

DATED

2013

PLANNING AGREEMENT

Burwood Council

ABN 84 362 114 428

Council

and

Strathfield Recreation Club Ltd

ACN 000 001 178

Developer

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PARTIES

Burwood Council ABN 84 362 114 428 of Suite 1, Level 2, 1-17 Elsie Street Burwood in the State of New South Wales (**Council**)

and

Strathfield Recreation Club Ltd ACN 000 001 178 of 4a Lyons Road, Strathfield in the State of New South Wales (**Developer**)

Background

- A. The Developer is the registered proprietor of the Land.
- B. The Developer intends to develop the Land.
- C. The Developer has sought a change to the Burwood Local Environment Plan 2012 to rezone part of the Land for mixed-use purposes. It is intended that a residential building be constructed on the rezoned land.
- D. This Agreement constitutes an agreement between the Developer and the Council that the Developer will make the Development Contribution on the terms and conditions of this Agreement.

Operative Provisions

1. Definitions and Interpretation

(a) Definitions

In this Agreement, the following definitions apply:

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

Application means an application for any Approval.

Approval means, if relevant, any approvals, consents, permits, endorsements, licences, conditions or requirements (and any modifications or variations of them) which may be required by Law for the Development, or for the commencement or carrying out of works contemplated by this Agreement.

Bank Guarantee means any irrevocable and unconditional undertaking by an Australian Bank, and on terms, acceptable to the Council to pay the face value of the undertaking on demand.

Bank Guarantee Amount means the amount reasonably required to carry out the Link Road Construction Works as agreed between the Council and the Developer, in accordance with the provisions of Schedule 7 including costs of subdivision and registration of the plan of subdivision for the Link Road Land, but does not include the value of the Link Road Land.

Bank Guarantee Delivery Date means a date not less than 5 Business Days prior to the issue of any Construction Certificate for any part of the Development.

BLEP Amendment means the amendment to the Burwood Local Environment Plan 2012 referred to in Schedule 1.

Business Day means any day except for Saturday or Sunday or a day that is a public holiday in Sydney.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law, in equity, under statute or otherwise, including (without limitation), any claim for compensation arising under or pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991*.

Commencement Date means the date upon which the operation of this Agreement commences in accordance with clause 4.

Construction Certificate means a construction certificate, as defined in the Act, issued for work that has been approved pursuant to a development consent for the Development.

Council means the Burwood Council.

Council's Legal Costs means legal costs as specified in Schedule 9.

Dedicate means the transfer of the rights, title and interest in the Link Road Land to the Council.

Defects Liability Period means a period of 12 months commencing at 4:00 pm on the Date of Practical Completion and such other period as provided for in paragraph 4 of Schedule 3.

Developer means Strathfield Recreation Club Ltd.

Development means the erection of a residential development and a new clubhouse for the Strathfield Sports Club on the Land.

Development Application has the same meaning as in the Act.

Development Consent means a development consent granted under the Act or a determination under the Act (as the case may be) in response to an application (or any amended application) lodged or to lodged under the Act necessary to carry out the Link Road Construction Works.

Development Contribution means the dedication of land and construction of road as specified in the Table of Schedule 3.

Development Contribution Schedule means the schedule or the Development Contribution set out in Schedule 3 of this Agreement.

Development Contribution Timetable means the timetable and milestones for each Development Contribution described in the table in Schedule 3 of this Agreement.

Dispute Resolution Procedures means the procedures imposed on the relevant Parties under Schedule 6.

Explanatory Note means the note exhibited with a copy of this Agreement, when this Agreement is made available for inspection by the public in accordance with the Act, as

contemplated by clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW)

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term 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.

Land means the land described in Schedule 2 of this Agreement.

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, or by-laws,

presently applying or as they may apply in the future.

Legislation means any statute, rule, ordinance, code, regulation, proclamation, or by-law.

Link Road Construction Works means the design and construction of a new through-road, to the Standards and Specifications, linking Lyons Street and Morwick Street in the general location of the Link Road Land.

Link Road Land means the area of the Land located between Lyons Street and Morwick Street (being 16.5 m wide and 91 m long subject to final survey for the purposes of the Subdivision Certificate) and depicted as that area of the Land identified as the Link Road Land in the plan attached to this Agreement at Annexure B.

Link Road Works Completion Date means the date by which the Link Road Construction Works are to be completed, being a date prior to the issuing of an Occupation Certificate for any part of the Development.

NSW means the State of New South Wales.

Occupation Certificate has the same meaning as in the Act (and includes either an interim or a final occupation certificate).

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

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Planning Agreement means the planning agreement that comes into operation upon satisfaction of the requirement set out in clause 4(b) of this Agreement, comprising the form and content of this Agreement.

Practical Completion means that stage in the execution of the Link Road Construction Works when:

- (a) the Council provides written acceptance that the Link Road Construction Works (including any associated works necessary for public access) have been completed in

accordance with the Council and/or Roads and Maritime Services approved plans and are ready for their intended public use and occupation, except for minor omissions and minor defects which:

- (i) do not impede the use of the Link Road Construction Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
 - (ii) will not prejudice the convenient and safe use of the Link Road Construction Works during any rectification; and
 - (iii) the Council determines that the Developer has reasonable grounds for not rectifying prior to public use and occupation,
- (b) any test necessary to be carried out and passed before the Link Road Construction Works, or part thereof, is used and occupied by the public have been carried out and passed and all test results and conformance data necessary have been provided to the Council;
- (c) all documents, certifications and information which, in the opinion of the Council, are essential for the use, operation and maintenance of the Link Road Construction Works have been supplied;
- (d) with the approval of the Council, the Developer has commissioned into operation the Link Road Construction Works, including all plant incorporated in the Link Road Construction Works and demonstrated to the Council that the commissioning has been successful;
- (e) the Developer has Dedicated the Link Road Land as public road in accordance with s9 of the *Roads Act 1993*;
- (f) there is no legal impediment to the use of the Link Road Construction Works by the public; and
- (g) all subcontractor warranties and guarantees have been provided.

Register means the Torrens Title register maintained under the *Real Property Act 1900* (NSW).

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

Release and Discharge Terms means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 4.

Review or Replacement Procedures means the procedures set out in Schedule 5.

Security Arrangement means those security arrangements set out in Schedule 7.

