

Our Ref: AFP.146158

Planning Agreement

23-31 Morwick Street, Strathfield NSW

Burwood Council (**Council**)

ABN 84 362 114 428

and

A.R.M. Holdings Pty Ltd (**Developer**)

ACN 056 604 070

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Details

Date

1 July 2015

Parties

Name	Burwood Council	
ABN	ABN 84 362 114 428	
Description	Council	
Notice details	Address	Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW
	Fax	9911 9900
	Attention	The General Manager

Name	A.R.M. Holdings Pty Ltd	
ABN	ACN 056 604 070	
Description	Developer	
Notice details	Address	10 Strathfield Avenue, Strathfield NSW
	Fax	02 9746-6715
	Attention	Antony Metledge

Background

- A The Developer is the registered proprietor of the Land.
- B The Land is situated on the corner of Bells Lane and Morwick Street, Burwood, NSW.
- C On or about 10 April 2014 the Council granted approval for Development Application No.66/2013 in respect of the Land for the construction of a 9 storey mixed use development comprising ground floor retail, 10 serviced apartments and 58 residential apartments over 2 levels of basement parking for 105 vehicles.
- D The Council has approached the Developer with a proposal involving the dedication of part of the Land to Council to facilitate the widening of Bells Lane, from its current single lane capacity to a dual lane capacity.
- E The Developer has agreed to dedicate a part of the Land to the Council to facilitate the widening of Bells Lane, subject to the terms of this Agreement.
- F The Developer has lodged with Council:
 - (a) Modification Application No.66/2013/B, seeking approval for amendments to Development Application No.66/2013 for the purposes of facilitating the dedication of a part of the Land to Council for road widening purposes associated with Bells Lane, and
 - (b) Development Application No.190/2014, seeking approval for 5 additional storeys over that which is approved in Development Application No.66/2013.
- G As contemplated by section 93F of the Act, the parties wish to enter into an Agreement with respect to the dedication of part of the Land to the Council, Modification Application No.66/2013/B and Development Application No.190/2014.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

The following words have the corresponding meanings for the purposes of this Agreement:

Act means the *Environmental Planning and Assessment Act 1979* (NSW), as amended, and includes any regulations made under the Act.

Agreement means this planning agreement.

Approval means any approvals, consents, section 96 modifications, Part 4A certificates or approvals under the Act, certificates, construction certificates, occupation certificates, complying development certificates, permits, endorsements, licences, conditions or requirements (and any variation to them) which may be required by Law for the commencement and carrying out of the External Works.

Authority means any government, local government, statutory, public, ministerial, administrative, fiscal or other authority or body, and includes the Joint Regional Planning Panel or such other consent authority as may be lawfully appointed and authorised to grant an Approval, including an accredited certifier defined under the Act.

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

Dedicate means the transfer of the fee simple of the Dedicated Land.

Dedicated Land means that part of the Land identified in **Schedule 1** to be dedicated to Council in accordance with this Agreement.

Development means the development of the Land in accordance with:

- (a) Development Application No.66/2013,
- (b) Modification Application No.66/2013/B, and
- (c) Development Application No.190/2014.

Development Application No.190/2014 means the development application lodged with Council on or about 8 December 2014 and annexed to **Schedule 4**.

Development Application No.66/2013 means the consent granted by Council on or about 10 April 2014 in respect of the Land for the construction of a 9 storey mixed used development comprising ground floor retail, 10 serviced apartments and 58 residential apartments over 2 levels of basement parking for 105 vehicles, and includes any future amendments or modification made pursuant to Section 96 of the Act or otherwise.

Development Contributions means the Dedicated Land and the External Works.

ALBERT METLEDGE 
Name/Signature

Miriam McPherson 
Name/Signature

Explanatory Note means the Explanatory Note set out in **Schedule 5** of this Agreement.

External Works means the works described in **Schedule 2** of this Agreement.

External Works Protocol means the protocol set out in **Schedule 3** of this Agreement.

Force Majeure means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.

GST has the meaning as in the GST Law.

GST law has the same 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 GST.

Land means the whole of the Land described in the certificate of title Lot 1 in DP 1196906, known as 23-31 Morwick Street, Strathfield NSW.

Law means:

- (a) the common law including principles of equity, and
- (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority,

that presently apply or that may apply in the future.


Modification Application No.66/2013/B means the modification application lodged with Council on or about 24 October 2014 in connection with Development Application No.66/2013.


Sunset Date means the date on which the Development Consent lapses.

1.2 Interpretation

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

- (a) headings are for convenience only and do not affect interpretation.
- (b) **"person"** includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation.
- (d) a reference to a party to the Agreement includes a reference to servants, representatives, agents, and contractors of the party.
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified, supplemented or replaced from time to time.

ALBERT METLEDGE 
Name/Signature

Michael McMahon 
Name/Signature

- (f) 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.
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender.
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it.
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.
- (j) A reference to the word "**include**", "**includes**" or "**including**" is to be interpreted without limitations.
- (k) the Explanatory Note set out in this Agreement is not to be used to assist in construing the Agreement.
- (l) a reference to "\$" or "**dollar**" is to Australian currency.

1.3 Compliance with New Laws

If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement or which was not contemplated at the time of entering into this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.

2. Planning Agreement under the Act


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

3. Application of this Agreement

The Agreement applies to the Land and the Development.

4. Operation of this Agreement

- (a) This Agreement takes effect on the date of this Agreement after execution by both parties, subject to clause 4(b).
- (b) This Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or

ALBERT NEWEDGE 
Name/Signature

 
Name/Signature


- (ii) all obligations are performed or satisfied; or
 - (iii) the Sunset Date is reached, or
 - (iv) the Development Consent is surrendered in accordance with the Act; or
 - (v) it is otherwise discharged or terminated in accordance with the terms of this Agreement.
- (c) If a legal challenge to the Development Consent by a third party results in the Development Consent being rendered invalid or unenforceable, then the Developer may, in its absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.

5. Dedicated Land

5.1 Obligations to Transfer

- (a) The Developer shall use its best endeavours to dedicate the Dedicated Land as public road pursuant to the *Roads Act 1993* and the *Real Property Act 1900* upon the Council:
- (i) granting development consent for Development Application No.190/2014, and
 - (ii) granting consent for Modification Application No.66/2013/B.
- (b) A reference to:
- (i) the granting of development consent for Development Application No.190/2014 is a reference to the Development Application No.190/2014 as lodged by the Developer with the Council or as otherwise modified with the approval of the Developer.
 - (ii) the granting of consent for Modification Application No.66/2013/B is a reference to the Modification Application No.66/2013/B as lodged by the Developer with the Council or as otherwise modified with the approval of the Developer.
- (c) The Developer and the Council acknowledge and agree that satisfaction of clause 5.1(a) expressly requires the granting of consent by Council for both the Development Application No.190/2014 and the Modification Application No.66/2013/B.
- (d) The Developer and the Council further acknowledge and agree that, should either the Development Application No.190/2014 or the Modification Application No.66/2013/B not be the subject of a grant of consent, the Agreement is terminated.

ALBERT METLEDGE 
Name/Signature


Michael McManus 
Name/Signature

5.2 Date of Transfer

- (a) The Parties acknowledge and agree that at the date of this Agreement the Dedicated Land is not contained in a separate Lot to the Land, and cannot be transferred to the Council until the Land is subdivided to create the Dedicated Land as a separate legal Lot capable of transfer.
- (b) The Developer will use its best endeavours to transfer the Dedicated Land to the Council as soon as practicable after the granting of consent for both the Development Application No.190/2014 and the Modification Application No.66/2013/B.
- (c) The Developer will prepare at its own cost and lodge all documents necessary to have the Dedicated Land created as a separate Lot with the Land & Property Information. The Developer should use its reasonable endeavours to ensure that this is done within 6 weeks after the granting of consent for both the Development Application No.190/2014 and the Modification Application No.66/2013/B.
- (d) The Developer and the Council agree and warrant that they will do all things necessary and sign all documents required to facilitate the subdivision of the Land and the subsequent dedication of the Dedicated Land.
- (e) Nothing in this clause 5.2 shall prevent the dedication of the Dedicated Land by the registration of the Developer's plan of subdivision.

