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Our Ref: AM:BW:21269
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9 August 2011

The Secretary
The Owners - Strata Plan No. 50785
c/- Strata Title Management
PO Box 2727
TAREN POINT NSW 2229

By email: nhowell@stratatitle.com.au

Dear Nina

RE: DEED OF LICENCE WITH SUTHERLAND SHIRE COUNCIL

Thank you for providing us with instructions to review a proposed deed of licence between the owners corporation and Sutherland Shire Council.

1. Your Instructions

The council wishes to install on the roof of Cote d'Azur an aerial and other equipment associated with a CCTV security camera network to be installed in the Cronulla area. The council has provided you with a proposed deed of licence for equipment ("**licence agreement**") to secure its right to install its equipment on the roof and you have asked us to review and make recommendations in relation to the licence agreement.

2. Our Approach

In this letter we will initially provide you with an overview of the basic features of the licence agreement. We will then review the amendments we have made to the agreement and make recommendations to you.

3. Overview of the Licence Agreement

Licensor

Owners Corporation

Licencee

Sutherland Shire Council

Liability limited by a scheme approved under Professional Standards Legislation

Licenced Premises

The common property (presumably on the roof of Cote d'Azur) detailed in a scope of works document attached to the licence agreement ("**site**").

Permitted Use

The council may occupy and use the site for the purpose of installing, operating and maintaining equipment referred to in the scope of works document.

Equipment

Council will be permitted to install on the site (and elsewhere with the owners corporation's prior written approval) equipment associated with the CCTV security camera network to be installed in the Cronulla area. Based on a previous version of the licence agreement this will include:

- an anemometer fixed to a mast of no more than three metres in height;
- associated recording and transmitting devices; and
- associated cables, wires and conduits.

Licence Term

Five (5) years. The commencement date is to be agreed.

Option to Renew

The council will get two options to renew the licence agreement each of (presumably) five (5) years. This will presumably give the council the right to maintain its equipment at Cote d'Azur for up to fifteen (15) years (we say "presumably" because the length of each option term is not stated in the licence agreement but usually each option term would run for the same period as the initial term).

Licence Fee

$6,000.00 per annum plus GST.

Review of Licence Fee

The licence fee will be increase annually by 5%.

Payment of Licence Fee

Annually in advance on the commencement date and each annual anniversary of the commencement date.

Outgoings

The council will need to pay any service and utility charges in connection with its equipment and install separate meters for this purpose.

Access Rights

The council will be able to access Cote d'Azur, and the site, at any time provided reasonable prior written notice is given to the owners corporation.

Installation of Equipment

Any equipment installed on Cote d'Azur by the council prior to commencement of the licence will be taken to have been accepted by the owners corporation. The council will need to obtain the owners corporation's approval to install any further equipment (which approval the owners corporation will not be able to unreasonably withhold).

Indemnity and Insurance

The council will need to indemnify the owners corporation in relation to any claims which are made against it as a result of the council's use of the site or its equipment accept for any claims that arise out of any wilful or negligent act or omission of the owners corporation. The council will also need to take out public liability insurance.

Security

The council will be able to take security or safety precautions and erect signs on the site with the prior consent of the owners corporation.

Access to Site

The owners corporation will not be able to access the site without being accompanied by an authorised council officer except in an emergency.

Nuisance and Disturbance

The council will not be able to do anything on the site which may cause a nuisance or danger to the owners corporation.

Termination

The owners corporation will be able to terminate the licence agreement if the licence fee remains unpaid for fourteen (14) days after a written demand for payment, or the council breaches its obligations under the licence agreement and does not remedy the breach within fourteen (14) days of being given a rectification notice by the owners corporation. The licence agreement is able to be terminated by either party by giving six (6) months notice in writing to the other party at any time. Once the licence agreement is terminated, the council will need to remove all of its equipment from Cote d'Azur and make good any consequential damage.

4. Amendments to Licence Agreement

We have made a number of amendments to the licence agreement to better protect the interests of the owners corporation. The amendments are marked up in the ***attached*** version of the licence agreement for ease of reference. The most significant amendments we have made are as follows:

Access to Cote d'Azur

The council will need to obtain a key from the owners corporation facilitating access to Cote d'Azur after which the council will be responsible for gaining access to the site without the assistance of the owners corporation.

Equipment

The owners corporation will be able to refuse to allow the council to install any further equipment where the further equipment is not for the sole purpose of operating and maintaining the original equipment installed by the council that is specified in the scope of works document attached to the licence agreement.

