

Our Ref: AFP.152542

Voluntary Planning Agreement

9-15 Deane Street & 18-20 George Street, Burwood

Burwood Council (Council)

ABN 84 362 114 428

and

Margaret Elias

and

Farah Elias

and

Sarah Anne Tohme

and

Jade Elias

and

Burwood Enterprise Centre Pty Ltd

ABN 83 080 870 597

and

Burwood Commercial Centre Pty Ltd

ABN 68 058 811 304

(Proprietors)

and

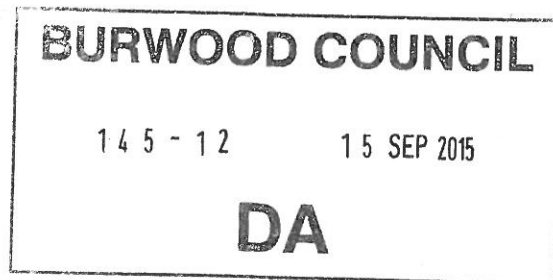
St John Ambulance Australia (NSW Trust) Limited (St John)

ABN 31 003 826 328

and

Farah Custodians Pty Ltd (Developer)

ABN 21 160 801 427



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Details

Date

August 2015

Parties

Description

Name

ABN

Council

Burwood Council

ABN 84 362 114 428

Notice details

Address

Suite 1, Level 2, 1-17 Elsie Street
Burwood NSW

Post

PO Box 240, Burwood NSW 1805

Fax

02 9911 9900

Attention

The General Manager

Description

Name and notice
details

Proprietors

Margaret Elias

79 Burlington Road

Homebush NSW 2140

and

Farah Elias

79 Burlington Road

Homebush NSW 2140

and

Sarah Anne Tohme

79 Burlington Road

Homebush NSW 2140

and

Jade Elias

79 Burlington Road

Homebush NSW 2140

and

Burwood Enterprise Centre Pty Limited ABN 83 080 870 597

Address

SJ Sassine

Suite 901 Level 9

50 Clarence Street

Sydney NSW

Post

PO Box 288, Enfield NSW 2136

and

Burwood Commercial Centre Pty Limited ABN 68 058 811 304

Address SJ Sassine
Suite 901 Level 9
50 Clarence Street
Sydney NSW
Post PO Box 288, Enfield NSW 2136

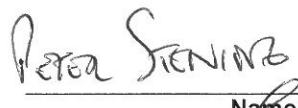
Description **St John**
Name **St John Ambulance Australia (NSW Trust) Limited**
ABN ABN 31 003 826 328
Notice details Address/Post 9 Deane Street
Burwood NSW 2134


Description **Developer**
Name **Farah Custodians Pty Ltd**
ABN ABN 21 160 801 427
Notice details Address Shop 8/320A-338 Liverpool Road
Enfield NSW
Post PO Box 288, Enfield NSW 2136
Fax 02 9744 3331
Attention Farah Elias

Background

- A The Development Property is situated at 11-15 Deane Street and 18-20 George Street Burwood, with frontage to Mary Street, comprising Lot 1 of DP 1181634.
- B The Proprietors are the registered proprietors of the Development Property.
- C The Development Site, for the purposes of this Planning Agreement, incorporates the Development Property and the adjacent Lot. The registered proprietor of the adjacent Lot (which is the whole of the land described as Lot 200 of DP 739048) is St John and is also controlled by St John.
- D The Development Site comprises 3,493 sqm.
- E On or about 8 July 2013 the Sydney East Joint Regional Planning Panel granted approval for Development Application No.145/2012 in respect of the Development Site for the construction of a 22 storey building above ground level for a mixed use development together with alterations and additions to an existing building on the Development Site, owned and operated by St John.
- F Since the granting of Development Consent for Development Application No.145/2012 in July 2013, the Developer has procured approval for a series of modification applications under section 96 of the Environmental Planning & Assessment Act 1979, comprising:


Name/Signature


Name/Signature


FARAH ELIAS
MARGARET ELIAS
SARAH ANNE TOHME

JADE ELIAS


- (a) Notice of determination of Modification Application dated 22 October 2013.
 - (b) Notice of determination of Modification Application dated 15 May 2014.
 - (c) Notice of determination of Modification Application dated 15 July 2014.
 - (d) Notice of determination of Modification Application dated 22 December 2014.
- G The Development Consent approved or otherwise incorporated:
- (a) 10,847 sqm of new commercial space plus 2,950 sqm of existing commercial space, totalling 13,797 sqm of commercial space.
 - (b) 6,859.1 sqm of new residential space.
- H The Development Consent approved or otherwise incorporated a total of 20,958 sqm.
- I The Developer has prepared a:
- (a) New Development Application, incorporating development to be carried out exclusively on the Development Property, and
 - (b) Planning Agreement seeking approval for a 10% increase in residential FSR for the Development Site in exchange for a public benefit.
- J As contemplated by section 93F of the Act, the parties wish to enter into a Planning Agreement with respect to the 10% increase in residential FSR for the Development Site contemplated by the New Development Application.
- K St John is the owner of 9 Deane Street, Burwood which forms part of the Development Site, but St John has no interest in the Development Property.
- L St John has agreed to consent to this Agreement as a party named in Development Application No. 145/2012, but accepts no liability for the payment of the Monetary Contribution or the compliance with the other obligations of the Proprietors or Development under the Planning Agreement. St John executes the Planning Agreement on this basis only.

Operative Provisions

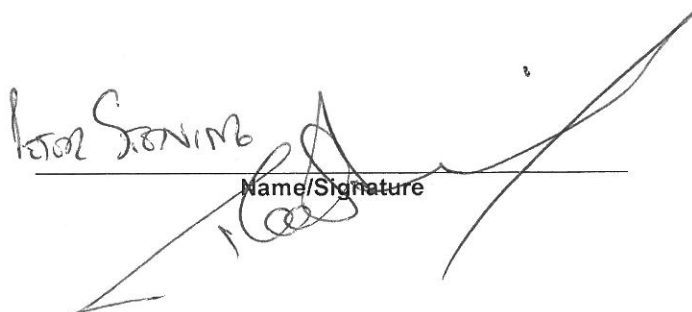
1. Definitions and Interpretation




1.1 Definitions

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

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

RICHARD NEAL 
Name/Signature

JOHN STONING 
Name/Signature

FARAH ELIAS
MARGARET ELIAS 
SARAH ANNE TOHME 
JADE ELIAS 

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 this Planning Agreement or the New Development Consent.

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.

Development Consent means the consent granted in connection with Development Application No.145/2012 as modified by subsequent approved modification applications dated 22 October 2013, 15 May 2014, 15 July 2014 and 22 December 2014.

Development Property means the whole of the land described in the certificate of title Lot 1 of DP1181634.

Development Site means the whole of the land described in the certificate of title Lot 1 of DP1181634 and Lot 200 of DP 739048.

Explanatory Note means the Explanatory Note set out in **Schedule 1** of this Planning 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 land described in the certificate of title Lot 1 of DP1181634 and/or Lot 200 of DP 739048.

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,

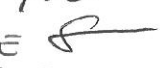
that presently apply or that may apply in the future.

Monetary Contribution means the sum of \$1,676,640 (one million six hundred and seventy six thousand, six hundred and forty dollars), inclusive of GST (if applicable).

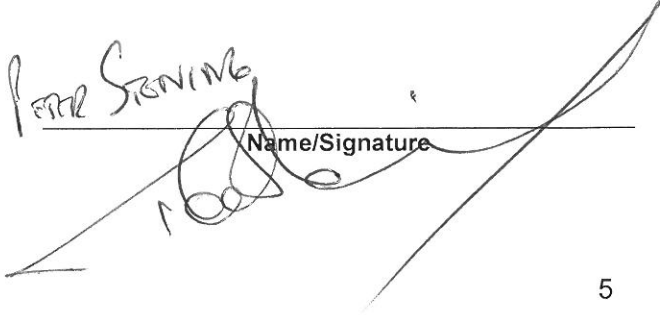
RICHARD NEAL 
Name/Signature

FARAH ELIAS

MARGARET ELIAS 

SARAH ANNE TOHME 

JADE ELIAS 

PETER STENING 
Name/Signature

New Development Application means the Development Application No.51/2015 lodged with Council on 30th March 2015 seeking approval for an additional 2,095.8m² of residential floor space.

