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planning • environment • local government

## **Alan Staunton Oval Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Wagga Wagga City Council  
ASMP Holdings Pty Ltd**

Dated:

**lindsaytaylorlawyers**

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**ABN 15 695 894 345**

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## **Alan Staunton Oval Planning Agreement**

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**Alan Staunton Oval Planning Agreement**  
**Wagga Wagga City Council**  
**ASMP Holdings Pty Ltd**

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## **Alan Staunton Oval Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Wagga Wagga City Council  
**Address:** PO Box 20, WAGGA WAGGA NSW 2650  
**Telephone:** 02 6926 9210  
**Facsimile:** 02 6926 9199  
**Email:** [Richardson.Craig@wagga.nsw.gov.au](mailto:Richardson.Craig@wagga.nsw.gov.au)  
**Representative:** Craig Richardson

#### **Developer:**

**Name:** ASMP Holdings Pty Ltd  
**Address:** 57 Berry Street, WAGGA WAGGA NSW 2650  
**Telephone:** 02 6921 7957  
**Facsimile:** 02 6921 1523  
**Email:** [greg@profinance.com.au](mailto:greg@profinance.com.au)  
**Representative:** Greg De Bruyn

#### **Land:**

Lot 1 in DP 578010  
Lot 2 in DP 525919

#### **Development:**

Residential development of the Land.

#### **Development Contributions:**

Cash contribution of \$500,000 (exclusive of GST).



**Application of s94, s94A and s94EF of the Act:**

Section 94 and 94EF of the Act continue to apply. Section 94A does not apply.

**Enforcement:**

See clauses 9 and 10.

**Registration:**

No – See clause 11.

**Restriction on dealings:**

See clause 12.

**Dispute Resolution:**

Mediation – See clause 13.



## Alan Staunton Oval Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

### Parties

**Wagga Wagga City Council** ABN 56 044 159 537 of PO Box 20, Wagga Wagga  
NSW 2650 (**Council**)

and

**ASMP Holdings Pty Ltd** ABN 43 114 094 549 of 57 Berry Street, Wagga Wagga  
NSW 2650 (**Developer**)

### Background

- A The Developer is the owner of the Land.
- B The Developer has sought the Instrument Change to enable the carrying out the Development.
- C The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.
- D Until the Planning Agreement operates, this Agreement constitutes the offer by the Developer to make Development Contributions in connection with the Instrument Change on the terms and conditions set out in this Agreement.

### Operative provisions

#### Part 1 - Preliminary

##### 1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

**Agreement** includes any schedules, annexures and appendices to this Agreement.



**Development** means the residential development of the Land facilitated by the rezoning of the Land to Residential 3(R3) effected by the Instrument Change.

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

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, a public purpose.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as 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.

**Instrument Change** means the making of the LEP.

**Land** means Lot 1 in DP 578010 and Lot 2 in DP 525919.

**LEP** means the *Wagga Wagga Principal Local Environmental Plan 2008* if that instrument has the effect of zoning the Land as *Zone R3 – Medium Density Residential* within the meaning of the *Standard Instrument – Principal Local Environmental Plan* made by the *Standard Instrument (Local Environmental Plans) Order 2006*, or another local environmental plan which has that effect

**Monetary Contribution** means \$500,000 (exclusive of GST).

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

**Planning Agreement** means the provisions of this Agreement under which the Developer is required to make Development Contributions, and includes any provisions that are incidental or supplementary to those provisions.

**Provision** means the Developer's provision under this Agreement.

**Public Facility** means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

**Public Purpose** means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in s93F(2) of the Act.

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

**Wagga Wagga Exhibition Centre** means Lot 7, 8, 9 and 10 in DP 259053 at 124-156 Copland Street, EAST WAGGA WAGGA NSW 2650.

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

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.2.2 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.



- 1.2.3 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.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 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.
- 1.2.6 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 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.
- 1.2.10 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.
- 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.13 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.
- 1.2.14 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.15 Notes appearing in this Agreement are operative provisions of this Agreement.

## **2 Application of this Agreement**

- 2.1 This Agreement applies to the Instrument Change.

## **3 Status of this Agreement**

- 3.1 The Developer irrevocably offers to enter into the Planning Agreement.
- 3.2 However, the Planning Agreement operates only if the LEP is made.





