

## APPENDIX D

### RIFKIND ASSOCIATES' OFFER TO M.C.C.

#### **COMMENTARY ON RA'S LAWYERS' LETTER OF 12TH MAY 2017**

The Club Chairman received a letter from RA's lawyers, Macfarlanes on 7th April 2017 formally clarifying RA's offer to M.C.C. regarding its Morley Plan. That letter was then superseded by one sent on 12th May 2017, which is reproduced in its entirety in this Appendix D. The letter / offer has been assessed by M.C.C.'s advisers and the below should be noted.

1. Macfarlanes confirm that the offer of £100m would be paid by a letter of credit. CBRE advise that one of the key risks is the availability / status of the letter of credit, and their interpretation of RA's latest letter confirms their assumption that the RA proposal is currently un-funded and would therefore be subject to the due diligence and close commercial scrutiny of a third party at a point in time in the future. CBRE advise the covenant strength of the contracting party is key here, and the latest proposal tends to suggest that the contracting party will be RA, and this information acts only to compound CBRE's concern around this issue.
2. In addition to the £100m letter of credit, RA values the subterranean facilities being provided on the leasehold land (e.g. the broadcasting compound, car-parking and servicing for the hospitality space above, plus the new North Gate entrance) at £35m. In contrast, the Club's Quantity Surveyors, Gardiner & Theobald, value those facilities at £17m. RA has subsequently clarified that their £35m of benefit-in-kind includes not only for the construction of the subterranean facilities and moving of the North Gate, but also provides compensation to M.C.C. for loss of profit and for the provision of temporary corporate hospitality facilities – most likely on stilts above the Food Village – during the period of construction of RA's Morley Plan. M.C.C.'s advisers question why the loss of profit and temporary facilities costs should be factored into any total offer when assessing a fair land value payment to M.C.C. for surrendering its 120-year lease. Similarly, the £4m fit-out cost to M.C.C. should also be deducted which is why the Club has been advised
3. Macfarlanes' letter offers to make a £15m "disturbance payment" being the total cost of all Members' subscriptions for Full Members (with any excess donated to Middlesex CCC) on an equivalent basis for a period of two years during which time material external works are carried out in delivering RA's Morley Plan. The £15m RA 'disturbance payment' is not relevant when considering what is an appropriate payment to M.C.C. for its fair share of the value of the leasehold land. This sum of money does not contribute at all to the funding of the Club's ground development and would be used entirely to run the Club for two years.
4. Macfarlanes state that the RA offer is for a fixed land price to M.C.C. which enables ground improvements and removes, once the conditions are met, M.C.C. from exposure to construction cost (inflation) and sale receipts risks. This implies that all the time that the conditions of the offer have not been met (and this includes the time taken to have discharged the conditions of any planning consent – which can take up to the end of construction), there is a risk to M.C.C. that construction inflation and sales receipts will reduce the real value of the £100m. M.C.C. would be unwise to accept such a condition.
5. Reference is made in the second paragraph on page 1 to continuing and delivering upon the journey embarked upon with M.C.C. as shown in the then M.C.C. Secretary & Chief Executive's letter of 18th December 2008 (the "Vision for Lord's"). Since 2008, M.C.C. has separated itself from those joint venture discussions and ceased further negotiation, partly due to professional advice it has received that the 50:50 split in land value was not a fair position and a 70:30 split in M.C.C.'s favour is more appropriate. Legal advice received in 2013 and verified in 2017 confirms that the Club's letter of 18th December 2008 is an agreement to agree, and not legally binding.

that the true value of RAP's offer is not £135m but closer to £128m. It is acknowledged that RA has clarified that should anything less than £35m be spent on the subterranean works or the loss of hospitality income, then the difference will be paid to M.C.C. in cash.

**6.** It is noted that on page 3, Macfarlanes make it clear that a condition of the offer is achieving at least 266,000 square feet of residential. However on page 4, paragraph 4, Macfarlanes suggest that there is an opportunity for M.C.C. and RA to work together to agree an appropriate revision if it does become appropriate to modify the scheme or reduce the area. These two statements are contradictory.

**7.** The planning advice that DP9 provided in 2008 on the likely permissible size of a residential scheme was for a completely different brief with a very different planning and political scene within Greater London and Westminster. DP9 has advised of a lesser size of residential development being appropriate now in 2017 given the latest “cricket-led” brief and the current approach to townscape and heritage impact.

