



Burwood Council

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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 21 August 2018 at 6.00pm to consider the matters contained in the attached Agenda.

Bruce Macdonnell
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, of 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 21 AUGUST 2018 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 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:

Council Meeting held on 24 July 2018

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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CONFIDENTIAL ITEMS

(ITEM 85/18)	VOLUNTARY PLANNING AGREEMENT FOR BURWOOD PLACE - 42-50 AND 52-60 RAILWAY PARADE, BURWOOD
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That above item be considered in Closed Session to the exclusion of the press and public in accordance with Section 10A(2) (d) of the Local Government Act, 1993, as the matter involves commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret.

QUESTIONS WITHOUT NOTICE

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

MAYORAL MINUTE

(ITEM MM14/18) CHANGES TO DEFINITION OF FLOOR SPACE IN THE BURWOOD TOWN CENTRE TO EXCLUDE HALLWAYS AND WALKWAYS, AND ROOMS USED AS MUSIC, STUDY OR COMMON ROOMS

Trim Folder: 18/29404

MAYORAL MINUTE BY CR JOHN FAKER (MAYOR)

Summary

It has come to my attention that current standard definitions and development standards may impede the inclusion of beneficial facilities and services in new developments in the Burwood Town Centre (BTC) particularly residential buildings. For example inclusion in a development of facilities such as music, study or common rooms, gyms and swimming pools which would benefit the cultural and recreational needs of residents, may be discouraged by the current floor space definition. Also hallways and walkways in developments usually take up a significant part of the available floor space on a site based on the Floor Space ratio, which may discourage allocation of floor space to these beneficial facilities and services. Car spaces in building basements for use by share-car would further benefit residents but currently would utilise available floor space as defined.

Operational Plan Objective

5.1.3 - Encourage mixed use buildings – commercial and residential to maximise use of buildings in the Town Centre

I therefore move that:

The General Manager investigate and report back to Council on changing the definition of floor space as it applies in the Burwood Town Centre to potentially exclude:

- Hallways and walkways in a building
- Facilities in a building for use as (but not limited to) music, study or common rooms, a gym or a swimming pool
- Car spaces in basements for use by share-car providers

Attachments

There are no attachments for this report.

MAYORAL MINUTE

(ITEM MM15/18) PUBLIC LIBRARY FUNDING

Trim Folder: 18/29772

MAYORAL MINUTE BY CR JOHN FAKER (MAYOR)

Summary

I am calling on Councillors to support the NSW Public Libraries Association and Local Government NSW in their advocacy to State Government for additional funds for public libraries.

In 2017/2018, the Burwood Library and Community Hub had 593,984 visits, provided 199,826 loans and hosted a huge range of well-attended programs and activities, such as story time and author talks. The service is highly valued by our local community and deserves to be supported. Burwood Council invests significantly in its library services, spending approximately \$1.9 million annually.

In the past, the cost burden associated with public libraries was shared to a much greater extent by the NSW Government in recognition of the broader social value of libraries for the State. This support has dwindled from 23% of total costs in 1980 to just 7.5% in 2017/2018.

To make matters worse, the 2018/2019 NSW State Budget delivered a 5% cut to funding and also cut access to all infrastructure funding for Metropolitan areas. This is a problem that has been ignored by successive NSW Governments resulting in State funding for NSW public libraries reaching crisis point.

The key issues are that:

- Libraries provide highly valued collections, spaces and programs for the whole community, including older people, refugees, multicultural communities and people who are digitally disadvantaged. Libraries are safe havens for vulnerable people, including those on low incomes and people who are homeless.
- Physical and virtual visits to libraries, library borrowing and participation in library programs continue to increase year after year.
- Yet NSW public libraries receive the lowest per-capita funding from the NSW Government compared to all other States in Australia.
- In 2015/2016, NSW Government funding for public libraries was only \$26.5m compared to the contribution of \$341.1m from NSW Councils. This amounts to Councils with far less of the State revenue, paying 12 times more than the State Government for library services which have a massive benefit overall for the people of NSW.

The NSW Public Libraries Association has joined forces with Local Government NSW to establish a library funding advocacy initiative in the lead up to the 2019 NSW State election. The *Renew Our Libraries* campaign will be rolled out over the next eight months. It will aim to persuade the NSW Government that its network of 368 public libraries has reached a funding crisis point and, without significant increases to ongoing funding, it is at risk of imminent service reduction. The success of this approach will rely heavily on the support of NSW Councils, their libraries and the community.

I recommend that this Council vigorously supports the *Renew Our Libraries* campaign.

Operational Plan Objective

1.1.2 Provide library services that engage the community in lifelong learning and provide recreational and social opportunities in accessible and people-friendly environments and spaces.

I therefore move that:

1. Council makes representation to the local State Member, the Hon Jodi McKay, in relation to the need for additional funding from the NSW State Government for the provision of public library services.
2. Council writes to the Hon Don Harwin, Minister for the Arts, and the Hon Walt Secord, Shadow Minister for the Arts, calling for bi-partisan support for the provision of a significant increase in State funding for NSW public libraries supported by a sustainable future funding model.
3. Council endorses the distribution of information at our Library and Community Hub relating to the NSW Public Libraries Association and Local Government NSW *Renew Our Libraries* campaign and supports other actions relating to this initiative.

Attachments

There are no attachments for this report.

MAYORAL MINUTE

(ITEM MM16/18) COUNCIL VENUES - ACCESS FOR SENIORS AND NOT FOR PROFIT GROUPS

Trim Folder: 18/30277

MAYORAL MINUTE BY CR JOHN FAKER (MAYOR)

Summary

I have recently received representation from some community groups who are regularly using our Council venues in relation to the fees and charges applied for local not for profits and senior groups.

The feedback I received is that, while discounts are applied for not for profit and senior groups, the fees are still quite high. Also, the process for booking venues and for providing evidence of membership and not for profit status is felt as a bit cumbersome by some groups.

I am aware that our Fees & Charges allow for pretty generous discounts for these groups, but I would recommend a review of our situation in comparison with neighbouring Councils to better assess and address these requests from our local groups.

Operational Plan Objective

- 1.1 High quality services and initiatives to meet the needs of the community
- 2.2 Strong partnerships to benefit the community

I therefore move that:

1. The General Manager assess the current process available for local not for profit and senior groups to book Council venues, including the requirements for evidence of status, as well as current fees and charges and related discounts, and compare them with those of neighbouring Councils.
2. The General Manager report back to Council via a Councillor memo with a summary of findings and possible improvements to the process.
3. Should the General Manager recommend a change in fees and charges as they apply to local not for profit and senior groups, a report be presented to Council for the change to be endorsed and placed on public exhibition.

Attachments

There are no attachments for this report.

MAYORAL MINUTE

(ITEM MM17/18) REQUEST FOR DONATION FOR THE RIVENDELL FLOWER SHOW 2018

Trim Folder: 18/30720

MAYORAL MINUTE BY CR JOHN FAKER (MAYOR)

Summary

I have been approached by Concord Hospital seeking Burwood Council's support for their annual Rivendell Flower Show fundraiser by way of sponsorship. The event will be held on 6-7 October 2018 at the Thomas Walker Estate in Concord with proceeds going towards Concord Hospital's Department of Geriatric Medicine and the Ageing and Alzheimer's Institute.

This fundraiser is of particular importance to our local community with almost one quarter of our local population aged 60 or older, many of whom rely on important services provided by Concord Hospital.

Therefore, I recommend that Council takes up a Bronze Sponsorship for the event to the value of \$5,000 to help raise funds for such an important cause.

On this note, I would like to highlight that over the few past years, there has been an increasing amount of organisations approaching Council to seek donations for their events and initiatives. I believe that it is important for Council to continue to support these organisations in a sustainable manner.

For this reason, I propose that Council implement an annual donations fund of up to \$20,000 for events and initiatives formally endorsed by Council by way of report, mayoral minute or notice of motion, with donations to be capped at \$5,000 per each individual organisation.

Operational Plan Objective

2.2.2 Develop strategic partnerships that will benefit the area and community

I therefore move that:

- Burwood Council takes up a Bronze Sponsorship to the value of \$5,000 to support the Concord Hospital's Rivendell Flower Show fundraiser to be held on 6-7 October 2018
- Council implement an annual donations fund of up to \$20,000 for events and initiatives formally endorsed by Council by way of a report, mayoral minute or notice of motion, with donations to be capped at \$5,000 per each individual organisation.

Attachments

1 [↓](#) Rivendell Flowershow Proposal 2018



2018
Rivendell
Flower
Show



Sponsorship Proposal



Rivendell Flower Show

The Rivendell Flower Show from 6-7 October 2018 will be a major floral event at the beautiful Thomas Walker Estate in Concord. Open to the public, Rivendell provides services to the Inner West Sydney community and this year will showcase another beautiful large scale flower show.

One of Sydney's best kept secrets, the Rivendell estate was the film location for Lex Luthor's mansion in *Superman Returns* and was included in Baz Luhrmann's *The Great Gatsby*, to name a few.

Bringing together displays and show gardens from up and coming floral designers and gardening personalities, the Rivendell Flower Show will allow the public to view spectacular displays and evoke an elegant mix of floral artistry, styling and design amidst beautiful architecture of the estate grounds. With the onset of the spring season, the Rivendell Flower Show will be a celebration of our Australian lifestyle and great outdoors and offer an extensive array of flower artistry and gardening presentations. Guests will have the opportunity to learn key floral arrangements techniques at the pop up classes and styling designs from TV gardening and lifestyle personalities. If you are a lover of flowers and garden displays, this is an event not to be missed.

Described as one of the Hospital's most anticipated social events, the Rivendell Flower Show is expected to attract record numbers. All funds raised for this year's Rivendell Flower Show will go towards Concord Hospital's Department of Geriatric Medicine, towards Ageing and Alzheimer's Research and for the establishment of a gymnasium for the **STRONG Program**.

Department of Geriatric Medicine

The Department of Geriatric Medicine at Concord Hospital cares for older people throughout the Inner-West areas of Sydney, focusing on older people with multiple or complex medical problems and care needs, rather than all older people.

Invitation to participate

Our Patron Professor The Honourable Dame Marie Bashir AD CVO and Concord Hospital invite you to participate in this unique event and be part of our Rivendell Flower Show.

Friday 5 October 2018

Rivendell Flower Show VIP Cocktail Evening

Saturday 6 October 2018

Rivendell Flower Show Gala Dinner

Saturday and Sunday 6-7 October 2018

Rivendell Flower Show

Sponsorship Opportunities

Rivendell Flower Show sponsorship offers your company or business a unique marketing and advertising partnership with Concord Hospital, The Royal Horticultural Society NSW, Sydney Flower School and the City of Canada Bay. Becoming a Flower Show sponsor will support and directly assist the Hospital's Department of Geriatric Medicine.

Platinum Sponsor

Value: \$50,000

As a Platinum Sponsor of the Rivendell Flower Show, your organisation will be given exclusive publicity opportunities. In addition to advertising in all promotional material, Platinum Sponsors will be provided with:

- Publicity in all advertising material, including company logo in all news releases
- Involvement in all media and publicity regarding the event
- Opportunity to deliver an address at the Rivendell Flower Show VIP Cocktail Evening
- Banner display at the event and promotional stand at the event
- Eight (8) complimentary tickets to attend the Rivendell Flower Show Gala Dinner
- Platinum Sponsor's website will be linked to Concord Hospital's website

Gold Sponsor

Value: \$25,000

Two opportunities available

As a Gold Sponsor of the Rivendell Flower Show your organisation will be given:

- Publicity in all advertising material, including company logo in all news releases
- Logo acknowledgement in the event program
- Acknowledgement during the opening night welcoming speech
- Banner display at the event and promotional stand at the event
- Six (6) complimentary tickets to attend the Rivendell Flower Show Gala Dinner
- Gold Sponsor's website will be linked to Concord Hospital's website

Silver Sponsor

Value: \$10,000

Two opportunities available

As a Silver Sponsor of the Rivendell Flower Show your organisation will be given:

- Logo acknowledgement in the event program
- Acknowledgement during the event welcoming speech
- Banner display at the event and promotional display stand at the event
- Four (4) complimentary tickets to attend the Rivendell Flower Show Gala Dinner
- Silver Sponsor's website will be linked to Concord Hospital's website

Bronze Sponsor

Value: \$5,000

As a Bronze Sponsor of the Rivendell Flower Show your organisation will be given:

- Logo acknowledgement in the event program
- Acknowledgement during the welcoming speech
- Bronze Sponsor's website will be linked to Concord Hospital's website

How to take up sponsorship:

Sponsorship opportunities are limited. Accordingly, we encourage you to select a sponsorship package that best suit your needs. Please direct your enquiries to:

Alice Kang

Director Marketing & Community Relations | Concord Hospital

Hospital Rd, Concord 2139

Tel 02 9767 8488 | Fax 02 9767 8477 | Mob. 0418 282 306 | alice.kang@health.nsw.gov.au

Peta Macfarlane

Marketing & Fundraising Co-ordinator | Concord Hospital

Hospital Rd, Concord 2139

Tel 02 9767 6038 | Fax 02 9767 6180 | peta.macfarlane@health.nsw.gov.au

www.rivendellflowershow.com.au

Sponsorship Booking Form

Concord Repatriation General Hospital
Rivendell Flower Show 2018
Thomas Walker Estate, Rivendell

Company: _____

Address: _____

_____ State: _____ Postcode: _____

Contact name: _____

Telephone: _____ Mobile: _____

Fax: _____ Email: _____

Please make cheques payable to Concord Hospital or debit my:

MasterCard Visa No Amex

Amount: _____

Credit Card Number: _____ / _____ / _____ / _____

Expiry Date: _____ / _____

Cardholder's Name: _____

Signature: _____

Please select the sponsorship package that best suit your needs

Platinum Sponsor of Rivendell Flower Show	<input type="checkbox"/> \$50,000
Gold Sponsor of Rivendell Flower Show	<input type="checkbox"/> \$25,000
Silver Sponsor of Rivendell Flower Show	<input type="checkbox"/> \$10,000
Bronze Sponsor of Rivendell Flower Show	<input type="checkbox"/> \$5,000

All Sponsors will be issued with a Tax Invoice upon receipt of their Sponsorship Booking Form and payment. Sponsorship Packages are exclusive of GST.



