

# *Burwood Council*

heritage ▪ progress ▪ pride

## ORDINARY MEETING

Notice is hereby given that a meeting of the Council of Burwood will be held in the Council Chamber, Suite 1, Level 2, 1-17 Elsie Street, Burwood on Tuesday 23 May 2017 at 6.00pm to consider the matters contained in the attached Agenda.

Bruce Macdonnell  
**ACTING GENERAL MANAGER**

### Our Mission

**Burwood Council will create a quality lifestyle for its citizens  
by promoting harmony and excellence in the delivery of its services**

## CONFLICT OF INTERESTS

**What is a "Conflict of Interests"** - A conflict of interests can be of two types:

**Pecuniary** - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

**Non-pecuniary** – are private or personal interests the Council official has that do not amount to a pecuniary interest as defined in the Local Government Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

**Who has a Pecuniary Interest?** - A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- The person, or
- The person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or
- A company or other body of which the person, or a nominee, partner or employer of the person, is a member.

**No Interest in the Matter** - However, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
- Just because the person is a member of, or is employed by, a Council or statutory body or is employed by the Crown.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter so long as the person has no beneficial interest in any shares of the company or body.

N.B. "Relative", in relation to a person means any of the following:

- a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

### Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** - A person does not breach the Act if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

### What interests do not have to be disclosed (S 448 Act)?

- (a) an interest as an elector,
- (b) an interest as a ratepayer or person liable to pay a charge,
- (c) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this Part,
- (d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,
- (e) an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not),
- (f) an interest of a member of a council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee,
- (g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:
  - (i) land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or
  - (ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i), if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal,
- (h) an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company,

- (i) an interest of a person arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership,
- (j) an interest of a person arising from the making by the council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
  - (i) the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation,
  - (ii) security for damage to footpaths or roads,
  - (iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council or by or under any contract,
- (k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),
- (l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252,
- (m) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor,
- (n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,
- (o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,
- (p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 448 of the Local Government Act.

**Non-pecuniary Interests** - Must be disclosed in meetings.

If you are a Council official, other than a member of staff of Council and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) Remove the source of the conflict by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official;
- b) Have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in Section 451(2) of the Act apply.

If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.

**Disclosures to be Recorded** - A disclosure (and the reason/s for the disclosure) made at a meeting of the Council or Council Committee must be recorded in the minutes of the meeting.

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# AGENDA

FOR AN ORDINARY MEETING OF BURWOOD COUNCIL  
TO BE HELD ON TUESDAY 23 MAY 2017 IN THE COUNCIL CHAMBERS, 1-17 ELSIE STREET, BURWOOD  
COMMENCING AT 6.00 PM.

**I DECLARE THE MEETING OPENED AT (READ BY MAYOR)**

**ACKNOWLEDGEMENT OF COUNTRY (READ BY MAYOR)**

*"I would like to acknowledge the Wangal people who are the Traditional Custodian of this Land. I would also like to pay respect to the Elders both past and present of the Wangal Nation and extend that respect to other Aboriginals present".*

**PRAYER (READ BY MAYOR)**

*"Lord, we humbly beseech thee to vouchsafe thy blessing on this Council, direct and prosper its deliberations for the advancement of this area and the true welfare of its people."*

**TAPE RECORDING OF MEETING (READ BY MAYOR)**

*"Members of the Public are advised that Meetings of Council and Council Committees are audio recorded for the purpose of assisting with the preparation of Minutes.*

*The tape recordings will be subject to the provisions of the Government Information (Public Access) Act 2009 (GIPA).*

*Tapes are destroyed two (2) months after the date of the recording"*

**APOLOGIES/LEAVE OF ABSENCES**

**DECLARATIONS OF INTERESTS BY COUNCILLORS**

**DECLARATION OF POLITICAL DONATIONS (READ BY MAYOR)**

*"Councillors & Members of the Gallery*

*As a result of recent changes to the Legislation that governs the legal process for the determination of Development Applications before Council, a person who makes a relevant application to Council or any person with a financial interest in the application must now disclose any reportable political donation or gift made to any local Councillor or employee of Council. Council will now require in its Development Application Forms this disclosure to be made.*

*Council is also required to publish on its website all reportable political donations or gifts. Should any person having business before Council this evening and being an applicant or party having a financial interest in such application feel that they have not made the appropriate disclosure, Council now invites them to approach the General Manager and to make their disclosure according to Law."*

**RECORDING OF COUNCILLORS VOTING ON PLANNING DECISIONS**

*In accordance with Section 375A of the Local Government Act a division must be called for and taken on every Environmental Planning & Assessment decision. The names of those Councillors supporting and those opposed to the decision are to be recorded in the meeting minutes and the register retained by the General Manager.*



## **OPEN FORUM ACKNOWLEDGMENT (READ BY MAYOR)**

*The Mayor to ask each speaker to confirm that they had read the guidelines about addressing the Council and acknowledge that they had been informed that the meeting was being recorded and that the Council accepts no responsibility for any defamatory comments made. Speakers should refrain from providing personal information unless it is necessary to the subject being discussed, particularly where the personal information relates to persons not present at the meeting*

## **OPEN FORUM COMMENCES**

### **CONFIRMATION OF MINUTES**

#### **Recommendation**

That the Minutes of the following Meeting of Burwood Council:

A. Council Meeting held on 18 April 2017

copies of which were previously circulated to all Councillors be and hereby confirmed as a true and correct record of the proceedings of that meeting.

## **ADDRESS BY THE PUBLIC ON AGENDA ITEMS ACKNOWLEDGMENT (READ BY MAYOR)**

*The Mayor to ask each speaker to confirm that they had read the guidelines about addressing the Council and acknowledge that they had been informed that the meeting was being recorded and that the Council accepts no responsibility for any defamatory comments made.*

## **ADDRESS BY THE PUBLIC ON AGENDA ITEMS COMMENCES**

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**QUESTIONS WITHOUT NOTICE**

*Councillors are requested to submit any Questions Without Notice in writing.*

## NOTICE OF MOTION

### (ITEM NM2/17) NEW UNDERGROUND METRO RAILWAY LINE BETWEEN PARRAMATTA AND THE SYDNEY CBD

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File No: 17/23060

**Councillor Justin Taunton to move that:**

#### **Background**

In November 2016 the NSW State Government announced plans to commence detailed planning works to build a new underground metro railway line, within the next decade, between Parramatta and the Sydney CBD, to help cater for Sydney's growth.

The announcement noted that the proposed new metro is planned to service "key growth precincts" of Parramatta, Sydney Olympic Park, the Bays Precinct and Sydney CBD.

Burwood has not been identified in the announcement, however in the State Government's own planning documents such as the Department of Planning "*Plan for Sydney 2036*" and the Greater Sydney Planning Commission, "*Draft Sydney Plan*", Burwood is listed as a "Strategic Centre" and "District Centre".

It is noted that the above categorisations mean that Burwood is the only centre in the inner west that has been identified as a Strategic Centre with the need to maximise capacity for both population and employment targets.

One of the key reasons for constructing the new western metro line is the need to ease pressure on the main western rail line, which is heavily used and expected to reach capacity within the next 15 years.

The existing Burwood train station is about the 11<sup>th</sup> busiest station on the existing Sydney rail network and with increased movements expected due to Burwood being a Strategic Centre, the need for better transport options has never been greater.

Despite sharing the same status with Sydney Olympic Park as a Strategic Centre, Burwood has not been listed in the announcement as a place that the new metro west rail line would service.

There is only a short window of opportunity to engage with the State Government and appropriate agencies to push the case to have a station located at Burwood.

#### ***Recommendation(s)***

1. That Burwood Council write to the Premier, the Hon Gladys Berejiklian MP, Minister for Transport and Infrastructure, the Hon Andrew Constance MP, the Greater Sydney Planning Commission Chief Commissioner, Lucy Turnbull and the Central District Commissioner, Marie Atkins, requesting urgent meetings to seek their support and commitment to include Burwood on the list of proposed stations for the new western metro rail.
2. Council seek broader support from both the Southern Sydney Regional Organisation of Councils (SSROC) and the Western Sydney Regional Organisation of Councils (WSROC) for our campaign

3. Council write to industry and professional associations such as the Sydney and NSW Business Chambers, the Urban Development Institute of Australia (UDIA NSW), the Property Council, Western Sydney University and any other association or groups who may be of assistance, to highlight the need for and to seek their public support and assistance to help councils campaign to secure a commitment for Burwood to be included in the list of stations along the proposed corridor of the new rail line.
4. A report be brought back to the June 2017 ordinary meeting of council providing:
  - a. an update on the progress of the requests for meetings with the state government and the Greater Sydney Chief Commissioner and Central District Commissioner.
  - b. an update on responses from industry and professional groups as outlined in point (3).

### **Attachments**

- 1 [↓](#) Transport for NSW: Newsletter "A New railway for Western Sydney" November 2016



**sydney METRO** | **west**

**NSW** | Transport for NSW

# A new railway for Western Sydney

The NSW Government has announced a new underground metro railway line will be built between Parramatta and the Sydney CBD to help cater for Sydney's growth.

Sydney Metro West will provide a direct connection between the CBDs of Parramatta and Sydney, linking communities not previously serviced by rail as well as supporting growth between the two major CBDs.

This state-of-the-art railway helps address Sydney's rapid growth, with the city's population to increase above 6 million in the next 20 years.

Sydney's west is growing the fastest, requiring new transport infrastructure to keep up with more people and more jobs.

An extra 420,000 people are expected to move into the corridor between Greater Parramatta and central Sydney over the next 20 years.

More than 300,000 jobs are expected to be created in this corridor by 2036. This

includes an extra 145,000 new jobs in the Sydney CBD.

Sydney Metro West will integrate with long-term transport planning for Western Sydney including rail needs currently being investigated around the future Western Sydney Airport.

The new railway is expected to be built largely underground and operational in the second half of the 2020s.

The NSW Government will work with industry, the community, businesses and local stakeholders like councils along the route to get feedback on potential station locations and the best outcomes to serve Sydney for the next century and beyond.

Transport for NSW will begin engaging with community, industry and key stakeholders in early 2017 to get feedback on the project.



## Servicing key precincts

The final number of potential stations will be identified following community and industry consultation. Four key precincts to be serviced have initially been identified at:

- **Parramatta**, where the number of jobs is expected to double over the next 20 years to 100,000;
- **Sydney Olympic Park**, where 34,000 jobs and more than 23,000 residents will be located by 2030;
- **The Bays Precinct**, Sydney's new innovation hub where 95 hectares of land is being regenerated; and
- **The Sydney CBD**, allowing easy access to the existing public transport network and Stages 1 and 2 of Sydney Metro, which is currently under construction.

## More rail capacity

- The existing T1 Western Line - which is more than a century old - is expected to be severely overcrowded by the early 2030s, despite ongoing upgrade works and more services.
- Currently, it moves around 40,000 people in the morning peak hour and is operating at 135 per cent seated capacity.
- New metro rail will be able to move about 40,000 people an hour in each direction.
- Sydney Metro West will work together with the T1 to service the growing needs of Western Sydney, effectively doubling the rail capacity of the Parramatta to Sydney corridor.
- The project also means faster and more frequent services will be able to be delivered on the Sydney Trains network from outer western Sydney areas like Penrith and Blacktown, with increased capacity for those customers into Parramatta and the CBD.



Sydney Olympic Park, where 34,000 jobs and more than 23,000 residents will be located by 2030

**New rail for new communities across Sydney**

The Sydney Metro West project will focus on a corridor between the Parramatta River and existing T1 Western Line, because of the greater potential to transform communities, create new ones and link them using a new state-of-the-art public transport system.

The NSW Government will integrate transport and land use planning along the corridor.

The project supports the Greater Sydney Commission's vision for a Central Parramatta

River City that's connected to the established Eastern Harbour City by providing improved travel times and service frequency between these two CBDs.

The NSW Government has identified the need for the project and committed to delivering it.

Beyond this corridor, opportunities to extend the line east and west will also be considered.



Artist's impression of an underground station at Bays Precinct

- **Sydney's population** is currently 4.6 million and in 20 years it will jump to more than 6 million.
- **Western Sydney is home to about 47 per cent of Sydney's residents**, 36 per cent of Sydney's jobs and one-third of Sydney's Gross Regional Product.
- An extra **420,000 people** are expected to move into the corridor between Greater Parramatta and central Sydney over the next 20 years.
- **More than 300,000 jobs** are expected to be created in the corridor between Greater Parramatta and central Sydney by 2036.
- By 2036, **3.2 million people** will live in Western Sydney – a population about the same size as Adelaide and Perth combined today.
- By 2036, **over 50 per cent of Greater Sydney's population** will live in Western Sydney.
- There are currently more than **4.7 million weekday trips** using all transport modes to, from and within the Greater Parramatta to central Sydney corridor, with just over one million trips during the AM peak period alone. This is expected to increase by 36 per cent in 2036.



The Parramatta CBD, where the number of jobs will double to 100,000 in coming years

For further information visit [transport.nsw.gov.au](http://transport.nsw.gov.au) or email [projects@transport.nsw.gov.au](mailto:projects@transport.nsw.gov.au)



## **(ITEM 23/17) BD.2014.187 – 18-20 MERYLA STREET BURWOOD – PROPOSED 5 STOREY RESIDENTIAL FLAT BUILDING**

File No: 17/14159

REPORT BY DEPUTY GENERAL MANAGER LAND, INFRASTRUCTURE & ENVIRONMENT

**Applicant:** Urban Link Pty Ltd  
**Location:** 18-20 Meryla Street Burwood  
**Zoning:** B4 Mixed Use – Burwood Local Environmental Plan (BLEP) 2012

### **Proposal**

Demolition of existing dwelling houses and construction of a five storey residential flat building comprising 30 residential apartments over two levels of basement car parking as follows:

- Basement two car parking level containing 22 car spaces, storage areas and access.
- Basement one car parking level containing 15 car spaces, storage areas and access.
- Ground floor containing six apartments (3 x 1 bedroom and 3 x 2 bedroom), balconies and/or POS areas, pedestrian and vehicular access from Meryla Street, internal pedestrian access, common open space area, facilities and landscaping.
- Levels 1 - 4 with the same layout each containing six apartments (2 x 1-bedroom and 4 x 2-bedroom), balconies, and a partly open corridor for apartment access.
- A roof area over the apartment building partly to be used as communal open space with stair access.
- The 30 apartments comprise 11 x 1 bedrooms plus study, 19 x 2 bedrooms and car parking provision is 37 spaces.

The design of the development above the basement car parking levels is of a single building formed by three “modules” linked by internal corridors and walkways. The building steps up to the rear module which is about one metre higher. The building has similar widths on the Meryla Street frontage and at the rear, with a narrower middle section.

### **Background**

Development Application (DA) BD.2011.148 for an apartment development on the site was refused on 10 August 2012 due to non-compliant and inadequate setbacks and excessive bulk and scale.

A Pre-DA for a revised proposal was submitted in April 2013. Advice was provided in June 2013.

The current development application was initially lodged on 3 December 2014. Several iterations of plans and two rounds of public notification led to Council writing to the applicant on 16 April 2015 identifying a wide range of unsatisfactory and unresolved matters.

Revised plans and details were lodged on 23 November 2015 and the proposal was re-notified. These plans were also subject to public notification. Comments obtained from Council’s urban design consultants GMU and other advice on the revised plans were forwarded to the applicant on 10 February 2016. The comments detailed ongoing deficiencies and concerns with the proposal.

On 18 October 2016 Council was advised that the application had been transferred to another architectural firm and authorisation was provided to Council and new plans were submitted. Comments on these plans were provided to the applicant, leading to revised plans and documentation being lodged on 3 February 2016.

Concern about the ground floor level of the rear section of the building in relation to finished ground levels led to further plan revisions received on 9 March 2017. These plans are the subject of this report.



## Statutory Requirements

The application is assessed under the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979*, as amended, which include:

- The provisions of the Burwood Local Environmental Plan (BLEP) 2012
- State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Buildings and the Residential Flat Design Code (RFDC)
- The provisions of Burwood Development Control Plan – BDCP 2013
- The impact of the development in relation to:
  - The context and setting of the development
  - The impact on the natural built environment
  - Shadowing of adjoining properties
  - Traffic impact
  - Streetscape and urban design issues
  - Crime prevention through environmental design
- The suitability of the site for development
- The public interest
- Social and economic impact
- Submissions made under the Act and Regulations.

These matters are considered in this report. NB: the RFDC continues to apply to this DA because the application was submitted in 2014.

## Locality

The site's location is indicated in Figure 1.

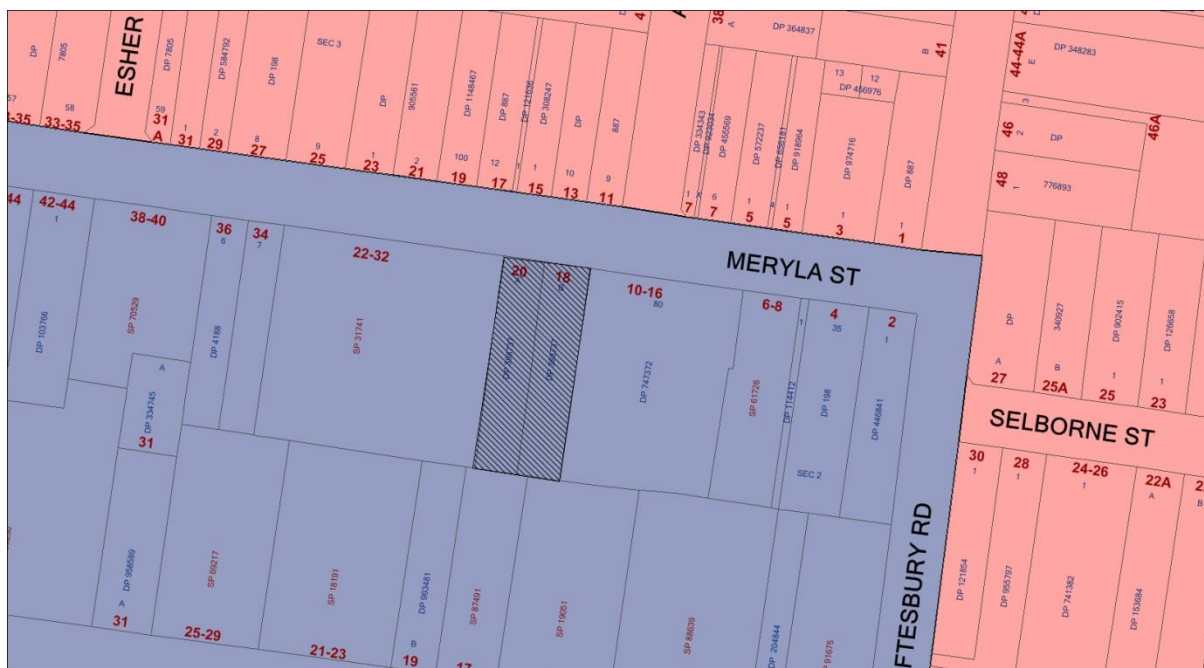


Figure 1 – Site location and zoning

## Site and surrounding area

The site comprises two separate lots that together have a rectangular shape. Street frontage Meryla Street is 22.25 metres and rear boundary is 22.075 metres. The site depth is 53.455 metres /53.485 metres, and the area is 1184.9 square metres.



Existing development on the lots comprises a single storey dwelling house on each lot with access driveways and several outbuildings.

Immediately to the west at Nos. 22-32 Meryla Street there is a two storey residential flat building, and to the east there is a three storey building at Nos. 10-16 Meryla Street. At the rear there is a common boundary with two lots containing residential apartment buildings that front Wilga Street. Land in Meryla Street is in transition as available lots are redeveloped to utilise capacity in the zoning and development standards

To the north on the other side of Wilga Street land is in the R2 Low Density Residential zone and lots are developed primarily with one and two storey dwelling houses.

## **Planning Assessment**

### **Development Permissibility**

#### *BLEP 2012*

The B4 Mixed Use zone applying in the Burwood Town Centre (BTC) permits with consent residential flat buildings and the proposal complies with the definition for this form of development. The site is in the Transition Area of the BTC as defined in the BTCP.

The proposal is consistent with the aims of the B4 zone, in that it provides and adds to a mixture of compatible land uses, and it integrates residential development with the Burwood Town Centre's mix of retail, business and commercial premises and other development in an accessible location that will encourage public transport use, walking and cycling.

In the BLEP 2012 the site does not contain a Heritage Item and is not in a Heritage Conservation Area. There are Heritage Items or HCAs in close proximity to the site that would be impacted by the proposed development.

The site's frontage is not designated in the Active Street Frontages Map referred to in Clause 6.3 of the BLEP 2012. No part of the site is designated in the BLEP for acquisition for any purpose. Pursuant to Clause 6.1 the land is included in Class 5 on the Acid Sulfate Soils (ASS) Map with no Class 4 land in the vicinity and therefore no ASS issues pertain to the site. There are no known flooding issues associated with the site that are relevant to Clause 6.2 Flood Planning.

### **Development standards and other requirements**

<b>Issue</b>	<b>Requirement/standard</b>	<b>Proposal</b>	<b>Compliance</b>
<b>BLEP 2012</b>			
Building height	Maximum 15 m – Clause 4.3 and Building height map	Rooftop pergola and balustrades around COS area exceed limit by up to 1.2 m (pergola) - 8% variation	No - Clause 4.6 request submitted - see below
Floor space ratio	Maximum 2:1 – Clause 4.4 and Floor Space Ratio map	Site area 1184.9 sq m; GFA 2177.7 sq m proposed - 1.84:1 proposed; max. 2369.8 sq m permitted	Yes
Maximum residential floor space ratio	Not applicable in this part of BTC		
Building Height Plane (BHP)	Line A on the BHP Map on the eastern side of Shaftesbury Ave	No constraint imposed on the proposed development	

Issue	Requirement/standard	Proposal	Compliance
<b>BDCP 2013</b>			
<b>Section 3.3.2.4 – Area Based Controls in BTC Transition Area</b>			
Setbacks and podium height	<p>Street front setback – 6 m minimum, no secondary setback or podium height</p> <p>Side and rear setbacks and building separation to have regard to RFDC. Setbacks to be shared equally. Up to four storeys/12 metres:</p> <ul style="list-style-type: none"> <li>▪ 12 metres between habitable rooms/balconies</li> <li>▪ 9 metres between habitable/balconies and non-habitable rooms</li> <li>▪ 6 metres between non-habitable rooms</li> </ul> <p>5th storey and above:</p> <ul style="list-style-type: none"> <li>▪ 18 metres between habitable rooms/balconies</li> <li>▪ 13 metres between habitable rooms/balconies and non-habitable rooms</li> <li>▪ 9 metres between non-habitable rooms</li> </ul>	<p>6 m minimum all levels; minor (0.5 m) encroachment by wall separating balconies ground - level 3</p> <p><u>Side setbacks:</u> East: 3 m min all levels in 2 sections 16 m &amp; 11.5 m long on 53 m boundary (52%) West: similar</p> <p><u>Rear setback:</u> Minimum 4.5 - 4.85 m all levels</p> <p><u>Separation:</u> East: min 9.95 m all levels; West: min. 10 m ground level; 8.5 m to 10 m upper levels Rear: minimum 9.5 m all levels</p>	<p>Satisfactory</p> <p>Accepted - see comments below on setbacks and building separation</p>
Communal open space	<p>Minimum 25% site area (RFDC). Provision in street front setback with min. 50% soft landscaping. Include canopy trees and deep soil zones</p>	<p>127 sq m ground level + 175 sq m roof top = 302 sq m provided – 25% of site.</p> <p>Deep soil area 165 sq m at rear &amp; east side - 14%; landscaped planter boxes in front setback and rear</p>	<p>Satisfactory – condition required</p>
<b>Section 3.2 General Building Design Controls in Centres and Corridors</b>			
Minimum site area and site isolation	<p>Minimum 500 sq m and isolated site formation discouraged</p>	<p>Site exceeds 500 sq m; no isolated sites created</p>	<p>Yes</p>
Building design	<p>Design excellence encouraged; high quality materials and finishes; roof design to contribute to overall design and performance outcomes</p>	<p>All elevations modulated and articulated with acceptable quality external materials; flat roof with COS and central pergola integrated with design</p>	<p>Yes</p>
Building access,	<p>Security measures to form integral</p>	<p>Clear street</p>	<p>Satisfactory -</p>

Issue	Requirement/standard	Proposal	Compliance
safety and security	part of building; ground floor integrated with streetscape; appropriate building entrances and clear street address; appropriate mail box provision; casual surveillance to be provided by design	address. Two entrances to building. Main central access includes doors and provides a path way to a single lift to upper floors set back 22 m from street. Second access along east side of building. Ground level integrated with streetscape. Mail boxes indicated. External casual surveillance available from all dwellings. Crime risk assessment provided.	see comments below - conditions required
Private open space (POS)	All dwellings must have private open space; integrated into building design; respond to site conditions; meet minimum dimensions	All ground level apartments have courtyards; all others have balconies; all accessible from living areas; integrated into design; meet minimum areas and depths	Yes
Ceiling heights	Ground floor residential 3.3 m; other residential above ground 2.4m and 2.7m - finished floor to ceiling	Ground level 2.95 m; others 2.95	Condition required re ground floor
Daylight access and natural ventilation	70% of residential living rooms and private open space to meet minimum sunlight standards; provide adequate natural ventilation (RFDC requirements)	21 of 30 units have solar access (70%); 20 units have cross-flow ventilation	Yes
Acoustic privacy	Design development to reduce noise transmission internally and from adjoining sites	No acoustic report necessary; no unusual adverse acoustic impacts apparent	Yes
Visual privacy	Building separation as per RFDC; avoid overlooking	Main external visual privacy issue is relationship to windows and balconies in adjoining buildings; internally potential privacy impacts for balcony to ground	Yes – see comment below

Issue	Requirement/standard	Proposal	Compliance
		level unit UG3	
Lobbies and internal circulation	Lobbies must be designed for natural ventilation and natural lighting; common area corridors must be minimum of 2m width	Adequate lighting required at front door and on east side path; also for ground floor circulation areas	Yes – see comment below - condition required
Storage for apartments	At least 50% of storage to be provided in apartments and 25% accessible from active areas	Storage provided in each unit and basement cages	Yes - condition
Apartment sizes and mix	Buildings of 20+ units require mix of dwellings of 1, 2 and 3 bedrooms. Minimum unit sizes: 1 br – 50 sq m; 2 br – 70 sq m; 3 br – 95 sq m	Mix of apartments provided. Minimum areas met	Yes
Access and mobility	Compliance with Australian Standards for adaptable units and car parking accessibility	3 units designated as adaptable; accessible parking spaces provided	Yes - conditions
Awnings	Required for any development built to the street front boundary in the B4 zone	Awnings not necessary or appropriate	N/A
<b>Section 4.6 – Transport and parking in residential development</b>			
Number of parking spaces	No commercial floor space. Residential: 1 per 1 & 2 bedroom units Residential visitors: 1 per 5 units	30 x 1 & 2 br units require 30 spaces + 6 for visitors; 37 provided	Yes

### **Comments on BLEP 2012 matters**

There is non-compliance with the development standard in the BLEP 2012 for maximum building height of 15 metres by up to 1.2 metres caused by the pergola over part of the roof top COS area. Also there is minor intrusion above the limit by planter boxes that surround the COS area. The main bulk of the building complies with the limit.

It is noted that the plans lodged on 9 March 2017 have raised the height of the rear module of the building and relocated the roof top COS area to the north so that it does not utilise any of the roof area of the rear module. This does not cause any additional breaches of the height limit.

A written request for approval of a departure from the development standard pursuant to Clause 4.6 of the BLEP 2012 has been lodged in the SEE. Clause 4.6 provides powers and procedures for consent authorities to consider and where appropriate grant consent to development even though the development would contravene a particular development standard. The objectives of this clause are to provide an appropriate degree of flexibility in applying development standards, and to deliver better outcomes for and from development by allowing flexibility. The provisions of Clause 4.6 may be applied to the development standard for maximum building height.

For Council to consent to an exception to a development standard it must have considered a written request from the applicant that seeks to demonstrate that compliance is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the departure. Consent cannot be granted unless Council is satisfied that these matters are adequately addressed and that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the zone objectives.

The breach of the 15 metre height limit occurs in the centre of the building where the pergola over part of the roof top COS area is located and towards the front of the building in respect the balustrades surrounding the COS area. The breaches arise because of the necessary height of the

pergola, and because of the slight slope of the site. There is no breach of the limit by the main body of the building.

The request submitted under Clause 4.6 for the departure of the proposed development from the maximum building height standard is contained in the SEE. It presents an adequate case based on the objectives of Clause 4.3 Height of buildings, which are:

- To establish the maximum building height to encourage medium density development in this locality.
- To control the potentially adverse impacts of building height on adjoining areas.

Having regard to the Clause 4.6 request these objectives are satisfied because:

- The main building form meets the 15 metre height limit and the non-compliant elements do not contribute to the scale of the building.
- The pergola is an open structure that is centrally located, away from the Meryla Street frontage and the rear of the site. It is associated with the COS area and contributes to the amenity of the development.
- The minor non-compliance with the height limit will not be noticeable in the streetscape. The building will be seen as compliant.
- There are no apparent adverse impacts on adjoining areas arising from the departure from the height limit in terms of further shadowing, privacy impacts or loss of views or amenity.
- The proposal is not contrary to the objectives of Clause 4.3 Height of Buildings and falls within the parameters of Clause 4.6.
- As such strict compliance with the height limit would serve no practical purpose and is unnecessary and unreasonable in the circumstances of this case.
- The proposed development is in the public interest as it is consistent with the objectives of the B4 Mixed Use zone and because it facilitates the orderly and economic use of land.

For these reasons, it is agreed that the departure from the maximum height development standard should be granted consent.

With regard to the finished ground floor levels at the rear of the building relative the levels of the adjoining lots, the plans submitted on 9 March 2013 have raised the levels of the rear section of the building by one metre. This provides for the ground floor levels being only 500-600 millimetres below the level of the adjoining land, which is satisfactory. It is noted that the Senior Development Engineer's comments have not identified flooding as a matter that arises from the proposed design.

### **SEPP No. 55 – Remediation of Land**

The site has been used for residential purposes for many years and no potentially hazardous activities are known to have been carried out on the land. No action under SEPP No. 55 is necessary.

### **SEPP No. 65 – Design Quality of Residential Flat Development**

The SEE includes an assessment against the guidelines of the Residential Flat Design Code and this has been used in preparation of the above table. The SEE also includes an assessment against the Design Quality Principles contained in Schedule 1 of SEPP No. 65. This assessment is accepted as satisfactory.

#### *Building Separation*

As specified in the BDCP the side boundary setbacks are to be determined on the basis of the RFDC guidelines for building separation. Buildings up to four storeys in height should aim for the following separations: 12 metres habitable to habitable rooms/balconies; 9 metres habitable to non-habitable rooms/balconies; and 6 metres non-habitable to non-habitable rooms/balconies. The

fifth storey should aim for 18 metres between habitable rooms/balconies, 13 metres between habitable rooms/balconies and non-habitable rooms and 9 metres between non-habitable rooms.

Generally there should be an equal sharing of these separations between development sites. The building separation guidelines are not mandatory and departures are accepted where the overall development is satisfactory and impacts are shown to be managed and reduced.

To the east, the existing apartment building on the adjoining lot is three storeys in height. The minimum separation for these three storeys is 9.95 metres. This is adequate because the east facing windows or balcony ends in the proposed building (above ground level) are either provided with louvre screening or are high set windows to minimize in-looking or overlooking. The treatment of the bedroom windows of units 1.01 to 4.01 is not fully indicated and a consent condition is appropriate to require use of frosted glass to 1.8 metres above floor level. A section of open corridor on each level has a 14.5 metre building separation which is adequate. The top two levels of the proposed building are above the height of the adjoining building to the east, however, the same design features are applied to reduce in-looking/overlooking.

To the west, the existing building is two storeys in height, and the provided separations are 8.5 metres to 10 metres for the floors above ground level. These are adequate because the proposed design on the western façade provides louvre screening for balconies and most windows, and use of high-set windows or frosted window glass up to 1.8 metres above floor level on other windows. This also prevents in-looking/overlooking from the storeys of the proposed development above the two storey height of the existing building.

To the rear, the minimum separation from the new apartment building on No. 17 Wilga Street is 9.5 metres on all levels. This is adequate as all south-facing windows in the proposed building are high-set, and the balconies are provided with sliding screens.

### **BDCP 2013**

#### *Building Access, Safety and Security*

The development has two proposed access ways: one from the street down five steps and a pathway to the front door and the main corridor into the centre of the building, the other nearer to the eastern boundary via a pathway down the eastern side of the site and into the centre of the building. This design appears necessitated by the lower floor level of the building compared to the street level (about 0.85 metres) in the centre of the site. The difference is negligible for the eastern access.

While the central entrance doorway is provided with doors that can be security-controlled, there is no apparent control on access via the east side walkway. This is critical as the ground floor provides access to six apartments as well as the lift to the upper floors. The lift is set back 22 metres from the street boundary and would have reduced street visibility. In addition access to the east side walkway from the street is via a “dog-leg” bend that prevents a continuous view from the street.

Conditions are required for the provision of security gates also at the street entrance to the walk way similar to the front door entrance. Also appropriate security lighting will be required along the east side walkway and for all the internal walkways at ground level including in the waiting area for the lift. Installation of a CCTV security system is also appropriate. The site should also be provided with boundary fencing that meets the guidelines in the BDCP.

### **Referrals**

The Manager Environment & Health has provided consent conditions on environmental and waste management.

The Manager Traffic & Transport has provided consent conditions.

The Senior Development Engineer has raised no objections to the development and has provided consent conditions.

Building conditions have been supplied.

The Tree Management Officer has no objection subject to conditions.

### **Community Consultation**

Public notification of the current plans for the development commenced on 6 April 2017 and closed on 28 April 2017. Ten objections were received. One party made two separate submissions that are counted as one, and six of the submissions were pro-forma.

It is noted that notification of the original plans for this DA from 17 December 2014 to 27 January 2015 yielded nine objections. Notification of a revised proposal from 10 December 2015 to 27 January 2016 resulted in eight objections.

From the notification of the current plans, the issues raised in the submissions with comment provided on each are as follows.

1. Reduced amenity of existing adjacent buildings and the streetscape generally due to loss of light and sunlight including overshadowing, reduced views, adverse visual and acoustic privacy impacts, overbearing bulk, inadequate landscape screening, adverse road safety and road use impacts.

*Comment: Given the zoning and development standards of building height and FSR applying to the site, it is a reasonable prospect that a new development involving a substantially larger building will replace the single dwelling houses now on the site. This is bound to have some impacts in terms of building bulk, overshadowing and reduced views on existing adjacent buildings and apartment residents. However, as explained in other sections the proposal has been designed to minimise and reduce adverse impacts to an acceptable level while permitting redevelopment consistent with the zoning and development standards. As most of the southern side of Meryla Street has already been developed with apartment buildings, the proposal is in keeping with the existing streetscape rather than inconsistent with it. The Manager Traffic and Transport has not indicated that there are any adverse traffic impacts arising from the proposal.*

2. Noise, air and other pollution disturbances during construction.

*Comment: These matters are dealt with by standard consent conditions.*

3. Unsatisfactory notification of current plans including: a resident objector did not receive notification letter, notification took place over the Easter holiday period, not all documentation was available for inspection, current proposal should have been a new DA due to the length of time since the previously notified proposal, previous non-compliances with guidelines and extent of current changes, DA status on Council's website not up to date and the previous DA BD.2011.148 refused on 10 August 2012 should have been available on concurrently Council's website.

*Comment: A letter was forwarded to the address of the objector in question. The re-notification period was extended to 21 days in this case due to the inclusion of the Easter long weekend to ensure adequate time was available. A new DA was not necessary for the proposal in the current plans as its main development parameters were very similar to the proposal as originally lodged in 2014, and because the land owner formally transferred the application rights to a new architectural company. Notification of the current plans was completed in accordance with the requirements of the BDCP and supporting documentation was available for inspection. It is not normal practice and not a requirement of the BDCP for previously notified plans or plans for a refused DA on the same site to be made available as part of the notification process.*

4. Proposal is substantially the same as that refused in 2012.

*Comment: The site dimensions and applicable planning controls mean that there are similarities in the several sets of development plans that have been notified for the site including the DA refused in 2012. The current proposal is a result of substantial discussions with the applicant/architects that have taken into account the reasons for refusal in 2012 and that have involved several iterations of development plans. There are considered to be sufficient changes to the proposal in the current plans compared to the refused 2012 DA to warrant a recommendation for consent.*

5. Inadequate and non-compliant side boundary setbacks and building separation, lack of equal sharing of building separation that reduces future redevelopment of adjoining land and sets an adverse precedent.

*Comment: Side and rear setbacks in the Transition Area of the BTC are assessed against the provisions in the RFDC for building separation. These are guidelines not mandatory standards and departures may be appropriate in specific site and design circumstances. No precedent is established as each application must be assessed on its merits.*

*For the current plans while strict compliance with the guidelines is not achieved, the building separations proposed are considered adequate, taking into account the width of the site and the existing setbacks and height of the apartment buildings on the lots to the east, west and south. In particular the proposed development will cause minimal in-looking and overlooking from the new building to the existing as a result of use of specific design features - screening of balconies and some windows, use of high-set windows, and use of frosted glass in the lower sections of other windows. Where these design features are unclear a consent condition will be imposed. The rooftop COS area is well set back from the side and front boundaries and surrounded by planter boxes, such that potential impacts on visual privacy will be minimal.*

4. Unacceptable bulk and scale with adverse urban design impacts for Meryla Street, number of floors and upper-level setbacks contrary to Town Centre Transition Area and other recent buildings in the vicinity including in Wilga Street.

*Comment: The bulk and scale of the building are considered satisfactory as adequate compliance is achieved with the main LEP development standards for FSR and building height (taking into account the Clause 4.6 request assessed above). Land fronting Meryla Street is in the Transition area designated in the BDCP. The building adequately complies with the street front setback of six metres minimum in this locality. There is no requirement for a podium or a secondary setback in the Transition Area and all levels above ground in the proposed building are also set back six metres. (A minor encroachment by a wall separating the front balconies is acceptable.) Land fronting Wilga Street is subject to a different street front setback requirement.*

5. Non-compliant ground floor ceiling height.

*Comment: This can be dealt with by consent condition. There is scope for compliance by reducing other floors without increasing the overall height of the building that as indicated above is satisfactory.*

6. Loss of one street paperbark tree to provide access will adversely affect Meryla Street streetscape, inadequate replacement planting, and adverse impacts visual privacy. Footpath area should include grass planting.

*Comment: The Tree Management Officer has not required the retention of the street tree and has specified its replacement planting with a water gum from a 75 litre container. A paperbark cannot be used as a replacement as it is not on Council's Street Tree Planting List due to problematic effects on sewers, drains, concrete kerbs and footpaths.*



## Conclusion

The proposed development complies adequately with the zoning and the applicable development standards. Building separation from existing development is an issue and has been assessed as satisfactory based on the design features of the building and taking into account characteristics of the site and existing adjacent development. Upgraded provision of building security is another issue for the proposal which can be achieved by consent conditions. Development consent is recommended for the proposal subject to conditions.

**That Council call for a Division in accordance with Section 375A of the *Local Government Act 1993* to record Councillor's voting for and against on each planning decision.**

## ***Recommendation(s)***

That Development Application BD.2014.187 proposing the demolition of existing buildings and the construction of a five storey residential flat building comprising 30 residential apartments over two levels of basement car parking at 18-20 Meryla Street Burwood be granted consent, subject to the following conditions:

- 1) The development is to be carried out in accordance with the following plans and documentation except as amended by other conditions of this consent:
  - Architectural plans prepared by Urban Link dated 8 March 2017, all Issue D, Project Number 16-086: Cover Sheet, 1001, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2101, 3001, 3002, 3101, 3201, 3202, 6301 (Schedule of Finishes).
  - Landscape Plans by Discount Landscape Plans dated 25 January 2017 Dwgs L/01 - L/06.
  - Engineering Concept Plans by Alpha Engineering & Development all dated 2 February 2017 Revision B: A7001 Cover, SW01- 04.

## FEES

- 2) Damage Deposit - security deposit against damage occurring to Council's assets (footpath, road, stormwater drainage system, kerb and gutter, etc) during building work **\$13,200 (Payment to be made to Council as a bond prior to issue of a Construction Certificate and/or commencement of demolition/bulk excavation)**

NOTE: This deposit is refundable if no damage occurs.

- 3) Construction by the Applicant/Council the stormwater drainage works **\$56,200 (Payment to be made to Council as a bond)**
- 4) Building and Construction Industry Long Service Corporation levy **\$20,895.00 (Payment to be made to Council, the Corporation or its Agent)**

Section 94A Contribution: **\$291,801.20 (Payment to be made to Council).**

Note: the contribution amount will be adjusted at the time of payment. **See Planning Condition 7** for more details.

- 5) Ground Anchors Damage Deposit - security deposit against damages occurring to Council's roadway fronting the development along Meryla Street is **\$50,000**. The Applicant shall also comply with all other conditions stipulated in this conditional DA consent that apply to the protection of Council's public infrastructures. **Payment is to be made to Council in the form of a Bank Guarantee prior to the commencement of Installation of temporary ground anchors.**

**NOTE: This deposit is refundable if no damage occurs.**

## **PLANNING**

- 6) Pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979* and the Section 94A Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre), the following monetary contribution towards public services and amenities is required:

<b>Contribution Element</b>		<b>Contribution</b>	
A levy of 4% of the cost of carrying out the development, where the cost calculated and agreed by Council is \$7,295,030		<b>\$291,801.20</b>	
<b>Index Period</b>	March 2017	<b>CPI<sub>1</sub></b>	111.3

Office Use: T56

**The above contribution will be adjusted at the time of payment. Applicants are advised to contact Council for the adjusted amount immediately prior to arranging payment.**

The contribution will be adjusted in accordance with the following formula:

$$\text{Contribution (at time of payment)} = \frac{C \times \text{CPI}_2}{\text{CPI}_1}$$

Where:

- C: the original contributions amount as shown in the development consent
- CPI<sub>2</sub> the Consumer Price Index: All Groups Index for Sydney, for the immediate past quarter (available from the Australian Bureau of Statistics at the time of payment)
- CPI<sub>1</sub> the Consumer Price Index: All Groups Index for Sydney, applied at the time of granting the development consent as shown on the development consent.

**Note:** The minimum payment will not be less than the contribution amount stated on the consent.

The contribution is to be paid to Council, or evidence that payment has been made is to be submitted to the Principal Certifying Authority, **prior to the issuing of a Construction Certificate.**

Council may accept works in kind or other material public benefits in lieu of the contribution required by this condition subject to and in accordance with the requirements specified in the Section 94A Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre).

**Note:** Credit cards and personal cheques are not accepted for the payment of Section 94A Contributions in excess of \$5,000.

- 7) Glazed balcony balustrades shall be constructed of opaque materials in lieu of clear glazing.
- 8) External gas water heaters are to be located in recessed enclosures within external walls and are to be located and are to be located so as to be not visible from a public road or place or adjoining property. Similarly, air conditioning units and plant are to be located so as not to be visible from a public road or place or adjoining property.

- 9) A separate application shall be lodged for any proposed subdivision of the site. Such subdivision shall designate all car parking spaces attached to a lot with the exception of visitor parking which shall be designated as common property. No car parking spaces shall be created as a separate lot. The drainage system for the site including basement pit and pumps and on site detention shall be designated as common property.
- 10) Mail boxes shall be provided at the residential access to the building, such that mail can be delivered by Australia Post from outside the security door, and accessed by residents inside the secure area. The mail boxes are to comply with the requirements of Australia Post. Details to be submitted and approved **prior to the issue of a Construction Certificate**.
- (11) Clothes drying areas or facilities shall be provided within an area of communal open space or provided within each residential unit. If provided on the balconies of individual units, the drying facilities must be screened from exterior view, and be designed in such a way that they do not detract from the building's appearance from the public domain.
- (12) The doors of the central residential entry foyer to the building and the gate that provides access along the eastern side of the building are to be security grade fixtures and are to be appropriately security keyed to ensure the personal safety and security of residents of the development. The security doors are to include an intercom system linked to each apartment. Details on these matters are to be submitted and approved **prior to the issue of a Construction Certificate**.
- (13) The entrance driveway for access to the basement parking levels is to be provided with a security door with controlled access that ensures the personal safety and security of the residents and users of the building. The driveway security door is to be linked to the intercom system for each apartment. Details on these matters are to be submitted and approved **prior to the issue of a Construction Certificate**.
- (14) Adequate lighting is required to be provided for the following to ensure the safety and security of residents and users of the development:
  - a. At the central residential entrance path way and lobby from Meryla Street.
  - b. Along all internal ground level path ways from the central lobby that provide access to the residential lift and to apartment entrance doors on the ground floor.
  - c. At the additional entrance to the development on the eastern side, including at the entrance gateway and along the pathway that leads to the residential lift.

The installed lighting is to be of sufficient quality to ensure the effective operation of the CCTV system referred to in the following conditions. Details on all of these matters are to be submitted and approved **prior to the issue of a Construction Certificate**

- (15) CCTV cameras shall be installed for the building so that they can survey the residential entrances and all external and internal access path ways, and the vehicular entrance to the driveway to the parking levels. The CCTV system shall provide a quality image that can assist with the detection of crime and be used by the NSW Police in any investigation (preferably a quality digital system). CCTV system footage shall be retained for a period of no less than fourteen days and be available upon request by the NSW Police when required. Details are to be submitted and approved **prior to the issue of a Construction Certificate**.
- (16) The provision of the security access system for the development is to afford the all residents of the development equivalent access to the Common Open Space area located on the roof top of the development.
- (17) The internal and boundary fencing for the development is to comply with Provisions P27 - P30 in Section 4.1.2.3 Site Building and Amenity of the Burwood Development Control Plan 2013.

- (18) The ground level communal open space (COS) area on the western side of the development is to be upgraded to provide improved amenity through the installation of additional lawn area and user facilities. Details are to be submitted and approved **prior to the issue of a Construction Certificate.**
- (19) The ground floor of the development is to be provided with a finished floor to ceiling height of 3.3 m and this change is not to cause the overall height of the building to increase. Details are to be submitted and approved **prior to the issue of a Construction Certificate.**
- (20) The east-facing bedroom windows of units 1.01 to 4.01 are to be provided with frosted glass up to 1.8 m above floor level. Details are to be submitted and approved **prior to the issue of a Construction Certificate.**
- (21) Provision of storage space in each unit and in the basement is to comply with the recommendations of the Apartment Design Guide. A schedule shall be submitted to the Principal Certifying Authority demonstrating compliance and approved **prior to the issue of a Construction Certificate.**
- (22) Provision of accessible/adaptable residential apartments and accessible parking spaces is to comply with the applicable Australian Standards as indicated in Section 3.2.19 of the Burwood Development Control Plan 2013.