**8.** Restrictive covenants placed upon residents not to be able to complain about the use of floodlights, smells of cooking, noise levels from cricket crowds and from the close-by new corporate hospitality functions – can all be trumped by local authority byelaws. This fact is evidenced by the Club’s experience with its neighbours in Century Court adjacent to the Lord’s Tavern and Thomas Lord Suite.

**9.** Advice from the Metropolitan Police counter-terrorist specialists is that residential apartments built within the boundary of Lord’s will pose much greater vulnerability to terrorist attacks at Lord’s than is the case from other existing residential properties surrounding Lord’s but beyond the perimeter wall.

**10.** It is likely that the proposed scheme would interfere with M.C.C.’s development of the Compton and Edrich stands. M.C.C. wants to establish outstanding new stands with larger capacities and containing more facilities for spectators; they would have a larger footprint which would mean the size of the Nursery Ground would have to be compromised to accommodate them. This would be at odds with the Cricket committee’s stated desire to preserve a Nursery Ground large enough to host meaningful cricket.

**11.** Macfarlanes’ proposal to permit M.C.C. to be involved with RA on contractor and consultant selection does little to give M.C.C. real control. Far more important

will be the third party that is selected as a funding / development partner, and RA is not currently offering any involvement in this process.

**12.** The restrictive user-clause on the leasehold land would not be dropped but it is proposed to be widened.

The Macfarlanes letter of 12th May 2017 follows.

Gerald Corbett DL  
Chairman  
Marylebone Cricket Club  
Lord's Cricket Ground  
St John's Wood  
London  
NW8 8QN

By Hand and Email

MACFARLANES

12 May 2017

Our ref      GVK/SAZP/658389

Dear Mr Corbett

**Wellington Road Development – David Morley Plan**

This letter supersedes our letter of 7 April 2017 and amends it in a few minor respects. We have been instructed by our client, Charles Rifkind, to write to you on behalf of Rifkind Associates in connection with the proposed joint development with MCC of the land abutting Wellington Road at Lord's Cricket Ground following the David Morley Plan.

Our client is pleased to have this opportunity to continue, and deliver upon, the journey embarked on with MCC as shown in the "MCC Masterplan for Lord's Ground" letter of 18 December 2008, a copy of which is attached.

**Summary**

Broadly, the transaction will comprise obtaining necessary consents and then the merger of the leasehold interests abutting Wellington Road in order for a residential, commercial and cricket ground facility to be developed. This will yield for MCC a significant capital sum to be applied directly to ground improvements as well as creating cricket ground and commercial facilities.

**Principal Financial Terms**

The offer comprises a total of £150,000,000 as follows:

- £100,000,000 payment by letter of credit;
- £35,000,000 payment by the provision of MCC Facilities; and
- £15,000,000 as estimated compensation payment in lieu of Lord's membership subscriptions.

In further detail :

- £100,000,000      This will be paid by way of a letter of credit once the transaction Conditions have been met and will be available for drawdown against ground improvement works by MCC. The Conditions are described below and we also comment below on the letter of credit as we are aware that this has been a concern.

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- £35,000,000 This will be paid by the provision at no cost to MCC of the following MCC Facilities to a shell and core specification to be agreed with MCC:
  - Underground car parking spaces - up to 120 spaces when the Broadcast compound is not in use, together with cycle parking facilities;
  - Undercroft broadcasting compound of up to 30,000 square feet;
  - Waste or refuse area, also located underground;
  - Relocation of the North Gate; and
  - Provision of a temporary pavilion area in a location agreed with MCC to cover some or all of the period between the closing of the existing Nursery Pavilion and the opening of the new Nursery Pavilion.
- In addition, MCC will be compensated by cash payment for the loss of any net profit from the Pavilion catering facilities that need to be relocated in order to allow the David Morley Plan development to be carried out.
- To the extent that the cost of providing these items is less than £35m then the balance will be paid to MCC as a cash payment following practical completion of them.
- £15,000,000 This will be paid as a 'disturbance' payment being the total cost of all MCC membership subscriptions for full memberships as well as for honorary and life Members on an equivalent basis.
  - This payment will apply for a period of 2 years during which material external works are carried out to effect the David Morley Plan for development. This would be paid annually on the date on which those subscriptions would normally fall due
  - The amount to be paid will be based on current subscription rates with increases allowed in line with the Retail Prices Index
  - The payments in respect of memberships would apply to the extent that MCC relieve or credit to its full Members their subscription obligations
  - The arrangements for payment will be agreed with MCC but in the case of honorary and life Members would be by way of a credit for expenditure within Lord's with a balancing cash payment for sums unspent after 3 years to a sporting registered charity nominated by each Member
  - This would be in addition to significant efforts to reduce any disruption caused by the development which would be adopted and implemented in consultation with MCC.