NOTICE OF MOTION**(ITEM NM1/18) SYDNEY EASTERN CITY PLANNING PANEL - LETTER TO MINISTER**

File No: 18/30874

Councillor Lesley Furneaux-Cook to move that:

Councillor George Mannah was unable to attend the meeting of the Sydney Eastern City Planning Panel's deliberation on 3 July 2018 on Item 2017SCL060-Burwood-DA124/2017, 68-72 Railway Parade and 2-10 Oxford Street Burwood.

The matter was deferred to seek further information from the applicant. At the second sitting on 6 August 2018 of the matter, which included new information from the Department of Education, Councillor George Mannah indicated his availability, but was not permitted to attend.

Council had not previously voted on the matter.

The nominated Alternative to Councillor George Mannah is the General Manager and he was not permitted to attend the 3 July 2018 meeting. The General Manager wrote to the Department of Planning seeking clarification of this on 14 June 2018 and still has not received a reply.

This is very disappointing that Burwood Council had no representatives to assist the Panel with their expertise and vote on this important matter.

In our Council's own deliberations on development matters, a Councillor's absence in one meeting does not preclude them on deliberating and voting on a deferred matter. In fact, that is often the basis for recession motions.

I have also examined both the Panel's Code of conduct and its Operational Procedures, and am unable to locate under what legislative framework the Panel used to exclude Councillor George Mannah.

Operational Plan Objective

4.4.1 Provide advocacy on regional and metropolitan projects on behalf of the community.

Recommendation(s)

1. That Council writes to the Minister of Planning, the Hon Anthony Roberts and the Chair of the Sydney Eastern City Planning Panel, Mr Carl Scully, expressing our disappointment that one of Council's nominated representatives, Councillor George Mannah, was not permitted to attend the Sydney Eastern City Planning Panel meeting of 6 August 2018 when deliberating on the deferred Item 2017SCL060-Burwood-DA124/2017.
2. That Council seek clarification from the Minister and the Chair under what Act deemed Councillor George Mannah ineligible to deliberate on the matter.

Attachments

There are no attachments for this report.

NOTICE OF MOTION**(ITEM NM2/18) BURWOOD COUNCIL HOARDING POLICY**

File No: 18/30939

Councillor Heather Crichton to move that:

Burwood Council currently has a Hoarding Policy to regulate and provide safe and convenient pedestrian access and movement around development sites.

These hoardings generally allow for developers to include site advertising and/or construction advertising for large scale developments.

On recent visits to the Sydney CBD, I have come across development sites that have noticeable hoardings which include artwork and colourful graphics.

City of Sydney reviewed their Hoarding & Scaffolding Policy in November 2016 to ensure that developers minimise adverse visual impacts through providing high quality public art and graphs, innovative designs and other visually interesting temporary structures. This also allows them to maintain a colour standard for consistency across the city.

Operational Plan Objective

5.3.1 Promote opportunities for public art and culture

Recommendation(s)

That the General Manager review our current hoarding policy for both Type A and Type B hoardings and provide a detailed report back to Council on opportunities for developers to include public art, including historical images of Burwood, colourful graphics and bespoke artwork on hoardings in our Town Centres. Amendments to this policy would allow Burwood Council to transform the visual impact of construction sites and would provide evolving, temporary urban canvases and outdoor galleries.

Attachments

1 [↓](#) Hoardings & Scaffolding Policy - City of Sydney - 21082018



Hoardings & Scaffolding Policy

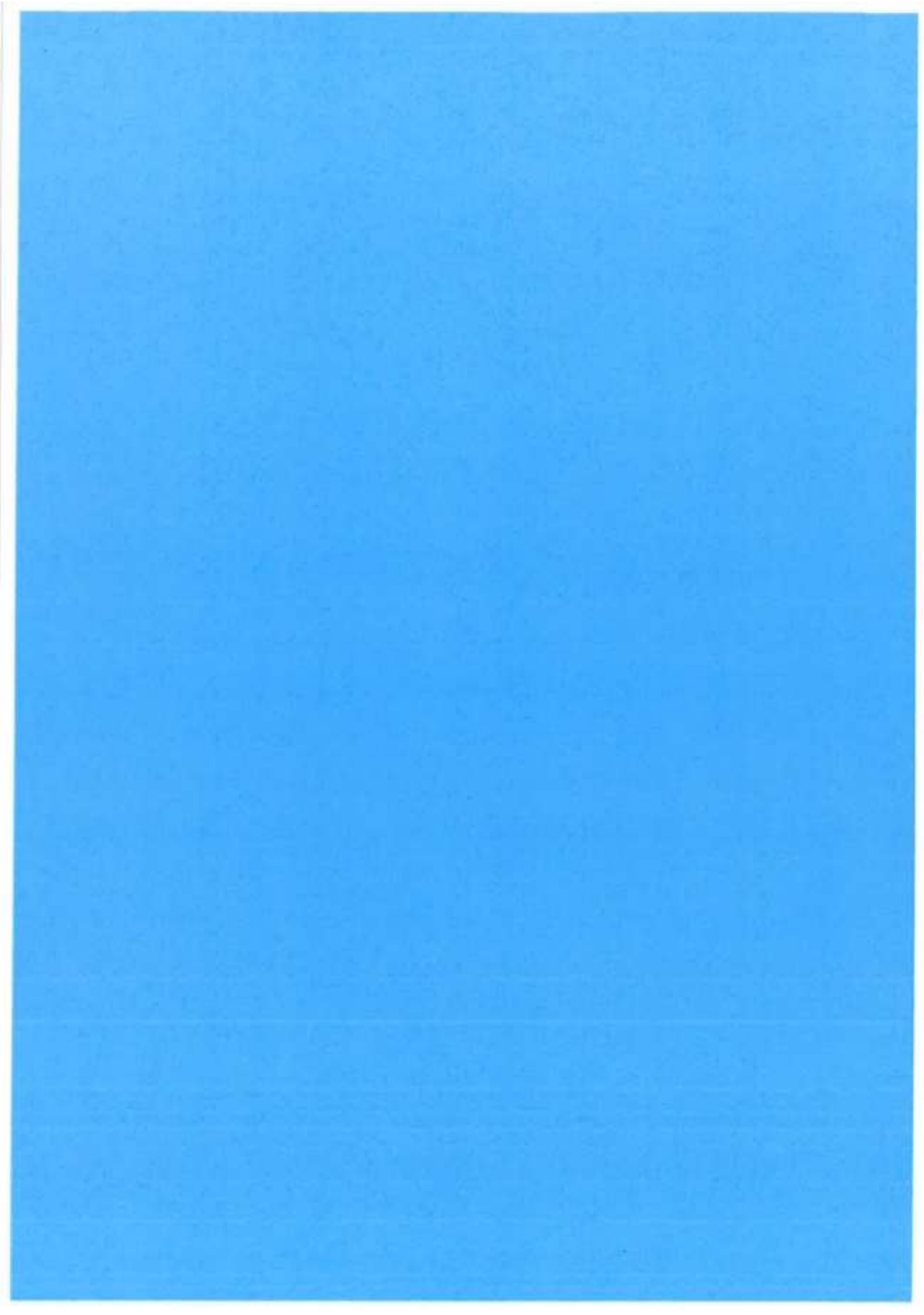
2017

Version	Adopted
01	8 December 2014
02	21 November 2016

City of Sydney Council
Town Hall House
456 Kent Street
PO Box 1591 Sydney NSW 2001
www.cityofsydney.nsw.gov.au

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Introduction



PART 01

Introduction



The city attracts around 615,000 visitors each day and more than 437,000 work in the local area. It is therefore imperative that temporary structures have the least possible impact on the movement of people and allow for safe and convenient pedestrian passage past worksites.

1.1 The purpose and title of this Policy

This Policy ("the Policy") is called the **'Hoardings and Scaffolding Policy'**.

The Policy applies throughout the City of Sydney local government area. The primary purpose of the Policy is to give force to *Guidelines for Hoardings and Scaffolding* that prescribe design and installation criteria to control the placement of temporary structures on or above a public road. The *Guidelines* are also used to assess applications lodged by property owners, developers, builders and contractors seeking approval to erect a temporary structure on or above Council's land (footways and roadways) to enable construction or maintenance activity on buildings to be undertaken.

1.2 The aims of the Policy

The aims of the Policy are to:

- minimise pedestrian, cycleway and vehicular obstructions and inconvenience resulting from the placement of temporary structures in a public place;
- maintain safe passage and high amenity including safe surfaces past worksites;
- maintain visual openness of footways;
- screen and secure work areas from the public place;

- minimise impacts by providing appropriately designed and finished hoarding deck protection;
- provide fascias to conceal site sheds on hoarding decks;
- minimise adverse visual impacts through providing high quality public art and graphics, innovative designs and other visually interesting temporary structures;
- maintain a colour standard for consistency across the city;
- control truck and worker access points in hoardings to enhance public safety;
- provide effective lighting under hoardings for public safety and to illuminate graphics on site fences; and
- minimise adverse impacts on street trees.

The Policy was adopted by the City of Sydney Council on 21 November 2016.

A reference in this Policy to the "Guidelines" refers to the *'Guidelines for Hoardings and Scaffolding'*. A reference to 'temporary structures' means: hoardings, scaffolding and cantilevered work platforms as defined in the *City of Sydney Guidelines for Hoardings and Scaffolding*.

The approval of hoardings to isolate a worksite and provide overhead protection does not include the operation of equipment to hoist or swing material or equipment over a public road. A separate approval must be obtained for these activities.



1.3 How this Policy works

Part 1 - Exempt from approval

There are no exempt activities available to allow the placement of temporary structures on or above a public road without the approval of Council.

Part 2 - Criteria that Council will take into consideration in determining whether to give or refuse an approval to an application

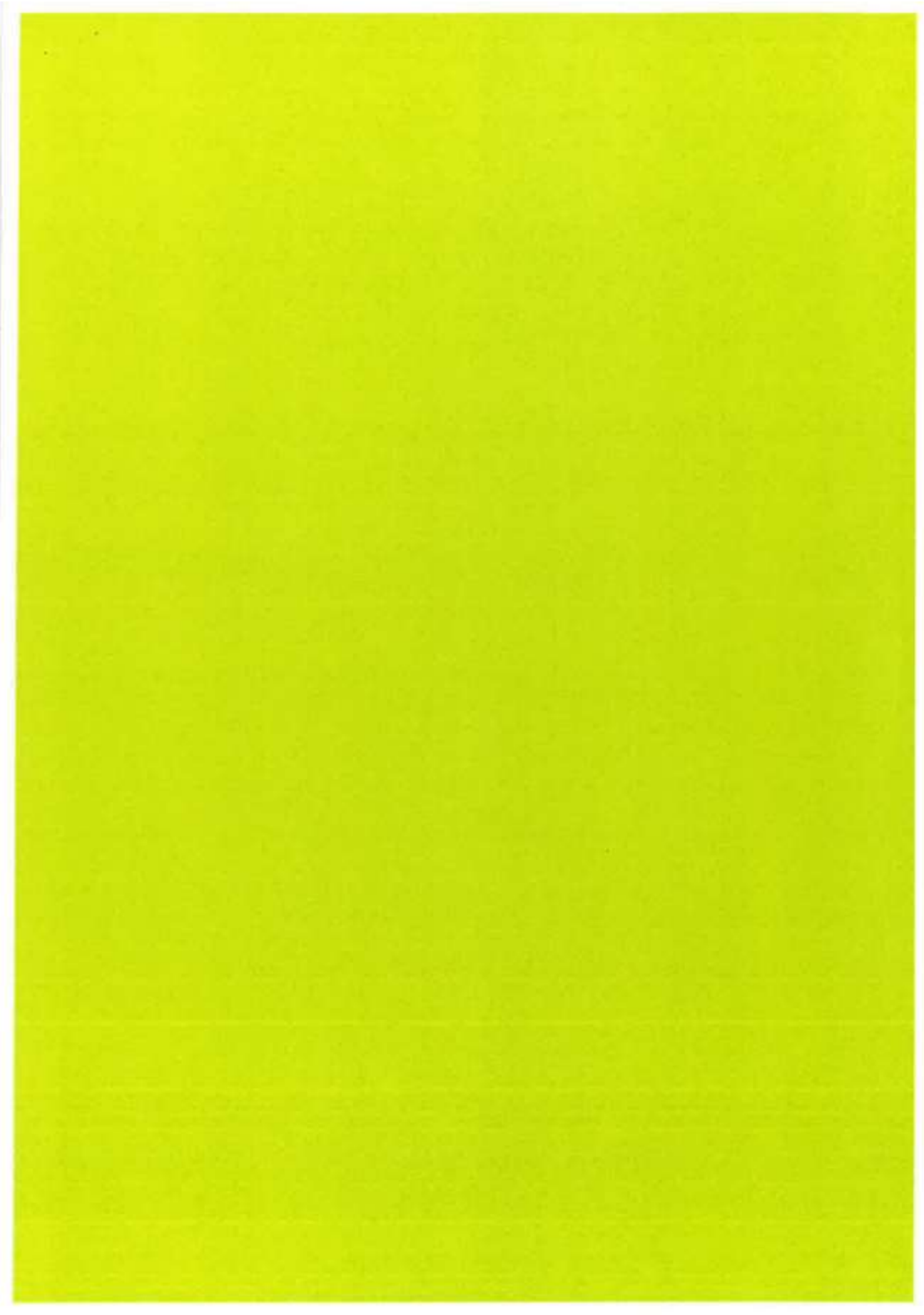
The provisions prescribed in the *Guidelines* will apply when seeking approval to erect a temporary structure on or above a public road.