New Development Consent means the consent granted in connection with the New Development Application.

Planning Agreement means this Planning Agreement.

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


1.2 Interpretation

In the interpretation of this Planning 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 Planning Agreement) is to that document as varied, novated, ratified, supplemented or replaced from time to time.
- (f) a reference in this Planning 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 Planning Agreement, and a reference to this Planning 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.


Name/Signature

FARAH ELIAS
MARGARET ELIAS
SARAH ANNE TOHME
JADE ELIAS


Name/Signature

- (k) the Explanatory Note set out in this Planning 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, Proprietor and/or St John are obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Planning Agreement or which was not contemplated at the time of entering into this Planning 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 Planning Agreement.

2. Planning Agreement under the Act

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

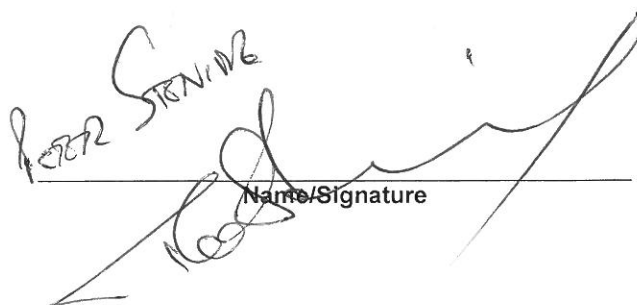
3. Application of this Planning Agreement

The Agreement applies to the Development Site.

4. Operation of this Planning Agreement

- (a) This Planning Agreement takes effect on the date of this Planning Agreement after execution by both parties, subject to clause 4(b).
- (b) This Planning Agreement will remain in force and effect until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) the Sunset Date is reached, or
 - (iv) the New Development Consent is surrendered in accordance with the Act; or
 - (v) it is otherwise discharged or terminated in accordance with the terms of this Planning Agreement.
- (c) If a legal challenge to the New Development Consent by a third party results in the New Development Consent being rendered invalid or otherwise unenforceable, then the Developer, Proprietors and St John collectively may, in their absolute discretion, either terminate this Planning Agreement or request the Council to consider changes to its terms.


Name/Signature


Name/Signature

FARAH ELIAS
MARGARET ELIAS MS
SARAH ANNE TOHME
JADE ELIAS

5. Monetary Contribution


5.1 Payment of Monetary Contribution

- (a) The Developer and/or Proprietors will, within 28 days after the granting of the New Development Consent for the New Development Application, pay to the Council the Monetary Contribution.
- (b) The payment of the Monetary Contribution will be by way of bank cheque made payable to the Council.
- (c) Notwithstanding clause 5.1(a), the Monetary Contribution must be paid prior to the issuing of any construction certificate issued in connection with the New Development Application.
- (d) The Developer, the Proprietors and St John each covenant and agree not to make an application for the issue of any construction certificate until the Monetary Contribution required to be paid to the Council has been received by the Council.
- (e) In the event that development consent is not granted for the New Development Application, the parties acknowledge and agree that no Monetary Contribution will be paid by the Developer or Proprietors.

5.2 Acknowledgments

- (a) The parties acknowledge and agree that the Monetary Contribution:
 - (i) is based upon the sale price of residential floor space within the Burwood Town Centre in the current market at the rate of \$800/m².
 - (ii) is voluntarily offered by the Developer and the Proprietors to the Council as part of this Planning Agreement.
- (b) The parties acknowledge and agree that the Monetary Contribution, when paid, will:
 - (i) constitute the payment of funds over and above the development contributions imposed or otherwise payable under the Council's Section 94A Contributions Plan for the Burwood Town Centre in connection with Development Application No.145/2012 and the New Development Application ("the benefits"). The benefits are not to be taken into consideration by the Council in determining contributions under section 94 and section 94A of the Act.
 - (ii) represent a monetary contribution towards a public benefit.
 - (iii) represent a monetary contribution towards a public benefit that may not be directly related to Development Application No.145/2012 and the New Development Application.