- 3.3 The provisions of this Agreement other than the Planning Agreement operate with full force and effect on and from the date this Agreement is entered into by all of the Parties.

**Note:** The provisions that operate on and from the date this Agreement is entered into include (but are not limited to) those relating to the sale of the Land or the assignment of a Party's interest under this Agreement. This note forms part of the operative provisions of this Agreement.

- 3.4 This Agreement ceases to have effect immediately upon a determination by the Minister not to make the LEP

#### **4 Further Agreements Relating to this Agreement**

- 4.1 The Developer may, at any time, enter into such other agreements with the Council relating to the subject-matter of this Agreement as the Council considers necessary or desirable in order to give effect to this Agreement.
- 4.2 An agreement referred to in clause 4.1 is not to be inconsistent with this Agreement. In particular, such an agreement may not alter the amount of the Monetary Contribution, or the Public Purpose for which it is to be provided.

#### **5 Application of s94, s94A and s94EF of the Act to the Development**

- 5.1 Section 94 and 94EF of the Act continue to apply to the Development.
- 5.2 Section 94A of the Act does not apply to the Development.

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

- 6.1 Subject to this Agreement, the Council is to apply the Monetary Contribution towards the Public Purpose for which it is made, and otherwise in accordance with this Agreement.

### **Part 2 – Monetary Contribution**

#### **7 Requirement to Pay Monetary Contribution**

- 7.1 The Developer is to pay to the Council the Monetary Contribution upon the gazettal of the LEP or immediately before the making of a Development Application to carry out the Development, whichever occurs first.
- 7.2 If this Agreement was not entered into on the day on which the Monetary Contribution is required to be paid under clause 7.1, the Developer is to make the Monetary Contribution immediately upon the entering into of this Agreement.



- 7.3 The Parties acknowledge and agree that clauses 7.1 and 7.2 satisfy s93F(3)(g) of the Act.
- 7.4 Subject to clauses 3.4 and 7.5, the Council is to hold and apply the Monetary Contribution for the provision of facilities for junior rugby league at the Wagga Wagga Exhibition Centre.
- 7.5 The Council is to repay the Monetary Contribution or an amount equal to the Monetary Contribution to the Developer within 7 days of this Agreement ceasing to have effect as provided for in clause 3.4.

## **8 Procedures relating to payment of Monetary Contribution**

- 8.1 The Monetary Contribution is made for the purposes of this agreement when the Council receives the full amount of the Monetary Contribution in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 8.2 The Developer is to give the Council not less than 2 business days written notice of its intention to pay the Monetary Contribution.
- 8.3 The Developer is not required to pay the Monetary Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 8.2, has given to the Developer a tax invoice for the amount of the contribution that the Developer intends to pay.
- 8.4 The Developer is not in breach of this Agreement if it fails to pay a Monetary Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.

## **Part 3 – Other Provisions**

### **9 Precondition for lodgement of Development Application**

- 9.1 Without limiting any other rights of the Council to enforce this Agreement, the Developer is not to lodge a Development Application to carry out the Development, or cause, suffer or permit any other person to lodge a Development Application to carry out the Development, unless the Developer has fully complied with all its obligations under this Agreement.

### **10 Enforcement**

- 10.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by the Parties in any court of competent jurisdiction.
- 10.2 For the avoidance of doubt, nothing in this Agreement prevents:
  - 10.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates, or



- 10.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## **11 No Registration of this Agreement**

- 11.1 The Parties agree not to register this Agreement under s93H of the Act.

## **12 Assignment, Sale of Land, etc.**

- 12.1 Unless the matters specified in clause 12.2 are satisfied, the Developer is not to do any of the following:
- 12.1.1 if the Developer is the owner of the Land, to transfer the Land to any person, or
  - 12.1.2 assign or novate to any person the Developer's rights or obligations under this Agreement.
- 12.2 The matters required to be satisfied for the purposes of clause 12.1 are as follows:
- 12.2.1 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 Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
  - 12.2.2 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 Agreement, and
  - 12.2.3 the Developer is not in breach of this Agreement.
- 12.3 Clauses 12.1 and 12.2 do not apply after the Developer has paid the Monetary Contribution.

