

Planning Agreement

City of Parramatta Council

and

SOHO (Parramatta) Pty Limited

Lord Mayor
A Wilson

Kilham

G Salupur

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Planning Agreement

Date

Parties

City of Parramatta Council (formerly Parramatta City Council)
of 126 Church Street, Parramatta NSW 2150 (**Council**)

SOHO (Parramatta) Pty Limited (ACN 168 017 409)
of L2/66 Wentworth Avenue, Surry Hills NSW 2100 (**Developer**)

Recitals

- A. The Parramatta Local Environmental Plan (2011) applies to the Land.
- B. The **Developer** is the registered proprietor of the Land.
- C. The **Developer** wishes to carry out development on the Land and intends to lodge a Development Application.
- D. The **Developer** has lodged with Council a Planning proposal requesting an instrument change by way of an amendment to the Parramatta Local Environmental Plan 2011.
- E. Gateway determination was given on 17 June 2016, and amended on 15 August 2016 and 29 November 2016.
- F. The **Developer** agrees to make the Monetary Contribution.
- G. The **Developer** and the Council agree to enter into this **Deed**.

The parties agree, in consideration of, among other things, the mutual promises contained in this Deed as follows:

1. Planning Agreement under the Act

The parties agree that this Deed is a Planning Agreement governed by subdivisions 2 and 4 of Division 7.1 of Part 4 of the Act.

2. Application of Section 7.11, 7.12 and 7.24 of the Act to the Development

- 2.1 This Deed does not exclude the application of Section 7.11, 7.12 and 7.24 of the Act to the Development.

3. Scope and application of this Deed

This Deed binds the parties and applies to the Land.

4. Operation of this Deed

- 4.1 This Deed takes effect on execution of this Deed.
- 4.2 Until this Deed operates, this Deed constitutes an offer by the Developer to enter into this Deed in connection with the Instrument Change.
- 4.3 This Deed only operates if each of the following has occurred:
- (a) the Instrument Change has been made and has commenced; and
 - (b) the Developer and the Council have signed this Deed.
- 4.4 This Deed will remain in force until:
- (a) it is terminated by operation of law; or
 - (b) all obligations are performed or satisfied.

5. Developer's warranties as to capacity

- 5.1 In addition to and despite all other warranties, express or implied, in this Deed, the Developer warrants and covenants that:
- (a) it is empowered to enter into this Deed and to do all things that will be required by this Deed;
 - (b) all things have been done or will be done as may be necessary to render this Deed legally enforceable in accordance with its terms and fully valid and binding on it; and

all authorisations by any Governmental Agency (whether in Australia or not) that are required or will be required in connection with the execution and delivery of, the performance of obligations under or the validity or enforceability of, this Deed have been obtained or effected and are or will be fully operative.

6. Definitions and interpretation

6.1 Definitions

In this Deed, the following definitions apply:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW) (as amended) and includes any regulations made under that Act.
Approval	means any certificate, licence, consent, permit, approval or other requirement of any Authority or any variation to them having jurisdiction in connection with the activities contemplated by this Deed.
Authority	means any government, semi-government statutory or administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.
Caveat	means the caveat form annexed at Annexure A.
Council's Representative	means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this Deed.
CPI	means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.
Developer	means the entity described in Item 1 of Schedule 1.
Development	has the same meaning as in the Act.
Development Application	has the same meaning as in the Act.
Development Consent	has the same meaning as in the Act.
Gateway determination	means the determination by a delegate of the Greater Sydney Commission of 17 June 2016 in relation to the Land as amended on 15 August 2016 and 29 November 2016.

GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Instrument Change	(a) means an amendment to the Parramatta Local Environmental Plan 2011 substantially in accordance with the Planning Proposal which amends the planning controls applicable to the Land as set out in Item 4 of Schedule 1.
LPI	means Land and Property Information New South Wales.
Land	means the land identified in Item 3 of Schedule 1, comprising the land the subject of the Planning Proposal.
Law	means: <ul style="list-style-type: none"> (a) Any law applicable including the common law and principles of equity, legislation, ordinances, regulations, by-laws and other subordinate legislation; and (b) Any Approval, including any condition or requirement under it.
Loss	means any loss, claim, action, liability, damage, demands, cost, charge, which Council, its employees, officers, agents, contractors and workmen sustains, pays, suffers or incurs or is liable for arising from the performance by the Developer of any obligation under this Deed, including (but not limited to) reasonable legal and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts reasonably paid in settlement of any claim or action.
Occupation Certificate	means an interim or final occupation certificate and has the same meaning as in the Act.
Party	means a party to this Deed, and includes their successors and assigns.