Name/Signature


Name/Signature

FARAH ELIAS
MARGARET ELIAS
SARAH ANNE TOMME
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5.3 Purpose for which the Monetary Contribution is paid

- (a) The Council acknowledges and agrees that the Monetary Contribution, when paid, will be received by Council and spent by Council on the provision, augmentation or improvement of open space, community facilities or other public facilities as determined by the Council.
- (b) Notwithstanding any other provision of this Planning Agreement, the parties acknowledge and agree that nothing in this Planning Agreement in any way fetters or attempts to fetter the discretion of the Council in the performance of its obligations.

6. Additional Material Public Benefits

6.1 Additional Material Public Benefits

- (a) The Developer has carried out or is proposing to carry out a range of additional works that have or will directly contribute to the civil infrastructure, public domain and physical facilities that are or will benefit the population within the immediate vicinity of the Development Site as well as the wider Burwood population.
- (b) The Additional Material Public Benefits:
 - (i) have been or are being carried out in connection with Development Application No.145/2012.
 - (ii) have been or will be completed by the Developer at its own cost.
 - (iii) have been or will be completed irrespective of whether the New Development Consent is granted for the New Development Application.

7. Application of the Act to the Development

- (a) This Planning 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.145/2012 and the New Development Application.
- (b) This Planning Agreement does not exclude the operation or application of any other contributions or commitments made in connection with any other voluntary planning agreements entered into by the Developer and/or the Proprietors and/or St John and the Council in connection with the New Development Application.

RICHARD NEAL
Name/Signature

PETER JENNINGS
Name/Signature

FARAH ELIAS
MARGARET ELIAS
SARAH ANNE TOMME
JADE ELIAS.




8. Registration of this Planning Agreement

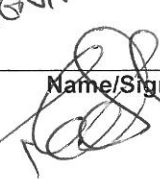
The Developer and the Proprietors further covenant with the Council:

- (a) that prior to the issue of any construction certificate issued in connection with the New Development Application, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this Planning Agreement over the title to the Development Property pursuant to section 93H of the Act from all persons who have an interest in the Development Property;
- (b) that forthwith after receiving the consents specified in subclause (a) hereof they shall cause this Planning Agreement to be registered on the title of the Development Property;
- (c) that if this Planning Agreement is not registered on the title to the Development Property, and if the Proprietors should propose to sell the Development Property or any part thereof then it shall:
 - (i) within seven (7) days of listing the Development Property or any part thereof for sale, either through an agent or privately, notify the Council of such intention;
 - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like agreement to this present Planning Agreement in which substantially the same covenants as set out herein shall apply;
 - (iii) within seven (7) days of exchange of contracts, notify the Council of the sale and provide the Council with a copy of the contract;
 - (iv) within twenty one (21) days of receipt from the Council of a replacement agreement between the Council and the purchaser substantially in the form of this Planning Agreement, have it executed by the purchaser and return it to the Council;
 - (v) that if this Planning Agreement is not registered on the title to the Development Property, and if the Developer or the Proprietors should propose otherwise than by sale to transfer or assign its interest in the Development Property or any part thereof to a transferee or assignee, then it shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Planning Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.

The Developer and the Proprietors further covenant and agree with the Council that pending the registration of this Planning Agreement on the title of the Development Property as required by **clause 8**, the Council shall be entitled to register a caveat at the Land & Property Management Authority over the Development Property title to protect its interest therein pursuant to this Planning Agreement.

RICHARD NEIL 
Name/Signature

FARAN ELIAS
MARGARET ELIAS 
SARAH ANNE TOHME 
JADE ELIAS 

PETER SIGNING 
Name/Signature

9. Dealing with the Development Property

The Parties acknowledge and agree that nothing in this Planning Agreement abrogates, fetters or in any way prevents the Developer on the Proprietors from selling, transferring, assigning, subdividing, mortgaging, charging, encumbering or otherwise dealing with any part of the Development Property.

10. GST

10.1 Interpretation

In this clause 9 words and expressions which are not defined in this Planning 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 Planning Agreement are exclusive of GST.