6. External Works

- (a) The Developer agrees to procure the External Works upon the Council:
 - (i) granting development consent for Development Application No.190/2014, and
 - (ii) granting consent for Modification Application No.66/2013/B.
- (b) The Developer agrees to procure and complete the External Works prior to the issuing of an Occupation Certificate for the Development.
- (c) Without limiting any other provision of this Agreement, the External Works are to be carried out:
 - (i) in a good and workmanlike manner;
 - (ii) to the reasonable satisfaction of Council; and
 - (iii) in accordance with the External Works Protocol.
- (d) The Council is responsible for obtaining any Approval under the Act required for the carrying out of works required to be carried out on land owned or controlled by Council, at its cost.

ALBERT METLEDGE 
Name/Signature


Name/Signature

- (e) In the event of an inconsistency between this Agreement and any Approval for the External Works or any applicable law, the Approval and the law prevail to the extent of the inconsistency.

7. Application of the Act to the Development


- (a) This Agreement does not exclude the application of:
- (i) sections 94 and 94A of the Act;
 - (ii) any Affordable Housing Levy;
 - (iii) any other monetary contributions;
- in connection with Development Application No.190/2014 and Modification Application No.66/2013/B granted in respect of the Land.
- (b) The obligations of the Developer under this Agreement involve a contribution to or provision of public amenities and services over and above those which would otherwise be imposed under section 94 and section 94A of the Act ('the benefits'). The benefits are not to be taken into consideration by the Council in determining contributions under s94 and s94A of the Act.

8. Registration

- (a) The Parties will take all practical steps to procure:
- (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,
- to enable the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.
- (b) The Parties will take all practical steps to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the Agreement is entered into by the Parties.

9. Dealing with the Land

The Parties acknowledge and agree that nothing in this Agreement abrogates, fetters or in any way prevents the Developer from selling, transferring, assigning, subdividing,

ALBERT METLEDGE 
Name/Signature

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Name/Signature

mortgaging, charging, encumbering or otherwise dealing with the Land (excluding, after dedication, the Dedicated Land).

10. GST

10.1 Interpretation

In this clause 10:

- (a) Words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

10.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

10.3 Payment of GST - additional payment required


- (a) If GST is payable by an entity (**Supplier**) in respect of any supply made under this Agreement (**Relevant Supply**), then the party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under clause 10.3(b).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money, the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate of GST for that Relevant Supply.
- (c) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, no additional amount shall be payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (d) The Recipient will pay the GST Amount referred to in this clause 10.3 in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.


10.4 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under clause 10.3. The Recipient can withhold a payment of the GST Amount until the Supplier provides a tax invoice.

10.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the Recipient under clause 10.3 will be recalculated to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

ALBERT METLEDGE 
Name/Signature


Name/Signature

10.6 Reimbursements

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under clause 10.3 in respect of the reimbursement.

11. Default

11.1 Notice

In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to that party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

11.2 Reasonable Time

In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

11.3 Suspension of time-dispute

If a party disputes the Default Notice it may refer that dispute to dispute resolution under clause 12 of this Agreement.

12. Dispute Resolution


12.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (**Claimant**), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 12.

12.2 Response to Notice

Within 10 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

ALBERT METLEDGEY 
Name/Signature

MICHAEL McPHEE 
Name/Signature

12.3 Negotiation


- (a) The nominated representative must:
 - (i) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative; and
 - (ii) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

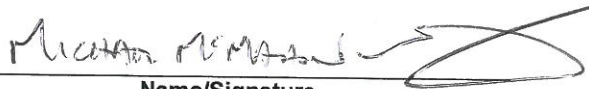
12.4 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 12.5 or by expert determination under clause 12.6.

12.5 Mediation

- (a) If a party gives a dispute Notice calling for the dispute to be mediated:
 - (i) the parties must agree to the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
 - (ii) the Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (b) the Mediator appointed pursuant to this clause 12.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (c) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (d) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (e) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement, or in the event the parties are unable to reach a mediation settlement;

ALBERT METLEDGE 
Name/Signature


Name/Signature

- (f) each party will bear their own professional and expert costs incurred in connection with the mediation.

12.6 Expert Determination


- (a) If the dispute is not resolved under clause 12.3 or 12.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:
- (i) the dispute must be determined by an independent expert in the relevant field:
 - (A) agreed upon and appointed jointly by the Council and the Developer; or
 - (B) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
 - (ii) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
 - (iii) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
 - (iv) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
 - (v) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
 - (vi) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this Agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.


12.7 Litigation

If the dispute is not finally resolved in accordance with this clause 12, either party is at liberty to litigate the dispute.

13. Notices

- (a) Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

ALBERT METLEDGE 
Name/Signature

Miguel Alvarez 
Name/Signature

- (i) delivered or posted to that Party at its address set out on numbered page 2 of this Agreement; or
- (ii) faxed to that Party at its fax number on numbered page 2 of this Agreement.
- (b) If a Party gives another Party 3 Business Days notice of a change of its address, or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted, or faxed to the latest address or fax number.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted;
 - (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.
- (d) If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

14. General

14.1 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, agent or employee of the Party, before this Agreement was executed, except as permitted by Law.

14.2 Further acts


Each party must promptly sign and execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it, including giving an approval or consent.


14.3 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.

14.4 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of

ALBERT METLEDGE 
Name/Signature

Muhammad Muhammad 
Name/Signature

them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

14.5 No fetter

Nothing in this Agreement is to be construed as requiring a Council to do, or refrain from doing, anything that would cause it to be in breach of any of its obligations at Law, and without limitation, nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14.6 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any Law.

14.7 Severability

- (a) If any part of this Agreement can be read in any way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.


14.8 Release and Discharge

- (a) To the extent the Developer has:
 - (i) satisfied its obligations under this Agreement; or
 - (ii) the Agreement no longer applies as a consequence of any event referred to in clause 4(b) of this Agreement;

the Council will provide a release and discharge of this Agreement with respect to any part of, or the whole of, the Land.
- (b) To the extent the Developer has:
 - (i) satisfied all of its obligations under this Agreement in respect of that part of the Land; or
 - (ii) the Agreement no longer applies as a consequence of any event referred to in clause 4(b) of this Agreement;

the Council will provide a release and discharge of this Agreement with respect to any part of the Land:

 - (iii) if the Developer requests a partial release and discharge of this Agreement for the purpose of selling part of the Land as a Developed Lot; or

ALBERT METLEDGE 
Name/Signature


Name/Signature

- (iv) if the Developer requests a partial release and discharge of this Agreement in connection with the completion of a sale contract for a Developed Lot; or
- (v) if the Developer requests a partial release and discharge of this Agreement to effect the transfer of part of Land to the Council or any other authority pursuant to this Agreement.
- (c) The Council will execute any form, and supply such other information, as is reasonably required to enable the removal of the Agreement from the title to the Land or part of the Land in accordance with this clause 14.8.

14.9 Modification, Review and Replacement

- (a) No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.
- (b) The Parties agree that this Agreement may be reviewed or modified in the circumstances using their best endeavours and acting in good faith, and in accordance with this clause 14.9.
- (c) Any review or modification will be conducted in the circumstances and in the matter determined by the Parties and in accordance with the provisions of the Act and Regulations. For clarity, no such review or replacement shall have any force or effect unless and until formal documents are signed by the Parties in accordance with this clause 14.9.

14.10 Waiver


The fact that a Party fails to do, or delays in doing, something the Party is required or entitled to do under this Agreement, does not amount to a waiver of any obligation by another Party.

14.11 Confidentiality

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.

