

# **Heads of Agreement**

General Heads of Agreement

Date: 19 November 2015



**Knightsbridge North Lawyers**

Level 15, 9 Castlereagh Street  
SYDNEY NSW 2000  
PO Box 1537  
North Sydney NSW 2059  
Phone: +612 8011 1347  
Fax: +612 9012 0325

[admin@knightsbridgenorthlawyers.com](mailto:admin@knightsbridgenorthlawyers.com)

THIS HEADS OF AGREEMENT dated 18 November 2015

**PARTIES:**

- 1 SOLSTICE PROPERTY CORPORATION PTY LTD ABN# 99 149 904 987  
of 82 Ellesmere Road Gympie Bay NSW 2227 ("Purchaser")

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OF THE FIRST PART

AND

2. THE AWABAKAL ABORIGINAL LAND COUNCIL ABN # 19 759 066 759  
of 127 Maitland Road ISLINGTON 2296 ("Vendor")

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OF THE SECOND PART

AND

3. GOWS HEAT PTY LTD ABN # 96 121 653 254 of Level 5, 44 Miller  
Street, North Sydney NSW 2060 ("Gows")

OF THE THIRD PART

**Recitals**

- A. The parties have agreed to enter into a contract, the particulars of which are contained in this Heads of Agreement.
- B. These Heads of Agreement will be the prevailing contract unless and until the options granted herein are exercised and the standard form contracts have been exchanged.
- C. The Vendor had entered into an agreement with Gows on 15 December 2014 granting an option(s) to Gows for the purchase by Gows of certain identified parcels of land, namely Lot 7393 DP1164604 and Lot 101 DP 1180001 in Lake Macquarie Council area for the market value ('the subject properties') as determined by a valuer agreed to by the parties.
- D. Gows and the Purchaser have agreed that Gows surrender and release its option to purchase the aforesaid properties by agreement of even date and by this agreement further rescind the agreement of 15 December 2014 between Gows and the Vendor.
- E. The Vendor hereby seeks to grant to the Purchaser and the Purchaser accepts an option to purchase Lot 7393 DP1164604 and an option to purchase Lot 101 DP 1180001 in Lake Macquarie Council area on the terms as provided by this agreement.

## Terms

### I HEADS OF AGREEMENT

These Heads of Agreement of the sale of the properties identified in schedule 1 constitutes an agreement between the parties. This document subject to law is a binding contract, and is intended to be superseded by the contracts substantially similar in the standard form NSW Real Estate Institute contracts which will be complete on the conclusion of the re-zoning process undertaken by the Purchaser.

### II TERMS OF CONTRACT

#### 1 DEFINITIONS & INTERPRETATION

##### 1.1 Definitions

In this Agreement, unless otherwise indicated by the context:

- (a) Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the state in which the subject matter of this agreement is to be performed Sydney;
- (b) Business Hours means from 9.00 am to 5.00 pm on a Business Day;
- (c) Force Majeure Event means any:
  - (i) act of God;
  - (ii) outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority;
  - (iii) industrial dispute;
  - (iv) restraint; or
  - (v) other event which is not within the reasonable control of the parties;
- (d) Person includes a natural person, body corporate, partnership, joint venture, association or other incorporated or unincorporated legal entity;
- (e) Ineffective means void, illegal or unenforceable;

##### 1.2 Interpretation

In this Agreement, unless otherwise indicated by the context:

- (a) the singular includes the plural and vice versa; words importing a gender include the other genders;
- (b) other grammatical forms of defined words or phrases have corresponding meanings;
- (c) use of a term denoting subject matter which comprises more than one part or aspect includes a reference to each or any part or aspect of the subject matter;
- (d) a reference to a clause, part of a clause, schedule or annexure is a reference to that clause, part of a clause, schedule or annexure to this document and a reference to this document includes its schedules and any annexures;
- (e) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form;