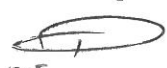

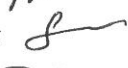

10.3 Payment of GST - additional payment required

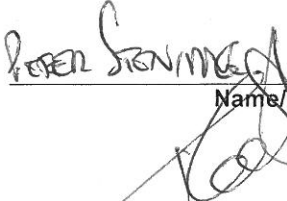
- (a) If GST is payable by an entity (**Supplier**) in respect of any supply made under this Planning Agreement (**Relevant Supply**), then the party required under the other provisions of this Planning Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under clause 9.3(b).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Planning 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 9.3 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 9.3. The Recipient can withhold a payment of the GST Amount until the Supplier provides a tax invoice.

RICHARD NEAL 
Name/Signature


FARAH ELIAS
MARGARET ELIAS 
SARAH ANNE TOHME 
JADE ELIAS 

ROGER STONING 
Name/Signature

10.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Planning Agreement, the amount payable by the Recipient under clause 9.3 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.

10.6 Reimbursements

Where a party is required under this Planning 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 9.3 in respect of the reimbursement.

11. Dispute Resolution

11.1 Notice of Dispute

If a party claims that a dispute has arisen under this Planning 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 (**Notice of Dispute**). 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 10.

11.2 Response to Notice

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

11.3 Negotiation





The nominated representative must:

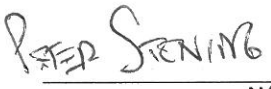
- (a) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

11.4 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 by mediation under clause 10.5 or by expert determination under clause 10.6.

RICHARD NEW 
Name/Signature

FARAH ELIAS 
MARGARET ELIAS 
SARAH ANNE TOMME 
JADE ELIAS 

PETER STENING 
Name/Signature

11.5 Mediation

- (a) If a party calls for the dispute to be mediated ("Mediation Dispute Notice"):
 - (i) the parties must agree to the terms of reference of the mediation within 5 business days of the receipt of the Mediation 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 Mediation 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 10.5 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 Mediation 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;
- (f) each party will bear their own professional and expert costs incurred in connection with the mediation.

11.6 Enforcement by Expert Determination

- (a) If the dispute is not resolved under clause 10.3 or 10.5, 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, Proprietors and St John; 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;

RICHARD NEAL

Name/Signature

PETER SIGNORILE

Name/Signature

FARAN ELIAS
 MARGARET ELIAS
 SARAH ANNE TOHME
 JADE ELIAS

- (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 Planning 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.

11.7 Litigation

If the dispute is not finally resolved in accordance with this clause 10, either party is at liberty to litigate the dispute.


12. Acknowledgements

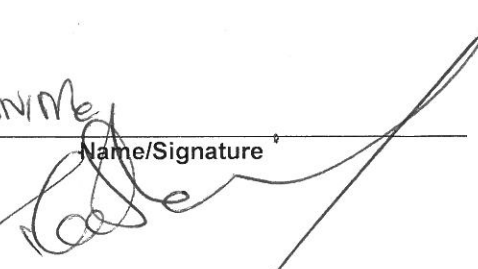
12.1 The Developer, Proprietors and St John each acknowledge that the Council may include a notation on Planning Certificates under section 149(5) of the Act in relation to this Agreement.

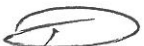



12.2 The parties acknowledge that the Council is a consent authority with statutory rights and obligations pursuant to the terms of the Act and other legislation.

13. Notices

- (a) Any notice, consent, information, application or request that must or may be given or made to a Party under this Planning Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (i) delivered or posted to that Party at its address set out on numbered page 2 and 3 of this Planning Agreement; or
 - (ii) faxed to that Party at its fax number on numbered page 2 and 3 of this Planning 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

RICHARD NEAL 
Name/Signature

PERN SIVIN 
Name/Signature

FARAH ELIAS 
MARGARET ELIAS 
SARAH ANNE THOMES 
JADE ELIAS 

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 Planning 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 Planning 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 Planning Agreement and all transactions incidental to it, including giving an approval or consent.

14.3 Governing Law and Jurisdiction

This Planning 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 Planning Agreement, any agreement, covenant, representation or warranty under this Planning 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.

14.5 No fetter

Nothing in this Planning 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 Planning Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

RICHARD NEAL

Name/Signature

PETER STENING

Name/Signature

FARAH ELIAS

MARGARET ELIAS

SARAH ANNE TOHME

UADE ELIAS

14.6 Representations and warranties

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

14.7 Severability

- (a) If any part of this Planning 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 Planning Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Planning Agreement, but the rest of this Planning Agreement is not affected.