Performance of Works

When the council installs any equipment it will need to ensure that:

- it obtains all necessary approvals for the work before commencing the work;
- the work is carried out in a proper and workmanlike manner by licenced contractors who use suitable materials;
- the work has an appearance which is in keeping with the rest of Cote d'Azur and any cables are concealed from view from outside the building so far as possible (unless the owners corporation permits otherwise);
- the work is completed within a reasonable period;
- the work complies with the Building Code of Australia and any applicable Australian Standards;
- the work causes no more than minimal disturbance to residents;
- building materials and equipment are transported in accordance with the owners corporation's reasonable directions;
- the building is protected from damage during the work and is kept clean, neat and tidy;
- any damage to the building caused by the work is made good;
- any equipment is properly maintained and kept in good repair; and
- any work done complies with all applicable laws.

Maintenance of Site

The council will need to ensure that the site is kept clean, neat and tidy at all times.

Electromagnetic Emissions

The owners corporation will be entitled to request that the council provide an audit to certify that the electromagnetic radiation emitted from its equipment complies with all appropriate Australian Standards.

Interference

If the council's equipment causes radiofrequency interference with any equipment of the owners corporation or any resident, the owners corporation will be able to notify the council of the problem and the council will need to remedy the problem. If there is any dispute over the cause of the

interference, the parties are able to refer the matter to the Australian Communications and Media Authority for determination by a third party expert.

Limits of Licence

The council will acknowledge that the licence agreement does not cover any lot in your strata scheme and that if the council needs to acquire any rights over a lot, for example, to access a lot or install equipment on a lot, it will need to negotiate directly with the lot owner.

Breach of Licence

If the council breaches the licence agreement, and fails to rectify the breach after service of a rectification notice by the owners corporation, the owners corporation will be able to rectify the breach and recover the costs it incurs doing so from the council.

5. Comments about the Licence Agreement

The owners corporation needs to be absolutely certain about:

- the location in which the council will install its equipment, and
- the equipment the council will install under the licence agreement

The site on which the council will install its equipment is defined in the licence agreement by reference to a scope of works document *which we have not cited.* We recommend that the site be defined by reference to a plan which accurately shows the boundaries of the site, both vertical and horizontal, so that the owners corporation is absolutely certain about the location in which the council will install its equipment.

The equipment which the council will install is defined in the licence agreement by reference to the scope of works document which, again, *we have not cited.* You should carefully consider the scope of works document and ensure that each and every piece of equipment the council intends to install is listed on it. If there are any vague references to "associated" or "ancillary" equipment you should get the council to specify precisely what it means by these vague expressions. We also recommend that you have the council provide you with a diagram or drawing depicting the equipment it will install, and its location, for attachment to the licence agreement.

The licence agreement will give the council two (2) options to renew the agreement. We assume the length of each option will be the same as the term of the original licence agreement, namely five (5) years. However, this should be confirmed with the council and item 8 of the schedule at the end of the licence agreement should be amended to reflect this.

The licence fee will increase by 5% per annum. There is no provision for a market review of the licence fee. If the council decides to exercise both options to renew the licence agreement, the arrangement with the council could run for up to 15 years (or possibly more if the length of each option period is longer than five (5) years). The owners corporation should therefore make sure that the initial licence fee of $6,000 per annum represents a fair market value and that the 5% annual increase in the licence fee is satisfactory.

The owners corporation should ensure that council will be able to gain access to Cote d'Azur without its assistance to install and work on its equipment at any time. If the council is unable to access the site without your assistance this will place an additional administrative burden upon you which may be undesirable.

Finally, the licence agreement says that the owners corporation is taken to have agreed to any equipment installed by the council at Cote d'Azur on the commencement date of the licence. You should therefore ensure that you are completely satisfied with any equipment that had been installed at the time you sign the licence agreement and which will be installed between the date you sign the agreement and the date of commencement of the licence (if the two dates will differ).

Motion to Approve Licence Agreement

If the licence agreement is satisfactory, it will need to be approved by the owners corporation passing a special resolution at a general meeting. A special resolution will be required because sections 65A & B of the *Strata Schemes Management Act 1996* permit the owners corporation to allow an owner to erect new structures on the common property or to licence the use of part of the common property to an owner, only if a special resolution is first passed at a general meeting which authorises the particular action proposed. It is fair to assume that the requirements for the owners corporation to allow a third party, such as the council, to install equipment on the common property and have a licence to use part of the common property will be equal to if not more onerous than those found in section 65A & B. Even though this has never been tested in court, the owners corporation may need to pass a by-law to give itself power to licence the use of part of the common property to the council, and if you are at all concerned about the owners corporation's power to enter the licence agreement, then you should let us know so that we are able to prepare a suitable empowering by-law.

Conclusion

We recommend that you submit the licence agreement, as amended by us, to the council for its consideration. If you require us to negotiate the terms of the licence agreement with the council, please do not hesitate to let us know.

Once the terms of the licence agreement have been finalised, you should convene a general meeting for the purpose of approving the licence agreement. You should not sign the licence agreement until it has been approved at a general meeting.

We now ***enclose*** our memorandum of fees and thank you for providing us with your instructions.

Yours faithfully

J.S. MUELLER & CO

Encl.