Standards and Specifications means the AUSTROADS road design standards and specifications as agreed between the Council and the Developer from time to time or arising under the Development Consent and Council's standards and specifications for civil works in the public domain.

Subdivision Certificate means a certificate issued under section 109C(1)(d) of the Act for the purpose of registering the plan of subdivision for the Link Road Land.

(b) Interpretation

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

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) 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, New South Wales;
- (c) 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;
- (d) a reference to a time of day means that time of day in the place whose laws govern the construction of this Agreement;
- (e) where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day;
- (f) a reference in this Agreement to "dollars" or "\$" means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (g) 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;
- (h) a reference in this Agreement to any document or Agreement is to that document or Agreement as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) 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;
- (l) a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to either gender also indicates the other gender;
- (m) a reference to the word "include" or "including" is to be interpreted without limitation; and
- (n) any schedules and attachments form part of this Agreement.

2. Planning Agreement under the Act

The Parties agree that this Agreement constitutes a planning agreement within the meaning of section 93F of the Act and is governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

This Agreement is made in respect of the Development and applies to the Land.

4. Operation of this Agreement

- (a) This Agreement further documents the offer made by the Developer by way of letter dated 13 December 2012 (attached at Annexure D) to the Council to enter into a Planning Agreement.
- (b) The Planning Agreement operates only if:
 - (i) the BLEP Amendment to which the Planning Agreement applies has been notified on the NSW legislation website after it has been made by the Minister (or a duly authorised representative) pursuant to s59 of the Act; and
 - (ii) the Planning Agreement is entered into as required by section 25C(1) of the Regulation; and
 - (iii) the parties have both executed the Agreement and an exchange of counterparts has occurred.
- (c) The parties must notify each other immediately after they execute this Agreement and promptly provide the other with the Agreement as executed by it.
- (d) Despite, sub-clause (b), upon execution of the Agreement by Council, the Developer will pay the Council's Legal Costs in accordance with Schedule 9 of this Agreement.

5. Commencement of the terms of this Agreement

This Agreement takes effect from the Commencement Date.

6. Development Contributions to be made under this Agreement

Upon the BLEP Amendment taking effect, the Developer will provide the Development Contribution in accordance with:

- (a) the Development Contribution Schedule in Schedule 3 of this Agreement;
- (b) the Development Contribution Timetable in Schedule 3 of this Agreement; and
- (c) the terms of this Agreement.

7. Amendment to the environmental planning instrument

The Council will use its reasonable endeavours to facilitate the BLEP Amendment.

8. Application of s 94 of the Act to the Development

- (a) The Link Road Construction Works and the value of the Link Road Land are to be credited against any development contribution in relation to the Development imposed under s 94, 94A or 94EF of the Act.

- (b) The parties acknowledge and agree that the credit referred to in the preceding paragraph is limited to such amount as would be payable having regard to the maximum floor space ratio and building height that exists for the B4 Mixed Use zone at the date of the BLEP Amendment.

9. Registration of this Agreement

(a) Land ownership

The Developer represents and warrants that, on the date of this Agreement, it is the legal and beneficial owner of the Land described in Schedule 2.

(b) Registration of the Planning Agreement

- (a) The Developer agrees to lodge the Planning Agreement for registration as soon as practicable and in any event no later than 15 Business Days after the date of this Agreement and to procure the registration of the Planning Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register as soon as practicable thereafter.
- (b) The Developer will provide the Council with a copy of the relevant folio of the registration within 10 Business Days of registration of this Agreement.

(c) Release and discharge of this Agreement

- (a) The Council agrees to release and discharge the Planning Agreement on the Release and Discharge Terms.
- (b) Once the Developer has complied with its obligations under the Agreement, the Council will implement the Security Arrangement in paragraph 6 of Schedule 7.

10. Security

The Developer has agreed to provide security to the Council for performance of the Developer's obligations under the Agreement on the terms and conditions of the Security Arrangement.

11. Review or replacement of this Agreement

The Parties agree that this Agreement will be reviewed or modified in the circumstances, and in accordance with the Review or Replacement Procedures.

12. Dispute Resolution

The Parties agree that any disputes under or in relation to this Agreement will be resolved in accordance with the Dispute Resolution Procedures in Schedule 6.

13. Enforcement

- (a) Once the Dispute Resolution Procedures have been exhausted, this Agreement may be enforced by a Party in a court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:

- (i) 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; and
- (ii) the Council in exercising any function under any Legislation, including 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.

14. GST

(a) Interpretation

- (a) Terms used in this clause that are not otherwise defined in this Agreement have the meanings given to them in the GST Law.
- (b) For the avoidance of doubt, where the GST payable on a supply under or in connection with this Agreement is the amount worked out in accordance with section 357–60(3) of Schedule 1 to the *Taxation Administration Act 1953*, this clause applies as if the GST payable on that supply is the amount worked out in accordance with that section.
- (c) If part of a supply is a separate supply under the GST Law (including for the purpose of attributing GST payable to tax periods), that part is a separate supply for the purposes of this clause.
- (d) Where the context requires, a reference to the Supplier, Recipient or Payee includes the representative member of a GST group of which the Supplier, Recipient or Payee respectively is a member.

(b) Recovery of GST on supplies and adjustments under this Agreement

- (a) All consideration provided under this Agreement is exclusive of GST, unless it is expressed to be GST-inclusive. Where a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this Agreement, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply. The additional amount must be paid by the Recipient at the later of:
 - (i) the date when any consideration for the taxable supply is first paid or provided; or
 - (ii) the date when the Supplier issues a tax invoice to the Recipient.
- (b) If an adjustment event varies the amount of GST payable by the Supplier in respect of a supply under this Agreement, the Supplier will adjust the amount payable by the Recipient to take account of the adjustment event. Any payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient within 10 business days of the Supplier becoming aware of the adjustment event. Any payment under this clause is deemed to be an increase or decrease (as appropriate) of the additional amount payable under clause (a). The Supplier will issue an adjustment note to the Recipient within 10 business days of becoming aware of the adjustment event.

(c) Other GST matters

- (a) Subject to an express provision in this Agreement to the contrary, any payment, amount, reimbursement or indemnity required to be made to a party (**Payee**) under this Agreement that is calculated by reference to a cost, expense, liability or other amount paid or payable by the Payee to a third party (**Expense**) will be calculated by reference to that Expense inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Expense. The Payee is assumed to be entitled to a full input tax credit on an Expense unless it demonstrates otherwise before the date the payment, amount, reimbursement or indemnity is required to be made.
- (b) This clause will survive the termination of this Agreement by any party.