14.12 Assignment and Novation

- (a) This Agreement may be assigned or novated by the Developer in accordance with any dealings the Developer may have with respect to its interests in the Land without requiring the Developer to obtain Council's Approval in respect of either the dealing or the assignment or the novation of this Agreement.
- (b) Council agrees to execute any deeds of assignment or novation or other documents necessary to assign, novate or otherwise transfer all of the Developer's rights and obligations under the Agreement to a successor as contemplated by the agreement.

ALBERT METLER 
Name/Signature

 
Name/Signature

14.13 Force Majeure

- (a) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under the Agreement, it must give to the other Party prompt notice of the force majeure with reasonably full particulars.
- (b) The obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under the Agreement.

14.14 Legal and associated costs

Each party is responsible for the payment of its own legal costs and expenses in connection with the preparation, execution and enforcement of this Agreement, unless otherwise agreed between the Parties or as may be ordered by a Court of competent jurisdiction.

14.15 Counterparts

This Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.


15. Explanatory Note

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

16. Effect of Scheduled 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.

ALBERT METLEDGE 
Name/Signature

Muhammad M. 
Name/Signature


Execution Page

Dated: 20 January 2016

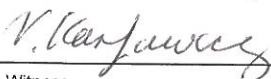
Executed as an Agreement


Signed by **A.R.M. Holdings Pty Ltd**
under s.127(1) of the
Corporations Act 2001


sign
DIRECTOR
office (Director)
ALBERT METLEDGE
full name


sign
WITNESS
witness
ADRIAN KENNALL
full name

Signed for and behalf
of **Burwood Council**
by its attorney,
Michael Gerard McMahon, under
Power of Attorney
dated 6 July 2011
registered book 4615
number 590 in the
presence of


Witness
Vera Karpowicz
full name



Signature of Attorney
Michael Gerard McMahon

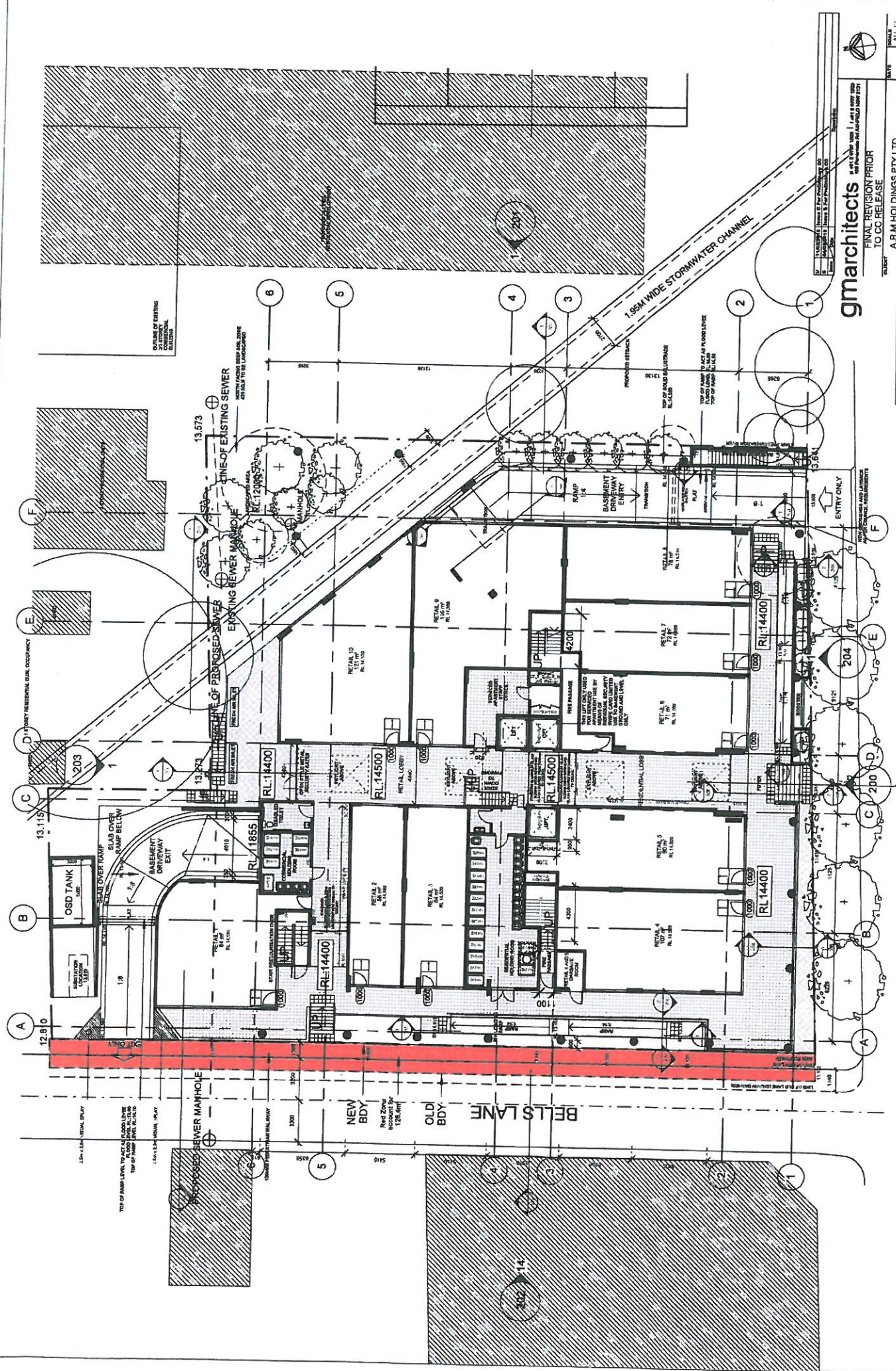
Name/Signature

Name/Signature

Schedule 1 Dedicated Land

ALBERT METLEDGE 
Name/Signature

Michael McManis 
Name/Signature



gmarchitects

23-31 MORWICK STREET, STRATHFIELD
 FINAL REVISION PRIOR
 TO CC RELEASE
 A.R.M. HOLDINGS PTY LTD
 23-31 MORWICK STREET, STRATHFIELD
 Ground Floor DA Modifications
 X04

DRAFT

23/02/2015 5:02:07 PM


MORWICK STREET

Ground Floor DA Modifications

Schedule 2 External Works

ALBERT METWAGE 
Name/Signature

Michael McManus 
Name/Signature



A horizontal scale bar with markings at 0, 0.2, 0.4, 0.6, 0.8, and 1.0. Below the scale is the text "SCALE 1/2" ON ORIGINAL SIZE".