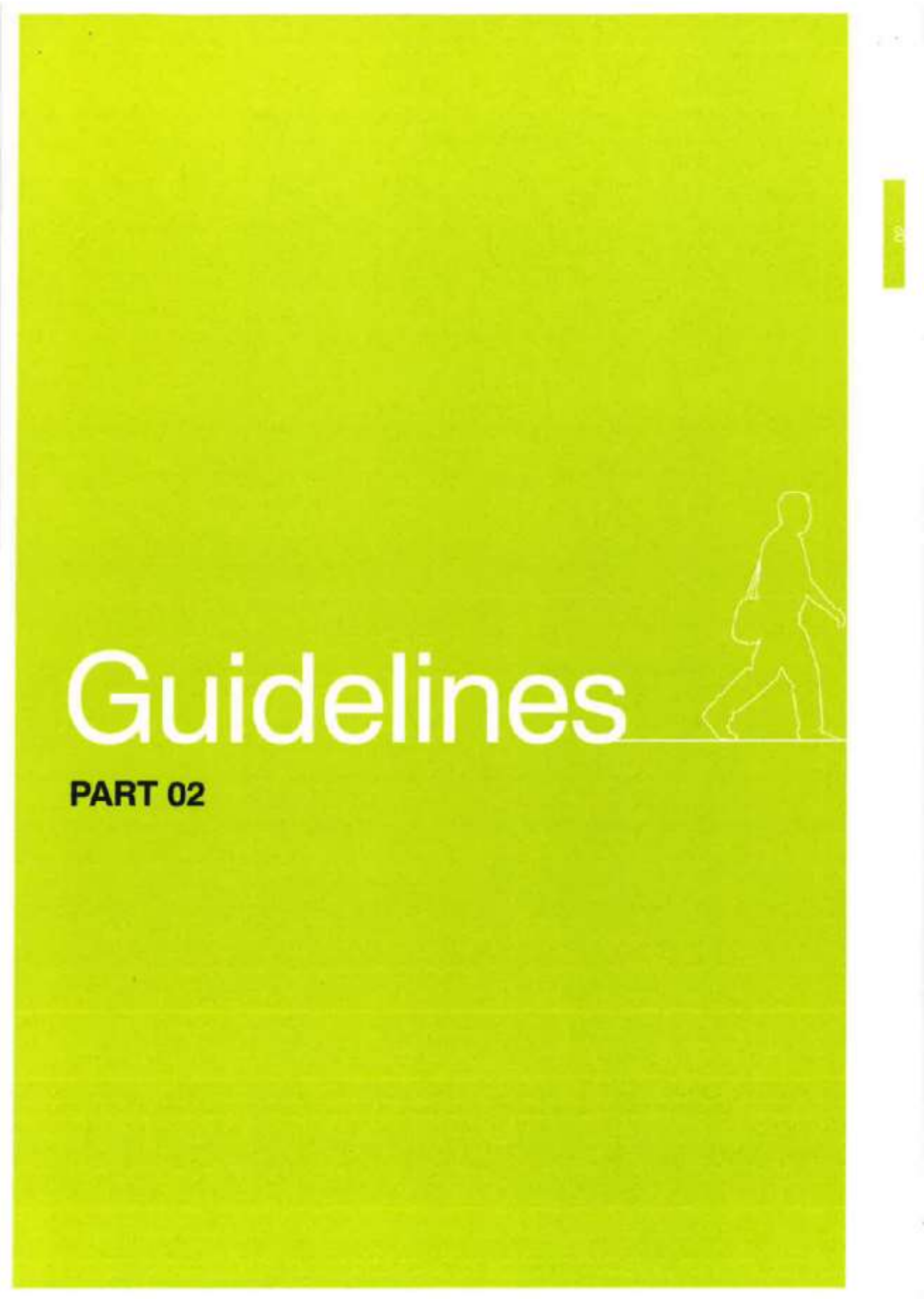
Part 3 - Other matters relating to approvals

The provisions of the Roads Act 1993 and Roads Regulation 2008 relating to the placement of temporary structures on or above a road will be considered in the assessment and determination of applications seeking approval to erect temporary structures.

The approval for the erection and placement of temporary structures on or above a public road does not automatically permit the use of equipment (cranes and hoists) to swing or lift material across or over any part of a public road. A separate approval is required under category E(1) of the table in s68 and s94 of the Local Government Act and s139 of the Roads Act 1993.







Guidelines

One of the principal aims of the *Policy and Guidelines* is to ensure that temporary structures have minimal impact on the safe and convenient passage of pedestrians, bicycle riders and vehicles past worksites.

The city, due to very high pedestrian and traffic volumes, has special needs in terms of providing safe and convenient pedestrian access and movement. Footway obstructions resulting from hoardings and scaffolding are often a necessary part of construction and building maintenance activity. In allowing the installation of these structures in a public place it is essential that they have the least possible impact on residents, workers, visitors and the business community.

There are also significant visual impacts that result from development activity therefore hoardings must have quality design features to minimise these impacts. The City therefore requires hoardings to meet prescribed minimum design standards including the display of public art and graphics.

The use of public art, graphics, colour and images on hoardings and scaffolding is a means of minimising visual impacts and adding visual interest and the presence of creativity in the streetscape. The installation of artwork on temporary structures aligns



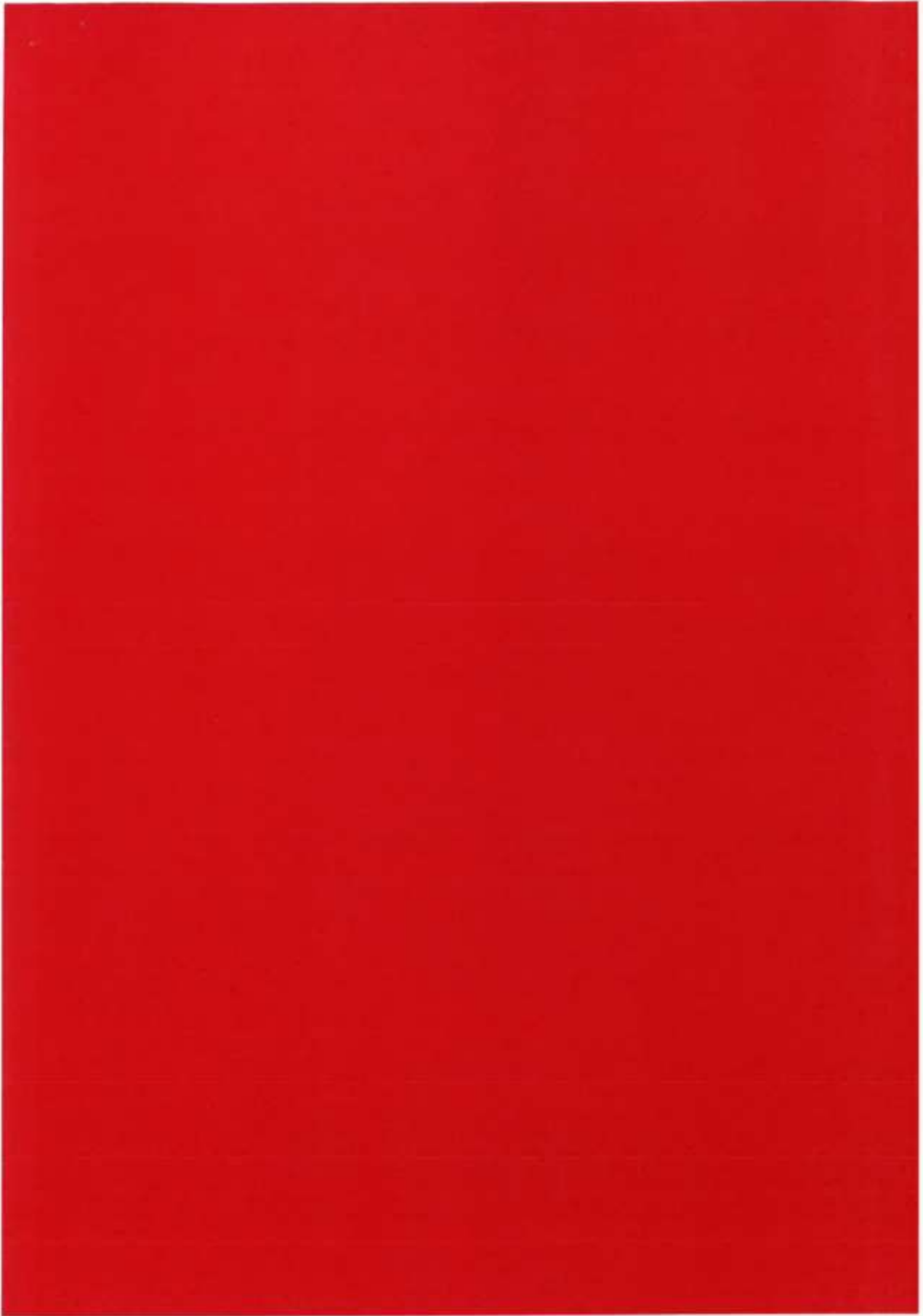
with the City's Creative City Cultural Policy and Action Plan and discourages graffiti and bill poster attack by eliminating blank spaces. Innovative hoarding design features are also encouraged through this Policy and Guidelines.

The Guidelines for Hoardings and Scaffolding adopted through this Policy are structured around performance 'objectives' and 'deemed-to-comply' provisions. It is expected that in the majority of cases proposals for temporary structures will be capable of complying with the prescriptive deemed-to-comply criteria.

Where it is not possible to meet the deemed-to-comply provisions and there are clearly demonstrated construction and/or site constraints consideration will be given to alternative designs that meet the objectives of the Guidelines or a combination of both the objectives and deemed-to-comply provisions.

Compliance with the deemed-to-comply provisions of the Guidelines will automatically satisfy the performance objectives.







03

The Policy

3.1 Legal status of this Policy

The *Hoardings and Scaffolding Policy* ("the Policy") is a local approvals Policy under s158 of the Local Government Act 1993. The Policy is aimed at the development and construction sectors where approval is sought to erect temporary structures on or over a public road (an activity under category E(2) of the table in s68 of the Act) in association with development sites or buildings undergoing maintenance.

3.1.1 When did the Policy commence?

The Policy commenced on 1 January 2017 and was advertised on 11 January 2017.

3.1.2 Have amendments been made to the Policy?

This is a new Policy and replaces a previous Policy titled 'Hoardings and Scaffolding Policy 2014' adopted by Council on 8 December 2014.

3.1.3 When will the Policy be revoked?

Under s165(4) of the Act a Policy is automatically revoked 12 months after the NSW local government elections unless the Council resolves to revoke it sooner (s164(3)).

3.1.4 Enforcement of the Policy

Unless specifically varied by a condition of approval or a direction of an authorised person, the relevant provisions set out in the *Guidelines* must be satisfied when placing a temporary structure on or above a public road.

3.1.5 What are the implications for non-compliance with this Policy?

An authorised person of Council may issue penalty notices, give orders, initiate Court action for non-compliance with the Policy, *Guidelines* and a determination (an approval) and for associated breaches of applicable legislation.

A person who is guilty of an offence under the various Acts administered by Council may be liable, on conviction, for a maximum penalty as prescribed by the applicable legislation.

Parties not acting in accordance with this Policy, *Guidelines* and an approval to place a temporary structure on or above a public road may be given notice in writing to comply before an infringement is issued. Council, at all times, reserves the right to issue an immediate infringement notice depending on the seriousness of the circumstance and at the discretion of the authorised person and consideration of Council's Compliance Policy and Prosecution and Civil Enforcement Policy.



3.1.6 Granting an approval

An approval (Permit) for the placement of a temporary structure on or over a public road (footway and/or roadway) is granted under s94 of the Local Government Act 1993 and s139 of the Roads Act 1993. Where required, an approval under s115 of the Roads Act may also be granted. An approval is issued subject to conditions imposed through s94 of the Local Government Act and s139(1)(d) of the Roads Act.

An approval is granted to allow a temporary structure to be installed and used in a specified way as prescribed in the *Guidelines* and as set out in the conditions forming part of an approval (Permit).

3.1.7 Amending an approval

A person to whom an approval is granted may apply to amend an approval (Permit) under s87 of the Local Government Act if the amendments are minor only. The assessment for an amendment to an approval will include, but will not be limited to, the following matters:

- a) whether the proposed amendment is substantially the same as that originally approved; and
- b) whether any prejudice will be caused to any person who made a submission concerning the original proposal; and



Persons not acting in accordance with this *Policy*, the *Guidelines* and an approval may be given notice to comply.

The City reserves the right to issue an immediate infringement notice at the discretion of an authorised officer.

- c) whether consultation with another authority such as NSW Roads and Maritime Services is required; and
- d) an amended determination replaces the original approval from the date endorsed on the notice of determination (Permit).

3.1.8 Extending an approval

The City may determine to extend an approval under s107 of the Local Government Act if it is satisfied there is good cause for doing so.

An approval may not be extended where a temporary structure:

- a) is structurally unsound;
- b) is not being satisfactorily maintained in accordance with the *Guidelines for Hoardings and Scaffolding*;
- c) is non-compliant with an approval;
- d) a public liability insurance policy for a structure/ approval is not current or has been withdrawn by the insurer; and
- e) any other circumstance as determined by Council.

An approval to extend a determination (Permit) must be obtained before the lapsing date (as specified in an approval).

3.1.9 Revoking an approval (Permit)

Council may revoke an approval under s108 of the Local Government Act for any circumstance set out in s109. An approval may also be revoked, for any reason, under s140 of the Roads Act 1993. Council may exercise its powers under these Acts where any of the following apply:

- a) the person holding an approval (Permit) fails to act on directions to rectify a temporary structure particularly matters relating to inadequate structural adequacy or other public safety risk;
- b) an approval has lapsed and an application has not been lodged to extend an approval;
- c) a public liability insurance policy for a structure/ approval is not current or has been withdrawn by the insurer;
- d) any other circumstance as determined by Council.

