

Hawkesbury

26 AUG 2009

City Council

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against DA0537/08

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**SCANNED**

# PLANNING AGREEMENT

## Parties

**Hawkesbury City Council**  
**366 George Street, Windsor, NSW**

and

**Alchemy Holding Pty Ltd**  
**Unit 5, 20-24 Hudson Avenue**  
**Castle Hill, NSW**

## Background

(For Development Applications)

- A. On, 18 July 2008 Alchemy Holdings Pty Ltd (the Developer) made a Development Application to Hawkesbury City Council (the Council) for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer dated 10 November 2008 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 subject land to which this Agreement relates is Lot 1 DP 1107029, No 263 Windsor Street, Richmond, 2753 and Development Application No DA 0537/08, Commercial Premises, Alterations and Additions to Existing Building and Change of Use to Pharmacy.

### 3 Operation of this Agreement

Council on 13 March 2009 issued a Notice of Determination under the EP&A Act, 1979 in respect of Development Application No DA 0537/08. Council granted Development Consent for the following: "Change of use of the existing restaurant and first floor residential flat to a shop (Pharmacy) and commercial premises (Office), including additions and alterations to the existing building at the front of the property". The Development Consent was approved subject to the following condition being satisfied prior to the issue of the Occupation Certificate for the development:

"A Planning Agreement under 93F of the Environmental Planning and Assessment Act 1979 must be entered into with the Hawkesbury City Council prior to the issue of the

Occupation Certificate. The agreement is to make provision for the applicant to provide works or payment of a contribution, as specified in the agreement, to the value of \$50,000 in lieu of the parking spaces not being provided onsite as a result of the proposed."

This Agreement must be executed by both parties to permit the issue of a Construction Certificate, for DA0537/08, by the Principal Certifying Authority.

This agreement will take effect upon one of the following occurring prior to the issue of the Occupation Certificate for the works approved in the Development Consent for DA0537/08, Whichever occurs first:

1. Payment of \$ 50,000 as a cash contribution to the Council; or
2. Both parties agreement to a schedule of works to the value of \$ 50,000.

## 4 Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

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

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

**Development** means: those works referred to under Development Consent No DA 0537/08, which includes "Change of use of the existing restaurant and first floor residential flat to a shop (Pharmacy) and commercial premises (Office), including additions and alterations to the existing building at the front of the property".

**Development Application** has the same meaning as in the Act.

**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 1107029, known as No 263 Windsor Street, Richmond, NSW 2753.

**LEADR** means Association of Dispute Resolvers located at L9, 15-17 Young Street, Sydney.

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

**Public Facilities** means: improvements to the existing public toilet facilities within the Richmond town centre or other works such as landscaping and beautification to the Richmond business and commercial centre.

**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 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.
- (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

In accordance with condition 23 of the Notice of Determination for Development Application DA 0537/08, the developer will make a cash contribution to Hawkesbury City Council in the amount of \$50,000 in lieu of providing parking spaces not provided on site as a result of the development prior to the issue of the Occupation Certificate for the works approved by Development Consent DA0537/08. The contribution of \$50,000 is to be used by Hawkesbury City Council for improvements to the existing public toilet facilities or for the embellishment or beautification of community infrastructure (landscaping and streetscaping) in the immediate proximity of the Richmond business and commercial centre.

## 6 Application of the Development Contributions

As per item 5 above.

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

Section 94 and Section 94A do not apply to the site in respect of any contributions for off-street carparking or public carparking purposes associated with this development.

## 8 Registration of this Agreement

The Agreement, if deemed necessary by Council, is to be registered as provided for in s93H of the Act.

## 9 Review of this Agreement

This Agreement can only be reviewed and varied by a resolution passed by Hawkesbury City Council, or in accordance with a delegated authority granted to the General Manager or the Director of Planning.

## 10 Dispute Resolution

### 10.1 No arbitration or court proceedings

If a dispute arises out of this planning agreement, a party must comply with this clause 10 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

## **10.2 Notification**

A party claiming a dispute has arisen must give the other parties to the dispute notice setting out details of the dispute.

## **10.3 Parties to resolve dispute**

During the 14 days after a notice is given under clause 10.2 (or longer period if the parties to the dispute agree in writing), each party to the dispute must use its reasonable efforts to resolve the dispute. If the parties cannot resolve the dispute within that period, they must refer the dispute to a mediator if one of them request.

## **10.4 Appointment of mediator**

If the parties to the dispute cannot agree on a mediator within seven days after a request under clause 10.3, the chairman of LEADR or the chairman's nominee will appoint a mediator.

## **10.5 Role of mediator**

The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a binding decision on a party to the dispute except if the party agrees in writing.

## **10.6 Confidentiality**

Any information or documents disclosed by a party under this clause 10:

- (a) Must be kept confidential; and
- (b) May only be used to attempt to resolve the dispute whether by mutual agreement, mediation, arbitration or litigation.

## **10.7 Costs**

Each party to a dispute must pay its own costs of complying with this clause 10. The parties to the dispute must equally pay the costs of any mediator.

## **10.8 Termination of process**

A party to a dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 10.1 to 10.3. Clauses 10.6 to 10.7 survive termination of the dispute resolution process.

## **10.9 Breach of this clause**

If a party to a dispute breaches clauses 10.1 to 10.8, the other parties to the Dispute do not have to comply with those clauses in relation to the Dispute.

# **11 Enforcement**

To enable the Development Application to become operable, the Developer shall pay to Council an amount of \$50,000 to permit the approval by the Principal Certifying Authority of the Construction Certificate.

## 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) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

<b>Council:</b>	<b>Hawkesbury City Council</b>
Attention:	General Manager
Address:	366 George Street, Windsor
Fax Number:	(02) 4560-4400
Email:	council@hawkesbury.nsw.gov.au
<b>Developer</b>	<b>Alchemy Holdings Pty Ltd</b>
Attention:	John Budin
Address:	Unit 5, 20-24 Hudson Ave, Castle Hill
Email:	johnbudin@persainvestments.com.au

12.2 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.

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, 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.

12.4 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.

### 13 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.

### 14 Assignment and Dealings

There are no restrictions on the Developer's dealings in the land to which the Agreement applies.

### 15 Costs

Each party would bear its own costs associated with the negotiating, preparing, executing, stamping and registering the 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 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 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.

## 21 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.

## 22 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.

## 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

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.

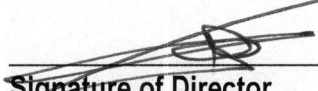
**Execution**

**Dated:**

**Executed as an Agreement:**

**Executed by Alchemy Holding Pty Ltd**

**Executed by Hawkesbury City Council**

  
\_\_\_\_\_  
**Signature of Director**

  
\_\_\_\_\_  
**Signature of authorised officer**

RAYMOND SHANIDA  
\_\_\_\_\_  
**Name of Director**

PETER JACKSON  
\_\_\_\_\_  
**Name of authorised officer**