CLIENT
ARM HOLDINGS
PTY LTD

ARCHITECT
URBAN LINK
TY LTD



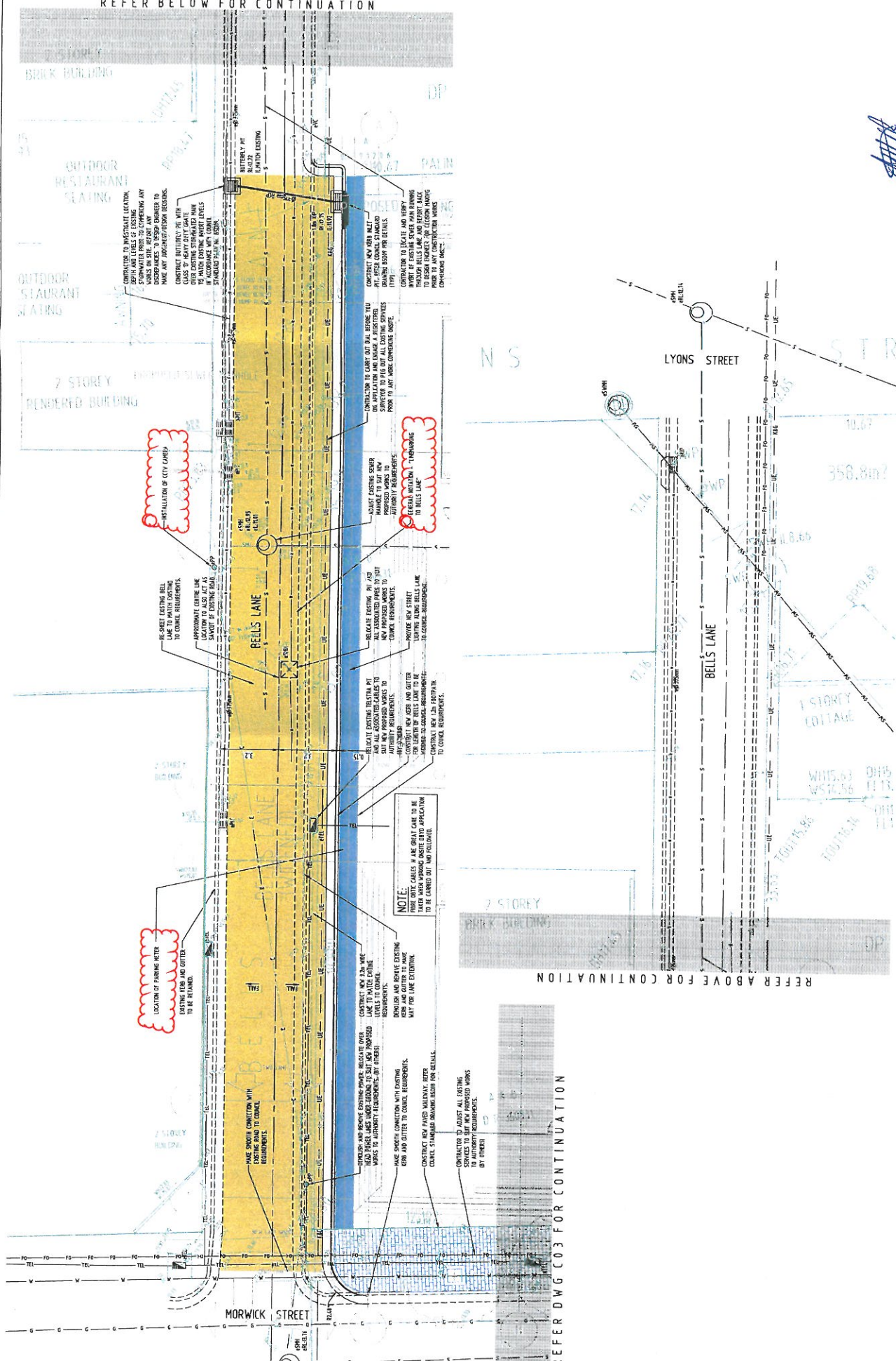
CONSULTING ENGINEER
S&G CONSULTANTS

SPY PTY LIMITED
ABN 25 002 222 530
Site A113, Level 1,
20 LEXINGTON DRIVE
BELLA VISTA, NSW 2153
T: +61 2 8863 4139
F: +61 2 9622 6977
Email: mail@spy.com.au

PROPOSED MIXED USE
DEVELOPMENT
-37 MORWICK STREET,
WARRATHFIELD, NSW

Project No.	0110212	Drawn by	CS	Revision No.	02
<h1>SITE PLAN</h1>					
<p>NOT TO BE USED FOR CONSTRUCTION PURPOSES</p>					
<p>PRELIMINARY</p>					

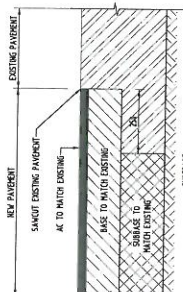
REFER ABOVE FOR CONTINUATION

[illegible]

[illegible]

SERVICES SHOWN ON PLAN ARE INDICATIVE,
EXACT DEPTH AND LOCATION TO BE CONFIRMED
ON SITE. CONTRACTOR TO CARRY OUT DIAL BEFORE
YOU DIG APPLICATION AND ENGAGE A REGISTERED
SURVEYOR TO PEG OUT ALL EXISTING SERVICES
PRIOR TO ANY WORK COMMENCING ON SITE.

ABBREVIATIONS:

[illegible]

1
-
DETAIL
PAVEMENT JOINT DETAIL
SCALE 1:10

BE RETAINED,
TYPICAL SECTION - BELLS LANE
SCALE 1"=100'

Reference, Conditional Drawing		ENGINEER'S NAME DATE AND TIME		QUALITY CONTROL		ARCHITECT URBAN LINK PTY LTD		CLIENT ARM HOLDINGS PTY LTD		CONSULTING ENGINEER S&G CONSULTANTS PTY LIMITED		PROJECT PROPOSED MIXED USE DEVELOPMENT EXTERNAL WORKS PLAN SHEET 2		Drawing Status NOT FOR CONSTRUCTION PURPOSES PRELIMINARY	
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Schedule 3 External Works Protocol

Developer's undertakings

1. The Developer undertakes to procure the construction of the External Works as set out in Schedule 2 as contemplated by this Schedule 3.

Procedures

Quality of Material and Work

2. The Developer must procure the External Works:
 - (a) using good quality materials, which must be suitable for the purposes for which they are required under this Agreement;
 - (b) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards; and
 - (c) in compliance with any relevant Approvals.

Standards

3. The Parties agree that the design and specifications of the External Works shall take into consideration Council's relevant development control plans, design codes and technical manuals.

Standards as conditions of Approval


4. The Parties agree that to the extent the External Works are to be undertaken in accordance with clause 2(c) of this Schedule, where any inconsistency with the requirements of this Agreement and any Approvals exist, the requirements of that Approval and the law prevail to the extent of the inconsistency.

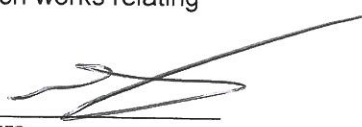
Reinstatement on damage or destruction

5. The Developer may but is not obliged to reinstate any External Works where the damage or destruction is the result of:
 - (a) any negligent act or omission of the Council or its employees, consultants or agents relating to any part of the External Works under this Agreement; or
 - (b) the use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of Council of any part of the External Works.

Implementation

6. During the period commencing on the date of issue of the final occupation certificate and ending 3 months later, the Developer is required to complete or rectify such works relating

ALBERT METLEDGE 
Name/Signature

Michael McManus 
Name/Signature

to the External Works after receiving notice from the Council detailing any alleged defect and the works required to rectify the defect. Should the Developer receive notice within the 3 month period, the Developer must complete or rectify such works whether or not the 3 month period has expired.

7. Whenever reasonably requested in writing by Council, the Developer must provide evidence of insurance prior to commencement of External Works.

Works Completion

8. When, in the opinion of the Developer, the External Works have reached completion, the Developer must notify Council as soon as practicable.

Final Inspection by Council

9. Following the notification by the Developer pursuant to clause 8 of this Schedule, the Council's representative must inspect the External Works within 14 days and must by written notice to the Developer concur that completion of the External Works has been achieved; or identify with reasonable particularity what is required to occur to enable completion of the External Works.

ALBERT METLEDGE

Name/Signature

Muhammad M. M. M.

Name/Signature

Schedule 4 Development Application No.190/2014

ALBERT METLEDGE

Name/Signature

MICHAEL M. MAHONEY

Name/Signature



Burwood Council

heritage • progress • pride

SUITE 1, LEVEL 2,
1-17 ELSIE STREET, BURWOOD, NSW 2134
P O BOX 240, BURWOOD, NSW 1805
TEL: 9911 9911 FAX: 9911 9900
WEBSITE: www.burwood.nsw.gov.au

MAJOR DEVELOPMENT APPLICATION

Made Under the *Environmental Planning & Assessment Act 1979 Section 78a*



All correspondence to be addressed to:
The General Manager, Burwood Council
PO Box 240, BURWOOD NSW 1805

CONTENTS:

- PART A - GENERAL
- PART B - DEVELOPMENT DETAILS
- PART C - SUBMISSION REQUIREMENTS

Application Fee:
Receipt No:
Date Received: / /
Building Classification:

Note: To ensure that there are no delays in the processing of your application, all parts of the application form must be completed before lodgement. Refer to Part C of this form for information to be submitted with the application.