15. Explanatory Note

The Explanatory Note must not be used to assist in construing the Planning Agreement.

16. Effect of Schedulised terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

17. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 10.

SCHEDULE 1: SECTION 93F REQUIREMENTS

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p>Planning instrument and/or development application - (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought to change an environmental planning instrument</p> <p>(b) made, or proposes to make, a development application</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraphs (a) or (b) applies</p>	<p>Yes</p> <p>No</p> <p>No</p>
Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))	The whole of the Land
Description of the change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b))	An amendment to the Burwood Local Environmental Plan 2012 rezoning to B4 Mixed Uses (with a maximum building height of 30m and a maximum floor space ratio of 3:1) that area of the Land that is to be re-zoned in the BLEP.
The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))	See Schedule 3
Applicability of section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded by this Agreement. In determining any development contribution payable under s94, clause 8 applies.
Applicability of section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded by this Agreement. In determining any development contribution payable under s94A, clause 8 applies. .
Applicability of section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded by this Agreement. In determining any development contribution payable under s94EF, clause 8 applies. .
Consideration of benefits under the Planning Agreement - (Section 93F(3)(e))	Yes
Mechanism for dispute resolution - (Section 93F(3)(f))	See clause 12 and Schedule 6

Enforcement of the Planning Agreement - (Section 93F(3)(g))	See clause 13 and Schedule 7
Registration of the Planning Agreement The Parties agree that the Planning Agreement will be registered in accordance with clause 9	Yes
No obligation to grant consent or exercise function - (Section 93F(9))	No obligation. See paragraph 13 of Schedule 10

SCHEDULE 2: LAND

The Land comprises the whole of the land described in the following table and depicted as that area of land that is marked with a black ink border and identified as the Land in the plan attached to this Agreement at Annexure B:

Lot	Deposited Plan	Registered Proprietor
11	555	Strathfield Recreation Club Ltd
12	555	Strathfield Recreation Club Ltd
13	555	Strathfield Recreation Club Ltd
14	555	Strathfield Recreation Club Ltd
15	555	Strathfield Recreation Club Ltd
16	555	Strathfield Recreation Club Ltd
17	555	Strathfield Recreation Club Ltd
18	555	Strathfield Recreation Club Ltd
29	555	Strathfield Recreation Club Ltd
30	555	Strathfield Recreation Club Ltd
31	555	Strathfield Recreation Club Ltd
32	555	Strathfield Recreation Club Ltd
33	555	Strathfield Recreation Club Ltd
34	555	Strathfield Recreation Club Ltd
35	555	Strathfield Recreation Club Ltd
36	555	Strathfield Recreation Club Ltd
37	555	Strathfield Recreation Club Ltd
1	958552	Strathfield Recreation Club Ltd
2	714755	Strathfield Recreation Club Ltd

SCHEDULE 3: DEVELOPMENT CONTRIBUTION SCHEDULE, PROCEDURE AND TIMETABLE

The Developer undertakes to make or provide the following Development Contribution as set out and provided for in the table below.

Table Development Contribution Schedule and Timetable

Column 1	Column 2	Column 3
Development Contribution	Intended use	Date for making the Development Contribution
<p>Item 1. Road dedication</p> <p>The dedication of the Link Road Land for the provision of a new public road through the current site of the Strathfield Sports Club, linking Lyons Street and Morwick Street</p>	Public amenities/public service - road	Link Road Land to be Dedicated pursuant to paragraph 1 of this schedule.
<p>Item 2. Road construction</p> <p>The design and construction of a new public road in the general location of the Link Road Land, linking Lyons Street and Morwick Street to the Agreed Standards and Specifications</p>	Public amenities/public service - road construction.	The Link Road Construction Works will be undertaken by the Developer pursuant to paragraph 2 of this schedule.

1. Road Contribution

1.1 Dedication of Link Road Land

- (a) The Developer acknowledges that the Development will require the creation and dedication of the Link Road.
- (b) As soon as reasonably practicable after obtaining a Construction Certificate, but not before the BLEP Amendment has taken effect, the Developer shall in accordance with this clause 1.1 procure the creation and dedication of the Link Road Land as public road pursuant to the *Roads Act 1993* and the *Real Property Act 1900* on the earlier of:
 - (i) three (3) years from the date of issue of a Construction Certificate; or
 - (ii) the date of issue of an Occupation Certificate for any part of the Development; or
 - (iii) the registration of the plan of subdivision in accordance with this paragraph 1.1 and the Development Consent.
- (c) The Developer as part of any application for development consent for the whole or any part of the Development or as part of any application for Development Consent must (at its own costs and risk) prepare a draft Plan of Subdivision to create a separate lot or lots for the Link Road Land. The Developer must comply with such requirements as Council (acting reasonably) may make when finalising the Plan of

Subdivision. At least 10 Business Days prior to the Date for Practical Completion, the Developer will apply for a Subdivision Certificate based upon the Plan of Subdivision, and Council will, subject to being satisfied of relevant matters under the Act issue the Subdivision Certificate.

- (d) Upon issue of the Subdivision Certificate the Developer will (at its own cost and risk) promptly register the Plan of Subdivision to create a separate lot or lots for the Link Road Land bearing a statement of the intention to Dedicate the Link Road Land as a public road.

1.2 Compulsory Acquisition

- (a) Subject to the this Agreement taking effect, if the Developer does not Dedicate the Link Road Land as required by this Agreement, the Developer consents to the Council compulsorily acquiring the whole or part of the Link Road Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Developer and the Council agree that:
 - (i) this paragraph 1.2 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this paragraph 1.2 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) Except as otherwise agreed between the Council, the Developer must ensure the Link Road Land is free of all encumbrances and affections (including any charge or liability for rates, taxes and charges), on the date that the Developer is liable to Dedicate the Link Road Land as public road in accordance with paragraph 1.2(a) of this schedule.
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or part of the Link Road Land under paragraph 1.2.
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all Council Legal Costs incurred by the Council acquiring the whole or part of the Link Road Land as contemplated by paragraph 1.2.
- (f) For the avoidance of doubt, if Council acquires the Link Road Land pursuant to this paragraph 1.2, the obligations of the Developer to carry out the Link Road Construction Works in accordance with this agreement continue.