### **BUILDING**

- (23) Where residential building work (within the meaning of the *Home Building Act 1989*) is proposed to be carried out, either of the following is to be provided to the Principal Certifying Authority **prior to the issuing of a Construction Certificate:-**
- a. Where work is carried out by a Principal Contractor:
- (i) written advice of the Principal Contractor's name and licence number, and
  - (ii) a certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* to the effect that a person is the holder of an insurance contract issued for the purposes of that Part.
- OR
- b. Where work is carried out by an owner-builder:
- (i) written advice of the person's name and Owner-Builder Permit number, or
  - (ii) a signed declaration from the owner of the land that states the reasonable market cost of the labour and materials involved in the work is not high enough for the owner to need an Owner-Builder's Permit to do the work.
- (24) Toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided:
- a. must be a standard flushing toilet
  - b. must be connected:
    - (i) to a public sewer, or
    - (ii) to an approved chemical closet facility.

The toilet facilities are to be completed before any other work is commenced.

- (25) All excavations and backfilling associated with the erection or demolition of a building shall be carried out in a safe and careful manner and in accordance with appropriate professional standards. All necessary planking and strutting shall be of sufficient strength to retain the sides of excavations. A Certificate verifying the suitability of structural details for any proposed shoring is to be submitted to the Principal Certifying Authority before excavating.
- (26) All excavations associated with the erection or demolition of the building are to be properly guarded and protected to prevent them from being dangerous to life or property.
- (27) Where soil conditions require it:
- a. retaining walls must be provided so as to prevent soil movement; and
  - b. adequate provision must be made for drainage.
- (28) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
- a. must preserve and protect the building from damage
  - b. if necessary, must underpin and support the building in an approved manner
  - c. must, at least 7 days before excavation below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

Allotment of land includes a public road and any other public place.

- (29) If the work involved in the erection or demolition of a building:
- a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - b. building involves the enclosure of a public place.

A hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

- (30) Your attention is directed to the following:

### **WARNING**

The approved plans must be submitted to Sydney Water Tap in™ to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will then be approved, with suitable evidence being provided to the Principal Certifying Authority **prior to the issuing of**

**a Construction Certificate.**

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Sydney Water Tap in™ details – see Plumbing, building and developing then Sydney Water Tap in™ and
- Technical guidelines - Building over and adjacent to pipe assets – see Plumbing, building and developing then Building plan approval,

or telephone 13 20 92.

**Note:**

The Principal Certifying Authority must ensure that they either:

- Receive the Sydney Water Tap in™ approval letter or
- Sight the Water Servicing Coordinator approval stamp **before the issue of any Construction Certificate.**

- (31) The builder is to take all precautions to ensure footpaths and roads are kept in a safe condition and to prevent damage to Council's property. Pedestrian access across the footpath must be maintained at all times. Any damage caused will be made good by Council at Council's restoration rates, at the builder's expense.
- (32) No materials are to be stored on Council's roads, footpaths, nature strips or parks.
- (33) No opening is to be made in any road or footpath, nor is any hoarding to be erected without the prior consent of Council. The builder is to obtain the relevant permit for which fees will be charged in accordance with Council's current Schedule of Fees and Charges.
- (34) The builder shall erect and maintain in good order all necessary hoardings, barricades and warning signs required to provide adequate public safety. Night warning lamps are to be provided where necessary. A Principal Certifying Authority sign should also be displayed in a prominent position at the front of the development site.
- (35) Hours of work shall be from 7:00am to 5:30pm Mondays to Fridays inclusive, and from 7:00am to 4:00pm Saturdays. No work shall be carried out on Sundays or Public Holidays. The owner/builder shall be responsible for the compliance of this condition by all sub-contractors, including demolishers.
- (36) The approved structure shall not be used or occupied unless an Occupation Certificate (being a Final Certificate or an Interim Certificate) as referred to in section 109C(1)(c) of the *Environmental Planning & Assessment Act 1979* has been issued.

(Vide Section 109M *Environmental Planning & Assessment Act 1979*)

- (37) The building works are to be inspected during construction by the Principal Certifying Authority or an appropriate Accredited Certifier authorised by the Principal Certifying Authority at the stages of construction listed in the following schedule. The Principal Certifying Authority must be satisfied that the construction satisfies the standards specified in the Building Code of Australia or in this approval before proceeding beyond the relevant stage of construction.

**SCHEDULE OF CONSTRUCTION STAGES REQUIRING INSPECTION**

- \* After the commencement of the excavation for, and before the placement of, the first footing;

- \* Prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building;
- \* Prior to covering any stormwater drainage connections; and
- \* After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

(38) An application for a Construction Certificate is to be made to Council or an Accredited Certifier. Council's "Construction Certificate Application" form is to be used where application is made to Council. Copies are available upon request. A Construction Certificate must be obtained **prior to the commencement of any building work**.

(39) Dial Before You Dig is a free national community service designed to prevent damage and disruption to the vast pipe and cable networks which provides Australia with the essential services we use everyday – electricity, gas, communications and water.

Before you dig call "Dial Before You Dig" on 1100 (listen to the prompts) or register on line at [www.1100.com.au](http://www.1100.com.au) for underground utility services information for any excavation areas.

The Dial Before You Dig service is also designed to protect Australia's excavators. Whether you are a backyard renovator, an individual tradesman or a professional excavator, the potential for injury, personal liability and even death exists everyday. Obtaining accurate information about your work site significantly minimises these risks.

*Reason:* To ensure that essential services such as electricity, gas, communications and water are not affected by excavation or construction works.

- (40) All building works being erected wholly within the boundaries of the property.
- (41) All sanitary plumbing being concealed in suitably enclosed ducts. Such ducts are to be constructed internally (i.e. not on the outside face of an external wall) and are to be adequately sound-proofed.
- (42) All plumbing and drainage work being carried out by licensed tradesmen and in accordance with the requirements of the Plumbing Code of Australia.
- (43) The floor of the wet areas being of a material impervious to moisture and graded and drained to the sewers of Sydney Water.
- (44) The noise emitted by any air-conditioning equipment being inaudible in your neighbours' homes between 10:00pm and 7:00am weekdays and 10:00pm and 8:00am on weekends and public holidays. Council is to be consulted prior to the installation of any air-conditioning equipment.
- (45) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- (46) Safety glazing complying with B1.4 of the Building Code of Australia used in every glazed door or panel that is capable of being mistaken for a doorway or unimpeded path of travel. The glazing must comply with Australian Standard AS 1288–2006: Glass in Buildings - Selection and Installation. Details of the method of complying with this requirement must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate**.
- (47) Framed panels or doors enclosing or partially enclosing a shower or bath shall be glazed with "A" or "B" grade safety glazing material in accordance with Australian Standard AS 1288-2006, Table 4.5 SAA Glass Installation Code (Human Impact Considerations) and B1.4 of the

Building Code of Australia. Details of the method of complying with this requirement must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**

- (48) Treatment for the protection of the building from subterranean termites must be carried out in accordance with Australian Standard AS 3660.1-2014 "Termite management - New building work."

If the method of protection is to be by way of a chemical barrier, it becomes the responsibility of the owner to maintain a suitable maintenance procedure in accordance with the manufacturer's requirements. Such responsibility is placed solely upon the owner.

After treatment the following is to be carried out:

- a. A durable notice must be permanently fixed to the building in a prominent location, such as the meter box, indicating:
  - (i) The method of protection.
  - (ii) The date of installation of the system.
  - (iii) Where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label.
  - (iv) The installer's or manufacturer's recommendation for the scope and frequency of future inspection for termite activity.
- b. Provide the Principal Certifying Authority with a Certificate which verifies that termite protection has been provided in accordance with Australian Standard AS 3660.1-2014. In the case of Reinforced Concrete Slab construction the Certificate is to verify that the protection incorporates both beneath slab (Part A) and slab penetrations (Part B) treatment.

Details showing compliance with this requirement must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**

- (49) *Dividing Fences Act 1991* - Your attention is directed to any obligations or responsibilities under the *Dividing Fences Act 1991* in respect of adjoining property owner/s which may arise from this application. Any enquiries in this regard may be made to the Crown Lands Division on (02) 8836 5332.
- (50) No part of the front fencing including footings must encroach upon Council's footpath. Entrance gates must open within/into the property.
- (51) A registered surveyor's certificate being submitted to the Principal Certifying Authority, **prior to the issue of an Occupation Certificate**, as follows:-
- a. Before pouring of concrete slab on every level to indicate the height of the finished floor level and to show boundary clearances; and
  - b. On completion of the building to indicate the height of the finished floor levels, the height of the roof ridge/parapet and to show boundary clearances and areas of the site occupied by the building.
- (52) Prior to the commencement of building work, the following is to be carried out:
- a. Submit to Council a "Notice of Intention to Commence Building Work and Appointment of a Principal Certifying Authority" form. Council's "Notice of Intention to Commence Building Work and Appointment of a Principal Certifying Authority" form is to be used where application is made to Council.



- b. Ensure detailed plans and specifications of the building are endorsed with a Construction Certificate by Council or an Accredited Certifier. Council's "Construction Certificate Application" form is to be used where application is made to Council. Copies are available on request.

(Vide Section 81A *Environmental Planning & Assessment Act 1979*)

- (53) The building being known as No. 18-20 Meryla Street, Burwood and this number (at least 150mm in height) being clearly displayed on the site prior to the issuing of an Occupation Certificate.
- (54) A "Section 73 Compliance Certificate" under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For assistance either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

The Section 73 Certificate must be submitted to the Principal Certifying Authority **prior to the issuing of an Occupation Certificate.**

- (55) Structural engineer's details prepared and certified by a practicing Structural Engineer for all reinforced concrete and structural members being submitted to the Principal Certifying Authority for approval **prior to the issuing of a Construction Certificate.**
- (56) The Principal Certifying Authority **or** Structural Engineer is to also supervise the construction. All Certificates from the supervising Structural Engineer are to be submitted to the Principal Certifying Authority before an Occupation Certificate is issued stating that all reinforced concrete and/or structural members have been erected in accordance with his/her requirements and the relevant SAA Codes.
- (57) Timber sizes and the framework in general are to conform with the requirements of Australian Standard AS 1684 "Residential timber-framed construction."
- (58) Mechanical ventilation/air conditioning details are to be submitted to the Principal Certifying Authority for approval **prior to the issuing of a Construction Certificate** and must include the following:
  - a. The location and size of proposed ductwork.
  - b. The location of equipment.
  - c. The performance characteristics of the proposed motor/s and fan/s.
  - d. The air flow characteristics of the system.

At the completion of work a Certificate from an Accredited Certifier, Mechanical Engineer or other suitably qualified person, to the effect that the ventilation system has been installed and performs in accordance with the provisions of Part F4 of the Building Code of Australia, Australian Standard AS 1668 "SAA Mechanical Ventilation and Air Conditioning Code", Part 1 and Part 2, Australian Standard AS 3666-1989 and the *Noise Control Act 1975*, must be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate.**

- (59) Fire Resistance Levels of all structural members, including external and internal walls, spandrels, external and internal columns, lift shafts and stair shafts, ventilation, pipe and like shafts, floors and roofs shall comply with the requirements of Specification C1.1 of the Building Code of Australia. Details of the method of achieving this must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**

- (60) All materials used in the building must comply with early fire hazard criteria of Specification C1.10 of the Building Code of Australia.
- (61) Means of access and egress complying with Section D of the Building Code of Australia. Details of the method of achieving this must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**
- (62) The building being provided with both access and sanitary facilities (where required) for people with disabilities. The sanitary facilities are to be provided in accordance with F2.4 of the Building Code of Australia and are to comply with the requirements of Clause 10 of AS 1428.1-2009. Access is to be provided to and within the building so as to comply with all the requirements of Part D3 of the BCA and the relevant provisions of AS 1428.1-2009. Details of the method of achieving this must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**
- (63) The *Commonwealth Disability Discrimination Act 1992* may apply to this particular proposal. Submissions and/or approval of the application does not imply or confer compliance with this Act. Applicants should satisfy themselves and make their inquiries to the Human Rights and Equal Opportunity Commission.
- (64) Continuous balustrades shall be provided along the side/s of any stairway or ramp, any corridor, hallway, balcony, access bridge or the like, any path of access to a building if:-
- a. It is not bounded by a wall; and
  - b. The change in level is more than one (1) metre, or five (5) risers in the case of a stairway, from the floor or ground surface beneath;

except where specific exemptions are provided in the Building Code of Australia.

Balustrades shall prevent as far as practicable:

- a. Children climbing over or through it; and
- b. Persons accidentally falling from the floor; and
- c. Objects which might strike a person at a lower level falling from the floor surface.

Balustrade heights and designs shall comply with Part D2.16 of the Building Code of Australia and Australian Standard AS/NZS 1170 Part 1 – Structural design actions. Height above nosings of stair treads, landing, corridors and the like shall generally be not less than 865mm.

Details of the method of satisfying these requirements must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**

- (65) The building being equipped with a smoke alarm system as required by Table E2.2a of the Building Code of Australia. The system is to satisfy the requirements of Specification E2.2a of the Building Code of Australia and in particular is to comply with the relevant parts of AS 3786-2014 and AS 1670.1-2004. Details of the method of complying with this requirement must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**
- (66) Protection of openable windows is to be in accordance with Part D2.24 of the Building Code of Australia. Details of the method of satisfying this requirement must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**

- (67) A Fire Safety Certificate (copies available from Council) is to be given to the Principal Certifying Authority prior to applying for an Occupation Certificate or Interim Occupation Certificate and thereafter once in every 12 month period an Annual Fire Safety Statement is to be given to Council. The certificate and statement attest to both the inspection of all essential fire safety measures by a properly qualified person and to the regular maintenance of the fire safety measures. A copy of the Fire Safety Certificate and the Fire Safety Schedule are to be given to the Commissioner of New South Wales Fire and Rescue **by the building owner** and copies of these documents are to be prominently displayed in the building. Similarly copies of Annual Fire Safety Statements are also to be given to the Commissioner and displayed in the building.

(Vide clause 153 & Division 3 of the *Environmental Planning & Assessment Regulation 2000*)

- (68) Noise transmission and insulation ratings for building elements being in accordance with Specification Part F5 of the Building Code of Australia.

Details of the method of satisfying this requirement must be noted on the plans or in the specifications **prior to the issuing of a Construction Certificate.**

- (69) Engineering Design – Basement Excavation

The following engineering details or design documentation shall be submitted to the Principal Certifying Authority (Council or Accredited Certifier) **prior to the issuing of a Construction Certificate:**

- a. Documentary evidence prepared by a suitably qualified professional Geotechnical Engineer that confirms the suitability of the site for the proposed excavation and building, as well as certifying the suitability and adequacy of the proposed design and construction of the building for the site.
- b. A report shall be prepared by a professional engineer **prior to the issuing of a Construction Certificate**, detailing the proposed methods of excavation, shoring or pile construction including details of vibration emissions and detailing any possible damage which may occur to adjoining or nearby premises due to building and excavation works. Any practices or procedures specified in the Engineer's Report in relation to the avoidance or minimisation of structural damage to nearby premises, are to be fully complied with and incorporated into the plans and specifications for the Construction Certificate.

**A copy of the Engineer's Report is to be submitted to Council, even if the Council is not the Principal Certifying Authority.**

## DEMOLITION

- (70) Removal of any asbestos must be undertaken in compliance with the requirements of SafeWork NSW. Refer to their Code of Practice "How to Safely Remove Asbestos" dated September 2016.
- (71) Demolition of the building is to be carried out in accordance with the requirements of Australian Standard AS 2601 – 2001, where applicable.
- (72) Hours of demolition work shall be from 7:00am to 5:30pm Mondays to Fridays inclusive, and from 7:00am to 4:00pm Saturdays. No demolition work shall be carried out on Sundays or Public Holidays. The owner/builder shall be responsible for the compliance of this condition by all sub-contractors, including demolishers.
- (73) Access to the site is to be restricted and the site is to be secured when demolition work is not in progress or the site is otherwise occupied.

- (74) The demolition site is to be provided with measures to mitigate against dust nuisances arising on adjoining sites and roadways. To achieve this, a fence or barrier is to be erected around the site. The construction may be steel mesh which is covered with a suitable filtering medium or such other construction acceptable to Council. An effective program of watering the site is also required to be maintained.
- (75) All demolition and excavation materials are to be removed from the site or disposed of on site using methods that comply with relevant environmental protection legislation.
- (76) When demolition of any existing building is involved, burning of any demolition materials on the site is prohibited.
- (77) Dilapidation Surveys are to be carried out by a Practising Structural Engineer, which is to include a full photographic record of the exterior and interior of the buildings at the applicants/owners expense on all premises adjoining the site and the survey is to be submitted to Council and the adjoining land owners **prior to the commencement of any works**. A further Dilapidation Survey is also to be carried out and submitted to Council and the adjoining owners **prior to the issuing of an Occupation Certificate**. The Dilapidation Surveys shall be dated accordingly.

## **HEALTH**

### **Environmental Management**

- (78) An Environmental Management Plan is to be submitted to Council for approval, prior to the commencement of any works, detailing the control and management methods to be implemented in addressing the following issues during the demolition, excavation and construction phases of the project:
- Noise and vibration control
  - Dust and odour suppression and control
  - Storm water control and discharge
  - Erosion control
  - Waste storage and recycling control
  - Litter control
  - Construction material storage
  - Truck cleaning methods on site so as to prevent spread of soil and like materials onto Council's roadways
- (79) Mechanical ventilation and or air conditioning systems and equipment are to be designed and installed in locations that do not cause any noise nuisance or disturbance to near-by residential or commercial premises.
- (80) A car wash area/bay is to be provided and be graded and drained to a waste water disposal system in accordance with the requirements of Sydney Water.

### **Waste Management**

- (81) A waste cupboard or other storage area is to be provided within each dwelling which is of sufficient size to hold a single day's waste and to enable source separation of general waste, recyclables and compostable materials.
- (82) The garbage and recycling storage area is to be:
- a. Supplied with both **hot and cold** water
  - b. Paved with impervious floor materials
  - c. Coved at the intersection of the floor and the walls

- d. Graded and drained to a floor waste which is connected to the sewer in accordance with the requirements of Sydney Water
  - e. Adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour as defined by the *Protection of the Environment Operations Act 1997*
  - f. Fitted with appropriate interventions to meet fire safety standards in accordance with the Building Code of Australia.
  - g. Suitable signage is to be installed in each waste service room encouraging the separation of recyclables from the general waste stream
- (83) Manufactures details and specifications for the installation, fire suppression and health and odour control measures for the garbage chute are to be submitted to Council for approval **prior to the issue of the Construction Certificate.**
- (84) Certification is to be provided by the installer of the chute system **prior to the issue of an occupation certificate** certifying that the Chute has been installed in accordance with the manufacturer's specification.
- (85) The garbage chute room at each level is to be of sufficient size to accommodate sufficient mobile bins (MGB'S)/crates to store recyclable material generated over the entire period between collection days.
- (86) Suitable signage is to be installed in each level of the chute waste service rooms encouraging the separation of recyclables from the general waste stream.
- (87) A Caretaker is to be appointed for the development who will have ongoing responsibility for the proper management of the waste and recycling services
- (88) Waste and recycling bins shall be kept clean and hygienic condition. Bins are to be washed regularly within the garbage storage room with any waste water being discharged to the sewer by way of a grated drain.
- (89) **Prior to the issue of an Occupation Certificate**, the applicant is to arrange with Council's Environment and Health Section the issue of the appropriate number of garbage and recycling bins and payment of the necessary fees to enable commencement of the waste and recycling service.

## **ENGINEERING**

- (90) A detailed drainage design shall be submitted to the Principal Certifying Authority.
- a. The design and calculations shall indicate the details of the proposed method of stormwater disposal and shall be prepared by a competent practicing hydraulic/civil engineer in accordance with Council's Stormwater Management Code.
  - b. Allowance shall be made for surface runoff from adjacent properties, and to retain existing surface flow path systems through the site. Any redirection or treatment of these flows shall not adversely affect any other property.
  - c. Overflow paths shall be provided to allow for flows in excess of the capacity of the pipe/drainage system draining the site, as well as from any on-site stormwater detention storage.
  - d. The design is to be reviewed by Council or an Accredited Certifier - Civil Engineering **prior to the issuing of a Construction Certificate.**
- (91) Details and calculations shall be prepared by a competent practicing Hydraulic/Civil Engineer. They shall include:

- a. a catchment plan
- b. plans showing proposed and existing floor, ground and pavement levels to Australian Height Datum (AHD)
- c. details of pipelines/channels showing calculated flows, velocity, size, materials, grade, invert and surface levels
- d. details and dimensions of pits and drainage structures
- e. hydrologic and hydraulic calculations
- f. details of any services near to or affected by any proposed drainage line
- g. any calculations necessary to demonstrate the functioning of any proposed drainage facility is in accordance with Council's requirements
- h. the depth and location of any existing stormwater pipeline and/or channel being connected to shall be confirmed by the applicant on site. Certification of such is to be provided to Council prior to the release of the construction certificate

The details and calculations are to be reviewed by Council or an Accredited Certifier - Civil Engineering, **prior to the issuing of a Construction Certificate.**

- (92) On-site stormwater detention storage shall be provided in conjunction with the stormwater disposal system:
- a. This storage shall be designed by a competent practicing Hydraulic/Civil Engineer in accordance with Council's Stormwater Management Code and submitted to the Principal Certifying Authority.
  - b. The design is to be reviewed by Council or an Accredited Certifier - Civil Engineering, **prior to the issuing of a Construction Certificate.**
- (93) A Positive Covenant under section 88E of the *Conveyancing Act* shall be created on the title of the property(s) detailing the:
- i) On-site Stormwater Detention system
  - ii) Pump and rising main system

incorporated in the development. The wording of the Instrument shall include but not be limited to the following:

- a. The proprietor of the property agrees to be responsible for keeping clear and the maintenance of the facilities consisting of:
  - i) On-site Stormwater Detention system
  - ii) Pump and rising main system
- b. The proprietor agrees to have the facilities inspected annually by a competent practicing Hydraulic/Civil Engineer.
- c. The Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean repair and maintain in good working order the facilities in or upon the said land; and recover the costs of any such works from the proprietor.
- d. The registered proprietor shall indemnify the Council and any adjoining land owners

against damage to their land arising from failure of any component of the facilities.

The applicant shall bear all costs associated with the preparation of the 88E Instrument. The wording of the Instrument shall be submitted to, and approved by Council prior to lodgement at the Land and Property Information office. Evidence that the Instrument has been registered at the Land and Property Information office shall be submitted to Council, **prior to issuing of an Occupation Certificate.**

- (94) The pump system is only permitted for the drainage of the basement areas where the finished slab is below the ground level. The following conditions are to be satisfied:
- a. A pump and rising main design shall be submitted to the Principal Certifying Authority and shall satisfy the following conditions:
    - i) The holding tank for the pump shall be capable of storing runoff from a one hour, 1 in 100 year ARI storm event.
    - ii) The pump system shall consist of two (2) pumps, connected in parallel, with each pump being capable of emptying the holding tank at a rate equal to the lower of the allowable on site detention discharge rate, or the rate of inflow for the one hour duration storm.
    - iii) An overflow, flashing light and audible alarm are to be provided, to warn of pump failure.
    - iv) Full details of the holding tank, pump type, discharge rate and the delivery line size are to be documented.
    - v) Any drainage disposal to the street gutter, from a pump system must have a stilling sump provided at the property line, and connected to the street gutter by a suitable gravity line.
    - vi) The capacity of the stilling sump and outlet pump shall be determined and verified by calculations which are to be documented.
  - b. Pumping system details shall be submitted to Council or an Accredited Certifier - Civil Engineering, **prior to the issuing of a Construction Certificate.**
  - c. The applicant shall submit written evidence to the Principal Certifying Authority that a contract has been let for the regular maintenance of the pumping system for a minimum period of 12 months. Information to be submitted to the Principal Certifying Authority **prior to issuing of an Occupation Certificate.**
- (95) All activities and works external to the site, or that affect public roads, are to be carried out in accordance with Council's Policies including but not limited to the Works on Council's Road Reserve Assets Policy, Rubbish Skips Policy, Work Zone Policy and Temporary Road Closure (Including Standing Plant) Policy.
- (96) A road-opening permit shall be obtained for all works carried out on public or Council controlled lands. Restoration of landscaping, roads and paths shall be carried out by Council at the applicant's expense in accordance with Council's **Schedule of Fees and Charges**. The applicant or any contractors carrying out works in public or Council controlled lands shall have public liability insurance cover to the value of \$20 million, and shall provide proof of such cover to the Principal Certifying Authority prior to carrying out the works. **Please see Burwood Council's web site [www.burwood.nsw.gov.au](http://www.burwood.nsw.gov.au) - Go to Development/Working on Footpaths or Roadways?/Works on Council Property (Application Form).**
- (97) Spoil and building materials shall not be placed, stored, thrown or caused to fall on any public

roadway or footpath. Waste containers shall be placed in accordance with Council's Rubbish Skips Policy. Contact Council for a list of approved skip bin suppliers.

- (99) The builder is to ensure footpaths and roads affected by construction works are kept safe and prevent any damage to Council property. The builder shall erect and maintain where necessary approved hoardings, barricades, warning signs and night warning lamps to ensure public safety. Pedestrian access across the footpath must be maintained at all times.
- (98) The following matters shall apply to the damage deposit listed in the Table of Fees:
- a. This deposit is refundable if no damage occurs. Any damage caused will be repaired at Council's restoration rates, at the applicant's expense. All or part of the deposit will be forfeited to cover damage to Council's property during the course of demolition and/or construction.
  - b. Council will carry out two inspections of the Council's footpath, kerb and gutter, stormwater drainage system and roadway, prior to works commencing and at the completion of all work covered by this consent. Council is aware that damage may be caused by individual contractors that culminate in the damage inspected at Council's final inspection. The applicant is responsible for attributing any part of the damage to their individual contractors. Council will not refund any part of a damage deposit until the completion of the work covered by this consent.
- (99) The following matters apply to the construction of the proposed vehicular crossing listed in the Table of Fees:
- a. A vehicular crossing 6 m wide to Meryla Street shall be constructed by the Applicant/Council at the applicant's cost.
  - b. The cost of any necessary adjustments to public utility services is not included, and shall be paid by the applicant to the relevant authority prior to Council commencing the work.
  - c. The driveway shall be 1m clear of any pits, lintels, poles and 2m clear of trees in the road reserve.
  - d. All redundant vehicular crossings shall be removed and replaced with kerb and gutter and footpath at no cost to Council.
- (100) Internal driveway levels shall be designed and constructed to conform with existing footpath and road profiles such that vehicles are not damaged while accessing the property. Council footpath and road profiles will not be altered for this purpose.
- (101) The applicant is to have prepared a longitudinal section of the proposed vehicular ramp access, drawn at 1:25 natural scale.
- a. The longitudinal section shall be prepared by a competent practicing civil engineer in accordance with AS 2890.1.
  - b. The design is to be reviewed by Council or an Accredited Certifier - Civil Engineering **prior to the issuing of a Construction Certificate.**
- (102) All demolition and excavation materials are to be removed from the site or disposed off site using methods that comply with relevant environmental protection legislation.
- (103) Vehicles removing demolished materials from the site shall access and depart from the site through Meryla Street and Shaftesbury Road. Vehicles involved in removing materials from the site shall be limited to an 8 tonne gross weight per axle.



(104) Engineering drawings addressing the following issues shall be provided for Council's review **prior to issuing of the Construction Certificate:**

- The storage capacity of the pump pit at basement 2 shall be capable for storing runoff from a 1 hour, 1 in 100 year ARI storm event together with additional seepage water from the surrounding basement walls.
- The discharge control pit of the OSD system shall be designed to control outflow for all storm events from 2, to 100 years ARI. Detailed calculations shall be provided and orifice shall be clearly indicated on plan with its diameter invert etc.
- A proper Long Section of the Ø375mm pipeline, cross section of pipe trench, details of the connecting pit including the invert levels, surface levels etc. shall be provided. Minimum 500mm pipe cover shall be maintained under road surface failing which concrete encasement of the pipe shall be provided. A cross sectional view of the concrete encased pipe shall be provided in the drawing.
- The depth and location of all services within the area that would be affected by the construction of the stormwater pipe (i.e. gas, water, sewer, electricity, telephone, traffic lights etc.) shall be confirmed by the applicant on site and are to be included on the design drawings.
- Any adjustment required will be at the applicant's expense. The relevant authority's written consent for any adjustments or works affecting their services shall be obtained and submitted to the principal Certifying Authority, prior to construction commencing.
- The stormwater works described above shall be constructed at applicant's expense. The applicant shall pay Council a stormwater works bond as listed in the Table of Fees. The bond shall be refunded after completion of the stormwater works described above as per Council's satisfaction.

#### **EXCAVATION, BULK EARTHWORKS AND SHORING**

(105) No opening is to be made in any road or footpath, nor is any hoarding to be erected without the prior consent of Council. The builder is to obtain the relevant permit for which fees will be charged in accordance with Council's Schedule of Fees and Charges.

(106) The builder shall erect and maintain in good order all necessary hoardings, barricades and warning signs required to provide adequate public safety. Night warning lamps are to be provided where necessary.

(107) Public roads to be kept clean and free of any material which may fall from vehicles or plant. Waste containers shall be placed in accordance with Council's Code for Activities Affecting Roads and are subject to the payment of appropriate fees.

(108) Heavy vehicles entering and leaving the site must only cross the footpath where it is adequately timbered and strapped. Pedestrian access across this footpath must be maintained in good order at all times during the excavation work.

(109) The contractor shall strictly implement all erosion and sediment control measures prior to the commencement of excavation. Such measures shall be inspected at site by a competent practicing hydraulic/civil engineer and the PCA shall be provided with a compliance certificate in regards to that.

(110) The Applicant shall prepare detailed survey reports of all existing service authority assets in and around the site of the proposed development that may be affected in any way by the proposed excavation. Surveys should include, but not be limited to, high and low voltage

electricity, water, stormwater, sewer, gas, telecommunications, street lighting and drainage assets, etc.

- (111) The Applicant shall liaise with all relevant service authorities (including, but not limited to electricity, water, stormwater, sewer, gas, telecommunications, street lighting and drainage) to develop final designs that satisfy all requirements of the service authority providers in respect of protection, termination or relocation of existing assets, temporary access and future permanent access for maintenance of assets.
- (112) The Applicant shall prepare detailed method statements to demonstrate how the proposed excavation is to be conducted such that all relevant utility authority assets are protected and maintained throughout the construction stage of the development, or are relocated. Method statements are to be submitted to the relevant utility authorities for their written approval.
- (113) Should the applicant require the use of temporary ground anchors to shore the bulk excavation, submissions for the installation of the temporary ground anchors shall be required by Council and the following conditions shall apply.

**Conditions for the Installation of Temporary Ground Anchors:**

- (114) Should the applicant require the use of temporary ground anchors to shore the bulk excavation within the public road, an NPER Registered Structural Engineer's certificate along with certified plans showing the details and extent of work shall be submitted to Council for its record. The following conditions to be complied with:
- a. The contractor shall be responsible to obtain and submit to Council a written authority from all public utility authorities that they have no objection in regards to the installation of temporary ground anchors, prior to works commencing.
  - b. The contractor shall be responsible for any injury or damage either to persons or property due to the presence or failure of the supporting structure on the public way and the contractor shall indemnify the Council against all claims that may arise from the installation of the supporting structure. In this regard the contractor shall provide written evidence of public liability insurance cover to the minimum value of \$20 million, with Council named in the insurance policy, prior to work commencing.
  - c. The anchors shall be installed in accordance with the manufacturer's instructions.
  - d. The construction of ground anchors shall be of a temporary nature only and a written undertaking shall be given that the ground anchors are temporary only and shall be de-stressed after final lateral supports are in place. The written undertaking is to be provided to Council, prior to work commencing.
  - e. Council may unilaterally use the damage deposit for the demolition and removal of the shoring elements constructed within the public road including the repair/reconstruction of any other associated damage to Councils infrastructure, it be necessary due to non-compliance with these conditions.
  - f. All shoring with the exception of the released temporary ground anchors shall be completely removed from the public road to a depth of 2.5m on completion. The void shall be backfilled by suitable materials and compacted.
  - g. All shoring including ground anchors are to be certified by a practicing professional structural engineer. Certification is required as follows:
    - i) That the proposed shoring and anchor scheme is capable of supporting the public road, to be submitted prior to work commencing.
    - ii) Certification that the shoring and anchor scheme has been adequately constructed,

- following installation.
- iii) Final certification that the anchors have been de-stressed and all shoring with the exception of the anchors have been removed to a depth of 2.5m, on completion following de-stressing of the anchors.
  - h. Council's footpath and roadway are to be kept safe for the passage of motorists and pedestrians at all times. Closure of any part of the public thoroughfare shall only be carried out with the approval of Council's Traffic Engineer.
  - i. All stockpiled shoring materials and equipment shall be kept solely within the private property and not obstruct the footpath or roadway at any time.
  - j. All earth and rock anchors shall be released before the completion of building work.

## TRAFFIC & PARKING

- (115) All owners, tenants and occupiers of this building are not eligible to participate in any existing or proposed Council on-street resident parking schemes.
- (116) Signs reading 'all owners, tenants and occupiers of this building are advised that they are not eligible to obtain an on-street resident parking permit from Council' must **be permanently displayed and located** in prominent places such as at display apartments and on all directory boards or notice boards, where they can easily be observed and read by people entering the building. The signs must be erected prior to an Occupation Certificate being issued and must be maintained in good order at all times **by the Owners Corporation**.
- (117) A minimum of 36 off-street car parking spaces and 13 bicycle parking spaces must be provided on-site. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Council's Development Control Plan. The layout, design and security of bicycle facilities either on-street or off-street must comply with the minimum requirements of Australian Standard AS 2890.3 – 1993 Parking Facilities Part 3: Bicycle Parking Facilities.
- (118) The approved parking spaces must be allocated as detailed below. All spaces must be appropriately line-marked and labelled according to this requirement prior to the issue of an Occupation Certificate. If the development is to be strata subdivided, the car park layout must respect the required allocation:
- a. 30 residential parking spaces.
  - b. six visitor parking spaces.
- (119) No part of the common property, apart from the visitor vehicle spaces which are to be used only by visitors to the building, and service vehicle spaces which are to be used only by service vehicles, is to be used for the parking or storage of vehicles or trailers.
- (120) Visitor parking spaces must not at any time be allocated, sold or leased to an individual owner/occupier and must be strictly retained as common property by the Owners Corporation for use by building visitors.
- (121) All visitor parking spaces must be grouped together, and located at the most convenient location to the car parking entrance. All spaces must be clearly marked 'visitor' prior to the issue of an Occupation Certificate. All signs must be maintained in good order at all times.
- (122) Where a boomgate or barrier control is in place, the visitor spaces must be accessible to visitors by the location of an intercom (or card controller system) at the car park entry and at least 6m clear of the property boundary, wired to all units. The intercom must comply with 'Australian Standard AS 1428.2-1992: Design for access and mobility - Enhance and

*additional requirements - Building and facilities Sections 22 and 23.*

- (123) Of the required car parking spaces, at least 4 must be designed and provided for accessible car parking for people with mobility impairment in accordance with Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking. Accessible car parking spaces must have a minimum headroom of 2.5m and must be clearly marked and appropriately located as accessible parking for people with mobility impairment.
- (124) Where a car park is serviced by lifts, accessible spaces for people with mobility impairment are to be located close to lifts. Where a car park is not serviced by lifts, accessible spaces for people with mobility impairment are to be located at ground level, or accessible to ground level by a continually accessible path of travel, preferably under cover.
- (125) The site must be configured to allow a vehicle to be driven onto and off the site in a forward direction.
- (126) The following signs must be provided and maintained within the site at the point(s) of vehicle egress:
- a. Compelling drivers to stop before proceeding onto the public way
  - b. Compelling drivers to "Give Way to Pedestrians" before crossing the footway
- (127) A system of traffic mirrors must be installed at the ends of any single lane ramp(s), to indicate traffic movement on the ramp(s).
- (128) Solid walls immediately adjacent to the basement entry and exit must not exceed 0.6m in height for the first 2.5m within the boundary so as to ensure adequate sight lines for motorists and pedestrians.
- (129) At all times the car parking spaces and access driveways must be kept clear of goods and must not be used for storage purposes, including garbage storage.
- (130) Any proposals for alterations to the public road, involving traffic and parking arrangements, must be designed in accordance with RMS Technical Directives and must be referred to and agreed to by the Traffic Committee prior to any work commencing on site.
- (131) All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway shall be borne by the developer. The new road works must be designed and constructed in accordance with any relevant Australian Standards, Austroads Guides and RMS Technical Directions.
- (132) All costs associated with signposting for any kerbside parking restrictions and traffic management measures, including any relocation of parking meters, associated with the development shall be borne by the developer.
- (133) A Construction Traffic Management Plan must be submitted and approved by Council **prior to the commencement of demolition and excavation or issuing of the Construction Certificate** (whichever occurs first). The following matters should be addressed in the plan (where applicable):
- a. A plan view of the entire site and frontage roadways indicating:
    - i) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways.
    - ii) Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site.
    - iii) The proposed locations of work zones where it is not possible for

- loading/unloading to occur on the site in the frontage roadways (which will require separate approval by Council).
- iv) Location of any proposed crane and concrete pump and truck standing areas on and off the site (which will require separate approval by Council).
- v) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries.
- vi) Details of vertical and horizontal material handling and deliveries.
- vii) Any on-site parking area for employees, tradespersons and construction vehicles where possible.
- viii) Traffic routes to and from the site from the closest arterial road in all directions.

- b. Traffic control plan(s) for the site must be in accordance with the Roads and Maritime Services publication "Traffic Control Worksite Manual" and prepared by a suitably qualified person. The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.

(134) Should works require any of the following on public property (footpaths, roads, reserves), an application shall be submitted and approved by Council prior to the commencement of the works associated with such activity

- i) Work zone
- ii) Temporary closure of roadway/footpath
- iii) Mobile crane or any standing plant
- iv) Scaffolding/Hoardings (fencing on public land)
- v) Road works including vehicle crossing/kerb & guttering, footpath, stormwater provisions etc
- vi) Installation or replacement of private stormwater drain, utility service or water supply

## **TREE MANAGEMENT**

### **Neighbouring Trees**

(135) Council approval cannot be granted to remove neighbouring trees, or prune branches on neighbouring trees that overhang into the site, without the prior consent of the respective property owners. It is the applicant's duty to obtain the tree owners' written consent prior to making a formal application to Council for pruning. Enquiries regarding this matter may be directed to Council's Tree Management Officer on 9911 9888. This matter must first be resolved **prior to the commencement of any works on the site, including demolition/bulk excavation.**

### **Tree Protection Measures – Neighbouring Trees**

(136) Tree protection measures for all neighbouring trees must be implemented in accordance with both AS4970 (Protection of Trees on Development Sites, 2009) and the Arboricultural Impact Appraisal and Method Statement by Naturally Trees dated 24 January 2017. This includes the requirement for the applicant to engage a Project Arborist to oversee the specific tasks and certify the 5 hold points detailed in Appendix 7 of the Arboricultural Impact Appraisal and Method Statement by Naturally Trees dated 24 January 2017.

### **Street Tree**

(137) The existing paperbark tree (*Melaleuca quinquenervia*) located on Council's nature strip shall be removed by the applicant at their expense.

A replacement water gum (*Tristanopsis laurina* 'Luscious') is required to be planted centrally within the nature strip at an offset of eight metres from the western boundary. This tree shall be planted from a minimum container size of 75 litres volume, **prior to the issuing of an**

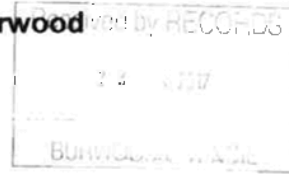
**Occupation Certificate.****Attachments**

1 [↓](#) Submissions Received - 18-20 Meryla Street Burwood

ATTACHMENT 1

ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC  
Submissions Received - 18-20 Meryla Street Burwood

Re: DA BD. 2014.187 – 18-20 Meryla Street, Burwood



Dear Sir

I object to the proposed 5 storey, 30 unit residential building proposed for 18 -20 Meryla Street Burwood.

A proposal for 25 units was rejected by Council in August 2012 because of the size and bulk of the building and insufficient side setbacks. The current DA proposes 30 units and is substantially the same mass and bulk that was previously unacceptable to Council.

The building is proposed to be only 3 metres from the side boundaries, the same non-compliance as before. The planning controls require a 6 metre setback for habitable rooms, and both adjacent buildings (Units at No 10-16 and Townhouses at No 22-32) currently comply with that requirement.

Therefore the proposed building will have unacceptable impacts on adjoining properties by way to solar access, visual and acoustic privacy, limited area for landscaping screening, and have adverse amenity impacts for Meryla Street.

Yours faithfully

Name: Xin Wang  
Address: 14/22-32 Meryla St Burwood  
Date: 24/04/2017

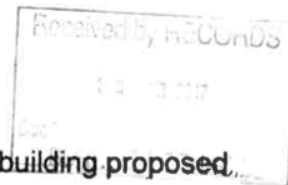
ATTACHMENT 1

ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC  
Submissions Received - 18-20 Meryla Street Burwood

**Burwood Council**  
**PO Box 240 (Suite 1, Lv2 1-17 Elsie St)**  
**Burwood NSW 1805**

**Re: DA BD. 2014.187 – 18-20 Meryla Street, Burwood**

Dear Sir



I object to the proposed 5 storey, 30 unit residential building proposed for 18 -20 Meryla Street Burwood.

A proposal for 25 units was rejected by Council in August 2012 because of the size and bulk of the building and insufficient side setbacks. The current DA proposes 30 units and is substantially the same mass and bulk that was previously unacceptable to Council.

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Yours faithfully

Name: Junlei Jian

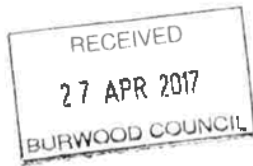
Address: 15/22-32 Meryla Street, NSW 2134

Date: 26/4/17



ATTACHMENT 1

ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC  
Submissions Received - 18-20 Meryla Street Burwood



19 Meryla Street  
Burwood NSW 2134  
26 April 2017

**Burwood Council**  
**PO Box 240**  
**Burwood NSW 1805**

**Subject: Development Application No 2014/187 – 18-20 Meryla Street, Burwood**

Dear Sir

I oppose the subject development as currently proposed.

The protection of residential amenity along the whole length of Meryla Street is of primary importance. Residents to the north of Meryla Street did not object to the Town Centre LEP and DCP because of the protection provided by the transitional zoning. We expect that Council will not relax these control and create a precedent for the whole of the Transitional Zone along Meryla Street.

I make the following comments in relation to this DA.

1. A similar proposal for 25 units (DA2011/148) was rejected by Council in August 2012. Seven (7) reasons were given by Council for that refusal. For the current DA of 30 units, the first five (5) reasons for refusal still apply.
2. The proposal doesn't comply with the planning controls in relation to following:
  - a. Building separation proposed is 9 metres. The Australian Design Guidelines and Residential Flat Design Code requires 12 metres between habitable to habitable rooms and habitable rooms to balconies. I note that both adjacent buildings have facing habitable rooms. Therefore, there will be unacceptable impacts on adjoining properties by way to solar access, visual and acoustic privacy, limited area for landscaping screening, and have adverse amenity impacts for the area.
  - b. Building separation is not shared equally with the adjoining development (3 metres compared to 6 metres). This prejudices future development potential for both adjoining properties to the east and west and would be an unacceptable precedent for future development in Meryla Street.
3. The architectural bulk and mass of the building is unacceptable and undesirable for the site from an urban design context. In the long term the southern side of Meryla Street should read as 3 storey buildings i.e. the fourth storey should be set

## ATTACHMENT 1

### ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC Submissions Received - 18-20 Meryla Street Burwood

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back so it is not seen at street level. There should be no fifth floor. This was the thinking and intent of the Town Centre LEP, with the southern side of Meryla Street designated as a Transitional Zone. We also note that the recent Wilga Street buildings have a maximum 4 storeys on the northern end, to match the Transition Zone.

4. The proposed floor to floor height at the ground level is 2.95 metres (approx. 2.7 floor to ceiling) meaning it will not comply with the 3.0 metre ground level floor to ceiling requirement. If that were made to comply, the build height would then be non-compliant. This demonstrates that only a 4 storey building can be compliant.
5. Meryla Street's main aesthetic feature is the boulevard of large Paperbark trees (*melaleuca quinquenervia*) along the footpaths. These trees and the boulevard should be retained wherever possible as required by the DCP. The proposed development would involve the removal of one of these large trees to enable vehicle entry onto the site and to replace it with one small species tree not in keeping with the street. Importantly, the existing tree would also provide some visual privacy to our backyard as 4th floors balconies from the proposed building would have sight lines to over 50% of our backyard. The tree could and should be saved by moving the proposed driveway to the eastern side of the frontage.
6. The footpath area should include a grass verge as well as concrete (not all concrete) to soften the street and the development. (Note: the full concrete footpath outside of No 38 -40 has detracted from the aesthetics of the street, and has eliminated the opportunity for planting of trees.)

I also refer to my e-mail dated 17 April 2017 (attached) outlining serious governance concerns with the notification of the revised plans, and request that all previous submissions on this Development Application 2015/16 be taken into account in Council's determination.

Would Council please also advise if there are any proposed changes by the applicant prior to determination?

I have not made a political donation or gift to any Councillor or Council employee at any time.

Yours faithfully



**Kim Woodbury**

26 April 2017

## ATTACHMENT 1

### ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC Submissions Received - 18-20 Meryla Street Burwood

#### DA No:2014/187

2 messages

Mon, Apr 17, 2017 at 6:57 PM

To: council@burwood.nsw.gov.au

Attn: Manager Building & Development

Dear Sir,

I was just made aware that the DA for 18-20 Meryla Street Burwood has been readvertised and closes on 28 April 2017.

I request that the current re-notification be aborted immediately and a new one be undertaken for the following reasons.