PART A - GENERAL		
1. APPLICANT DETAILS		
Name: <u>ARM Holdings Pty Ltd.</u>		
Address: <u>P.O. Box 1235 SPRATHFIELD. 2135.</u>		
Phone:		
Work: ()	Home: ()	
Mobile: () <u>0410 535157</u>	Fax: ()	
2. LAND TO BE DEVELOPED		
Address: <u>23-31 MORWICK ST.</u>		
<u>SPRATHFIELD</u>		
Post Code:		
Lot(s):	Section(s):	DP(s):
3. BRIEF DESCRIPTION OF PROPOSED DEVELOPMENT		
The proposal will involve (tick appropriate boxes and complete the appropriate sections of Part B of this form):		
<input checked="" type="checkbox"/> Residential uses (complete General Section of Part B)		
<input type="checkbox"/> Commercial uses (complete General & Operations Section of Part B)		

<input type="checkbox"/> Industrial uses (complete General & Operations Section of Part B) <input type="checkbox"/> Demolition (complete General and Demolition Section of Part B) <input type="checkbox"/> Subdivision (complete General and Subdivision Section of Part B)	
Brief description of proposed development (include details of proposed use of land/buildings, erection of buildings and subdivision of land/buildings, carrying out of work, demolition and other): THE ADDITION OF 6 STOREYS TO (RESIDENTIAL) TO AN EXISTING MIXED USE DEVELOPMENT UNDER CONSTRUCTION	
Total floor area of proposed building/s (if applicable) 3650 (m ²):	
Estimated value of proposal: \$10,691,784.40	
NOTE: A Construction Certificate application is to be lodged at the same time as the Development Application to qualify for a Combined Application Discount Fee.	
<input type="checkbox"/> Yes (A Construction Certificate Application Form must be completed and lodged with this application). <input checked="" type="checkbox"/> No	
4. TYPE OF CONSENT	
Type of Consent Applied For (tick appropriate type): <input checked="" type="checkbox"/> Development consent <input type="checkbox"/> Deferred commencement consent <input type="checkbox"/> Staged development consent	
5. APPROVALS UNDER S68 LOCAL GOVERNMENT ACT 1993	
Are you seeking an approval under s68 of the Local Government Act 1993 (Tick appropriate box): <input type="checkbox"/> Yes (tick approvals sought below) <input checked="" type="checkbox"/> No	
Approvals sought under s68 of Local Government Act 1993. Structures or places of public entertainment: <input type="checkbox"/> Installing a manufactured home, moveable dwelling or associated structure on land <input type="checkbox"/> Installing a temporary structure on land <input type="checkbox"/> Using a building or temporary structure as a place of public entertainment or permitting its use as a place of public entertainment	
Water Supply, Sewerage and Stormwater Drainage Work: <input type="checkbox"/> Carrying out water supply work <input type="checkbox"/> Drawing water from a Council water supply or a standpipe or selling water so drawn <input type="checkbox"/> Installing, altering, disconnecting or removing a meter connected to a service pipe <input type="checkbox"/> Carrying out sewerage work <input type="checkbox"/> Carrying out stormwater drainage work <input type="checkbox"/> Connecting a private drain or sewer with a public drain or sewer under the control of a Council or with a drain or sewer which connects with a public drain or sewer	
Management of Waste: <input type="checkbox"/> For fee or reward, transporting waste over or under a public place <input type="checkbox"/> Placing waste in a public place <input type="checkbox"/> Placing a waste storage container in a public place <input type="checkbox"/> Disposing of waste into a sewer of the Council <input type="checkbox"/> Installing, constructing or altering a waste treatment device or a human waste storage facility or drain connected to any such device or facility.	
Public Roads: <input type="checkbox"/> Swinging or hoisting goods across or over any part of a public road by means of a lift, hoist	

or tackle over the footway

Other Activities:

- ☐ Operating a public car park
- ☐ Operating a caravan park or camping ground
- ☐ Operating a manufactured home estate
- ☐ Installing or operating domestic oil or solid fuel heating appliance, other than a portable appliance
- ☐ Installing or operating amusement devices (within the meaning of the *Construction Safety Act 1912*)
- ☐ Installing or operating amusement devices prescribed by the regulations under the *Local Government Act 1993* in premises
- ☐ Operating an undertaker's business
- ☐ Operating a mortuary
- ☐ Carrying out an activity prescribed by the regulations under the *Local Government Act 1993* or an activity of a class or description so prescribed.

6. INTEGRATED DEVELOPMENT

Is This Application for Integrated Development (tick appropriate box):

- ☐ Yes (complete this section)
☒ No

If yes, which approval(s) are you seeking (tick approvals sought):

Fisheries Management Act 1994	<input type="checkbox"/> s144	<input type="checkbox"/> s201	<input type="checkbox"/> s205		
Heritage Act 1997	<input type="checkbox"/> s58				
Mine Subsidence Compensation Act	<input type="checkbox"/> s15				
National Parks & Wildlife Act	<input type="checkbox"/> s90				
Pollution Control Act	<input type="checkbox"/> s17A	<input type="checkbox"/> s17C	<input type="checkbox"/> s17D	<input type="checkbox"/> s171	
Rivers and Foreshores Improvement Act 1948	<input type="checkbox"/> Part 3A				
Roads Act 1993	<input type="checkbox"/> s138				
Waste minimisation & Management Act 1995	<input type="checkbox"/> s44				
Water Act	<input type="checkbox"/> s20CA	<input type="checkbox"/> s20L	<input type="checkbox"/> s116	<input type="checkbox"/> s20B	<input type="checkbox"/> Part 8

7. ENVIRONMENTAL IMPACT

Where any of the following matters have not been considered, a written statement with further details may be required upon request from the Council (tick matters considered or matters not applicable):

Considered	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	A Site Analysis Report (refer to Required Attachments 1 of Part C of this form)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Flooding, drainage, land slip, soil erosion and any other risk
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Effect on the landscape, streetscape or scenic quality of the locality
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Impact on existing and future amenity of the locality
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Amount of traffic generated, particularly in relation to the adequacy of existing roads and present volumes of traffic carried. Car access, parking and availability of public transport
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Waste disposal arrangements. Location of garbage and storage areas
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Methods of sewerage and stormwater disposal
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Availability of utility services, power, gas, telephone, water and sewer
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Social and economic effects
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Anticipated impact of noise levels to the site and locality
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Effect on historical and archaeological aspects

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Effect on flora and fauna
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Design and external appearance in relation to the site and locality indicating how the design is appropriate to the site
<input checked="" type="checkbox"/>	<input type="checkbox"/>	How the privacy, daylight and views of other dwellings will be affected, i.e. they do not overlook or overshadow each other
<input checked="" type="checkbox"/>		Access for the disabled. See requirements of Disability Discrimination Act 1992
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Any special circumstances
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Environmental Impact Statement for designated development (Refer to Required Attachments Note 4 in Part C).

8. CONSENT OF ALL OWNERS

This section must be completed and signed by the owner/s of the property on which the development is proposed to be carried out (this includes every person who jointly or severally own the property).

As the owner(s) of the land, I/we consent to this application. I/we hereby agree to allow Council's Officers to enter the subject land for the purpose of carrying out inspections associated with the application.

Note: If signed on behalf of a corporate body or company, the company seal must be stamped over signatures or the signature of the Managing Director provided accompanied by the Australian Company Number (ACN).

1. Name: ALBERT METLEDGE Position: DIRECTOR
Address: 10 STRATHFIELD AVE STRATHFIELD
Telephone: 0412961122 Signature: [Signature]

2. Name: Position:
Address:
Telephone: Signature:

9. SIGNED BY APPLICANT/S IF NOT OWNER

Signature/s: [Signature]
Name: ANTONY METLEDGE
Capacity: MANAGER Date: 8.12.14

10. INSTRUCTIONS for COLLECTION

Upon determination of the application please (tick appropriate box and give details where appropriate:

1. Post to applicant:
2. Post to owner:
3. Hold for collection by:
4. Telephone:

☐☐☒☐

APPLICANT.

