

NSWHEALTH

**HUNTER AND NEW ENGLAND
AREA HEALTH SERVICE**

**NEWCASTLE COMMUNITY HEALTH
CENTRE PROJECT**

CONTRACT SUMMARY

NOVEMBER 2005

1. INTRODUCTION

This report has been prepared by the NSW Department of Health and the Hunter New England Area Health Service (HNEH) in accordance with the Premier's Memorandum No. 2000-11 Disclosure of Information on Government Contracts with the Private Sector. It provides a summary of key features of the Development Agreement (the Agreement) and related documents dated 6 September 2005 which have been entered into for the delivery of the Newcastle Community Health Centre Project (the Project).

Project Description

The Project involves the development of the Newcastle Community Health Centre (NCHC) on land owned by the Health Administration Corporation (HAC) in the CBD of Newcastle.

The Project includes:

- the sale of the CBD site from HAC to the successful proponent.
- the design, development, finance, construction and operation of the Building on the site.
- the lease of the "leased area" of the Building (approximately 4,770 m² or 43%) to HAC for occupation by HNEH as its Community Health Centre.
- the delivery of fit out of the Leased Area to the requirements of HAC.

Of the 5 storey development, the Lease Area comprises part of the ground floor (Level 1), all of level 2 and most of level 3 of the Building, and includes 90 car parking spaces.

The balance of the floor space in the Building will be available for use or lease by the private sector proponent.

Background

The Newcastle Community Health Centre concept has been developed in consultation with the local community, business groups and the Newcastle City Council.

The Centre will be open 7 days a week. The general operating hours will be from 7:30am to 11pm weekdays and 7:30am to 8pm weekends. Some services will be provided on specified days.

The Centre will accommodate a number of services currently provided from the Royal Newcastle Hospital, the East Newcastle Community Health Centre, and the Parry Street Mental Health Centre. In addition, a number of new services will be delivered from the Centre.

Community health services continue to be provided by HNEH under current arrangement. The services to be delivered from the Centre include:

Existing services to be transferred:

- Sexual Health Service
- Diabetic Education and Clinic Service
- Allied Health Services – outpatient speech pathology & dietetics
- Allied Health & Therapy Services
- Post-acute Community Care Team
- Community Stroke Team
- Adult community mental health team
- Dental Clinic
- Methadone Unit & Needle Exchange
- Community Nursing (including specialist roles)
- Counselling & Social Work
- Drug & Alcohol
- Spinal Cord Unit

New services:

- After hours GP Medical Service
- Pathology
- Community rehabilitation & therapy programs
- Health promotion programs
- Imaging
- Health Promotion/Health Resource Centre
- Cross-disciplinary outpatient clinics/programs

2. PARTICIPANTS IN THE PROJECT

The public sector party to the Development Agreement is HAC. Whilst HNEH is not a party to the Agreement, it is the key stakeholder in the Project. HNEH is to occupy the Newcastle Community Health Centre once the construction and fit out are complete. NSW Treasury was the approval agency and provided advice on private sector participation in this Project from project development through the procurement process to contract execution.

The private sector party to the Development Agreement is 670 Hunter St Development Management Pty Ltd (ACN 109 446 924), a special purpose trust company which is wholly owned by Austcorp Development Management Pty Limited (ACN 067 145 500). Austcorp Development Management Pty Limited is wholly owned by the successful proponent, Austcorp Group Limited (ACN 011 042 318).

The Development Agreement contemplates that Austcorp's contractual obligations as follows:

- Abigroup Contractors Pty Ltd (ABN 40 000 201 516) as the Builder who will carry out the construction of the Building.
- Austcorp will lease the "Leased Area" to HAC.

Austcorp's financier for this project is ING Bank (Australia) Limited (ABN 24 000 893 292).

Additionally, HAC has entered into a "Fit Out Works Agreement" with 670 Hunter St Development Management Pty Ltd to deliver the tenancy fitout as a linked arrangement.

Rider Hunt Technology (NSW & ACT) Pty Ltd (ABN 78 068 445 116) was the Independent Certifier for this Project.