Planning proposal means the planning proposal (Council reference No. RZ/22/2014/) reference no. PP_2016_PARRA_006_00 which was granted Gateway Determination on 17 June 2016 and described in Item 4 of Schedule 1.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

6.2 Interpretation

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

- (a) headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) a reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) a reference in this Deed to dollars means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (d) a reference in this Deed 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.
- (e) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (f) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) references to the word 'include' or 'including' are to be construed without limitation.
- (h) reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (i) Any schedules and attachments form part of this Deed.
- (j) A word defined in the Act has the same meaning in this Deed.

7. Contributions to be made under this Deed

7.1 Monetary Contribution

- (a) The Developer will pay to Council a monetary contribution of \$266,580 or an amount calculated in accordance with the following formula, whichever is the greater:

		The CPI at the time of payment
\$266,580	x	
		<hr/> The CPI at the date of this agreement

- (b) The monetary contribution must be paid to Council prior to the issue of the first Occupation Certificate for the Development on the Land which is made permissible by the Instrument Change.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council for community infrastructure within the Parramatta CBD.
- (f) Despite clause 7.1(e), the Council may apply the monetary contribution made under this Deed towards another public purpose if the Council reasonably considers that it would be in the public interest to do so

8. Registration of this Deed

8.1 Registration of Deed

The Developer must promptly:

- (a) obtain any necessary consents to the registration of this Deed on the title to the Land;
- (b) lodge the Deed for registration with the LPI;
- (c) promptly comply with any requisitions that may be raised with regard to registration of the Deed from the LPI;
- (d) produce to the Council within 35 days of execution of this Deed, details of lodgement of this Deed with the LPI; and
- (e) following registration of this Deed, notify the Council of registration, enclosing a title search of the Land confirming the registration.

8.2 Removal of Deed

Provided the Council is satisfied the Developer has duly fulfilled its obligations under this Deed and is not otherwise in default of any of the obligations under this Deed the Council will promptly execute any form and supply such other information and do any thing as reasonably required by the Developer to enable the removal of this Deed from the title of the common property comprised within any Strata Plan registered over the Land.

9. Caveat

9.1 Caveat

Without limiting any other provision of this Deed, by entering into this Deed:

- (a) the Developer agrees that the Council has and will continue to have a caveatable interest in the Land under this Deed until such time as the Council notifies the Developer in writing under clause 7(d) that it has received the Monetary Contribution;
- (b) the Developer consents to the Council lodging and maintaining the Caveat over the Land upon this Deed taking effect; and
- (c) the Council shall provide to the Developer a withdrawal of the Caveat within 7 days after the Council issues notice to the Developer under clause 7(d).

10. Dispute Resolution

10.1 Reference to dispute

If a dispute arises between the parties in relation to this Deed, then either party may seek to resolve in accordance with this clause 10 provided that nothing in this clause prevents either party from seeking urgent interlocutory relief in relation to a breach of this Deed.

10.2 Notice of dispute

The party wishing to commence dispute resolution processes must notify the other of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve latter than by way of this clause 10;
- (b) the intent to involve this clause 10;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;

The contents of a notice issued under the clause 10.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

10.3 Principals of parties to meet

The principals of the parties (and in the case of the Council, the principal may include the person acting in the role of General Manager as defined in the Local Government Act, or such person as is nominated by that officer in writing) must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion, or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 10.3; and
- (b) the parties have been unable to reach an outcome identified in clause 10.2(a) to 10.2(c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 10.3;

then that party may, by 14 day's notice to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 10 does not of itself amount to a breach of the Deed.

11. Notices

11.1 Service of Notice

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed 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 in Item 5 of Schedule 1;
or
- (b) faxed to that Party at its fax number set out in Item 5 of Schedule 1.

11.2 Change of address

If a Party gives the other Party 10 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.

11.3 Time of service of Notice

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, two 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.

11.4 Service after hours, on weekends and holidays

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 5.00 pm 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.

12. Approvals and consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, a party may give or withhold an Approval or consent to be given under this Deed 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 consent or for giving consent subject to conditions.

13. Variation of Deed

The parties may agree to vary the terms of this Deed. Any such variation shall be evidenced by a written variation executed by the Parties and must comply with the provisions of Section 93G of the *Environmental Planning and Assessment Act 1979*.

14. Costs

14.1 Legal and administrative costs

- (a) The Developer must pay the Council's legal and administration costs with respect to the negotiation, preparation and execution of this Deed.
- (b) The Developer must pay on demand all legal costs (assessed on an indemnity basis) and out of pocket disbursements incurred by the Council of and incidental to:
 - (i) the giving effect to this Deed; and
 - (ii) any enforcement of the rights under this Deed.

14.2 Stamp duty

The Developer is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it.