Phone number: *0410 535157*

11. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Have you made a Political Donation or Gift to a local councillor (including when the councillor was a candidate) or to a Council employee within two years prior to lodging this application (tick appropriate box):

☐ Yes

☒ No

If Yes, you must complete the Disclosure Statement attached to this application form.

PART B – DEVELOPMENT DETAILS

Are there any buildings/structures on the land? (tick)

- ☐ Yes (provide details on plans accompanying this application)
☒ No

What is the existing or previous use of the land/building(s)/structures?

OFFICES & DWELLING HOUSES

Type of construction of existing building/s or works, including details of materials in walls, roofs, floors, etc (if applicable):

Walls:

N/A

Floors:

Roofs:

Other:

Total wall area of existing buildings (m²):

Are you proposing to develop only part of any existing building(s) or works including details of materials in walls, roads, floors etc ?(where applicable)

☐ Yes

☒ No

If you intend to develop only part of any existing building(s) or land , give details of the part proposed to be developed and the use of the remaining part:

N/A

Type of construction proposed building(s) or works, including details of materials in walls etc (where applicable):

Walls:

conc

Floors:

R + Conc

Roofs:

conc

Other:

Are there any existing trees on the land ?(tick)

☐ Yes (Provide details on plans accompanying this application)

☒ No

Is the property a heritage item or in a conservation area under the *Burwood Local Environmental Plan 2012*?

☐ Yes (refer to Required Attachments Note 6 of Part C of this form for information to be submitted with this application)

☒ No

Is the property within the vicinity of a heritage item under the *Burwood Local Environmental Plan 2012*?

Yes (refer to Required Attachments Note 6 of Part C of this form for information to be submitted with application)

☐ No

OPERATIONS

Are goods/materials to be delivered to the premises?

☒ Yes

☐ No

If yes, what hours will the goods/materials be delivered to the premises?

Weekdays: 7am - 5pm Saturday: 8.00am - 3pm Sunday: NIL

Are goods/materials to be despatched from the premises?

☐ Yes

☒ No

If yes, what hours will the goods/materials be despatched from the premises?

Weekdays: Saturday: Sunday:

Details of type, size, number and frequency of vehicles delivering goods from the premises: N/A

Details of type, size, number and frequency of vehicles despatching goods from the premises: N/A

Does the proposal require loading/unloading facilities?

☐ Yes (Provide details on plans accompanying this application)

☒ No

Describe the type, size and quantity of goods to be made, stored or transported (attach separate sheets of paper if necessary): N/A

What is the existing number of parking spaces on the site? (if applicable) 105

What is the proposed number of parking spaces or additional number of parking spaces? (if applicable) 158 (EXTRA 53 SPACES)

Will the proposal have a greater impact on existing traffic than the previous use?

☐ Yes (provide details with the application)

☒ No

Number of persons to be working on site.

SAME

If this proposal relates to an existing development, what is the increase or decrease of person to be working on site?

Increase: Decrease:

What are the proposed operating hours: N/A

Weekdays: Saturday: Sunday:

Does the proposal involve the installation of machinery?

☐ Yes (Provide details on plans accompanying this application)

☒ No

Does the proposal involve the change of use of existing buildings?

<input type="checkbox"/> Yes (Provide details on plans accompanying this application) <input checked="" type="checkbox"/> No	
DEMOLITION <u>N/A.</u>	
Where the proposed development involves demolition, give details of the type of building/s (attach separate sheets of paper if necessary):	
Where the proposed development involves demolition, provide details of the proposed methods of demolition, removal and recycling of material in accordance with Council's Waste Management Guidelines (attach separate sheets of paper if necessary):	
SUBDIVISION <u>N/A.</u>	
If the proposal involves subdivision, what type of subdivision (i.e. Torrens, Community Title or Strata)?	
How many lots/units? Existing: Proposed:	
If the proposed subdivision involves the construction of any structures or works, provide details below (attach separate sheets of paper if necessary).	
PART C – SUBMISSION REQUIREMENTS	
Number of Attachments	
Six copies of all attachments are required to be submitted with your application (unless otherwise indicated). The following information should be included on attachments (where applicable): <ul style="list-style-type: none"> ▪ Applicant's name, block/house/shop/flat number, street/road name and suburb ▪ Lot number, section number and DP number (found on rate notice or land title) ▪ The position of true north ▪ Additions/alterations/modification to previously approved plans (building and/or subdivision) - to be highlighted in colour (two out of the six copies to be submitted must be coloured) ▪ Buildings to be demolished - to be indicated in outline 	
Note 1 - Plans: Site plans, floor plans, drawings, sections and elevations are to be provided at a scale of 1:100 or 1:200.	
Note 2 - Notification Plans: Applicants are required to submit two copies of all plans in A4 size showing the height and external configuration of the building in relation to the site on which it is proposed to be erected for the information and dissemination to interested persons and for notification letters to adjoining neighbours and/or landowners.	
Note 3 - Referrals to a Traffic Committee: Major traffic generating Development Applications are required to be submitted to the Sydney Regional Development Advisory Committee or the Burwood Local Traffic Committee. If the Development Application is required to be referred to the Sydney Regional Development Advisory Committee, four additional sets of plans will be required to be submitted with the application. If the Development Application is required to be submitted to the Burwood Local Traffic Committee, three additional sets of plans will be required to be submitted with the application. If your proposal has the potential to be a major traffic generating development, please contact Council to establish whether your Development Application will be required to be submitted to one of the above Traffic Committees.	

Required Attachments (Tick attachments provided with your application)

Note 1 - All Development Applications

- ☒ A site analysis report must be submitted with a Development Application which includes the following:

A site plan which must indicate:

- Location of site (including nearest cross street), boundary dimensions, site area and north point of the land
- Existing vegetation and trees on the land
- Any trees to be removed or lopped
- Location and uses of existing buildings on the land
- Existing levels of the land in relation to buildings and roads
- Location and uses of buildings on sites adjoining the land.

Floor plans/drawings describing any proposed buildings or work indicating:

- The location of proposed new buildings or works (including extensions or additions to existing buildings or works) in relation to the land's boundaries and adjoining development
- Floor plans of proposed buildings showing layout, partitioning, room sizes and intended uses of each part of the building
- Elevations and sections showing proposed external finishes and heights
- Proposed finished levels of the land in relation to buildings and roads
- Building perspectives, where necessary to illustrate the proposed building
- Proposed parking arrangements, entry and exit points for vehicles, and provision for movement of vehicles within the site including dimensions (where appropriate)
- Loading and unloading facilities (including dimensions of service bay)
- Proposed landscaping and treatment of the land (indicating plant types and their height and maturity)
- Location of industrial waste container (where applicable)
- Sections showing any filling or excavation of the land (where applicable)
- Location and storage of dangerous or flammable goods (where applicable)
- Shadow diagrams (for developments two-storeys and above)
- Proposed methods of stormwater drainage.

- ☒ Application Fee

- ☐ Long Service Levy = 0.35% of Contract Price.

Note 2 - Development Applications Involving Subdivision N/A

- ☐ As well as the details required to be submitted with a Development Application, the following must also be submitted if the Development Application involves subdivision:
- Details of the existing and proposed subdivision pattern (including the number of lots and location of access roads)
 - Details of consultation with public authorities responsible for provision or amplification of utility services required by the proposed subdivision
 - Preliminary engineering drawings detailing infrastructure provision including roads, water, sewerage and earthworks
 - Existing finished ground levels.

Note 3 - Development Applications Involving Demolition N/A

- ☐ As well as the details required to be submitted with a Development Application, the details of the buildings or works to be demolished must also be submitted. See Part B of this form.