1. This DA was first lodged in 2014. I made a submission to the original DA as did many other residents. I did not receive the updated notification (I am not the owner of the property I reside in). I suspect that other people who made previous submissions who were non-owner residents within the statutory notification area or residents outside the notification area did not receive the updated notification. This is contrary to due process;
2. The original DA was notified over the Christmas holidays. This one is being advertised over the Easter holidays when residents may be away;
3. I when to the Council Offices last Thursday to see the documents. Only the notification letter, plans and material/finishes were available on the Council computer. I asked for the full documents including updated Statement of Environmental Effects & compliance tables, site analysis plans, access report, fire safety report, waste management report. None of these were available;
4. In my opinion this proposal requires a new DA, and is not a minor modification. It is now over 2 years since the DA was lodged with major non-compliances. The number of apartments proposed has increase from 27 to 30.

I request that the status of the current DA be clearly shown on your website. It currently shows all actions as being complete, and doesn't indicate readvertising (nor was it advertised in the local paper like the other DAs).

I also request that the previous DA (2011/148) for 25 apartments that was refused of Council on 10 August 2012 be placed on your website like all other DAs. (note: I verbally requested this 3 years ago and nothing has happened).

As you can see from the above, for some reason 18-20 Meryla Street DAs seem pretty opaque. This is not good governance. I trust it will be rectified.

Could you please advise of your response by the end of this week.

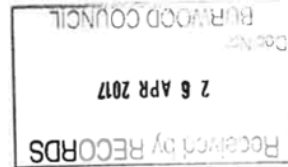
regards

Kim Woodbury  
19 Meryla Street  
Burwood

ATTACHMENT 1

ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC  
Submissions Received - 18-20 Meryla Street Burwood

**Burwood Council**  
**PO Box 240 (Suite 1, Lv2 1-17 Elsie St)**  
**Burwood NSW 1805**



**Re: DA BD. 2014.187 – 18-20 Meryla Street, Burwood**



Dear Sir

I object to the proposed 5 storey, 30 unit residential building proposed for 18 -20 Meryla Street Burwood.

A proposal for 25 units was rejected by Council in August 2012 because of the size and bulk of the building and insufficient side setbacks. The current DA proposes 30 units and is substantially the same mass and bulk that was previously unacceptable to Council.

The building is proposed to be only 3 metres from the side boundaries, the same non-compliance as before. The planning controls require a 6 metre setback for habitable rooms, and both adjacent buildings (Units at No 10-16 and Townhouses at No 22-32) currently comply with that requirement.

Therefore the proposed building will have unacceptable impacts on adjoining properties by way to solar access, visual and acoustic privacy, limited area for landscaping screening, and have adverse amenity impacts for Meryla Street.

Yours faithfully

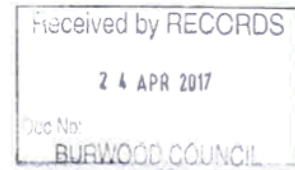
*F Murray*

Name: FIONA MURRAY  
Address: 5/22 MERYLA ST BURWOOD  
Date: 24/4/17

ATTACHMENT 1

ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC  
Submissions Received - 18-20 Meryla Street Burwood

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Yours faithfully

Name: *Jane Badby*  
Address: *11/22-32 Meryla St Burwood*  
Date: *21/4/2014*

## ATTACHMENT 1

### ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC Submissions Received - 18-20 Meryla Street Burwood

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**Jennifer Cosentino**

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**From:** Shirley Woodbury <skyepro2@gmail.com>  
**Sent:** Monday, 17 April 2017 6:58 PM  
**To:** Council  
**Subject:** DA No:2014/187

Attn: Manager Building & Development

Dear Sir,

I was just made aware that the DA for 18-20 Meryla Street Burwood has been readvertised and closes on 28 April 2017.

I request that the current re-notification be aborted immediately and a new one be undertaken for the following reasons.

1. This DA was first lodged in 2014. I made a submission to the original DA as did many other residents. I did not receive the updated notification (I am not the owner of the property I reside in). I suspect that other people who made previous submissions who were non-owner residents within the statutory notification area or residents outside the notification area did not receive the updated notification. This is contrary to due process;
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As you can see from the above, for some reason 18-20 Meryla Street DAs seem pretty opaque. This is not good governance. I trust it will be rectified.

Could you please advise of your response by the end of this week.

regards

Kim Woodbury  
19 Meryla Street  
Burwood

## ATTACHMENT 1

### ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC Submissions Received - 18-20 Meryla Street Burwood

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Burwood Council  
Building and Development  
Suite 1 , Level 2, 1-17 Elsie Street  
Burwood NSW 2134

Mr Ka Ching LI & Mrs Suit San LAU  
11 Meryla Street  
BURWOOD NSW 2134

Date : 12 Apr 2017

Re: Objection of Development Application No. 2014,187 regarding 18-20 Meryla Street Burwood –5 Storey Residential Flat Building Containing 30 Apartments Above 2 Levels of Basement Parking

Dear Sirs,

We, undersigned as the registered owner of the property in captioned sender address and a resident in the vicinity of the proposed development.

We hereby object to the Development application no 2014.187 regarding 18-20 Meryla Street Burwood –5 Storey Residential Flat Building. We wish to make you aware of the strong objections that we have with regard to the proposed development based on below:

- **Overshadowing** - The height and proximity of the development would cause the occurrence of unreasonable overshadowing.
- **Disturbance** - There would be unacceptable intrusion in the form of noise nuisance, general disturbance, odour and poor air quality in the neighborhood
- **Overbearing** - The scale of the construction works will cause the property has an oppressive impact on surrounding areas/houses.
- **Visual impact** - Bulky development will have negative impact on the outlook from a neighboring property. This includes the impact on the character of an area, density, layout, design and external appearance of buildings and landscaping
- **Road Safety** - The development may lead to a significant negative impact upon road safety especially to the elderly residents and children who resides in the neighborhood.
- **Road utilization** – In case of emergency medical services required by the elderly for travelling to the hospitals, high road utilization in the neighborhood will cause delay in obtaining medical services

We wish that our input will be considered seriously when Council makes a decision on the above Development application.

Yours faithfully,

Mr Ka Ching LI and Mrs Suit San LAU

Email : ceciliviali@hotmail.com

ATTACHMENT 1

ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC  
Submissions Received - 18-20 Meryla Street Burwood

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**Jennifer Cosentino**

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**From:** joanna lu <joanna88lu@gmail.com>  
**Sent:** Monday, 10 April 2017 8:10 PM  
**To:** Council  
**Subject:** Ref :BD 2014.187

Dear all

Re 18-20 Meryla St Burwood Development application No. 2014.187

From 17 Wilga St Burwood building local residents.

There is not agree with above applications. Too close our residential area. the sun would be blocked by building and during the construction ,there is a industrial pollution and noise.

Our building most part is the old people and children , we just want have a stable living environment.

**Kindest Regards,**

Joanna Lu



ATTACHMENT 1

ITEM 23/17 BD.2014.187 – 18-20 Meryla Street Burwood – Proposed 5 Storey Residential Flat Building.DOC  
Submissions Received - 18-20 Meryla Street Burwood

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**Jennifer Cosentino**

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**From:** Ron Bao <baorongbt2008@gmail.com>  
**Sent:** Tuesday, 25 April 2017 11:53 PM  
**To:** Council  
**Subject:** Submission about 18-20 Meryla Street Burwood Development Application NO. 2014.187

Hi there,

Thanks for your notification about the development application.

I am Rong Bao, who is writing this submission on behalf of Ms Changzhu Guo, the owner of the apartment in Unit 11, 11-15 Wilga Street, Burwood 2134.

Ms Changzhu Guo considers the new development application scheme may decrease lighting and sunlight of her balcony dramatically, and what's more, the scenery outside the balcony would be influenced at the same time.

Therefore, Ms Changzhu Guo hopes this development application could be terminated, if possible.

If further communication is needed, please use the contact information below:

**Name:** Changzhu Guo  
**E-mail address:** [baorongbt2008@gmail.com](mailto:baorongbt2008@gmail.com)

Looking forward to your reply soon!

Regards,  
Rong Bao

## **(ITEM 24/17) DRAFT VOLUNTARY PLANNING AGREEMENT - NO. 27-29 BURWOOD ROAD, BURWOOD**

File No: 17/19653

REPORT BY DEPUTY GENERAL MANAGER LAND, INFRASTRUCTURE & ENVIRONMENT

### **Summary**

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with a Section 96 application at No. 27-29 Burwood Road Burwood have been publicly notified in accordance with the relevant legislation. The draft VPA provides for the developer to pay a monetary contribution to Council towards the provision, augmentation and/or improvements of open space, community facilities or other public facilities as determined by Council, in exchange for additional development on the site. Council's endorsement is sought to enter into the VPA.

### **Background**

Development Application (DA) BD.2014.022 approved construction of a nine storey mixed use development comprising 46 residential units. The Section 96 application will increase the number of residential apartments from 46 to 48 units. This Section 96 application will seek to provide for 340m<sup>2</sup> of additional floor space, or a 10% increase in the maximum floor space ratio (FSR) permitted by the *Burwood Local Environmental Plan (BLEP)*.

### **Draft VPA and EN**

The draft VPA will:

- 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 in accordance with the *Burwood Open Space and Community Facilities Study* undertaken for Council
- Provide the developer, in exchange for making the monetary contribution, additional FSR over the development site, based on the *Burwood Town Centre Urban Design Study* undertaken for Council, which recommended a maximum 10% FSR increase.

The amount of the monetary contribution is determined to be \$1,100 per sqm of additional floor space in the development as per Council's Schedule of Fees and Charges for 2016–2017. The total monetary contribution payable is \$374,000.

The draft VPA and EN were referred to Council's solicitors for their advice and vetting. The documents have been modified in negotiation with the applicant in response to the legal advice. Further minor revision of the draft VPA may be necessary prior to execution, e.g. updating footer or insertion of dates. Any changes will not alter the purpose or intention of the VPA.

### **Consultation**

Following the modification and negotiation of the document contents, the draft VPA and EN were publicly notified for a period of at least 28 days from 18 April 2017 to 16 May 2017. The public notice was placed in the local newspaper and on Council's website. Hard copies were also made available to view at Council's Customer Service Centre. No submissions have been received.

### **Planning or Policy Implications**

Council has a *Planning Agreement Policy* which has been referenced in the progression of this matter. The Policy contains an acceptability test which stipulates the matters that Council should

consider when determining whether or not to enter into a VPA. Consideration of these matters against the draft VPA is outlined below:

1. The VPA is directed towards a proper legitimate planning purpose. The VPA provides funds to Council to be used to provide the augmentation or improvement of open space, community facilities or other public facilities, consistent with the *Burwood Open Space and Community Facilities Study*.
2. The VPA would result in a public benefit. The contribution of \$374,000 to Council would be used towards public facilities.
3. The VPA provides a reasonable means of achieving the relevant purpose. The *Burwood Open Space and Community Facilities Study* recommended a monetary contribution rate for additional development.
4. The VPA would be taken into consideration in the assessment of the Section 96 application. The Section 96 application must stand on its own merits from a design, planning and amenity perspective, which has been the subject of a separate and independent planning assessment. If the VPA is not entered into the approval of the Section 96 application could not be granted and the applicant would be expected to submit a proposal without the additional floor space.
5. The VPA would produce outcomes that meet the general values and expectations of the community, and protect the overall public interest. The provision, augmentation and improvement of public facilities by Council are an expectation of the community. The VPA provides Council with the financial resources to assist in the delivery.
6. The VPA promotes Council's strategic objectives as outlined in Clause 2.1 of Council's *Planning Agreements Policy*, particularly:
  - Objective 'a' – to provide an enhanced and more flexible development contributions system for Council. The VPA encourages flexibility by enabling a monetary contribution towards public facilities, to the mutual benefit of the developer and the community.
  - Objective 'b' – to supplement or replace, as appropriate, the application of s94 and s94A of the Act for development. The VPA supplements Council's Section 94A Plan because the VPA contribution is on top of established Section 94A contributions.
  - Objective 'e' – to lever planning benefits from development wherever possible. The VPA would facilitate the provision of public facilities, which represent a public benefit.
7. The VPA conforms to the fundamental principles governing the Council's use of planning agreements as set out in Clause 2.2 of the *Planning Agreements Policy*, particularly:
  - Principle 'a' – planning decisions may not be bought or sold through planning agreements. Council is not obliged to support the Section 96 application and instead, each application must be considered on the individual merit.
  - Principle 'd' – Council will not use planning agreements for any purpose other than a proper planning purpose. The manner in which the VPA is proposed to be used is in accordance with Council's studies.

There are not considered to be any circumstances that may preclude the Council from entering into the VPA should it determine to do so.

## **Financial Implications**

The VPA would provide for a total monetary contribution of \$374,000 (dependent on the final determination of the Section 96 application regarding the floor space to be approved) to Council for the provision of the augmentation or improvement of open space, community facilities, or other public facilities. Council would be obliged under legislation to allocate, the contribution and any return on its investment to the provision of, or recoupment of costs for, public facilities.

The provision of public facilities by Council would not coincide with the completion of the subject development, and would be undertaken at a time determined by Council at its discretion.

## **Conclusion**

Council's endorsement is now sought to enter into a VPA for 27-29 Burwood Road Burwood. The VPA would help secure a monetary contribution of \$374,000 for the allocation towards public facilities. It is recommended that arrangements be made for the execution of the VPA by Council authorising the signing of the agreement, after the granting of the Section 96 application but prior to the issue of the amended Construction Certificate, which would include a condition on the modified consent requiring that the VPA be entered into.

## **Recommendation(s)**

1. That Council enter into the VPA for No. 27-29 Burwood Road Burwood for the provision of a monetary contribution towards public facilities after the granting of the Section 96 application which would include a condition on the amended consent requiring that the VPA be entered into prior to the issuing of a modified Construction Certificate.
2. That Council authorise the General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse the minor revisions of the VPA documents prior to execution.
4. That the Developer pay the monetary contribution (dollar value dependant on the final determination of the Section 96 application in relation to floor space) to Council, on or before, the execution of the VPA by Council.

## **Attachments**

- 1 [↓](#) Voluntary Planning Agreement and Explanatory Note

## Planning Agreement

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Burwood Council

Shoreline Organisation Pty Ltd



Level 12, 400 George Street  
Sydney NSW 2000  
Australia

T +61 2 8289 5800  
F +61 2 9247 1315  
Ref 3233533

## ATTACHMENT 1

### ITEM 24/17 Draft Voluntary Planning Agreement - No. 27-29 Burwood Road, Burwood.DOC Voluntary Planning Agreement and Explanatory Note

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## Planning Agreement

Dated

Parties

1. **Burwood Council** of Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW (**the Council**)
2. **Shoreline Organisation Pty Ltd** ACN 142 320 661 of 31 Greens Avenue Oatlands NSW (**the Developer**)

Background

- A. The Developer is the owner of the Land.
- B. The Developer made (by its agent) the development application for the Development Consent.
- C. The Developer has the benefit of the Development Consent.
- D. The Land is subject to a maximum Floor Space Ratio of 3:1 under the *Burwood Local Environmental Plan 2012*.
- E. The maximum permitted Gross Floor Area of the land is 3,675m<sup>2</sup>.
- F. The Development Consent is currently for a Development with a Gross Floor Area of 3,669m<sup>2</sup>.
- G. This maximum floor space ratio can be exceeded in certain circumstances — including when a Modification Application is made and there is sufficient merit.
- H. The Developer has made the Modification Application.
- I. The Modification Application seeks to increase the Gross Floor Area of the Development to 4,015m<sup>2</sup> — which is the equivalent of a Floor Space Ratio of 3.28:1.
- J. If the Modification Application is approved the Developer is prepared to make a Development Contribution in accordance with this Agreement.
- K. The Development Contribution is to be used for or applied towards a public purpose.

## Operative provisions

### 1. Defined meanings

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Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

### 2. Status of this Agreement

---

#### 2.1 Planning Agreement

This Agreement is a planning agreement within the meaning of section 93F(1) of the Act.

#### 2.2 Land

This Agreement applies to the Land.

#### 2.3 Development

This Agreement applies to the Development.

#### 2.4 Effect and obligations

Despite any other provision of this Agreement, the Developer is under no obligation to make the Development Contribution in accordance with this Agreement unless:

- (a) the Development Consent is modified as a consequence of the Modification Application; and
- (b) the relevant circumstances set out in this Agreement as to when the Development Contribution must be made have arisen.

#### 2.5 Security

The Council is satisfied this Agreement provides the enforcement of this Agreement by a suitable means in the event of a breach of this Agreement by the Developer, particularly by:

- (a) the requirement for a Construction Certificate to be withheld by reason of clause 146A of the *Environmental Planning and Assessment Regulation 2000* (NSW) when read in conjunction with clause 4.1(a);
- (b) the provisions of clause 6 and clause 7.

### 3. Application of other development contribution provisions

---

#### 3.1 Local infrastructure contributions - general

This Agreement does not exclude the application of section 94 of the Act to the Development.



**3.2 Local infrastructure contributions - fixed levies**

This Agreement does not exclude the application of section 94A of the Act to the Development.

**3.3 Special infrastructure contributions**

This Agreement does not exclude the application of section 94EF of the Act.

**3.4 Determination of a Development Contribution under s94 of the Act**

The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 94 of the Act.

**4. Development Contributions**

---

**4.1 Nature, extent and timing**

- (a) The Developer must make the Development Contribution in Column 3 of the Table at the point in time set out in Column 5 of the Table.
- (b) Nothing in this Agreement prevents the Developer from electing to make a Development Contribution earlier than it is required to do so.

**4.2 Public purpose of the Development Contributions**

- (a) Each Development Contribution must be used for or applied towards the relevant public purpose set out in Column 4 of the Table.
- (b) This clause 4.2 has effect after the termination of this Agreement.

**5. Making of a monetary Development Contribution**

---

- (a) The Development Contribution is taken to have been made by the Developer when the Council receives the full amount of the contribution payable:
  - (i) in cash; or
  - (ii) by an unendorsed bank cheque; or
  - (iii) by a deposit, by means of electronic funds transfer, of cleared funds into a bank account nominated by the Council.
- (b) The Development Contribution will be taken to have been made when the Council notifies the Developer in writing that the Development Contribution has been received.

## 6. Registration

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### 6.1 Developer agreement to registration

The Developer agrees to the registration of this Agreement under section 93H of the Act in relation to the Land.

### 6.2 Registration of this Agreement

- (a) The parties agree to promptly do all things necessary for the Owner and/or Developer to procure the registration of this Planning Agreement in the relevant folio of the Register for the Land in accordance with section 93H of the Act in accordance with this clause 6.2.
- (b) The Developer will obtain all consents to the registration of this document on the title to the land as required by Land and Property Information.
- (c) The Developer must within 20 Business Days of execution of this document produce to the Council:
  - (i) Any letters of consent necessary for the registration of this document and any other documents that may be required by the Registrar-General;
  - (ii) A copy of the production slip number as evidence that the certificate of title has been produced to the Land and Property Information for the purpose of the registration of the document; and
  - (iii) A bank cheque for the registration fees payable in relation to the registration of this document on the title to the Land.
- (d) The parties must promptly comply with any requisitions that may be raised with regard to registration of this document from Land and Property Information.
- (e) Subject to clause 6.2(c)(ii) and 6.2(c)(iii) the Developer will register this document on the Land.
- (f) The Developer will notify the Council following registration of this document by the Developer.

### 6.3 Release and discharge of this Agreement

- (a) The Council must promptly do all things reasonably required by the Developer and Owner to release and discharge this document with respect to any part of the Land (such that this document is no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) upon:
  - termination of the document under clause 8;
- (b) The Developer and Owner are released and discharged from their obligations under this document upon termination under clause 8.

## 7. Transfer, assignment or novation

---

### 7.1 Consent for transfer of the Land

- (a) The Developer must not transfer the Land or any part of the Land to any person without the consent of the Council.
- (b) This clause 7.1 does not apply to:
  - (i) the conversion part of the Site into association property (within the meaning of the *Community Land Management Act 1989*);
  - (ii) the conversion of part of the Site into common property (within the meaning of the *Strata Schemes Management Act 1996*); or
  - (iii) the transfer of a Service Lot or Final Lot.

### 7.2 Consent for assignment or novation of this Agreement

- (a) The Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Council.
- (b) For avoidance of doubt, this clause 7.2 does not preclude the transfer of any part of the Land.

### 7.3 The giving of consent by the Council

- (a) The Council must give the Council's consent under clause 7.1(a) or clause 7.2(a) if:
  - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom:
    - (A) the land will be transferred; or
    - (B) the rights or obligations under this Agreement are to be assigned or novated,a deed of novation on reasonable terms (being a deed generally in terms of the Novation Deed); and
  - (ii) reasonable evidence has been produced to show that the transferee, assignee or novatee is reasonably capable of performing its obligations under this Agreement; and
  - (iii) the Developer is not in Material Breach of this Agreement.
- (b) The Council, on giving consent under clause 7.3(a), must enter into the deed of novation referred to in clause 7.3(a)(i).
- (c) In this clause 7.3 **Material Breach** means:
  - (i) if the breach is capable of being remedied, a material breach that has not been remedied; and
  - (ii) if the breach is not capable of being remedied, a material breach for which the Developer has compensated the Council such that the Council is in the same financial position as it would have been had the breach not taken

place (and if, in these circumstances, such a compensation amount is nil, the breach is taken not to be a material breach).

**7.4 No requirement for consent when Agreement is registered**

Clause 7.1 and clause 7.2 do not apply in connection with the transfer of the whole or any part of the Land if this Agreement is, at the time of transfer, Registered on Title.

**7.5 Novation Deed deemed to apply in certain circumstances**

If the whole or any part of the Site is transferred without a Novation Deed being entered into (**Transferred Land**), and this Agreement is registered on the title of the Transferred Land, then this Agreement is deemed to include the provisions of the Novation Deed as if it had been entered into:

- (a) by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
- (b) by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
- (c) by the Council,

on the basis that:

- (d) the Effective Date is either:
  - (i) if the New Developer was not a party to the Agreement until the transfer of the Transferred Land, the date that the New Developer become a Party under section 93H(3) of the Act; or
  - (ii) if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.

**8. Termination**

---

**8.1 Termination of this Agreement**

The Developer may terminate this Agreement by giving written notice to the Council in either of the following circumstances:

- (a) if this Agreement is executed prior to a determination being made in relation to the Modification Application being made and:
  - (i) the Modification Application is refused; or
  - (ii) the Developer withdraws the Modification Application; or
- (b) the Developer has made the Development Contribution required under this Agreement.

**8.2 Consequences of the termination of this Agreement**

- (a) If this Agreement is terminated under clause 8.1 the parties are released and discharged from their obligations under this Agreement, excepting the Developers obligation pursuant to clause 10 of this Agreement which survives termination.
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

**9. Dispute resolution**

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**9.1 Notice of Dispute**

If a party claims that a dispute has arisen under this document (**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 9.1.

**9.2 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.

**9.3 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;
- (b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

**9.4 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 9.5.

**9.5 Mediation**

If a party gives a Dispute Notice calling for the dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within 3 business days of the receipt of the Dispute Notice (the terms will include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the Mediator will be agreed between the parties, or failing agreement within 3 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;
- (c) the Mediator appointed pursuant to this clause 9.5 must:

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- (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;
- (d) the Mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (e) 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;
- (f) the parties agree to be bound by a 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;
- (g) must convene and attend the mediation within 21 days of the date of the Dispute Notice;
- (h) in relation to costs and expenses:
  - (i) each party will bear their own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

#### 9.6 Litigation

If the dispute is not finally resolved in accordance with this clause 9, either party is at liberty to litigate the dispute.

#### 9.7 Continue to perform obligations

Each party must continue to perform its obligations under this document, despite the existence of a dispute.

### 10. General provisions

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#### 10.1 Costs

- (a) The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment.
- (b) The amount referred to in clause 10(a) is subject to a cap of \$5,000.

#### 10.2 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Agreement, the recipient must pay to the supplier an amount (**GST Amount**) equal

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to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.

- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause 10.2 is subject to any other specific agreement regarding the payment of GST on supplies.

#### 10.3 Duties

The party at law to pay stamp duty, must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Agreement, or any agreement or document executed or effected under this Agreement.

#### 10.4 Assignment

A party must not transfer any right or liability under this Agreement without the prior consent of each other party, except where this Agreement provides otherwise.

#### 10.5 Notices

- (a) Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

Addresses or numbers for notices:

##### **The Council**

Burwood Council  
Suite 1  
Level 2, 1-17 Elsie Street  
Burwood NSW 2134  
Fax: 9911 9900

##### **The Developer**

Shoreline Organisation Pty Ltd  
  
PO Box 315  
Hunters Hill NSW 2110  
Fax: Not applicable.

- (c) Any notice is effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

- (d) A notice to the Developer must be given in relation to each of the persons who are identified as the Developer in clause 10.5(b).

**10.6 Governing law and jurisdiction**

- (a) This Agreement is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

**10.7 Amendments**

This Agreement may be amended or revoked by further agreement in writing signed by the parties (including by means of a further planning agreement).

**10.8 Third parties**

This Agreement confers rights only upon a person expressed to be a party and not upon any other person.

**10.9 Pre-contractual negotiation**

This Agreement:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

**10.10 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.

**10.11 Continuing performance**

- (a) The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.
- (b) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.
- (c) Any indemnity agreed by any party under this Agreement:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
  - (ii) survives and continues after performance of this Agreement.



**10.12 Waivers**

Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

**10.13 Remedies**

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

**10.14 Severability**

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

**10.15 Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

**10.16 Party acting as trustee**

If a party enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Agreement:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Agreement on behalf of the trust and that this Agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of, or lien over, the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.
- (d) where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.

**10.17 Where more than one person is the Developer**

- (a) Where more than one person is bound by this Agreement as the Developer, any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 10.17(a) does not apply to a right that may be exercised by:
  - (i) a Developer; or

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- (ii) two or more persons who are each a Developer (but not all persons who are a Developer) acting jointly,  
  
without any prejudice to the other persons who are a Developer.
- (c) The provisions of clause 10.17(a) and clause 10.17(b) have effect subject to:
  - (i) any written agreement between the parties concerned (which may be in the form of a deed under clause 7.3(a)(i)); and
  - (ii) clause 9.
- (d) This clause 10.17 does not prevent the Council from taking action against any person who is a Developer under this Agreement in respect of any breach of this Agreement.

#### 10.18 Validity of this Agreement

If this Agreement or any part of it becomes unenforceable or invalid as a result of any change to a law, the parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

#### 10.19 Review of this Agreement

- (a) The parties may review this Agreement if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- (b) For the purposes of this clause 10.19(a), the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- (c) For the purposes of addressing any matter arising from a review of this Agreement, the parties must use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- (d) A failure by a party to agree to take action requested by the other Party as a consequence of a review referred to in clause 10.19(a) is not a breach of this Agreement and is not able to be dealt with under clause 9.

## 11. Definitions and interpretation

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### 11.1 Definitions

In this Agreement unless the context otherwise requires:

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

**Agreement** or **this Agreement** means this Deed and includes any schedules, annexures and appendices to this Deed;

**Approval** includes approval, consent, licence, permission or the like;

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or

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body exercising functions under any Act including a commission, panel, court, tribunal and the like;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

**Claims** includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;

**Construction Certificate** has the same meaning as in the Act;

**Development** means the Development that is the subject of the Development Consent;

**Development Consent** means the development consent (for the time being) known as 22/2014, granted by the Council under the Act;

**Development Contribution** means any of the following:

- (a) a monetary contribution;
- (b) a dedication of land free of cost; or
- (c) the provision of any other material public benefit,

provided for in this Agreement and described in Schedule 1;

**Encumbrance** includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre;

**Floor Space Ratio** means floor space ratio within the meaning of the LEP;

**Gross Floor Area** means gross floor area within the meaning of the LEP;

**GST** has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act (1999)* (Cth);

**Item** means the relevant or indicated item in the Table;

**Land** means Lot 1 DP 592417 (also known as 27-29 Burwood Road);

Note: A site plan is set out in Sheet 1 of Schedule 2

**LEP** means the *Burwood Local Environmental Plan 2012*;

**Material Breach** — see clause 7.3(c);

**Modification Application** means the application by the Developer to modify the Development Consent to increase the gross floor area of the Development to 4,015m<sup>2</sup>;

**Novation Deed** means the draft deed in Annexure A;

**Real Property Act** means the *Real Property Act 1900* (NSW);

**Registration on Title** means the registration of this Agreement under section 93H of the Act in the folio of the Register kept under the Real Property Act in relation to the Dedicated Land, and **Registered on Title** refers to the state of the Agreement being so registered;

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**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW);

**Service Lot** means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to the Council;
- (b) for any public utility undertaking (within the meaning of the Standard Instrument);
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

but does not include a lot which is intended to be further subdivided by or on behalf of the Developer but does include association property within the meaning of the *Community Land Development Act 1989* used for a purpose mentioned in (c) above;

**Standard Instrument** means the standard instrument for a principal local environmental plan set out in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement;

**Table** means the table set out in Schedule 1;

**Work** means:

- (a) when a reference to an object, the physical result of any building, engineering or construction work in, on, over or under land; and
- (b) when a reference to activity, activity directed to produce the physical result of any building, engineering or construction work in, on, over or under land.

#### 11.2 Interpretation

- (a) In this Agreement unless the context otherwise requires:
  - (i) clause and subclause headings are for reference purposes only;
  - (ii) the singular includes the plural and vice versa;
  - (iii) words denoting any gender include all genders;
  - (iv) reference to a person includes any other entity recognised by law and vice versa;
  - (v) a reference to a party means a party to this Agreement, including their successors and assigns and a person bound by the Agreement under section 93H(3) of the Act;
  - (vi) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
  - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
  - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
  - (ix) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;

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- (x) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
  - (xi) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
  - (xii) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party.
  - (xiii) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Agreement;
  - (xiv) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
  - (xv) when a thing is required to be done or money required to be paid under this Agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
  - (xvi) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.
- (b) Nothing in this Agreement is to be taken to require the Council to do anything that would cause it to be in breach of any of its statutory obligations.
  - (c) Nothing in this Agreement requires the Developer to produce any or a particular number of Final Lots, or produce the Final Lots in any particular order.

#### 11.3 No joint venture, etc

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

#### 11.4 No obligation to grant or modify a Development Consent

- (a) This Agreement does not impose an obligation on any public authority to grant or modify any Development Consent.
- (b) For avoidance of doubt, clause 11.4(a) does not affect any obligation of a consent authority (under section 79C(1)(a)(iia) of the Act) to take this Agreement into consideration.

#### 11.5 No breach, etc of a Development Consent

Despite any other provision of this Agreement, this Agreement does not require, allow or preclude anything from being done if by so doing it would cause the Developer to:

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- (a) be in breach; or
  - (b) not fulfil a requirement,
- of a Development Consent or Approval.

#### **11.6 Explanatory Note**

In accordance with clause 25E(7) of the *Regulations* the explanatory note must not be used to assist in construing this Agreement.

**Schedule 1 – Development Contributions**

(Clause 4 and Clause 11.1)

**Table**

Column 1 Item Number	Column 2 Name	Column 3 Description	Column 4 Public purpose	Column 5 When contribution is required
<b>Monetary contribution</b>				
1	Bonus development monetary contribution	<p>A monetary contribution equal to \$1,100 for each additional square metre of Gross Floor Area of the Development above 3,675m<sup>2</sup></p> <p>Note: If the modification application is approved in the terms sought by the Developer, there will be an additional 340m<sup>2</sup> of Gross Floor Area. This would result in a monetary contribution of <b>\$374,000</b>.</p>	Open space, community facilities, public services or other public infrastructure.	<p>Immediately prior to:</p> <ul style="list-style-type: none"> <li>the issue of a Construction Certificate; or</li> <li>modified Construction Certificate (whichever occurs first).</li> </ul> <p>after the Development Consent is modified as a consequence of the Modification Application</p>

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Schedule 2 – Drawings

---

(Clause 11)

Sheet 1: Site plan





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Voluntary Planning Agreement and Explanatory Note

**Executed as a deed.**

---

**Signed** for and on behalf of **Burwood Council** by  
Its attorney dated 6 July 2011 registered book  
4615 number 590  
in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Attorney Michael Gerard McMahon

By executing this document the attorney certifies that he has  
not received notification of revocation of the power of attorney

\_\_\_\_\_  
Print name

**Executed** on behalf of **Shoreline Organisation  
Pty Ltd** ACN 142 320 661 in accordance with  
s127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

**Annexure A – Draft Deed of Novation**

---

**Deed of Novation**

---

Burwood Council

[Insert name of existing developer]

[Insert name of new developer]

## Deed of Novation

Dated

Parties

1. **Burwood Council** of Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW (**the Council**)
2. **[Insert name of existing developer]** ACN [insert ACN] of [insert address] (**the Existing Developer**)
3. **[Insert name of new developer]** ACN [insert ACN] of [insert address] (**the New Developer**)

Background

- A. The Council and the Existing Developer have entered into the Agreement.
- B. The Existing Developer intends to transfer **[Insert title reference(s)]** to the New Developer.

**[If, as a result of the transfer, the Existing Developer will no longer own any of the Site:]**

- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. The Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and the parties have agreed to enter into this Deed to give effect to their common intentions.

**[If, as a result of the transfer, the Existing Developer will still own part of the Site:]**

- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. The Council has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and the parties have agreed to enter into this Deed to give effect to their common intentions.

Operative provisions

### 1. Defined meanings

---

Words used in this Agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

## 2. Novation

---

**[If, as a result of the transfer, the Existing Developer will no longer own any of the Site:]**

With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

**[If, as a result of the transfer, the Existing Developer will still own part of the Site:]**

With effect on and from the Effective Date:

- (a) The New Developer is taken to be a party to the Agreement and the definition of Developer in clause 11.1 of the Agreement is taken to include the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

## 3. Consent

---

**[If, as a result of the transfer, the Existing Developer will no longer own any of the Site:]**

With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- (c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

**[If, as a result of the transfer, the Existing Developer will still own part of the Site:]**

With effect on and from the Effective Date, the Council:

- (d) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- (e) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

#### **4. Release and Indemnity**

---

[If, as a result of the transfer, the Existing Developer will no longer own any of the Site:]

##### **4.1 Release and Discharge (the Council)**

On and from the Effective Date, the Council releases the Existing Developer from all Rights and Obligations and from all Claims that it may have against the Existing Developer under or in respect of the Agreement.

##### **4.2 Release and Discharge (the Existing Developer)**

On and from the Effective Date, the Existing Developer releases the Council from all its obligations under the Agreement and from all Claims that it may have against the Council under or in respect of the Agreement.

##### **4.3 Indemnity**

On and from the Effective Date, the New Developer indemnifies the Existing Developer from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Site]

#### **5. Representations and Warranties**

---

##### **5.1 Power**

Both of the Existing Developer and the New Developer represent and warrant to the Council and to each other that:

- (a) it is an individual or corporation validly existing under the laws of Australia;
- (b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- (c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

##### **5.2 Reliance by the Council**

The Existing Developer and the New Developer each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

**6. General provisions**

---

**6.1 Developer Costs**

The Existing Developer and the New Developer must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

**6.2 The Council's Costs**

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable legal costs in relation to the negotiation, preparation and execution of this Deed, but are not otherwise liable for the Council's costs in relation to the:

- (a) performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

**6.3 GST**

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

**6.4 Duties**

- (a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

**6.5 Assignment**

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

**6.6 Notices**

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

**[Insert address for notices for each of the parties]**

## ATTACHMENT 1

### ITEM 24/17 Draft Voluntary Planning Agreement - No. 27-29 Burwood Road, Burwood.DOC Voluntary Planning Agreement and Explanatory Note

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- (b) Any notice to or by a party under this Deed must be in writing and signed by either:
  - (i) the sender or, if a corporate party, an authorised officer of the sender; or
  - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

#### **6.7 Governing law and jurisdiction**

- (a) This Deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

#### **6.8 Amendments**

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

#### **6.9 Third parties**

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

#### **6.10 Pre-contractual negotiation**

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

#### **6.11 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

#### **6.12 Continuing performance**

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:

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- (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
- (ii) survives and continues after performance of this Deed,

#### **6.13 Waivers**

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### **6.14 Remedies**

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

#### **6.15 Severability**

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

#### **6.16 Counterparts**

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same Deed.

#### **6.17 Party acting as trustee**

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed s being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

## **7. Definitions and interpretation**

---

### **7.1 Definitions**

In this Deed unless the context otherwise requires:

**Claims** includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.



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**Agreement** means the voluntary planning agreement between the Council and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure **A**.

**Deed** means this Deed and includes any Annexures to this Deed.

**Effective Date** means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

**GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

**Liabilities** include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

**Rights and Obligations** means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

#### 7.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

**ATTACHMENT 1**

**ITEM 24/17 Draft Voluntary Planning Agreement - No. 27-29 Burwood Road, Burwood.DOC  
Voluntary Planning Agreement and Explanatory Note**

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**Executed** as a deed.

**[Insert relevant attestation clauses]**

**[Insert the executed planning agreement that is the subject of the novation as Annexure A]**

## Explanatory Note: Draft Planning Agreement

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Burwood Council

Shoreline Organisation Pty Ltd

Prepared in accordance with clause 25E of the  
*Environmental Planning and Assessment Regulation 2000*

14 March 2017



Level 12, 400 George Street  
Sydney NSW 2000  
Australia

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F +61 2 9247 1315  
Ref 3233533

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## ATTACHMENT 1

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### ITEM 24/17 Draft Voluntary Planning Agreement - No. 27-29 Burwood Road, Burwood.DOC Voluntary Planning Agreement and Explanatory Note

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#### Contents

1. Summary of objectives, nature and effect	1
2. Assessment of the merits of the proposed agreement	2
3. Preparation of this explanatory note	4

## 1. Summary of objectives, nature and effect

---

Clause 25E (1) of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement and must be exhibited with it. The explanatory note must address the requirements of clause 25E (1) (a)-(b) and clause 25E (2) (a)-(g) of the Regulation.

This explanatory note has been prepared to address these requirements.

A draft planning agreement (**the Agreement**) has been prepared. The proposed parties to the Agreement are Burwood Council (**the Council**) on one hand, and Shoreline Organisation Pty Ltd (**the Developer**) on the other.

The Agreement to which this explanatory note relates has been the subject of an offer by the Developer and is being exhibited following the making of a modification application. The purpose of the exhibition is to seek feedback from the community on the offer that has been made by the developer.

The Agreement relates to a development application made for the development consent 22/2014, granted by the Council on 1 July 2014 (Development Consent). The Development Consent (as it presently stands) is for:

- (a) the demolition of an existing building; and
- (b) the construction of a mixed use building, comprising:
  - (i) 46 residential apartments;
  - (ii) two commercial premises units; and
  - (iii) two levels of basement car parking,

**(the Development).**

The Development Consent relates to Lot 1 DP 592417 (known as 27-29 Burwood Road, Burwood) (**the Land**).

The offer to enter into a planning agreement has been made in conjunction with an application to modify the Development Consent.

The approved development has a gross floor area of 3,669m<sup>2</sup>—which is the equivalent of a floor space ratio of close to 3:1. The maximum floor space ratio that applies to site is 3:1. This means that the maximum permitted gross floor area for the site is 3,675m<sup>2</sup>.

However, this maximum floor space ratio can be exceeded in certain circumstances — including when a modification application is made and there is sufficient merit.

The Developer has made a modification application to increase the number of residential apartments from 46 to 48 units. This involve an increase in the gross floor area of the Development to 4,015m<sup>2</sup> — which is the equivalent of a floor space ratio of 3.28:1.

The policy context for the modification application and the proposed planning agreement is as follows:

- If the modification application is approved, the Developer is prepared to make a monetary development contribution in order to realise the benefits of the modification.

- The purpose of the development contribution is help meet the demand for open space, community facilities, public services or other public infrastructure.

## 1.2 Objectives

The objective of the draft planning agreement is to provide a mechanism by which a monetary contribution may be made, in relation to the Development, to help meet the demand for open space, community facilities, public services or other public infrastructure.

## 1.3 Nature

The Agreement will be a voluntary agreement under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**).

An agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the Agreement provides for the payment of a bonus development monetary contribution.

In brief terms, the monetary contribution is a payment equal to \$1,100 for each additional square metre of gross floor area (as defined in the local environmental plan) of the development above 3,675m<sup>2</sup>.

If the modification application is approved in the terms sought by the Developer, there will be an additional 340m<sup>2</sup> of Gross Floor Area. This would result in a monetary contribution of \$374,000.

This amount is to be used by the Council for the purpose of open space, community facilities, public services or other public infrastructure.

## 1.4 Effect

The Agreement provides the enforcement of the Agreement by a suitable means if there is a breach by the Developer.

The requirement to make a monetary contribution will arise immediately prior to the issue of a construction certificate or modified construction certificate (whichever occurs first) after the development consent is modified.

If the contribution is not paid, the construction certificate cannot be lawfully issued.

Where it is relevant to a modification application, a consent authority is to take into consideration a planning agreement, or any draft planning agreement that a developer has offered to enter into.

However, a planning agreement cannot impose an obligation on a planning authority to actually modify the development consent. A merit assessment of the proposed modification must still be carried out.

## 2. Assessment of the merits of the proposed agreement

---

### 2.1 Impact on the public or any relevant section of the public

The Agreement has a positive impact on the public, and in particular, the residents of the Burwood community. This is because the Agreement provides for a monetary contribution, to be applied by the Council towards:

- (a) the provision of public open space;
- (b) the provision of community facilities; or
- (c) the provision of other public infrastructure.

**2.2 Promotion of the public interest and the objects of the Act**

The Agreement promotes the following objects of the Act:

- (a) Section 5(a)(iv):  
to encourage the provision of land for public purposes ...
- (b) Section 5(a)(v)  
to encourage the provision ... of community services and facilities ...

The Agreement promotes the above objects of the Act, and the public interest, by providing funds for the provision of open space, community facilities and/or other public infrastructure in accordance with the *Carrying Out of Bonus Development in the Public Interest* policy.

**2.3 The purposes of the *Local Government Act 1993 (NSW)***

The Council is the planning authority that would be a party to the Agreement. The Council is a public authority constituted under the *Local Government Act 1993 (NSW)*.

The Agreement promotes the following purposes of this Act:

- (a) Section 7(e):  
to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective ...

The Agreement promotes the above purposes of the Act in the same way that is set out in section 2.2 above.

**2.4 The principles for local government**

Chapter 3 of the *Local Government Act 1993 (NSW)* sets out principles for local government

The Agreement promotes the following elements of the principles:

(a) Section 8A(b):

Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

(b) Section 8A(g):

Councils should work with others to secure appropriate services for local community needs.

(c) Section 8B(b):

Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.

The Agreement promotes the above principles in the same way that is set out in section 2.2 above.

**2.5 The planning purpose**

The planning purpose of the Agreement is to provide a contribution that will be used by the Council to deliver public open space, community facilities and other public infrastructure.

By entering into the Agreement, the Council is able to secure benefits for the community that would not otherwise be available.

The Agreement achieves these benefits for the community by securing additional funds.

**2.6 The Council's capital works program**

The Contribution proposed under the Agreement conforms with the Council's capital works program, in the sense that the contribution will help fund works under this program.

**2.7 Construction certificate, occupation certificate or subdivision certificate**

The Agreement specifies that the monetary contribution is required prior to the issue of a construction certificate for the Development.

The Agreement does not specify any requirements that must be complied with before an occupation certificate or subdivision certificate is issued.

**3. Preparation of this explanatory note**

---

This explanatory note has been prepared jointly by the parties proposing to enter into the Agreement.



## **(ITEM 25/17) DRAFT VOLUNTARY PLANNING AGREEMENT - NO. 23-27 GEORGE STREET BURWOOD**

File No: 17/19616

REPORT BY DEPUTY GENERAL MANAGER LAND, INFRASTRUCTURE & ENVIRONMENT

### **Summary**

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with a Development Application (DA) for 23-27 George Street Burwood have been publicly notified in accordance with the relevant legislation. The draft VPA provides for the developer to pay a monetary contribution to Council towards the provision, augmentation and/or improvements of open space, community facilities or other public facilities as determined by Council, in exchange for additional development on the site. Council's endorsement is sought to enter into the VPA, subject to the contribution amount being based on the rate recently adopted by Council.

### **Background**

Development Application BD.2016.179 proposes the construction of a 20 storey mixed use development comprising of a café, commercial tenancies on Levels two and three and 58 residential units above basement car parking on the land. The proposal will seek to provide 545m<sup>2</sup> of additional gross floor area (GFA), or a 10% increase in the maximum floor space ratio (FSR) permitted by the *Burwood Local Environmental Plan* (BLEP).

### **Draft VPA and EN**

The draft VPA will:

- 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 in accordance with the *Burwood Open Space and Community Facilities Study* undertaken for Council
- Provide the developer, in exchange for making the monetary contribution, additional FSR over the development site, based on the *Burwood Town Centre Urban Design Study* undertaken for Council, which recommended a maximum 10% FSR increase.

Under the draft VPA the developer proposes to pay Council \$599,500, based on the monetary contribution rate of \$1,100/m<sup>2</sup> additional GFA. However, the VPA was received by Council on 17 February 2017. Council at its meeting of 28 March 2017 resolved to adopt the rate of \$1,500/m<sup>2</sup>, and to apply this rate to any VPAs for bonus development received by Council on or after 30 January 2017. Accordingly, the monetary contribution payable should be \$817,500.

The draft VPA and EN were referred to Council's solicitors for their advice and vetting. The documents have been modified in negotiation with the applicant in response to the legal advice. Further minor revision of the draft VPA may be necessary prior to execution, e.g. updating footer or insertion of dates. Any changes will not alter the purpose or intention of the VPA.

### **Consultation**

Following the modification and negotiation of the document contents, the draft VPA and EN were publicly notified for a period of at least 28 days from 18 April 2017 to 16 May 2017. A public notice was placed in the local newspaper and on Council's website. Hard copies were also made available to view at Council's Customer Service Centre. No submissions have been received.

