



Planning Agreement

Environmental Planning and Assessment Act 1979

Fairfield City Council (ABN 83 140 439 239)

Chrisco Holdings Pty Limited (ACN 149 938 652)

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This deed is dated 24th APRIL 2014

Parties:

Council

Fairfield City Council (ABN 83 140 439 239) of 86 Avoca Road, Wakeley, New South Wales 2176

Developer

Chrisco Holdings Pty Limited (ACN 149 938 652) of 53 Brennan Street, Smithfield, New South Wales 2164.

Introduction:

- A The Developer owns the Land and proposes to carry out the Development on the Land.
- B The Council anticipates that the Development will create a shortfall of two car parking spaces and the Developer has made an offer to enter into a planning agreement to provide the Development Contribution towards the provision those car parking spaces.
- C The Council has granted Development Consent for the Development and imposed condition 36 on that Development Consent requiring that this planning agreement be entered into.
- D The parties enter into this planning agreement to satisfy condition 36 of the Development Consent granted for the Development.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Council means Fairfield City Council.

Development means alterations and additions to the existing premises at 83-85 The Crescent, Fairfield, to be used as a pharmacy and medical centre, as approved by Development Consent No. 613.1/2013.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contribution to be provided by the Developer in accordance with clause 4.

General Manager means the General Manager of the Council.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means Lot 1 DP 209298, Lot 2 DP 209298 and Lot E DP 164651.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;

- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed will commence from the date this deed is signed by all the parties.

2.2 Planning Agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4. Development Contribution

- (a) The Developer agrees to pay to the Council the amount of \$37,174 as a development contribution under this deed.
- (b) The Developer is to submit a bank cheque to the Council for the Development Contribution at the same time as providing a signed copy of this deed to the Council for its execution.

5. Dispute Resolution

Should a dispute between the parties arise, the matter shall be referred to an independent person as agreed between the parties, or failing agreement, nominated by the President for the time being of the Law Society of New South Wales, whose determination of the disagreement shall be final and binding on the parties.

6. GST

6.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

6.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

6.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

6.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 6.

6.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Council as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Council, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Council.

6.6 Non monetary consideration

Clause 6.5 applies to non-monetary consideration.

6.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 6.5 the Developer will assume the Council is not entitled to any input tax credit.

6.8 No merger

This clause will not merge on completion or termination of this deed.

7. Capacity

7.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

7.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

7.3 Trustee Developer

- (a) Chrisco Holdings Pty Limited (ACN 149 938 652) enters into this deed in its capacity as the trustee for the CJK Family Trust.
- (b) Chrisco Holdings Pty Limited warrants that:
 - (i) it is the sole trustee of the CJK Family Trust;
 - (ii) and no action has been taken to remove or replace it;
 - (iii) it is authorised under the trust deed of the CJK Family Trust to enter into this deed;
 - (iv) it is not in breach of the trust deed of the CJK Family Trust; and
 - (v) it has the power under the deed constituting the CJK Family Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting the CJK Family Trust.

8. General Provisions

8.1 No fetter

Nothing in this deed shall be construed as requiring the Council to do anything that would cause the Council to breach any of its obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of its statutory functions, powers, authorities or duties.

8.2 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

8.3 Expenses

The Developer is to pay:

- (a) its own costs in connection with the preparation, negotiation and publication of this deed; and
- (b) Council's costs of negotiating, preparing, executing, monitoring, enforcing and administering this deed, assessed and agreed at \$3816.15.

8.4 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the General Manager at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:

- (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day
- (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted but if the transmittal is recorded by the sending party's facsimile machine as after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day; or
- (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

Schedule 1

Table 1 - Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
<p>Planning instrument and/or development application – (section 93F(2))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>No</p> <p>Yes</p> <p>No</p>
Description of land to which this deed applies – (section 93F(3)(a))	See clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See clause 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(5))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 5
Enforcement of this deed – (section 93F(3)(g))	Not required
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 8.1

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H of the Act)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Schedule 2

Address for Service (clause 1.1)

Council: Fairfield City Council

Contact: The General Manager

Address: 86 Avoca Road
Wakeley NSW 2176

Facsimile No: (02) 9725 4249

Developer Chrisco Holdings Pty Limited

Contact: Chris Kahawati

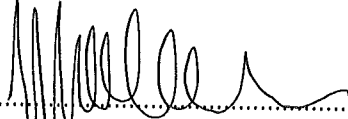
Address: 53 Brenan Street
Smithfield NSW 2164