2. Construction of Link Road

2.1 The Developer must at its risk and expense:

- (a) prepare all Applications and obtain all Approvals necessary to carry out the Link Road Construction Works in accordance with the Standards and Specifications;
- (b) comply with all conditions of all such Approvals when carrying out those works; and

- (c) carry out the Link Road Construction Works so as to achieve Practical Completion of the Link Road Construction Works by the Link Road Works Completion Date and rectify any defects in accordance with paragraph 4 of this Schedule.
- 2.2 If the Developer has not achieved Practical Completion of the Link Road Construction Works in accordance with paragraph 2.1(c) of this schedule, the Developer is deemed to be in default of this Agreement.
- 2.3 The Developer shall be liable for and shall promptly rectify any damage to the Link Road Construction Works caused by the construction of any part of the Development after the Date of Practical Completion.

3. Conduct of the Link Road Construction Works

The Developer must at its cost:

- (a) cause the Link Road Construction Works to be carried out:
 - (i) in a proper and workmanlike manner; and
 - (ii) in accordance with this Agreement and all Approvals relating to the Link Road Construction Works (including, without limitation, plans, drawings and specifications referred to in all such Approvals); and
 - (iii) in accordance with all applicable Laws; and
 - (iv) with all due expedition.
- (b) comply with all directions given by any relevant governmental agency (acting reasonably).

4. During the Defects Liability Period

- (a) As soon as practicable after the Date of Practical Completion the Developer shall rectify all defects existing at the Date of Practical Completion.
- (b) The Developer shall carry out rectification at times and in a manner causing as little inconvenience to the users of the Link Road Construction Works as possible.
- (c) During the Defects Liability Period, Council may give the Developer a direction to rectify a defect which:
 - (i) shall identify the defect and a reasonable period within which the completion of its rectification is to occur.
 - (ii) may state whether there shall be a separate Defects Liability Period therefore (not exceeding a 12 month period, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).
- (d) If the rectification is not commenced or completed within a reasonable time, the Council may, having first given notice to the Developer of its intention to do so but no sooner than 20 business days after giving the notice, have the rectification carried out by others but without prejudice to any other rights and remedies the Council may have. The cost thereby incurred shall be moneys due and payable to the Council.

5. Access by Council

The Developer shall, upon receiving a request from the Council, inform it of the status and progress of the Link Road Construction Works and, upon receipt of notice by Council to the Developer in accordance with Schedule 10, will, subject to site access requirements and constraints, permit access to Council representatives to inspect the Link Road Construction Works at such times as Council may reasonably request and in accordance with the conditions of the Development Consent.

6. Acknowledgment

The parties acknowledge that an area of approximately 2.5m wide for the length of Link Road will be located within the B4 zone and the remainder of the Link Road will be located within the RE2 zone. The Developer acknowledges that residential development is prohibited within the RE2 zone and as such land within that zone cannot be included in any site area calculation for the purposes of calculating FSR for any residential development within the B4 zone.

SCHEDULE 4: RELEASE AND DISCHARGE TERMS

1. Release and Discharge Terms

Once the Developer has:

- (a) Dedicated the Link Road Land as public road; and
- (b) achieved Practical Completion of the Link Road Construction Works; and
- (c) 28 days after the last of the Defects Liability Periods have expired and any bank guarantee has been released in accordance with paragraph 6 of Schedule 7,

all as required by this Agreement, and any default by the Developer under the Planning Agreement has been remedied by the Developer or waived by the Council, the Council must promptly, at the request and cost of the Developer:

- (i) provide a release and discharge (in immediately registrable form) of the Planning Agreement; and
- (ii) do all things necessary to enable the extinguishment of the Planning Agreement from title of the Land,

and the Council agrees to use reasonable endeavours to procure the outcomes referred to in paragraphs (i) and (ii) above as soon as practicable after, but not later than 10 Business Days after the request.

SCHEDULE 5: REVIEW OR REPLACEMENT PROCEDURES

The Parties may agree that: any modifications must be made pursuant to paragraph 17 of Schedule 10.

SCHEDULE 6: DISPUTE RESOLUTION

1. Notice of dispute and procedure

- (a) If a dispute arises from this Agreement, a Party must not commence court or arbitration proceedings relating to the dispute unless that party has participated in a mediation in accordance with paragraphs 1(b) and 1(c) of this schedule. This paragraph does not apply to an application for urgent interlocutory relief.
- (b) A Party claiming that a dispute has arisen from the Agreement (**the Dispute**) must give written notice specifying the nature of the Dispute (**the Notice**) to the other Party or Parties to the Agreement. The Parties must then participate in mediation in accordance with this clause.
- (c) If the Parties do not agree, within seven days of receipt of the Notice (or within a longer period agreed to in writing by them) on:
 - (i) the procedures to be adopted in a mediation of the Dispute; and
 - (ii) the timetable for all the steps in those procedures; and
 - (iii) the identity and fees of the mediator; then:
 - (iv) the President of The Law Society of New South Wales will appoint the mediator and determine the mediator's fees and determine the proportion of those fees to be paid by each party (to be in equal shares unless otherwise agreed by the parties);
 - (v) the Parties must mediate the Dispute:
 - A. with the mediator appointed under paragraph 1(c)(iv);
 - B. with a genuine commitment to participate; and
 - C. in accordance with the Mediation Guidelines of The Law Society of New South Wales.
- (d) If a Party commences proceedings relating to the Dispute other than for urgent interlocutory relief, that Party must consent to orders under section 26 of the *Civil Procedure Act 2005* that the proceedings relating to the Dispute be referred to mediation by a mediator.
- (e) If the Parties do not agree on a mediator within seven days of the order referred to in paragraph 1(d), the mediator appointed by the President of the Law Society of New South Wales will be deemed to have been appointed by the Court.
- (f) If a party:
 - (i) refuses to participate in a mediation of the Dispute to which it earlier agreed; or
 - (ii) refuses to comply with paragraph 1(c)(v) of this schedule, a notice having been served in accordance with paragraph 1(b); then

- (iii) that party is deemed to have consented to a decree of the Supreme Court of New South Wales that it will specifically perform and carry into execution paragraph 1(c)(v) of this schedule.
- (g) The Parties must continue to perform their respective obligations under this Agreement if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Other courses of action

If the mediation referred to in paragraph 1 has not resulted in resolution of the dispute within a reasonable time, any one Party may take whatever course of action it deems appropriate (including commencing and prosecuting any proceedings in any court of competent jurisdiction) for the purpose of resolving the dispute.