### **Planning or Policy Implications**

Council has a *Planning Agreement Policy* which has been referenced in the progression of this matter. The Policy contains an acceptability test which stipulates the matters that Council should consider when determining whether or not to enter into a VPA. Consideration of these matters against the draft VPA is outlined below:

1. The VPA is directed towards a proper legitimate planning purpose. The VPA provides funds to Council to be used to provide the augmentation or improvement of open space, community facilities or other public facilities, consistent with the *Burwood Open Space and Community Facilities Study*.
2. The VPA would result in a public benefit. The contribution to Council would be used towards public facilities.
3. The VPA provides a reasonable means of achieving the relevant purpose. The *Burwood Open Space and Community Facilities Study* recommended a monetary contribution rate for additional development.
4. The VPA would be taken into consideration in the assessment of the DA. The DA must stand on its own merits from a design, planning and amenity perspective, which has been the subject of a separate and independent planning assessment. If the VPA is not entered into, approval of the DA could not be granted and the applicant would be expected to submit a proposal without the additional floor space.
5. The VPA would produce outcomes that meet the general values and expectations of the community, and protect the overall public interest. The provision, augmentation and improvement of public facilities by Council are an expectation of the community. The VPA provides Council with the financial resources to assist in the delivery.
6. The VPA promotes Council's strategic objectives as outlined in Clause 2.1 of Council's *Planning Agreements Policy*, particularly:
  - Objective 'a' – to provide an enhanced and more flexible development contributions system for Council. The VPA encourages flexibility by enabling a monetary contribution towards public facilities, to the mutual benefit of the developer and the community.
  - Objective 'b' – to supplement or replace, as appropriate, the application of s94 and s94A of the Act for development. The VPA supplements Council's Section 94A Plan because the VPA contribution is on top of established Section 94A contributions.
  - Objective 'e' – to lever planning benefits from development wherever possible. The VPA would facilitate the provision of public facilities, which represent a public benefit.
7. The VPA conforms to the fundamental principles governing the Council's use of planning agreements as set out in Clause 2.2 of the *Planning Agreements Policy*, particularly:
  - Principle 'a' – planning decisions may not be bought or sold through planning agreements. Council is not obliged to support the DA proposal and instead, each application must be considered on the individual merit.
  - Principle 'd' – Council will not use planning agreements for any purpose other than a proper planning purpose. The manner in which the VPA is proposed to be used is in accordance with Council's studies.
8. There are not considered to be any circumstances that may preclude the Council from entering into the VPA should it determine to do so.

### **Financial Implications**

The VPA would provide for a monetary contribution of \$817,500, based on the \$1,500/m<sup>2</sup>

additional GFA rate (instead of \$599,500, being based on the previous \$1,100/m<sup>2</sup> rate) to Council towards the provision, augmentation and/or improvement of open space, community facilities, or other public facilities. Council would be obliged under legislation to allocate the contribution and any return on its investment to the provision of, or recouping of costs for, public facilities.

The provision of public facilities by Council would not coincide with the completion of the subject development, and would be undertaken at a time determined by Council at its discretion.

### **Conclusion**

Council's endorsement is now sought to enter into a VPA for 23-27 George Street Burwood. The VPA would help secure a monetary contribution of \$817,500 for the allocation towards public facilities. It is recommended that arrangements be made for the execution of the VPA by Council authorising the signing of the agreement, after the granting of the consent of the DA but prior to the issue of the construction certificate, which would include a condition of consent on the DA requiring that the VPA be entered into.

### ***Recommendation(s)***

1. That Council enter into the VPA for No. 23-27 George Street Burwood for the provision of a monetary contribution of \$817,500 towards public facilities after the granting of the consent for the Development Application, which would include a condition of consent requiring that the VPA be entered into.
2. That Council authorise the General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse the minor revisions of the VPA documents prior to execution.
4. That the Developer pay the monetary contribution (dollar value dependant on the final determination of the Development Application in relation to floor space) to Council, on or before, the execution of the VPA by Council.

### **Attachments**

- 1 [↓](#) Voluntary Planning Agreement and Explanatory Note

## Planning Agreement

Burwood Council (Council)

George St Property Pty Ltd ACN 607 853 770 (Developer)

JUZBUJFWD1(MGY)

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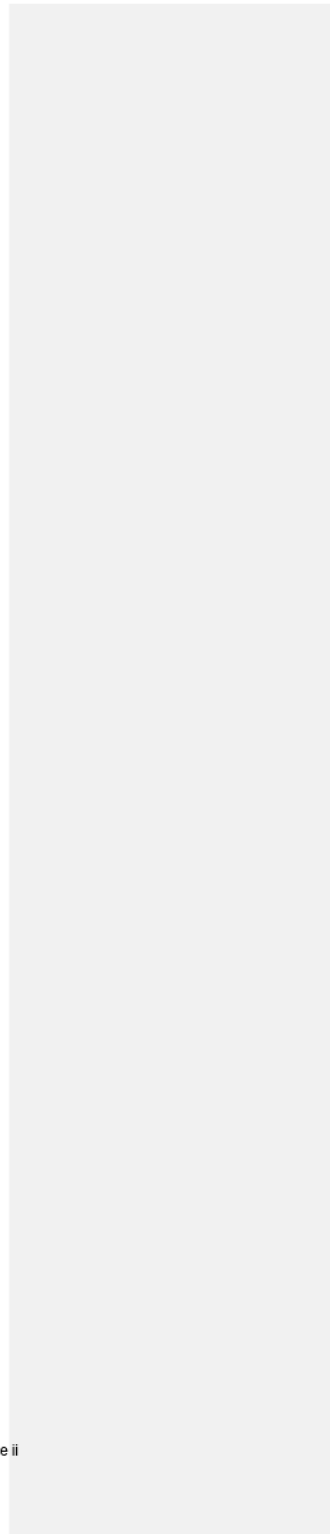
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## ATTACHMENT 1

### ITEM 25/17 Draft Voluntary Planning Agreement - No. 23-27 George Street Burwood.DOC Voluntary Planning Agreement and Explanatory Note

#### Details

#### Date

#### Parties

Name	<b>Burwood Council</b>
Description	<b>Council</b>
Notice Details	Address Suite 1, Level 2, 1-17 Elsie Street Burwood NSW 2134

Name	<b>George St Property Pty Ltd</b>
ACN	607 853 770
Description	<b>Developer</b>
Notice Details	Address Shop 1, 36 Victoria Street Burwood NSW 2134

#### Background

- A. The Developer is the registered proprietor of a number of strata properties on the Land. The Developer has purchased the remaining Strata titles that make up the Land. At the time of making this Agreement settlement has not yet occurred.
- B. On 16 December 2016, the Developer made the Development Application to the Council for Development Consent to carry out the construction of a 20 storey mixed use development comprising a café, commercial tenancies on Level 2 and 3 and 58 residential units above basement car parking on the Land. The Development Application seeks a 10% increase in FSR.
- C. As contemplated by section 93F of the Act, the parties wish to enter into an Agreement with respect to the 10% increase in FSR contemplated by the Development Application, and for the Developer to make a Development Contribution towards Public Facilities if Development Consent is granted to the Development Application.

## Operative Provisions

### 1. 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 Subdivision 2 of Division 6 of Part 4 of the Act.

### 2. Application of this Agreement

This Agreement applies to the Land and the Development.

### 3. Operation of this Agreement

This Agreement takes effect on the date of this Agreement after execution by both Parties, subject to:

- (i) The Developer being the registered proprietor of all interests in the Land. The Developer must produce evidence to the Council if so requested, to the satisfaction of Council, that all previous interests by other registered proprietors of the Land have been extinguished; and

Development Consent is granted to the Development Application

- (a) This Agreement will remain in force until:

- (i) it is terminated by operation of Law; or
- (ii) all obligations are performed or satisfied; or
- (iii) Development Consent for the Development is surrendered in accordance with the Act; or
- (iv) it is otherwise discharged or terminated in accordance with the terms of this Agreement.

### 4. Application of section 94 and section 94a of the Act to the Development

- (a) This Agreement does not exclude the application of:

- (i) section 94 or section 94A of the Act;
- (ii) any Affordable Housing Levy;
- (iii) any other monetary contributions;

in connection with the Development Consent granted in respect of the Development.

- (b) The obligations of the Developer under this Agreement involve a Development 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 (**benefits**). The benefits are not to be taken into consideration by the Council in determining Development Contributions under section 94 and section 94A of the Act.

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**5. Definitions and interpretation**

**5.1 Definitions**

In this Agreement the following definitions apply:

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

**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 Agreement or the Development Consent granted for the Development.

**Authority** means any government, local government, statutory, public, ministerial, administrative, fiscal or other authority or body, and includes the Sydney 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 Saturday or Sunday or a day which is a public holiday in Sydney.

**Construction Certificate** means a certificate issued under Part 4A of the *Environmental Planning and Assessment Act 1979* (NSW) approving building work to be carried out on the Land for the whole or part of the work granted by the Development Consent for the Development.

**Dealing** means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Development** means the development of the Land in accordance with the Development Application for the construction of a 20 storey mixed use development comprising of a café, commercial tenancies on Levels 2 and 3, and 58 residential units above basement car parking on the Land.

**Development Application** means Development Application No.BD.2016.179 lodged with the Council on 16/12/2016.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit identified in this Agreement.

**Dispute Notice** means a notice issued by either party to the other party where there is a dispute in respect of this Agreement.

**FSR** means the floor space ratio as defined in the Burwood Local Environmental Plan 2012.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Land** means SP47, known as 23-27 George Street, Burwood.

**Monetary Contribution** means the sum of \$599,500.00 (five hundred and ninety nine thousand five hundred dollars).

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

**Public Benefit** means the Monetary Contribution.

**Public Facilities** means the augmentation or improving of public open space, community facilities, or other public facilities as determined by the Council.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**5.2 Interpretation**

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) 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.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.

**6. Development Contributions to be made under this Agreement**

- (a) Subject to clause (c) the Developer must pay to the Council the Monetary Contribution prior to the issue of the first Construction Certificate for the Development.

- (b) The Monetary Contribution reflects the additional 545 square metres of floor space sought in the Development Application for the Development, representing \$1100 per additional square metre of floor space.
- (c) The payment of the Monetary Contribution will be by way of delivery of a bank cheque to the Council which must be:
  - (i) made payable to the Council; and
  - (ii) in a form acceptable to the Council.
- (d) The Monetary Contribution will be taken to have been paid when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds have been deposited in the Council's bank account.
- (e) The Developer covenants and agrees with the Council not to make an application for the issue of any Construction Certificate until the Monetary Contribution has been paid by the Developer to the Council.
- (f) If the Developer determines not to take up the Development Consent for the Development, the Developer must provide written notice to the Council of the Developer's:
  - (i) intention to not take up the Development Consent and
  - (ii) surrender of the Development Consent for the Development in accordance with section 104A of the Act.

## **7. Application of the Development Contributions**

### **7.1 Use of Monetary Contribution by Council**

The Monetary Contribution paid by the Developer under this Agreement will be used by the Council to develop Public Facilities.

### **7.2 Public Facilities**

The Public Facilities will:

- (a) not be provided to coincide with the conduct or completion of the Development;
- (b) be constructed at a time determined by the Council at its absolute discretion;
- (c) be available for use by the general public and will not be restricted for use by patrons of the Development.

## **8. Assignment and dealing with Land**

- (a) Subject to paragraph (b), the Developer must not transfer its interest in any of the whole or any part of the Land unless the proposed transferee accepts the obligations of this Agreement.
- (b) For the purpose of giving effect to paragraph (a) the Council, the Developer and any transferee must enter into a novation agreement where the transferee agrees to carry out the obligations of the Developer under this Agreement and the Developer is released, from the date of execution of the novation agreement, from the obligations contained in this Agreement to the extent that they:
  - (i) are novated to the transferee; and
  - (ii) remain to be performed.

**9. Acknowledgements**

**9.1 Planning Certificates**

The Developer acknowledges that the Council may include a notation on Planning Certificates under section 149(5) of the Act in relation to this Agreement.

**9.2 Consent Authority**

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.

**10. Dispute Resolution**

**10.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause.

**10.2 Written notice of dispute**

A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the dispute.

**10.3 Attempt to resolve**

On receipt of notice under clause 10.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

**10.4 Mediation**

If the parties do not agree within 7 days of receipt of notice under clause 10.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

**10.5 Court proceedings**

If the dispute is not resolved within 42 days after notice is given under clause 10.2 then any party which has complied with the provisions of this clause may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

**10.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause for any purpose other than in an attempt to settle the dispute.

**10.7 No prejudice**

This clause does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

**11. Enforcement**

**11.1 Enforcement in Court**

- (a) This Agreement may be otherwise enforced by either party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
  - (i) a party from bringing proceedings in the Land Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
  - (ii) the Council from exercising any function under the Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

**12. Notices**

**12.1 Written Notice**

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:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

**Council**

Attention: The General Manager  
Address: Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW 2134  
Post: PO Box 240, Burwood NSW 1805  
Fax Number: (02) 9911 9900  
Email: [council@burwood.nsw.gov.au](mailto:council@burwood.nsw.gov.au)

**Developer**

Attention: Peter Sleiman  
Address: Shop 1, 36 Victoria Street, Burwood NSW 2134  
Post: Shop 1. 36 Victoria Street, Burwood NSW 2134

Fax Number: N/A

Email: [peter@sleiman.com.au](mailto:peter@sleiman.com.au)

**12.2 Change of Address**

If a Party gives the other Party three (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.

**12.3 Time for Service of Notice**

Any notice, consent, information, application or request is to be treated as given or made at the following time if it is:

- (a) delivered, when it is left at the relevant address.
- (b) sent by post, two (2) Business Days after it is posted.
- (c) 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.

**12.4 Service after hours, on Weekends and Holidays**

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, or if on 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.

**13. Approvals and consent**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an Approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

**14. Assignment and Dealings**

The Developer agrees that this Agreement shall be binding upon the Developer and upon their respective transferees, assignees or successors.

**15. Costs**

- (a) The Developer agrees to pay its own costs directly related and incidental to negotiation, preparing, executing, stamping and registering the Agreement, including any costs of lodging / removing caveats on the title to the Land.
- (b) The Developer agrees to pay the Council's reasonable costs in relation to the preparation of this Agreement.

**16. Entire agreement**

- (a) This Agreement constitutes the entire agreement between the Parties regarding the matters set out on it and superseded any prior representations, understandings or arrangements made between the Parties, whether orally or in writing.

- (b) No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

**17. Further acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

**18. 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.

**19. 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 (2) or more persons binds them jointly and each of them individually, and any benefit in favour of two (2) or more persons is for the benefit of them jointly and each of them individually.

**20. No fetter**

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

**21. Representations and warranties**

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

**22. Severability**

If a clause or part of a clause of this Agreement can be read in a 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. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

**23. Modification**

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.

**24. Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

**25. Explanatory Note**

The explanatory note put on exhibition with this Agreement is not to be used in construing the terms of this Agreement.

**26. GST**

**26.1 Words**

All words in this clause which are also defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("the GST Act") have a corresponding meaning to that in the GST Act.

**26.2 Supply**

- (a) The consideration for any supply under this Agreement excludes GST.
- (b) Where a party to this Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment.
- (c) The maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply.
- (d) Despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

**27. Confidentiality**

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.

**28. Release from Agreement**

Once the Council is satisfied that the Developer has fully complied with all of its obligations under this Agreement, the Council agrees to provide a full release and discharge of this Agreement with respect of the whole of the Land. In such circumstances the Council will do all things reasonably necessary, including the execution of any documents to enable the Developers to remove any caveat and the notation of this Agreement on the title to the Land.



ATTACHMENT 1

ITEM 25/17 Draft Voluntary Planning Agreement - No. 23-27 George Street Burwood.DOC  
Voluntary Planning Agreement and Explanatory Note

Signing page

EXECUTED AS AN AGREEMENT

Signed for and on 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: )  
)  
)  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
(Print) Name of Witness

\_\_\_\_\_  
Michael Gerard McMahon  
(Print) Full Name of Attorney

\_\_\_\_\_  
Level 2, 1 – 17 Elsie Street, Burwood, New South Wales, 2134  
(Print) Address

By executing this document, the attorney certifies that he has not received notification of revocation of the power of attorney.

On behalf of George St Property Pty Ltd

**George St Property Pty Ltd** ACN 607 853 )  
770 executed this agreement pursuant to )  
section 127 of the Corporations Act by: )  
)

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Print Full Name of Director/Secretary

\_\_\_\_\_  
Print Name of Director

Date \_\_\_\_\_

## Explanatory Note

### Environmental Planning and Assessment Regulation 2000

#### (Clause 25E)

#### Agreement

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

##### 1. Parties

Burwood Council (**Council**)

Address: Suite 1 Level 2, 1-17 Elsie Street Burwood NSW 2134.

and

George Street Property Pty Ltd (**Developer**)

ACN 607 853 770.

Address: INSERT ADDRESS.

##### 2. Description of the Land to which the Agreement Applies

The Land comprises Strata Plan 47 which is otherwise known as 23-27 George Street Burwood.

The Developer is the registered proprietor of part of the Land. The Developer intends to be the registered proprietor of the whole of the Land following settlement of those lots which it does not currently own.

##### 3. Description of Proposed Development

The construction of a 20 storey mixed use development comprising of a café, commercial tenancies on level 2 and 3 and 58 residential units above basement car parking.

##### 4. Summary of Objectives, Nature and Effect of the Agreement

###### 4.1 Summary of Objectives

The objective of the Agreement is for the Developer to make a development contribution to the Council upon the grant of Development Consent for the Development.

The Agreement is a planning Agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. The Agreement is a voluntary Agreement under which Development Contributions (as defined in clause 5.1 of the Agreement) are made by the Developer for various public purposes (as defined in s93F(2) of the Act).

###### 4.2 Effect of the Agreement

The Agreement:

- (a) relates to the carrying out of the Development on the Land;

- (b) does not exclude the application of s94 & s94A of the Act to the Development;
- (c) does not exclude the application of s94EF of the Act to the Development;
- (d) requires the Developer to make a monetary contribution as a Development Contribution for a material public benefit.

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

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

The Agreement serves the following planning purposes:

- (a) contributing to the Council's public works program to provide for better public facilities within the Council's local government area;
- (b) activating the streetscape and contributing to a diversity of commercial services in the local community through the provision of commercial floor space within the Development; and
- (c) contributing to improved landscaping in the public domain.

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

The Agreement promotes the following objects of the Act:

- (a) the proper management, development and conservation of natural and artificial resources, 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; and
- (c) the provision and co-ordination of community services and facilities.

The Agreement provides for a reasonable means of achieving those purposes as set out in section 5.1 above.

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

**6.1 How Agreement Promotes the purposes of the *Local Government Act 1993* (NSW)**

The Council is the planning authority that would be a party to the Agreement. The Council is a public authority constituted under the *Local Government Act 1993* (NSW).

The Agreement promotes the following purposes of this Act:

- (a) Section 7(a):  
to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales ...
- (b) Section 7(d):  
to give councils: ... the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public ... to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities ...

The Agreement promotes the above purposes of the Act in the same way that is set out in section 5.1 above.

**6.2 How Agreement Promotes the Elements of the Council's Charter**

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

- (a) providing directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; bearing in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.

It does this through the means set out in section 5.1 above.

**6.3 Whether the Agreement Conforms with the Council's Capital Works Program**

The Agreement conforms with Council's Capital Works Program to the extent that it will supplement the Program by providing a monetary contribution and s94 Development Contributions to provide public facilities.

**6.4 Whether the Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Agreement contains requirements that must be complied with prior to the issue of the first Construction Certificate for the Development.

The Agreement does not specify that certain requirements must be complied with before a Construction Certificate or Subdivision Certificate is issued.

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

The Agreement has a positive impact on the public, and in particular, the residents of the local community. This is because the Agreement provides an opportunity to improve the range and quality of services available to the local community and contributes to an improved public domain.

**8. Other Matters**

None.

## **(ITEM 26/17) DRAFT VOLUNTARY PLANNING AGREEMENT - NO. 20 THE STRAND CROYDON**

File No: 17/20061

REPORT BY DEPUTY GENERAL MANAGER LAND, INFRASTRUCTURE & ENVIRONMENT

### **Summary**

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with a Development Application (DA) at 20 The Strand, Croydon have been publicly exhibited in accordance with the relevant legislation. The draft VPA provides for the developer to pay a monetary contribution to Council in lieu of a shortfall in parking. Council's endorsement is sought to enter into the VPA after the granting of consent for the DA.

### **Background**

Development Application BD.2015.034 proposes the alterations and additions to existing mixed use building to establish a boarding house and some commercial floor space at 20 The Strand, Croydon.

The DA requires one parking space for the boarding house and one parking space for the commercial floor space. However, only one parking space can be provided at the rear of the site. Council's Development Control Plan (DCP) provides that the commercial parking space may be provided as a monetary contribution. The parking rate (from 1 July 2016) is \$49,500 and a 50% discount is provided, meaning the monetary contribution would be \$24,750.

A copy of the draft VPA and EN is attached. The VPA provides for the applicant to pay a monetary contribution of \$24,750 to Council upon its execution, in lieu of the one on-site parking space which is required, but cannot be provided for the commercial development. The VPA has been submitted in conjunction with the DA.

The documents were referred to Council's solicitors for their advice and vetting. The draft VPA and EN have been modified in negotiation with the applicant to resolve discrepancies and anomalies identified by Council's solicitors.

Further minor revision of the draft VPA may be necessary prior to execution, e.g. updating footer or insertion of dates. Any changes will not alter the purpose or intention of the VPA.

### **Consultation**

Following the modification and negotiation of the document contents, the draft VPA and EN were publicly notified for a period of at least 28 days from 4 April 2017 to 9 May 2017. The public notice was placed in the local newspaper and on Council's website. Hard copies were also made available to view at Council's Customer Service Centre. No submissions have been received.

### **Planning or Policy Implications**

Council has in place a *Planning Agreement Policy*. The Policy contains an acceptability test which stipulates the matters that Council should consider when determining whether or not to enter into a VPA. Consideration of these matters against the draft VPA is outlined below:

1. The VPA is directed towards a proper or legitimate planning purpose. The planning purpose of the VPA is to provide funds to Council to be used to provide additional car parking spaces to redress the parking shortfall within the development. The VPA is generally consistent with Council's DCP in allowing monetary contributions in lieu of the on-site parking provision for commercial development in the Croydon Neighborhood Centre. The contribution received under the VPA would assist in Council's provision of public car parking.

2. The VPA would result in a public benefit. The VPA would seek to provide public car parking, being made available to the general public, in place of parking within a private development, which could not be provided, as the development involves the addition of floor space to an existing building.
3. The VPA provides a reasonable means of achieving the relevant purpose. The VPA provides for the provision of additional parking by Council, instead of that parking being provided privately by the developer, and in doing so, facilitating an outcome which is more beneficial to the public.
4. The VPA would be taken into consideration in the assessment of the DA. The DA must stand on its own merits from a design, planning and amenity perspective, which is the subject of a separate planning assessment. If the VPA is not entered into, the applicant would be expected to amend the DA or its approval could not be granted.
5. The VPA would produce outcomes that meet the general values and expectations of the community, and protect the overall public interest. The provision of safe and practical public parking by Council is an expectation of the community. The VPA provides Council with the financial resources to assist in this provision.
6. The VPA promotes Council's strategic objectives as outlined in Clause 2.1 of Council's *Planning Agreements Policy*, particularly:
  - Objective 'a' – *to provide an enhanced and more flexible development contributions system for Council.* The VPA encourages flexibility by enabling a monetary contribution towards public amenities, as opposed to strict compliance with on-site parking requirements, to the mutual benefit of the developer and the community.
  - Objective 'b' – *to supplement or replace, as appropriate, the application of s94 and s94A of the Act to development.* The use of the VPA in this instance supplements Council's Section 94A Plan because the existing plan cannot be used to obtain contributions in the case of parking shortfall.
  - Objective 'e' – *to lever planning benefits from development wherever possible.* The VPA would facilitate the provision of public car parking in place of private parking, which represents a public benefit.
7. The VPA conforms to the fundamental principles governing the Council's use of planning agreements as set out in Clause 2.2 of the *Planning Agreements Policy*, particularly:
  - *Principle 'a' – planning decisions may not be bought or sold through planning agreements.* Council is not obliged to support the DA proposal and, instead, each application must be considered on its merits.
  - *Principle 'd' – Council will not use planning agreements for any purpose other than a proper planning purpose.* The manner in which the VPA is proposed to be used is generally in accordance with Council's DCP.
8. These are not considered to be any circumstances that may preclude the Council from entering into the VPA should it determine to do so.

### **Financial Implications**

The VPA would provide to Council a monetary contribution of \$24,750 for the provision of public parking. Council would be obliged under legislation to allocate the contributions, and any return on their investment, to the provision of, or the recoupment of costs for the specific purpose expressed in the VPA document.

The developer is to pay Council the reasonable costs of preparing, negotiating, executing and stamping the VPA, under Clause 13 of the VPA.

### **Conclusion**

Council's endorsement is sought to enter into the VPA for No. 20 The Strand, Croydon. The VPA would provide Council with a monetary contribution of \$24,750 towards the provision of the public parking. This approach is generally provided for by Council's DCP. It is recommended that arrangement be made for the execution of the VPA by Council authorising the signing of the agreement, after the granting of consent for the DA, which would include a condition requiring that the VPA be entered into.

### ***Recommendation(s)***

1. That Council enter into a VPA for 20 The Strand Croydon for the provision of a monetary contribution towards public parking after the granting of Development Application BD.2015.034, which would include a condition requiring that the VPA be entered into prior to the issuing of a Construction Certificate.
2. That Council authorise to the General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse minor revisions of the VPA documents prior to execution.
4. That the Proprietor/Developer pay the monetary contribution to Council, on or before the execution, of the VPA by Council.

### **Attachments**

- 1 [↓](#) Voluntary Planning Agreement and Explanatory Note



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Voluntary Planning Agreement by way of Deed  
20 The Strand, Croydon

Burwood Council (**Council**)

and

Agius Investment Management Pty Ltd

and

Agius Business Investments Pty Ltd (**Developers**)



## ATTACHMENT 1

### ITEM 26/17 Draft Voluntary Planning Agreement - No. 20 the Strand Croydon.DOC Voluntary Planning Agreement and Explanatory Note

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Deed dated 2017

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#### Parties

<b>Council</b>	Name	Burwood Council
	Address	Suite 1, Level 2, 1-17 Elise Street Burwood NSW 2134
<b>Developers</b>	Name	Agius Investment Management Pty Ltd ACN 073 932 153
		and Agius Business Investments Pty Ltd ACN 073 938 879
	Address	Level 5, 233 Castlereagh Street, Sydney NSW 2000

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#### Background

- A. The Developers are the registered proprietors of the Land.
- B. The Developers wish to develop the Land and have submitted a Development Application, DA34/2015, relating to the proposed Development to the Council.
- C. Following the grant of the Development Consent, the Developers will make the Development Contribution in accordance with the terms of this Deed.

OPERATIVE PROVISIONS

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**1. Definitions and Interpretation**

**1.1 Definitions**

In this Deed the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended from time to time).

**Completion Date** means the date an occupation certificate (as that term is defined in the Act) is issued in respect of the Development located at 20 The Strand, Croydon.

**Construction Certificate** means the construction certificate (as defined in the Act) granted by Council or Relevant Authority in respect of the Development.

**Deed** means this Deed and the Reference Schedule hereto.

**Development** has the meaning specified in Item 4 of the Reference Schedule.

**DA Number** is specified at Item 5 of the Reference Schedule.

**Development Application** means the development application in respect of the Development and being identified by the DA Number as modified from time to time.

**Development Consent** means the development consent (as defined in the Act) granted by Council in respect of the Development Application as modified from time to time.

**Development Contribution** means the payment of the Monetary Contribution as specified in item 7 of the Reference Schedule.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Land** means the land specified in Item 3 of the Reference Schedule.

**Monetary Contribution** has the meaning specified in Item 7 of the Reference Schedule.

**Party** means a party to this Deed, including that party's successors and assigns.

**Reference Schedule** means the Reference Schedule attached hereto and forming part of this Deed.

**Relevant Authority** means a local council, private certifier or other authority empowered to grant or issue a Development Consent or Construction Certificate.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW) (as amended from time to time).

**1.2 Interpretation**

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

## ATTACHMENT 1

### ITEM 26/17 Draft Voluntary Planning Agreement - No. 20 the Strand Croydon.DOC Voluntary Planning Agreement and Explanatory Note

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#### Operative Part

- (a) headings are inserted for convenience only and do not affect the interpretation of this Deed;
- (b) a reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;
- (c) if the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day;
- (d) a reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars;
- (e) a reference in this Deed 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;
- (f) a reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (k) references to the word 'include' or 'including' are to be construed without limitation;
- (l) a reference to this Deed includes the Deed recorded in this Deed;
- (m) a reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns;
- (n) any schedules and attachments form part of this Deed;
- (o) **at any time** includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period;
- (p) **claim** includes any claim, demand, request, requisition, notice, direction, allegation, action, proceeding, damage or judgment arising in any manner and at any time, and whether present, immediate, unascertained, future or contingent;

Operative Part

- (q) **cost** includes any cost, charge, expense, disbursement, fee, commission, outgoing, premium, tax, levy, fine, penalty or loss incurred at any time, whether directly or indirectly;
  - (r) **default** includes any default, breach, non-performance, non-compliance or repudiation;
  - (s) **liability** includes any liability or obligation of any nature, whether present, prospective or contingent; and
  - (t) **loss** includes any loss, cost, damage or liability.
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**2. Planning Agreement under the Act**

The Parties acknowledge and agree that this Deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

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**3. Application of this Deed**

This Deed applies to:

- (a) the Land; and
  - (b) the Development approved in accordance with the Development Consent.
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**4. Operation of this Deed**

- (a) This Deed commences on the date that it is executed by all of the Parties.
  - (b) This Deed ends and is complete when the Developers have provided the Development Contributions to the Council in accordance with this Deed.
- 

**5. Development Contribution**

**5.1 Developers to Provide Development Contribution**

If the Council or other Relevant Authority grants the Development Consent, the Developers will provide the Development Contribution to the Council in accordance with clause 5.2 and otherwise in accordance with this Deed and the Reference Schedule hereto. If Council does not grant the Development Consent, this Deed is at an end and is *void ab initio*.

**5.2 Monetary Contribution**

The Developers agrees to pay the Monetary Contribution to the Council as a one-off, lump sum payment in cash or by an unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council within the time provided for in the Reference Schedule hereto.

Operative Part

**5.3 Acknowledgement**

The Parties acknowledge and agree that payment by the Developers of the Development Contribution will satisfy the Developers' obligations hereunder.

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**6. Registration**

**6.1** The Parties agree to register this Deed for the purposes of Section 94A(1) of the Act.

**6.2** Not later than 30 days after the commencement of this Deed, the Developers are to deliver to the Council in registrable form;

**6.2.1** an instrument requesting registration of this Deed on the title to the Land duly executed by the Developers and

**6.2.2** the written irrevocable consent of each person referred to in section 93H(1) of the Act to that registration and

**6.2.3** produce the Title Deed of the Land to Land and Property Information for the purposes of the registration thereof.

**6.3** The Developers are to do such other things that are reasonably necessary to enable registration of this Deed to occur.

**6.4** The parties are to do such things as are reasonably necessary, at the Developers expense, to remove any notation relating to this Deed from the title to the Land once the Developers have completed their obligations under this Deed to the reasonable satisfaction of the Council for this Deed or this Deed is terminated or otherwise comes to an end for any other reason.

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**7. Application of s 94 and s 94A of the Act**

This Deed does not exclude the Application of s94, 94A and 94EF of the Act to the Development.

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**8. Default**

**8.1** Without limiting any other provision in this Deed, the parties may enforce this Deed in any Court of competent jurisdiction.

**8.2** For the avoidance of doubt, nothing in this Deed prevents;

(a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter which this Deed relates, or

(b) the Council from exercising any function under this Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

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**9. Dispute Resolution**

(a) This clause applies to any dispute under the Deed.

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Operative Part

- (b) Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- (c) If a notice is given under clause 10(b), the parties must meet within 14 days of the notice in an attempt to resolve the dispute.
- (d) If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- (e) If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow ant mediation process which has been commenced to be completed, the Parties may exercise their legal rights in relation to the dispute, including the commencement of legal proceedings in a court of competent jurisdiction in New south Wales.

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**10. Notices**

**10.1 Form of Notice**

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

- (a) delivered or posted to that Party at its address set out in Item 10 of the Reference Schedule; or
- (b) faxed or e-mailed to that Party at its fax number or e-mail address set out in Item 10 of the Reference Schedule.

**10.2 Change of Details**

If a Party gives the other Party three (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, e-mailed or faxed to the latest address or fax number.

**10.3 Timing of Service**

- (a) 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.
  - (iv) If it is sent by e-mail, as soon as the sender receives confirmation of receipt from the sender's server that the e-mail message was successfully sent to the stated recipient.

Operative Part

- (b) 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, or if on 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.

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**11. Approvals and Consent**

- (a) Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- (b) A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

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**12. Assignment and Dealings**

**12.1 Dealings with Land**

Unless the matters specified in clause 12.2 are satisfied, the Developers is not to do any of the following:

- (a) transfer, mortgage, charge or assign the Land to any person, or
- (b) assign the Developers' rights or obligations under this Deed, or novate this Deed, to any person.

**12.2 Conditions**

The matters required to be satisfied for the purposes of clause 12.1 are as follows:

- (a) the Developers must, at no cost to Council, first procure the execution by the person to whom the Land or part is to be sold, transferred, mortgaged or charged or the Developers rights or obligations under this Deed are to be assigned or novated, of a Deed in favour of the Council on terms reasonable satisfactory to the Council; and
- (b) the Council must have given written notice to the Developers stating that it reasonably considers that the purchaser, transferee, mortgagee, charge, assignee or novatee is reasonably capable of performing its obligations under this Deed, and
- (c) the Developers must not be in breach of this Deed, and
- (d) the Council must otherwise consents to the transfer, mortgage, charge, assignment or novation, such consent not to be unreasonably withheld.

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**13. Costs**

The Developers agree to pay the Council's reasonable fees, costs and expenses properly and reasonably incurred by the Council in relation or incidental to the



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preparation and negotiation of this Deed, capped at \$2,200 (inclusive of GST). These costs are payable at the time of entry into this Deed.

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**14. GST**

- (a) If GST is payable on a taxable supply made under, by reference to or in connection with this Deed, the Party providing the consideration for that taxable supply must also pay the GST amount as additional consideration. This subclause (a) does not apply to the extent that the consideration for the taxable supply is expressly stated in this Deed to be GST inclusive.
- (b) No additional amount will be payable by the Council under 15(a) unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the taxable supply giving rise to the liability to pay GST.
- (c) No payment of any amount pursuant to this clause 15, and no payment of the GST amount where the consideration for the taxable supply is expressly agreed to be GST inclusive, is required until the supplier has provided a tax invoice or adjustment note (as the case may be) to the recipient.
- (d) Any reference in the calculation of consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any input tax credit entitlement of that party in relation to the relevant cost, expense or other liability.
- (e) This clause continues to apply after expiration or termination of this Deed.

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**15. General**

**15.1 Entire Deed**

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

**15.2 Further Acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Deed and all transactions incidental to it.

**15.3 Governing Law and Jurisdiction**

This Deed 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.

**15.4 Joint and Individual Liability**

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them



Operative Part

individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

**15.5 No Fetter**

Nothing in this Deed will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**15.6 Representations and Warranties**

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

In particular, the Developers warrant that they have attained the written consent of any mortgagee or charge of the Land to the Developers entering into this Deed and the registration hereof under the *Real Property Act 1900*.

**15.7 Severability**

If a clause or part of a clause of this Deed can be read in a 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. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected

**15.8 Modification**

No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

**15.9 Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

**ATTACHMENT 1**

**ITEM 26/17 Draft Voluntary Planning Agreement - No. 20 the Strand Croydon.DOC  
Voluntary Planning Agreement and Explanatory Note**

Reference Schedule

**Reference Schedule**

<b>Item</b>	<b>Name</b>	<b>Description</b>
1	<b>Developers' Name</b> <b>Developers' ACN</b> <b>Developers' Address</b>	Agius Investment Management Pty Ltd & Agius Business Investments Pty Ltd 073 93 2153 & 073 938 879 Level 5, 233 Castlereagh Street, Sydney NSW 2000
2	<b>Council's Representative</b>	General Manager, Burwood Council
3	<b>Land</b>	The land comprised in certificate of title folio identifier 5/255125 and being known as 20 The Strand, Croydon.
4	<b>Development</b>	Alterations and additions to existing mixed use building to establish a new generation boarding house with 5(five) rooms and associated communal facilities and a 73sq ground floor retail unit at 20 The Strand, Croydon, including one rear off-street garage parking space.
5	<b>Development Application No.</b>	DA34/2015
6	<b>Development Contributions</b>	<b>Monetary Contribution</b> means the cash payment from the Developers to Council in the amount set out in Item 7 of the Reference Schedule within the time set out in Item 9.
7	<b>Monetary Contribution Amount</b>	\$24,750.00
8	<b>Bank Guarantee Amount</b>	Nil
9	<b>Timing</b>	Prior to the issue of a Construction Certificate for the Development.
10	<b>Notices</b>	<p><b>Council</b></p> <p>Attention: The General Manager Address: Suite 1, Level 2, 1-17 Elsie Street, Post: PO Box 240, Burwood NSW 1805</p> <p>Fax Number: (02) 9911 9900 Email: <a href="mailto:council@burwood.nsw.gov.au">council@burwood.nsw.gov.au</a></p> <p><b>Developers</b></p> <p>Attention: Mark Agius Address: Level 5, 233 Castlereagh Street, Sydney NSW 2000</p> <p>E-mail: <a href="mailto:magius@intelle.com.au">magius@intelle.com.au</a></p>

ATTACHMENT 1

ITEM 26/17 Draft Voluntary Planning Agreement - No. 20 the Strand Croydon.DOC  
Voluntary Planning Agreement and Explanatory Note

EXECUTED as a Deed:

Execution of Planning Agreement No. ----- of

Dated:

COUNCIL:

EXECUTED by )  
BURWOOD COUNCIL )  
by being SIGNED SEALED AND )  
DELIVERED in New South Wales by its )  
attorney )  
MICHAEL GERARD MCMAHON )  
under Power of Attorney dated 6 July )  
2011 and Registered Book 4615 No. 590 )  
who declares that he holds the office in )  
the company indicated under his )  
signature and that he has no notice of )  
revocation of the said Power of Attorney )  
in the presence of:

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Date

DEVELOPERS:

SIGNED for and on behalf of )  
AGIUS BUSINESS INVESTEMENTS )  
PTY LTD )  
in accordance with Section 127 )  
Corporations Act 2001:

\_\_\_\_\_  
Sole Director and sole secretary  
Full Name:

SIGNED for and on behalf of )  
AGIUS INVESTMENT MANAGEMENT )  
PTY LTD )  
in accordance with Section 127 )  
Corporations Act 2001:

\_\_\_\_\_  
Sole Director and sole secretary  
Full Name:

## Explanatory Note

Planning Agreement for the provision of monetary contribution in lieu of a commercial Parking space at 20 The Strand, Croydon NSW  
Under Section 93F of the Environmental Planning and Assessment (EP&A) Act 1979

### 1. Parties

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The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2) Agius Investment Management Pty Ltd ACN 073 932 153 and Agius Business Investments Pty Ltd ACN 073 938 879 (**Proprietor**)
- (3) Agius Investment Management Pty Ltd ACN 073 932 153 and Agius Business Investments Pty Ltd ACN 073 938 879 (**Developer**)

### 2. Description of Subject Land

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The land to which the Planning Agreement relates is as follows:

Folio Identifiers: 5/255125  
Location: 20 The Strand, Croydon.

### 3. Description of Proposed Change to Development

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The Developer has lodged a Development Application (being DA34/2015) which provides a shortfall of one (1) commercial parking space.

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

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[Section 25E(1)(a) of the EP&A Regulation 2000]

The offer made by the **Proprietor** and **Developer** as set out in the Planning Agreement is based on the parking provision of Burwood Council's Development Control Plan and is consistent with that provision.

The intent of the Planning Agreement is to ensure that the parking needs of the incoming population into the Burwood local government area are met.

The monetary contributions to be provided by the **Proprietor** and **Developer** under the Planning Agreement is an amount of \$24,750.00, payable on the date of execution of the agreement and before issue of any Construction Certificate.

12.4.2011

## 5. Assessment of the Merits of the Planning Agreement

[Section 25E(1)(b) of the EP&A Regulation 2000]

### 5.1 The planning purposes served by the Planning Agreement

[Section 25E(2)(e) of the EP&A Regulation 2000]

The Planning Agreement serves the following planning purpose:

The monetary contributions paid by the **Proprietor** and **Developer** under this Planning Agreement will be used by **Council** to develop public carparking facilities within the Burwood Town Centre.

Whether the Planning Agreement provides for a reasonable means of achieving that purpose:

The planning provision enabling monetary contributions in lieu of parking on-site is contained within Burwood Development Control Plan, a publically exhibited document which was initially adopted by Council on 12 February 2013. The mechanism allows the aggregation of funds by Council for the provision of efficient and sensitively located public carparking facilities.

### 5.2 Promotion of the public interest

[Section 25E(2)(a) of the EP&A Regulation 2000]

The Planning Agreement promotes the public interest by:

Ensuring the orderly use and development of land by ensuring that the location and design of public carparking facilities function effectively and safely. The Planning Agreement provides for the provision of public carparking in lieu of private-use Commercial Parking.

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

- i. The proper management and development of land for the purpose of promoting the social and economic welfare of the community and a better environment;
- ii. The provision and co-ordination of community services and facilities; and
- iii. Opportunities for public involvement and participation in environmental planning and assessment.

### 5.3 Promotion of the Council's charter

[Section 25E(2)(d) of the EP&A Regulation 2000]

The Planning Agreement promotes one or more of the elements of Council's charter under Section 8 of the Local Government Act 1993 as follows [italicised sections come directly from the Charter]:

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

Council undertakes to involve *councillors, members of the public, users of facilities and services, and council staff* in its activities. The Planning Agreement process provides an opportunity for the community and stakeholders to be involved and interested people are invited to make comment during the exhibition period. The public exhibition and the consideration of this matter at Council meetings are intended to *keep the local community informed*.

Council seeks to ensure that it *acts consistently and without bias*, which is why Council's provisions for Planning Agreements which allow for contributions in lieu of parking is set out in its Development Control Plan.

#### **5.4 Capital Works Program**

[Section 25E(2)(f) of the EP&A Regulation 2000]

Whether Council has a capital works program, and if so, whether the Planning Agreement conforms with that capital works program:

Council has in place a capital works program, but the program does not, to date, identify additional public carparking facilities within the Burwood Town Centre. The capital works program is subject to annual review and any proposal for additional public carparking would be initiated where sufficient funds are available.

**(ITEM 27/17) BUDGET REVIEW FOR QUARTER ENDING 31 MARCH 2017**

File No: 17/19701

REPORT BY CHIEF FINANCE OFFICER

**Summary**

The 2016-17 Budget was adopted at the Council Meeting held on 24 May 2016 with a surplus of \$44,977. The adopted budget was prepared on the basis of the organisational structure which includes three Divisions (Office of the General Manager, Corporate, Governance and Community and Land, Infrastructure and Environment).

This report provides Council with the financial results for the period ending 31 March 2017, 2016-17 Financial Year. In accordance with Clause 203(1) *Local Government (General) Regulation 2005* (the Regulation) the Responsible Accounting Officer is required to prepare and submit to Council a budget review statement no later than two months after the end of each quarter (except the June Quarter).

The following Statement of Budget Income and Expenditure identifies a forecast funding surplus of \$93,202 as at 31 March 2017 compared to the revised adopted forecast surplus of \$104,163 as at 31 December 2016 which was adopted on the 28 February 2017 Council Meeting. The reasons for the net decrease of \$10,961 are outlined in the report.

**Background**

Included in this report is the budget forecast of Income and Expenditure Statement which is based on external and internal reporting consolidations to improve the transparency and consistency of reported information. This statement forms part of a group of statements which must be reported to Council on a quarterly basis in accordance with Clause 202(3) of the Regulation. These statements are known as the Quarterly Budget Review Statements (QBRs).

Council's budget is prepared on a program basis and forecasts expected operating and capital income and expenditure for the year. To fund the budget, Council also utilises funds held in reserve that have accumulated in prior years such as Section 94 Contributions and Internally Restricted Reserves.

The Local Government Code of Accounting Practice and Financial Reporting require Council to prepare its General Purpose Annual Financial Reports in accordance with the Australian Accounting Standards. The major implications are that Council must adopt a general purpose format for financial reporting.

This requires Council to:

- implement full accrual accounting, including capitalisation of infrastructure assets
- prepare consolidated financial statements incorporating all functions and entities under the control of Council
- adapt to a change in accounting focus from the fund result for the year (i.e. the movement in working funds) to the gain/ (loss) from ordinary activities

Each of these requirements is applied at the time of preparing the Annual Financial Reports at 30 June each year. However, with respect to the budget process Council is still focusing on the funding result of reporting. The financial result for the year is determined and audited and the Financial Reports and Auditor's Report are included in Council's Annual Report.