In circumstances where an approval has been revoked, Council reserves the right to take action to have the unauthorised structure/s removed and recover all associated costs.



Sydney 2030 Green/Global/Connected

(ITEM 77/18) DRAFT VOLUNTARY PLANNING AGREEMENT - 24 BURLEIGH STREET BURWOOD

File No: 18/24450

REPORT BY ACTING DIRECTOR PLANNING & ENVIRONMENTAL SERVICES

Summary

Applicant: O.T.A.R Investments Pty Ltd.
Owner: O.T.A.R Investments Pty Ltd.
Company Director(s): Valery Musman and Osman Ordukava

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with a Development Application (DA) for 24 Burleigh Street Burwood have been publicly notified in accordance with the relevant legislation. The draft VPA will require the developer to pay a monetary contribution to Council in lieu of a shortfall in parking. Council's endorsement is now sought to enter into the VPA after the granting of the DA.

Operational Plan Objective

2.1.3 Ensure transparency and accountability in decision making.

Background

The subject site at 24 Burleigh Street Burwood contains the former Burwood Police Station and Courthouse, both of which are heritage listed. DA BD.2017.056 proposes to construct a three storey addition above the former Police Station and use the whole site for a boarding house.

The Applicant lodged an appeal with the Land & Environment Court of NSW (the Court) in response to a "deemed refusal" whereby Council had not determined the DA within 40 days of lodgement.

The matter was heard in the Court in May 2018. During the Court proceedings the Applicant presented a VPA offer to Council with respect to a shortfall of six off-street car parking spaces.

A draft VPA was then submitted to Council providing for the developer to pay a contribution of \$297,000 to Council in exchange for the six on-site car parking spaces.

The DA was approved by the Court on 7 June 2018 subject to conditions including:

*This consent is subject to a Voluntary Planning Agreement (VPA) with Council. The VPA shall be executed following the granting of this development consent and a monetary contribution in lieu of six car parking spaces [based upon (24 boarding rooms x 0.2) + one (manager space) x \$49,500 = \$297,000], paid to Council on or before the date of execution of the VPA and **prior to issue of the Construction Certificate.***

The draft VPA and Explanatory Note (EN) were referred to Council's solicitors for their advice and vetting. The documents 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 28 days from 26 June 2018 to 25 July 2018. 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 in response to the public exhibition.

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 are 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 provide additional car parking 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 the Burwood / Strathfield Town Centres.
2. The VPA would result in a public benefit. The VPA would seek to provide car parking, being made available to the general public, in place of parking within a private development.
3. The VPA provides a reasonable means of achieving the relevant purpose. The VPA provides for the monetary contribution in exchange for the parking shortfall within the development. Council will utilise the funds provided for public car parking that will ultimately be more beneficial to the community.
4. The VPA was taken into consideration in assessing and determining the DA. The DA was approved by the Court on 7 June 2018. If the VPA is not entered into, the Applicant would be expected to amend the DA or the consent will be breached.
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.* In this case, the DA has been approved by the Court.
 - *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. 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 \$297,000 to Council towards the provision of public car parking within the Burwood Town Centre. This amount is based on the contribution rate of \$49,500 per space for the 2017-2018 Financial Year. Council has been charging monetary contributions based on the rates at the time of Council's endorsement of a VPA. Accordingly, the contribution based on the rate for the 2018-2019 Financial Year would be $\$50,640 \times 6 = \$303,840$.

Council would be obliged under legislation to allocate the contributions and any return on its investment to the provision of, or the recoupment of, the cost of providing public car parking.

The provision of public parking 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 the VPA for 24 Burleigh Street Burwood. The VPA would provide Council with a monetary contribution of \$303,840.00 for public car parking. 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 the DA, which would include a condition on the (amended) consent requiring that the VPA be entered into.

Recommendation(s)

1. That Council enter into the VPA for 24 Burleigh Street Burwood for the provision of a monetary contribution of \$303,840 towards public car parking in accordance with the Condition of Consent for DA BD.2017.056 requiring that the monetary contribution paid to Council on or before the date of execution of the VPA and prior to issue of the 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.

Attachments

- 1  Draft Voluntary Planning Agreement
- 2  Explanatory Note

PLANNING AGREEMENT

BURWOOD COUNCIL

O.T.A.R. INVESTMENTS PTY LTD ACN 139 899 482

Draft

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PLANNING AGREEMENT

PARTIES

Burwood Council of Suite 1, Level 2, 1-17 Elsie Street Burwood in the State of New South Wales (Council)

and

O.T.A.R. Investments Pty Ltd ACN 135899482 of Unit 36, 2 Railway Parade, Lidcombe, in the State of New South Wales (Developer).

Background

- A. The Developer is the registered proprietor of the Land.
- B. On 3 May 2017, the Developer submitted a Development Application, DA 2017/56, to the Council for Development Consent to carry out the Development on the Land.
- C. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make a monetary contribution in lieu of deficient parking for the proposed boarding house at 24 Burleigh Street, Burwood, if the Development Consent was granted.

Operative Provisions

1. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Part 7 of the Act.

2. Application of this Agreement

This Agreement applies to both the Land and the Development.

3. Operation of this Agreement

This Agreement shall operate from the date of the approval by the Court of the Development Application DA2017/56

Any approval given by the Court for Development Consent for DA2017/56 shall not come into effect until this Agreement is executed.

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

Construction Certificate has the same meaning as in the Act.

Developer: Initial Here Attorney: Initial Here

Court is the Land and Environment Court

Dealing in relation to the Land, 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 Consent issued for Development Application DA2017/56 lodged by the Developer with the Council.

Development Application has the same meaning as in the Act.

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.

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 Lot 11 in Deposited Plan 1168986, known as 24 Burleigh Street, Burwood, NSW.

Monetary Contribution means \$297,000.00

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

Planning Certificate has the meaning ascribed in section 10.7(1) of the Act.

Public Facility means car parking within the Burwood Town Centre for use by the public.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

4.2 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) A reference in this Agreement 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 Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) 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.

Developer: Initial Here _____ Attorney: Initial Here _____

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Version Control: 14 June 2018

- (f) A reference in this Agreement 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 Agreement.
- (h) An expression importing a natural person including 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 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 Agreement includes the agreement recorded in this Agreement.
- (m) 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.
- (n) Any schedules and attachments form part of this Agreement.

5. Development Contributions to be made under this Agreement

- 5.1 The Developer will pay to the Council a monetary contribution at the sum of one hundred and forty eight thousand five hundred dollars (\$297,000.00) on the date of the execution of this Agreement.
- 5.2 The Developer must deliver to Council a bank cheque in a form acceptable to the Council for the amount of the monetary contribution on the date of the execution of this Agreement, which shall occur prior to the issue of any Construction Certificate with respect to the Development.
- 5.3 The Developer covenants and agrees with the Council not to make an application for the issue of any Construction Certificate until the payments required to be made to the Council hereunder have been paid.

6. Application of the Development Contributions

- 6.1 The monetary contributions paid by the Developer under this Agreement will be used by Council to develop Public Facilities.
- 6.2 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 Council at its absolute discretion;
 - (c) be available for use by the general public and will not be restricted for use by patrons, visitors and occupiers of the Development.

Developer: Initial Here _____ Attorney: Initial Here _____

7. Application of and Sections 7.11, 7.12 or 7.24 of the Act to the Development.

This Agreement does not exclude the application of or Sections 7.11, 7.12 or 7.24 of the Act to the Development. Benefits under the Planning Agreement are not to be taken into account in determining a development contribution under Sections 7.11, 7.12 or 7.24 of the Act.

8. Registration of this Agreement

8.1 The Developer further covenants with the Council:

- (a) that prior to the issue of any Construction Certificate for the Development, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this Agreement over the title to the Land pursuant to Section 7.6 of the Act from all persons who have an interest in the Land;
- (b) that forthwith after receiving the consents specified in subclause (a) hereof it shall cause this Agreement to be registered on the title of the Land;
- (c) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose to sell the Land or any part thereof then it shall:
 - (i) within seven (7) days of listing the Land or any part thereof for sale, either through an agent or privately, notify the Council of such intention;
 - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like agreement to this present Agreement in which substantially the same covenants as set out herein shall apply;
 - (iii) within seven (7) days of exchange of contracts, notify the Council of the sale and provide the Council with a copy of the contract;
 - (iv) within twenty one (21) days of receipt from the Council of a replacement agreement between the Council and the purchaser substantially in the form of this Agreement, have it executed by the purchaser and return it to the Council;
 - (v) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose otherwise than by sale to transfer or assign its interest in the Land or any part thereof to a transferee or assignee, then it shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.

8.2 The Developer further covenants and agrees with the Council that pending the registration of this Agreement on the title of the Land as required by clause 8.1, the Council shall be entitled to register a caveat at Land & Property Management Authority over the title to the Land to protect its interest therein pursuant to this Agreement

9. Acknowledgements

9.1 The Developer and the Proprietor acknowledge that Council may include a notation on Planning Certificates in relation to this Agreement.

Developer: Initial Here Attorney: Initial Here

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Version Control: 14 June 2018

- 9.2 The parties acknowledge that 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 If a party believes that there is a dispute in respect of this Agreement then:
- (a) the party must give notice in writing to the other party stating that there is a dispute (the Dispute Notice); and
 - (b) the Dispute Notice must outline:
 - (i) what the party believes the dispute to be;
 - (ii) what the party wants to achieve;
 - (iii) what the party believes will settle the dispute; and
 - (iv) who will be the party's representative to negotiate the dispute.
- 10.2 Within fifteen (15) business days of a Dispute Notice served, the representatives of each of the parties must meet in order to resolve the dispute.
- 10.3 Both parties must adhere to the dispute resolution procedure set out in this Agreement. The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.
- 10.4 If the parties cannot resolve the dispute after adhering to the dispute resolution procedure set out in this Agreement then either party may seek any other avenues available to it in order to resolve the dispute.
11. Enforcement
- 11.1 This Agreement may be otherwise enforced by either party in any court of competent jurisdiction.
- 11.2 For the avoidance of doubt, nothing in this Agreement prevents:
- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (b) 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.
- 11.3 The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of the Council existing at law or which the Council would otherwise have available to it.
12. Notices
- 12.1 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:

Developer: Initial Here Attorney: Initial Here

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- (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) Email 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 2134
Post: PO Box 240, Burwood NSW 1805
Fax Number: 9911 9900
Email: council@burwood.nsw.gov.au

Developer

Attention: Valery Muzman
Address: Unit 36, 2 Railway Parade, Lidcombe, NSW, 2141
Email: vmuzman@bigpond.com

- 12.2 If a party gives the other Party three (3) business days notice of a change of its address or fax number or email, 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, fax number or email address.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, two (2) business days after it is posted.
 - (c) If it is sent by fax or email, at the time it is sent.
- 12.4 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 5.00pm on that day on 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 obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

Developer: Initial Here _____ Attorney: Initial Here _____

14. Assignment and dealings

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

15. Costs

The Developer shall bear the Council's reasonable costs directly related, and incidental, to negotiating, preparing, executing, stamping and registering the Agreement, including any costs of lodging/removing caveats on the title to the Land.

16. Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, 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 constructed 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,

Developer: Initial Here Attorney: Initial Here

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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 obligations of, or breach of obligations 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 Planning Agreement is not to be used in construing the terms of this Planning Agreement.

26. **GST**

26.1 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 The consideration for any supply under this Planning Agreement excludes GST;

26.3 Where a party to this Planning 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;

26.4 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.

26.5 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 Planning 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**

Once the Council is satisfied that the Developer have fully complied with all of their obligations under this Planning Agreement, the Council agrees to provide a full release

Developer: Initial Here _____ Attorney: Initial Here _____

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and discharge of this Planning Agreement with respect of the whole of the Land. In such circumstances Council will do all things reasonably necessary, including the execution of any documents to enable the Developer to remove any caveat and the notation of this Planning Agreement on the title to the Land.

DRAFT

Developer: Initial Here Attorney: Initial Here

Version Control: 14 June 2018

Draft Voluntary Planning Agreement

EXECUTED AS AN AGREEMENT

Date:

Signed for and on behalf of Burwood Council by its attorney, Bruce Gordon Macdonnell under Power of Attorney dated 29 November 2017 registered book 4736 number 451, in the presence of:

)
)
)
)
)
)

.....
Signature of Witness

.....
Signature of Attorney

.....
(Print) Name of Witness

Bruce Gordon Macdonnell
.....
(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 O.T.A.R Investments Pty Ltd:

(ACN 135899482 executed this agreement pursuant to section 127 of the Corporations Act in the presence of:

.....
Signature of Director

.....
Signature of Director

Valery Musman

Osman Ordukava

.....
(Print) Full Name of Director

.....
(Print) Full Name of Director

Explanatory Note

Planning Agreement for the provision of monetary contribution in lieu of parking spaces at 24 Burleigh Street, Burwood, NSW

Under Section 7.4 of the Environmental Planning and Assessment (EP&A) Act 1979

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2)
- (3) O.T.A.R. Investments Pty Ltd (**Developer and Proprietor**)

2. Description of Subject Land

The land to which the Planning Agreement relates is as follows:

Folio Identifiers: Lot 11, DP1168986
 Location: 24 Burleigh Street, Burwood

3. Description of Proposed Change to Development

The Developer has lodged a Development Application (being DA 2017/56) which provides a shortfall of six (6) parking spaces.

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

Clause 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 \$297,000, payable on the date of execution of the agreement and before issue of any Construction Certificate.