SCHEDULE 7: SECURITY ARRANGEMENTS

1. Security

The Developer has agreed to provide security to the Council for the performance of the Developer's obligations under this Agreement by:

- (a) Registering the Planning Agreement on the title to the Land; and
- (b) Providing a Bank Guarantee in the terms set out below.

2. Bank guarantee required

- (a) The Developer has agreed to provide security to the Council in the form of a Bank Guarantee for the face value of the Bank Guarantee Amount to secure the Developer's obligations to carry out the Link Road Construction Works by the Bank Guarantee Delivery Date, unless the Link Road Construction Works have been completed in accordance with this Agreement prior to the Bank Guarantee Delivery Date.
- (b) The Developer and the Council acknowledge and agree that any Bank Guarantee required to be provided by the Developer under paragraph 2(a):
 - (i) secures the Developer's obligation to carry out the Link Road Construction Works;
 - (ii) will be reduced by fifty (50) per cent once the Developer has achieved Practical Completion of the Link Road Construction Works; and
 - (iii) will be returned to the Developer within 28 days of the expiry of the last of the Defects Liability Period.

3. Reduction or replacement

The Council agrees that the face value of any Bank Guarantee provided by the Developer may be reduced in amount, or be replaced by a Bank Guarantee with face values of reduced amounts, as determined by the Council, acting reasonably, (up to a maximum of fifty per cent) having regard to progress of the Link Road Construction Works made from time to time.

4. Expiry of Bank Guarantee

- (a) Any Bank Guarantees provided by the Developer are to be unlimited as to time.
- (b) The provision of the Bank Guarantee does not:
 - (i) relieve the Developer from any obligations to be complied with on its part under any other provision of this Agreement;
 - (ii) limit the right of the Council to recover from the Developer in full all money payable to the Council under this Agreement, including without limitation, interest on any such amounts or damages or other losses incurred by the Council.

5. Claims under the Bank Guarantee

The Parties agree that:

- (a) the Council may make claims under the Bank Guarantee required to be provided under paragraph 2 of this schedule, at any time and from time to time, if the Developer fails to comply with its obligations under paragraph 2 and 3 of Schedule 3 and retain and use such monies in its reasonable discretion to compensate the Council for the Developer's breach of those obligations; and
- (b) the Council agrees not to make any claim under any Bank Guarantee without providing at least 10 Business Days prior written notice to the Developer of its intention to do so.

6. Release of Bank Guarantee

If the Developer has satisfied all of its obligations to achieve Practical Completion of the Link Road Construction Works and rectify defects in accordance with Schedule 3 and:

- (i) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with paragraph 5(a) of this schedule; and
- (ii) the Council is satisfied, acting reasonably, that there are no actual or contingent liabilities arising as a result of making the Development Contribution,

the Council will promptly return the Bank Guarantee (less any reasonable costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer upon receipt of a written request by the Developer.

7. Bank Guarantee Amount

At least 10 Business Days prior to the Bank Guarantee Delivery Date, the Developer will provide to Council an estimate of the Bank Guarantee Amount prepared by an experienced and appropriately qualified quantity surveyor together with material to support the estimate. If Council does not agree with the estimated bank guarantee amount it shall promptly notify the Developer and the parties will meet to attempt to agree the amounts. If no agreement can be reached the matter will be treated as a dispute and the provisions of Schedule 6 shall apply.

The Developer may not commence construction of any part of the Development until the dispute is resolved and the Bank Guarantee has been provided to Council.

SCHEDULE 8: ASSIGNMENT AND DEALING TERMS

1. Developer's right to sell the Land

The Developer must not sell, transfer or dispose of the whole or part of the Land otherwise than in circumstances where paragraph 2 of this schedule applies, unless before it sells, transfers or disposes of any such part of the Land to another person (**Transferee**):

- (a) it satisfies the Council acting reasonably that the proposed Transferee is financially capable of complying with such Developer's obligations under this Agreement (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) as the Council acting reasonably shall nominate must be adopted by the Transferee (**Required Obligations**);
- (b) the rights of the Council under this Agreement are not diminished or fettered in any way;
- (c) the Transferee signs an Agreement in the form set out in Annexure A to the Council containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of;
- (d) the Council is satisfied that it holds appropriate security (by way of Bank Guarantees as contemplated by Schedule 7) to secure the Developer's obligations to Dedicate the Link Road Land or to carry out the Link Road Construction Works;
- (e) the Council is satisfied that the Developer is performing its obligations under paragraph 2 of Schedule 3 in respect of carrying out the completion of the Link Road Construction Works as required by this Agreement;
- (f) any default by the Developer has been remedied by the Developer or waived by the Council; and
- (g) the Developer and the Transferee pay reasonable Council Legal Costs in relation to that assignment.

2. Release

If the Developer sells, transfers or disposes of the whole or any part of the Land and fully satisfies the requirements of paragraph 1 of this schedule, the Developer will be released from its obligations under this Agreement with respect to that Land being sold, transferred or disposed of.

SCHEDULE 9: COSTS

The Developer to pay its own costs and the Council's Legal Costs to a maximum of \$10,000 in connection with the negotiation, preparation, execution, stamping and registration of documents in relation to this Agreement upon execution of the Agreement by Council.

SCHEDULE 10: NOTICES

1. Notices etc only by authorised signatories

Any notice or communication given or made by a Party in connection with this Agreement must be executed by that Party or signed by an authorised signatory of that party. A person is an authorised signatory if he or she is a director of the relevant Party, or if he or she is authorised in writing by that Party.

2. Giving notices

Any notice or communication given to a Party under this Agreement is only given if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below; or
- (b) faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below.