BURWOOD COUNCIL								
Statement of Budget Income & Expenditure								
as at 31 March 2017								
<b>Income</b>								
Type	Budget	Adopted Variations		Amended Budget	Recommended Amendments	Forecasted Year End	Reference	Actuals
		September	December					
Rates & Annual Charges	(24,240,908)	(575,621)	-	(24,816,529)	(4,075)	(24,820,604)	1	(24,807,541)
User Charges & Fees	(9,090,845)	(150,200)	(76,866)	(9,317,911)	(408,300)	(9,726,211)	2	(7,590,712)
Interest & Investment Revenue	(1,145,000)	-	-	(1,145,000)	-	(1,145,000)	3	(873,552)
Other Revenue	(4,054,721)	(8,000)	(267,887)	(4,330,608)	(64,000)	(4,394,608)	4	(3,044,606)
Operating Grants & Contributions	(4,196,672)	198,509	(10,790)	(4,008,953)	74,636	(3,934,317)	5	(3,033,715)
Capital Grants & Contributions	(4,314,000)	(1,242,646)	(586,642)	(6,143,288)	(977,587)	(7,120,875)	6	(2,609,195)
Carryover Grants	-	(4,149)	(2,683)	(6,832)	(31,593)	(38,425)	7	(38,425)
<b>Total Income</b>	<b>(47,042,146)</b>	<b>(1,782,107)</b>	<b>(944,868)</b>	<b>(49,769,121)</b>	<b>(1,410,919)</b>	<b>(51,180,040)</b>		<b>(41,997,747)</b>
<b>Expenditure</b>								
Type	Budget	Adopted Variations		Amended Budget	Recommended Amendments	Forecasted Year End	Reference	Actuals
		September	December					
Employment Costs	18,858,186	(370,589)	(115,207)	18,372,390	(44,168)	18,328,222	8	12,575,013
Borrowing Costs	340,212	-	-	340,212	-	340,212	9	237,467
Materials & Contracts	9,890,432	569,539	549,686	11,009,657	545,409	11,555,066	10	5,605,572
Depreciation	6,620,000	-	-	6,620,000	-	6,620,000	11	4,473,646
Other Expenses	8,545,941	106,272	(82,950)	8,569,263	6,459	8,575,722	12	5,459,320
<b>Total Expenditure</b>	<b>44,254,771</b>	<b>305,222</b>	<b>351,529</b>	<b>44,911,522</b>	<b>507,700</b>	<b>45,419,222</b>		<b>28,351,016</b>
<b>Net Operating Result</b>	<b>(2,787,375)</b>	<b>(1,476,885)</b>	<b>(593,339)</b>	<b>(4,857,599)</b>	<b>(903,219)</b>	<b>(5,760,818)</b>		<b>(13,646,730)</b>
<b>Net Operating Result before Capital Items</b>	<b>1,526,625</b>	<b>(234,239)</b>	<b>(6,697)</b>	<b>1,285,689</b>	<b>74,368</b>	<b>1,360,057</b>		<b>(11,037,535)</b>
<b>Funding Statement</b>								
Net Operating Result	(2,787,375)	(1,476,885)	(593,339)	(4,857,599)	(903,219)	(5,760,818)		(13,646,730)
Add Back Non Cash Items								
Depreciation	(6,620,000)	-	-	(6,620,000)	-	(6,620,000)	13	(4,473,646)
Movement in ELE	-	-	-	-	-	-		-
<b>Adjusted Net Operating Result</b>	<b>(9,407,375)</b>	<b>(1,476,885)</b>	<b>(593,339)</b>	<b>(11,477,599)</b>	<b>(903,219)</b>	<b>(12,380,818)</b>		<b>(18,120,376)</b>
<b>Source of Capital Funds</b>								
Sale of Assets	(850,000)	(1,723,397)	-	(2,573,397)	-	(2,573,397)	14	(2,330,386)
Loan Funding	-	(1,330,057)	-	(1,330,057)	-	(1,330,057)	15	-
Transferred From Section 94	(1,225,000)	(1,378,257)	(1,343,237)	(3,946,494)	(624,000)	(4,570,494)	16	-
Transferred From Reserves	(680,000)	(512,453)	(205,000)	(1,397,453)	(52,000)	(1,449,453)	17	(829)
Add Back Non Cash Property	-	-	-	-	-	-		-
<b>Funds Available</b>	<b>(12,162,375)</b>	<b>(6,421,049)</b>	<b>(2,141,576)</b>	<b>(20,725,000)</b>	<b>(1,579,219)</b>	<b>(22,304,219)</b>		<b>(20,451,591)</b>
<b>Funds Utilised:</b>								
Acquisition of Assets	6,591,485	4,606,517	2,093,025	13,291,027	1,615,180	14,906,207	18	6,025,194
Loan Principal Repayment	443,913	-	-	443,913	-	443,913	19	330,707
Transfer to Section 94	4,282,000	-	-	4,282,000	-	4,282,000	20	-
Transfer to Reserves	800,000	1,723,397	80,500	2,603,897	(25,000)	2,578,897	21	-
<b>Budget Result</b>	<b>(44,977)</b>	<b>(91,135)</b>	<b>31,949</b>	<b>(104,163)</b>	<b>10,961</b>	<b>(93,202)</b>		<b>(14,095,690)</b>

The material variations greater than \$15,000 are detailed in the following section which are crossed referenced to the Income and Expenditure type on the face of the above report.

### **Total Income from continuing operations**

Income from continuing operations was originally forecast at \$47,042,146. This figure after the first half of the year increased to \$49,769,121. The March quarter review has seen an additional amount of \$1,410,919 with total income forecast to be \$51,180,040. The major items resulting in this forecast income adjustment include:

#### **Reference 1 – Rates and Annual Charges**

An increase in Council's Rating Base of \$4,075 attributed to an increase in residential strata units.

#### **Reference 2 – User Charges and Fees**

An overall increase of \$408,300 primarily due to the following:

- An increase in Development Application Fees and Advertising Fees of \$90,000 due to increased applications received.



- A budget adjustment for Development Rezoning Fees in accordance with revised rezoning fees of \$36,000.
- An increase of \$147,500 in Enfield Aquatic Centre income due to increased admissions, learn to swim class attendances and commercial lane hire.
- A \$121,500 increase in Road Closure Permits, Road Opening Permits, Standing Plant Permits and Temporary Work Zones Permits due to the increased development occurring presently within the Burwood Local Government Area.
- \$18,000 additional income in Car Parking Rental from Parnell Street Car Park attributed to the rental of the car park for adjacent building construction works, in Commercial Building Rental mainly due to increased licence agreements.

There were other budget movements within the classification of User Charges and Fees which were under \$15,000 resulting in little or no change to the actual overall budget.

#### **Reference 4 – Other Revenue**

An increase of \$64,000 primarily attributed to the following:

- An increase of \$50,000 in Parking Meter Fines following from the introduction of weekend patrol services.

There were other budget movements within the classification of Other Revenues which were under \$15,000 resulting in minor improvements to the overall budget.

#### **Reference 5 – Operating Grants and Contributions**

A reduction in Operating Grants and Contributions of \$74,636 relates to:

- A decrease in Road and Footpath Restoration Fees of \$130,000, due to income previously being allocated to Capital Contributions in prior budget reports. Contra expenditure items within Reference 10 - Materials & Contracts
- Increase of \$13,849 in Pensioner Rebates for the year
- An additional Grant of \$31,250 from the NSW Environmental Protection Authority for Bin Trim project. Expenditure associated with this project within Reference 10 - Materials and Contracts.

There were other budget movements within the classification of Operating Grants and Contributions which were under by \$15,000 resulting in little or no change to the actual overall budget.

Further grant payments will be brought to account as received. The expenditure items for these grant and contribution monies are distributed within Reference 10 - Materials and Contracts.

#### **Reference 6 – Capital Grants and Contributions**

Council has received an amount of \$1,000,000 from the Department of Infrastructure and Regional Development towards Wangal Park embellishment works. Expenditure associated with the grant has been adjusted accordingly within Reference 18 – Acquisition of Assets.

There was also a contribution amount of \$22,413 reversed as works were completed in previous year. The contribution was reported in the December quarter review as additional income, however, investigations during the quarter revealed an error had occurred. Expenditure associated with the grant has been adjusted accordingly within Reference 18 – Acquisition of Assets.

#### **Reference 7 – Carryover Grants**

A total of \$31,593 Library Grant monies were unspent in the 2015-16 Financial Year have now

been carried over to this financial after receiving approval from the funding authority.

The expenditure items for these grant monies are distributed within Reference 18 - Acquisition of Asset.

### **Total Expenditure from Continuing Operations**

Expenditure from continuing operations was originally forecast at \$44,254,771. This figure after the first half of the year increased to \$44,911,522. The March quarter review has seen a further increase of \$507,700 resulting in a revised forecast of \$45,419,222. The major items resulting in this forecast expenditure adjustment include:

#### **Reference 8 – Employment Costs**

An overall decrease in employee costs of \$44,168 is attributed to, but not limited to, transfers from various Business Units Wages and Salaries components to Contractors – Temporary Staff who are employed to fill vacant positions within the Organisation. Areas which required the transfers during the quarter from Wages and Salaries were Governance, Records and Customer Service and Depot.

Note that there is a commensurate offset within Reference 10 – Materials and Contracts.

There were other budget movements within the classification of Employee Costs which resulted in little or no change to the actual overall budget.

#### **Reference 10 – Materials and Contracts**

An additional expenditure amount of \$545,409 was attributed to various movements within Business Units throughout the budget. Significant movements and additional funding requests were:

- Roads and Footpath Restoration Works a decrease of \$60,000 for Contractors within Reference 5 – Operating Grants and Contributions.
- \$31,250 for the Bin Trim Project funding. Reference 5 - Operating Grants and Contributions
- Increase in Consultancy Costs associated with Building and Development \$50,000 and Town Planning \$65,000 due to the need for expert advice on development matters before the courts and assessment proposals. Contra part funding within Reference 16 – Transferred from Section 94 Contribution.
- Burwood Park Tennis Court Building required an additional \$25,000 for urgent repairs within Reference 17 – Transferred from Reserves.
- Council's Community buildings required an additional \$13,500 for Cleaning Costs.
- Contract Temporary Staff - \$420,456 to fill vacant positions throughout the organisation. These funds were partially sourced from savings within the Wages and Salaries respective budgets within Reference 8 – Employment Costs.

In addition to vacant positions being filled, additional funding was required for contracted temporary staffing of \$180,000 for the continuation of extra staffing in the Building and Development section to assist with the processing of development applications, Environment and Health section received extra funding of \$30,000 for health inspections and parking enforcement an amount of \$50,000 was required to continue weekend enforcement patrols.

There were other budget movements within the classification of Materials and Contracts. These movements had no significant change to the actual overall budget or were transferred to Other Expenses.

## Reference 12 – Other Expenses

An overall increase in expenditure amounting to \$6,459 was attributed to various movements within Business Units throughout the budget. Significant movements and additional funding requests include:

- An overall increase in Waste Disposal Charges of \$109,375 across Street Cleansing Service, Domestic Waste Clean Up Services and Parks maintenance. Additional Costs were funded by the reduction within the Domestic Waste Transfer to Reserve - Reference 21.
- A saving of \$35,000 in Street Light Electricity Charges due to more efficient lighting being installed.
- A review of all Electricity and Gas Charges revealed a savings of \$20,500 for Council for the year.
- A savings \$19,500 in Councillors Fees with the vacant Councillor position.

There were other budget movements within the classification of Other Expenses which were either offset with savings from within respective budgets or funded from Materials and Contracts.

## Capital Expenditure

### Reference 18 – Acquisition of Assets

Council's original adopted 2016-17 Capital Budget, as per Delivery Plan, was \$6,591,485. At the December quarter it had increased to \$13,291,027. As at March quarter there is a further forecasted increase of \$1,615,180 to \$14,906,207.

### **Capital Plant, Equipment and Other Assets:**

Expenditure to 31 March 2017 represents 36.83% of the revised budget as shown in the table below.

### **Property Acquisitions/Disposals:**

There have been no property acquisitions or disposals during the March quarter.

### **Capital Works Program:**

During the March quarter review the Capital Program Working Party assessed and revised the 2016-17 Capital Works Program based on recommendations from the respective Project Managers have made the following adjustments:

- A net increase of \$31,593 for Library Books and Resources associated with the Library carryover grant funding from 2015-16 financial year within Reference 7 – Carryover Grants.
- Wangal Park – an increase of \$1,000,000 through grant funding from the Department of Infrastructure and Regional Development towards Wangal Park embellishment works within Reference 6 – Capital Grants & Contributions.
- Wangal Park – an increase of \$110,000 for stage 1 Planting Programme within Reference 16 - Transferred from Section 94 contributions
- A reduction of \$22,413, reversed as works were completed in previous year within Reference 6 – Capital Grants & Contributions.
- Infrastructure Works at Dunns Lane \$60,000 additional expenditure required due to associated night works within Reference 16 - Transferred from Section 94 contributions.
- An additional amount of \$5,000 for Pedestrian Fencing Railway Pde within Reference 16 - Transferred from Section 94 Contributions.

- Blair Park preliminary flood light investigation works of \$20,000 within Reference 16 - Transferred from Section 94 Contributions.
- Enfield Aquatic Centre Stage 1 upgrade additional amount of \$350,000 required per Tender assessment of works within Reference 16 - Transferred from Section 94 Contributions.
- Waste Bins \$20,000 funded from within Domestic Waste Collection Charge.
- CCTV upgrade at Depot \$27,000 within Reference 17 - Transferred from Reserves
- Weigh Bridge resurfacing of \$14,000 within Reference 16 - Transferred from Section 94 Contributions.

BURWOOD COUNCIL									
Capital Budget Review Statement									
Budget Review for the YTD ended - 31 March 2017									
<u>Income</u>		<u>Adopted Variations</u>		<u>Amended</u>	<u>Recommended</u>	<u>Forecasted</u>			
	<u>Budget</u>	<u>September</u>	<u>December</u>	<u>Budget</u>	<u>Amendments</u>	<u>Year End</u>	<u>Reference</u>	<u>Actuals</u>	
<b>Capital Expenditure</b>									
Renewal Assets (Replacement):									
Fleet Capital Acquisitions Sales	1,350,000	-	-	1,350,000	-	1,350,000	18	497,147	
Furniture and Equipment	-	-	-	-	-	-	18	96,891	
Grant Funded Capital Works	388,540	-	-	388,540	-	388,540	18	-	
Roads	800,000	593,500	60,000	1,453,500	-	1,453,500	18	203,411	
Traffic Facilities	150,000	140,000	397,000	687,000	65,000	752,000	18	435,792	
Footpaths	850,000	341,460	32,000	1,223,460	(50,000)	1,173,460	18	185,152	
Kerb & Gutter	260,000	53,268	-	313,268	50,000	363,268	18	151,660	
Drainage	368,445	185,533	-	553,978	-	553,978	18	8,659	
Park Improvements	225,000	2,062,288	(98,000)	2,189,288	1,130,000	3,319,288	18	1,914,179	
Playground Equip	80,000	-	310,000	390,000	-	390,000	18	-	
Street Furniture	100,000	40,000	305,000	445,000	-	445,000	18	307,796	
Reinstatement Works	-	855,183	642,733	1,497,916	(22,413)	1,475,503	18	994,080	
Street Lighting	-	-	-	-	-	-	18	-	
Library Collection	105,500	-	34,292	139,792	31,593	171,385	18	79,358	
Lib Resources	29,000	-	-	29,000	-	29,000	18	15,001	
IT Projects	290,000	-	-	290,000	-	290,000	18	119,400	
Corporate Projects	500,000	20,000	40,000	560,000	14,000	574,000	18	248,326	
Council Buildings	500,000	315,285	150,000	965,285	27,000	992,285	18	556,858	
Enfield Pool	550,000	-	220,000	770,000	350,000	1,120,000	18	143,604	
Domestic Waste Collection	45,000	-	-	45,000	20,000	65,000	18	57,833	
<b>Total Capital Expenditure</b>	<b>6,591,485</b>	<b>4,606,517</b>	<b>2,093,025</b>	<b>13,291,027</b>	<b>1,615,180</b>	<b>14,906,207</b>		<b>6,015,147</b>	
<b>Capital Funding</b>									
Rates & other Charges	477,515	1,580,293	41,854	2,099,662	38,407	2,138,069			
Capital Grants & Contributions	(4,314,000)	(1,242,646)	(586,642)	(6,143,288)	(977,587)	(7,120,875)			
Loan Funding	-	(1,330,057)	-	(1,330,057)	-	(1,330,057)			
Sale of Assets	(850,000)	(1,723,397)	-	(2,573,397)	-	(2,573,397)			
Reserves:									
Transferred From Section 94	(1,225,000)	(1,378,257)	(1,343,237)	(3,946,494)	(624,000)	(4,570,494)			
Transferred From Reserves	(680,000)	(512,453)	(205,000)	(1,397,453)	(52,000)	(1,449,453)			
<b>Total Capital Funding</b>	<b>(6,591,485)</b>	<b>(4,606,517)</b>	<b>(2,093,025)</b>	<b>(13,291,027)</b>	<b>(1,615,180)</b>	<b>(14,906,207)</b>			

### Transfers to and From Reserves:

#### Reference 16 – Transferred from Section 94

An increase of \$624,000 relating to the following projects:

- Weigh Bridge – Railway Pde resurfacing of \$14,000
- Enfield Aquatic Centre Stage 1 upgrade an amount of \$350,000 required per Tender assessment of works

- Blair Park preliminary flood light investigation works of \$20,000
- \$5,000 for pedestrian fencing Railway Pde
- Wangal Park \$110,000 for stage 1 Planting Programme
- Infrastructure Works at Dunns Lane \$60,000 associated with night works
- \$65,000 for Town Planning assessment proposal review 68-72 Railway Pde

### Reference 17 – Transferred from Reserve

An increase of \$52,000 relating to the following projects:

- CCTV upgrade Depot \$27,000
- \$25,000 for urgent works associated with the Burwood Park Tennis Court Building

### Reference 21 – Transfer to Reserve

A reduction of \$25,000 to cover the cost of additional waste charges in relation to the Domestic Waste Clean Up Service.

### Cash and Investments Budget Review Statement

Cash & Investments							
	Opening Balance as at 1 July 2016 000s	Original Budget 2016-17 000s	Budget Review September 2016-17 000s	Budget Review December 2016-17 000s	Budget Review March 2016-17 000s	Projected Year End Result 000s	Actual YTD figures 000s
Total Cash, Cash Equivalents and Investment Securities	39,449	42,606	41,249	39,779	39,078	39,078	46,092
<b>Restrictions</b>							
<b>External Restrictions</b>							
Developers Contributions Specific Purpose Unexpended Grants	11,055	3,057	-1,378	-1,343	-624	10,767	10,767
Loans	791	-	-4	-3	-	784	784
Stormwater Management	1,330	-	-1,330	-	-	-	-
Domestic Waste Management	0	-	-	-	-	-	-
	1,886	200	-	81	-25	2,142	2,142
<b>Total External Restrictions</b>	<b>15,062</b>	<b>3,257</b>	<b>-2,712</b>	<b>-1,265</b>	<b>-649</b>	<b>13,693</b>	<b>13,693</b>
<b>Internal Restrictions</b>							
Plant & Vehicle Replacement	2,627	40	-	-	-	2,667	2,667
Employees Leave Entitlements	1,356	-	-	-	-	1,356	1,356
Carry Over Works	1,078	-	-	-	-	1,078	1,078
Deposits, Retentions & Bonds	4,144	-	-	-	-	4,144	4,144
Information Technology	438	-145	-	-	-	293	293
OHS	30	-	-	-	-	30	30
Parking Meter Replacement	250	50	-	-205	-	95	95
Property Sales	500	-	-	-	-	500	500
Future Property Investment	4,394	-	1,723	-	-	6,117	6,117
Wangal Park Upgrade	640	-	-640	-	-	-	-
Woodstock Community Building	667	-	-	-	-	667	667
Election	220	-220	200	-	-	200	200
Property Maintenance	560	-	-	-	-25	535	535
Burwood Park Upgrade	1,000	-	-	-	-	1,000	1,000
Car Park Upgrades	574	-	-	-	-	574	574
Enfield Aquatic Centre Maintenance/upgrade	966	75	-	-	-	1,041	1,041
Road & Footpath Restorations	527	-	-	-	-	527	527
Insurances	786	100	-	-	-	886	886
CCTV	178	-	-	-	-27	151	151
Other	189	-	72	-	-	261	261
<b>Total Internal Restrictions</b>	<b>21,124</b>	<b>-100</b>	<b>1,355</b>	<b>-205</b>	<b>-52</b>	<b>22,122</b>	<b>22,122</b>
<b>Total Restrictions</b>	<b>36,186</b>	<b>3,157</b>	<b>-1,357</b>	<b>-1,470</b>	<b>-701</b>	<b>35,815</b>	<b>35,815</b>
<b>Unrestricted Cash</b>	<b>3,263</b>	<b>3,263</b>	<b>3,263</b>	<b>3,263</b>	<b>3,263</b>	<b>3,263</b>	<b>10,277</b>

Council's Current Unrestricted Cash is distorted as Council has received a high volume of rate revenue as at 31 March 2017. The Unrestricted Cash figure will fluctuate during the year as it will

be used to fund planned expenditure.

### **Investments:**

Council's investments have been made in accordance with the Investment Policy and the Investment Guidelines issued by the Minister for Local Government at the time of their placement. Previous investments which have been affected by the Global Financial Crisis (GFC) are covered by the "Grandfather" clauses of the new investment guidelines issued by the Minister. As at 31 March 2017, Council's investment portfolio stood at \$46,092,275. Council's Investments are tabled on a monthly basis as a separate report.

### **Cash:**

Council's Finance Staff undertake a monthly bank reconciliation, which reconciles funds held in Council's General Fund Bank Account with those within its ledger. The most recent reconciliation was undertaken on 3 April 2017 for the month ending 31 March 2017 and the balance in Council's General Fund Bank Account totalled \$304,961.69.

## **Key Performance Indicators Statement**

In assessing an organisation's financial position, there are a number of performance indicators that can assist to easily identify whether or not an organisation is financially sound. These indicators and their associated benchmarks, as stipulated by the Local Government NSW are set out below.

	Performance Indicator	2016-17 Original Budget	2016-17 Budget Sept Review	2016-17 Budget Dec Review	2016-17 Budget Mar Review	Local Government or NSW Treasury Corp Bench Mark	March Quarter Comments
1	Operating Performance Ratio	-3.57%	-2.99%	-2.95%	-3.09%	Greater or equal to break-even	Tracking to revised result
2	Consolidated Budget Result	\$44,977 Surplus	\$136,112 Surplus	\$104,163 Surplus	\$93,202 Surplus	N/A	Current budget tracking to revised result.
3	Unrestricted Current Ratio	3.59:1	3.4:1	3.41:1	3.63:1	Greater or equal to 1.5:1	Above the benchmark due to previous years property sales.
4	Debt Service Result	1.84%	1.81%	1.80%	1.78%	Greater than Zero	Tracking as per Budget.
5	Rates and Annual Charges Outstanding %	2.38%	64.94%	37.67%	19.74%	Less than or equal to 5%	For the year to 31 March 2017 Council has received \$20,230,722 in payment of Rates, Annual Charges and Interest levied which equates to 80.26%.
6	Building and Infrastructure Renewals Ratio	103%	132%	188%	220%	>100% or 1:1	Ratio has improved due to additional works commissioned during the quarter.

### **1. Operating Performance Ratio**

The Operating Performance Ratio measures the ability of Council to contain operating expenditure within operating revenue excluding capital amounts. An indicator of "equal to or greater than zero percent".

### **2. Consolidated (Budget) Result**

The Consolidated (Budget) Result is the increase or call on Council funds which shows the source and application of both Operating and Capital Income and Expenditure along with transfers to and from Reserves applicable to those activities. A Surplus is a positive financial indicator.

### **3. Unrestricted Current Ratio**

The Unrestricted Current Ratio is an industry based liquidity ratio which measures the serviceability of debt. Over time the preferred level of adherence has shifted from 2:1 (or \$2 in cash for every \$1

of debt) to 1.5:1. Some local government practitioners (including independent auditors) consider 1:1 is satisfactory. Council currently projects to have a ratio of 3.63:1 at years end. A ratio greater than 1.5 is a positive financial indicator.

#### 4. Debt Service Result

This ratio measures annual debt service costs (Principal and Interest) against operating result before capital excluding interest and depreciation. NSW Treasury Corporation benchmark suggests an indicator at 2% minimum. A ratio of 2.1 or more is a positive financial indicator.

#### 5. Rates and Annual Charges Outstanding Percentage

This indicator measures the collectability of Council's rates and annual charges revenue and highlights the strengths of collection policies and strategies. A ratio of 5% or less is a positive financial indicator. Currently Council has collected 80.26% of the Rates and Annual Charges raised, based on these figures a collection rate for the year will be in the same percentage band as previous years, below the Office of Local Government recommended 5% level.

#### 6. Building and Infrastructure Renewal Ratio

This ratio indicates the rate of renewal/replacement of existing assets as against the depreciation of the same category of Assets. A ratio greater than one is a positive financial indicator.

### Budget Review Contracts and Other Expenses

#### Part A – Contracts Listing

The following contracts were entered into by Council during the quarter ending 31 March 2017.

Contractor	Contract Details and Purpose	Commencement Date	Duration of contract	Budgeted
Icon Building Group	Enfield Aquatic Centre – Stage 1 Amenities Upgrade	23 March 2017	15 July 2017	Y

**Part B – Legal Expenses**

Type	Description	Expenditure YTD (\$)	Recovery YTD \$	Fines YTD \$
Rates Recovery Action	Various Properties	16,318.00	15,588.00	
Legal Advice	2a Chelmsford Avenue Croydon	642.20		
Legal Advice	1-17 Elsie St Property Purchase	1,125.60		
Infringement Notices (Health)	Health Infringements - Paid Fines	91.60		
Legal Advice	Breach of Consent - 1-3 Marmaduke St	504.90		
Legal Advice	20 The Strand Croydon	1,681.65		
Draft Voluntary Planning Agreement	1-3 Elizabeth Street	3,236.00		
Voluntary Planning Agreement	DA 52/2016, 6 Railway Pde Burwood	3,013.01		
Planning Agreement	DA 710/2016, 29 George St Burwood	3,093.05		
Voluntary Planning Agreement	185F Burwood Road Burwood	1,786.65		
Voluntary Planning Agreement	DA 098/2016 9-15 George st Burwood	3,028.50		
Voluntary Planning Agreement	4 Railway Parade	3,017.00		
Voluntary Planning Agreement	20 The Strand, Croydon	800.00		
Voluntary Planning Agreement	Strathfield Recreation Club Ltd	2,001.00		
Legal Advice	16 Lyons St, Strathfield & Bells Lane, Road Reserve Widening	1,650.00		
Legal Advice	Waste Disposal Services, Cost Recovery	4,448.80		
Legal Advice	1 Railway Parade- Positive Covenant Advice	412.00		
Legal Advice	Resource Recovery Order & Exemptions	4,401.00		
Legal Advice	Legal Assistance - Share Cowra Shire Council legal cost	446.98		
Legal Advice	Wangal Park Topsoil	1,925.00		
Legal Advice	Advice regarding Westconnex land acquisition			
Appeal, Land & Environment Court	1-3 Elizabeth Street	10,587.56		
Construction Certificates	1 Railway Parade	5,609.60		
Class 3 Cost	Awarded to BC - 2013 - 1 Railway Pde (Ralan Burwood P/L)	1,559.45		
Voluntary Planning Agreement	25-29 Mitchell Street Croydon Park	3,018.10		
Voluntary Planning Agreement	180-186 Burwood Road	3,293.00		
Appeal, Land & Environment Court	7B-9 Church Street DA 136/2014	1,387.20	3,055.00	
Illegal Building Works	2 Culdees Road	111.27		
Legal Advice	Removal of Scaffolding, 248-250 Liverpool Rd Enfield	35,062.11		
Land & Environment Court	62-66 Parramatta Rd Croydon	15,259.65		
Legal Advice	2A Shearars Avenue Strathfield - tree works without consent	1,543.10		
Legal Advice	Littering Offence - Constantinos Kontos	1,887.82		
Legal Advice	45 Cheltenham Rd Croydon - breach of EPA act 1979, S125(1) - no consent works & used as boarding house	16,157.59		
Legal Advice	20A Angelo St Burwood - Liana Sugrono unlawful works	2,531.26		
	6 Railway Parade Burwood (DA52/2016)	7,700.00		
Legal Advice	146-150 Liverpool Road Enfield (DA 54/2015)	4,026.48		
Legal Advice	Joe Hassarati and Co Pty Ltd building consent breach on Liverpool Road	4,992.60		
Legal Advice	Lease Aquatic Centre	1,417.50		
Land & Environment Court	12-14 Gloucester St Burwood	30,587.76		
Legal Advice	Vestra Const P/L, Loc Court Proceedings	1,425.73		
Legal Advice	Nascon Property Group P/L	1,557.73		
Legal Advice	Class1 L&E Court Proc 17/24930 vs Elisa Lorenzato	12,129.38		
Professional Fees	Amalgamation; Strathfield Cncl v Min of LocGovt			
Legal Advice	Wynne Ave Carpark	7,832.14		
Legal Advice	1-17 Elsie St 4 car spaces legal fees; car spaces registration	536.30		
Legal Advice	Legal Fees - Consent to transfer of Interest by Burwood Montessori Academy	912.50		
Legal Advice	Deane Street Closure, Acquisition & Sale	4,018.10		
<b>Total</b>		<b>228,766.87</b>	<b>18,643.00</b>	<b>0.00</b>
<b>Capital Works</b>				
Legal Advice	Contaminated Top Soil - Wangal Park	1,419.00		
<b>Grand Total</b>		<b>230,185.87</b>	<b>18,643.00</b>	
<b>Annual Budget</b>		<b>561,600</b>		



## **Conclusion**

The current forecast budget result and the variations identified as part of the 31 March 2017 Quarter review have been undertaken by the Executive Team and the Chief Finance Officer.

There were minor income and expenditure changes made throughout the budget which had minimal effect on the projected surplus.

There are a number of budget items that will require close monitoring and reviewed over the next three months, including Enforcement Fine income, Car Parking income, Development Application income and Town Planning Consultancy expenses, Temporary Agency Staff expenses, Wages and Salaries Overtime, Commercial Waste activities, Footpath and Kerb and Gutter Maintenance, Private Works, Road and Footpath Restoration works and Enfield Aquatic Centre revenue and expenditure.

## **Regulatory Compliance**

In compliance with the requirements of Clause 203(2) of the Regulations, the Responsible Accounting Officer must prepare and submit to Council a budget review statement and form an opinion as to whether the statements indicate that the financial position of the Council is satisfactory. The Chief Finance Officer has been delegated as the Responsible Accounting Officer by the General Manager.

The following is the Responsible Accounting Officer (Chief Finance Officer) opinion:

*"It is my opinion that the Quarterly Budget Review Statement for Burwood Council for the quarter ended 31 March 2017 indicated in the above report, takes into account and reflects the changing economic and other conditions that are currently impacting on Council. Council is in a satisfactory position however, it will be essential for the forecast Surplus to be continually monitored by the Executive and their immediate Managers during the remainder of the financial year, with particular attention being provided to maintaining revenue streams and monitoring expenditure to deliver the forecast surplus and pursue strategies to maintain Council's sustainability"*

## **Recommendation(s)**

1. That the Budget Review Statement of the 2016-17 Budget as at 31 March 2017, including the statement by the Responsible Accounting Officer, Chief Finance Officer, be received and noted.
2. That in accordance with Clauses 203 and 211 of the *Local Government (General) Regulations 2005*, the revised estimates of income and expenditure for 2016-17 surplus of \$93,202, as shown in the report be approved and that Council's adopted budget be adjusted accordingly and that the expenditure and income variations projected in the report be, and are hereby voted.

## **Attachments**

There are no attachments for this report.

## (ITEM 28/17) DELIVERY PROGRAM 2013/17 - QUARTERLY REPORT FOR THE PERIOD ENDING 31 MARCH 2017

File No: 17/21269

REPORT BY DEPUTY GENERAL MANAGER CORPORATE, GOVERNANCE &amp; COMMUNITY

### **Summary**

Following the introduction of the Integrated Planning and Reporting framework in 2009, Section 404(5) of the *Local Government Act 1993* requires that the General Manager provide progress reports to the Council, at least every six months, as to its progress with respect to the principal activities detailed in its Delivery Program.

As per Burwood Council's Delivery Program 2013/17 (Strategic Goal 2.1.2), a review of the Program is to be presented to Council on a quarterly basis.

### **Background**

The report reflects the structure of the Delivery Program 2013/17 and Operational Plan 2016/17, which in turn follow the targets identified by the Community in 2010 and 2013 as part of the Burwood2030 Community Strategic Plan.

The strategic goals are divided into five themes:

- A Sense of Community
- Leadership Through Innovation
- A Sustainable Natural Environment
- Accessible Services and Facilities
- A Vibrant Economic Community

Each strategic goal is divided into actions, which represent the specific initiatives Council proposes to implement to achieve the identified targets. The Delivery Program includes a total of 243 actions, allocated into quarters as part of the annual Operational Plan.

The reporting structure features:

- planned action
- identified performance measure
- target (indicating in which quarter Council plans to start or deliver the service)
- status (a management assessment of the project/activity)
- comment

### **Reporting Structure**

Key users are required to provide a rating (Status) and a comment for each strategic action they are responsible for. The rating options are as follows:

On Track	The activity/project has been completed on time, or is ongoing and progressing regularly
Watch	The activity/project in underway, but has not been completed on time, or its completion date has been postponed
No Activity	The activity/project has not started
Not Due	No activity is planned for that specific quarter

These requirements support and promote a continuous risk evaluation process for staff and management, which allows the identification of risks and opportunities at an early stage in the delivery of activities/projects.

## Measuring our success

For the period 1 January – 31 March 2017, Council has registered the following progress:

Status	Number
On Track	239
Watch	0
No Activity	2
Not Due	2
<b>Total</b>	<b>243</b>

In addition to the full Quarterly Review report (see attached) the General Manager and Executive Team provide to Council and the public an exception report highlighting and explaining the top 5 actions that have been rated as “Watch” or “No Activity” based on a management risk assessment.

For the reporting period 1 January – 31 March 2017 there were two “No Activity” items, zero “Watch” items and two “Not Due” items.

Below is a summary of the “No Activity” items:

Strategic Goal	Action	Target	Comment
2.5.4 Conduct a comprehensive biannual customer survey regarding satisfaction with Council's performance and service provision	2.5.4.1 Design, implement and report on biannual customer survey	Survey to be undertaken in 2015 and 2017	The biannual survey has been deferred due to pending Council amalgamations
2.3.1 Attract, engage, develop and retain the best and most highly skilled staff to strengthen workforce capability	2.3.1.2 Survey staff on employee relations and learning needs	Conduct employee survey every two years and action top five areas for improvement	Council's Employee Opinion survey was due to be conducted in November 2016 however has been put on hold as a consequence of the pending Council amalgamation with Canada Bay and Strathfield Councils. The situation will be reviewed during the 4th quarter

## Consultation

Once the Plan is endorsed by Council, the Delivery Program Quarterly Report will be made available to the public on Council's Website, and in hard copy at the Library and Community Hub, and at the Customer Service Centre.

## Planning or Policy Implications

In accordance with Section 404(5) of the *Local Government Act 1993* the General Manager must provide progress reports to the Council, at least every six months, as to its progress with respect to the principal activities detailed in its Delivery Program.

Burwood Council's Delivery Program 2013/17 (Strategic Goal 2.1.2) requires that a review of the Program is to be presented to Council on a quarterly basis.

**Financial Implications**

No Financial implications.

***Recommendation(s)***

That Council endorse the Delivery Program 2013/17 Quarterly Report for the period ending 31 March 2017.

**Attachments**

Quarterly Report will be distributed separately.

**(ITEM 29/17) INVESTMENT REPORT AS AT 30 APRIL 2017**

File No: 17/21119

REPORT BY CHIEF FINANCE OFFICER

**Summary**

In accordance with Clause 212 of the *Local Government (General) Regulation 2005*, this report details all money that Council has invested under Section 625 of the *Local Government Act 1993*.

**Background**

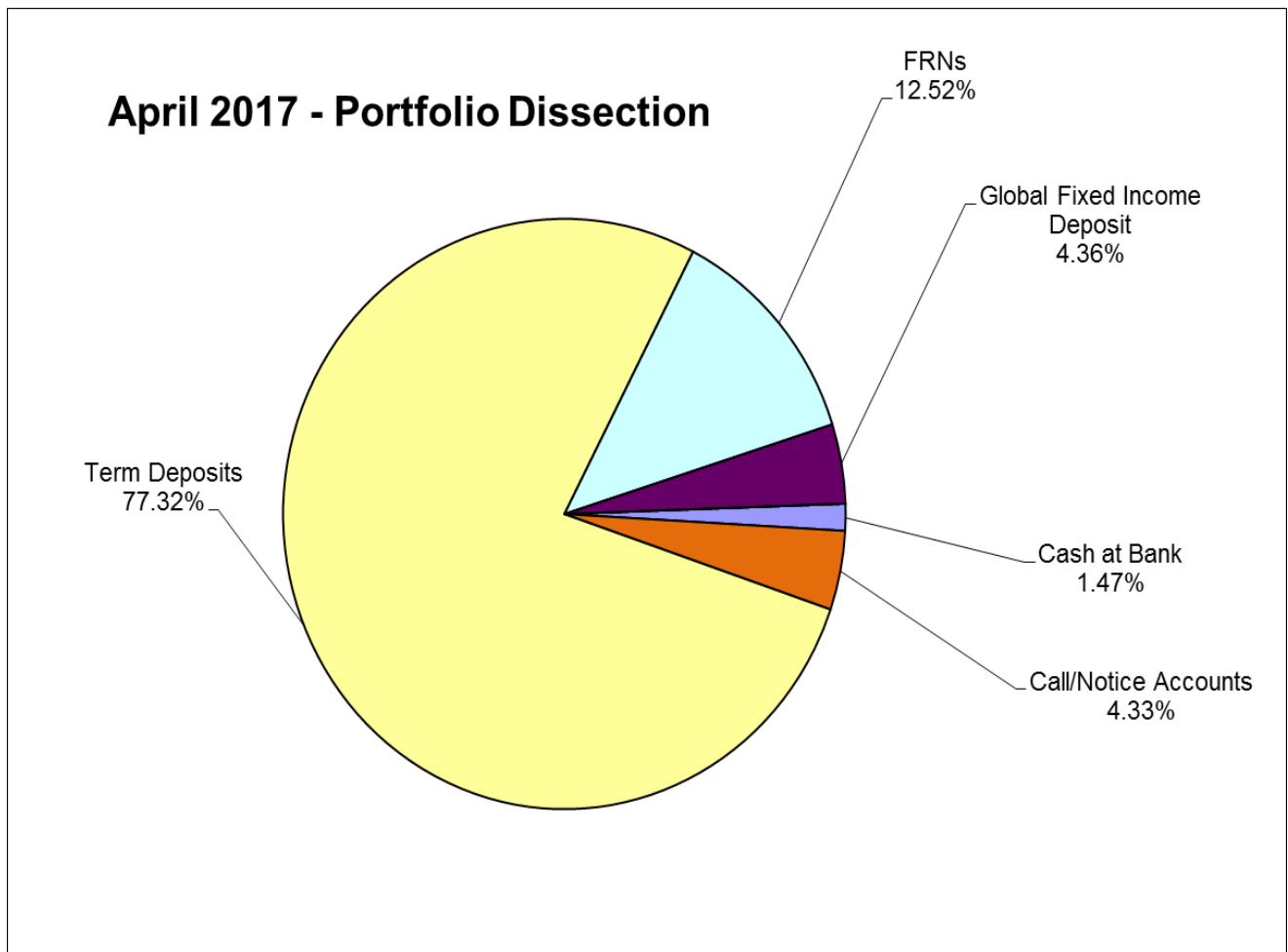
As provided for in Clause 212 of the *Local Government (General) Regulation 2005*, a report listing Council’s investments must be presented to Council.

Council’s investments are made up of a number of direct investments, some of which are managed or advised by external agencies.

In accordance with Council’s adopted Investment Policy and in line with Office of Local Government Investment Guidelines the portfolio contains investments which are covered by “grandfather” clauses, including investments in Floating Rate Notes (FRN) and Collateralised Debt Obligations (CDO).

**Investment Portfolio**

Council has a diversified investment portfolio and has a number of direct investments in term deposits. The investment portfolio as at 30 April 2017 is:

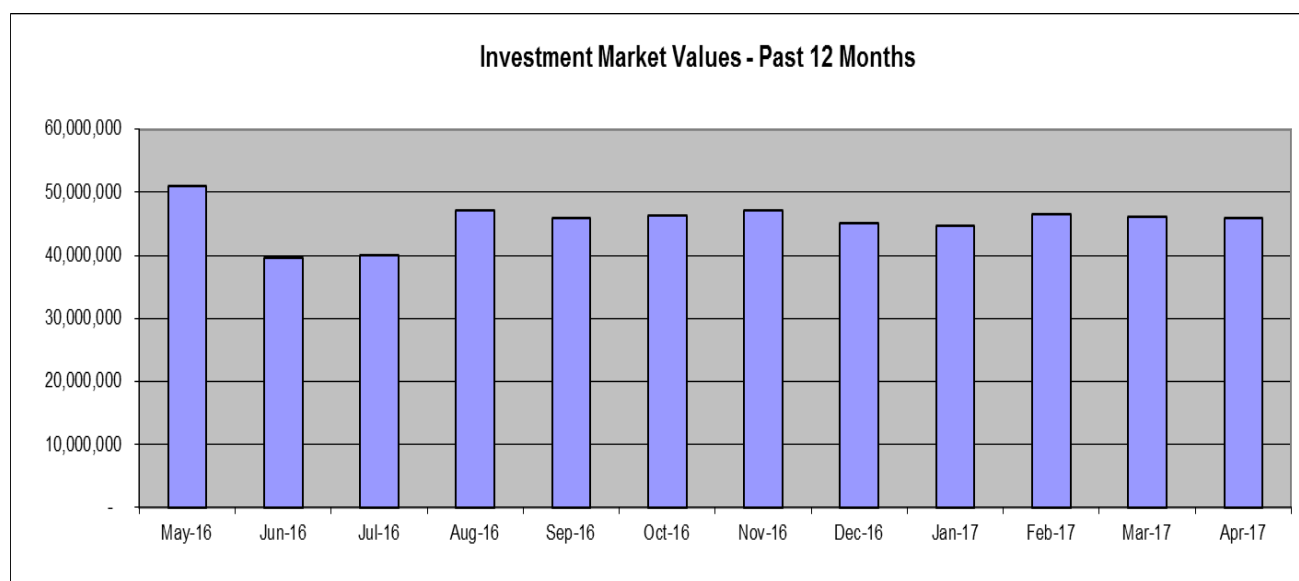


During the month of March 2017 Council received a distribution on the Lehman Brothers Global Property Note under Chapter 11 bankruptcy status through actions in the US Bankruptcy Courts. This distribution was valued at \$2,205.27 AUS, bringing a total distribution of \$50,839.52 AUS on the Lehman Brothers Property Note to date through the US Courts.

As at 30 April 2017 Council held the following term deposits:

Purchase Date	Financial Institution	Principal Investment Amount	Interest Rate	Investment Days	Maturity Date
06-Mar-17	AMP Bank (Curve)	3,000,000	2.75%	182	04-Sep-2017
24-Mar-17	AMP Bank (Curve)	2,000,000	2.75%	180	20-Sep-2017
12-Jan-17	Bank of Queensland	2,000,000	2.80%	180	11-Jul-2017
27-Jan-17	Bank of Queensland	3,000,000	2.75%	180	26-Jul-2017
20-Apr-17	Bank of Queensland	2,000,000	2.65%	180	17-Oct-2017
27-Feb-17	Bankwest	3,000,000	2.60%	182	28-Aug-2017
24-Mar-17	Bankwest	3,000,000	2.60%	180	20-Sep-2017
03-Mar-17	ING Bank	2,000,000	2.70%	180	30-Aug-2017
26-Apr-17	ING Bank	3,000,000	2.69%	180	23-Oct-2017
28-Feb-17	ME Bank (Curve)	2,000,000	2.62%	181	28-Aug-2017
30-Jan-17	National Australia Bank	2,500,000	2.55%	91	01-May-2017
22-Nov-16	National Australia Bank	2,000,000	2.70%	181	22-May-2017
11-Apr-17	National Australia Bank	2,000,000	2.57%	90	10-Jul-2017
03-Apr-17	Suncorp Bank	4,000,000	2.60%	183	03-Oct-2017
Total		<b>35,500,000</b>			

The following graph highlights Council's investment balances for the past 12 months:



Council's investment portfolio is recognised at market value and some of its investments are based on the midpoint valuations of the underlying assets and are subject to market conditions that occur over the month.

Council's investment balances as at reporting date and for the previous two months are detailed in Attachment 1. Definitions on the types of investments are detailed in Attachment 2.

### **Investment Performance and Market Commentary**

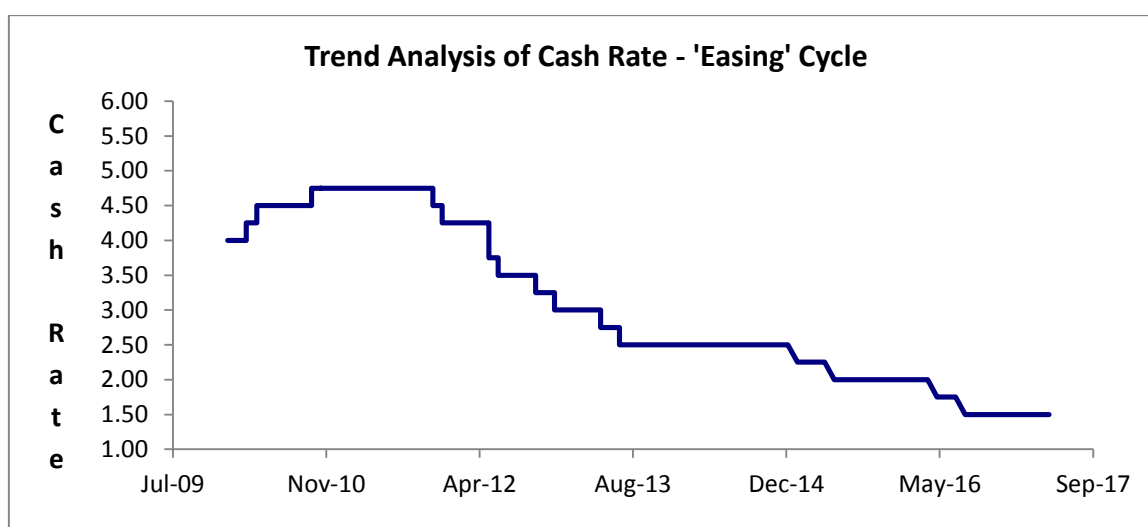
The Reserve Bank of Australia (RBA) at its 2 May 2017 Board Meeting kept the official cash rate at 1.50% per annum. "... The global economy has seen a broad-based pick-up since last year. Labour markets have tightened further in many countries and forecasts for global growth have

been revised up. Above-trend growth is expected in a number of advanced economies although uncertainties remain. The improvement in the global economy has contributed to higher commodity prices, which are providing a significant boost to Australia's national income.

In Australia, the economy is continuing its transition following the mining investment boom, with the drag from the decline in mining investment coming to an end and exports of resources picking up. Growth in consumption is expected to remain moderate and broadly in line with incomes. Non-mining investment remains low as a share of GDP and a stronger pick-up would be welcome. Inflation picked up to 2 per cent in the March quarter in line with the Bank's expectations. In underlying terms, inflation is running at around 1 ¾ per cent, a little higher than last year. A gradual further increase in underlying inflation is expected as the economy strengthens.

The Board has judged that holding the stance of monetary policy unchanged at this meeting would be consistent with sustainable growth in the economy and achieving the inflation target over time...." Statement by Philip Lowe, Governor: Monetary Policy Decision – 2 May 2017

The following graph provides information on the current RBA monetary policy:



### ***Recommendation(s)***

1. That the Investment Report for 30 April 2017 be received and endorsed.
2. That the Certificate of the Responsible Accounting Officer be received and noted.