## **13 Dispute Resolution - Mediation**

- 13.1 This clause applies to any dispute under this Agreement.
- 13.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 13.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 13.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal



rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

## **14 Notices**

- 14.1 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:
- 14.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 14.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 14.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 14.2 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.
- 14.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 14.3.1 delivered, when it is left at the relevant address,
  - 14.3.2 sent by post, 2 business days after it is posted, or
  - 14.3.3 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.
- 14.4 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.

## **15 Approvals and Consent**

- 15.1 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.
- 15.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **16 Costs**

- 16.1 The Developer is to pay to the Council its costs of preparing, negotiating and executing this Agreement up to a maximum of \$3,000 (excluding GST) within 28 days of a written demand by the Council for that payment.



## **17 Entire Agreement**

- 17.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 17.2 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.

## **18 Further Acts**

- 18.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

## **19 Governing Law and Jurisdiction**

- 19.1 This Agreement is governed by the law of New South Wales.
- 19.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 19.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **20 Joint and Individual Liability and Benefits**

- 20.1 Except as otherwise set out in this Agreement:
- 20.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
- 20.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **21 No Fetter**

- 21.1 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.

## **22 Representations and Warranties**

- 22.1 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.



## 23 Severability

- 23.1 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.
- 23.2 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.

## 24 Modification

- 24.1 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.

## 25 Waiver

- 25.1 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.
- 25.2 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.
- 25.3 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.

## 26 GST

- 26.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 26.2 Subject to clause 26.1, 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.



- 26.3 Clause 26.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 26.4 No additional amount shall be payable by the Council under clause 26.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 26.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 26.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 26.5.2 that any amounts payable by the Parties in accordance with clause 26.2 (as limited by clause 26.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 26.6 No payment of any amount pursuant to this clause 26, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note, as the case may be, to the recipient.
- 26.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 26.8 This clause continues to apply after expiration or termination of this Agreement.

## **27 Explanatory Note Relating to this Agreement**

- 27.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 27.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Agreement.



## Execution

Executed as an Agreement

Dated: 2.9.10

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Executed by the Council:

General Manager

Clare Lee

Witness/Name/Position: EA to GM

ASMP HOLDINGS PTY LTD.

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Executed by the Developer in accordance with s127 of the Corporations Act 2001  
(Cth): NEIL HARNER

Director/Name:

Company Secretary/Name:

GREG DE BRUYN.





## **Appendix**

(Clause 27)

## **Explanatory Note**

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Draft Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

## **Parties**

**Wagga Wagga City Council** ABN 56 044 159 537 of PO Box 20 Wagga Wagga NSW  
2650 (Council)

and

**ASMP Holdings Pty Ltd** ABN 43 114 094 549 of 57 Berry Street Wagga Wagga NSW  
2650 (Developer)

## **Description of the Land to which the Draft Planning Agreement Applies**

Lot 1 in DP 578010 and Lot 2 in DP 525919.

## **Description of Proposed Development**

The residential development of the Land.



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

### **Objectives of Draft Planning Agreement**

The objective of the Draft Planning Agreement is to ensure the continued availability of facilities for junior rugby league in Wagga Wagga.

### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council and the Developer pursuant to which the Developer agrees to make a monetary Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for the public purpose of junior rugby league facilities at the Wagga Wagga Exhibition Centre.

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

The Draft Planning Agreement:

- relates to the rezoning of the Land,
- does not exclude the application of s 94, s94A and s94EF of the Act to the Development,
- requires a monetary Development Contribution towards the junior rugby league facilities at the Wagga Wagga Exhibition Centre,
- requires the Council to apply the monetary Development Contribution made under the agreement towards the specified purpose for which it was made,
- requires the Developer make the monetary Development Contribution prior to lodging a development application, or causing, suffering or permitting a development application to be lodged, to carry out residential development on the Land,
- is not to be registered on the title to the Land,
- provides a dispute resolution methods for a dispute under the agreement, being mediation, and
- provides that the agreement is governed by the law of New South Wales.

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

### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the agreement applies,
- compensates for the loss of open space for junior rugby league resulting from the Development by providing for contributions towards the development of junior rugby league facilities on another site, and



- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

### **How the Draft Planning Agreement Promotes the Public Interest**

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii)-(v) and 5(c) of the Act.

#### **For Planning Authorities:**

##### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

##### ***Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted***

N/A

##### ***Councils - How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing services and facilities for the community,
- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community, and
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

##### ***All Planning Authorities - Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

Does conform.

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