

**GREATER TAREE CITY COUNCIL
("Council")**

and

**ROCHE GROUP PTY LIMITED
ACN 000 606 682
("Developer")**

PLANNING AGREEMENT

PJ DONNELLAN

& CO

SOLICITORS AND ATTORNEYS

"LPI" means the Land and Property Information division of the Department of Lands (NSW).

"MPC Contribution" means a contribution charged by Council under the Section 94 Plan for [community facilities].

"MPC Credits" means credits for MPC Contributions for 582 lots

"MPC Lot" is that part of the HWE Land upon which the Harrington MPC is to be constructed and is shown hatched on the plan which forms annexure "B" to this agreement.

"Other Development" means any development other than a development on the HWE Land by the Developer that would have been required to pay an MPC Contribution had the development occurred on the Relevant Date.

"Relevant Date" means 1 September 2006.

"Sale Price" means the amount of \$930,000 (excluding GST)

"Section 94 Plan" means the Harrington Section 94 Contributions Plan 2001 or any other Plan adopted by Council for levying contributions in the nature of S94 Contributions.

INTERPRETATION:

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

Headings are inserted for convenience only and do not affect the interpretation of this agreement.

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.

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.

A reference in this agreement to dollars or \$ means Australian dollars and all amounts payable under this agreement are payable in Australian dollars.

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.

A reference in this agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this agreement.

An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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.

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 gender.

References to the word 'include' or 'including' are to be construed without limitation.

A reference to this agreement includes the agreement recorded in this agreement.

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.

Any schedules and attachments form part of this agreement.

OPERATIVE PART:

1. Planning agreement under the EPAA

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

2. Application of this agreement

This agreement applies to the HWE Land.

3. Operation of this agreement

This agreement takes effect upon execution by the parties.

4. Developer to construct Harrington MPC

- 4.1. The Developer shall construct the Harrington MPC at its cost in accordance with the specifications which comprise annexure "C" to this agreement and any relevant conditions of consent.
- 4.2. The Developer shall take all actions required to effect construction of the Harrington MPC, including obtaining all necessary consents and approvals and undertaking all works.
- 4.3. The Developer shall construct the Harrington MPC as soon as practicable after the date of this agreement.
- 4.4. Council shall be responsible for the fit out of the Harrington MPC and pay all costs of the fit out.

5. Sale of MPC Lot to Council

- 5.1. The Developer shall no later than 3 months after completion of construction of the Harrington MPC cause to be registered at LPI a plan of subdivision to create the MPC Lot as a separate lot.
- 5.2. The Developer shall notify Council of the registration of the plan of subdivision within 14 days of receipt of notification by the Developer that the registration has taken place.
- 5.3. Council shall provide to the Developer a transfer in registerable form to transfer the MPC Lot to Council within 14 days of it being notified by the Developer of completion of construction of the Harrington MPC.
- 5.4. The Developer shall within 14 days of receipt by it of the transfer execute the transfer and provide the executed transfer to Council together with the certificate of title for the MPC Lot and any other document required to effect registration of the transfer. The Developer shall at the same time provide to Council an assignment of the benefit of all building contracts, warranties and other matters pertaining to the Harrington MPC.
- 5.5. Council shall, upon delivery to it of the documents required under clause 5.4 pay to the Developer the Sale Price.

6. Application of MPC Contributions, MPC Credits and other Charges

6.1 Council agrees that:

- (a) in consideration of the Developer constructing the Harrington MPC and transferring to it the MPC Lot that in addition to the Sale Price to be paid to the Developer pursuant to clause 5.5 it will grant to the Developer the MPC Credits as from the Relevant Date;
- (b) if requested by the Developer, Council will:
 - (i) promptly reimburse the Developer the amount of any MPC Contributions paid by the Developer in respect of the HWE Land between the Relevant Date and the date of this agreement;
 - (ii) promptly pay to the Developer the amount of any MPC Contributions Council has received in respect of Other Developments between the Relevant Date and the date of this agreement;
 - (iii) offset the MPC Credits against any MPC Contributions charged to the Developer in respect of the HWE Land after the date of this agreement; and
 - (iv) pay to the Developer the amount of any MPC Contributions Council receives in respect of Other Developments after the date of this agreement in accordance with sub-clause (c).

- (c) as soon as practicable after it receives any MPC Contribution(s) in respect of an Other Development it will notify the Developer and provide details of how the MPC Contribution(s) was calculated and if the Developer advises Council within 30 days of receipt by the Developer of the notice that it wishes to be paid the amount of any or all of the MPC Contributions then Council will pay to the Developer within 30 days the amount of MPC Contributions the Developer wishes to be paid;
 - (d) it will maintain a register of the MPC Credits detailing:
 - (i) the number of MPC Credits offset; and
 - (ii) the balance of MPC Credits still available to the Developer,and allow the Developer to inspect the register on reasonable notice to Council; and
 - (e) it will continue to charge Other Developments for MPC Contributions at the rate specified in the Section 94 Plan, adjusted for indexation and use its best endeavours to obtain MPC Contributions in respect of Other Developments until such time as there are no MPC Credits left or the Developer otherwise notifies Council that it no longer requires Council to charge Other Developments for MPC Contributions.
- 6.2 The Developer agrees that if Council pays or reimburses the Developer any MPC Contributions under sub-clauses 6.1(b)(i), (ii) or (iv) then the MPC Credits will be reduced by the number of MPC Contributions paid or reimbursed.
- 6.3 For the avoidance of doubt, no MPC Credits will be offset against MPC Contributions payable by a person other than the Developer unless written consent is given by the Developer, even if the activity or development giving rise to the requirement for the MPC Contribution relates to the HWE Land.
- 6.4 Council will waive all contributions that may but for this agreement have been payable by the Developer under the Section 94 Plan in respect of the MPC Lot.
- 6.5 Council will pay to Midcoast Water all headworks charges levied under Midcoast Water's Equivalent Tenement Policy in respect of the MPC Lot.

