

**Voluntary Planning Agreement – DA. No. 306.1/2011**

**Fairfield City Council ABN 83 140 439 239 (Council)**  
**And**  
**The Fairfield Chase Centre Pty Ltd (Developer)**  
**ABN 61 141 528 823**

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**PLANNING AGREEMENT**

**Parties**

**Fairfield City Council – ABN 83 140 439 239 (Council)**

and

**The Fairfield Chase Centre Pty Ltd – ABN 61 141 528 823 (Developer)**

**Background**

- A.** The Developer is the owner of the Land.
- B.** The Developer has made a Development Application to Council in order to carry out the Development on the Land.
- C.** The Developer has offered to provide the Development Contributions if the Development Consent is 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**

This agreement applies to:

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

**3 Operation of this Agreement**

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This agreement will commence on and from the date it is signed by the Parties and Development Consent is granted by the Consent Authority.

### 4 Definitions and interpretation

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

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

**Construction Certificate** means any Construction Certificate issued under section 109C(1)(b) of the Act with respect to the Development.

**Development** means the proposed development of the Land as set out in the Development Application.

**Development Application** means an application for Development Consent lodged with Council by the Developer having application number 306.1/2011.

**Development Consent** means a consent issued under the Act for the Development.

**Development Contribution** means five hundred and twenty one thousand one hundred and thirty dollars (\$521,130).

**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 the whole of the land contained in certificate of title folio identifier 1/730010 and known as 49-61 Spencer Street, Fairfield.

**Public Facilities** means the provision of public car parking, the upgrade of existing parking facilities and improving access arrangements to existing parking within the Fairfield local government area.

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

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### 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 includes any statutory modification, amendment 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, novated, 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.

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(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 the party's successors and assigns.

(n) Any schedules and attachments form part of this Agreement.

## 5 Development Contributions to be made under this Agreement

- 5.1 Prior to the issue of a Construction Certificate for the Development, the Developer must pay to Council, by way of bank cheque, the Development Contribution .
- 5.2 The Developer undertakes not to lodge an application for the issue of a Construction Certificate until it has complied with clause 5.1.

## 6 Application of the Development Contributions

- 6.1 The Developer acknowledges that:
  - (a) the Development Application was lodged on or about 6 April 2011;
  - (b) the Development Contribution paid by it under this agreement will be used by Council to provide the Public Facilities;
  - (c) the Public Facilities will:
    - (i) not be provided by Council to coincide with the conduct or completion of the Development;
    - (ii) be constructed or provided at a time determined by Council at its absolute discretion but no later than five (5) years of the date of issue of the Construction Certificate; and
    - (iii) be available for use by the general public and will not be restricted for use by patrons of the Development.

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

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

### 8 Registration of this Agreement

- 8.1 The Developer represents and warrants that it is the legal and beneficial owner of the Land.
- 8.2 The Developer and Council agree that this agreement will be registered on the title of the Land pursuant to section 93H of the Act.
- 8.3 The Developer must do all things necessary to allow this agreement to be registered on the title of the Land by Council (including obtaining the consent of any mortgagee).

### 9 Review of this Agreement and confidentiality

- 9.1 This agreement may only be the subject of review with the written consent of both parties to the agreement.
- 9.2 The terms of this agreement are not confidential and this agreement may be treated as a public document and exhibited or reported without restriction by any party.

### 10 Dispute Resolution

- 10.1 A party claiming that a dispute has arisen in relation to this agreement must give notice in writing to the other party specifying the nature of the dispute.
- 10.2 Where a Notice under clause 10.1 is received by a party, both parties must meet expeditiously and in good faith to resolve the dispute by way of informal dispute resolution mechanisms.
- 10.3 Should the dispute not be resolved within 21 days, the parties agree that if a mediator is to be appointed to determine the dispute and the following provisions will apply:
  - (a) If the parties not agree on a mediator within 10 business days either party may request the President of the Institute of Arbitrators and Mediators (NSW Chapter) to appoint a mediator;

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- (b) The parties must agree on the terms of reference for the Mediator within 5 business days;
- (c) The Mediators determination will be binding on the parties and the parties agree to be bound by the Mediator's decision, without recourse to legal proceedings, save for enforcement of the Mediator's decision;
- (d) The Mediator will be required to undertake to keep all matters relating to the Mediation confidential except as required to be disclosed by a party under law; and
- (e) Each party will bear its own costs of the Mediator and half the Mediator's cost.

**11 Not Used**

**12 Notices**

**12.1** 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 that party at its address set out below.
- (b) Emailed to that party at its email address set out below and a correct and complete transmission report is received.

**Council:**

**Attention:** Robert Cologna

**Address:** Administration Centre  
86 Avoca Road  
Wakeley NSW 2176

**Email:** mail@fairfieldcity.nsw.gov.au

**Developer: Fairfield Chase Centre Pty Ltd**

**Attention:** Sam Krslovic

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**Address: Level 5, 6 Bridge Street, Sydney NSW 2000**

**Email: [sam.krslovic@level-1.com.au](mailto:sam.krslovic@level-1.com.au)**

12.2 If a party gives the other Party 2 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 email.

12.3 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, 1 business days after it is posted.
- (c) If it is sent by email, one day after the email is issued.