14.8 Release and Discharge

- (a) To the extent the Developer, Proprietors and St John have:
 - (i) satisfied their obligations under this Planning Agreement; or
 - (ii) the Agreement no longer applies as a consequence of any event referred to in clause 4(b) of this Planning Agreement;

the Council will provide a release and discharge of this Planning Agreement with respect to any part of, or the whole of, the Land.

- (b) To the extent the Developer, Proprietors and St John have:
 - (i) satisfied all of their obligations under this Planning 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 Planning Agreement;

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

- (iii) if the Developer, Proprietors and/or St John request a partial release and discharge of this Planning Agreement for the purpose of selling part of the Development Property as a Developed Lot; or
- (iv) if the Developer, Proprietors and/or St John request a partial release and discharge of this Planning Agreement in connection with the completion of a sale contract for a Developed Lot; or
- (v) if the Developer, Proprietors and/or St John request a partial release and discharge of this Planning Agreement to effect the transfer of part of Land to the Council or any other authority pursuant to this Planning Agreement.

RICHARD NEAL

Name/Signature

FARAH ELIAS

MARGARET ELIAS MS

SARAH ANNE TOHME

JADE ELIAS

PETER STENING

Name/Signature

- (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 13.8.

14.9 Modification, Review and Replacement

- (a) No modification of this Planning Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Planning Agreement.
- (b) The Parties agree that this Planning Agreement may be reviewed or modified in the circumstances using their best endeavours and acting in good faith, and in accordance with this clause 13.9.
- (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 13.9.

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 Planning Agreement, does not amount to a waiver of any obligation by another Party.

14.11 Confidentiality

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




14.12 Assignment and Novation

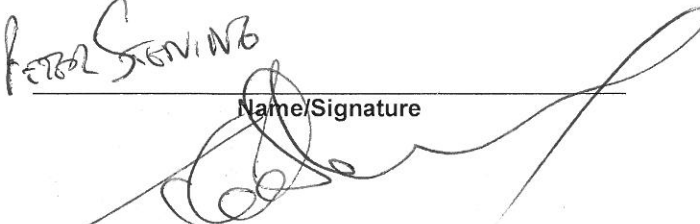
- (a) This Planning Agreement may be assigned or novated by the Developer, Proprietors and St John collectively in accordance with any dealings the Developer, Proprietors and St John may have with respect to their interests in the Land without requiring the Developer, Proprietor and St John to obtain Council's Approval in respect of either the dealing or the assignment or the novation of this Planning 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, Proprietors and St John's rights and obligations under the Agreement to a successor as contemplated by the agreement.

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.

RICHARD NEAL 
Name/Signature

FARAN ELIAS.
MARGARET ELIAS 
SARAH ANNE TOMME 
JADE ELIAS 

PETER SENEVIRATNE 
Name/Signature

- (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 Planning Agreement, unless otherwise agreed between the Parties or as may be ordered by a Court of competent jurisdiction.

14.15 Counterparts

This Planning 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 Schedule as if those rights and obligations were expressly set out in full in the operative parts of this Planning Agreement.