7. Carparking and Maintenance

- 7.1 Upon settlement under Clause 5.5, the Developer agrees to provide right of use of the carpark under a shared arrangement.
- 7.2 Council agrees to contribute annually to its share of all maintenance costs associated with the car park, which based on gross floor area, equates to 23.5% of such costs.
- 7.3 the requirement for Council to pay its share of maintenance costs under clause 7.2 may be the subject of an agreement between Council and the Developer or be noted on the title to the MPC Lot at the election of the Developer.

8. 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 if in writing and signed by all parties and registered under Section 93H of the EPAA.

9. Dispute resolution

- 8.1. 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.
- 8.2. A party claiming that a dispute has arisen must serve a notice on the other party specifying the nature of the dispute.
- 8.3. On receipt of that notice by the 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.
- 8.4. If the parties do not agree within 7 days of service of the notice under clause 9.2, or any further period agreed in writing by them, as to:
 - 8.4.1. the dispute resolution technique and procedures to be adopted;
 - 8.4.2. the timetable for all steps in those procedures; and
 - 8.4.3. the selection and compensation of any 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.

9. Notices

- 9.1. 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:
 - 9.1.1. delivered or posted to that party at its address set out below.
 - 9.1.2. faxed to that party at its fax number set out below.

Council
Attention: The General Manager
Address: PO Box 482, Taree
NSW 2310
Fax Number: (02) 6592 5311
Email: gtaree@gtcc.nsw.gov.au

Developer
Attention: Wes Gardner
Address: 21/14 Edgeworth David Ave
Hornsby NSW 2077
Fax Number: (02) 9482 4788
Email: wesgardner@rochegroup.com.au

- 9.2. If a party gives the other party 3 business days notice of 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.
- 9.3. Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - 9.3.1. if it is delivered, before 5.00 pm on a business day on that day and otherwise on the next business day;
 - 9.3.2. if it is sent by post, 2 business days after it is posted; and
 - 9.3.3. if it is sent by fax before 5.00 pm on a business day on that day and otherwise on the next business day, provided that the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

10. Assignment and Dealings

- 10.1. Until the Developer has transferred the MPC Lot in accordance with this agreement, the Developer may not execute any Dealing without the prior written consent of the Council.
- 10.2. Council may not refuse consent to any Dealing unless the Dealing is likely, in the opinion of the General Manager of the Council, to prevent, tend to hinder or present a risk to the timely and effectual transfer of the MPC Lot to Council.

11. Costs

- 11.1. The Developer will pay any stamp duty imposed on this agreement and the costs of registering this agreement and the plan of subdivision creating the MPC Lot.
- 11.2. Council will pay any stamp duty and any other costs in connection with the transfer to it of the MPC Lot.
- 11.3. In all other respects, each party must bear its own costs.

12. Extension of time

- 12.1. Any timeframe established by this agreement may be extended where the delay is due to a matter outside of the control of the party responsible to undertake the action, including but not limited to;
 - 12.1.1. strikes and other industrial action;
 - 12.1.2. acts of God, force majeure, etc;

12.1.3. delays by the other party.

12.2. The length of any extension granted shall not exceed the length of the delay caused by the matter referred to in clause in 14.1.

13.13. 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.

14. Further acts

A party must promptly execute all documents and do all things that the other party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

15. No joint venture, etc

Nothing in this agreement shall be taken to create a joint venture, partnership or other relationship between the parties.

16. Governing law and jurisdiction

This agreement is governed by the laws 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.

17. 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.

18. Representations and warranties

The parties represent and warrant that they have power to enter into this agreement and comply with their obligations under this agreement and that entry into this agreement will not result in the breach of any law.

19. 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 unless the removal affects the basic nature of this agreement in which case this entire agreement will be void.

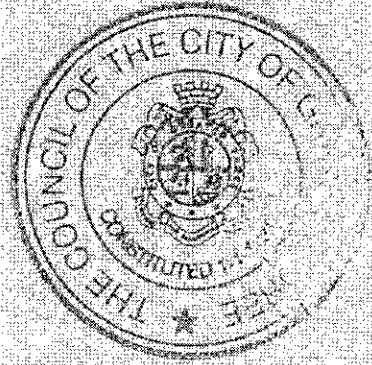
20. Waiver

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.

21. 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 the recipient of the supply must pay an additional amount equal to the GST on that supply.

SIGNED AS AN AGREEMENT



THE COMMON SEAL OF GREATER)
TAREE COUNCIL is hereunto affixed)
pursuant to resolution made on)
19 September 2007

Acting
.....
General Manager

.....
Mayor/Councillor

Executed by ROCHE GROUP)
PTY LIMITED ACN 000 606 682)
Under Section 127(1) of the)
Corporations Act 2001)

.....
Director

.....
Director/Secretary

.....
Name

.....
Name