5. Assessment of the Merits of the Planning Agreement

[Clause 25E(1)(b) of the EP&A Regulation 2000]

5.1 The planning purposes served by the Planning Agreement

[Clause 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

[Clause 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 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 (now Principles)

[Clause 25E(2)(d) of the EP&A Regulation 2000]

The Planning Agreement promotes one or more of the elements of Council's charter (now Principles) under Sections 8, 8B and 8C of the Local Government Act 1993 by

- identifying and prioritising community needs and aspirations;
- carrying out Council functions in a way that provides the best possible value for residents and ratepayers;

- providing an opportunity for the community and stakeholders to be involved and interested people are invited to make comment during the exhibition period of the Planning Agreement. The public exhibition and the consideration of this matter at Council meetings are intended to *keep the local community informed*,
- ensuring 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

Clause 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.

5.5 Compliance matters

Clause 25E(2)(g) of the EP&A Regulation

Whether the Planning Agreement requires certain matters to be complied with before a construction certificate, occupation certificate or subdivision certificate is issued:

The Planning Agreement requires payment of the monetary contribution before the issue of the construction certificate for the Development.

(ITEM 78/18) ADOPTION OF THE POLICY ON CARRYING OUT BONUS DEVELOPMENT IN THE PUBLIC INTEREST

File No: 18/24565

REPORT BY ACTING DIRECTOR PLANNING & ENVIRONMENTAL SERVICES

Summary

A draft amendment to the Policy on Carrying Out Bonus Development in the Public Interest was considered by Council in April 2018. The draft amended Policy has been publicly exhibited. No submissions were received. It is recommended that the amended Policy be formally adopted by Council.

Operational Plan Objective

2.1.3 Ensure transparency and accountability in decision making.

Background

Council at its meeting on 24 April 2018 resolved the following:

1. *That Council endorse the draft amended Policy for placement on public exhibition in accordance with Section 705 of the Local Government Act 1993.*
2. *That Council authorise the General Manager to allow further editorial or minor changes to the Policy considered necessary prior to the public exhibition.*
3. *That the outcome of the public exhibition be reported back to Council.*
4. *That Council authorise the General Manager to review and adjust the Policy's contribution rates periodically.*
5. *That Council authorise the General Manager to negotiate special cases of bonus development up to a maximum 5% FSR only where land is dedicated and or works carried out for essential infrastructure of clear documented benefit to the Burwood community that would not otherwise be achieved.*

This report presents the outcome of the public exhibition in accordance with the above resolution.

Draft Amended Policy

The draft amended Policy seeks to reflect the following key points which were set out in the report to Council on 24 April 2018:

- The Policy is extended to the Perimeter and Transition areas of the Burwood Town Centre (BTC), the Strathfield Town Centre (STC) and to the B2 zone along the northern side of Liverpool Road in Strathfield and Burwood. The additional areas were supported by site testing undertaken by urban design consultants for Council.
- The Policy no longer applies to the BTC Middle Ring and Commercial Core due to the recent amendment to the Burwood Local Environmental Plan 2012 (BLEP). The BLEP provides for bonus development in these areas instead.
- Inclusion of an addition 5% bonus cannot apply in the BTC Commercial Core and Middle Ring, so it is not recommended that the additional bonus be routinely applied to any other areas of the Burwood Local Government Area (LGA).

- That special cases of bonus development up to a maximum of 5% be considered only where land is dedicated and/or works are carried out. This would apply only in the case of essential infrastructure of clear documented benefit to the community.
- Recent resolutions by Council in respect to bonus development, particularly in relation to the dollar rate that applies and the locations where these rates apply.

Consultation

In accordance with the Council resolution, the draft amended Policy was exhibited for 28 days between 5 June 2018 and 3 July 2018. A notice was displayed in the local newspaper, in the foyer of Council's Administration Building and on Council's website. The draft amended Policy was made available for viewing at Council's Customer Service Centre and on Council's website. No submissions were received.

Planning or Policy Implications

The previous report on this matter discussed the planning and policy implications. In essence, the draft amended Policy aims to represent Council's position on bonus development in a formal and transparent manner.

Developers and property owners may apply for bonus development in one of two ways:

- Under Clause 4.4A(5)-(9) of the BLEP which applies to the Commercial Core and Middle Ring of the Burwood Town Centre, or
- Under Council's Policy on Carrying Out Bonus Development in the Public Interest.

Financial Implications

No financial implications.

Conclusion

The draft amended Policy on Carrying Out Bonus Development in the Public Interest has now been publicly exhibited and no submissions were received. Council's adoption of the Policy is recommended.

Recommendation(s)

1. That Council adopt the draft amended Policy on Carrying Out Bonus Development in the Public Interest.
2. That Council authorise the General Manager to allow further editorial or minor changes to the Policy considered necessary before the document becomes effective.
3. That the amended Policy on Carrying Out Bonus Development in the Public Interest becomes effective on 1 September 2018.

Attachments

- 1 [↓](#) Draft Amended Policy on Carrying out Bonus Development in the Public Interest



Burwood Council

heritage ▪ progress ▪ pride

TRIM 18/9871

CARRYING OUT BONUS DEVELOPMENT IN THE PUBLIC INTEREST

Suite 1, Level 2, 1-17 Elsie Street, BURWOOD NSW 2134
PO Box 240, BURWOOD NSW 1805
Phone: 9911-9911 - Fax: 9911-9900
Email: council@burwood.nsw.gov.au
Website: www.burwood.nsw.gov.au

Adopted by Council: xx xx xx
Effective: xx xx xx

Purpose

This policy provides guidance on:

- **Part A** - carrying out bonus development in the public interest in certain commercial centre areas of the Burwood Local Government Area (LGA) under this policy
- **Part B** - carrying out bonus development in the Middle Ring and Commercial Core areas of the Burwood Town Centre under the provisions of the *Burwood Local Environmental Plan (BLEP) 2012*

The policy informs developers or applicants where and how bonus development may be approved. It also informs Council Officers and experts appointed by Council who will assess the Development Application (DA) and/or the Section 96 Modification Application (s96), which involve bonus development in the public interest.

Part A

1. Where does this policy apply?

This part of the policy provides guidance on how bonus development may be carried out in the commercial centres shown on Maps 1, 2, 3 and 4 below being:

1. The Perimeter and Transition areas of the Burwood Town Centre as delineated in Figure 2(a) in Section 3.3.2 of the Burwood Development Control Plan (BDCP) 2013.
2. Land included in the B4 Mixed Use zone in Burwood Road North in the BLEP 2012
3. Land included in the B4 zone in the Strathfield Town Centre in the BLEP 2012
4. Land included in the B2 Local Centre zone on the northern side of Liverpool Road Burwood and Strathfield in the BLEP 2012



Map 1

Carrying Out Bonus Development in the Public Interest



Map 2



Map 3

Carrying Out Bonus Development in the Public Interest



Map 4

2. How does this policy work?

In these centres Council must be satisfied at its discretion before development consent can be granted that the bonus development is carried out in the public interest and will help meet the demand for open space, community facilities or other public infrastructure within the Burwood Local Government Area (LGA). Sections 4 and 5 below provide more details on the Public Interest Requirement.

3. What is bonus development and the extent of bonus?

In these centres bonus development refers to development involving additional floor space, which results in the Floor Space Ratio (FSR) of the entire development being over and above the maximum FSR and/or the maximum Residential FSR stipulated for the site in the BLEP 2012.

The maximum FSR bonus that may be accepted in these centres is 10% of the applicable maximum FSR development standards in the BLEP. The floor space resulting from the bonus may fully apply to the residential component of a development.

For example, the maximum FSR for a site within the B4 Mixed Use zone area in North Burwood Road is 3:1, and the maximum Residential FSR for the site is 2.7:1, under the current BLEP 2012. The former may be increased to a maximum of 3.3:1 under this policy. Assuming the whole of the additional floor space is used for residential purposes, the maximum Residential FSR may be increased to a maximum of 2.97:1.

4. What is the Public Interest Requirement?

Council commissioned Cred Community Planning and Hill PDA to undertake an Open Space and Community Facilities Study in 2014 (the Study).

It is stated in the Study that the following will be in demand by 2031:

Open Space and Parks

- An additional open space of 165,055m²
- Quality over quantity
- Green open space, especially in the north of the Burwood LGA
- Places for informal recreation and social gatherings
- Shaded seating, tables and games which make "parks as living rooms"
- Exercise equipment for older people
- Adventure play grounds for a range of age groups
- Multipurpose courts and fields over single purpose

Community Facilities

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

Council must be satisfied that the bonus development is carried out in the public interest and will help meet the demand for open space and community facilities within the Burwood LGA as identified in the Study.

5. What matters will be considered in meeting the Public Interest Requirement?

The public interest is met, if the developer voluntarily offers to:

- dedicate land free of costs; or
- pay a monetary contribution to Council; or
- provide any other public benefit; or
- any combination of the above

to be used for or applied towards a public purpose.

6. What is the amount of a monetary contribution or the value of another offer?

Where a developer voluntarily offers a monetary contribution, the amount of the contribution is determined by the dollar rate per square metre of Gross Floor Area (GFA) that is approved as additional development pursuant to this policy.

The dollar rate per square metre for bonus development in each of the areas on Maps 1-4 will be determined from time to time by Council resolutions. Council's Schedule of Fees and Charges will be updated when required to incorporate the rates determined by Council. See http://www.burwood.nsw.gov.au/fees_and_charges.html.

Carrying Out Bonus Development in the Public Interest

Where a developer voluntarily offers the dedication of land, any other public benefit or a combination of offers, Council will require reliable information on the cost and value of the offer(s) to meet the Public Interest Requirement. The DA/s96 is to include supporting cost and valuation reports by a registered quantity surveyor and a registered valuer.

Council may seek the services of independent qualified persons to verify such cost and value reports. In these cases, all costs associated with obtaining such advice will be at the expense of the developer.

Determination as to whether the Public Interest Requirement is met will be at the absolute discretion of Council.

7. What matters are excluded from the Public Interest Requirement?

Land identified for acquisition for road widening in the BLEP 2012 generally will not be considered to have satisfied the Public Interest Requirement. Consideration may however be given to an entire land parcel that is identified for local open space acquisition in the BLEP 2012.

Section 3.9 of the Burwood Development Control Plan (BDCP) requires open spaces, forecourts and pedestrian links to be provided at certain locations within the Burwood Town Centre in conjunction with approved development. These are to be made available for public use. Compliance with these public domain provisions does not satisfy the Public Interest Requirement for the purposes of this policy and does not entitle the developer to any bonus floor space. This is because compliance usually does not result in any loss of development potential on the site and because the BDCP went through public exhibition and adoption by Council before coming into force.

Provisions of open spaces and pedestrian links in conjunction with developments, additional to the BDCP public domain provisions, could be considered to satisfy the Public Interest Requirement.

8. What is the relationship to developer contributions?

The Public Interest Requirement to be provided in a bonus scheme is over and above the requirements of the Section 94A Contributions Plans for the Burwood Town Centre and the Burwood LGA excluding the Burwood Town Centre. Also the calculation of the Section 94A contribution will include floor space gained as bonus development.

9. What is the planning framework?

BLEP 2012

The BLEP 2012 is the statutory principal document that regulates development. It is supported by a series of maps, which sets out zoning, maximum height of buildings and maximum FSR.

Clause 4.4 - *Floor Space Ratio* sets out the maximum FSR for development which is shown in the FSR map.

Clause 4.4A - *Exceptions to Floor Space Ratio* sets out the maximum FSR for the purpose of residential accommodation (the maximum Residential FSR) and for serviced apartments by areas that are delineated in the FSR map. It also sets out maximum FSR for bonus development (see Part B below).

Clause 4.6 - *Exceptions to development standards* provides a degree of flexibility in applying certain development standards to particular development. In all cases where an applicant is seeking approval of a departure from a development standard involving bonus FSR, the applicant must make a written request that justify the contravention of a development standard by demonstrating that:

Carrying Out Bonus Development in the Public Interest

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.

The consent authority must not grant approval to the variation of the development standard unless it is satisfied that these matters have been demonstrated and that the proposed development is consistent with the objectives of the particular standard and the objectives for the zone. This requirement applies in conjunction with bonus development considerations and compliance with the Public Interest Requirement.

Clause 6.5 - *Design excellence in zones B2 Local Centre and B4 Mixed Use* aims to deliver in the Burwood Town Centre and other centres in the Burwood LGA the highest standard of architectural, landscape and urban design for development involving the erection of a new building of 3 or more storeys on land in Zone B2 Local Centre or Zone B4 Mixed Use.

BDCP

The BDCP supports the controls set out in the BLEP 2012 with detailed development controls to achieve the vision for the Burwood Town Centre and other centres covered by this policy.

Section 94A Contributions Plan for the Burwood LGA (excluding the Burwood Town Centre)

This Plan imposes a flat levy on the cost of development of up to 1%, the rate depending on the type and scale of development. Contributions received will be spent by Council on the provision, augmentation or improvement of the local infrastructure specified in the Works Schedule of the Plan.

Section 94A Contributions Plan for the Burwood Town Centre

This Plan imposes a 4% flat levy on the cost of development where it exceeds \$250,000. Contributions received will be spent by Council on the provision, augmentation or improvement of the local infrastructure specified in the Works Schedule of the Plan.

10. What can be expected in the development assessment stage?

The DA/s96 will be referred to independent planning, urban design, and possibly valuation and economic consultants, for assessment for probity reasons. The proposed development, including any bonus floor space, which could result in up to an additional 10% of the maximum total FSR, must be able to stand on design and planning merits before approval of the DA/s96 can be recommended. It is not sufficient justification for bonus floor space over and above the controls of the BLEP 2012 to rely only on a "public interest" contribution or benefit for approval.

PART B

1. Where does this policy apply?

This part of the policy provides guidance on how Council may be satisfied that a development will provide community infrastructure in the Commercial Core and Middle Ring areas of the BTC.

The Commercial Core and Middle Ring areas (shown on Map 5 below) are the same as Area 1 and Area 2 referred to in Clause 4.4A *Exceptions to floor space ratio* of the Burwood Local Environmental Plan (BLEP) 2012 and are delineated in the Floor Space Ratio Map of the BLEP 2012.



