

# **Environmental Planning and Assessment Regulation 2000 (Clause 25E) Explanatory Note**

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

## **1. Parties**

LITHGOW CITY COUNCIL (Planning Authority)

INTOUCH SYSTEMS & RESEARCH PTY LTD (Developer)

## **2. Description of Subject Land**

Lot 402 DP 1155154, Tweed Road, Lithgow NSW 2790

## **3. Description of the Development Application**

DA174/12 for a subdivision of 1 allotment into 3 allotments.

## **4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

### **Objectives**

To provide a material benefit to be used for or applies towards a public purpose.

### **Nature of the Planning Agreement**

The developer shall pay a contribution of \$3000 plus GST per allotments created for the purpose of public community facilities in the Lithgow Local Government Area.

### **Effect of the Planning Agreement**

The effect of the Planning Agreement will be to allow for the provision of public community facilities within the local community.

## **5. Assessment of the Merits of the Draft Planning Agreement**

- The proposed development is for the establishment of a subdivision of 1 allotment into 3 allotments for residential pursuits.
- In the assessment of the merits of the development Council must consider the social impacts of the proposal in the immediate locality and on the wider community, and ensure through whichever means are available that facilities are provided which will address the matter.

**6. Promotion of Council’s Charter**

Council has a vision for the Lithgow area to be recognised as a desirable place to live and visit and a viable place in which to invest. The provision public community facilities will assist in promoting this vision.

**7. Planning purpose**

- In compliance with the Environmental and Planning Assessment Act and Regulations.
- In compliance with the public interest of the development, being to provide facilities which may be of benefit towards a public purpose.
- To enhance the positive social impact of the development on the locality.

**8. Capital Works Program**

Once funds from the Planning Agreement have been collected Council begins planning for their expenditure through incorporation into the capital works program.

As agreed this day:.....

Intouch Systems & Research Pty Ltd:.....

Lithgow City Council:.....

# **PLANNING AGREEMENT**

## **Parties**

LITHGOW CITY COUNCIL of 180 Mort Street, Lithgow, New South Wales  
(Council)

and

IN TOUCH SYSTEMS & RESEARCH PTY LTD of PO Box 4, Newport Beach, New South  
Wales  
(Developer)

## **Background**

- A. On, 10 October 2012, the Developer made a Development Application (DA174/12) to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Community 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**

This Agreement applies to DA174/12 for a subdivision of 1 allotment into 3 allotments on land known as Lot 402 DP1155154, Tweed Road, Lithgow NSW 2790.

### **3 Operation of this Agreement**

This Agreement takes effect on the date of execution. All contributions must be paid prior to the release of the Subdivision Certificate for the Development.

## 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 a subdivision of 1 allotment into 3 allotments.

**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 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 402 DP 1155154, known as Tweed Road, Lithgow NSW 2790.

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

**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**

5.1 The Developer shall pay to Council an amount of \$3000 plus GST per allotment created for the provisions of community facilities in the Lithgow Local Government Area.

## **6 Application of the Development Contributions**

6.1 Payments or provisions of material public benefits must be paid prior to the release of the Subdivision Certificate.

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

Sections 94 and 94A do not otherwise apply to the Development.

## **8 Registration of this Agreement**

This agreement will not be registered as provided for in 93H of the Act as its provisions are to be finalised prior to the release of the Subdivision Certificate.

## **9 Review of this Agreement**

This Agreement shall not be reviewed except with the approval of both parties.

## **10 Dispute Resolution**

Should a dispute arise as part of this agreement that cannot be resolved between the parties then the parties may engage an independent mediator to be funded by the parties to assist in resolving the dispute. If the dispute is not resolved by mediation then before either party has recourse to litigation, the party must submit the dispute to expert appraisal. If the parties do not agree upon an independent expert, either may request the Secretary General of the Australian Commercial Disputes Centre to nominate an expert.

## **11 Enforcement**

If this agreement is not honored prior to any request for the release of the Subdivision Certificate then the parties agree that enforcement shall mean the Subdivision Certificate will not be released.

## **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.

**Council**

Attention: Andrew Muir  
Address: 180 Mort Street, Lithgow NSW 2790  
Fax Number: 02 63572927  
Email: acm@lithgow.nsw.gov.au

**Developer**

Attention: In touch Systems & Research Pty Ltd  
Address: PO Box 4, Newport Beach, NSW 2106  
Fax Number: -  
Email: -

- 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**

The parties agree that this Agreement shall not be assigned to any other party. Should the Developer intend to sell, transfer or otherwise dispose of the Land the subject of the Agreement then the Developer hereby agree to honour the terms of the Agreement prior to such sale, transfer or disposition.

#### **15 Costs**

Any incidental costs associated with this Agreement shall be borne by the Developer.

#### **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:**

Signed by **Lithgow City Council**

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Signature of Group Manager Environment & Development Department

Name: Andrew Muir

Signed by **Intouch Systems & Research Pty Ltd**

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Signature of Director

Name: \_\_\_\_\_  
*(Please Print)*