Council

Attention: General Manager
Address: Burwood Council
PO Box 240, Burwood NSW 1805
Fax number: (02) 9911 9900
Attention: General Manager

Developer

Attention: General Manager
Address: Strathfield Recreation Club Ltd
4a Lyons Road, Strathfield NSW 2135
Fax number: (02)
Attention: Managing Director

3. Change of address or fax number

If a party gives the other party three business days notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

4. Time notice is given

- (a) Any notice or communication is to be treated as given at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, two (or, in the case of a notice or communication posted to another country, nine business days after it is posted; or

- (iii) 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.
- (b) However, if any notice or communication is given on a day that is not a business day, or after 5.00 pm, in the place of the party to whom it is sent it will be treated as having been given at the beginning of the next business day in that place.

5. Approvals and consents

- (a) Unless this agreement expressly provides otherwise, a Party may give or withhold an approval or consent 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 or withholding a consent or approval or for giving a consent or approval subject to conditions.
- (b) Where this Agreement refers to a matter being to the "satisfaction" of a Party, this means to the satisfaction of that Party in its absolute discretion.

6. Assignments and transfers

A party must not assign or transfer any of its rights or obligations under this Agreement or attempt to do so, without the prior written consent of each of the other parties unless stated otherwise in Schedule 8.

7. Costs

Except as otherwise set out in Schedule 9 of this Agreement, each party must pay its own costs and expenses for preparing, negotiating, executing and completing this Agreement and any document related to this Agreement.

8. Entire agreement

This Agreement contains everything the Parties have agreed in relation to the subject matter it deals with. No Party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

9. Execution of separate documents

This Agreement is properly executed if each Party executes either this document or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the Parties.

10. Further acts

Each Party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third Party to do all things that another Party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

11. Governing law and jurisdiction

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

12. Joint and individual liability and benefits

- (a) Except as otherwise set out in this Agreement, a reference to any Party to this Agreement, where that Party is made up of more than one person, includes each of them severally.
- (b) Except as otherwise set out in this Agreement any covenant, agreement, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

13. No fetter

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, function or duty.

14. No adverse construction

No term or condition of this Agreement will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this Agreement or that provision.

15. Representations and warranties

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.

16. Severability

Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

17. Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by each Party to this Agreement.

18. Waivers

- (a) A waiver of any right, power or remedy under this Agreement must be in writing signed by the Party granting it. A waiver only affects the particular obligation or

breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.

- (b) 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.


19. The Planning Agreement not confidential


The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

EXECUTED AS AN AGREEMENT:


DATE: 23/1/14

Executed by Strathfield Recreation Club Ltd
ACN 000 001 178 acting by the following
persons or, if the seal is affixed, witnessed by the
following persons in accordance with s 127 of
the Corporations Act 2001:



.....
Signature of director



.....
Name of director (print)


.....
Signature of director/company secretary


.....
Name of director/company secretary (print)

Signed by the **BURWOOD COUNCIL** by its
duly constituted Attorney Michael Gerard
McMahon pursuant to Power of Attorney
registered Book 4615 No 590 in the presence of:


.....
Witness [signature]


.....
Name of witness [BLOCK LETTERS]


.....
Michael Gerard McMahon

ANNEXURE A – ACCESSION AGREEMENT

DATED

2013

ACCESSION AGREEMENT

Burwood Council

ABN 84 362 114 428

Council

and

Strathfield Recreation Club Ltd

ACN 000 001 178

Developer

[Insert Transferor's name]

Transferor

[Insert Transferee's name]

Transferee

CONTENTS

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PARTIES:

Burwood Council ABN 84 362 114 428 of Suite 1, Level 2, 1-17 Elsie Street Burwood in the State of New South Wales (**Council**)

and

Strathfield Recreation Club Ltd ACN 000 001 178 of 4a Lyons Road, Strathfield in the State of New South Wales (**Developer**)

[*Insert Transferor's name*] of [insert] (**Transferor**)

[*Insert Transferee's name*] of [insert] (**Transferee**)

Background

- A The Council and the Developer are parties to the Original Agreement.
- B The Original Agreement relates to the Land including the Link Road Land.
- C The Transferor wants to transfer [the whole of] [part or parts of] the Link Road Land comprising Lot [*insert Lot number*] in DP [*insert Deposited Plan number*].

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Link Road Land has the meaning given to that term in the Original Agreement.

Effective Date means [*insert*].

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated [insert] and made between the Council and the Developer.

Required Obligations means [*insert the obligations nominated by the Council pursuant to paragraph 1(a) of Schedule 8 of the Original Agreement*].

1.2 References to certain general terms

In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;

- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors,
- (f) administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (g) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (h) a reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them; and
- (i) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature.

1.3 Headings

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

2. NOVATION

2.1 Original Agreement

Subject to clause 2.2 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Transferor as a party to the Original Agreement, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Transferor insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Transferor is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Liability before Effective Date

Notwithstanding clause 2.1, the Transferor is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach which the Transferor may have committed before the Effective Date of any provision of the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

3. AFFIRMATION OF THE ORIGINAL AGREEMENT

The Original Agreement will be read and construed subject to this Agreement, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this Agreement, the Original Agreement will continue in full force and effect.

4. GST

Where a supply made under this Agreement gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this Agreement. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. STAMP DUTY AND COSTS

- (a) The Transferor and the Transferee are jointly and severally liable for the Council's legal costs of and incidental to the negotiation, preparation and execution of this Agreement, and must reimburse the Council for such legal costs promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this Agreement.

6. FURTHER ACTS

- (a) Each party will take all steps, execute all Agreements and do everything reasonably required by any other party to give effect to any of the actions contemplated by this Agreement.
- (b) This Agreement binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

7. GOVERNING LAW

- (a) This Agreement is governed by the law in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

8. COUNTER PARTS

- (a) This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

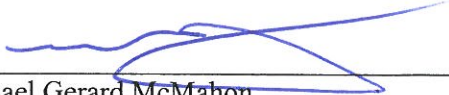
EXECUTED AS AN AGREEMENT

DATE:

131326

Signed by the **BURWOOD COUNCIL** by its
duly constituted Attorney Michael Gerard
McMahon pursuant to Power of Attorney
registered Book 4615 No 590 in the presence of:

Witness [signature]



Michael Gerard McMahon

Name of witness [BLOCK LETTERS]

Executed by Strathfield Recreation Club Ltd
ACN 000 001 178 acting by the following
persons or, if the seal is affixed, witnessed by the
following persons in accordance with s 127 of
the Corporations Act 2001:

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director (print)

.....
Name of director/company secretary (print)