Facsimile No: (02) 9724 6274


Execution page

Executed as a deed

Executed by Fairfield City Council (ABN 83 140 439 239):

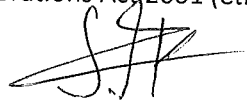

.....
Signature of witness

MONICA CHEA
.....
Name of witness



.....
Signature of authorised person

DIANE CUTHBERT
.....
Name of authorised person

Executed by Chrisco Holdings Pty Limited (ACN 149 938 652) in accordance with section 127 of the Corporations Act 2001 (Cth):


.....
Signature of Director

JOSEPH KAHAWATI
.....
Name of Director


.....
Signature of Director/Secretary

CHRISTOPHER KAHAWATI
.....
Name of Director/Secretary

Environmental Planning and Assessment Regulation 2000 (Clause 25E)

Explanatory Note

Draft Planning Agreement – 83-85 The Crescent, Fairfield

1. Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the exhibition of a proposed draft planning agreement (**Planning Agreement**) prepared under section 93F of the *Environmental Planning and Assessment Act 1979 (Act)*.

Words which are capitalised in this explanatory note but are not defined take on the meaning given to those words in the Planning Agreement.

2. Parties

The parties to the Planning Agreement are the Fairfield City Council (**Council**) and Chrisco Holdings Pty Ltd (**Developer**). This explanatory note has been prepared jointly by the parties as required by clause 25E(3) of the *Environmental Planning and Assessment Regulation 2000*.

3. Description of the Subject Land

The Planning Agreement applies to Lot 1 DP 209298, Lot 2 DP 209298 and Lot E DP 164651 and is known as 83-85 The Crescent, Fairfield (**Land**).

4. Description of the Development

The development involves the carrying out of alterations and additions to existing premises to be used as a pharmacy and a medical centre (**Development**). The Development has received Development Consent from the Council.

5. Summary of Objectives, Nature and Effect of the Planning Agreement

The Developer has made an offer to the Council to enter into the Planning Agreement in connection with the Development.

It is anticipated by the Council that the Development will create a shortfall in car parking spaces. The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of two car parking spaces.

To achieve this objective, the Planning Agreement requires the Developer make a monetary contribution in the amount of \$37,174 (**Contribution**).

6. Assessment of the Merits of the Planning Agreement

6.1 How the Planning Agreement promotes the objects of the Act

The Contribution required by the Planning Agreement is consistent with and promotes the objects in section 5 of the Act. In particular the Contribution promotes:

- (a) the proper management, development and conservation of natural and artificial resources, including...cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment (section 5(a)(i)); and

- (b) the co-ordination of the orderly and economic use and development of land (section 5(a)(ii)).

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to make the Contribution to provide for adequate car parking in the local government area.

6.2 How the Planning Agreement promotes the purposes (objects) of the Local Government Act 1993

The Contribution provides funding that promotes the following purposes under section 7 of the *Local Government Act 1993* by contributing to:

- (a) Council's ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public (section 7(d)); and
- (b) Council's role in the management, improvement and development of the resources of its local government area (section 7(d)).

6.3 How the Planning Agreement promotes one or more elements of the Council's Charter

The Planning Agreement promotes the following elements of the Council's Charter under section 8 of the *Local Government Act 1993*:

- (a) providing for adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; and
- (b) bearing in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.

The above elements of the Council charter are promoted by the Developer providing funding as a means to assist Council to meet its obligations to provide adequate facilities and services such as car parking and its obligations as the custodian and trustee of public assets.

6.4 The planning purpose served by the Planning Agreement

The purpose of the Planning Agreement is that it ensures that the Council can provide for suitable car parking spaces required as a result of the Development. In addition, the Planning Agreement has the following public purposes in accordance with section 93F(2) of the Act:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services; and
- (b) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure.

The Council and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the planning and public purposes set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision car parking spaces that are required as a result of the Development.

6.5 How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest and will have a positive effect on the public by ensuring that an appropriate contribution is made towards the provision of car parking spaces to satisfy needs that arise from the Development.

7. Conformity with the Council's capital works program

The Planning Agreement conforms to Council's Capital Works Program insofar as the Contribution payable under the agreement will be utilised, (without imposing any further cost on the Program), to:

- (a) Provide additional parking;
- (b) Upgrade existing parking facilities; and
- (c) Improve access arrangements to existing parking facilities.

8. Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not specify that certain requirements of the agreement must be complied with before a construction, occupation or subdivision certificate is issued. However it is a condition of the Development Consent for the Development that payment of the Contribution is required before Council will issue an Occupation Certificate.