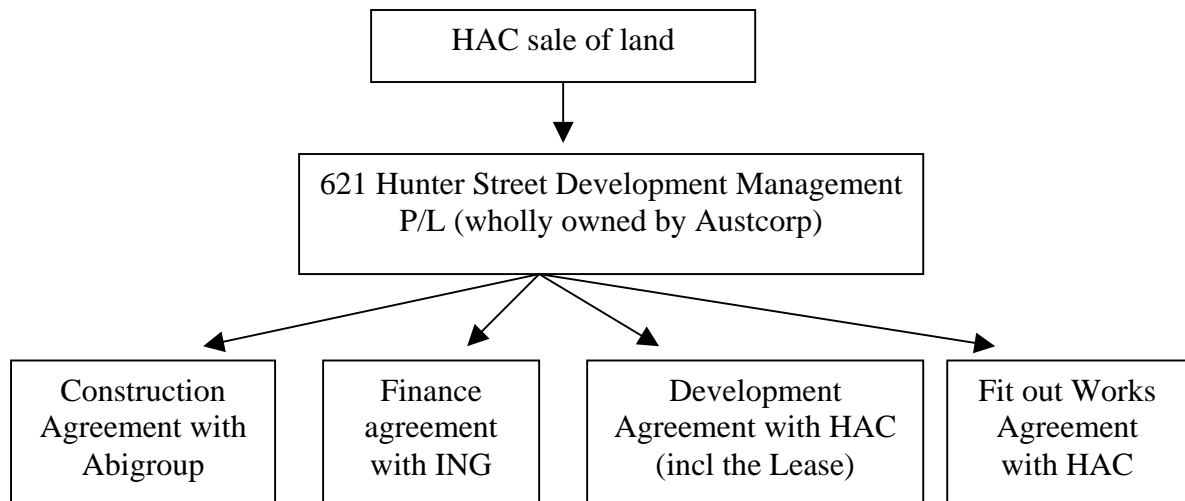
Sparke Helmore was the Legal Adviser acting on behalf of HAC. Bovis Lend Lease was appointed as the Project Manager for this Project.

NSW Department of Commerce provided advice in the rental assessment of the Project.

A Probity Auditor was appointed to oversee the tender and evaluation process. Additionally the involvement of the Probity Auditor was available during negotiations on an as needs basis. However, as the final documentation is consistent with the Call for Detailed Proposals and the Austcorp response, this was not required.

3. CONTRACT DOCUMENTATION SUMMARY

The contractual structure is summarised as follows:



Based on the recommendation by NSW Health to proceed with executing contracts, Treasury granted approval in early September 2005. The executed agreement to lease is consistent with the terms at the time of announcement of the preferred proponent. Contract execution and financial close was achieved on 6 September 2005. The documentation executed by HAC includes:

- Development Agreement
- Lease Agreement
- C21 Fitout Construction Contract
- Contract for Sale of Land
- Independent Certifier Deed
- Project Agreement Tie In Deed
- Deed of Guarantee with Austcorp Group Ltd
- Deed of Guarantee with 670 Hunter Street Pty Ltd

The terms of the Development Agreement were approved by NSW Health and NSW Treasury, prior to the Call for Detailed Proposals. The finalisation of the Development Agreement and related documents was in line with the terms of the Call for Detailed Proposals. The terms of Austcorp's tender bid including lease rental and terms in the response to the Call for Detailed Proposals have been unchanged and are reflected in the executed documentation.

The Project team negotiated all the documentation with the assistance of the solicitors, Sparke Helmore, acting on behalf of HAC. The risks to HAC are considered minimal and are consistent with that approved under the Call for Detailed Proposals and the offer of the Preferred Proponent. In summary, Austcorp is to bear full design and construction risks, operational risk, revenue risk (rental incomes from other tenancies for the remaining Part of the Building), and the residual value risk.

March 2007 is the expected Building completion date at which time the Lease will commence. The Development Agreement includes standard provisions for extensions of time.

HAC has no interest in the Building at expiry of the lease term and has no responsibility to finance or repay any debt required by Austcorp to undertake their responsibilities under the documentation.

Key features and terms of the contracts are summarised as follows.