Executed by **[name of Transferor] ACN [ACN]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the Corporations Act 2001:

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director (print)

.....
Name of director/company secretary (print)

Executed by **[name of Transferee] ACN [ACN]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the Corporations Act 2001:

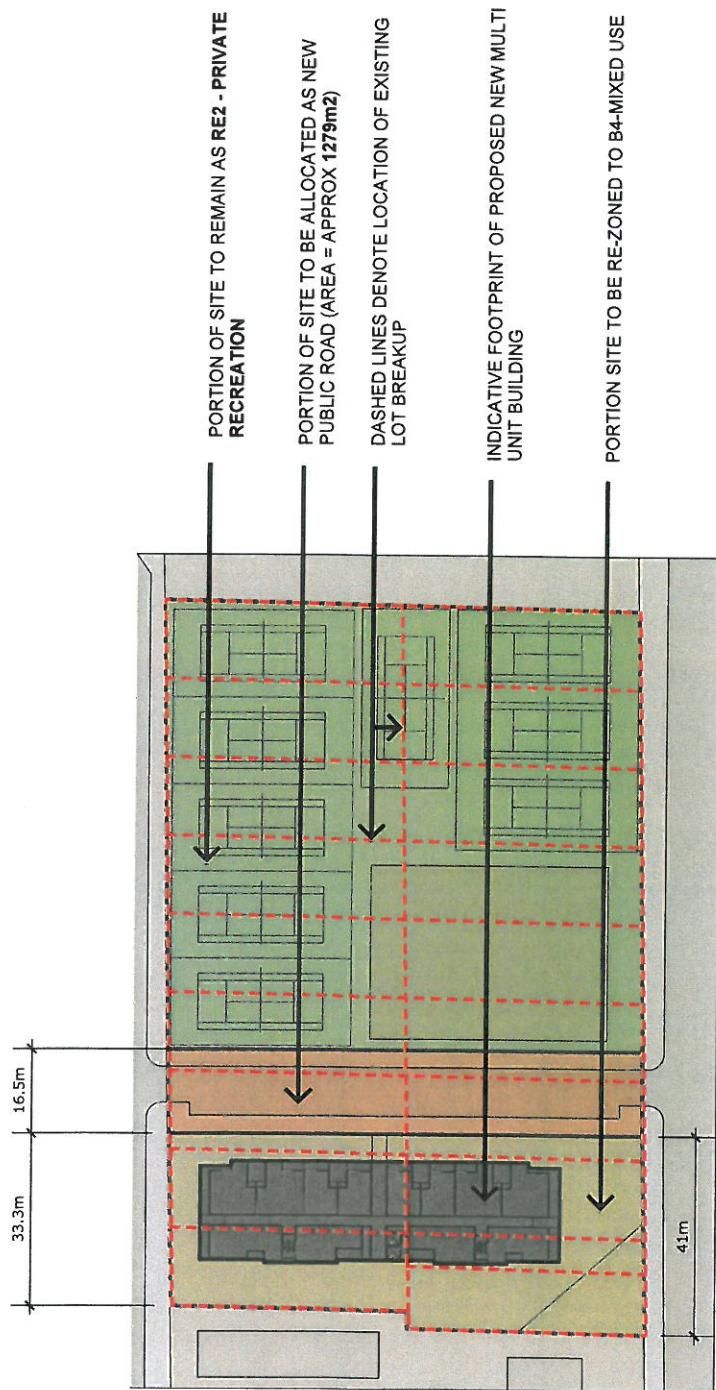
.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director (print)

.....
Name of director/company secretary (print)

ANNEXURE B - THE LAND INCLUDING THE LINKED ROAD LAND



ZONING PLAN 1:1000

STRATHFIELD SPORTS CLUB
REVISED ISSUE D 31.07.2013



ANNEXURE C - EXPLANATORY NOTE

Explanatory Note

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed planning agreement (**Planning Agreement**) prepared under section 93F of the *Environmental Planning and Assessment Act 1979 (Act)*.

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**).

Parties

The parties to the Planning Agreement are Strathfield Recreation Club Ltd (**Developer**) and Burwood Council (**Council**).

The Developer has made an offer to enter into the Planning Agreement in connection with the part rezoning and proposed future redevelopment of the Strathfield Sports Club.

Description of Subject Land

The land to which the Planning Agreement relates is Lots 11-18 and 29-37 DP 555, Lot 1 DP 958552 and Lot 2 DP 714755, and largely comprises the land between Lyons Street, Parnell Street, Morwick Street and Bells Lane (**Land**).

Description of Proposed Change to the Environmental Planning Instrument and of the Development

The Developer has sought a modification to the Burwood Local Environment Plan 2012 to rezone part of the Land to B4 Mixed Uses with a maximum building height of 30m and a maximum FSR of 3:1. The effect of the modification will be to allow for the development of a residential building on the rezoned part of the Land and the development of a new clubhouse for Strathfield Sports Club (**Development**). The Development will include construction of a public road linking Lyons Street and Morwick Street (**Link Road**).

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make various contributions towards road infrastructure, comprising the following:

- Transfer of approximately 16.5m wide and 91m long land to the Council to be dedicated for the purpose of use as a public road.
- Design and Construct the Link Road to Council standards and specifications for local roads.

The Planning Agreement contains a schedule (being Schedule 3) setting out the timing for delivery of the Developer's contributions. The objective of the Planning Agreement is to facilitate the delivery of the contributions.

Assessment of the Merits of the Planning Agreement

The planning purposes served by the Planning Agreement

The Planning Agreement serves the following public purposes:

- The provision of land for public purposes;
- The construction of transport infrastructure for public purposes.

The intent of the Planning Agreement is to ensure appropriate contribution to local infrastructure and accessibility to and from the area as proposed by the *Traffic and Transport Study Strathfield Town Centre Expansion in Burwood LGA*, to accommodate future housing and growth in the Burwood local government area.

The Planning Agreement further provides that the Development will not be subject to any condition requiring further contributions under ss94 or 94A of the Environment Planning and Assessment Act 1979.

The Council and the Developer have assessed the Planning Agreement and hold the view that the provision of the Planning Agreement provides a reasonable means of achieving the public purpose set out above.

Promotion of the public interest

The Planning Agreement promotes the public interest by committing the Developer to make contributions towards local transport infrastructure.