Note 4 - Designated Development Applications N/A

- ☐ As well as the details required to be submitted with a Development Application, an Environmental Impact Statement is required to be submitted for a designated development (as per the requirements of Clause 84 of the *Environmental Planning & Assessment Regulation 1994*).

Designated development is major development that is declared to be designated development by the *Environmental Planning & Assessment Regulation 1994* (Schedule 3).

Note 5 – Development Applications with Advertising Signs and Structures N/A.

- ☐ If your Development Application involves the erection of an advertising structure or sign you will need to submit details of the following:
- The proposed location of the sign and elevation of what it will look like
 - Details of the structure and types of materials to be used
 - Size, colour and overall design of the sign
 - Proposed sign wording and method, if any, of illumination.

Note 6 – Development Applications Involving Heritage

- ☒ As well as the details required to be submitted with a Development Application, the following must also be submitted if the subject site is a heritage item or in the vicinity of a heritage item under the *Burwood Local Environmental Plan 2012*.

☒ A statement that:

- Describes the significance of that building, work or land as part of the environmental heritage of the Burwood Council area
- Demonstrates that consideration has been given to the heritage significance and the conservation of the building, work or land to which the application relates
- Setting out any steps to be taken to mitigate any impact of the development on the heritage significance of that building, work or land.

(Applications for dwellings in the APPIAN WAY or MALVERN HILL Conservation Areas should also obtain a copy of Council's additional requirements from our Customer Service Staff).

Note 7 – Additional Information Provided by Applicant

- ☒ Additional information has been submitted to support the proposed development and its context e.g. photographs, models etc).

Give details: VPA

PRINCIPLES FOR CONTROL OF SEPP NO. 1 USAGE

- ☐ On 10 July 2000, new SEPP No. 1 delegations were issued to the Burwood Council Planning Officer subject to the following restriction:
- ☐ "Shall not exceed the planning controls proposed under draft *Burwood Local Environmental Plan* No. 46, draft LEP No. 40 and draft LEP No. 35."
- ☐ Council does not and cannot exercise its powers under SEPP No. 1 unless an effective objection is made that such development standard is unreasonable or unnecessary in the circumstances.
- ☐ In the main, deviations should be relatively minor, such that they are not used, nor have the effect of eroding zoning provisions.
- ☐ Quality of urban design for the built form has to form the basis for the setting of controls in the limits to development standards deviation.
- ☐ The protection of the quality of amenity around a development proposal has to be a consideration when looking at standards and their controls as reflected in spatial land usage applicability.
- ☐ Where a major planning study has been undertaken such as the Town Centre Studies, and properly documented controls have been recommended which will be incorporated in a draft LEP and/or DCP, then the acceptable deviation of existing development standards should not exceed those recommended from the study.
- ☐ Deviation from development standards for a given zone, say, Residential 2(b1) should not approach nor exceed those of the next zone up, say, Residential 2(b2) as such exercise if proposed through SEPP No. 1 should take place through the LEP process (if at all justifiable).
- ☐ Case law principles, as established through the Land & Environmental Court and the Court of Appeal, should not be breached by Council's policy decision.
- ☐ The general terms and principles of the DOP Circular on SEPP No. 1 and advice and information given by DOP officers should not be deviated from in order to preserve Council's planning powers on these matters.
- ☐ The purpose and objectives of the particular zone to which the development standard or standards apply should not be contravened by the deviation to such controls.
- ☐ The use of 'controls' for SEPP No. 1 should only ever be an interim and short term exercise pending proper and comprehensive planning studies to address issues relating to zoning and development standards control.
- ☐ The radical and usually deemed unjustified use of SEPP No. 1 being a vital matter of concern to DOP can be prevented or at worst minimised with control promoted by Council.
- ☐ In any case, the short term controlled use of SEPP No. 1 could not be used as a precedent to pre-empt an altered set of standards to result from a subsequent planning study.
- ☐ Consistency of and, the basis for advice to developers over a period of time, as well as information reported to Council over such a time frame, has been deemed a further reasonable basis for the suggestions on variation control as set out below.
- ☐ An analysis of approvals with and without SEPP No. 1 in recent years has been effectively taken into account in this assessment task.

- ☐ Responses resultant from public exhibition of both development proposals and strategic forward planning tasks have also been properly factored into this assessment result which also conforms to overall advice given to Council on a number of occasions by DOP officers.

CHECKLIST FOR LODGING A DEVELOPMENT APPLICATION

- ☐ Electronic lodgement (PDF format) on CD, not password protected for DA lodgement containing all plans, Statement of Environmental Effects and supporting information e.g. "SEE.pdf", Supporting "image.jpg". **For further information please refer to "Electronic Lodgement of Development Applications" fact sheet.*
- ☒ Six sets of fully dimensioned plans at 1:100 scale or larger including: site plan, floor plan, sections and elevations. (For developments of three-storeys or more, ~~twelve~~ ⁸ sets required).
- ☒ Two sets of A4 sized plans for public notification showing the height and external configuration of the building. *Ref. BRIAN OLSEN.*
- ☒ Two sets of the plans are to be coloured for any alterations and/or additions to an existing building.
- ☒ Four copies of Survey plan with contours, north point, existing trees and structures and adjoining buildings identified for new developments.
- ☒ A registered Quantity Surveyor's Development Cost/Capitol Investment Value (CIV) for developments in excess of \$500,000 in accordance with Council's Section 94A Contributions Plans (not including dwelling houses).
- ☒ Landscaping plans with all new dwelling, medium density housing and commercial developments.
- N/A* ☐ Four copies of Waste Management Plan based the provisions of waste management in Council's DCP.
- ☒ Plan of any new driveway and identify any existing street trees.
- N/A* ☐ Four copies of Stormwater Drainage Concept plans for new buildings and alterations and additions, in accordance with Council's *Stormwater Management Code*.
- N/A* ☐ Concept electrical plan/liaison with Energy Australia.
- ☒ Four copies of shadow diagrams for any new developments of two storeys or more.
- ☐ A digital 3D model is required to be submitted for all Major Development (see "Digital 3D Development Applications Model Specifications for further information).
- ☒ SEPP 65 Certification for Residential Flats comprising a design verification statement from a registered architect for buildings with a residential component of three storeys or more.
- ☒ Four copies of Statement of Environmental Effects to accompany applications (except for minor domestic applications) including schedule of dwelling sizes/number of bedrooms, if applicable, including *SEPP 65* and *NSW Residential Flat Design Code (RFDC)* assessment.
- ☒ Four copies of Heritage Impact Statement for all Heritage premises and for those adjoining and in the immediate vicinity of Heritage items.
- ☒ Locality/site analysis statement for new commercial or residential developments.
- ☐ A precise schedule of External Finishes Colours and Materials for multi-dwellings and mixed use developments (such information may be lodged in electronic format).
- N/A* ☐ Two sets of Building Specifications (including materials used) for new building work.
- ☒ Two sets of Basix Certificate. (Residential flat development, alterations and additions over \$50,000 and work involving a swimming pool with a capacity of 40,000 litres or more).

- ☒ Fire safety measures to be provided.
 - ☒ Access and facilities for disabled persons to be provided.
 - ☒ Building Height Plane (BHP) diagram together with BHP formula, prepared by an accredited architect, in line with the Burwood Town Centre Local Environmental Plan 2010 (BTC LEP) and Development Control Plan Part 36 – Burwood Town Centre (DCP part 36).
 - ☒ Voluntary Planning agreement (VPA) for car parking contributions lodged with DA (does not apply to major development) in lieu of providing parking on-site of development.
 - ☒ Transport, Traffic and Parking Impact Report and Management Plan prepared for all major development and all other development in the Burwood Town Centre.
 - ☒ Public Domain Improvements and street front setbacks in accordance with requirements of BTC LEP and DCP Part 36.
 - ☒ Has a Pre-Application meeting been held? Yes ☒ No ☒
 - ☒ Completion of Disclosure of Political Donations & Gifts Statement? Yes ☒ No ☒
-

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Pursuant to Section 147 of the *Environmental Planning & Assessment Act 1979*, you are required to disclose any political donation or gift (being money, disposition of property or a service rendered to the value of \$1000 or above, (as defined in Sections 84 to 87 of the *Election Funding and Disclosures Act 1981*) - made to any local councillor (including the period when the Councillor was a candidate) or employee of the council within two years prior to the date of lodging this application and up until the time the application is determined.