RICHARD NEAL

Name/Signature

FARAH ELIAS
 MARGARET ELIAS
 SARAH ANNE TONME
 JADE ELIAS -

PETER STENING

Name/Signature

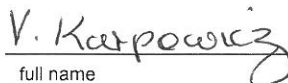
Execution Page

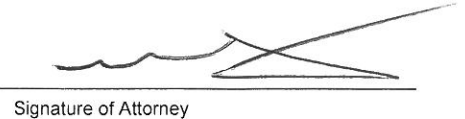
Dated: 15th September 2015

Executed as an Agreement

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


full name


Signature of Attorney

Michael Gerard McMahon

Signed by **Margaret
Elias** in the presence
of


sign

MARGARET ELIAS
full name


witness

ANTONELLA CARUSO.
full name

Signed by **Farah Elias**
in the presence of

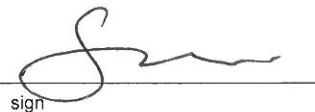

sign

FARAH ELIAS.
full name


witness

ANTONELLA CARUSO.
full name

Signed by **Sarah Anne
Tohme** in the
presence of

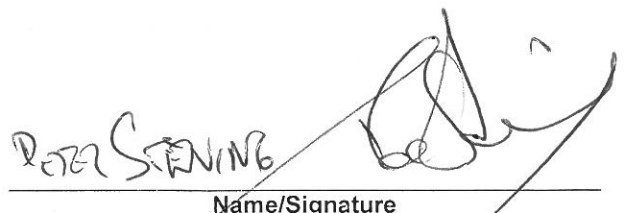

sign

SARAH ANNE TOHME
full name



witness

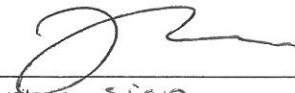
ANTONELLA CARUSO.
full name


Name/Signature



Name/Signature

Signed by **Jade Elias**
in the presence of


sign WITNESS
ANTONELLA CARUSO.
full name

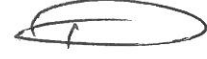

witness sign
Jade Elias
full name

Signed by **Burwood
Enterprise Centre Pty
Ltd** under s.127(1) of
the *Corporations Act
2001*



sign

office (director)


full name


sign
SOLE DIRECTOR & SECRETARY
office (director or secretary)
FARAH ELIAS
full name


Signed by **Burwood
Commercial Centre
Pty Ltd** under
s.127(1) of the
Corporations Act 2001

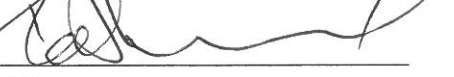

sign
FARAH ELIAS
office (director)

full name



sign
SOLE DIRECTOR & SECRETARY
FARAH ELIAS.
office (director or secretary)
FARAH ELIAS
full name

Signed by **St John
Ambulance Australia
(NSW Trust) Ltd**
under s.127(1) of the
Corporations Act 2001


sign
DIRECTOR
office (director)
RICHARD JOHN NEAL
full name

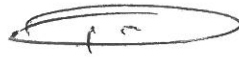

sign
DIRECTOR
office (director or secretary)
PETER EDWARD SONING
full name

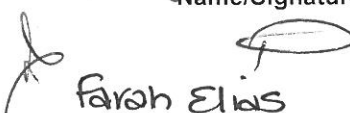
Signed by **Farah
Custodians Pty Ltd**
under s.127(1) of the
Corporations Act 2001

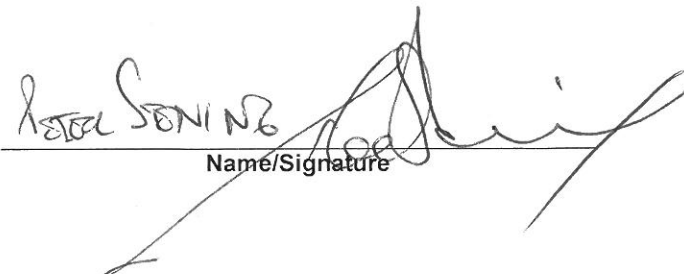

sign

office (director)

full name


sign
SOLE DIRECTOR & SECRETARY
office (director or secretary)
FARAH ELIAS
full name


Name/Signature

Farah Elias


Name/Signature

Schedule 1 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

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

and

Margaret Elias

and

Farah Elias

and

Sarah Anne Tohme

and

Jade Elias

and

Burwood Enterprise Centre Pty Ltd

ABN 83 080 870 597

and

Burwood Commercial Centre Pty Ltd

ABN 68 058 811 304

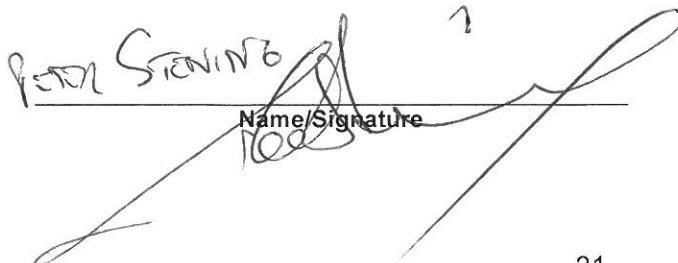
(**Proprietors**)

and

St John Ambulance Australia (NSW Trust) Limited. ABN 31 003 826 328 (**St John**)

and


Name/Signature


Name/Signature

Farah Custodians Pty Ltd. ABN 21 160 801 427. Shop 8/320A-338 Liverpool Road, Enfield NSW (Developer).