How the Planning Agreement promoted the objects of the Act

The Planning Agreement promotes one or more of the objects of the Act as follows:

- The proper management and development of land for the purpose of promoting the social and economic welfare of the community and a better environment;
- The promotion and co-ordination of the orderly and economic use and development of land; and
- The provision of land for public purposes.

The Planning Agreement provides for a reasonable means of achieving that purpose by requiring the Developer to provide the items set out in this explanatory note under the heading *Summary of Objectives, Nature and Effect of the Planning Agreement* for the purpose of providing transport infrastructure.

The purpose represents an important public benefit, and the Developer's offer to contribute towards this purpose will have a positive impact on the public who use the infrastructure to which this purpose relates.

Promotion of the Council's charter

The Planning Agreement promotes one or more of the elements of Council's charter under Section 8 of the *Local Government Act 1993* as follows:

- Council undertakes to provide *adequate, equitable and appropriate services for the community*. The Planning Agreement provides resources for Council to assist in the provision of additional transport infrastructure and ensures that those *facilities are managed efficiently and effectively*. Council is the *custodian and trustee of public assets* and has a responsibility to *effectively plan for, account for, and manage the assets and the Planning Agreement provides for appropriate public infrastructure*.

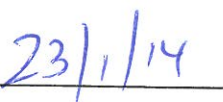
- Council undertakes to involve *councillors, members of the public, users of facilities and services, and council staff* in its activities. The Planning Agreement process provides an opportunity for the community and stakeholders to be involved and interested people are invited to make comment during the exhibition period. The public exhibition and the consideration of this matter at Council meetings is intended to *keep the local community informed*.
- Council seeks to ensure that it *acts consistently and without bias*, which is why the Council provides for Planning Agreements that allow for contributions for transport infrastructure as contemplated by the *Traffic and Transport Study Strathfield Town Centre Expansion in Burwood LGA*.

Interpretation of the Planning Agreement


This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Signatories:

Burwood Council (**Council**)







General Manager Date

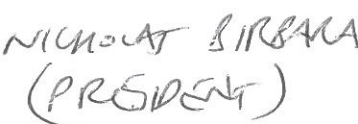


Print Name of General Manager

Strathfield Recreation Club Ltd (**Developer**)

Director/Secretary Date



CHRISTOPHER DUNN

Print Name of Director/Secretary

ANNEXURE D - LETTER OF OFFER



Omada Property Group Pty Ltd
ABN: 35 149 753 560

Suite4, 287 Military Road
CREMORNE NSW 2090

Ph: (02) 9908 7730 / 9908 7750
Fx: (02) 9908 7730

Email: aris.dimos@omada.com.au
eric.costas@omada.com.au

13 December, 2012

The General Manager
Burwood Council
PO Box 240
Burwood NSW 1805

RE: Letter of Offer to enter into a Voluntary Planning Agreement in relation to the proposed part rezoning and redevelopment of Strathfield Sports Club

Introduction

1. We act on behalf of our client Strathfield Sports Club. Strathfield Sports Club is the owner of the land at Lyons Road and Morwick Street, Strathfield which is the subject of a planning proposal as described below.
2. The purpose of this letter is to summarise the principal terms of a VPA under s93F 1(a) and (b) of the Environmental Planning & Assessment Act 1979 (EPA Act) that Strathfield Sports Club would be willing to enter into with Burwood Council in relation to the part rezoning and proposed future redevelopment of the land.
3. This offer is intended to cover a VPA for the dedication of land and construction of a new link road through the Strathfield Sports Club site as summarized in the planning proposal. It is intended that the value of the VPA works and land would be credited against any future section 94 or 94A contributions payable in relation to the redevelopment of the land.

Land to which the VPA applies

4. The VPA would apply to the Land described as 'The Site' in Part 2 of the document titled *Planning Proposal, Strathfield Sports Club* prepared by Urbis and dated December 2012 (Planning Proposal).

Instrument Change to which the VPA relates

5. The VPA will relate to the instrument change sought in the Planning Proposal (The Rezoning)

Development to Which the VPA relates

6. The VPA would apply to development on the land which will be subject of future development application(s).



Development Contributions and other public benefits

The VPA would require Strathfield Sports Club to provide the following:

7. The dedication of land for the provision of a new public road through the current site of the Strathfield Sports Club, linking Lyons Road and Morwick Street as generally described in the Planning Proposal.

8. The construction of a new public road as generally described in the planning proposal to Burwood Council standards and specification for local roads, as agreed and specified in the VPA.

Timing of provision of development contributions and other public benefits

9. The completed road would be constructed and dedicated to the Council prior to the issuing of an occupation certificate for the first stage of the built form of the Development(s)

Resolution of Disputes

10. Any dispute under the VPA would be resolved by mediation in accordance with a process specified in the VPA.

Security and Enforcement

11. The VPA would require Strathfield Sports Club to provide the Council with an unconditional bank guarantee from an Australian Bank (Security), equal to the estimated construction cost of the new road, prior to the issuing of the first construction certificate for the built form of the development(s).

Registration

12. The VPA is to be registered on the title of the land of the Strathfield Sports Club.

13. Burwood Council will be required to remove any notations on the title of the land(s) as soon as practicable after completion of the works and VPA obligations by Strathfield Sports Club.

14. Should Strathfield Sports Club choose to sell the mixed use portion of the land after rezoning with Council's consent, then Strathfield Sports Club will not sell, assign or vacate its interest under the VPA to a third party unless it has procured the third party entering into a deed with the Council in a form attached to the VPA under which the third party assumes Strathfield Sports Club's obligations under the VPA.

Legal Costs

15. The VPA will require Strathfield Sports Club to pay the Council's reasonable legal costs to a maximum of \$10,000 in relation to preparation and negotiation of the VPA.

Timing when the VPA would be entered into

16. The VPA would be entered into by Strathfield Sports Club in connection with the Rezoning following community consultation but before the Council forwards/advises the Minister/Department of its final planning proposal that will make the Development



Permissible on the Land.

17. The VPA would operate when the rezoning takes effect.

We look forward to Council's positive response to our VPA letter of offer.

Yours faithfully

OMADA PROPERTY GROUP PTY LTD

A handwritten signature in black ink, appearing to read "Aris Dimos". The signature is fluid and stylized, with a prominent loop at the end.

Aris Dimos
DIRECTOR