- (f) the word 'person' includes an individual, a firm, body corporate, unincorporated association, incorporated association or a Public Authority;
- (g) where a party comprises two or more persons an agreement or obligation binding that party binds those persons jointly and severally;
- (h) a reference to a party who is body corporate is a reference to that party acting within its legal capacity and includes that party's successors and assigns;
- (i) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (j) a reference to 'dollar', '\$', '\$A', '\$A\$'; or 'AUD' is a reference to Australian currency; and
- (k) a reference to a specific time for the performance of an obligation is a reference to that time in the state or territory where the obligation is to be performed;
- (l) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under, the legislation;
- (m) a reference to a body,
  - (i) whether statutory or not;
    - (A) which ceases to exist; or
    - (B) whose powers or functions are transferred to another body
  - (ii) is a reference to the body which replaces it or which substantially takes over its powers or functions.

## 2 TERMS

2.1 On the condition precedent that the Purchaser pays Gows such amounts as provided for in the agreement between Gows and the Purchaser of even date attached hereto as schedule B, Gows and the Vendor hereby rescind the agreement entered into between them on 15 December 2014 attached hereto as schedule C granting an option to Gows for the purchase by Gows of Lot 7393 DP1164604 and Lot 101 DP 1180001.

2.2 In consideration of the sum of \$1.00 (receipt of which is hereby acknowledged), the Vendor hereby grants to the Purchaser and the Purchaser hereby accepts, for a period of 36 months from the execution of this agreement, the option of purchasing the properties known as Lot 7393 DP1164604 and Lot 101 DP 1180001 in Lake Macquarie Council area from the Vendor for the price, namely the sum of \$4,000,000.00 (Four million dollars).

2.3 In consideration of the agreement by the Vendor to extend the option period the Purchaser will, on or before 1 November 2018, pay to the Vendor the sum of \$50,000.00 (Fifty thousand dollars) to extend the option period to 60 months from the execution of this agreement.

2.4 The option may be exercised by the Purchaser by the delivery to the offices of Knightsbridge North Lawyers at Level 15, 9 Castlereagh Street Sydney of:-

- (a) if required a written notice of nomination executed by the Purchaser,
- (b) a written notice of exercise of option executed by the Purchaser or its nominee,
- (c) the contracts executed by the Purchaser or its nominee.

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(d) an unendorsed bank cheque for the deposit under the contracts payable to the stakeholder nominated in the contracts.

2.5 Upon the exercise of the option in accordance with the terms of this document, the Vendor will be bound to sell, and the Purchaser (or its nominee) will be bound to purchase the properties on the terms and conditions set out in the contracts. Within 5 Business Days of receipt of the items set out in clause 2.4 the Vendor must deliver to the Purchaser counterpart contracts executed by the Vendor.

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2.6 During the option period the Purchaser is granted such rights, access and authority to the properties as is necessary and convenient for the purpose of surveying the properties and making such environmental, ecological, engineering, drainage and other investigations for the purposes of any rezoning, development and/or construction certificate applications relating to the properties to be made to the local Council and any other competent authority. If requested by the Purchaser the Vendor will consent to all applications, give all information and sign all documents reasonably required by the Purchaser to enable any rezoning, development and/or construction certificate applications relating to the properties to be made to the local Council and any other competent authority.

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2.7 The Purchaser may give to the Vendor written notice either before the exercise of the option or contemporaneously with the exercise of the option that it elects the contracts will be entered by the nominee named in that notice and the Vendor will proceed and enter the contracts with such nominee in accordance with the terms of this document.

Deleted: Where the Purchaser exercises either or both options for the purchase of the property(ies), the parties will exchange contracts in schedule A for the option to purchase so exercised

### 3 GENERAL PROVISIONS

#### 3.1 Counterparts

- (a) This Agreement may be executed in any number of counterparts and may be executed and exchanged electronically.
- (b) Each counterpart exchanged will be an original and all counterparts together will constitute one and the same instrument.
- (c) The date of the Agreement will be the date on which it is executed by the last party.