2. Description of Development Property

The Development Property comprises Lot 1 in DP1181634.

The Proprietors are the registered proprietors of the Development Property.

The Development Site comprises Lot 1 in DP1181634 and Lot 200 in DP 739048.

St John is the registered proprietor of Lot 200 in DP 739048.

3. Description of Proposed Development Application

The proposed development is documented in:

- (a) Statement of Environmental Effects prepared by Daintry Associates, dated 30th March 2015.

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) provide a Monetary Contribution to Council for the purposes of providing, augmenting or improving open space, community facilities or other public facilities as determined by Council.
- (b) provide Additional Material Public Benefits, as set out in this Planning Agreement, that have or will directly contribute to the civil infrastructure, public domain and physical facilities that are or will benefit the population within the immediate vicinity of the Development Site as well as the wider Burwood population
- (c) provide the Developer and the Proprietors, in exchange for making the Monetary Contribution, an additional 10% FSR over the Development Site.

4.2 Nature and Effect of the Draft Planning Agreement

The draft Planning Agreement requires the Developer, Proprietors or St John to make a Monetary Contribution in the amount prescribed by this Planning Agreement for contribution towards the purposes prescribed below.

Open space and parks

- An additional open space of 165,055m²
- Quality over quantity

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Name/Signature

FARAH ELIAS

MARGARET ELIAS. MR

SARAH ANNE TOMME

JADE ELIAS.

PETER STONING

Name/Signature

- Green open space, especially in the north of the LGA
- Places for informal recreation and social gatherings
- Shaded seating, tables and games which make "parks as living rooms"
- Exercise equipment for older people
- Adventure play grounds for a range of age groups
- Multipurpose courts and fields over single purpose

Community facilities

- An additional floor space of 2,169m² for community facilities
- Small meeting rooms
- 405 child care places
- Two community gallery or exhibition spaces
- One creative arts space
- Multipurpose and flexible facilities
- One youth space and one seniors space which can be within multipurpose facilities
- Space in Burwood Park to support events
- Facilities especially in the south of the LGA
- Additional office space for public purposes

The purposes for which the Monetary Contribution will be used will be at the discretion of the Council.

5. **Assessment of the Merits of the Draft Planning Agreement**

5.1 **The Planning Purposes Served by the Draft Planning Agreement**

In accordance with section 93F(2) of the Act, the Planning Agreement promotes the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,

RICHARD NEAL

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SARAH TOHME

JADE ELIAS

- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.

5.2 How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979 (NSW)

The draft Planning Agreement promotes the following objects of the Act:

- (g) the promotion and co-ordination of the orderly and economic use and development of land;
- (h) the provision of land for public purposes, and
- (i) the provision and co-ordination of community services and facilities.

The draft Planning Agreement provides for a reasonable means of achieving those purposes, subject to the areas of expenditure to which the Monetary Contributions are put.

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) providing, augmenting or improving open space, community facilities or other public facilities as determined by the Council.
- (b) providing Additional Material Public Benefits, as set out in this Planning Agreement, that have or will directly contribute to the civil infrastructure, public domain and physical facilities that are or will benefit the population within the immediate vicinity of the Development Site as well as the wider Burwood population.

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 Monetary Contribution be paid prior to the issue of a construction certificate for the proposed development.


Name/Signature


Name/Signature

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MARGARET ELIAS MS
SARAH ANNE TOHME
JADE ELIAS

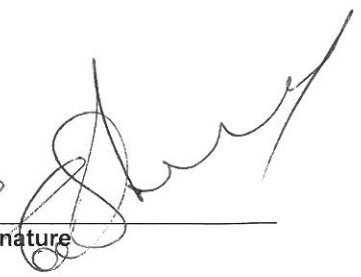
7. **The Impact of the Draft Planning Agreement on the Public or Any Section of the Public**



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

8. **Other Matters**

None.

RICHARD NEAL 
Name/Signature

PETER STENING 
Name/Signature

FARAH ELIAS
MARGARET ELIAS. 
SARAH ANNE TOHME 
JADE ELIAS. 