### **Attachments**

- 1 [↓](#) Investment Register - April 2017 1 Page
- 2 [↓](#) Types of Investments - April 2017 1 Page

ITEM 29/17 Investment Report as at 30 April 2017.DOC  
Investment Register - April 2017

BURWOOD COUNCIL  
INVESTMENT PORTFOLIO  
as at 30 April 2017

Investment Adviser	Issuer	Investment Name	Type	Rating S&P	Invested Amount	Market Value as at 28 February	Market Value as at 31 March	Market Value as at Reporting Date	% of Total Invested	ADI or N-ADI
<b>Cash &amp; Deposits at Call</b>										
Council	Commonwealth Bank	Operating Account	Cash	AA-	673,787	1,853,388	408,421	673,787	1.47	ADI
Council	Commonwealth Bank	Online Saver	AT Call	AA-	1,931,036	2,375,887	2,377,420	1,931,036	4.21	ADI
Council	AMP Bank	AMP Business Saver & Notice Account	AT Call / Notice 30 days	AA-	57,863	1,096,823	56,434	57,863	0.13	ADI
<b>Term Deposits - Term (30-180 days)</b>										
Council	AMP Bank (Curve)	AMP Bank	Term Deposit	AA-	3,000,000	3,000,000	3,000,000	3,000,000	6.53	ADI
Council	AMP Bank (Curve)	AMP Bank	Term Deposit	AA-	2,000,000	-	2,000,000	2,000,000	4.36	ADI
Council	Bank of Queensland	Bank of Queensland	Term Deposit	A-	2,000,000	2,000,000	2,000,000	2,000,000	4.36	ADI
Council	Bank of Queensland	Bank of Queensland	Term Deposit	A-	3,000,000	3,000,000	3,000,000	3,000,000	6.53	ADI
Council	Bank of Queensland	Bank of Queensland	Term Deposit	A-	2,000,000	2,000,000	2,000,000	2,000,000	4.36	ADI
Council	BankWest	Bank of Western Australia	Term Deposit	AA-	3,000,000	3,000,000	3,000,000	3,000,000	6.53	ADI
Council	ING Bank	ING	Term Deposit	A	2,000,000	2,000,000	2,000,000	2,000,000	4.36	ADI
Council	ING Bank	ING	Term Deposit	A	3,000,000	-	-	3,000,000	6.53	ADI
Council	ME Bank (Curve)	ME Bank	Term Deposit	BBB+	2,000,000	2,000,000	2,000,000	2,000,000	4.36	ADI
Council	National Australia Bank	National Australia Bank	Term Deposit	AA-	2,500,000	2,500,000	2,500,000	2,500,000	5.45	ADI
Council	National Australia Bank	National Australia Bank	Term Deposit	AA-	-	3,000,000	3,000,000	-	-	ADI
Council	National Australia Bank	National Australia Bank	Term Deposit	AA-	2,000,000	2,000,000	2,000,000	2,000,000	4.36	ADI
Council	National Australia Bank	National Australia Bank	Term Deposit	AA-	2,000,000	2,000,000	2,000,000	2,000,000	4.36	ADI
Council	Suncorp-Metway Limited	Suncorp	Term Deposit	A+	4,000,000	-	-	4,000,000	-	ADI
Council	Suncorp-Metway Limited	Suncorp	Term Deposit	A+	4,000,000	-	4,000,000	4,000,000	8.71	ADI
<b>Short - Medium Term (1-2 Years)</b>										
Council	Stove Research - Lehman Brothers	Treasury BV #	CDO Global Property Note	D	-	-	-	-	-	N-ADI
<b>Medium Term (2-5 Years)</b>										
Council	Suncorp-Metway Limited	Suncorp-Metway Limited	Floating Rate Notes (90 day BBSW mid +94 bps)	A+	2,000,000	2,000,000	2,000,000	2,000,000	4.36	ADI
Council	Bank of Queensland	Bank of Queensland	Floating Rate Notes (90 day BBSW +105 bps)	A-	1,000,000	1,000,000	1,000,000	1,000,000	2.18	ADI
Council	Bendigo-Adelaide	Bendigo Bank & Adelaide Bank	Floating Rate Medium Term Notes (90 day BBSW +110 bps)	A-	1,000,000	1,000,000	1,000,000	1,000,000	2.18	ADI
Council	Commonwealth Bank	Commonwealth Bank	Floating Rate Notes (90 day BBSW +75 bps)	AA-	1,000,000	1,000,000	1,000,000	1,000,000	2.18	ADI
Council	AMP Bank Limited	AMP Bank Limited	Floating Rate Notes (90 day BBSW +110 bps)	AA-	750,000	750,000	750,000	750,000	1.63	ADI
Council	Commonwealth Bank	Commonwealth Bank	Global Fixed Income Deposit	AA-	2,000,000	2,000,000	2,000,000	2,000,000	4.36	ADI

45,912,706 46,576,097 45,092,275 100

Credit Ratings	
AAA	Extremely strong capacity to meet financial commitments Highest Rating
AA	Very strong capacity to meet financial commitments.
A	Strong capacity to meet financial commitments but somewhat susceptible to adverse economic conditions and changes in circumstances.
BBB	Adequate capacity to meet financial commitments, but more subject to adverse economic conditions.
CCC	Currently vulnerable and dependent on favourable business, financial and economic conditions to meet financial commitments
D	Payment default on financial commitments
+	Means that a rating may be raised
-	Means that a rating may be lowered

**Certificate of Responsible Accounting Officer**  
I hereby certify that the investments listed have been made in accordance with Section 625 of the Local Government Act 1993, Clause 212 of the Local Government (General) Regulation 2005 and Council's Investment Policies at the time of their placement.

*W. Armitage*  
Wayne Armitage  
Chief Finance Officer



### Types of Investments

Council's investment portfolio consists of the following types of investment:

1. **Cash and Deposits at Call** – Cash and Deposits at Call accounts are a flexible savings facility providing a competitive rate of interest for funds which are at call (available within 24hours). These accounts enable us to control Council's cashflows along with council's General Fund Bank account. Interest rates are updated in accordance with movements in market rates.

The following investments are classified as Cash and Deposits at Call:

- Commonwealth Bank of Australia – Online Saver AA-
- AMP Business Saver and Notice – At Call/Notice AA-
- Macquarie Treasury – At Call account A
- UBS Bank – At Call High Yield account A

2. **Floating Rate Notes (FRN)** - FRNs are a contractual obligation whereby the issuer has an obligation to pay the investor an interest coupon payment which is based on a margin above bank bill. The risk to the investor is the ability of the issuer to meet the obligation.

FRNs are either sub-debt or senior-debt which means that they are guaranteed by the bank that issues them with sub-debt notes rated a notch lower than the bank itself. The reason for this is that the hierarchy for payments of debt in event of default is:

- a. Term Deposits
- b. Global Fixed Income Deposits
- c. Senior Debt
- d. Subordinated Debt
- e. Hybrids
- f. Preference shares
- g. Equity holders

In the case of default, the purchaser of subordinated debt is not paid until the senior debt holders are paid in full. Subordinated debt is therefore more risky than senior debt.

## **(ITEM 30/17) ADOPTION - DRAFT CODE OF CONDUCT AND THE PROCEDURES FOR THE ADMINISTRATION OF THE CODE OF CONDUCT**

File No: 17/19684

REPORT BY DEPUTY GENERAL MANAGER CORPORATE, GOVERNANCE & COMMUNITY

### **Summary**

In November 2015 the Office of Local Government issued the new Model Code of Conduct (the Model Code) Circular 15-41 in relation to the commencement of the *Local Government Amendment (Councillor Misconduct and Poor Performance Act) 2015* and the amendments to the *Local Government Act 1993*. Council's Code of Conduct was reviewed in line with the changes to the legislation and other enhancements have been made which are outlined in the Report. The Code of Conduct and the Procedures for the Administration of the Code of Conduct have been merged for ease of use.

### **Background**

The current Code of Conduct and the Procedures for the Administration of the Code of Conduct were last adopted by Council on 12 February 2013.

### **Proposal**

The Model Code and procedures are supported by the *Local Government Amendment (Councillors Misconduct and Poor Performance Act) 2015*. These changes have had an effect on the *Local Government Act 1993* and are as follows:

1. Councillors who have previously been suspended on two or more occasions will be automatically disqualified from holding office in a Council for five years if they are suspended on a further occasion. Councillors who have been suspended on two or more occasions will be written to directly by the Office of Local Government.
2. The definition of "misconduct" has been expanded to include acts or omission by Councillors that are intended to prevent the proper or effective function of a council or a committee of a Council (e.g. by disrupting decision making).
3. Councillors will no longer be permitted to participate in the consideration of the making, amendment, alteration or repeal of an environmental planning instrument applying to the whole of or a significant part of their local government area that they have pecuniary interest in, unless:
  - the only interests affected by the changes are the interest they or their relatives have in their principal places of residence
  - they have made a special disclosure of the affected interests
4. Notice is no longer required of a motion to censure a Councillor for misconduct under Section 440(g) of the Act. Under the *Procedures of the Administration of the Code of Conduct*, Councils can only formally censure a Councillor for misconduct where this is recommended in a report by an independent investigator. This will reported to the Councillor by Council's Complaints Co-ordinator (Internal Ombudsman).

Key changes to the Code are summarised below:

- Amendment, alteration, repeal - Making of a Principal Environmental Planning Instrument applying to the whole or a significant part of the Council area - Clause 4.29 has been

amended to include point (b) *the non-pecuniary conflict of interests arises only because of an interest that the person has in that person's principal place of residence.*

- Where Council has developed additional policies, corporate practices and procedures to complement the Code of Conduct, these documents provide clear direction on the requirements, they have been listed under the appropriate section in the Code and Procedures.
- Additional recommendations by the Internal Ombudsman have been included throughout the document and marked additional Burwood Council Clause.

These changes are designed to:

- Ensure a faster but fair investigation process for Councillor misconduct
- Remove impediments to effective action in response to serious corrupt conduct
- Maximise the effectiveness of Performance Improvement Orders issued by the Minister for Local Government to a Council
- More effectively address Council maladministration

Council is required to adopt the Models provided by the Office of Local Government. The Models can only be added to or enhanced without changing its intent. Burwood Council's Code of Conduct and the Procedure for the Administration of the Code of Conduct have been enhanced with the recommendations from ICAC Report April 2011 and the additional clauses specific to Burwood including clauses suggested by the Internal Ombudsman.

All amendments/additions are in red.

The Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct is now submitted to Council for adoption.

### **Consultation**

The General Manager and the Policy, Corporate Practice and Procedures Panel have approved the Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct.

The Code of Conduct including the Administration of the Code of Conduct Procedures will be published on Council's website for viewing by members of the public.

Councillors were provided training at the Councillor's Workshop on 18 April 2017 and Council Officers will be provided training once the documents are adopted by Council.

### **Planning or Policy Implications**

The Draft - Code of Conduct including the Procedures for the Administration of the Code of Conduct will replace the superseded documents.

### **Financial Implications**

No Financial implications.

### **Conclusion**

The Draft - Code of Conduct including the Administration of the Code of Conduct Procedures ensures Council's policy is in line with the requirements of the Office of Local Government.

***Recommendation(s)***

That Council adopts the Draft - Code of Conduct including the Procedures for the Administration of the Code of Conduct.

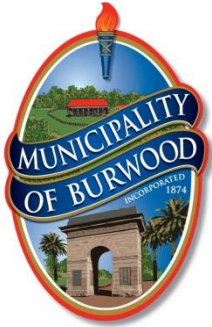
**Attachments**

1 [↓](#) Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct

ATTACHMENT 1

ITEM 30/17 Adoption - Draft Code of Conduct and the Procedures for the Administration of the Code of Conduct.DOC

Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct



# *Burwood Council*

heritage ■ progress ■ pride

## **DRAFT - CODE OF CONDUCT AND PROCEDURES FOR THE ADMINISTRATION OF THE CODE OF CONDUCT**

Based on the Office of Local Government Model Code of Conduct with additions  
clauses relating to Burwood Council

PO Box 240, BURWOOD NSW 1805  
Suite 1, Level 2, 1-17 Elsie Street, BURWOOD NSW 2134  
Phone: 9911-9911 Fax: 9911-9900  
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Website: www.burwood.nsw.gov.au

Public Document  
Adopted by the Council:  
Trim No.: 17/15747  
Version No: 6 Code of Conduct  
Version No: 2 Procedures for the Administration of the Code of Conduct  
Ownership: Governance

**ATTACHMENT 1**

**ITEM 30/17 Adoption - Draft Code of Conduct and the Procedures for the Administration of the Code of Conduct.DOC**

**Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct**

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**ITEM 30/17 Adoption - Draft Code of Conduct and the Procedures for the Administration of the Code of Conduct.DOC**

**Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct**

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#### Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct

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## PART 1 INTRODUCTION TO THE CODE OF CONDUCT

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The Code of Conduct for Local Councils in NSW (“the Model Code of Conduct”) is made for the purposes of section 440 of the *Local Government Act 1993* (“the Act”). Section 440 of the Act requires every Council to adopt a code of conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all parts of this document.

Councillors, Administrators, members of staff of Council, independent conduct reviewers, members of Council committees including a conduct review committee and delegates of the Council must comply with the applicable provisions of Council’s code of conduct in carrying out their functions as Council officials. It is the personal responsibility of Council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind.

Failure by a Councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on Councillors for misconduct, including suspension or disqualification from civic office. A Councillor who has been suspended on three or more occasions for misconduct is automatically disqualified from holding civic office for five years.

Failure by a member of staff to comply with Council’s code of conduct may give rise to disciplinary action.

The Code of Conduct also includes the ICAC recommendations from the outcome of the Magnus Investigation (the investigation into alleged corrupt conduct involving a Burwood Council former General Manager and others on 20 April 2011) and additional clauses specific to Burwood Council.

## PART 2 PURPOSE OF THE CODE OF CONDUCT

---

The Model Code of Conduct sets the minimum requirements of conduct for Council officials in carrying out their functions. The Model Code is prescribed by regulation.

The Model Code of Conduct has been developed to assist Council officials to:

- understand the standards of conduct that are expected of them
- enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- act in a way that enhances public confidence in the integrity of local government.

## PART 3 GENERAL CONDUCT OBLIGATIONS

---

### General Conduct

- 3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the Council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- a. contravenes the Act, associated regulations, Council’s relevant administrative requirements and policies
  - b. is detrimental to the pursuit of the charter of a Council
  - c. is improper or unethical
  - d. is an abuse of power or otherwise amounts to misconduct



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#### Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct

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- e. causes, comprises or involves intimidation, harassment or verbal abuse
- f. causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- g. causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A*)

3.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)

3.3 You must treat others with respect at all times.

#### **Fairness and Equity**

3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.

3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

#### **Harassment and Discrimination**

3.6 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

#### **Workplace Bullying (Burwood Council Clause)**

3.7 You must not engage in behaviour which constitutes workplace bullying.

3.8 Workplace bullying is defined as repeated behaviour directed towards another person which is unreasonable and/or unfair. Bullying comprises behaviours that a reasonable person would expect to victimise, harass, humiliate, offend, intimidate, belittle, demean, undermine, or threaten the other person, and which may create a risk to that person's health (physical or mental), safety, or welfare.

Further information can be found in Council's Discrimination, Harassment, Bullying Corporate Practice and Grievance Procedure.

#### **Development Decisions**

3.9 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.

3.10 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

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#### Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct

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#### **Binding Caucus Votes**

- 3.11 You must not participate in binding caucus votes in relation to matters to be considered at a Council or committee meeting.
- 3.12 For the purposes of clause 3.9, a binding caucus vote is a process whereby a group of Councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the Council or committee irrespective of the personal views of individual members of the group on the merits of the matter before the Council or committee.
- 3.13 Clause 3.9 does not prohibit Councillors from discussing a matter before the Council or committee prior to considering the matter in question at a Council or committee meeting or from voluntarily holding a shared view with other Councillors on the merits of a matter.
- 3.14 Clause 3.9 does not apply to a decision to elect the Mayor or Deputy Mayor or to nominate a person to be a member of a Council committee.

Further information can be found in Council's Councillor Induction, Briefings & Workshops Policy and the Code of Meeting Practice.

#### **Electronic and Social Media (Burwood Council Clause)**

- 3.15 You must not use Council's electronic communications (including, but not limited to the Internet, the email system, mobile phones, text messaging services, and social media access) in any manner which could be construed as disparaging or defamatory of colleagues or Council, or which could bring Council into disrepute.
- 3.16 You must not use any electronic communications or social media facilities, at work or otherwise, to engage in bullying or harassing behaviours towards colleagues or any other person.
- 3.17 You must not use any electronic communications or social media facilities, at work or otherwise, in a manner which identifies you as a Council official and which could be construed as bringing Council into disrepute.

Further information can be found in Council's Use and Monitoring of Network, Skype and Internet Corporate Practice.

#### **Fraud and Corruption (Burwood Council Clause)**

- 3.18 You must not engage or participate in an act that may constitute fraud or corruption.
- 3.19 For the purpose of this Part, fraud and corruption are defined as follows:
- a. Fraud is defined as 'dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property by employees or persons external to the entity and where deception is used at the time, immediately before or immediately following the activity. This also includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position for personal financial benefit' – Australian Standard for Fraud and Corruption Control (AS8001-2008).

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- b. Corruption is defined as ‘dishonest activity in which a director, executive, manager, employee or contractor of any entity acts contrary to the interests of the entity and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity’ – Australian Standard for Fraud and Corruption Control (AS8001-2008).
- c. The general nature of corruption, and acts which may constitute corrupt conduct, are defined under sections 7, 8 and 9 of the *Independent Commission Against Corruption Act 1988* (ICAC Act).

3.20 You must not ignore or condone any act that you reasonably suspect to constitute fraud or corruption.

3.21 Should you have an honest belief or suspicion, on reasonable grounds, that a fraudulent or corrupt act has been committed, you must disclose this to the Internal Ombudsman, the General Manager, or a Nominated Disclosure Officer (NDO) at the earliest opportunity.

Further information can be found in Council’s:

- *Public Interest Disclosures Act 1994* – Internal Reporting Policy
- *Public Interest Disclosures Act 1994* - Procedure For Assessing Disclosures and Investigations
- Fraud and Corruption Prevention Policy
- Fraud and Corruption Prevention Action Plan

3.22 The General Manager has a statutory obligation, under section 11 of the ICAC Act, to report suspicions of corrupt conduct to the Independent Commission Against Corruption. Any Council official is, therefore, expected to report any reasonable suspicion of fraud or corruption in accordance with clause 3.21.

#### **Salary Overpayments (Burwood Council Clause)**

3.23 If you receive an over payment by Council, and you know or believe that payment to be incorrect, you are expected to take such steps as are reasonable in the circumstances to ensure that the amount is returned in accordance with the Australian Tax Office’s guidelines.

#### **Obligation to Report Criminal Convictions or Other Factors - that may affect your employment or ability to carry out your workplace duties (Burwood Council Clause)**

3.24 If, during the course of your employment at Council, you incur a criminal conviction, you must report this to Organisation Development at the earliest practical opportunity, but at the latest, within 10 working days of receiving the conviction.

3.25 If your working rights in Australia change during the course of your employment, such that they may impact upon your continued employment at Council, you must report this to Organisational Development at the earliest practical opportunity, but at the latest, within 10 working days of the changes being made.

3.26 If you are required to operate a vehicle in the course of your duties, you must notify your supervisor or in the case of the Mayor the General Manager, if your driving licence is no longer valid, even if only for a period of time. This must be reported at the earliest practical

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#### Draft – Code of Conduct including the Procedures for the Administration of the Code of Conduct

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opportunity, but at the latest, within 10 working days of the change to your driving licence status being made.

#### Child Protection (Burwood Council Clause)

- 3.27 For the purpose of this Part, the term “child abuse” is defined as “physical and/or emotional harm to a person who is under the age of 18 years”, and it typically takes the form of physical, psychological, sexual abuse, maltreatment and/or neglect. Further guidance on child abuse can be found on the NSW Office of Children’s Guardian website.
- 3.28 When dealing with a person (staff or customer) who is under the age of 18 years, you must not engage in behaviour which constitutes (or could be perceived to be) child abuse.
- 3.29 You are expected to take all reasonable steps to ensure that a person whom you interact with in your daily work and who is under the age of 18 years is not exposed to child abuse.
- 3.30 For those staff whose role is defined as a “mandatory reporter” under the *Children and Young Persons (Care and Protection) Act 1998*, you are expected to fulfil the requirements of you that are set out therein.
- 3.31 For all staff, whether defined as a “mandatory reporter” or not, you are expected to take all reasonable steps to ensure that you prevent and/or that you report known or suspected instances of child abuse by another staff member to the Internal Ombudsman.

Further information can be found in Council's Child Protection Corporate Practice.

#### PART 4 CONFLICT OF INTERESTS

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- 4.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 4.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 4.3 Any conflict of interests must be managed to uphold the probity of Council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

Further information can be found in Council's:

- Conflicts of Interest Policy
- A Guide for Completing Disclosure of Interest Returns

#### What is a Pecuniary Interest?

- 4.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. (*section 442*)

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- 4.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (*section 443*)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- a. Councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (*section 449*)
  - b. Councillors and members of Council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (*section 451*)
  - c. designated persons immediately declare, in writing, any pecuniary interest. (*section 459*)
- 4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the General Manager and other senior staff of the Council.
- 4.9 Where you are a member of staff of Council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the General Manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

#### What are Non-pecuniary Interests?

- 4.10 Non-pecuniary interests are private or personal interests the Council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.
- 4.11 The political views of a Councillor do not constitute a private interest.

#### Managing Non-pecuniary Conflict of Interests

- 4.12 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.
- 4.13 If a disclosure is made at a Council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 4.12.
- 4.14 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.
- 4.15 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

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- a. a relationship between a Council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b. other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- c. an affiliation between the Council official and an organisation, sporting body, club, corporation or association that is particularly strong.

4.16 If you are a Council official, other than a member of staff of Council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a. remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official
- b. have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply.

4.17 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.

4.18 If you are a member of staff of Council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.

4.19 Despite clause 4.16(b), a Councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate Council's decision-making role to Council staff through the General Manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not Council would be deprived of a quorum if one or more Councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

#### **Reportable Political Donations**

4.20 Councillors should note that matters before Council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.

4.21 Where a Councillor has received or knowingly benefitted from a reportable political donation:

- a. made by a major political donor in the previous four years
- b. where the major political donor has a matter before Council

then the Councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).

4.22 For the purposes of this Part:

- a. a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,

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- b. a “major political donor” is a “major political donor” for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.

4.23 Councillors should note that political donations below \$1,000, or political donations to a registered political party or group by which a Councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.

4.24 If a Councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that Councillor is not prevented from participating in a decision to delegate Council’s decision-making role to Council staff through the General Manager or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

#### Loss of Quorum as a Result of Compliance with this Part

4.25 Where a majority of Councillors are precluded under this Part from consideration of a matter the Council or committee must resolve to delegate consideration of the matter in question to another person.

4.26 Where a majority of Councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the Councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.

4.27 The Chief Executive will only exempt a Councillor from complying with a requirement under this Part where:

- a. compliance by Councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and  
b. the matter relates to the exercise of a function of the Council that may not be delegated under section 377 of the Act.

4.28 Where the Chief Executive exempts a Councillor from complying with a requirement under this Part, the Councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.

4.29 A Councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:

- a. the matter is a proposal relating to:  
i) the making of a principal environmental planning instrument applying to the whole or a significant part of the Council’s area, or  
ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the Council’s area, and

- b. the non-pecuniary conflict of interests arises only because of an interest that a person has in that person’s principal place of residence, and



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- c. the Councillor declares the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

#### Other Business or Employment

4.30 If you are a member of staff of Council considering outside employment or contract work that relates to the business of the Council or that might conflict with your Council duties, you must notify and seek the approval of the General Manager in writing. (*section 353*)

4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:

- a. conflict with your official duties
- b. involve using confidential information or Council resources obtained through your work with the Council
- c. require you to work while on Council duty
- d. discredit or disadvantage the Council

Further information can be found in Council's Secondary Employment Corporate Practice.

#### Personal Dealings with Council

4.32 You may have reason to deal with your Council in your personal capacity (for example, as a ratepayer, recipient of a Council service or applicant for a consent granted by Council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

Further information can be found in Council's Conflicts of Interest Corporate Practice.

## PART 5 PERSONAL BENEFIT

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For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

#### Gifts and Benefits

5.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the Council.

5.2 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

Further information can be found in Council's:

- Gifts and Benefits Policy
- Bribes and Inducements Fact Sheet
- Councillors' Expenses and Facilities Policy



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- **Statement of Business Ethics**

#### **Token Gifts and Benefits**

5.3 Generally speaking, token gifts and benefits include:

- a. free or subsidised meals, beverages or refreshments provided in conjunction with:
  - i) the discussion of official business
  - ii) Council work related events such as training, education sessions, workshops
  - iii) conferences
  - iv) Council functions or events
  - v) social functions organised by groups, such as Council committees and community organisations
- b. invitations to and attendance at local social, cultural or sporting events
- c. gifts of single bottles of reasonably priced alcohol to individual Council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
- d. ties, scarves, coasters, tie pins, diaries, chocolates or flowers
- e. prizes of token value.

#### **Gifts and Benefits of Value**

5.4 Notwithstanding clause 5.3, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

#### **How are Offers of Gifts and Benefits to be Dealt With?**

5.5 You must not:

- a. seek or accept a bribe or other improper inducement
- b. seek gifts or benefits of any kind
- c. accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d. accept any gift or benefit of more than token value
- e. accept an offer of cash or a cash-like gift, regardless of the amount.

5.6 For the purposes of clause 5.5(e), a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.

5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the General Manager. The recipient, supervisor, Mayor or General Manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to Council, unless the nature of the gift or benefit makes this impractical.

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- 5.8 Notwithstanding clause 5.7, where you are offered, and refuse, or receive a gift or benefit, irrespective of its value, this must be disclosed promptly through completing a Gift and Benefit disclosure form and sent to the Deputy General Manager Corporate Governance and Community for approved action (refuse, return, keep, share with team or surrender to Council) and the Governance Co-ordinator (or delegate) will record this in the Gifts Register. Do not use or consume the gift until the Deputy General Manager Corporate Governance and Community recommends an action. Council Officers should forward the Gift and Benefit disclosure form to their supervisor first who will forward onto the Deputy General Manager Corporate Governance and Community. (Burwood Council Clause)

#### Improper and Undue Influence

- 5.9 You must not use your position to influence other Council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else. A Councillor will not be in breach of this clause where they seek to influence other Council officials through the appropriate exercise of their representative functions.
- 5.10 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for Council in order to obtain a private benefit for yourself or for any other person or body.

## PART 6 RELATIONSHIP BETWEEN COUNCIL OFFICIALS

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### Obligations of Councillors and Administrators

- 6.1 Each Council is a body politic. The Councillors or administrator/s are the governing body of the Council. The governing body has the responsibility of directing and controlling the affairs of the Council in accordance with the Act and is responsible for policy determinations, for example, those relating to workforce policy.
- 6.2 Councillors or Administrators must not:
- direct Council staff other than by giving appropriate direction to the General Manager in the performance of Council's functions by way of Council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
  - in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the Council or a delegate of the Council in the exercise of the functions of the member or delegate (*Schedule 6A of the Act*)
  - contact a member of the staff of the Council on Council related business unless in accordance with the policy and procedures governing the interaction of Councillors and Council staff that have been authorised by the Council and the General Manager
  - contact or issue instructions to any of Council's contractors or tenderers, including Council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to Council's external auditors or the Chair of Council's audit committee who may be provided with any information by individual Councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions.

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Further information can be found in Council's Councillors Access to Information and Councillor Interaction with Council Officers Policy.

#### Obligations of Staff

- 6.3 The General Manager is responsible for the efficient and effective operation of the Council's organisation and for ensuring the implementation of the decisions of the Council without delay.
- 6.4 Members of staff of Council must:
- a. give their attention to the business of Council while on duty
  - b. ensure that their work is carried out efficiently, economically and effectively
  - c. carry out lawful directions given by any person having authority to give such directions
  - d. give effect to the lawful decisions, policies, and procedures of the Council, whether or not the staff member agrees with or approves of them
  - e. ensure that any participation in political activities outside the service of the Council does not conflict with the performance of their official duties

#### Obligations During Meetings

- 6.5 You must act in accordance with Council's Code of Meeting Practice, if Council has adopted one, and the *Local Government (General) Regulation 2005* during Council and committee meetings.
- 6.6 You must show respect to the chair, other Council officials and any members of the public present during Council and committee meetings or other formal proceedings of the Council.

#### Inappropriate Interactions

- 6.7 You must not engage in any of the following inappropriate interactions:
- a. Councillors and Administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.
  - b. Council staff approaching Councillors and Administrators to discuss individual or operational staff matters other than broader workforce policy issues.
  - c. Council staff refusing to give information that is available to other Councillors to a particular Councillor.
  - d. Councillors and Administrators who have lodged a development application with Council, discussing the matter with Council staff in staff-only areas of the Council.
  - e. Councillors and Administrators being overbearing or threatening to Council staff.
  - f. Councillors and Administrators making personal attacks on Council staff in a public forum.
  - g. Councillors and Administrators directing or pressuring Council staff in the performance of their work, or recommendations they should make.

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- h. Council staff providing ad hoc advice to Councillors and Administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- i. Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
- j. Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by Council associated with current or proposed legal proceedings unless permitted to do so by Council's General Manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

Further information can be found in [Council's Councillors Access to Information and Councillor Interaction with Council Officers Policy](#).

## **PART 7 ACCESS TO INFORMATION AND COUNCIL RESOURCES**

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### **Councillor and Administrator Access to Information**

- 7.1 The General Manager and the Public Officer are responsible for ensuring that members of the public, Councillors and Administrators can gain access to the documents available under the *Government Information (Public Access) Act 2009*.
- 7.2 The General Manager must provide Councillors and Administrators with information sufficient to enable them to carry out their civic office functions.
- 7.3 Members of staff of Council must provide full and timely information to Councillors and Administrators sufficient to enable them to carry out their civic office functions and in accordance with Council procedures.
- 7.4 Members of staff of Council who provide any information to a particular Councillor in the performance of their civic duties must also make it available to any other Councillor who requests it and in accordance with Council procedures.
- 7.5 Councillors and Administrators who have a private (as distinct from civic) interest in a document of Council have the same rights of access as any member of the public.

Further information can be found in Council's:

- [Councillors Access to Information and Councillor Interaction with Council Officers Policy](#)
- [Agency Information Guide](#)
- [Privacy Management Plan](#)
- [Information Security Corporate Practice](#)

### **Councillors and Administrators to Properly Examine and Consider Information**

- 7.6 Councillors and Administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with Council's charter.

Further information can be found in [Council's Charter – Decision Making](#).

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#### Refusal of Access to Documents

- 7.7 Where the General Manager and public officer determine to refuse access to a document sought by a Councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the Councillor or administrator to perform their civic duty (see clause 7.2). The General Manager or public officer must state the reasons for the decision if access is refused.

#### Use of Certain Council Information

- 7.8 In regard to information obtained in your capacity as a Council official, you must:
- a. only access Council information needed for Council business
  - b. not use that Council information for private purposes
  - c. not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with Council
  - d. only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.

#### Use and Security of Confidential Information

- 7.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 7.10 In addition to your general obligations relating to the use of Council information, you must:
- a. protect confidential information
  - b. only release confidential information if you have authority to do so
  - c. only use confidential information for the purpose it is intended to be used
  - d. not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - e. not use confidential information with the intention to cause harm or detriment to your Council or any other person or body
  - f. not disclose any information discussed during a confidential session of a Council meeting.

Further information can be found in Council's Information Security Corporate Practice.

#### Personal Information

- 7.11 When dealing with personal information you must comply with:
- a. the *Privacy and Personal Information Protection Act 1998*
  - b. the *Health Records and Information Privacy Act 2002*
  - c. the Information Protection Principles and Health Privacy Principles
  - d. Council's Privacy Management Plan
  - e. the Privacy Code of Practice for Local Government – Office of Local Government

Further information can be found in Council's Privacy Management Plan.

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#### Use of Council Resources

- 7.12 You must use Council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 7.13 Union delegates and consultative committee members may have reasonable access to Council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a. the representation of members with respect to disciplinary matters
  - b. the representation of employees with respect to grievances and disputes
  - c. functions associated with the role of the local consultative committee.
- 7.14 You must be scrupulous in your use of Council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.
- 7.15 You must avoid any action or situation that could create the appearance that Council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 7.16 You must not use Council resources, property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 7.17 You must not use Council letterhead, Council crests and other information that could give the appearance it is official Council material for:
- a. the purpose of assisting your election campaign or the election campaign of others, or
  - b. for other non-official purposes.
- 7.18 You must not convert any property of the Council to your own use unless properly authorised.
- 7.19 You must not use Council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Further information can be found in Council's:

- [Disposal of Council Assets Corporate Practice and Procedures](#)
- [Motor Vehicles Corporate Practice](#)
- [Use of Council Intellectual Property \(Including Logos\) on Personalised Stationery](#)
- [Use of Council Resources Policy](#)
- [Use of Council Provide Mobile Phones Policy](#)
- [Use and Monitoring of Network, Email and Internet Corporate Practice](#)

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#### Councillor Access to Council Buildings

- 7.20 Councillors and Administrators are entitled to have access to the Council chamber, committee room, Mayor's office (subject to availability), Councillors' rooms, and public areas of Council's buildings during normal business hours and for meetings. Councillors and Administrators needing access to these facilities at other times must obtain authority from the General Manager.
- 7.21 Councillors and Administrators must not enter staff-only areas of Council buildings without the approval of the General Manager (or delegate) or as provided in the procedures governing the interaction of Councillors and Council staff.
- 7.22 Councillors and Administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence Council staff decisions.

Further information can be found in Council's Councillors Access to Information and Councillor Interaction with Council Officers Policy.

#### PART 8 MAINTAINING THE INTEGRITY OF THIS CODE

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- 8.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

#### Complaints Made for an Improper Purpose

- 8.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.
- 8.3 For the purposes of clause 8.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a. to intimidate or harass another Council official
  - b. to damage another Council official's reputation
  - c. to obtain a political advantage
  - d. to influence a Council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
  - e. to influence the Council in the exercise of its functions or to prevent or disrupt the exercise of those functions
  - f. to avoid disciplinary action under this code
  - g. to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code
  - h. to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code
  - i. to prevent or disrupt the effective administration of this code.

#### Detrimental Action

- 8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.



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- 8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code except as may be otherwise specifically permitted under this code.
- 8.6 For the purposes of clauses 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:
- a. injury, damage or loss
  - b. intimidation or harassment
  - c. discrimination, disadvantage or adverse treatment in relation to employment
  - d. dismissal from, or prejudice in, employment
  - e. disciplinary proceedings.

Further information can be found in Councils:

- *Public Interest Disclosures Act 1994 – Internal Reporting Policy*
- *Public Interest Disclosures Act 1994 - Procedure For Assessing Disclosures and Investigations*

#### Compliance with Requirements under this Code

- 8.7 You must not engage in conduct that is calculated to impede or disrupt the consideration of a matter under this code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.
- 8.9 You must comply with a practice ruling made by the Office of Local Government.
- 8.10 Where you are a Councillor or the General Manager, you must comply with any Council resolution requiring you to take action as a result of a breach of this code.

#### Disclosure of Information about the Consideration of a Matter Under this Code

- 8.11 You must report breaches of this code in accordance with the reporting requirements under this code.
- 8.12 You must not make allegations of suspected breaches of this code at Council meetings or in other public forums.
- 8.13 You must not disclose information about the consideration of a matter under this code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this code.

#### Complaints Alleging a Breach of this Part

- 8.14 Complaints alleging a breach of this Part (Part 8) by a Councillor, the General Manager or an administrator are to be made to the Office of Local Government.
- 8.15 Complaints alleging a breach of this Part by other Council officials are to be made to the General Manager.



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#### Complaints Generally Alleging a Breach (Burwood Council Clause)

8.16 The Complaints Co-ordinator for Council is the Internal Ombudsman.

8.17 Complaints alleging a breach of this Code (other than Part 8) by a Councillor, the General Manager or an administrator, are to be referred to the Complaints Co-ordinator for appropriate handling through the Conduct Reviewer process.

8.18 Complaints alleging any breach of this Code by other Council officials (including all staff except the General Manager) are to be referred to the Complaints Co-ordinator (and/or delegate).

8.19 The responsibility for investigating any alleged breaches of this Code by other Council officials (including all staff except the General Manager) rests with the Complaints Co-ordinator (and/or delegate).

Further information can be found in Council's:

- *Public Interest Disclosures Act 1994* - Procedure For Assessing Disclosures and Investigations
- Discipline and Formal Warnings Corporate Practice

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#### PART 9 DEFINITIONS

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In the Model Code of Conduct the following definitions apply:

- **the Act** - the *Local Government Act 1993*
- **act of disorder** - see the definition in clause 256 of the *Local Government (General) Regulation 2005*
- **administrator** - an administrator of a Council appointed under the Act other than an administrator appointed under section 66
- **Chief Executive** - Chief Executive of the Office of Local Government
- **Committee** - a Council committee
- **conflict of interests** - a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty
- **Council committee** - a committee established by resolution of Council
- **“Council committee member”** - a person other than a Councillor or member of staff of a Council who is a member of a Council committee
- **Council official** - includes Councillors, members of staff of Council, Administrators, Council committee members, conduct reviewers and delegates of Council
- **Councillor** - a person elected or appointed to civic office and includes a Mayor

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- **delegate of Council** - a person (other than a Councillor or member of staff of a Council) or body, and the individual members of that body, to whom a function of the Council is delegated
- **designated person** - see the definition in section 441 of the Act
- **election campaign** - includes Council, State and Federal election campaigns
- **personal information** - information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion
- **the Regulation** - the *Local Government (General) Regulation 2005*
- **The term “you”** - used in the Model Code of Conduct refers to Council Officials.
- **The phrase “this code”** - used in the Model Code of Conduct refers also to the procedures for the administration of the Model Code of Conduct prescribed under the *Local Government (General) Regulation 2005*.

#### **PART 10 ADDITIONAL CLAUSES SPECIFIC TO BURWOOD COUNCIL**

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- 10.1 Burwood Council strictly prohibits the distribution of any election material at any Burwood Council event including citizenship ceremonies but not limited to and in any Burwood Council related event or related media by Councillors, members of staff or Council delegates, whether they are acting in their official or other capacity.
- 10.2 A Councillor, member of staff or delegate who, honestly and faithfully, observes the requirements of this Code and any relevant law, is entitled to expect the publicly expressed support of his or her Council and colleagues against unfair allegations of dishonesty, or partial performance of his or her public or professional duties.
- 10.3 The Mayor to monitor decisions and actions of the General Manager where they relate to potential detrimental actions against a staff member or contractor who has provided information about alleged misconduct by the General Manager (ICAC Report April 2011).
- 10.4 Burwood Council strictly prohibits Council Officers to distribute any election material at any Burwood Council Local Government Election.

#### **PART 11 RELATED DOCUMENTS**

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Council has developed additional policies, corporate practices and procedures to complement the Code of Conduct, these documents provide additional information and provide clear direction on the requirements. These are as follows:

- Agency Information Guide
- A Guide for Completing Disclosure of Interest Returns
- **Bribes and Inducements Fact Sheet**
- **Child Protection Corporate Practice**
- Conflict of Interest Policy
- Code of Meeting Practice
- Complaints Management Policy
- **Council Charter – Decision Making**

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- Councillors Access to Information and Councillor Interaction with Council Officers Policy
- **Councillor Induction, Briefings & Workshops Policy**
- Councillors Expenses and Facilities Policy
- **Discrimination, Harassment Bullying Corporate Practice and Grievance Procedures**
- **Discipline and Formal Warnings Corporate Practice**
- **Disposal of Council Assets Corporate Practice and Procedures**
- Gifts and Benefits Policy
- **Fraud and Corruption Prevention Policy**
- **Fraud and Corruption Prevention Action Plan**
- **Information Security Corporate Practice**
- **Motor Vehicle Corporate Practice**
- *Public Interest Disclosures Act 1994* – Internal Reporting Policy
- ***Public Interest Disclosures Act 1994* - Procedure For Assessing Disclosures and Investigations**
- Privacy Management Plan (including Health Records and Information)
- **Secondary Employment Corporate Practice**
- Statement of Business Ethics
- Use of Council Resources Corporate Practice
- Use of Council Provided Mobile Phones Corporate Practice
- Use and Monitoring of Network, Email and Internet Corporate Practice

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#### **PART 12 REVIEW**

To be reviewed when changes to legislation occur.

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#### **PART 13 CONTACT**

If you have any concerns, queries, or would simply like advice or guidance about any aspect of the Code of Conduct, please feel free to contact one of the Council Officers listed below:

- Governance Co-ordinator – Policy on 9911 9910
- **Internal Ombudsman** (Complaint Co-ordinator) – Breaches on 9911 9808
- **General Manager on 9911 9802**

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**PROCEDURES FOR THE ADMINISTRATION OF  
THE CODE OF CONDUCT**

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## PART 1 INTRODUCTION TO THE PROCEDURES FOR THE ADMINISTRATION OF THE CODE OF CONDUCT

These procedures (“the Model Code Procedures”) are prescribed for the purposes of the administration of the Model Code of Conduct for Local Councils in NSW (“the Model Code”). The Model Code and Model Code Procedures are made under Sections 440 and 440AA respectively of the *Local Government Act 1993* (“the Act”) and the *Local Government (General) Regulation 2005* (“the Regulation”).

Sections 440 and 440AA of the Act require every Council to adopt a Code of Conduct and procedures for the administration of the Code of Conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively.

In adopting procedures for the administration of their adopted codes of conduct, Councils may supplement the Model Code Procedures. However provisions of a Council’s adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.

## PART 2 DEFINITIONS

For the purposes of the procedures, the following definitions apply:

- **the Act** - *the Local Government Act 1993*
- **administrator** - an administrator of a Council appointed under the Act other than an administrator appointed under Section 66
- **Code of Conduct** - a Code of Conduct adopted under Section 440 of the Act
- **Code of Conduct Complaint** - a complaint that alleges conduct on the part of a Council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the Council’s Code of Conduct
- **Complainant** - a person who makes a Code of Conduct complaint
- **Complainant Councillor** - a Councillor who makes a Code of Conduct complaint
- **Complaints Co-ordinator** - a person appointed by the General Manager under these procedures as a Complaints Co-ordinator
- **Conduct Reviewer** - a person appointed under these procedures to review allegations of breaches of the Code of Conduct by Councillors or the General Manager
- **Council Committee** - a Committee established by resolution of Council
- **Council Committee member** - a person other than a Councillor or member of staff of a Council who is a member of a Council Committee
- **Councillor** - a person elected or appointed to civic office and includes a Mayor
- **Council Official** - includes Councillors, members of staff of Council, administrators, Council Committee members, Conduct Reviewers and delegates of Council

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- **Delegate of Council** - a person (other than a Councillor or member of staff of a Council) or body and the individual members of that body to whom a function of the Council is delegated
- **Investigator** - a Conduct Reviewer or Conduct Review Committee
- **The Office** - the Office of Local Government, Department of Premier and Cabinet
- **The Regulation** - the *Local Government (General) Regulation 2005*
- **Subject Person** - a person whose conduct is the subject of investigation by a Conduct Reviewer or Conduct Review Committee under these procedures

### PART 3 ADMINISTRATIVE FRAMEWORK

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#### The Establishment of a Panel of Conduct Reviewers

- 3.1 The Council must by resolution establish a panel of Conduct Reviewers.
- 3.2 The Council may by resolution enter into an arrangement with one or more other Councils to share a panel of Conduct Reviewers.
- 3.3 The panel of Conduct Reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the Council's panel of Conduct Reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a member of a panel of Conduct Reviewers, a person must, at a minimum, meet the following requirements:
  - a. an understanding of local government
  - b. knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*
  - c. knowledge and experience of one or more of the following:
    - i. investigations
    - ii. law
    - iii. public administration
    - iv. public sector ethics
    - v. alternative dispute resolution
  - d. meet the eligibility requirements for membership of a panel of Conduct Reviewers under Clause 3.6
- 3.6 A person is not eligible to be a member of the panel of Conduct Reviewers if they are:
  - a. a Councillor
  - b. a nominee for election as a Councillor
  - c. an administrator
  - d. an employee of a Council

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- e. a member of the Commonwealth Parliament or any State Parliament or Territory Assembly
  - f. a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly
  - g. a person who has a conviction for an indictable offence that is not an expired conviction
- 3.7 A person is not precluded from being a member of the Council's Panel of Conduct Reviewers if they are a member of another Council's Panel of Conduct Reviewers.
- 3.8 A panel of Conduct Reviewers established under this Part is to have a term of up to four years.
- 3.9 The Council may terminate the panel of Conduct Reviewers at any time by resolution.
- 3.10 When the term of the Conduct Reviewers concludes or is terminated, the Council must establish a new panel of Conduct Reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of Conduct Reviewers established by the Council may be a member of subsequent panels of Conduct Reviewers established by the Council.

#### **The Appointment of Complaints Co-ordinators**

- 3.12 The General Manager must appoint a member of staff of the Council to act as a Complaints Co-ordinator. Where practicable, the Complaints Co-ordinator should be a senior and suitably qualified member of staff.
- 3.13 The General Manager may appoint other members of staff to act as alternates to the Complaints Co-ordinator.
- 3.14 The General Manager must not undertake the role of Complaints Co-ordinator.
- 3.15 The person appointed as Complaints Co-ordinator or alternate Complaints Co-ordinator must also be a Nominated Disclosures Co-ordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.16 The role of the Complaints Co-ordinator is to:
- a. Co-ordinate the management of complaints made under the Council's Code of Conduct
  - b. liaise with and provide administrative support to a Conduct Reviewer or Conduct Review Committee
  - c. liaise with the Office of Local Government
  - d. arrange the annual reporting of Code of Conduct complaints statistics

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#### **PART 4 HOW MAY CODE OF CONDUCT COMPLAINTS BE MADE?**

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##### **What is a “Code of Conduct complaint”?**

- 4.1 For the purpose of these procedures, a Code of Conduct complaint is a complaint that alleges conduct on the part of a Council Official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the Council’s Code of Conduct.
- 4.2 Only Code of Conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a “Code of Conduct complaint” are to be dealt with under Council’s routine complaints management processes.

##### **When must a Code of Conduct complaint be made?**

- 4.3 A Code of Conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.4 A complaint made after three months may only be accepted if the General Manager, or, in the case of a complaint about the General Manager, the Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the Code of Conduct.