### Basis of Financial Offer

- The financial offer is based on a 50/50 split of the land value which is created by the development under the planning consent referred to in this letter.

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- That development is one which cannot take place at all without the surrender of MCC's leasehold interest.
- MCC's current lease is for a further 120 years with a limited permitted use clause and a rent at two thirds of market value. The lease provides no material development opportunity since the demise is limited to 18 inches below the ground surface.
- The 50/50 basis underlying these financial terms is consistent with previous written discussions with MCC as referred to in the attached 2008 letter.
- The offer is for a fixed land price to MCC which enables ground improvements and removes, once the Conditions are met, MCC from exposure to construction cost and sale receipts risks.

### Other Interests to be made available to MCC

As well as the MCC Facilities to be provided and detailed above:

- A new Nursery Pavilion of approximately 40,500 square feet (of gross internal area) will also be procured compared with what we understand to be the existing 18,700 square feet. This will be leased to MCC at an open market rent and with a wider user clause than the current MCC lease (which is limited to sporting, storage and car parking uses).
- MCC will be given the option, at practical completion of the new Nursery Pavilion, to acquire a long lease interest in the new Nursery Pavilion at open market value.
- Should MCC wish to rent, at an open market rent, any of the ground floor commercial premises then it will have first call to do so prior to any third party lettings.
- MCC will also be given the option, at practical completion to shell and core of the ground floor commercial, to purchase a long leasehold interest in that commercial space at open market value.
- MCC will also be entitled to call for a transfer to MCC at open market value of the reversionary interest in the whole of the development once the residential apartment leases have been sold and legally completed.

This would mean that MCC would own a long leasehold, with 983 years unexpired, in the Wellington Road leasehold land subject to the apartment leases (granted for 175 year terms) and commercial lettings.

### Conditions

The Conditions to the transaction are as follows:

- A detailed, challenge-free planning permission for the MCC Facilities and a development of 97 private residential apartments of at least 266,000 square feet (net internal area) in total and ground floor commercial of no less than 11,600 square feet (gross internal area) as well as the ancillary common parts and service areas. This would include the completion of a section 106 planning agreement.
- The necessary consents from Network Rail (as freeholder) and Network Rail and TfL (both as owner/operators of the operational railway tunnels which will be affected by the development).

The parties will actively pursue the satisfaction of the Conditions at their joint expense. In the event that the Conditions are satisfied then MCC will be reimbursed their 50% of the external professional fees directly incurred by them in obtaining the planning permission.

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MCC will be fully consulted and involved in the process and will be the applicant to the planning application and assist with local and other stakeholders.

Once the Conditions have been satisfied the transaction will be unconditional and the letter of credit will be made available to MCC and the commitment to provide MCC Facilities and the 2 years of membership subscriptions will become unconditional.

We are aware that different views have been expressed about the likelihood of obtaining a planning permission for the size of scheme set out in the David Morley Plan. Our client's view remains that it is very much achievable and that is based on professional advice and consultation with Westminster Council and is, we understand, consistent with the advice of the planning adviser to MCC (DP9) in 2008 when "Vision for Lord's" was contemplated and who still remains MCC's adviser.

If it does become appropriate to modify the scheme to reduce the area, to a limited extent, then the parties would work together to endeavour to agree an appropriate revision.

### **Letter of Credit**

The letter of credit will be provided by a reputable regulated bank approved by MCC.

The provision of the letter of credit cannot be specifically contracted for now or at exchange of the agreement because there would be a significant commitment fee and cost in doing so.

However, the form of the letter will be carefully prescribed in the agreement and MCC cannot be forced to proceed without an acceptable letter being provided.

### **Programme**

Start on site is, we understand, still anticipated to be in September 2019 assuming that both parties respond in good time in order to reach agreement on the detail necessary to submit and pursue the planning application and detailed consents.

