

DATED

8 May 2008

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**BETWEEN**

**BOTANY BAY CITY COUNCIL**

of the one part

**AND**

**THE BONNIE DOON GOLF CLUB LTD**

ACN 000 005 265

of the other part

**D E E D**

HOUSTON DEARN O'CONNOR  
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THIS D E E D made the 8<sup>th</sup> day of MAY 2008

BETWEEN

BOTANY BAY CITY COUNCIL

of 141 Coward Street, Mascot ("Council")

AND

BONNIE DOON GOLF CLUB LTD

ACN 000 005 265 (the "Golf Club").

WHEREAS

- A. The Golf Club leases from Sydney Water Corporation land known as the Bonnie Doon Golf Course at Banks Avenue, Pagewood ("the Developed Land").
- B. The Golf Club proposes redeveloping the Developed Land by undertaking alterations and additions to the existing club, construction of a new pro shop, new amenities, new basement car park and new garden terrace ("Proposed Development").
- C. On 1 December 2006 Max Sgammotta Architects lodged a development application on behalf of the Golf Club for the redevelopment of the Developed Land (Development Application No. 07/185).
- D. By letter dated 30 April 2007 the Golf Club offered to enter into a voluntary planning agreement to pay \$30,000 to be used for community facilities/benefits.
- E. This voluntary planning agreement has been publicly notified in accordance with Section 93G and Clause 25D of the NSW Environmental Planning and Assessment Act ("EP & A Act") and Regulations.

- F. Pursuant to Section 93F of the EP & A Act the parties now enter into this agreement ('Planning Agreement').

NOW THIS DEED WITNESSETH as follows:

1. This Planning Agreement shall be binding upon the heirs, executors, transferees and assigns of each of the parties.
2. The Golf Club and the Council acknowledge and agree that:
  - (a) The Council in supporting the Proposed Development did so in reliance upon the Golf Club providing \$30,000 for community benefits and the Council would not otherwise have supported approval of the Proposed Development.
  - (b) Section 94(6) of the EP & A Act does not apply with respect to the proposed payment to any development consent granted for the Proposed Development.
3. The Golf Club covenants and agrees with the Council will pay to the Council the sum of \$30,000 on or before the issue of the occupation certificate for the Proposed Development to be used for community facilities/benefits.
4. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of Council existing at law for which Council would otherwise have available to it.
5. In the event that any one or more of the provisions contained in this Planning



Agreement shall be invalid, legally unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not thereby be affected.

6. The Golf Club covenants with the Council on behalf of itself its successor in title and assigns that if the Planning Agreement is not registered on the title to the Developed Land and if it should be proposed to transfer or assign its interest in the Developed Land or any part thereof to a transferee or assignee then it shall before effecting any such assignment or transfer have the incoming assignee or transferee enter into an agreement with the Council substantially in the form of this agreement and provide same to the Council.
7. The Golf Club shall pay the Council's reasonable solicitor/client costs in preparing this Planning Agreement and the cost of Council registering the Planning Agreement or a caveat over the title to the Developed Land. Further, should it be necessary for Council to consent to the registration of any lease, mortgage, consolidation of title, strata plan or other document as a result of a caveat being registered on the title to the Developed Land then the Golf Club shall pay the Council's reasonable solicitor/client costs of obtaining Council's consent to such registration. The Golf Club shall also pay the Council's reasonable solicitor/client costs of preparing any positive covenant and having it registered over the title to the Developed Land. The Golf Club shall also pay Council's reasonable costs of preparing any substitute planning agreement with any incoming purchaser, assignee or transferee of the Developed Land.
8. Should the Golf Club be in breach of any terms of this Planning Agreement and

without any prior warning being given Council shall be entitled at its option to enforce by way of injunctive relief in the NSW Supreme Court any provisions of this agreement which have been breached or to seek damages or seek to enforce the provisions of any development consent which relate to the Developed Land whether by way of order under s.121B of the EP & A Act, Class 4 proceedings in the Land and Environment Court or otherwise.

9. Any amendment or variation to this agreement is not effective unless it is in writing and signed by all the parties.
10. The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.
11. In the event of any disagreement arising between the parties hereto arising out of the provisions of this Planning Agreement which they are unable within a reasonable time to settle amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation.
12. Any goods and services tax (GST) payable in connection with any taxable supply made by either party under this agreement or pursuant to any of the conditions that the development consent referred to herein shall be the sole responsibility of the Golf Club.

IN WITNESS WHEREOF the parties have affixed their seals and signed their names on the  
day and year first hereinbefore written.

THE COMMON SEAL of )  
BOTANY BAY CITY COUNCIL )  
was hereunto duly affixed )  
pursuant to a resolution carried at a duly )  
convened meeting on the 20<sup>TH</sup> day of )  
in the ~~FEBRUARY~~ <sup>FEBRUARY</sup> ~~2007~~ <sup>2008</sup> )

Mayor/Councillor

General Manager

THE COMMON SEAL of )  
THE BONNIE DOON GOLF CLUB LTD )  
ACN 000 005 265 )  
was hereunto affixed by authority of the )  
Board of Directors in the presence of: )

Barry Michael Miller