Map 5

2. How do the bonus provisions work?

In these areas bonus development may be approved by Council under Clause 4.4A (5) provided compliance is achieved with the maximum FSR development standards in that Clause. In addition Council must be satisfied before development consent is granted that the requirements of Clause 4.4A (6) and (9) of the BLEP 2012 for the provision of community infrastructure have been met.

N.B. Council cannot approve exceedances of the maximum FSR development standards in Clause 4.4A (5). These are mandatory maximum development standards.

3. What is satisfactory community infrastructure?

Under this policy, Council may determine at its absolute discretion that subclauses (6) and (9) of Clause 4.4A have been satisfied for a development having regard to whether:

- Community infrastructure of the kind(s) specified in subclause (9) of Clause 4.4A is provided on site as part of the development or on another site within the Burwood Town Centre free of

Carrying Out Bonus Development in the Public Interest

cost to Council. Also that infrastructure has to be assessed as appropriate for the Burwood Town Centre, taking into account the nature of the community infrastructure and its value to the community working or residing in the Burwood Town Centre or

- Land is dedicated free of cost to Council for the provision of community infrastructure within the Burwood Town Centre of the kind(s) specified in subclause (9) of Clause 4.4A. Also that land has been assessed and determined as appropriate for the Burwood Town Centre, taking into account the nature of the community infrastructure and its value to the community working or residing in the Burwood Town Centre or
- Any combination of the above or
- A monetary contribution is voluntarily offered to and accepted by Council for the provision of community infrastructure within the Burwood Town Centre of the kind(s) specified in subclause (9) of Clause 4.4A

4. What is the amount of a monetary contribution or the value of another offer?

Where a monetary contribution is offered, the amount will be determined in accordance with the dollar rate per square metre of GFA that is approved as additional development under BLEP Clause 4.4A(5). The dollar rate per square metre for bonus development in the Commercial Core and Middle Ring areas will be determined from time to time by Council resolutions. Council's Schedule of Fees and Charges will be updated periodically to incorporate the rates determined by Council. See http://www.burwood.nsw.gov.au/fees_and_charges.html

The community infrastructure for which received monetary contributions will be expended are those listed in the Schedule of Works for the Section 94A Plan for the Burwood Town Centre, provided those works comply with the meaning of community infrastructure in subclause (9) of Clause 4.4A of the BLEP 2012, and the community infrastructure is of value to the community working or residing in the Burwood Town Centre.

Where community infrastructure is offered in kind or by dedication of land, Council will require the DA/s96 to include reliable information on the cost and value of the offer(s), where necessary supported by cost and valuation reports by a registered quantity surveyor and a registered valuer.

Council may seek the services of independent qualified persons to verify such cost and value reports. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant.

5. What land is excluded?

Where land is offered for dedication under BLEP Clause 4.4A (6) the following is excluded:

- land designated for acquisition (eg. road widening) under the BLEP 2012
- land referred to in the Burwood Development Control Plan Section 3.9 Public Domain and Amenity

6. What is the relationship to the contributions plan?

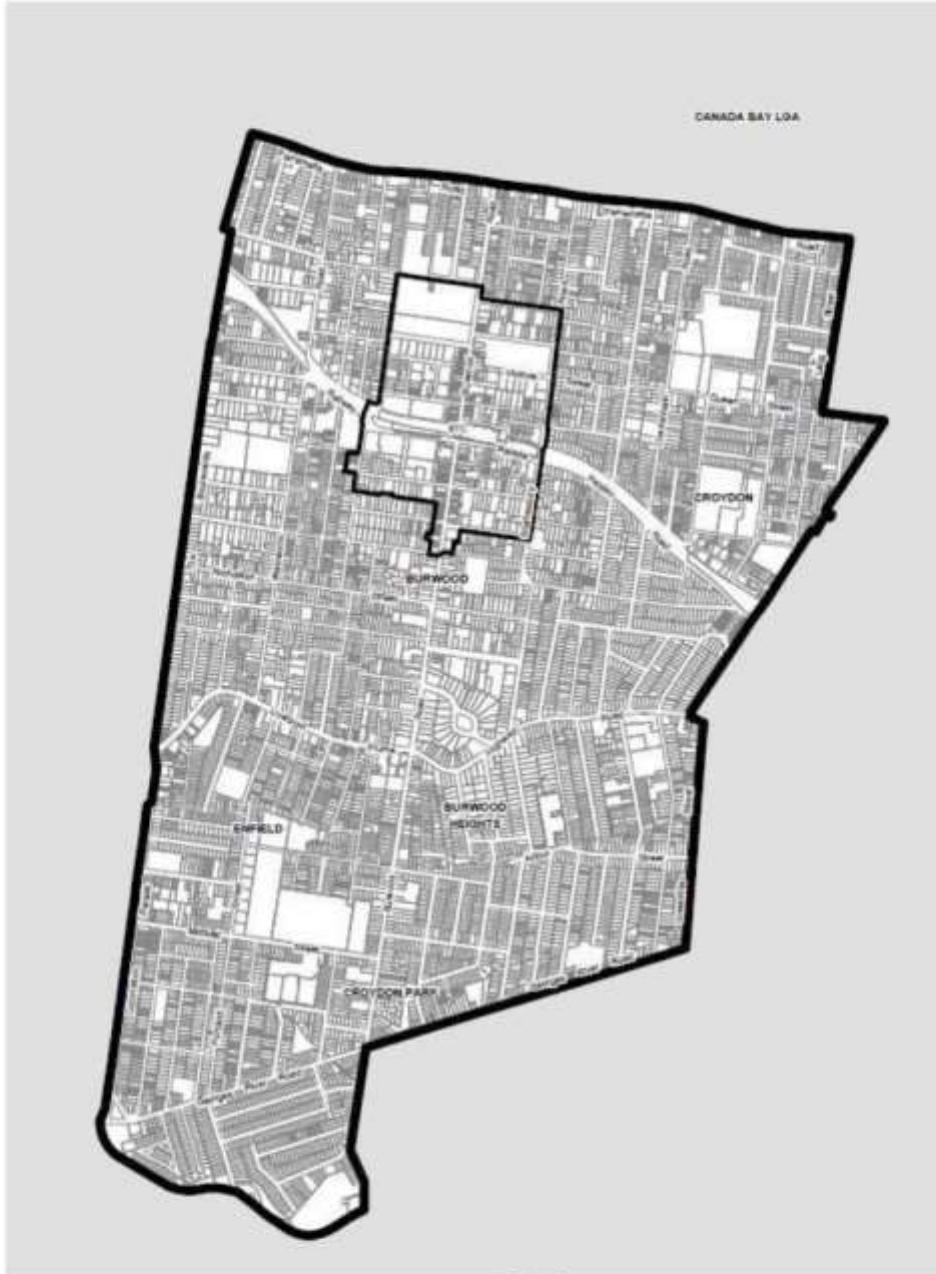
Compliance with BLEP Clause 4.4A (6) is over and above the requirements of the Section 94A Contributions Plan for the Burwood Town Centre. Also the calculation of the Section 94A contribution will include floor space gained as bonus development.

7. What can be expected in the development assessment stage?

The DA/s96 will be referred to independent planning, urban design, and possibly valuation and economic consultants, for assessment for probity reasons. The proposed development, including

Carrying Out Bonus Development in the Public Interest

any bonus floor space, must be able to stand on design and planning merits before approval of the DA/s96 can be recommended. It is not sufficient justification for bonus floor space over and above the controls of the BLEP 2012 to rely only on a "public interest" contribution or benefit for approval.



Map 6

Related Documents

- Burwood Local Environmental Plan 2012
- Burwood Development Control Plan
- Section 94A Contributions Plan for the Burwood Town Centre
- Section 94A Contributions Plan for the Burwood LGA (excluding the Burwood Town Centre)

Review

This policy will be reviewed no later than every four years.

Contact

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(ITEM 79/18) REVIEW AND REVISION OF PLANNING AGREEMENTS POLICY

File No: 18/22970

REPORT BY ACTING DIRECTOR PLANNING & ENVIRONMENTAL SERVICES

Summary

The Planning Agreements Policy (the Policy) as adopted in 2005 needs to be streamlined and updated to reflect Council's experience with the use, preparation and implementation of planning agreements and to incorporate recent amendments to the *Environmental Planning & Assessment Act 1979* (EP&A Act). The proposed changes will provide a contemporary policy document that is more accessible and of more utility to users and the community. It is recommended for public exhibition.

Operational Plan Objective

2.1.3 Ensure transparency and accountability in decision making.

Background

The Policy was adopted by Council on 6 December 2005. This followed amendment of the EP&A Act to enable planning agreements (also called Voluntary Planning Agreements or VPAs) to be entered into by Council and a developer.

VPAs were introduced to the NSW planning system to provide more flexibility into the development contributions system, to deliver enhanced planning benefits for the community related to the impacts of development, and to help fund works that create the capacity for new development.

Over the last 12 years Council has entered into 25 VPAs, indicating that they have been useful and beneficial to Council, developers and the Burwood community. It is expected that more VPAs will be proposed for future development in Burwood and endorsed by Council.

A review and revision of the Policy is timely to account for Council's experience with the use, preparation and implementation of VPAs and to incorporate recent amendments to the EP&A Act.

Proposal

The aims of the review and revision of the Policy are:

- To streamline and update the Policy document based on Council's experience in its use and implementation in the last 12 years. There is now a clear focus for how VPAs are used in the Burwood Local Government Area (LGA) and a clear process for the preparation of the VPAs.
- To incorporate changes to the EP&A Act and Regulation concerning planning agreements. This was one of a range of amendments that commenced on 1 March 2018 as part of NSW State Government reforms to the planning system.
- To include in the Policy the templates for planning agreements and their accompanying explanatory notes that are currently used in new agreements. The original 2005 Policy provided generic templates and Council's experience since then it has evolved to include templates specifically suited to how VPAs are used in the Burwood LGA.
- To provide a Policy document to developers and the community that is a current and best-practice guide to VPAs in the Burwood LGA as a result of the above.
- To support the implementation of other key Council planning documents. The VPA system is integral to providing flexibility for car parking provision in business zones under the *Burwood*

Development Control Plan 2013 (BDCP), and to facilitate bonus development in certain business zones under the Policy on Carrying Out Bonus Development in the Public Interest.

In this context, the main proposed changes to the Policy are summarised as:

- Streamlined and improved presentation of the Policy so that it is more accessible to users.
- Clear statements on the outcomes that Council wants from VPAs, the purposes for which they are mostly used in the Burwood LGA, and the relationship between VPA funds and local infrastructure contributions under EP&A Act Sections 7.11 and 7.12 (formerly Sections 94 and 94A).
- An improved statement of the process and the steps involved in developers offering, and Council entering into VPAs and clearer links to other key planning documents (such as the BDCP and the Bonus Development Policy).
- Direct links to Council's Schedule of Fees and Charges where the standardised monetary contribution rates that can be accepted under VPAs are specified, and where they may be updated without the need to change the Policy document.
- Inclusion of the update references to the EP&A Act and Regulation in the Policy and in the templates for Planning Agreements and Explanatory Notes.
- Including in the Policy the templates that are now used for planning agreements.

Legislation Changes

The EP&A Act and Regulation changes incorporated in the revision of the Policy mainly concern reference to the new numbering system adopted for this legislation. There are two important exceptions.

Complying Development Certificates

A VPA may be entered into now in relation to an application for Complying Development Certificates (CDCs). This was not allowed previously.

Notwithstanding the change, the EP&A Act and the Regulation are silent on the mechanisms or process by which this could occur, the Minister has not issued any determinations or directions and the Secretary has not issued any guidance notes on this matter.

In practice, it is difficult to see how this reform will function or whether it will impact on Council. Currently CDCs in the Burwood LGA are mainly issued by private certifiers for relatively minor developments such as new dwelling houses which are unlikely to involve matters necessitating VPAs. Council assesses few CDC applications.

In this context, until such determinations, directions or guidance notes are issued to clarify the matter, it is recommended that Council not consider any offer for a planning agreement in association with a CDC should one be received. This is stated in the revised Policy.

Ministerial Determinations or Directions

Also added to the EP&A Act is the power for the Minister to determine or direct a planning authority (Council) on the method of determining the extent of the provision of the public benefit to be made by the developer under a planning agreement. This is significant as providing any "*material public benefit ... to be used for or applied towards a public purpose*" is one of the options that the EP&A Act states a developer may offer under a planning agreement. The other options are to dedicate land free of cost or pay a monetary contribution, or any combination of these options.

The Policy states that a public benefit is a benefit enjoyed by the public as a consequence of a development contribution, and that is a net material public benefit conferred by a development contribution that is used for, or applied towards a public purpose. Based on the EP&A Act, the

Policy defines a public purpose as including public amenities or services, affordable housing, transport or other infrastructure related to land, recurrent expenditure related to these matters, monitoring the planning impacts of development, or the conservation or enhancement of the natural environment.

The EP&A Act amendment will allow the Minister, in future, to clarify or restrict the options that Councils can accept as material public benefits. However, at this stage the Minister has not issued any determinations or directions on this matter. Until such time as this occurs, it is recommended that the Policy maintains a general approach on this matter consistent with the EP&A Act.

Practice Notes

The Regulation provides that the Secretary of the Department may issue practice notes to assist parties in the preparation of planning agreements.

Practice Notes issued in 2005 by the (equivalent of the) Department of Planning & Environment (the Department) were included in the Policy as adopted in 2005. These notes are out of date and are no longer published by the Department. In 2016 the Department released Draft Practice Notes on Planning Agreements which were the subject of a public consultation process in early 2017. These included significant, although not major, changes from the original Practice Notes.

Publicly nothing has happened with the Draft Practice Notes since the consultation. The Notes do not reflect the recent legislation changes and are no longer available on the Department's website. Instead, the website says the 48 submissions received from the consultation were analysed and consideration is being given now to how the policy framework can be improved before being finalised. No timeframe is indicated.