15. Entire Deed

This Deed 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 Deed was executed, except as permitted by law.

16. 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 Deed and all transactions incidental to it.

17. Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

18. Joint and several liability

Any Deed, covenant, representation or warranty under this Deed by two or more persons binds them jointly and each of them individually.

19. No fetter

Nothing in this Deed will be construed as limiting or fettering in any way the exercise by Council of any statutory discretion or duty.

20. Representations and warranties

The Parties represent and warrant that they have power to enter into this Deed and that entry into this Deed will not result in the breach of any law.

21. Severability

If a clause or part of a clause of this Deed 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 Deed, but the remainder of this Deed is not affected.

22. Modification

Subject to clause 13 of this Deed no modification of this Deed will be of any force or effect unless it is in writing and signed by the parties to this Deed.

23. Waiver

A waiver by either Party is only effective if it is given in writing, and that waiver will only relate to the particular obligation or breach (as the case may be) identified in that communication.

24. GST

- 24.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the 'GST Act').
- 24.2 If a party to this Deed (the 'Supplier') makes a supply under or in connection with this Deed and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- 24.3 If this Deed requires a party to pay for, or reimburse any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- 24.4 If a party to this Deed has the benefit of an indemnity for a cost, expense, loss or outgoing (indemnified cost) under this Deed, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- 24.5 Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Deed.
- 24.6 Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Deed are GST exclusive.

25. Counterparts

- 25.1 This Deed may be executed in any number of counterparts.
- 25.2 All counterparts taken together will be taken to constitute one Deed.

26. Assignment and Transfer

- 26.1 Unless the matters specified in clause 26.2 are satisfied, the Developer must not do any of the following:
- (a) transfer or assign the Land to any person, or
 - (b) assign, transfer dispose or novate to any person the Developer's rights or obligations under this Deed.

26.2 The matters required to be satisfied for the purposes of clause 26.1 are as follows:

- (a) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated, of an Deed in favour of the Council on terms satisfactory to the Council acting reasonable;
- (b) the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Deed;
- (c) the Developer is not in breach of this Deed; and
- (d) the Council otherwise consents to the transfer, assignment or novation in writing.

26.3 Any purported dealing in breach of this clause 26.2 is of no effect.

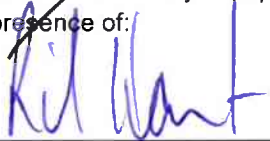
Schedule 1 Reference Schedule

Item 1	Developer's Details	<p>Developer's Name: SOHO (Parramatta) Pty Limited</p> <p>Developer's ACN: 168 017 409</p> <p>Developer's Address: L2/66 Wentworth Avenue, Surry Hills NSW 2010</p>
Item 2	Council's Representative	<p>Interim General Manager</p> <p>Telephone: 9806 5050</p> <p>Facsimile: 9806 5917</p> <p>Email: council@parracity.nsw.gov.au</p>
Item 3	Land	Lot 1 in DP 623527
Item 4	Planning Proposal	<p>Amendment to Parramatta Local Environmental Plan 2011 as follows:</p> <ul style="list-style-type: none"> to increase the maximum floor space ratio (FSR) from 4:1 to 8:1 and add site specific controls.
Item 5	Notices	<p>Council</p> <p>Council Name: City of Parramatta Council Address: 126 Church St Parramatta NSW 2150 Attention: Interim General Manager</p> <p>Telephone: 9806 5050</p> <p>Facsimile: 9806 5917</p> <p>Email: council@parracity.nsw.gov.au</p> <p>Developer</p> <p>Developer Name: SOHO (Parramatta) Pty Limited</p> <p>Address: L2/66 Wentworth Ave, Surry Hills NSW 2010</p> <p>Attention: Aras Labutis</p> <p>Telephone: (02) 8316 9100</p> <p>Facsimile: [Insert details]</p> <p>Email: AL@coronation.com.au</p>

Signing page

Executed as an Deed

Executed for and on behalf of **City of Parramatta Council** by its representative in the presence of:



Signature of ~~witness~~ **Roland Ian Kim Hart**
Acting CEO

~~Full name of witness (print)~~

~~Address of witness (print)~~

The Common Seal of the
CITY OF PARRAMATTA COUNCIL
was hereunto affixed on this _____
day of _____
pursuant to a resolution of
CITY OF PARRAMATTA COUNCIL
passed at its meeting held on
17 December 2018



Signature of representative **Andrew Wilson**
Lord Mayor

~~Full name of representative (print)~~

Executed by **SOHO (Parramatta) Pty Limited ACN 168 017 409** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director



JOSEPH NAHAS
Full name (print)



Signature of Director/Company Secretary

GEORGE SAHYOUN
Full name (print)