##### **How may a Code of Conduct complaint about a Council Official other than the General Manager be made?**

- 4.5 All Code of Conduct complaints other than those relating to the General Manager are to be made to the General Manager in writing.
- 4.6 Where a Code of Conduct complaint about a Council official other than the General Manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.7 In making a Code of Conduct complaint about a Council official other than the General Manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.8 The General Manager or, where the complaint is referred to a Conduct Reviewer, the Conduct Reviewer, must consider the complainant’s preferences in deciding how to deal with the complaint.
- 4.9 Notwithstanding Clauses 4.5 and 4.6, where the General Manager becomes aware of a possible breach of the Council’s Code of Conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

##### **How may a Code of Conduct complaint about the General Manager be made?**

- 4.10 Code of Conduct complaints about the General Manager are to be made to the Mayor in writing.
- 4.11 Where a Code of Conduct complaint about the General Manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.



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- 4.12 In making a Code of Conduct complaint about the General Manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.13 The Mayor or, where the complaint is referred to a Conduct Reviewer, the Conduct Reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.14 Notwithstanding Clauses 4.10 and 4.11, where the Mayor becomes aware of a possible breach of the Council's Code of Conduct by the General Manager, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.
- 4.14(a) If the Mayor is also implicated, the complaint should be referred to the Office of Local Government (refer ICAC Report April 2011) and the Complainant must be advised in writing.

#### **PART 5 HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?**

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##### **How are Code of Conduct complaints about staff (other than the General Manager) to be dealt with?**

- 5.1 The General Manager is responsible for making enquiries or causing enquiries to be made into Code of Conduct complaints about members of staff of Council and for determining the outcome of such complaints.
- 5.2 Where the General Manager decides not to make enquiries into a Code of Conduct complaint about a member of staff, the General Manager must give the complainant reasons in writing for their decision.
- 5.3 Without limiting Clause 5.2, the General Manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.4 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.5 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

##### **How are Code of Conduct complaints about delegates of Council and Council Committee members to be dealt with?**

- 5.6 The General Manager is responsible for making enquiries or causing enquiries to be made into Code of Conduct complaints about delegates of Council and Council Committee members and for determining the outcome of such complaints.
- 5.7 Where the General Manager decides not to make enquiries into a Code of Conduct complaint about a delegate of Council or a Council Committee member, the General Manager must give the complainant reasons in writing for their decision.

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- 5.8 Without limiting Clause 5.7, the General Manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.9 Sanctions for delegates of Council and/or members of Council Committees depend on the severity, scale and importance of the breach and may include one or more of the following:
- a. censure
  - b. requiring the person to apologise to any person or organisation adversely affected by the breach
  - c. prosecution for any breach of the law
  - d. removing or restricting the person's delegation
  - e. removing the person from membership of the relevant Council Committee
- 5.10 Prior to imposing a sanction against a delegate of Council or a Council Committee member under Clause 5.9, the General Manager or any person making enquiries on behalf of the General Manager must comply with the requirements of procedural fairness. In particular:
- a. the substance of the allegation (including the relevant provision/s of Council's Code of Conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation
  - b. the person must be given an opportunity to respond to the allegation
  - c. the General Manager must consider the person's response in deciding whether to impose a sanction under Clause 5.9.

#### **How are Code of Conduct complaints about Conduct Reviewers to be dealt with?**

- 5.11 The General Manager must refer all Code of Conduct complaints about Conduct Reviewers to the Office for its consideration.
- 5.12 The General Manager must notify the complainant of the referral of their complaint in writing.
- 5.13 The General Manager must implement any recommendation made by the Office as a result of its consideration of a Code of Conduct complaint about a Conduct Reviewer.

#### **How are Code of Conduct complaints about administrators to be dealt with?**

- 5.14 The General Manager must refer all Code of Conduct complaints about administrators to the Office for its consideration.
- 5.15 The General Manager must notify the complainant of the referral of their complaint in writing.

#### **How are Code of Conduct complaints about Councillors to be dealt with?**

- 5.16 The General Manager must refer the following Code of Conduct complaints about Councillors to the Office:

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- a. complaints alleging a breach of the pecuniary interest provisions of the Act
- b. complaints alleging a failure to comply with a requirement under the Code of Conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations (see Section 328B)
- c. complaints alleging a breach of Part 8 of the Code of Conduct relating to the maintenance of the integrity of the Code
- d. complaints the subject of a special complaints management arrangement with the Office under Clause 5.40

- 5.17 Where the General Manager refers a complaint to the Office under Clause 5.16, the General Manager must notify the complainant of the referral in writing.
- 5.18 Where the General Manager considers it to be practicable and appropriate to do so, the General Manager may seek to resolve Code of Conduct complaints about Councillors, other than those requiring referral to the Office under Clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the Complaints Co-ordinator under Clause 5.20.
- 5.19 Where the General Manager resolves a Code of Conduct complaint under Clause 5.18 to the General Manager's satisfaction, the General Manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.20 The General Manager must refer all Code of Conduct complaints about Councillors other than those referred to the Office under Clause 5.16 or resolved under Clause 5.18 to the Complaints Co-ordinator.

#### **How are Code of Conduct complaints about the General Manager to be dealt with?**

- 5.21 The Mayor must refer the following Code of Conduct complaints about the General Manager to the Office:
- a. complaints alleging a breach of the pecuniary interest provisions of the Act
  - b. complaints alleging a breach of Part 8 of the Code of Conduct relating to the maintenance of the integrity of the Code
  - c. complaints the subject of a special complaints management arrangement with the Office under Clause 5.40
- 5.21a **In exceptional circumstances the Mayor may consider the suspension of the General Manager in response to a serious breach of the Code of Conduct. Prior to making this decision the Mayor must seek the advice of the Chief Executive, Office of Local Government.**
- 5.22 Where the Mayor refers a complaint to the Office under Clause 5.21, the Mayor must notify the complainant of the referral in writing.
- 5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve Code of Conduct complaints about the General Manager, other than those requiring referral to the Office under Clause 5.21, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the Complaints Co-ordinator under Clause 5.25.

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- 5.24 Where the Mayor resolves a Code of Conduct complaint under Clause 5.23 to the Mayor's satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.25 The Mayor must refer all Code of Conduct complaints about the General Manager other than those referred to the Office under Clause 5.21 or resolved under Clause 5.23 to the Complaints Co-ordinator.

#### **Referral of Code of Conduct Complaints to External Agencies**

- 5.26 The General Manager, Mayor or a Conduct Reviewer or Conduct Review Committee may, at any time, refer a Code of Conduct complaint to an external agency or body such as, but not limited to, the Office, the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Police Force for its consideration, where they consider such a referral is warranted.
- 5.27 Where the General Manager, Mayor, Conduct Reviewer or Conduct Review Committee refers a complaint to an external agency or body under Clause 5.26, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 5.28 Referral of a matter to an external agency or body shall finalise consideration of the matter under the Code of Conduct unless the Council is subsequently advised otherwise by the referral agency or body.

#### **Disclosure of the identity of complainants**

- 5.29 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed unless:
- a. the complainant consents in writing to the disclosure
  - b. it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint
  - c. it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed
  - d. a Conduct Reviewer or Conduct Review Committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively
  - e. it is otherwise in the public interest to do so
- 5.30 Clause 5.29 does not apply to Code of Conduct complaints made by Councillors about other Councillors or the General Manager.
- 5.31 Where a Councillor makes a Code of Conduct complaint about another Councillor or the General Manager and the complainant Councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.32 A request made by a complainant Councillor under Clause 5.31 must be made at the time they make a Code of Conduct complaint and must state the grounds upon which the request is made.

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- 5.33 The General Manager or Mayor or, where the matter is referred, a Conduct Reviewer or Conduct Review Committee must consider a request made under Clause 5.31 before disclosing information that identifies or tends to identify the complainant Councillor but are not obliged to comply with the request.
- 5.34 Where a complainant Councillor makes a request under Clause 5.31, the General Manager or Mayor or, where the matter is referred, a Conduct Reviewer or Conduct Review Committee shall notify the Councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

#### Code of Conduct complaints made as Public Interest Disclosures

- 5.35 Code of Conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the Council's internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.
- 5.36 For a Code of Conduct complaint to be dealt with as a public interest disclosure, the complainant must state at the outset and in writing at the time of making the complaint that it is made as a public interest disclosure.
- 5.37 Where a Councillor makes a Code of Conduct complaint about another Councillor or the General Manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant Councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.38 Where a complainant Councillor declines to consent to the disclosure of their identity as the complainant under Clause 5.37, the General Manager or the Mayor must refer the complaint to the Office for consideration. Such a referral must be made under Section 26 of the *Public Interest Disclosures Act 1994*.

Further information can be found in Council's:

- *Public Interest Disclosures Act 1994 – Internal Reporting Policy*
- *Public Interest Disclosures Act 1994 – Procedure for Assessing Disclosures and Investigations*

#### Special Complaints Management Arrangements

- 5.39 The General Manager may request in writing that the Office enter into a special complaints management arrangement with the Council in relation to Code of Conduct complaints made by or about a person or persons.
- 5.40 Where the Office receives a request under Clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of Code of Conduct complaints made by or about a person or persons has:
- a. imposed an undue and disproportionate cost burden on the Council's administration of its Code of Conduct
  - b. impeded or disrupted the effective administration by the Council of its Code of Conduct
  - c. impeded or disrupted the effective functioning of the Council

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- 5.41 A special complaints management arrangement must be in writing and must specify the following:
- a. the Code of Conduct complaints the arrangement relates to
  - b. the period that the arrangement will be in force
- 5.42 The Office may by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.43 While a special complaints management arrangement is in force, an officer of the Office (the assessing Divisional officer) must undertake the preliminary assessment of the Code of Conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by Clause 5.44 below.
- 5.44 Where, following a preliminary assessment, the assessing Divisional officer determines that a Code of Conduct complaint warrants investigation by a Conduct Reviewer or a Conduct Review Committee, the assessing Divisional officer shall notify the Complaints Co-ordinator in writing of their determination and the reasons for their determination. The Complaints Co-ordinator must comply with the recommendation of the assessing Divisional officer.
- 5.45 Prior to the expiry of a special complaints management arrangement, the Office shall, in consultation with the General Manager, review the arrangement to determine whether it should be renewed or amended.
- 5.46 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under Clause 5.45.

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## **PART 6 PRELIMINARY ASSESSMENT**

### **Referral of Code of Conduct Complaints to Conduct Reviewers**

- 6.1 The Complaints Co-ordinator must refer to a Conduct Reviewer all Code of Conduct complaints about Councillors or the General Manager submitted to the Complaints Co-ordinator within 21 days of receipt of a complaint by the General Manager or the Mayor.
- 6.2 For the purposes of Clause 6.1, the Complaints Co-ordinator will refer a complaint to a Conduct Reviewer selected from:
- a. a panel of Conduct Reviewers established by the Council, or
  - b. a panel of Conduct Reviewers established by an organisation approved by the Chief Executive of the Office
- 6.3 In selecting a suitable Conduct Reviewer, the Complaints Co-ordinator may have regard to the qualifications and experience of members of the panel of Conduct Reviewers.
- 6.4 A Conduct Reviewer must not accept the referral of a Code of Conduct complaint where:
- a. they have a conflict of interest in relation to the matter referred to them
  - b. a reasonable apprehension of bias arises in relation to their consideration of the matter



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- c. they or their employer has entered into one or more contracts with the Council in the two years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100K
- d. at the time of the referral, they or their employer are the Council's legal service providers or are a member of a panel of legal service providers appointed by the Council

6.5 For the purposes of Clause 6.4(a), a Conduct Reviewer will have a conflict of interest in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see Clause 4.1 of the Code of Conduct).

6.6 For the purposes of Clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the Conduct Reviewer might not bring an impartial and unprejudiced mind to the matter referred to the Conduct Reviewer.

6.7 Where the Complaints Co-ordinator refers a matter to a Conduct Reviewer, they will provide the Conduct Reviewer with a copy of the Code of Conduct complaint and any other information relevant to the matter held by the Council.

6.8 The Complaints Co-ordinator must notify the complainant in writing that the matter has been referred to a Conduct Reviewer and advise which Conduct Reviewer the matter has been referred to.

#### **Preliminary Assessment by a Conduct Reviewer**

6.9 The Conduct Reviewer is to undertake a preliminary assessment of a complaint referred to them by the Complaints Co-ordinator for the purposes of determining how the complaint is to be managed.

6.10 The Conduct Reviewer may determine to do one or more of the following in relation to a complaint referred to them by the Complaints Co-ordinator:

- a. to take no action
- b. to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology
- c. to refer the matter back to the General Manager or, in the case of a complaint about the General Manager, the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology
- d. to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Office of the Police
- e. to investigate the matter
- f. to recommend that the Complaints Co-ordinator convene a Conduct Review Committee to investigate the matter

6.11 In determining how to deal with a matter under Clause 6.10, the Conduct Reviewer must have regard to the complaint assessment criteria prescribed under Clause 6.27.

6.12 The Conduct Reviewer may make such enquiries the Conduct Reviewer considers to be reasonably necessary to determine what option to exercise under Clause 6.10.

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- 6.13 The Conduct Reviewer may request the Complaints Co-ordinator to provide such additional information the Conduct Reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under Clause 6.10. The Complaints Co-ordinator will, as far as is reasonably practicable, supply any information requested by the Conduct Reviewer.
- 6.14 The Conduct Reviewer must refer to the Office any complaints referred to him or her that should have been referred to the Office under Clauses 5.16 and 5.21.
- 6.15 The Conduct Reviewer must determine to take no action on a complaint that is not a Code of Conduct complaint for the purposes of these procedures.
- 6.16 Where the Conduct Reviewer completes their preliminary assessment of a complaint by determining to exercise an option under Clause 6.10, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.
- 6.17 Where the Conduct Reviewer refers a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.
- 6.18 The Conduct Reviewer may only determine to investigate a matter or to recommend that a Conduct Review Committee be convened to investigate a matter where they are satisfied as to the following:
- a. that the complaint is a “Code of Conduct Complaint” for the purposes of these procedures
  - b. that the alleged conduct, on its face, is sufficiently serious to warrant investigation
  - c. that the matter is one that could not or should not be resolved by alternative means
- 6.19 The Conduct Reviewer may only determine to recommend that a Conduct Review Committee be convened to investigate a matter after consulting with the Complaints Co-ordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole Conduct Reviewer.
- 6.20 The Conduct Reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the Complaints Co-ordinator.
- 6.21 The Conduct Reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

#### **Referral back to the General Manager or Mayor for Resolution**

- 6.22 Where the Conduct Reviewer determines to refer a matter back to the General Manager or to the Mayor to be resolved by alternative and appropriate means, they must write to the General Manager or, in the case of a complaint about the General Manager, to the Mayor, recommending the means by which the complaint may be resolved.
- 6.23 The Conduct Reviewer must consult with the General Manager or Mayor prior to referring a matter back to them under Clause 6.22.



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- 6.24 The General Manager or Mayor may decline to accept the Conduct Reviewer's recommendation. Where the General Manager or Mayor declines to do so, the Conduct Reviewer may determine to deal with the complaint by other means under Clause 6.10.
- 6.25 Where the Conduct Reviewer refers a matter back to the General Manager or Mayor under Clause 6.22, the General Manager or, in the case of a complaint about the General Manager, the Mayor, is responsible for implementing or overseeing the implementation of the Conduct Reviewer's recommendation.
- 6.26 Where the Conduct Reviewer refers a matter back to the General Manager or Mayor under Clause 6.22, the General Manager, or, in the case of a complaint about the General Manager, the Mayor, must advise the complainant in writing of the steps taken to implement the Conduct Reviewer's recommendation once these steps have been completed.

#### Complaints Assessment Criteria

- 6.27 In undertaking the preliminary assessment of a complaint, the Conduct Reviewer may have regard to the following considerations:
- a. whether the complaint is a "Code of Conduct complaint"
  - b. whether the complaint is trivial, frivolous, vexatious or not made in good faith
  - c. whether the complaint discloses prima facie evidence of a breach of the code
  - d. whether the complaint raises issues that would be more appropriately dealt with by another agency or body
  - e. whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of
  - f. whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology
  - g. whether the issue/s giving rise to the complaint have previously been addressed or resolved
  - h. whether the conduct complained of forms part of a pattern of conduct
  - i. whether there were mitigating circumstances giving rise to the conduct complained of
  - j. the seriousness of the alleged conduct
  - k. the significance of the conduct or the impact of the conduct for the Council
  - l. how much time has passed since the alleged conduct occurred
  - m. such other considerations that the Conduct Reviewer considers may be relevant to the assessment of the complaint

Further information can be found in Council's *Public Interest Disclosures Act 1994 – Procedure for Assessing Disclosures and Investigations*.

#### PART 7 OPERATIONS OF CONDUCT REVIEW COMMITTEES

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- 7.1 Where a Conduct Reviewer recommends that the Complaints Co-ordinator convene a Conduct Review Committee to investigate a matter, the Conduct Reviewer must notify the Complaints Co-ordinator of their recommendation and the reasons for their recommendation in writing.

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- 7.2 The Complaints Co-ordinator must convene a Conduct Review Committee comprising three Conduct Reviewers selected from:
- a. a panel of Conduct Reviewers established by the Council
  - b. a panel of Conduct Reviewers established by an organisation approved by the Chief Executive of the Office
- 7.3 In selecting suitable Conduct Reviewers for membership of a Conduct Review Committee convened under Clause 7.2, the Complaints Co-ordinator may have regard to the following:
- a. the qualifications and experience of members of the panel of Conduct Reviewers
  - b. any recommendation made by the Conduct Reviewer about the membership of the Committee
- 7.4 The Conduct Reviewer who made the preliminary assessment of the complaint must not be a member of a Conduct Review Committee convened under Clause 7.2.
- 7.5 A member of a panel of Conduct Reviewers may not be appointed to a Conduct Review Committee where they would otherwise be precluded from accepting a referral of the matter to be considered by the Committee under Clause 6.4.
- 7.6 Where the Complaints Co-ordinator convenes a Conduct Review Committee, they will advise the complainant in writing that the Committee has been convened and the membership of the Committee.
- 7.7 Where, after a Conduct Review Committee has been convened, a member of the Committee becomes unavailable to participate in further consideration of the matter, the Complaints Co-ordinator may appoint another person from a panel of Conduct Reviewers to replace them.
- 7.8 Meetings of a Conduct Review Committee may be conducted in person or by teleconference.
- 7.9 The members of the Conduct Review Committee must elect a chairperson of the Committee.
- 7.10 A quorum for a meeting of the Conduct Review Committee is two members.
- 7.11 Business is not to be conducted at any meeting of the Conduct Review Committee unless a quorum is present.
- 7.12 If a quorum is not present at a meeting of the Conduct Review Committee, it must be adjourned to a time and date that is specified.
- 7.13 Each member of the Conduct Review Committee is entitled to one vote in relation to a matter. In the event of an equality of votes being cast, the chairperson will have a casting vote.
- 7.14 If the vote on a matter is not unanimous, then this should be noted in the report of the Conduct Review Committee in which it makes its determination in relation to the matter.

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- 7.15 The chairperson may make a ruling on questions of procedure and the chairperson's ruling is to be final.
- 7.16 The Conduct Review Committee may only conduct business in the absence of the public.
- 7.17 The Conduct Review Committee must maintain proper records of its proceedings.
- 7.18 The Complaints Co-ordinator shall undertake the following functions in support of a Conduct Review Committee:
- a. provide procedural advice where required
  - b. ensure adequate resources are provided including secretarial support
  - c. attend meetings of the Conduct Review Committee in an advisory capacity
  - d. provide advice about Council's processes where requested
- 7.19 The Complaints Co-ordinator must not be present at, or in sight of a meeting of, the Conduct Review Committee where it makes its final determination in relation to the matter.
- 7.20 The Conduct Review Committee may adopt procedures governing the conduct of its meetings that supplement these procedures. However any procedures adopted by the Committee must not be inconsistent with these procedures.

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## **PART 8 INVESTIGATIONS**

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### **What matters may a Conduct Reviewer or Conduct Review Committee investigate?**

- 8.1 A Conduct Reviewer or Conduct Review Committee (hereafter referred to as an "investigator") may investigate a Code of Conduct complaint that has been referred to them by the Complaints Co-ordinator and any matters related to or arising from that complaint.
- 8.2 Where an investigator identifies further separate possible breaches of the Code of Conduct that are not related to or arise from the Code of Conduct complaint that has been referred to them, they are to report the matters separately in writing to the General Manager, or, in the case of alleged conduct on the part of the General Manager, to the Mayor.
- 8.3 The General Manager or the Mayor is to deal with a matter reported to them by an investigator under Clause 8.2 as if it were a new Code of Conduct complaint in accordance with these procedures.

### **How are Investigations to be commenced?**

- 8.4 The investigator must at the outset of their investigation provide a written notice of investigation to the subject person. The notice of investigation must:
- a. disclose the substance of the allegations against the subject person
  - b. advise of the relevant provisions of the Code of Conduct that apply to the alleged conduct
  - c. advise of the process to be followed in investigating the matter

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- d. invite the subject person to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice
  - e. provide the subject person the opportunity to address the investigator on the matter within such reasonable time specified in the notice
- 8.5 The subject person may within 14 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the subject person to identify the substance of the allegation against them.
- 8.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the subject person in relation to the matter referred to them.
- 8.7 Where an investigator issues an amended notice of investigation, they will provide the subject person with a further opportunity to make a written submission in response to the amended notice of investigation within 28 days or such other reasonable period specified by the investigator in the amended notice.
- 8.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the Complaints Co-ordinator and the General Manager, or in the case of a complaint about the General Manager, to the Mayor. The notice must:
- a. advise them of the matter the investigator is investigating
  - b. in the case of the notice to the complainant, invite them to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice

#### Written and Oral Submissions

- 8.9 Where the subject person or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 8.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 8.11 Prior to preparing a draft report, the investigator must give the subject person an opportunity to address the investigator on the matter being investigated. The subject person may do so in person or by telephone.
- 8.12 Where the subject person fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the subject person.
- 8.13 Where the subject person accepts the opportunity to address the investigator in person, they may have a support person or legal advisor in attendance. The support person or legal advisor will act in an advisory or support role to the subject person only. They must not speak on behalf of the subject person or otherwise interfere with or disrupt proceedings.

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8.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

#### **How are Investigations to be conducted?**

8.15 Investigations are to be undertaken without undue delay within one working day.

8.16 Investigations are to be undertaken in the absence of the public and in confidence.

8.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.

8.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.

8.19 An investigator may request that the Complaints Co-ordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The Complaints Co-ordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

Further information can be found in Council's *Public Interest Disclosures Act 1994 – Procedure for Assessing Disclosures and Investigations*.

#### **Referral or Resolution of a Matter after the Commencement of an Investigation**

8.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:

- a. resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology
- b. refer the matter to the General Manager, or, in the case of a complaint about the General Manager, to the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology
- c. refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Office or the NSW Police Force

8.21 Where an investigator determines to exercise any of the options under Clause 8.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.

8.22 Where an investigator determines to exercise any of the options under Clause 8.20 after the commencement of an investigation, they may by written notice to the subject person, the complainant, the Complaints Co-ordinator and the General Manager, or in the case of a complaint about the General Manager, the Mayor, discontinue their investigation of the matter.

8.23 Where the investigator discontinues their investigation of a matter under Clause 8.22, this shall finalise the consideration of the matter under these procedures.

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- 8.24 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under Clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

#### **Draft Investigation Reports**

- 8.25 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 8.26 The investigator must provide their draft report to the subject person and invite them to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.27 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.28 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 8.29 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. Where as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the subject person or an affected person, they must provide the subject person or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 8.30 Where the subject person or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 8.31 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

#### **Final Investigation Reports**

- 8.32 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under Clause 8.22.
- 8.33 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.
- 8.34 The investigator's final report must:
- a. make findings of fact in relation to the matter investigated
  - b. make a determination that the conduct investigated either

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- i. constitutes a breach of the Code of Conduct
    - ii. does not constitute a breach of the Code of Conduct
  - c. provide reasons for the determination

8.35 Where the investigator determines that the conduct investigated constitutes a breach of the Code of Conduct, the investigator may make one or more of the following recommendations:

  - a. that the Council revise any of its policies, corporate practices or procedures
  - b. that the subject person undertake any training or other education relevant to the conduct giving rise to the breach
  - c. that the subject person be counselled for their conduct
  - d. that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation
  - e. that findings of inappropriate conduct be made public
  - f. in the case of a breach by the General Manager, that action be taken under the General Manager's contract for the breach
  - g. in the case of a breach by a Councillor, that the Councillor be formally censured for the breach under Section 440G of the Act
  - h. in the case of a breach by a Councillor, that the Council resolves as follows:
    - i. that the Councillor be formally censured for the breach under Section 440G of the Act
    - ii. that the matter be referred to the Office for further action under the misconduct provisions of the Act

8.36 Where the investigator determines that the conduct investigated does not constitute a breach of the Code of Conduct, the investigator may make one or more of the following recommendations:

  - a. that the Council revise any of its policies, corporate practices or procedures
  - b. that a person or persons undertake any training or other education

8.37 In making a recommendation under Clause 8.35, the investigator may have regard to the following:

  - a. the seriousness of the breach
  - b. whether the breach can be easily remedied or rectified
  - c. whether the subject person has remedied or rectified their conduct
  - d. whether the subject person has expressed contrition
  - e. whether there were any mitigating circumstances
  - f. the age, physical or mental health or special infirmity of the subject person
  - g. whether the breach is technical or trivial only
  - h. any previous breaches
  - i. whether the breach forms part of a pattern of conduct
  - j. the degree of reckless intention or negligence of the subject person
  - k. the extent to which the breach has affected other parties or the Council as a whole
  - l. the harm or potential harm to the reputation of the Council or local government arising from the conduct
  - m. whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny

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- n. whether an educative approach would be more appropriate than a punitive one
- o. the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action
- p. what action or remedy would be in the public interest

8.38 At a minimum, the investigator's final report must contain the following information:

- a. a description of the allegations against the subject person
- b. the relevant provisions of the Code of Conduct that apply to the alleged conduct investigated
- c. a statement of reasons as to why the Conduct Reviewer considered that the matter warranted investigation
- d. a statement of reasons as to why the Conduct Reviewer considered that the matter was one that could not or should not be resolved by alternative means
- e. where the matter is investigated by a Conduct Review Committee, a statement as to why the matter was one that warranted investigation by a Conduct Review Committee instead of a sole Conduct Reviewer
- f. a description of any attempts made to resolve the matter by use of alternative means
- g. the steps taken to investigate the matter
- h. the facts of the matter
- i. the investigator's findings in relation to the facts of the matter and the reasons for those findings
- j. the investigator's determination and the reasons for that determination
- k. any recommendations

8.39 The investigator must provide a copy of their report to the Complaints Co-ordinator, the subject person and the complainant.

8.40 Where the investigator has determined that there has not been a breach of the Code of Conduct, the Complaints Co-ordinator must provide a copy of the investigator's report to the General Manager or, where the report relates to the General Manager's conduct, to the Mayor and this will finalise consideration of the matter under these procedures.

8.41 Where the investigator has determined that there has been a breach of the Code of Conduct and makes a recommendation or recommendations under Clause 8.35, paragraph (a), the Complaints Co-ordinator must provide a copy of the investigator's report to the General Manager. Where the General Manager agrees with the recommendation/s, the General Manager is responsible for implementing the recommendation/s. If the recommendations are not supported by the General Manager, the General Manager's final determination, with reasons, must be recorded.

8.42 Where the investigator has determined that there has been a breach of the Code of Conduct and makes a recommendation or recommendations under Clause 8.35, paragraphs (b) or (c), the Complaints Co-ordinator must provide a copy of the investigator's report to the General Manager or, where the report relates to the General Manager's conduct, to the Mayor. The General Manager is responsible for arranging the implementation of the recommendation/s where the report relates to a Councillor's conduct. The Mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the General Manager's conduct.

8.43 Where the investigator has determined that there has been a breach of the Code of Conduct and makes a recommendation or recommendations under Clause 8.35,



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paragraphs (d) to (h), the Complaints Co-ordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary Council meeting for the Council's consideration unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary Council Meeting following the election.

#### **Consideration of the Final Investigation Report by Council**

- 8.44 The role of the Council in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the Code of Conduct and makes a recommendation in their final report under Clause 8.35, paragraphs (d) to (h).
- 8.45 The Council is to close its meeting to the public to consider the final investigation report where it is permitted to do so under Section 10A of the Act.
- 8.46 Where the complainant is a Councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant Councillor may absent themselves without making any disclosure of interest in relation to the matter unless otherwise required to do so under the Act or the Code.
- 8.47 Prior to imposing a sanction, the Council must provide the subject person with an opportunity to make an oral submission to the Council. The subject person is to confine their submission to addressing the investigator's recommendation/s.
- 8.48 Once the subject person has completed their oral submission they must absent themselves from the meeting and, where they are a Councillor, take no part in any discussion or voting on the matter.
- 8.49 The Council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 8.50 Prior to imposing a sanction, the Council may by resolution:
- a. request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report
  - b. seek an opinion by the Office in relation to the report
- 8.51 The Council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the Office.
- 8.52 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 8.53 Where the investigator prepares a supplementary report, they must provide copies to the Complaints Co-ordinator who shall provide a copy each to the Council, the subject person and the complainant.
- 8.54 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the Complaints Co-ordinator.

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- 8.55 The Council is only required to provide the subject person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.
- 8.56 A Council may by resolution impose one or more of the following sanctions on a subject person:
- a. that the subject person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution
  - b. that findings of inappropriate conduct be made public
  - c. in the case of a breach by the General Manager, that action be taken under the General Manager's contract for the breach
  - d. in the case of a breach by a Councillor, that the Councillor be formally censured for the breach under Section 440G of the Act
  - e. in the case of a breach by a Councillor:
    - i. that the Councillor be formally censured for the breach under Section 440G of the Act
    - ii. that the matter be referred to the Office for further action under the misconduct provisions of the Act
- 8.57 The Council is not obliged to adopt the investigator's recommendation/s. Where the Council does not adopt the investigator's recommendation/s, the Council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.
- 8.58 The Council may, by resolution, impose a sanction on the subject person under Clause 8.56 different to the sanction recommended by the investigator in their final report.
- 8.59 Where the Council resolves not to adopt the investigator's recommendation/s, the Complaints Co-ordinator must notify the Office of the Council's decision and the reasons for it.

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## **PART 9 RIGHTS OF REVIEW**

### **Failure to Comply with a Requirement under these Procedures**

- 9.1 Where any person believes that a person has failed to comply with a requirement prescribed under these procedures, they may, at any time prior to the Council's consideration of an investigator's final report, raise their concerns in writing with the Office.

### **Practice Rulings**

- 9.2 Where a subject person and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Office to make a ruling on a question of procedure (a practice ruling).
- 9.3 Where the Office receives a request in writing for a practice ruling, the Office may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.
- 9.4 Where the Office makes a practice ruling, all parties are to comply with it.

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- 9.5 The Office may decline to make a practice ruling. Where the Office declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

#### Requests for Review

- 9.6 A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under Clause 8.56, paragraph (e), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Office.

- 9.7 A review under Clause 9.6 may be sought on the following grounds:

- a. that the investigator has failed to comply with a requirement under these procedures
- b. that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the Code of Conduct
- c. that the Council has failed to comply with a requirement under these procedures in imposing a sanction

- 9.8 A request for a review made under Clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or the Council has erred.

- 9.9 The Office may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.

- 9.10 The Office may undertake a review of a matter without receiving a request under Clause 9.6.

- 9.11 The Office will undertake a review of the matter on the papers. However, the Office may request that the Complaints Co-ordinator provide such further information that the Office considers reasonably necessary for it to review the matter. The Complaints Co-ordinator must, as far as is reasonably practicable, provide the information requested by the Office.

- 9.12 Where a person requests a review under Clause 9.6, the Office may direct the Council to defer any action to implement a sanction. The Council must comply with a direction to defer action by the Office.

- 9.13 The Office must notify the person who requested the review and the Complaints Co-ordinator of the outcome of the Office's review in writing and the reasons for its decision. In doing so, the Office may comment on any other matters the Office considers to be relevant.

- 9.14 Where the Office considers that the investigator or the Council has erred, the Office may recommend that a decision to impose a sanction under these procedures be reviewed.

- 9.15 In the case of a sanction implemented by the General Manager or Mayor under Clause 8.42, where the Office recommends that the decision to impose a sanction be reviewed:

- a. the Complaints Co-ordinator must provide a copy of the Office's determination in relation to the matter to the General Manager or the Mayor

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- b. the General Manager or Mayor must review any action taken by them to implement the sanction
  - c. the General Manager or Mayor must consider the Office's recommendation in doing so
- 9.16 In the case of a sanction imposed by the Council by resolution under Clause 8.56, where the Office recommends that the decision to impose a sanction be reviewed:
- a. the Complaints Co-ordinator must, where practicable, arrange for the Office's determination to be tabled at the next ordinary Council meeting unless the meeting is to be held within the four weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary Council meeting following the election
  - b. the Council must:
    - i. review its decision to impose the sanction
    - ii. consider the Office's recommendation in doing so
    - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter
- 9.17 Where having reviewed its previous decision in relation to a matter under Clause 9.16 the Council resolves to reaffirm its previous decision, the Council must state in its resolution its reasons for doing so.

#### **PART 10 PROCEDURAL IRREGULARITIES**

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- 10.1 A failure to comply with these procedures does not, on its own, constitute a breach of the Code of Conduct except as may be otherwise specifically provided under the Code of Conduct.
- 10.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
- a. the non-compliance is isolated and/or minor in nature
  - b. reasonable steps are taken to correct the non-compliance
  - c. reasonable steps are taken to address the consequences of the non-compliance

#### **PART 11 PRACTICE DIRECTIONS**

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- 11.1 The Office may at any time issue a practice direction in relation to the application of these procedures.
- 11.2 The Office will issue practice directions in writing, by circular to all Councils.
- 11.3 All persons performing a function prescribed under these procedures must consider the Office's practice directions when performing the function.

#### **PART 12 REPORTING ON COMPLAINTS STATISTICS**

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- 12.1 The Complaints Co-ordinator must arrange for the following statistics to be reported to the Council within three months of the end of September of each year:

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- a. the total number of Code of Conduct complaints made about Councillors and the General Manager under the Code of Conduct in the year to September
  - b. the number of Code of Conduct complaints referred to a Conduct Reviewer
  - c. the number of Code of Conduct complaints finalised by a Conduct Reviewer at the preliminary assessment stage and the outcome of those complaints
  - d. the number of Code of Conduct complaints investigated by a Conduct Reviewer
  - e. the number of Code of Conduct complaints investigated by a Conduct Review Committee
  - f. without identifying particular matters, the outcome of Code of Conduct complaints investigated by a Conduct Reviewer or Conduct Review Committee under these procedures
  - g. the number of matter reviewed by the Office and, without identifying particular matters, the outcome of the reviews
  - h. The total cost of dealing with Code of Conduct complaints made about Councillors and the General Manager in the year to September, including staff costs
- 12.2 The Council is to provide the Office with a report containing the statistics referred to in Clause 12.1 within three months of the end of September of each year.

### **PART 13 CONFIDENTIALITY**

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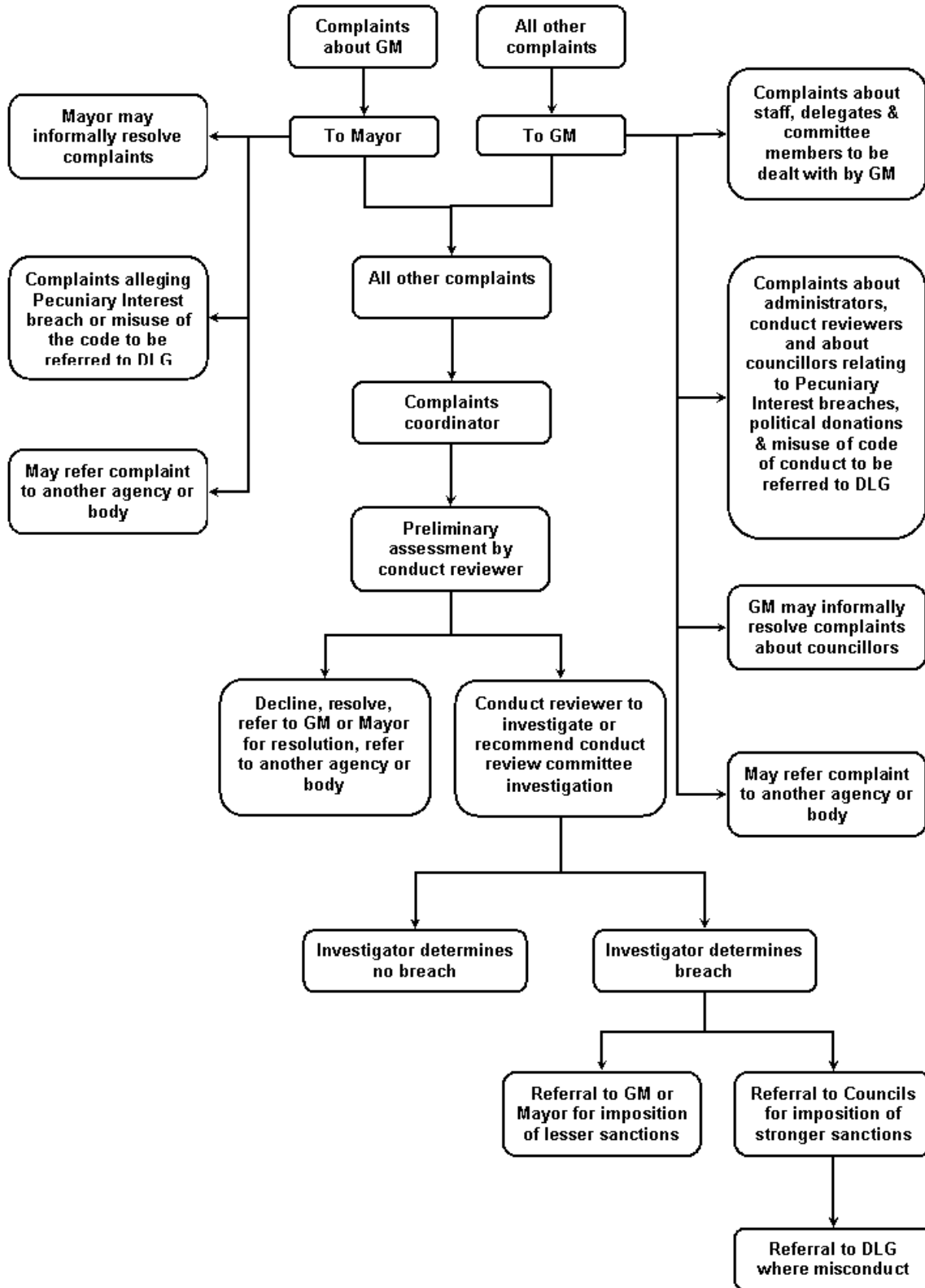
- 13.1 Information about Code of Conduct complaints and the management and investigation of Code of Conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.

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**CODE PROCEDURE FLOWCHART**



**Note: the flowchart is a general outline as prescribe by the Office of Local Government**

## **(ITEM 31/17) ENDORSEMENT PUBLIC EXHIBITION - DRAFT CAR SHARE POLICY**

File No: 17/20451

REPORT BY DEPUTY GENERAL MANAGER LAND, INFRASTRUCTURE & ENVIRONMENT

### **Summary**

Car Sharing is a convenient and cost-effective alternative to private car ownership. It complements sustainable transport modes such as walking, cycling and public transport, thereby reducing private vehicle use and parking demand, by enabling residents and local businesses convenient access to vehicles for short periods. As well as being cost effective, there are environmental benefits through an overall reduction in car use, and through the use of environmentally friendly vehicles. In order to provide residents of Burwood ongoing access to car share options a draft policy has been prepared to formalise the use of on-street and public off-street parking areas by Car Share operators.

### **Background**

Car Sharing is recognised nationally and internationally as an alternative mobility option with the potential to reduce private car ownership, road congestion, parking demand and air pollution. Car Share Schemes have been operating in Australia for about 10 years within most major cities.

A Car Share Scheme is a membership program that permits persons or entities that become members the use of vehicles from a fleet on an hourly basis.

Car Share vehicles are usually positioned in dedicated parking spaces ('pods') in medium to high density urban areas. Members reserve the vehicles in advance for a desired period of time, usually through a website or by phone, and access them by using a smart card, an electronic key, or similar device. Once the vehicle is returned to its dedicated space by the user, the user is billed based on the number of hours and kilometres expended. Fuel, maintenance and insurance costs are included in the hourly fee.

Car Share company 'GoGet' currently has a monopoly on the Sydney Car Share market, with vehicles available by the hour or per day. Other operators such as 'FlexiCar' and 'Green Car Share' that use similar business models have a strong presence in Melbourne, however, no longer operate within Sydney. Alternate Car Share companies have begun to operate in Sydney, such as 'Car Next Door' and 'Drive My Car', however, these models are based on users providing access to privately owned vehicles which are kept at the owners property and are not exclusively available to members.

'GoGet' currently operates 13 vehicles within the Burwood LGA out of the Westfield Shopping Centre car park and the privately operated John Street car park. Data collected from 'GoGet' shows that there are currently 408 members registered in Burwood, being 80 businesses and 308 individuals.

### **Proposal**

On-street and public off-street parking spaces are community facilities and, as such, any privatisation of parking spaces requires a clearly defined and regulated policy. The Draft Car Share Policy outlines the requirements Car Share providers must successfully demonstrate in order to be eligible for a dedicated Car Share bay.

Road & Maritime Services (RMS) advises that Councils should undertake direct community consultation in the form of an opinion survey for the placement of any new dedicated Car Share parking bays. It is therefore proposed that letters be sent out to residents/businesses within the length of the subject road, requesting their views on Car Share parking proposals.

If more than 75% of responses object to the proposed Car Share spaces, the proposed location will be considered undesirable and another location will be considered.

As part of the consent conditions for developments at 1-17 Elsie Street Burwood and 27-31 Belmore Street Burwood, Car Share spaces were allocated within the public car park areas. There are a total of six spaces across these two sites which are immediately available to be used by a Car Share operator.

### **Financial Implications**

Car Share providers are for-profit organisations and as such appropriate fees should apply for the exclusive use of any new dedicated Car Share parking bays. A review of the fees and charges at comparable Councils' has been undertaken, as well as a review of Burwood Council's current fees and charges, to determine an appropriate fee for Burwood.

It should be noted that none of the Councils reviewed operated on a full cost recovery method, but rather subsidised the cost based on the considerable benefits that Car Sharing brings to the Community with regard to reduced traffic and parking congestion and lower greenhouse gas emissions.

	Application Fee	Installation Fee	Annual Fee	In metered area
<b>City of Sydney</b>	465.00	1,950.00	225.00	-
<b>Leichhardt*</b>	244.50	244.50	64.00	-
<b>Waverly</b>	472.00	-	410.00	-
<b>Willoughby</b>	-	410.00	52.00	820.00
<b>Canada Bay</b>	-	1,046.00	-	-
<b>Marrickville*</b>	-	900.00	-	-
<b>Botany Bay*</b>	250.00	-	100.00	-
<b>North Sydney</b>	129.00	1,149.00	200.00	-
<b>Mosman</b>	400.00	-	290.00	-
<b>Lane Cove</b>	-	-	2,160.00	-
<b>Parramatta*</b>	301.30	503.60	1,887.00	-
<b>AVERAGE</b>	<b>323.11</b>	<b>886.16</b>	<b>598.67</b>	<b>820.00</b>

\*Fees prior to amalgamations.

It is proposed to proceed with the same fee structure as Canada Bay Council, which charges only for the installation of a dedicated parking bay in the form of sign-posting. Car Share operators may be permitted to linemark the bays at their own cost, subject to Council approval and provided all works are undertaken to Council specifications.

An additional fee is proposed for Car Share spaces requested within paid ticket parking areas. A fee of \$800.00 per annum per parking space is proposed, in addition to the installation fee of \$1,040.00.

### **Consultation**

Upon endorsement from Council, the documents will be placed on public exhibition for a period of 28 days. The documents will be made available to the public at:

Council's website: [www.burwood.nsw.gov.au](http://www.burwood.nsw.gov.au)  
 Customer Service Centre: Suite 1, Level 2, 1-17 Elsie Street Burwood  
 Burwood Library and Community Hub: 2 Conder Street Burwood



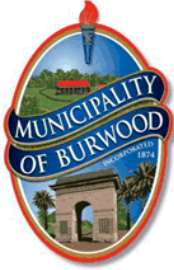
During the period of public exhibition, Council will advise members of the public that submissions may be made to the Council, in writing, at any time during this period. Upon the expiry of the public exhibition period, Council will consider any public submissions received, prior to adopting the documents at the following Council Meeting.

### ***Recommendations***

1. That Council endorse the Draft Car Share Policy and place the document on public exhibition for a period of 28 days.
2. That the Notice of the public exhibition be published in relevant local newspapers inviting public submissions, and copies of the Draft Car Share Policy be made available at Council's Customer Service Centre, Burwood Library and Community Hub and on Council's website.
3. That following the public exhibition period, a report, including all submissions received, be prepared for Council's consideration and adoption of the Draft Car Share Policy.

### **Attachments**

- 1 [↓](#) Draft Car Share Policy



# *Burwood Council*

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## **DRAFT - CAR SHARE POLICY**

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PO Box 240, BURWOOD NSW 1805  
Suite 1, Level 2, 1-17 Elsie Street, BURWOOD NSW 2134  
Phone: 9911-9911 Fax: 9911-9900  
Email: [council@burwood.nsw.gov.au](mailto:council@burwood.nsw.gov.au)  
Website: [www.burwood.nsw.gov.au](http://www.burwood.nsw.gov.au)

Public Document  
Adopted by Council : <Date>  
Trim No.: <Trim No.>  
Version No.: 1.0  
Ownership: Traffic and Transport

ATTACHMENT 1

ITEM 31/17 Endorsement Public Exhibition - Draft Car Share Policy.DOC  
Draft Car Share Policy

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[Draft - Car Share Policy](#)

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## Purpose

The purpose of the Policy is to manage the car share parking in the Burwood Local Government Area (LGA) in a fair and equitable manner. The Policy ensures that car share operators are provided equal access to defined car share spaces as well as providing residents and businesses in the Burwood LGA access to an environmentally sustainable alternative to car ownership.

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## Scope

This policy applies to car share spaces located on Burwood Council streets or property.

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## Definitions

**Car Share Operator** – A company or organisation who provide a car share vehicle which is available for use by the member of a car share scheme for a period commencing with a minimum of 1 hour.

**Dedicated Parking Space** – A parking space located on-street or in a Council operated car park which has been dedicated to a single car share operator for the purpose of placing a car share vehicle.