## 13 Approvals and consent

Except as otherwise set out in this agreement, and subject to any statutory obligations, Council may give or withhold an approval or consent to be given under this agreement in Council's absolute discretion and subject to any conditions determined by Council.

## 14 Assignment and Dealings

The Developer must not Deal with its rights, title or interest in the Land and its rights and obligations under this agreement without the written consent of the Council.

## 15 Costs

Each party, must bear their own legal costs and disbursements incurred in respect of, arising from or incidental to the negotiation, preparation, execution, exhibition and registration of this agreement.

## 16 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

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agreement was executed, except as permitted by law.

**17 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.

**18 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.

**19 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.

**20 No fetter**

Nothing in this agreement will 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 will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty of Council with respect to the Development Consent, the Land and/or the Development.

**21 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.

**22 Severability**



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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.

### 23 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.

### 24 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.

### 25 GST

- 25.1 Defined terms used in this clause 25 have the meaning ascribed to them in the GST Law.
- 25.2 If GST is payable on a Taxable Supply made under, by reference to or in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 25.3 Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this agreement are exclusive of GST.
- 25.4 This clause 25 will continue to apply after the expiration or earlier termination of this agreement.

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**SCHEDULE 1 - REQUIREMENTS UNDER SECTION 93F**

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

Requirement Under the Act	Deed
<p><b>Planning Instrument and/or development application – (section 93F(1))</b>                      The Developer has:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or proposes to make, a development/                      project 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>N/A</p> <p>Yes</p> <p>N/A</p>
<p><b>Description of land to which this agreement applies – (section 93F(3)(a))</b></p>	<p>See clause 4.1</p>
<p><b>Description of change to the environmental planning instrument to which this agreement applies – (section 93F(3)(b))</b></p>	<p>N/A</p>
<p><b>The scope, timing and manner of delivery of contribution required by this Deed – (section 93F(3)(c))</b></p>	<p>See clause 4.1.</p>
<p><b>Applicability of section 94 of the Act – (section 93F(3)(d))</b></p>	<p>The application of S94 of the Act is not excluded in respect of the Development on the basis that the Development Contribution being provided by the Developer under this agreement is separate to and independent from the contributions contemplated by this section.</p>
<p><b>Applicability of section 94A of the Act – (section 93F(3)(d))</b></p>	<p>The application of S94A of the Act is not excluded in respect of the Development on the basis that the Development Contribution being provided by the Developer under this agreement is separate to and independent from the contributions contemplated by this section.</p>

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<p><b>Applicability of section 94EF of the Act – (section 93F(3)(d))</b></p>	<p>The application of S94EF of the Act is not excluded in respect of the Development on the basis that the Development Contribution being provided by the Developer under this agreement is separate to and independent from the contributions contemplated by this section.</p>
<p><b>Consideration of benefits under this agreement if section 94 applies – (section 93F(3)(e))</b></p>	<p>N/A</p>
<p><b>Mechanism for Dispute Resolution - (Section 93F(3)(f))</b></p>	<p>See Clause 10 of the Planning Agreement.</p>
<p><b>Enforcement of this agreement – (section 93F(3)(g))</b></p>	<p>See Clauses 5 and 8 of the Planning Agreement.</p>
<p><b>Registration of the Planning Agreement</b></p>	<p>See Clause 8 of the Planning Agreement.</p>
<p><b>No obligation to grant consent or exercise functions –(section 93F(9))</b></p>	<p>See Clauses 13 and 20 of the Planning Agreement,</p>

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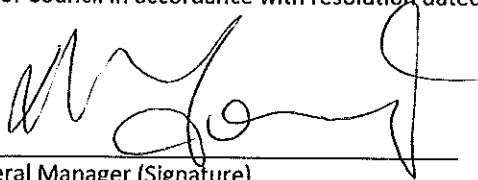
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EXECUTION PAGE

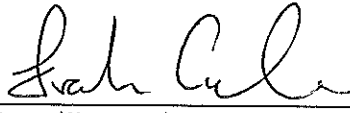
Dated: 26 February 2013

Executed as an agreement

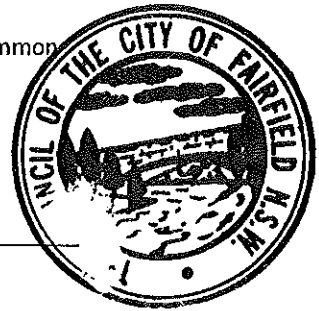
Executed by Fairfield City Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated



General Manager (Signature)



Mayor (Signature)



ALAN YOUNG

Name of General Manager (Print Name)

FRANK CARBONE

Name of Mayor (Print Name)

Executed by The Fairfield Chase Centre Pty Limited in accordance with section 127(1) of the Corporations Act by authority of its directors.



Director/Secretary (Signature)

Director (Signature)

STEVE (SAM) KESLOW

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)