Contract for Sale of Land

- This agreement deals with the sale of land by HAC to Austcorp's special purpose development entity, 670 Hunter St Pty Ltd.
- The contract provisions act such that title for the land is not transferred to the development/ownership entity until the commencement date of the Lease with HAC on completion of the Building construction. This is to secure HAC position should there be a default during construction. This principle is also consistent with the terms of the HAC agreement with Honeysuckle Development Authority who sold the land to HAC.
- The price required to be paid by Austcorp is specified in the Call for Detailed Proposals and this contract is \$3 million based on the market value for this site.

Development Agreement

- This is the major document defining the relationship between HAC and the developer and the project to be delivered. The draft Agreement was a key attachment to the Call for Detailed Proposals.
- This Agreement is effective from 6 September 2005 to the Completion of the Building ie the Commencement Date of the Lease.
- The substantive terms of this agreement are consistent with those approved and issued in the Call for Detailed Proposals. There were some minor amendments, in

particular the design, which varied aspects including the central core, disabled access and electricity substation location. However, these are considered acceptable to HAC and in most cases represent an improvement.

- The overall design intent and requirements of users remains consistent with that approved by HAC.
- The construction and development risk remains with Austcorp.
- The Building must comply with a 4.5 Energy Star Rating.

Lease Agreement

- The Lease governs the ongoing relationship between HAC and the property owner during the term. The Lease commences on completion of the building. The Commencement Date means 2 business days after the date of the notice served by the Independent Certifier that the Practical Completion of the Building has been achieved.
- The major lease terms are as follows:
 - Lease area: 4770 sq metres
 - Car spaces: 90
 - Rent (building): \$283 per sq metre net of outgoings
 - Rent (car spaces): \$2040 per annum
 - Rent review: 3.5% per annum fixed (no market review)
 - Lease term: 20 years from completion date (expected March 2007) (March 2007 – 2027)

 - Options: 5 years + 5 years (entirely at HAC's discretion)

The commencing net rent is \$1,533,510 in the first year. Additionally building outgoings are estimated at approximately \$256,200 in the first year. The Building will be fully maintained by Austcorp.

- These financial parameters, which are reflected in the lease, are the same as those in the proponent's bid and within the parameters previously approved by NSW Treasury as providing value for money within the public sector comparator and reviewed as reasonable by the Office of State Valuations.
- The lease is not cancellable over the lease term. However, HAC may terminate the Lease if the Premises are rendered unable to be occupied as a Community Health Centre.
- HAC, as the Lessee, has the right to assign, sublet, part with possession or deal with its interest in the Lease after the Lessor's prior consent to do so, which may not be unreasonably withheld or delayed.
- HAC must not undertake alterations without the lessor's consent.
- On or before expiry or termination of the Lease, HAC may remove the fittings and any alterations provided it makes good and restores any damage to the Premises caused by that removal.
- The Lessor must keep and maintain the Building in good. It warrants that the Building is, and will remain, fit for use and occupation for the Permitted Use.

Independent Certifier Deed

- This agreement governs the role of the Independent Certifier and their role in certifying various matters for the parties.
- From HAC's point of view the key certification is that of certifying practical completion allowing the transfer of the title in the land and triggering commencement of the lease.
- Each party to the Agreement will be able to seek determination of rulings by the Independent Certifier. This would be by the appointment of an Independent Arbitrator whose decision will be final in the event of a dispute.
- The other major role of the Independent Certifier will be the certification of the project during construction for the project financier and the developer.

C21 Fit-out Agreement

- This agreement is for the Hunter New England Health's fitout and is essentially a standard C21 contract approved by the Department of Commerce.
- There was a \$140,000 increase in the price of the fitout contract due to escalation that occurred over the time from the tender response and financial close. This has been reviewed by the Quantity Surveyor acting for HNEH and was determined to be appropriate.
- The total cost of the fitout in the C21 contract is \$3.74 million.

Project Agreement Tie In Deed

- Essentially this agreement deals with the inter-relationships between the parties under the various project agreements and financier securities. The principles of this agreement satisfactorily protect the interests of HAC.
- From HAC's position this Deed is important, as it requires the financier and its successors to comply with the terms of the project agreements to which they are not a direct party. This acts to protect HAC should a default arise during construction.
- Additionally should an insurance event arise during construction which damages the building, this agreement requires that the proceeds of insurance be applied to reinstatement of the building.