### **Other Practical Considerations**

- In order to allay concerns about the proximity of a residential development with the cricket ground and its related commercial uses, the sale of the apartments will be expressly on the basis of the residents accepting in clear terms in their leases the neighbouring cricket and other uses of Lord's Cricket Ground.
- More pertinently, pedestrian access for residents will be via Wellington Road or Wellington Place and never via Lord's Cricket Ground.
- Car parking access will be separated from Lord's Cricket Ground by a security point and there will be restricted car parking access for residents when the Broadcast compound is in use for major matches.
- MCC is at liberty to submit planning applications which are not adverse to the David Morley Plan for development. Our client does not consider that the proposed scheme would interfere with MCC development of the Compton and Edrich stands, for example, as long as the parameters for such ground development is agreed in advance.
- The parties will work with each other and other relevant stakeholders, such as the Metropolitan Police, to ensure that the security issues arising from the David Morley Plan for development and its impact on the Lord's Cricket Ground are satisfactorily addressed. The residential apartments will present no more security issues than other residential properties around the ground.

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- Although our client does not at present have knowledge of the other proposals being put to Members, it would be pleased to consider them and accommodate them or elements of them with the proposed scheme of development if at all possible.

### Naming Rights

Our client proposes that the naming rights of the new Nursery Pavilion are granted to a newly registered charity for the benefit in perpetuity of sport, education, culture and the local community.

### Development Works

- The parties would choose five principal contractors between them and MCC will have the final decision once the list has been reduced to the last two in a tender process.
- There will also be a full project professional and contracting team including a project manager and architect with responsibility for the delivery of the development works. The briefs and identities of all contractors and project team consultants will be agreed between the parties.

Our client is arranging for the David Morley Plan presentation document to be clearly rebranded so as not to cause any potential confusion and would request that it, as well as this letter, are presented to MCC Members. We understand that a 1:150 scale model of the David Morley Plan is being prepared and will be available from mid June 2017.

### Conclusion

This letter represents the offer of terms made to MCC for the development of the Wellington Road leasehold land under the David Morley Plan and remains non-binding and subject to contract unless and until documented in signed and dated formal agreements.

Please do not hesitate to contact me or my partner Gerald Kelly if any further clarification would be helpful.

Yours sincerely



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18<sup>th</sup> December 2008

Dear Sirs

### M.C.C. MASTERPLAN FOR LORD'S GROUND

I refer to our recent discussions on how best to progress matters regarding the M.C.C. Masterplan and to your joint involvement in the process.

On behalf of M.C.C., I would confirm our agreement, in principle, to move forward with the following understanding:

1. a 50:50 financial arrangement to seek planning consent for the M.C.C Masterplan and share, equally, the rewards from a redeveloped Wellington Road end;
2. M.C.C. to lead the overall planning process, but with responsibility for detail and design of the residential element to be provided by RLP; and
3. all costs to be shared 50:50 as per the attached budget updated 25<sup>th</sup> September 2008.

As proposed, I would confirm that the M.C.C. Committee and any other relevant committee, will be kept fully informed of progress and that I will continue to ensure that, where appropriate, you are made aware of both their conclusions and any reservations, as soon as any arise. I would also confirm our agreement to continue to run the bank account in the name of M.C.C. with both parties contributing a sum of £100,000, and a mutual agreement to top up these funds as required, to ensure a continuing credit balance of not less than £200,000.

We envisage that this letter and your signed acknowledgement will record the commitment to work together in this process. Hopefully, we will end up with an agreed Masterplan, a Planning Strategy and a detailed Heads of Agreement for a

Development Agreement that can be put to the M.C.C. Committee and subsequently, if approved, to the M.C.C. Members. If the Masterplan, the Planning Strategy and the final agreed Heads of Agreement between us are approved by the M.C.C. Members, we can then document the detailed Development Agreement.

As ever, we are approaching this in the utmost good faith, as I know you both are. However this letter records M.C.C.'s present intent and is not intended to be legally binding and is written without liability of M.C.C. or any officer, Member or employee of M.C.C.

Let us see if we can deliver something truly outstanding for all.

I should be grateful if you would signify your acceptance of the terms set out in this letter by signing the enclosed copy and returning it to me.

Yours sincerely



Keith Bradshaw  
Secretary & Chief Executive

ACKNOWLEDGED AND ACCEPTED



For and on behalf of  
**RIFKIND LEVY PARTNERSHIP**

