurance, in respect of the Open Space.

3.2 Dedicated Roads

3.2.1 The Developer agrees to provide Council with the Dedicated Roads as public roads. The Dedicated Roads must when provided:

- (a) be completed to the specifications as set out in Schedule 3; and
- (b) be available for use as a public road.

3.2.2 The Developer must on registration of the Plan of Subdivision dedicate the Dedicated Roads to Council.

3.2.3 The Developer must inform the principal certifying authority for the Development (if it is not the Minister) of the provisions of this clause within 14 days after the date of this Agreement.

3.3 Public Purpose

3.3.1 The Open Space is to be used as a public park and public open space or other public purposes area whilst being owned by the Developer.

3.3.2 The Dedicated Roads are to be used by Council as public roads pursuant to the *Roads Act* 1993.

4. Registration

4.1 Acknowledgement

The Developer acknowledges that the Council intends to register this Agreement under section 93H of the Act on the Project Land and on registration by the Registrar-General the Agreement will be binding on and enforceable against the owner of the land from time to time as if each owner for the time being had entered into this Agreement.

4.2 Consents to Registration

The Developer must promptly after the date of this Agreement obtain the consent to the registration of this instrument from each person who has an estate or interest in the Project Land.

4.3 Developer's Obligations

The Developer must at the request of the Council, sign any *Real Property Act* dealing, acknowledgement or document, provide all relevant consents (including the consent of any mortgagee or caveator) arrange for the production of the Certificates of Title for the Project Land and do all other things reasonably necessary to enable this Agreement to be registered pursuant to section 93H of the Act.

4.4 Release from Registration

The Council will at the request of the Developer execute the relevant forms to remove the registration of this Agreement from the Certificates of Title for the Project Land on completion of the Developer's obligations under this Agreement

4.5 Registration Expenses

The Developer must pay the registration fees on the registration of this Agreement and the Council must pay the registration fees on the subsequent removal of registration.

5. Section 94, 94A and 94EF of the Act

This Agreement excludes the application of section 94, section 94A and section 94EF of the Act from the Development.

6. Section 93F of the Act

6.1 Planning Agreement

The Council and the Developer agree that this Agreement is made as a Planning Agreement pursuant to section 93F of the Act.

6.2 Offer by the Developer

It is acknowledged and agreed that this Agreement is in the terms of an offer made by the Developer in connection with the **Preferred Project Report**.

6.3 No Fettering of Council's Powers

Nothing in this Agreement is to be construed as requiring the Council to do anything that would cause the Council to be in breach of any of the Council's obligations at law, and without limitation:

- 6.3.1 nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- 6.3.2 nothing in this Agreement imposes any obligation on a Consent Authority to grant any consent or exercise any function or power under the Act.

7. Review

7.1 3 Year Review

The Council and the Developer will review the operation of this Agreement in good faith:

- 7.1.1 on or before the date every 3 years after the date of this Agreement; and
- 7.1.2 at the request of either party if there is a change in circumstances that materially affects the operation of this Agreement.

7.2 Dispute Resolution

If a party fails to participate in the review or provide any information reasonably required by the other party, then this will be a dispute and the dispute resolution mechanism under this Agreement will apply.

8. Default

8.1 Notice of Default

The Developer will be in default under this Agreement if the Developer fails to comply with an obligation under this Agreement within 28 days after receiving a written request from the Council.

9. Dispute resolution

- 9.1 If a dispute between the Council and the Developer arises out of or in any way connected with this Agreement, then either party may deliver by hand or send by certified mail to the other party a notice of dispute (**Notice of Dispute**) which must:
 - 9.1.1 identify and provide adequate details of the dispute so as to enable the other party to fully understand the nature of the dispute; and
 - 9.1.2 designate as a party's representative in negotiations a person with authority to settle the dispute.
- 9.2 Within 5 Business Days after a party receives a Notice of Dispute under this clause (**Recipient Party**) it must give a notice to the other party designating the Recipient Party's representative who will have authority to settle the dispute.