Therefore, the revised Policy does not include any practice notes. However, when the Policy is reported to Council for adoption following public exhibition, it is intended to recommend to Council that the General Manager be authorised to include in the Policy any new Practice Notes when published by the Department, together with any determinations or directions given by the Minister as referred to above.

Consultation

Following endorsement by Council, the revised Policy will be placed on public exhibition to provide the community with the opportunity to comment on the document. The exhibition period will last for six weeks in accordance with Council's practice of exhibition of major policies. Upon completion of the notification period, the Policy will be reported to Council again with details of any submissions received before final adoption by Council.

Planning Comment

Currently, Council's system for planning agreements is operating satisfactorily. The main benefits of the proposed revisions will be providing users and the community with a contemporary Policy document that includes the lessons learned in Council's experience in implementing VPAs is consistent with recent legislative changes, and provides users with the current templates for VPAs and Explanatory Notes.

When the proposed changes are included in the Policy, Council's process for assessing offers, preparing agreements, public notification, and the execution of endorsed agreements will continue to function and operate much as it does currently.

Conclusion

The Planning Agreements Policy as adopted in 2005 needs to be streamlined and updated to reflect Council's experience with the use, preparation and implementation of VPAs in the Burwood LGA and to incorporate recent amendments to the EP&A Act. The proposed changes will provide a contemporary policy document that is more accessible and of greater use to users and the community.

Recommendation(s)

1. That the draft revised Planning Agreements Policy is endorsed for public exhibition in accordance with Council's practice of exhibition of major policies.
2. That a further report be provided to Council after the public exhibition period advising of the exhibition outcomes and making recommendations on the finalisation of the revised Planning Agreements Policy.

Attachments

- 1 [↓](#) Draft Revised Planning Agreements Policy

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1 Introduction

- 1.1 The *Environmental Planning and Assessment Act 1979* (the Act) provides that a planning agreement may be made between Council and a developer for a contribution that is used for or applied towards a public purpose.
- 1.2 The legal framework for a planning agreement is provided by:
- (a) the provisions of the Act in Subdivision 2 of Division 7.1 of Part 7 - Planning Agreements,
 - (b) the provisions of the Regulation in Division 1A of Part 4 - Planning Agreements,
 - (c) Directions or determinations concerning planning agreements made by the Minister for Planning (under Section 7.9 of the Act) and/or Practice Notes issued by the Secretary of the Department of Planning & Environment (under Section 25B(2) of the Regulation).
- 1.3 The purpose of this document is to set out Burwood Council's additional or supplementary policy guidelines and procedures relating to the use of planning agreements in the Burwood Local Government Area (LGA).
- 1.4 This Policy was adopted by resolution of the Council on 6 December 2005 and amended on [insert date].
- 1.5 In this Policy, the following terminology is used:
- Act** means the *Environmental Planning and Assessment Act 1979*,
 - complying development certificate** has the same meaning as in the Act,
 - development application** has the same meaning as in the Act,
 - development contribution** means the kind of provision made by a developer (a person who may be an applicant, proponent or land owner) under a planning agreement, being a monetary contribution, the dedication

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of land free of cost or the provision of a material public benefit, or the recoupment of the cost of providing these, or any combination of them, to be used for or applied towards a public purpose,

instrument change means a change to an environmental planning instrument to enable a development application to be made to carry out development the subject of a planning agreement,

planning obligation means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution,

public benefit is a benefit enjoyed by the public as a consequence of a development contribution,

public purpose includes public amenities or services, affordable housing, transport or other infrastructure related to land, recurrent expenditure related to these matters, monitoring the planning impacts of development, or the conservation or enhancement of the natural environment,

public includes a section of the public,

Regulation means the *Environmental Planning and Assessment Regulation 2000*,

- 1.6 This Policy is not legally binding. However, it is intended that the Council and all persons dealing with the Council in relation to planning agreements will follow this Policy.
- 1.7 Amendments may be made to the Policy over the course of its operation.
- 1.8 Other planning documents of the Council directly relevant to this Policy include:
- (a) the Burwood Development Control Plan (BDCP) 2013,
 - (b) the Policy on Carrying Out Bonus Development in the Public Interest.

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The Planning Agreements Policy is integral to implementation of the Council's Policy on Carrying Out Bonus Development in the Public Interest, and the BDCP's parking guidelines in business zones.

In addition, any directions or determinations concerning planning agreements made by the Minister for Planning and/or Practice Notes issued by the Secretary of the Department of Planning & Environment are referred to in Attachment F.

2 Policy on the Use of Planning Agreements

Principles governing the use of planning agreements

- 2.1 The Council's use of planning agreements will be governed by the following principles. These complement the provisions of Section 7.4 of the Act.
- (a) planning decisions may not be bought or sold through planning agreements,
 - (b) planning agreements must result in a public benefit, and must provide for a reasonable means of achieving the public benefit,
 - (c) development that is unacceptable on planning grounds will not be permitted because of public benefits offered by developers that do not make the development acceptable on planning grounds,
 - (d) the Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act or law,
 - (e) the Council will not use planning agreements for any purpose other than a proper planning purpose, having regard to the applicable planning instruments, strategies and development control plans, other planning policies and strategies adopted by the Council, and the circumstances of the case,

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- (f) the Council will not seek public benefits under a planning agreement that are unrelated to particular development,
- (g) the Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement,
- (h) the Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements,
- (i) where the Council has a commercial stake in a development the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development.

Outcomes from the use of planning agreements

- 2.2 The outcomes sought by Council from the use of planning agreements are to:
- (a) Provide an enhanced and more flexible system of contributions by developments towards the provision of public benefits, related to the impacts of development,
 - (b) Obtain additional public benefits for the wider community by sharing in the increased land value accruing to a developer from a rezoning or development approval,
 - (c) Enable community awareness of and input to the public benefits of particular developments, related to the impacts of the developments.

Circumstances in which Council will consider negotiating a planning agreement

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- 2.3 The Council, in its complete discretion, may negotiate a planning agreement with a developer in connection with any proposed application by the developer for a change to a planning instrument or for development consent relating to any land in the Burwood LGA.

Without limitation of the above, the use of planning agreements for development applications in Burwood LGA will be derived mainly from two key planning documents that guide and control development in the LGA, and relate to two specific aspects of development:

- (a) Council's Policy on Carrying Out Bonus Development in the Public Interest that may enable bonus floor space in development in certain circumstances and areas of the LGA, or
- (b) The BDCP 2013 that may provide flexibility in the provision for certain car parking space(s) for development on sites mainly in the Burwood Town Centre (including the Burwood Road North area) or the Strathfield Town Centre.

The use of planning agreements in connection with an application for an instrument change may involve other public purposes and public benefits, consistent with the Act.

Complying development certificates and planning agreements

- 2.4 The amendments to the Act that commenced on 1 March 2018 provide that a planning agreement may be made in respect of an application for a complying development certificate.

Notwithstanding, the Act and the Regulation are silent on the mechanisms or process by which that would occur. In addition the Minister has not issued any determinations or directions and the Secretary has not issued any practice notes that concern planning agreements in relation to complying development certificates.

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Until such determinations, directions or practice notes are made available the Council will not consider any planning agreements in association with applications for complying development certificates.

Application of BLEP Clause 4.6 to development to which a planning agreement relates

- 2.4 The Council will not agree to a provision in a planning agreement requiring the public benefit provided by the developer under the agreement to be used to justify a contravention of an applicable development standard under Clause 4.6 of the *Burwood Local Environmental Plan (BLEP) 2012*.

Notwithstanding a proposed planning agreement, the Council cannot approve an exception to a development standard under BLEP Clause 4.6 unless compliance has been achieved with the requirements of Clause 4.6.

Planning agreement development contributions and local infrastructure contributions

- 2.5 The general policy of the Council is that a planning agreement will not exclude the application of s7.11 or s7.12 of the Act (concerning local infrastructure contributions) to development to which the agreement relates. The public benefit conferred by a planning agreement is to be over and above a consent condition for a local infrastructure contribution under these sections of the Act.
- 2.6 The general policy of the Council is not to agree to a provision allowing public benefits under the agreement to be taken into consideration in determining the amount of a development contribution under s7.11 or 7.12.
- 2.7 Departures from Clauses 2.5 and 2.6 (above) of this policy may be negotiated between the Council and a developer having regard to exceptional circumstances in particular cases, and subject to the requirements of the Act and the Regulation and the guidelines of this policy.

Standardised monetary contributions

- 2.8 Where a development contribution is made up fully or partly by a monetary contribution, the Council has adopted some standardised rates. This aims to

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streamline negotiations and provide fairness, predictability and certainty for developers.

The standardised monetary contributions that may be accepted are set out as follows:

- (a) for bonus floor space, see the Council's Policy on Carrying Out Bonus Development in the Public Interest and the Council's Schedule of Fees and Charges
- (b) for a monetary contribution in lieu of the provision of car parking space(s) on a development site in business zones, see the Burwood Development Control Plan 2013 Section 3.7 and the Council's Schedule of Fees and Charges

The amounts in (a) and (b) are kept under review and indexed from time to time in accordance with accepted accounting practice. For the current applicable amounts see http://www.burwood.nsw.gov.au/fees_and_charges.html

As an addendum to the Planning Agreements Policy Council in 2012 endorsed a policy statement of principles and practice on the use of funds received under (b) above to increase parking supply or in some cases improve the use of parking areas. This statement is provided in Attachment E.

Recurrent expenditure

- 2.9 A planning agreement may provide for a developer to make monetary contributions towards the funding of recurrent expenditure related to the provision of a public purpose under the agreement. Where the public purpose primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity. However, where the public purpose is intended to serve the wider community, the planning agreement may only require the developer to make

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contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

Pooling of development contributions

- 2.10 Where a proposed planning agreement provides for a monetary contribution by the developer, the Council may include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements, or money paid as local infrastructure contributions. The funds may be applied progressively for the different purposes, subject to the specific requirements of the relevant agreements or consent conditions.

Methodology for valuing public benefits under a planning agreement

- 2.11 Unless otherwise agreed, where the public benefit under a planning agreement is the provision of land for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated amount of compensation to which the developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land. Regard may also be given to the developer is likely to be affected by the loss of development potential.
- 2.12 Unless otherwise agreed, where the benefit under a planning agreement is the carrying out of works for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.

Refunds and Offsets

- 2.13 The Council will not endorse a planning agreement that provides for any part of the development contribution being refunded to the developer or offset against

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any other contribution under another planning agreement or a local infrastructure contribution required to be made by the developer in respect of other development in the Burwood LGA.

Time when developer's obligations arise under a planning agreement

2.14 For a planning agreement relating to a development application, the Council will generally require the agreement is to be executed immediately following granting of the development consent and:

- (a) In the case of a planning agreement for bonus development in the public interest, the developer's obligations under the agreement will be implemented through a condition(s) of the development consent. In the main that will require the monetary contribution to be paid to Council prior to the issue of a Construction Certificate for the development.
- (b) In the case of a planning agreement for a monetary contribution in lieu of on-site parking provision, the contribution is to be paid at the time of the execution of the agreement.

For other kinds of contributions relating to a development application, the timing and manner of completion of the contribution will be determined on a case-by-case basis.

In the case of applications for a planning instrument change the Council will require that the planning agreement be executed prior to the planning instrument change being notified. Specific aspects of the agreement such as the payment of monetary contributions may be implemented subsequently through the development consent process.

Implementation agreements

2.15 In appropriate cases, the Council may require a planning agreement to provide that before the development the subject of the agreement is commenced (ie

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prior to the issue of a Construction Certificate for the development), the parties are to enter into an *implementation agreement* that provides for matters such as:

- (a) the times at which and, if relevant, the period during which, the developer is to make provision under the planning agreement,
- (b) the design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer,
- (c) the manner in which a work is to be handed over to the Council,
- (d) the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

Monitoring and review of a planning agreement

- 2.16 In applicable cases the Council will continuously monitor the performance of the developer's obligations under a planning agreement.
- 2.17 The Council may require the planning agreement to contain a provision establishing a mechanism under which the planning agreement is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance of the agreement.
- 2.18 The Council may require the planning agreement to contain a provision requiring the parties to use their best endeavours to agree on a modification to the agreement having regard to the outcomes of the review.

Modification or discharge of the developer's obligations under a planning agreement

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2.19 The Council may agree to a provision in a planning agreement permitting the developer's obligations under the agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- (a) the developer's obligations have been fully carried out in accordance with the agreement,
- (b) the developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become bound to the Council to perform the developer's obligations under the agreement,
- (c) the development consent to which the agreement relates has lapsed,
- (d) the performance of the planning agreement has been frustrated by an event beyond the control of the parties,
- (e) other material changes affecting the operation of the planning agreement have occurred,
- (f) the Council and the developer otherwise agree to the modification or discharge of the agreement.

2.20 Such a provision will require the modification or revocation of the planning agreement in accordance with the Act and Regulation.

Registration of planning agreements

2.21 The Council will generally require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to s7.6 of the Act if the requirements of that section are satisfied. A planning agreement may specify the procedures and requirements to be followed in the registration of the agreement.

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Assignment and dealings by the developer

- 2.22 The Council will require every planning agreement to provide that the developer may not assign its rights or obligations under the agreement nor have any dealing in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:
- (a) the developer has, at no cost to the Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of the Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement, and
 - (b) the developer is not in breach of the Agreement.

Provision of security under a planning agreement

- 2.23 The Council may require a planning agreement to make provision for security by the developer of the developer's obligations under the agreement. The form of security will generally be the unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the Developer's provision under the Agreement and on terms otherwise acceptable to the Council.

Preparation of the planning agreement and explanatory note

- 2.24 In the interests of process efficiency, the Council uses standard templates for its planning agreements related to development applications. There are two templates for the planning agreements that will mainly be entered into by the Council:
- (a) Under Council's Policy on Carrying Out Bonus Development in the Public Interest - for a development contribution (commonly a monetary contribution) for a public purpose related to bonus floor space

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- (b) Under the Burwood Development Control Plan 2013 - for a monetary contribution in lieu of the provision of on-site car parking space(s) on a development site mainly in the Burwood Town Centre (including the Burwood Road North area) or the Strathfield Town Centre.