Deed of Guarantee

- There are two Guarantees that are being provided to HAC. The first from Austcorp Group Ltd which guarantees the land purchaser and lessors obligations. The second one is from 670 Hunter Street Pty Ltd guaranteeing the purchasers obligations under the Development Agreement and the C21 Construction Contract.
- These guarantees are required to protect HAC as the contracting parties are special purpose entities and the guarantees bind the principal entity, Austcorp Group Ltd, to the project obligations.

4. PAYMENT

Under the Sales of Contract, Austcorp must pay HAC \$3m for the acquisition of land.

Under the Lease Agreement and over the Lease term, HAC must pay:

- a) Lease payment of \$1,533,510 in the first year, which will be indexed by 3.5% per annum.
- b) Payment of Building outgoings which is estimated at \$256,200 in the first year of the Lease. Outgoings include the Lessee's proportion of the following expenses based on the proportion of net lettable Area to HAC compared with the whole of the net lettable area:
 - consumption charges for water and energy
 - statutory outgoings
 - insurance premiums relating to damage and destruction of the Building and public liability
 - the reasonable cost of supply, maintaining and repairing any service to the Common Areas of the Building
 - the reasonable cost of cleaning and disposal of refuse
 - the reasonable cost of pest and vermin control
 - the reasonable cost of managing and administering the Building
 - the reasonable cost of repairs and maintenance of the Building excluding the cost of any structural repairs and improvement which has the effect of upgrading the Building
 - the reasonable cost of security and fire protection services
 - the reasonable cost of planting, landscaping, buying, hiring and maintaining any indoor or outdoor gardens and
 - any other outgoings that are generally accepted to be outgoings payable or reimbursed to lessors by lessees for comparable buildings to the Building and such outgoings were of a kind not contemplated at the Lease Commencement Date.

Under the Fit-out Contract, HAC must pay AustCorp \$3,740,000 for the cost of Building fit-out.

5. SIGNIFICANT EVALUATION CRITERIA & WEIGHTINGS

The process of selecting Austcorp and awarding the Project was managed by Bovis Lend Lease as the Project Manager on behalf of HNEH and NSW Health. The tender and evaluation process was carried out having regard to the NSW Government Code of Practice for Procurement and the Working with Government Guidelines.

The Evaluation Committee assessment of the Call for Detailed Proposals the consortium of Austcorp Group Ltd (Austcorp) as principal and Abigroup Contractors Pty Ltd (Abigroup) as its building contractor was recommended as the Preferred Proponent. This was announced by the Minister for Health in January 2005.

The respondents to the Call for Detailed Proposals were evaluated under the following criteria. The criteria numbered 1 to 4 were weighted and agreed prior to the evaluation according to the following table.

The scoring of the criteria was additionally measured and assessed for value for money and affordability relative to the Public Sector Comparator¹ which was constructed by the financial adviser (KPMG).

PROJECT OBJECTIVE	EVALUATION CRITERIA	WEIGHTING
1. To complete the Project in accordance with the Key Dates.	Ability of the Respondent to complete the Project in accordance with the Key Dates.	30%
2. To provide the Building and the Leased Area for occupation by HNEH in a manner that satisfies the Project Requirements.	The extent to which the Building and the Leased Area satisfy the Project Requirements	20%
3. To achieve value for money for HAC and HNEH, in terms of occupancy costs under the Lease and the capital costs of the Fit Out.	The extent to which the financial proposal in the Response, being: <ul style="list-style-type: none"> • the proposed Lease rental and anticipated overall occupancy costs for the Lease Term; and • the capital cost of the Fit Out, achieve value for money for HAC and HNEH.	40%
4. To satisfy, where possible, HAC's preference for the provision of complementary occupants (health and welfare services and related organisations) in the Building.	The extent to which complementary occupancies are proposed or identified for the Building.	10%

¹ The Public Sector Comparator (PSC) is the hypothetical, risk-adjusted estimate of the cost of the most efficient, likely and achievable form of public sector conventional delivery and procurement. The PSC assumes HNEH would design and construct a purpose built Community Health Centre Building only.