**Member of a Car Share Scheme** – A person, business or organisation who has paid a joining fee to become a member of a Car Share Scheme.

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## Eligibility of Operators

The car sharing program is open to both existing and new operators who meet the requirements of this policy. In order to qualify for a dedicated car share space the operator must:

- Have in place, or be developing, a network of cars in locations that are accessible to all members.
- Allow any licensed driver over the age of 18 to join, subject to reasonable terms and conditions.
- Supply an internet and phone-based booking system available to members 24 hours per day, 7 days per week, allowing immediate booking of vehicles.
- Ensure that no vehicle is booked for longer than four days unless a replacement vehicle is provided for the space.
- Prohibit the routine long-duration reservation or exclusive use, including overnight use, of a car sharing space by any one user, either individual or business.

Multiple car share operators can provide services within the Burwood LGA in line with Council's Car Share Policy. Allocated car share spaces may not be transferred between operators.

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## Obligations of Operators

Car share operators must meet the obligations set out below:

- **Vehicle Types** – An operator must provide vehicles whose CO<sub>2</sub> emissions do not exceed 185g/km. For vehicles such as utilities or vans, operators must demonstrate that the selected vehicles achieve a high green vehicle guide rating within their class.

- **Vehicle Availability** – Dedicated car share bays cannot remain empty for a period of more than 3 days due to vehicle maintenance or repair. In such an event a replacement vehicle is to be made available to members.
- **Reports** – Car share operators must provide Council quarterly reports for all vehicles located in the Burwood LGA. The report is to include at a minimum information and statistics on the number of members by suburb, total number and duration of bookings per vehicle, total trip distance per vehicle, average number of bookings made per day, the total number of hours the vehicle is available each quarter as well as quantifying the environmental benefits where possible.
- **Parking** – Operators must ensure that vehicles parked in dedicated car share spaces display valid permits or a temporary letter of authorisation issued by Council at all times.

## Process

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### 1. Application

Car Share operators may apply to Council for the installation of a dedicated car share space. Car share spaces may be placed on-street or within a Council operated off-street car park and will be limited to a maximum of 5% of the available parking spaces in any single street or length of road. For new Car Share spaces it must be demonstrated that at least 10 current members will have reasonable proximity access to the space.

Operators must provide Council documentation outlining its ability to meet the eligibility criteria and obligations outlined in the Policy.

Dedicated car share spaces may be contracted for a period of three years performance based, with a two year option period.

### 2. Consultation

Council will consult with residents and businesses in the immediate vicinity of a proposed car share space. The number and location of spaces will be proportionate with demand. All proposals to allocate car share spaces will be considered by the Burwood Local Traffic Committee and determined by Council.

### 3. Installation

Once approved, dedicated and exclusive spaces for authorised car share vehicles will be installed by Council, by way of RMS approved signage only.

### 4. Fees

A fee will be charged to the operator for the annual approval of a dedicated parking space. Additional fees may be charged if the dedicated parking bay is to be placed in an existing metered ticket parking area. Car share operators may request to linemark parking bays at their own cost however must obtain approval from Council prior to any works being undertaken. Fees are reviewed annually and set out in Council's Statement of Revenue Policy.

### 5. Review

Following the initial 12 month placement of a new car share space a review of its usage will be undertaken. Where the usage of a car share space is less than 10 trips per month and is less than 40 hours per month (averaged over three consecutive months), an operator may be required to show cause as to why the space should not be withdrawn or reallocated.

Draft - Car Share Policy

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### Post Approval Monitoring

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In the case of non-compliance with obligations outlined in this Policy, Council may, acting reasonably, suspend or revoke any or all spaces assigned to an operator, or suspend an operator's eligibility to apply for additional spaces.

Authority to take action for non-compliance rests with the Deputy General Manager Land, Infrastructure and Environment. Operators will be given an opportunity to make representations prior to any action for non-compliance with this policy. In case of the revocation of spaces, the Deputy General Manager is authorised to reallocate spaces to an alternative operator.

### Related Information

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- Guidelines for the Implementation of On-Street Car Share Parking, Technical Direction, TDT 2007/04, NSW Roads and Traffic Authority, September 2007

### Review

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This Policy will be reviewed every four years.

### Contact

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Manager Traffic & Transport on 9911 9911

## **(ITEM RC2/17) MEETING OF THE BURWOOD LOCAL TRAFFIC COMMITTEE - MAY 2017**

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File No: 17/22053

REPORT BY DEPUTY GENERAL MANAGER LAND, INFRASTRUCTURE &amp; ENVIRONMENT

### 1. **Summary**

Attached are the Minutes of the Burwood Local Traffic Committee from its meeting of 4 May 2017. The Minutes are hereby submitted to the Ordinary Council Meeting for consideration and adoption by Council.

### ***Recommendations***

That the minutes of the Burwood Local Traffic Committee of May 2017 be noted and the recommendations of the Committee as detailed below be adopted as a resolution of the Council.

### **(ITEM LTC7/17) PARK ROAD BURWOOD - PROPOSED INSTALLATION OF 'WORK ZONE' RESTRICTIONS**

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#### ***Recommendation***

That Council approve the installation of a 'Work Zone, 7.00am - 5.30pm Monday to Friday and 7.00am - 1.00pm Saturday' on the western side of Park Road fronting MLC, for a length of 37 metres per the plan in this report.

### **(ITEM LTC8/17) RAILWAY PARADE, BURWOOD - PROPOSED INSTALLATION OF 'WORK ZONE' RESTRICTIONS**

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#### ***Recommendation***

That Council approves the installation of a 'Work Zone, 7.00am – 5.30pm Monday to Friday and 7.00am to 4.00pm Saturday' on the southern side of Railway Parade Burwood for a length of 5 metres, 35m west of Burwood Road, with the following conditions:

- a. That the 'Work Zone' be permitted for the use of loading and unloading goods only.
- b. Skip bins are only permitted to be placed from 10.00am – 2.00pm outside of peak periods.
- c. That any break in the pedestrian fencing be closed via the use of barricade while the 'Work Zone' is not in use.

### **(ITEM LTC9/17) MARY STREET BURWOOD - CHANGES TO PARKING RESTRICTIONS**

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#### ***Recommendation***

That Council approve the installation of '2P Ticket Parking 9.00am – 6.00pm Monday – Saturday and Public Holidays' on the eastern side of Mary Street Burwood.

### **(ITEM LTC10/17) PROPOSED RUBBER SPEED CUSHION - ON APPROACH TO ROUNDABOUT AT MITCHELL STREET/PORTLAND STREET INTERSECTION CROYDON PARK**

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#### ***Recommendations***

1. That Council approve the installation of a speed cushion on the west bound approach to the roundabout located at the intersection of Mitchell Street and Portland Street, Croydon Park, as per plan in the report.
2. That Council approve the installation of all associated speed hump warning signage on Mitchell Street, Croydon Park, as per plan in the report.

### **Attachments**

- 1 [↓](#) Burwood Local Traffic Committee - May 2017 - Agenda
- 2 [↓](#) Burwood Local Traffic Committee - May 2017 - Minutes



**Burwood Council**  
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## NOTICE OF BURWOOD LOCAL TRAFFIC COMMITTEE MEETING

The 4 May 2017 meeting of the Burwood Local Traffic Committee will be held electronically with the Agenda and the minutes from the 2 March 2017 meeting emailed to members for comments, which will be included in the Minutes as required. All comments are requested to be returned to Council by 9.30am Friday 5 May 2015.

Michael McMahon  
**GENERAL MANAGER**

**Our Mission**

**Burwood Council will create a quality lifestyle for its citizens  
by promoting harmony and excellence in the delivery of its services**



**AGENDA**

**APOLOGIES/LEAVE OF ABSENCES**

**CONFIRMATION OF MINUTES**

***Recommendation***

That the Minutes of the following Meeting of Burwood Local Traffic Committee:

A. Burwood Local Traffic Committee Meeting held on Thursday 2 March 2017

as typed and circulated, be confirmed and signed as a true record of the proceedings of that meeting.

**GENERAL BUSINESS**

(ITEM LTC7/17)	PARK ROAD BURWOOD - PROPOSED INSTALLATION OF 'WORK ZONE' RESTRICTIONS .....	3
(ITEM LTC8/17)	RAILWAY PARADE, BURWOOD - PROPOSED INSTALLATION OF 'WORK ZONE' RESTRICTIONS .....	6
(ITEM LTC9/17)	MARY STREET BURWOOD - CHANGES TO PARKING RESTRICTIONS .....	8
(ITEM LTC10/17)	PROPOSED RUBBER SPEED CUSHION - ON APPROACH TO ROUNDABOUT AT MITCHELL STREET/PORTLAND STREET INTERSECTION CROYDON PARK.....	10

**(ITEM LTC7/17) PARK ROAD BURWOOD - PROPOSED INSTALLATION  
OF 'WORK ZONE' RESTRICTIONS**

File No: 17/18410

REPORT BY TRAFFIC ENGINEERING OFFICER

**Summary**

The Methodist Ladies College (MLC) has requested the implementation of 'Work Zone' restriction along the western side of Park Road between Rowley Street and Parramatta Road Burwood, to facilitate construction works within the school.

**Background**

Park Road runs in a north-south direction and is classified a local road, meaning it carries a low vehicle capacity that serves to move traffic to regional and state roads. The section between Parramatta Road and Rowley Street provides a 5.9 metre wide carriageway but still allows kerb side parking, on the western side only, with 'No Stopping' restrictions on the eastern side.

'No Stopping' restrictions are currently in place fronting MLC with '1P' parking restriction available for residents from outside house number 33 and onwards towards Parramatta Road. The '1P' parking forms part of Council's Permit Parking Scheme Area 12 meaning that all local residents who hold a valid parking permit are entitled to park all day without restriction.

Demolition and excavation of the subject site has already commenced and the development of the new building is expected to take 12-18 months to complete.

**Proposal**

During the construction of the new building, a 'Work Zone' has been requested along the western side of Park Road for a length of 37 metres, directly in front of the site. The area will be used for the delivery of materials and pumping of concrete. The proposed 'Work Zone' will change the existing 'No Stopping' area during the hours 7.00am – 5.30pm Monday to Friday and 7.00am to 1.00pm Saturday, matching the hours of consent for the development with 'No Stopping' restrictions recommencing outside of consent hours. The 'Work Zone' has been requested for the duration of the project which is estimated to be completed by mid-2018.

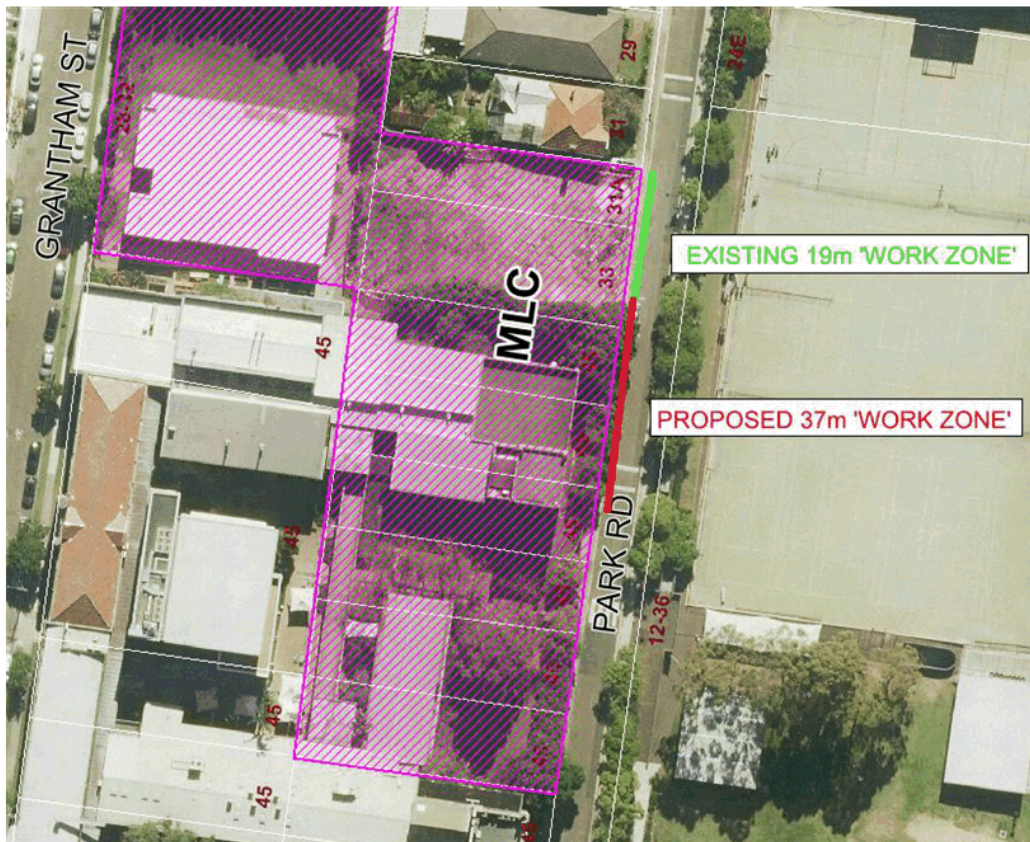
Due to the narrowness of Park Road, traffic controllers will be onsite to assist vehicle thoroughfare with minimal works to be conducted during school peak periods. 'No Stopping' restrictions will remain as per *Australian Road Rule* requirements for 20 metres before and 10 metres after the pedestrian crossing.

## ATTACHMENT 1

### ITEM 2/17 Meeting of the Burwood Local Traffic Committee - May 2017.DOC Burwood Local Traffic Committee - May 2017 - Agenda

BURWOOD LOCAL TRAFFIC COMMITTEE

4 MAY 2017



#### **Consultation**

Apart from discussions with MLC, no consultation has been undertaken for the proposal. The 'Work Zone' will not result in the loss of on-street parking and is located within an existing 'No Stopping' zone.

#### **Financial Implications**

The costs associated with the 'Work Zone' will be charged to the developers as per Council's Fees and Charges, including the erection of signage.

#### **Recommendation**

That Council approve the installation of a 'Work Zone, 7.00am - 5.30pm Monday to Friday and 7.00am - 1.00pm Saturday' on the western side of Park Road fronting MLC, for a length of 37 metres per the plan in this report.

#### **Attachments**

- 1 MLC request for changes to Parking restrictions along Park Road, Burwood

ATTACHMENT 1

ITEM 2/17 Meeting of the Burwood Local Traffic Committee - May 2017.DOC  
Burwood Local Traffic Committee - May 2017 - Agenda

ATTACHMENT 1

ITEM /17 Park Road Burwood - Proposed Installation of 'Work Zone' restrictions.DOC  
MLC request for changes to Parking restrictions along Park Road, Burwood



16 March, 2017

Burwood Council  
Traffic Section  
PO Box 240  
Burwood NSW 1805

Re: Temporary closure of the footpath on Park Road; removal of No Stopping Signs

To whom it may concern

Following on from the email dated 9 March 2017 from Jason King of Lipman, I'd like to confirm that we have no objection to the temporary closure of the footpath on Park Road in front of the MLC School construction zone.

We've been advised that closure of the footpath, whilst the construction is taking place, is a necessary safety measure and therefore approve that pedestrians are directed to the footpath on the opposite side of the road.

In addition to the above, we have no objection on the removal of the "No Stopping" street signs directly in front of the site on the western side during the duration of the construction. Please refer to the attached sketch indicating the location of the street signage to be removed.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ross Kirby'.

Ross Kirby  
Head of Finance, Systems and Administration



Rowley Street, Burwood NSW 2134 Australia

Telephone 61 2 9747 1266

Facsimile 61 2 9745 3254

ABN 75 549 644 535

CRICOS No. 02328D

PO Box 643 Burwood 1805

[www.mlcsyd.nsw.edu.au](http://www.mlcsyd.nsw.edu.au)

**(ITEM LTC8/17) RAILWAY PARADE, BURWOOD - PROPOSED  
INSTALLATION OF 'WORK ZONE' RESTRICTIONS**

File No: 17/18479

REPORT BY TRAFFIC ENGINEERING OFFICER

**Summary**

Council has received an application for a 'Work Zone' to be installed along Railway Parade in order to facilitate a development at 34 Railway Parade Burwood.

**Background**

MacMahon Optometrists, located on 34 Railway Parade Burwood, is scheduling substantial renovations both internally and to its facade. Railway Parade is a classified Regional Road and acts as the main east-west thoroughfare through the Burwood Town Centre.

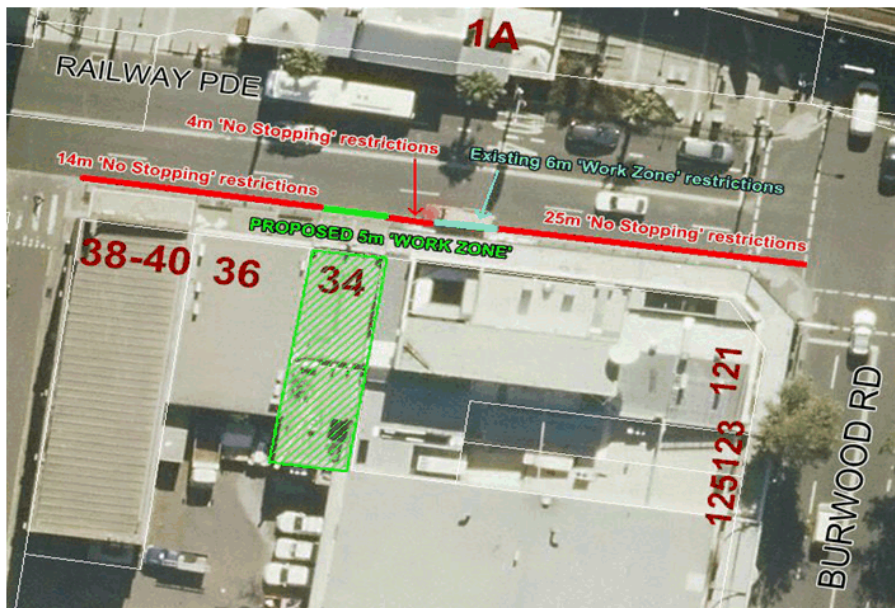
'No Stopping' restrictions run along the frontage of the site. There is no off-street parking available within the site, nor is there any opportunity to create off-street parking at the rear.

**Proposal**

It is proposed to install a 5 metre long 'Work Zone' on the southern side of Railway Parade, 35 metres west of the intersection with Burwood Road. The 'Work Zone' would be restricted to the hours of consent for the development, being 7.00am – 5.30pm Monday to Friday and 7.00am – 4.00pm Saturday, with 'No Stopping' restrictions in place outside of these times.

In order to minimise impact upon traffic flow, it is recommended that the use of the 'Work Zone' be restricted for the purposes of loading and unloading only, and not allow vehicles to be parked in this area for extended periods.

A similar six metre long 'Work Zone' was installed to facilitate the fit out works which took place at the Burwood Hotel. This 'Work Zone' operated without issue and it due to be removed as the works have now completed.



**Consultation**

No consultation has been undertaken for the proposal. The 'Work Zone' will not result in the loss of on-street parking and is located within an existing 'No Stopping' zone.

**Financial Implications**

The 'Work Zone' will be charged to the developers as per Council's Fees and Charges, including the erection of signage and the temporary removal and eventual replacement of three panels of the existing pedestrian fencing.

***Recommendation***

That Council approves the installation of a 'Work Zone, 7.00am – 5.30pm Monday to Friday and 7.00am to 4.00pm Saturday' on the southern side of Railway Parade Burwood for a length of 5 metres, 35m west of Burwood Road, with the following conditions:

- a. That the 'Work Zone' be permitted for the use of loading and unloading goods only.
- b. Skip bins are only permitted to be placed from 10.00am – 2.00pm outside of peak periods.
- c. That any break in the pedestrian fencing be closed via the use of barricade while the 'Work Zone' is not in use.

**Attachments**

There are no attachments for this report.



**(ITEM LTC9/17) MARY STREET BURWOOD - CHANGES TO PARKING RESTRICTIONS**

File No: 17/19496

REPORT BY MANAGER TRAFFIC & TRANSPORT

**Summary**

A review has been undertaken of parking restrictions in Mary Street in order to help maximise the number of on-street parking spaces available in this area.

**Background**

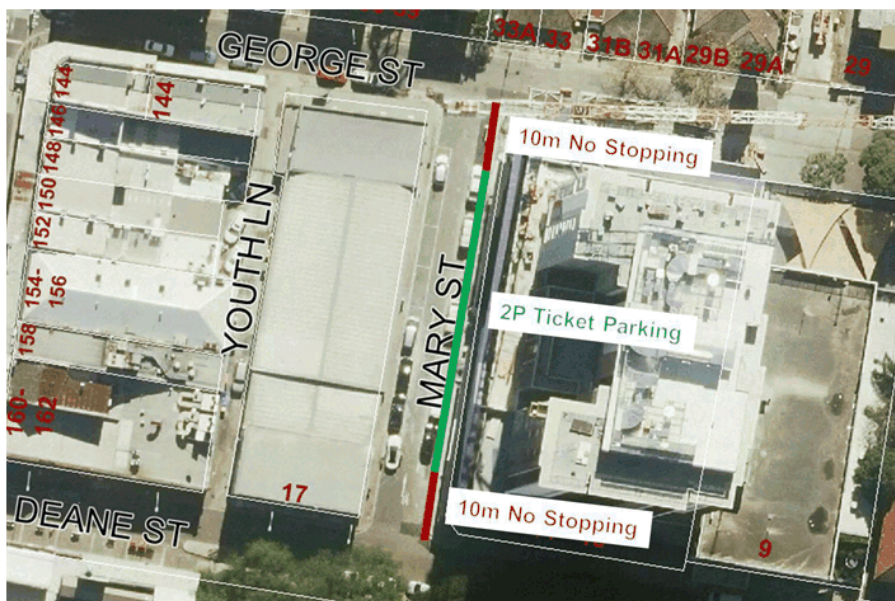
At present, Mary Street is a one way road between George Street and Deane Street Burwood. Upon completion of the recent development at the corner of Deane Street, Mary Street and George Street, 'No Stopping' restrictions were restored on the eastern side of Mary Street, and '2P Ticket 9.00am - 6.00pm Monday to Saturday & Public Holidays' parking restrictions were restored on the western side of Mary Street.

The new development contains a retail and commercial component with businesses such as a gym, child care centre, educational centres and restaurants and now open to the public. These additional businesses are now generating additional demand for parking which prompted this review.

**Proposal**

It is proposed to install 2P ticket parking restrictions on the eastern side of Mary Street. The parking restrictions will apply to a total of eight parking spaces fronting the main entrance to the building. The restrictions would be limited to the hours of 9.00am – 6.00pm Monday to Saturday & Public Holidays, in line with the ticket parking areas throughout Burwood. Unrestricted parking would be permitted outside of these times.

Statutory 'No Stopping' restrictions will apply for ten metres at the intersections with Deane Street and George Street to help ensure adequate sight distances for motorists and pedestrians.



## ATTACHMENT 1

### ITEM 2/17 Meeting of the Burwood Local Traffic Committee - May 2017.DOC Burwood Local Traffic Committee - May 2017 - Agenda

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BURWOOD LOCAL TRAFFIC COMMITTEE

4 MAY 2017

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#### **Consultation**

The proposed changes will not result in a major impact on the existing on-street parking availability within the area. As such no public consultation has been undertaken.

#### **Financial Implications**

The installation of new signage is estimated to cost \$500. The cost will be funded from the 2016/2017 Traffic Facilities Budget. It is proposed to relocate a parking meter from a lesser used area in Conder Street to Mary Street.

#### ***Recommendation***

That Council approve the installation of '2P Ticket Parking 9.00am – 6.00pm Monday – Saturday and Public Holidays' on the eastern side of Mary Street Burwood.

#### **Attachments**

There are no attachments for this report.



**(ITEM LTC10/17) PROPOSED RUBBER SPEED CUSHION - ON  
APPROACH TO ROUNDABOUT AT MITCHELL STREET/PORTLAND  
STREET INTERSECTION CROYDON PARK**

File No: 17/19609

REPORT BY ENGINEER TRAFFIC & DESIGN

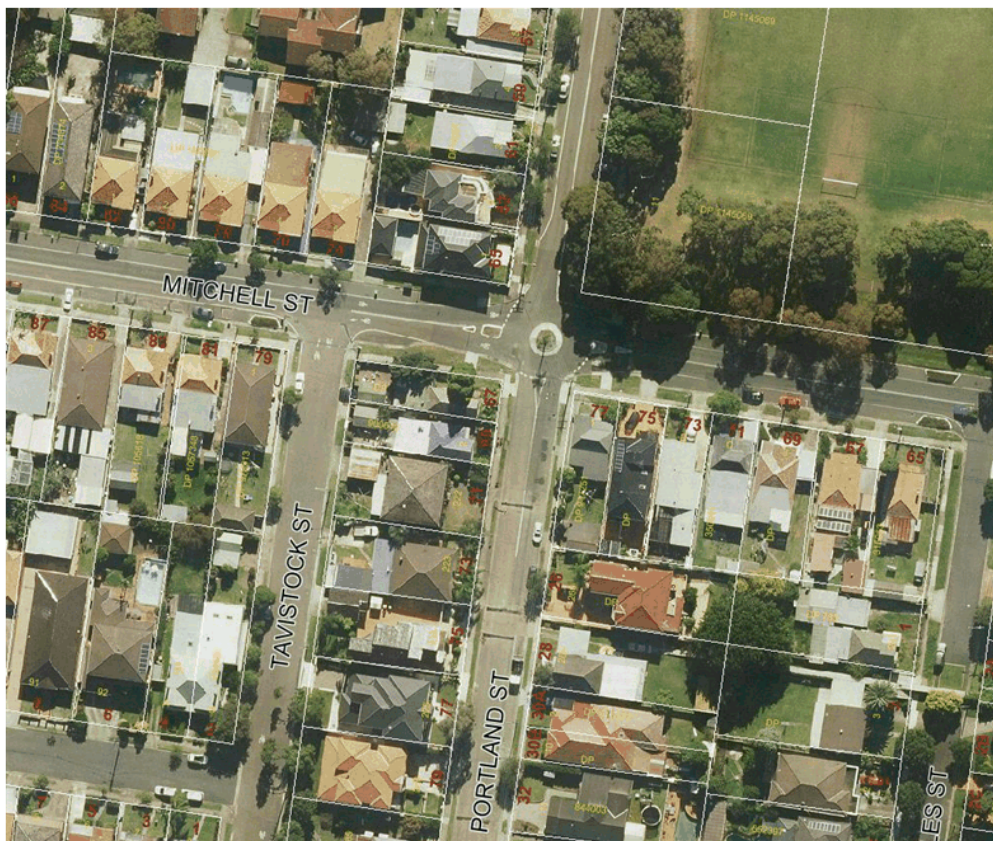
**Summary**

Council has received representation from local residents of Croydon Park requesting that Council investigate installing a traffic calming device on the western approach to the roundabout located at the intersection of Mitchell Street and Portland Street Croydon Park.

**Background**

Following a number of residential complaints regarding the safety of the roundabout, Council undertook an in depth analysis of the available traffic and accident data for the subject location. The data which covers all accidents from 2011 to 2016 confirmed that four accidents have occurred as a result of west bound traffic in Mitchell Street colliding with south bound traffic in Portland Street.

All of the recorded accidents were found to be cross traffic accidents, meaning that a vehicle departed the lane and side impacted with another vehicle. This type of crash usually involves two vehicles and is often attributed to speeding, sight distance issues or performance errors by the driver. Based on the above, a traffic calming device is justified for the westbound approach.



SUBJECT ROUNDABOUT

**Proposal**

Given that a traffic calming device is warranted, multiple options were considered for this location. These included a guard rail, concrete kerb blisters, a complete kerb re-alignment, an asphalt speed hump and a rubber speed cushion. After careful consideration, the rubber speed cushion option is preferred due to its practicality, easy installation and effectiveness.

It is therefore proposed to install a 1.8 metre wide rubber speed cushion on the west bound approach to the roundabout, on the boundary line of properties No.75 and No.77. This device will not only assist in slowing down west bound traffic but will assist in alleviating potential accidents.

The chosen device will also have minimal impact upon Burwood Council's Depot services in terms of truck movements through the area and any bus services that use Mitchell Street. Refer to attached plan.

**Consultation**

No formal consultation has been undertaken. The installation of the proposed rubber speed cushion is not expected to create any adverse effects to local residents or result in the loss of any on-street parking.

**Financial Implications**

The cost of installing a Speed Cushion and erecting associated 'Speed Hump' warning signage is approximately \$5,500.00. This will be funded from the 2016/2017 Traffic Facilities Budget.

***Recommendations***

1. That Council approve the installation of a speed cushion on the west bound approach to the roundabout located at the intersection of Mitchell Street and Portland Street, Croydon Park, as per plan in the report.
2. That Council approve the installation of all associated speed hump warning signage on Mitchell Street, Croydon Park, as per plan in the report.

**Attachments**

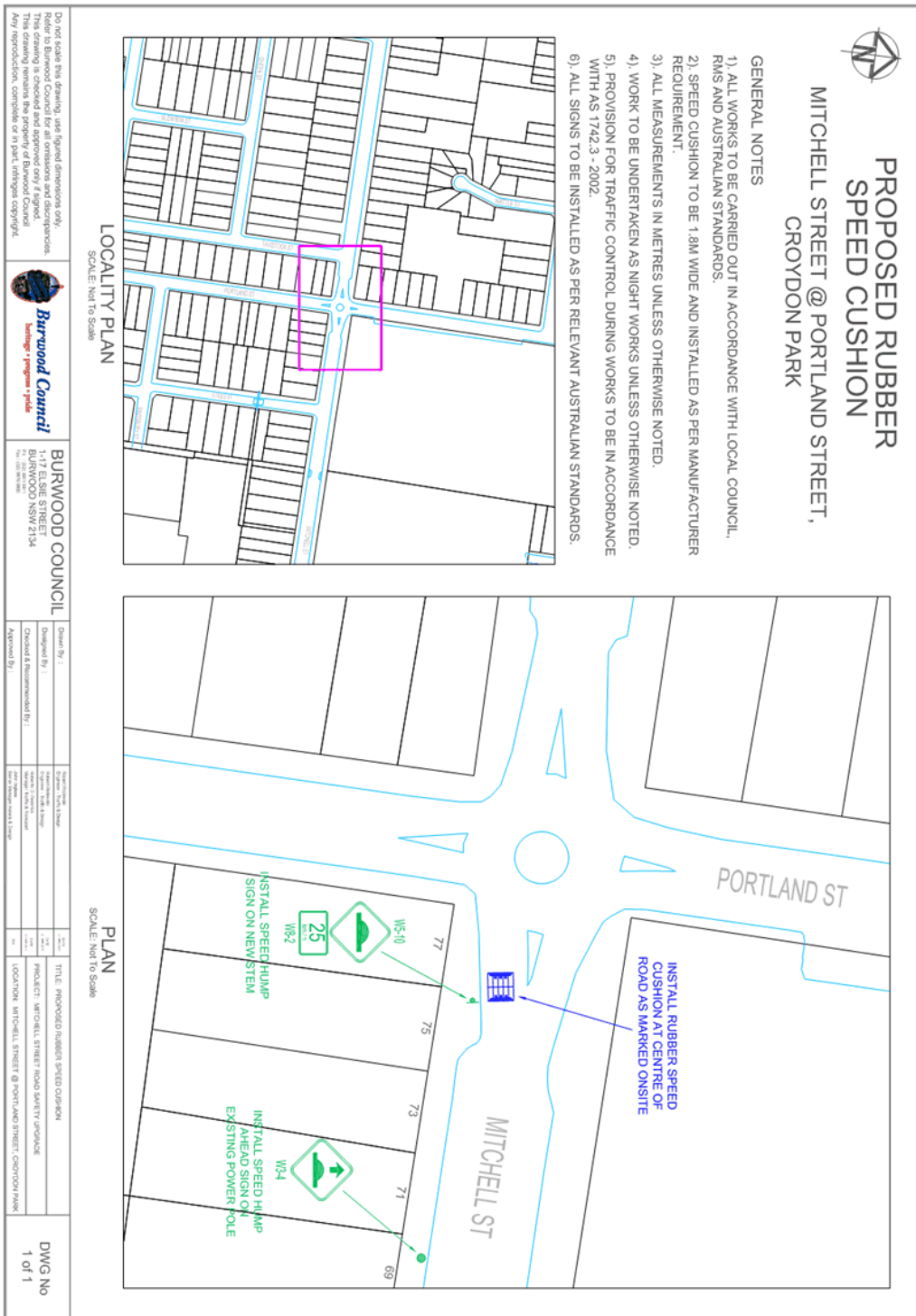
- 1 Proposed Rubber Speed Cushion - Mitchell St @ Portland St, Croydon Park

ATTACHMENT 1

ITEM 2/17 Meeting of the Burwood Local Traffic Committee - May 2017.DOC  
 Burwood Local Traffic Committee - May 2017 - Agenda

ATTACHMENT 1

ITEM /17 Proposed Rubber Speed Cushion - on approach to Roundabout at Mitchell Street/Portland Street Intersection Croydon Park.DOC  
 Proposed Rubber Speed Cushion - Mitchell St @ Portland St, Croydon Park





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## BURWOOD LOCAL TRAFFIC COMMITTEE MEETING

MINUTES OF THE MEETING OF THE BURWOOD LOCAL TRAFFIC COMMITTEE held at the Council Chamber, Suite 1, Level 2, 1-17 Elsie Street, Burwood on Thursday 4 May 2017 commencing at .

### ATTENDANCE

Cr John Faker (Mayor) Chairperson  
Sgt Trudy Crowther, NSW Police Service  
Mr Brandon Morson, Roads and Maritime Services  
Ms Jodi McKay, State Member for Strathfield  
Mr Peter Whitney, State Transit Authority  
Mr Doug Sutherland AM, JP, Burwood Chamber of Commerce

Mr Bruce Macdonnell, Deputy General Manager Land, Infrastructure and Environment  
Mr John Inglese, Burwood Council, Senior Manager Assets and Design  
Mr Roberto Di Federico, Burwood Council, Manager Traffic and Transport  
Mr Robert Ristevski, Burwood Council, Engineer – Traffic and Design  
Mr Henry Huynh, Burwood Council, Traffic Engineering Officer  
Ms Megan Pigram, Burwood Council, Road Safety Officer

### APOLOGIES

That there were no apologies.

### CONFIRMATION OF MINUTES

That the minutes of the Burwood Local Traffic Committee of Burwood held on Thursday 6 April 2017, as circulated, be confirmed and signed as a true record of the proceeding of the meeting.

NSW Police noted that item LTC6/17 stated the ANZAC March was to commence at 5am when in fact it commenced at 6am.

### GENERAL BUSINESS

#### **(ITEM LTC7/17) PARK ROAD BURWOOD - PROPOSED INSTALLATION OF 'WORK ZONE' RESTRICTIONS**

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##### **Summary**

The Methodist Ladies College (MLC) has requested the implementation of 'Work Zone' restriction along the western side of Park Road between Rowley Street and Parramatta Road Burwood, to facilitate construction works within the school.

##### ***Recommendation***

That Council approve the installation of a 'Work Zone, 7.00am - 5.30pm Monday to Friday and 7.00am - 1.00pm Saturday' on the western side of Park Road fronting MLC, for a length of 37 metres per the plan in this report.



**(ITEM LTC8/17) RAILWAY PARADE, BURWOOD - PROPOSED INSTALLATION OF 'WORK ZONE' RESTRICTIONS**

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**Summary**

Council has received an application for a 'Work Zone' to be installed along Railway Parade in order to facilitate a development at 34 Railway Parade Burwood.

**Comments Received**

The NSW Police expressed that the applicant be sure to comply with the conditions of consent, namely that the area not be used to park vehicles all day and that skip bins are placed only between 10am and 2pm.

***Recommendation***

That Council approves the installation of a 'Work Zone, 7.00am – 5.30pm Monday to Friday and 7.00am to 4.00pm Saturday' on the southern side of Railway Parade Burwood for a length of 5 metres, 35m west of Burwood Road, with the following conditions:

- a. That the 'Work Zone' be permitted for the use of loading and unloading goods only.
- b. Skip bins are only permitted to be placed from 10.00am – 2.00pm outside of peak periods.
- c. That any break in the pedestrian fencing be closed via the use of barricade while the 'Work Zone' is not in use.

**(ITEM LTC9/17) MARY STREET BURWOOD - CHANGES TO PARKING RESTRICTIONS**

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**Summary**

A review has been undertaken of parking restrictions in Mary Street in order to help maximise the number of on-street parking spaces available in this area.

***Recommendation***

That Council approve the installation of '2P Ticket Parking 9.00am – 6.00pm Monday – Saturday and Public Holidays' on the eastern side of Mary Street Burwood.

**(ITEM LTC10/17) PROPOSED RUBBER SPEED CUSHION - ON APPROACH TO ROUNDABOUT AT MITCHELL STREET/PORTLAND STREET INTERSECTION CROYDON PARK**

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**Summary**

Council has received representation from local residents of Croydon Park requesting that Council investigate installing a traffic calming device on the western approach to the roundabout located at the intersection of Mitchell Street and Portland Street Croydon Park.

***Recommendations***

1. That Council approve the installation of a speed cushion on the west bound approach to the roundabout located at the intersection of Mitchell Street and Portland Street, Croydon Park, as per plan in the report.
2. That Council approve the installation of all associated speed hump warning signage on Mitchell Street, Croydon Park, as per plan in the report.

**ATTACHMENT 2**

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**ITEM 2/17 Meeting of the Burwood Local Traffic Committee - May 2017.DOC**  
**Burwood Local Traffic Committee - May 2017 - Minutes**

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MINUTES OF BURWOOD LOCAL TRAFFIC COMMITTEE MEETING

4 MAY 2017

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This concluded the business of the meeting.

Confirmed this

**MAYOR  
CHAIRPERSON**

**DEPUTY GENERAL MANAGER - LAND,  
INFRASTRUCTURE & ENVIRONMENT**

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This is page 3 of the Minutes of the Burwood Local Traffic Committee  
held on 4 May 2017

## (ITEM IN15/17) SAFE & CLEAN TEAM - QUARTERLY PERFORMANCE REPORT

File No: 17/18135

REPORT BY DEPUTY GENERAL MANAGER LAND, INFRASTRUCTURE &amp; ENVIRONMENT

### Summary

This Report provides performance information on the Safe & Clean Team for the third quarter of the 2016/17 period.

The Safe & Clean Team operates on a daily basis between the hours of 10am to 6pm. The Safe & Clean Team patrols all main business streets in the Burwood Local Government Area including Burwood Road, Liverpool Road, The Boulevarde, The Strand and Georges River Road. The Safe & Clean Team like the name suggests focuses on ensuring that the main business streets are always clean by removing light litter and cleaning infrastructure as well as reporting all crime activity to Police and all local law breaches to Council. The Safe & Clean Team provides a physical customer service presence for Council along the main business streets. Below is a summary of their performance for the period:

Activity	January 2017	February 2017	March 2017	Total
Rubbish removed from roadway	2108 litres 18 (120L bins)	1919 litres 16 (120L bins)	1819 litres 15 (120L bins)	5876 litres 49 (120L bins)
Shopping trolleys reported and removed from main streets	231	197	220	648
Advertising posters removed	42	49	25	116
Report Graffiti on Council Property	23	28	6	57
Report Road Obstructions	0	0	0	0
Report Crime	0	0	0	0
Small spill clean ups	1	0	0	1
Distribute information leaflets	0	0	0	0
Report maintenance issues	0	0	0	0

Note: The shopping trolleys left abandoned on the streets were reported to the relevant service providers and removed within a 24 hours period.

The advertising posters were mainly small handwritten signs and physically removed by the Team.

Rubbish removed from the roadway highlights that Burwood Road has the highest amount removed by the team and this is consistent with the high pedestrian traffic in the area.

Overall, the presence of the Safe & Clean Team has made a huge impact towards the beautification of the main streets and the safety of the local community.

**No Decision – Information Item Only**

**Attachments**

There are no attachments for this report.



## (ITEM IN16/17) ANSWERS TO QUESTIONS WITHOUT NOTICE - COUNCIL MEETING OF 18 APRIL 2017

File No: 17/19676

REPORT BY ACTING GENERAL MANAGER

### Summary

At the Council Meeting of 18 April 2017 the following Questions without Notice (QWN) were submitted by Councillors. Council Officers responded to the QWN and Councillors were notified on 24 April 2017 of the outcome of the QWN.

These are now submitted as part of the Council Agenda for Public Notification.

<b>QUESTIONS WITHOUT NOTICE – COUNCIL MEETING OF 18 April 2017</b>	
<b>Question</b>	<b>Response</b>
<p><b><u>Councillor Furneaux-Cook</u></b></p> <p><b>Question 1</b> - Is MLC School complying with its Development Approval for use of the aquatic centre?</p>	<p><b><u>Senior Manager Compliance</u></b></p> <p>Council will review the original consent and then determine if there are any inconsistencies.</p>
<p><b><u>Councillor Furneaux-Cook</u></b></p> <p><b>Question 2</b> - Will Council write to the government on the proposed SEPP for education and childcare facilities and bring this to Councils?</p>	<p><b><u>Manager Strategic Planning</u></b></p> <p>Council made a submission on the proposed SEPP in relation to childcare facilities on 23 March 2017, as attached.</p>
<p><b><u>Councillor Furneaux-Cook</u></b></p> <p><b>Question 3</b> - How can Councillors become aware of any gateway determinations? Are they reported to Council?</p>	<p><b><u>Manager Strategic Planning</u></b></p> <p>Anyone can check the status of any planning proposal lodged with the Department of Planning &amp; Environment by clicking on <a href="http://letracking.planning.nsw.gov.au">http://letracking.planning.nsw.gov.au</a></p> <p>Notwithstanding, it is proposed that once per month (at the end of the month) a memo will be prepared from the GM to Councillors giving an update on any gateway determinations.</p>
<p><b><u>Cr Justin Taunton</u></b></p> <p><b>Question 1</b> – New Strata Legislation allows a 75% owner majority to allow for re-development of the unit/apartment complex. Has Council received any applications and how many?</p>	<p><b><u>Manager Building and Development</u></b></p> <p>Council has not received any applications under the new legislation to date.</p>
<p><b><u>Cr Justin Taunton</u></b></p> <p><b>Question 2</b> – Burwood Park Pavilion what is the time frame for Stage 2, including the provision of the LC screens?</p>	<p><b><u>Senior Manager Property and Building Services</u></b></p> <p>Council's Officers will investigate and conduct a feasibility study on this matter if a stage 2 proposal is finalised.</p>

**No Decision – Information Item Only****Attachments**

1 [↓](#) Council Submission - Child Care Planning Guideline - Education and Child Care SEPP



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Department of Planning and Environment  
Industry and Infrastructure Policy  
PO Box 39  
SYDNEY NSW 2001

TRIM No: 17/14199  
23 March 2017

Dear Sir/Madam

**BURWOOD COUNCIL SUBMISSION  
DRAFT CHILD CARE PLANNING GUIDELINE**

Reference is made to the Draft Child Care Planning Guideline released by the Department as part of the preparation of the Draft Education and Child Care State Environmental Planning Policy (SEPP).

Council supports the establishment of a Planning Guideline as a means to reinforce principles around the care and wellbeing of children within child care facilities, as well as protecting the amenity and local character for residents living in the vicinity of these facilities.

Council has reviewed the exhibited material and wishes to raise the following matters:

- Concern is raised that the Draft SEPP and Draft Guideline promote child care facilities in multi-storey buildings and allow simulated outdoor space in place of genuine outdoor space.

Children who access long day care are often in these environments ten hours per day, five days per week. The literature and studies on healthy and child-friendly environments stress the importance of spaces which are home-like, with stimulating play and learning opportunities, social interaction, quiet spaces for relaxing, and provide fresh air, and access to outdoor environments.

It is Council's view that simulated outdoor spaces should not be promoted by the Guideline, but be actively discouraged.

- In relation to vehicle parking rates, Council supports the Guideline's reliance on the existing parking rates in a council's Development Control Plan (DCP). It is appropriate that councils be permitted to set their own parking rates based on local circumstances.
- Council has been involved in a number of child care proposals where the child care facility is operating in conjunction with another institution or use, like a church or school. One of the major issues arising in these proposals is achieving an appropriate separation of the uses, particularly in respect to vehicle access and parking. Council has found there is pressure for existing parking spaces to do "double-duty", serving both the child care facility and church for instance. Where the church may be holding a funeral or other service, parking provision is stretched beyond its capacity.

Section 3A 'Location' of the Guideline outlines the matters for consideration in relation to a 'mixed-use development' where a child care centre is located on the same site as another use. Council requests that a further item be added to this list of considerations in respect to parking requirements for each of the uses on a site, and separation of the respective uses.

Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW 2134 | P.O. Box 240 Burwood NSW 1805  
Phone: 02 9911 9911 | Facsimile: 02 9911 9900 | Email: council@burwood.nsw.gov.au

[www.burwood.nsw.gov.au](http://www.burwood.nsw.gov.au)

## ATTACHMENT 1

### ITEM 16/17 Answers to Questions Without Notice - Council Meeting of 18 April 2017.DOC Council Submission - Child Care Planning Guideline - Education and Child Care SEPP

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Draft Child Care Planning Guideline

2 of 2

- The SEPP argues that it is necessary to build more child care facilities in centres near to where people work. It is unclear if there is solid evidence to support this approach. Council's preference is generally for child care facilities to be located close to where people live, in residential areas, as opposed to resorting to multi-storey commercial developments. The anecdotal advice provided by Council's community services staff is that parents prefer to leave their children in care close to home where there is more likelihood of developing friendships with other local families.
- It is recommended that the privacy and overlooking of children within facilities also be a matter for consideration. This is particularly relevant to the multi-storey child care model which occurs in town centres with other multi-storey buildings in close proximity.
- Council supports the Section 2.10 'Emergency and Evacuation' guidelines which involve the provision of safer balustrades and handrails for children in a fire stair, and a safe haven or emergency lifts in multi-storey buildings with child care facilities. However, concern is raised that these emergency measures are unlikely to be met in the case of retrofitting a child care facility into an existing multi-storey commercial building. Clarification is sought in respect to whether Council can refuse a child care facility in circumstances where the minimum standards are met, but these higher-level measures are not being satisfied.

Thank you for the opportunity to provide input into the SEPP and Guidelines. I trust that these comments will be considered by the Department in finalising the legislation and supporting material.

If you have any enquiries please contact Council's Manager Strategic Planning, Ms Diwei Luo, on 9911 9928.

Yours sincerely



**BRUCE MACDONNELL**  
Deputy General Manager  
Land, Infrastructure & Environment