Disclosure is to be made by completing the Statement attached to this application.

Explanation: A political donation or gift means money, disposition of property or a service rendered to the value of \$1000 or above (as defined in Sections 84 to 87 of the *Election Funding & Disclosures Act 1981*) - made to any local councillor (including the period when the councillor was a candidate) or employee of the council within two years prior to the date of lodging this application, in this case from, and up to the time the application is determined.

Political Donation

Name of political party or person for whose benefit the donation was made:

.....

Date the donation was made:

Name of the donor:

Residential address of donor or address of registered or other official office of the donor (as appropriate):

.....

Amount (or value) of donation:

Australian Business Number (If applicable):

Gift

Name of the person to whom the gift was made:

.....

Date the gift was made:

Name of the person who made the gift:

.....

Residential address of the person who made the gift, or address of registered or other official office of the person who made the gift:

.....

Amount (or value) of the gift: \$

Note: It is an offence under Section 125 of the Act not to disclose a political donation or gift, where the person knows, or ought reasonably to know, that a political donation or gift was made. The maximum penalty for such an offence is \$22,000.

Date: / /

D.A No:

Name:

Address:

.....

Signature:



Burwood Council

heritage • progress • pride

SUITE 1, LEVEL 2,
1-17 ELSIE STREET, BURWOOD, NSW 2134
PO BOX 240, BURWOOD, NSW 1805
TEL: 9911 9911 FAX: 9911 9900
WEBSITE: www.burwood.nsw.gov.au

PRIVACY STATEMENT

If you are applying for consent as an individual, you may be providing Council with personal information (such as your name and address) within the meaning of the *Privacy and Personal Information Protection Act 1998*.

You are obliged by law to provide your name and address. If you do not provide the personal information requested Council may be unable to process your application.

Council is collecting this personal information from you in order to identify, process and consider your Development Application.

Council is required to make every Development Application, including any personal information contained, publicly available for inspection at Council's principal office.

Council may also be obliged to notify and advertise your Development Application in order to process your Development Application.

If your application is decided by the Building & Development Committee or by Council, any personal information set out in this form may be included in Council's business papers which are published on Council's web-site and made publicly available.

You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from being made publicly available. Council will consider any such application in accordance with the relevant legislation.

Enquiries concerning this matter can be addressed to Council's Public Officer.

Schedule 5 Explanatory Note

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979 (NSW)

1. Parties

A.R.M. Holdings Pty Ltd. ACN 056 604 070. 10 Strathfield Avenue, Strathfield NSW
(Developer).

Burwood Council. ABN 84 362 114 428. 1-17 Elsie Street, Burwood NSW (Council).

2. Description of Subject Land

The subject land means the whole of the Land comprised in the certificate of title Lot 1 in DP 1196906, known as 23-31 Morwick Street, Strathfield NSW.

The Developer is the registered proprietor of the subject land.

3. Description of Proposed Development Application and Modification Application

The proposed development is documented in:

- (a) Development Application No.66/2013,
- (b) Modification Application No.66/2013/B, and
- (c) Development Application No.190/2014.

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

4.1 Summary of Objectives

The objectives of the draft Planning Agreement are to:

- (a) dedicate land to Council for the purposes of widening Bells Lane from its current single lane capacity to a dual lane carriageway,

ALBERT HETLEDGE 
Name/Signature

Michael McManus 
Name/Signature

- (b) procure a range of external works associated with the widening and upgrading of Bells Lane,

in order to provide a benefit for the public in terms of traffic flow and associated reduction in traffic congestion in and around Bells Lane.

4.2 Nature and Effect of the Draft Planning Agreement

The draft Planning Agreement requires the Developer to dedicate the following land and procure the following external works:

- (a) dedicate to Council approximately 127 sqm of land for the purposes of widening Bells Lane, to facilitate its conversion from a single lane carriageway to a dual lane carriageway.
- (b) procure external works associated with the widening and upgrading of Bells Lane, including:
- (i) undergrounding of overhead powerlines along Bells Lane.
 - (ii) demolish and remove existing curb and guttering along Bells Lane to make way for lane extension;
 - (iii) adjust all existing services along Bells Lane.
 - (iv) relocating existing Telstra pit and associated cables along Bells Lane.
 - (v) constructing new curb and guttering along Bells Lane (for the length of the subject land only) to Council requirements.
 - (vi) constructing new 1.2m footpath along Bells Lane (for the length of the subject land only) to Council requirements.
 - (vii) provide new street lighting along Bells Lane to Council requirements;
 - (viii) adjust existing sewer manhole in Bells Lane.
 - (viii) installation of 1 parking meter and 1 CCTV camera, and linemarking.
- (c) As a consequence - directly and indirectly - of the dedication of land to Council for road widening purposes, various amendments to the existing development consent over the subject land will be required, including:
- (i) additional basement level.
 - (ii) reduced ground floor area to accommodate the proposed widened laneway.
 - (iii) reduced balcony area on L1 to L3.
 - (iv) increased floor to ceiling height by 100mm.
 - (v) upgrading of facade.

ALBERT MEZLEGE

Name/Signature

Muhammad M. M. M.

Name/Signature

- (d) The estimated value of:
 - (i) the Dedicated Land is **\$1,025,000** (excl. of GST).
 - (ii) the External Works is **\$951,169** (incl. of GST).
 - (iii) the amendments to the development arising as a consequence of part of the subject land being dedicated for road widening purposes - up to an including Level 8 of the development - is **\$6,830,587** (incl. of GST).
- (e) The obligations of the Developer - and the costs consequences for the Developer - are over and above those contributions imposed under section 94, section 94A and section 94EF of the *Environmental Planning and Assessment Act 1979* (NSW) in connection with the proposed development.

5.1 The Planning Purposes Served by the Draft Planning Agreement

In accordance with section 93F(2) of the *Environmental Planning and Assessment Act* 1979 (NSW), the Planning Agreement promotes the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The draft Planning Agreement promotes the following objects of the *Environmental Planning and Assessment Act 1979* (NSW):

- (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- (b) the promotion and co-ordination of the orderly and economic use and development of land;
- (c) the protection, provision and co-ordination of communication and utility services;
- (d) the provision of land for public purposes, and
- (e) the provision and co-ordination of community services and facilities.

The draft Planning Agreement provides for a reasonable means of achieving those purposes.

ALBERT METLEDGE 

Name/Signature

M. K. M. M.

Name/Signature

6. **How the Draft Planning Agreement Promotes the Public Interest**

6.1 How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The draft Planning Agreement promotes Council's Charter under section 8 of the *Local Government Act 1993* (NSW) by:

- (a) the provision of adequate, equitable and appropriate services and facilities for the community in the form of providing land, road works and infrastructure works.

6.2 Whether the draft Planning Agreement Conforms with the Council's Capital Works Program

The draft Planning Agreement conforms with Council's Capital Works Program to the extent that it will supplement the Program by providing works and infrastructure.

6.3 Whether the draft Planning Agreement specifies that certain requirements must be complied with before an occupation certificate is issued

The draft Planning Agreement provides that the dedication of land and the provision of external works be delivered prior to the issue of any occupation certificate for the proposed development in accordance with the *Environmental Planning and Assessment Act 1979* (NSW).

7. **The Impact of the Draft Planning Agreement on the Public or Any Section of the Public**

The draft Planning Agreement impacts on the Public by promoting the Public's interest as outlined above.

8. **Other Matters**

None.

ALBERT METLEDGE 
Name/Signature

Michael McManus 
Name/Signature