#### 4 Force majeure

No party shall be considered in default under this Deed as long as its failure to perform any of its obligations is occasioned solely by fire, labour disturbance, acts of civil or military authorities, acts of God, terrorism or any similar cause beyond such party's reasonable control.

##### 4.1 Further assurance

Each party will from time to time do all things necessary or desirable to give full effect to this Agreement, including executing further documents including appointing each other as power of attorney to do such acts and execute such documents as is necessary and convenient to effecting the objective of this agreement.

##### 4.2 Governing law and jurisdiction

This Agreement is governed by the laws of New South Wales. Each party irrevocably submits to the jurisdiction of the courts of New South Wales.



#### 4.3 Notices

A notice by one party to another must be in writing and:

- (a) delivered personally;
- (b) sent by registered mail to the address of the addressee specified in this Agreement; or
- (c) sent by facsimile transmission to the facsimile number of the addressee.

A party may change its address for service by giving notice of that change in writing to the other parties.

#### 4.4 Service of notices

- (a) For the purpose of the notice under this clause, a party's address is the address specified at the commencement of this Agreement or as notified to each other party.
- (b) A notice may be served by:
  - (i) giving it to a party personally,
  - (ii) by posting it by registered post or
  - (iii) by faxing it.
  - (iv) When a Notice is Received by Post
    - (A) If the notice is posted by registered post it is deemed to be received by the receiving party two Business Days after posting.
  - (v) When a Notice is Received by Fax
    - (A) If the notice is faxed it is deemed to be received by the receiving party when the completed transmission report is received, unless:
    - (B) the sending party's machine indicates a malfunction in transmission, or the receiving party within a reasonable time (and in any event no longer than two Business Days) informs the sending party of an incomplete transmission; or
    - (C) the transmission is completed outside Business Hours at the receiver's address in which case the notice is regarded as received at the commencement of business on the following Business Day in that place.

#### 4.5 Severability

If a clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

#### 4.6 Survival & merger

- (b) The terms of this Agreement survive its termination to the extent permitted by law.
- (c) Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against it.

#### 4.7 Variation

A variation or waiver of a provision of this Agreement will be ineffective unless it is:

- (d) in writing and;
- (e) executed by the parties.

**4.8 Waiver**

- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) The exercise of a power or right does not preclude:
  - (i) its future exercise; or
  - (ii) the exercise of any other power or right.

**4.9 Warranties and representations**

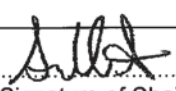
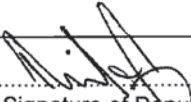
- (h) Each party warrants that they have not relied on any prior oral or written warranty or representation in relation to the subject matter of this Agreement.
- (i) Each party relies on its own enquiries in relation to all matters relevant to the subject matter of this Agreement.

**4.10 Whole agreement**

This Agreement constitutes the whole Agreement between the parties and supersedes all oral and written communications between them.

**Execution**

<b>EXECUTED</b> for and on behalf of <b>GOWS HEAT PTY LTD ABN # 96 121 653 254</b> by in accordance with and by those with authority to so act		
..... Signature of Director		..... Signature of Director/Secretary
..... Name of Director		..... Name of Director/Secretary

<b>EXECUTED</b> for and on behalf of the <b>AWABAKAL ABORIGINAL LAND COUNCIL ABN # 19 759 066 759</b> in accordance with and by those with authority to so act.		
 ..... Signature of Chairperson	 ..... Signature of Deputy Chairperson	
<u>Debbie Dater</u> ..... Name of Chairperson	<u>RICHARD GREEN</u> ..... Name of Deputy Chairperson	

<b>EXECUTED</b> for and on behalf of <b>SOLSTICE PROPERTY CORPORATION PTY LTD ABN# 99 149 904 987</b> by in accordance with and by those with authority to so act		
..... Signature of Director	..... Signature of Director/Secretary	
..... Name of Director	..... Name of Director/Secretary	