- 9.3 The designated representatives under clauses 9.1.2 and 9.2 will have 10 Business Days from the date of the Notice of Dispute within which to negotiate a resolution of the dispute.
- 9.4 The parties will ensure that the designated representatives use their best endeavours to settle the dispute by negotiation within that period.
- 9.5 In the event that the persons negotiating pursuant to clause 9.3 cannot resolve the dispute within the 10 Business Days of referral, either party may give notice of particulars of such dispute to the other party and require that such dispute be resolved by an expert acceptable to both parties.
- 9.6 If the parties are unable to agree on an expert within 10 Business Days of the date of such notice of dispute, either party may required the President for time being of the Institute of Arbitrators and Mediators in Australia (New South Wales Chapter) nominate an appropriate person or persons (having regard to the matters the subject of dispute) to determine the matters under dispute and the parties agree to accept as expert the person so nominated.
- 9.7 When an expert is agreed or nominated the parties must submit to the arbitration of the dispute in accordance with and subject to The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations.
- 9.8 The parties agree that the determination of an expert under this clause 9 shall be final and binding upon the parties.

10. General

10.1 Amendment

This document may only be varied or replaced by a document duly executed by the parties.

10.2 Entire Understanding

This document contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

10.3 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this document.

10.4 Legal Costs and Expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it, unless expressly stated otherwise.

10.5 Waiver and Exercise of Rights

- 10.5.1 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

- 10.5.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

10.6 Rule of Construction

In the interpretation of this document, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it.

11. Notices

11.1 Service of Notice

A notice or other communication required or permitted, under this document, to be served on a person must be in writing and may be served:

- 11.1.1 personally on the person;
- 11.1.2 by leaving it at the person's current address for service;
- 11.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 11.1.4 by facsimile to the person's current number for service.

11.2 Particulars for Service

- 11.2.1 The particulars for service of the Council are:

address: 137 Beamish St
Campsie NSW 2194

facsimile number: (02) 9789 1542

The particulars for service of the Developer are:

address: Lot 1, Pier 8/9, 23 Hickson Road
Millers Point NSW 2000

facsimile number: (02) 8259 7319

- 11.2.2 Any party may change the address or facsimile number for service by giving notice to the other parties.
- 11.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

11.3 Time of Service

A notice or other communication is deemed served:

- 11.3.1 if served personally or left at the person's address, upon service;

- 11.3.2 if posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting;
- 11.3.3 if served by facsimile, subject to clause 11.3.4, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 11.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

12. Interpretation

12.1 Governing Law and Jurisdiction

This document is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

12.2 Persons

In this document, a reference to:

- 12.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 12.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 12.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

12.3 Joint and Several

If a party consists of more than one person, this document binds them jointly and each of them severally.

12.4 Legislation

In this document, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

12.5 This Document, Clauses and Headings

In this document:

- 12.5.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 12.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document all of which are deemed part of this document;

- 12.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 12.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document;
- 12.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 12.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

12.6 Severance

- 12.6.1 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 12.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.

12.7 Counterparts

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

12.8 Business Day

If a payment or other act is required by this document to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

12.9 Number and Gender

In this document, a reference to:

- 12.9.1 the singular includes the plural and vice versa; and
- 12.9.2 a gender includes the other genders.



THE OFFICIAL SEAL of CANTERBURY)
CITY COUNCIL was affixed in the presence of)
, and the sealing is)
attested by:)

Mayor

Name of Mayor

EXECUTED by **PARKVIEW SYDNEY**)
DEVELOPMENTS PTY LTD in accordance)
with Section 127 of the Corporations Act 2001)
in the presence of:)

Signature of Director

Name of Director



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Schedule 1 Plan of Subdivision



Schedule 2 Landscaping



Schedule 3 Specifications