The two templates are provided in Attachments A. and C. of this policy.

- 2.25 The Regulation requires that the Council prepare an explanatory note for any planning agreement that it proposes to enter into. The explanatory note must comply with the requirements of Clause 25E(1) and (2) of the Regulation and must be prepared jointly with the other parties proposing to enter into the planning agreement. The explanatory note must be exhibited with the proposed planning agreement.

In the interests of process efficiency the Council uses two standard templates for the explanatory notes for the most common types of planning agreements for development applications as stated in Clause 2.24 (a) and (b) above.

The two templates are provided respectively in Attachments B. and D. of this policy

- 2.2.6 The standard templates and explanatory notes in Attachments A - D have been drafted for planning agreements that accompany development applications that involve bonus floor space or deficient parking provision.

In all other cases templates do not exist, and generally planning agreements will be drafted by the developer's legal representatives based on the circumstances of each case. The draft planning agreements would be reviewed by Council's legal advisors.

Council's costs of negotiating, entering into, monitoring and enforcing a planning agreement

- 2.27 The Council will generally require a planning agreement to make provision for payment by the developer of the Council's costs of and incidental to:
 - (a) negotiating, preparing and entering into the agreement,
 - (b) enforcing the agreement.

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- 2.28 In particular cases, the Council may require the planning agreement to make provision for a monetary contribution by the developer towards the on-going administration of the agreement.

Notations on Certificates under s10.7(5) of the Act

- 2.29 The Council will generally require a planning agreement to contain an acknowledgement by the developer that the Council may, in its absolute discretion, make a notation under s10.7(5) of the Act about a Planning Agreement on any certificate issued under s10.7(2) of the Act relating to the land the subject of the agreement or any other land.

Dispute resolution and Enforcement

- 2.30 The Council will require a planning agreement to provide procedures for resolution of disputes to be adhered to by both parties to the agreement. Provisions relating to the enforcement of a planning agreement also will be required to be included in an agreement.

Notices

- 2.31 The Council will require a planning agreement to provide procedures for giving of any notice, consent, information, application or request to a part under the planning agreement.

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3 Procedures Relating to the Use of Planning Agreements

Council's negotiation system

- 3.1 The Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable.
- 3.2 The system seeks to ensure that the final negotiation of planning agreements runs in parallel with the assessment of applications for instrument changes or development applications.

When should a planning agreement be negotiated?

- 3.3 The Council prefers that discussions, consultations and negotiations for a planning agreement commence before lodgement of the relevant application. If practicable an offer of a planning agreement including the draft agreement should accompany the application on lodgement. In some cases the later submission of a draft planning agreement may be appropriate. See Section 3.8 for key steps in the negotiation process.

Who will negotiate a planning agreement on behalf of the Council?

- 3.4 A council officer with appropriate delegated authority will negotiate a planning agreement on behalf of the Council.
- 3.5 The councillors will not be involved in the face to face negotiation of the agreement.

Separation of the Council's planning assessment and negotiation roles

- 3.6 The Council will, in all cases, ensure that the person who undertakes the assessment of the application (to which a planning agreement relates) for the

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purpose of determining the application or reporting on it to the Council, is not the same person who negotiated the planning agreement on behalf of the Council.

Involvement of independent third parties in the negotiation process

3.7 The Council may appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, particularly where:

- (a) an independent assessment of a proposed Environmental Planning instrument change, or development application is necessary or desirable,
- (b) factual information requires validation in the course of negotiations,
- (c) sensitive financial or other confidential information must be verified or established in the course of negotiations,
- (d) facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved,
- (e) dispute resolution is required under a planning agreement.

Key steps in the negotiation process

3.8 The negotiation of a planning agreement will generally involve the following key steps:

- (a) Where a planning agreement is likely to be offered for a development proposal the preparation of the agreement by the developer must be based on the relevant standard templates for a draft agreement and the accompanying draft explanatory note contained in the Attachments A-D of this policy (if applicable). Consultation with the Council at this stage on relevant matters is encouraged.
- (b) Where possible a draft planning agreement and explanatory note should accompany lodgement of the development application or the application

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for planning instrument change. In some cases the appropriateness of a planning agreement may be identified by the developer or the Council during the assessment of the application, leading to the later submission of a draft planning agreement and explanatory note.

- (c) On receipt by the Council, the draft agreement and explanatory note will be subject to initial assessment having regard to this policy and the development proposal. Advice will be provided to the developer by the Council indicating any changes that should be made to the draft agreement and explanatory note before Council refers the draft agreement and explanatory note to its solicitors for vetting.
- (d) On receipt of its solicitors' advice the Council will provide the draft agreement and explanatory note containing its solicitors' tracked changes to the developer to for review and in-principle agreement.
- (e) When this is received the draft agreement and explanatory note will be subject to public notification in compliance with the requirements of the Act and the Regulation (see Section 3.9 below)
- (f) Following notification the draft agreement will be reported to Council for its endorsement. In some cases the Council may decline to enter into the agreement and further negotiations with the developer may ensue.
- (g) Assessment and processing of the application for development consent or planning instrument change to which the draft planning agreement relates will proceed on a parallel path.
- (h) Development applications involving a planning agreement will not be determined unless and until the planning agreement has been endorsed by the Council for execution. In the main the consent will include a condition about the execution of the planning agreement as outlined in Clause 2.14 of this policy.
- (i) In the case of applications for a planning instrument change the Council will require that the planning agreement is endorsed by the Council and

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executed prior to the change of the planning instrument being notified. Specific aspects of the agreement may be implemented subsequently through the development consent process.

Public notification of planning agreements

- 3.9 In accordance with the Act a planning agreement cannot be entered into, amended or revoked unless public notice has been given of the proposed agreement, amendment or revocation and a copy of the proposed agreement has been available for inspection by the public for a period of not less than 28 days.
- 3.10 Generally public notice of a proposed planning agreement will take place as soon as possible after public notice has been given for the development application or application for a planning instrument change that is required to be given by a consent authority under the Act or under Council's Development Control Plan. In cases where a draft planning agreement is lodged with Council during assessment of the relevant application, public notice will take place at a later time.
- 3.11 Public notice of a proposed planning agreement will generally take place prior to the planning agreement being reported to a Council meeting. The public notice will be implemented through placement of a notice once in a newspaper circulating in the Burwood Local Government Area; placement of a notice on the Council's website under the heading Public Exhibitions and Public Notices for the 28 day notification period; and making the draft planning agreement and explanatory note available for public inspection at Council's Administration Centre for the 28 day notification period. Information about the application to which the proposed planning agreement relates will be provided with the notification of the proposed planning agreement.
- 3.12 The Council will publicly re-notify and make available for public inspection a proposed planning agreement and information on the application to which it

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Planning Agreements Policy

relates if, in the Council's opinion a material change is made to the terms of the agreement after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification, or its formal consideration by the Council, or for any other reason.

- 3.13 On completion of the notification the draft agreement and explanatory note will be reported to Council with the results of the notification. Where appropriate the draft agreement will be reported to Council with a recommendation for endorsement and execution of the agreement.
- 3.14 Completed planning agreements that are entered into by the Council will be made available for public inspection in accordance with the Act and Regulation. While such planning agreements with the Council remain in force the Council will include in its annual report particulars of compliance with and the effects of the planning agreements during the year to which the report relates.

When is a planning agreement required to be entered into?

- 3.15 A planning agreement is entered into when it is signed by all of the parties.
- 3.16 A planning agreement can be entered into at any time after the agreement is publicly notified in accordance with the Act and Regulation, and Council has endorsed entering into the agreement.

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ATTACHMENT A

Template planning agreement - bonus development in the public interest

(Between Council and Developer)

PLANNING AGREEMENT

PARTIES

Burwood Council of Suite 1, Level 2, 1-17 Elsie Street Burwood in the State of New South Wales (the Council).

and

[Insert Proprietor Name] ACN [Insert Number] of [Insert Business Address] in the State of New South Wales (Proprietor).

and

[Insert Developer Name] ACN [Insert Number] of [Insert Business Address] in the State of New South Wales (Developer).

[Drafting Note: If the Developer is the registered proprietor of the Land, delete the proprietor section above and elsewhere in this document. Insert instead into the "Background" section, the text: 'A. The Developer is the registered proprietor of the Land']

Background:

- A. The Land is situated [Insert Development Address].
- B. On [Insert Date of Lodgement], Development Application No. [Insert DA Number] was submitted by the Developer to the Council for development consent for development to be carried out on the Land for the purpose of [Insert Description of Development].
- C. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make a monetary contribution towards the provision, augmentation or improvement of open space, community facilities, and other public facilities as determined by the Council if the Development Consent was granted.

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- D. As contemplated by section 7.4 of the Act, the parties wish to enter into this Planning Agreement with respect to the [Insert number%] increase in FSR for the Land contemplated by the Development upon the Development Consent.

Operative Provisions

1. Planning Agreement under the Act

The Parties acknowledge and agree that this Planning Agreement is a planning agreement within the meaning of section 7.4 of the Act and is governed by Part 7 of the Act.

2. Application of this Planning Agreement

This Agreement applies to the Land.

3. Operation of this Planning Agreement

- 3.1 The parties are to execute this Agreement immediately following the grant by the Council of Development Application No. [Insert DA Number].

- 3.2 This Planning Agreement shall operate from the date of execution of this Agreement.

4. Definitions and interpretation

- 4.1 In this Agreement the following definitions apply:

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

Approval means any approvals, consents, section 4.55 modifications, Part 6 certificates or approvals under the Act, certificates, construction certificates, occupation certificates, complying development certificates, permits, endorsements, licences, conditions or requirements (and any variation to them) which may be required by this Planning Agreement or the Development Consent.

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

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

Construction Certificate means a certificate issued under Part 6 of the *Environmental Planning and Assessment Act 1979* (NSW) approving building work to be carried out on

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the Land for the whole or part of the work consented to under the Development Consent on the Land.

Dealing in relation to the Land, 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 No. [Insert DA Number] as made by the Developer and as a result of any conditions of Development Consent.

Development Consent means the consent granted in connection with Development Application No. [Insert DA Number].

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

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

GST has the 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 GST.

Land means [Insert Lot Number] in Deposited Plan [Insert DP Number] situated at and known as [Insert Development Address].

Law means:

- a) the common law including principles of equity; and
- b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority, that presently apply or that may apply in the future.

Monetary Contribution means the sum of \$[Insert Amount of Monetary Contribution] excluding GST representing [Insert Rate of Monetary Contribution] (see Council's Schedule of Fees & Charges - http://www.burwood.nsw.gov.au/fees_and_charges.html) x [Insert Number]m².

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

Planning Agreement means this Planning Agreement.

Public Benefit means the Monetary Contribution.

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

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- 4.2 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) A reference in this Agreement 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 Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - (e) 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.
 - (f) A reference in this Agreement 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 Agreement.
 - (h) An expression importing a natural person including 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 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 Agreement includes the agreement recorded in this Agreement.
 - (m) 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.
 - (n) Any schedules and attachments form part of this Agreement.

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5. Development Contributions to be made under this Agreement
 - 5.1 The Developer will pay to the Council the Monetary Contribution after Development Consent and prior to the issue of the Construction Certificate for the Development.
 - 5.2 The payment of the Monetary Contribution will be by way of the delivery of a bank cheque to the Council which must be:
 - (a) made payable to the Council; and
 - (b) in a form acceptable to the Council.
 - 5.3 The Developer and the Proprietor each covenant and agree not to make an application for the issue of any Construction Certificate until the Monetary Contribution required to be made to the Council hereunder has been paid.
 - 5.4 Subsequent to payment of the Monetary Contribution, in the event the Development Consent is not taken up by the Developer or an application for the issue of the Construction Certificate is refused, Council will refund the amount of the Monetary Contribution to the Developer within 14 days of notice being given to Council by the Developer of such event.
 - 5.5 Notwithstanding any refund of the Monetary Contribution pursuant to clause 5.4 of this Agreement, the Planning Agreement shall continue to have effect.
 - 5.6 In the event the Original Consent or Development Consent expires, is abandoned, is surrendered, or ceases to have effect, the Planning Agreement will also expire and cease to have effect and from that point on not be binding on any party.
6. Application of the Development Contributions
 - 6.1 The Monetary Contribution paid by the Developer under this Agreement will be used by the Council to develop and provide Public Facilities.
 - 6.2 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.

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7. Application of section 7.11 and section 7.12 of the Act to the Development

This Planning Agreement does not exclude the application of:

- (a) section 7.11 or section 7.12 of the Act;
- (b) any affordable Housing Levy;
- (c) any other monetary contributions;

in connection with Development Application No. [Insert DA Number]. Benefits under the Agreement are not to be taken into account in determining a development contribution under section 7.11 or section 7.12 of the Act.

8. Registration of this Agreement

8.1 The Proprietor and the Developer each further covenant with the Council:

- (a) that prior to the issue of any Construction Certificate for the Development, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this Agreement over the title to the Land pursuant to section 7.6 of the Act from all persons who have an interest in the Land;
- (b) that forthwith after receiving the consents specified in subclause (a) hereof they shall cause this Agreement to be registered on the title of the Land;
- (c) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose to sell the Land or any part thereof then it shall:
 - (i) within seven (7) days of listing the Land or any part thereof for sale, either through an agent or privately, notify the Council of such intention;
 - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like agreement to this present Agreement in which substantially the same covenants as set out herein shall apply;
 - (iii) within seven (7) days of exchange of contracts for the sale, notify the Council of the sale and provide the Council with a copy of the contract;
 - (iv) within twenty one (21) days of receipt from the Council of a replacement agreement between the Council and the purchaser substantially in the form of this Agreement, have it executed by the purchaser and return it to the Council;

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- (v) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose otherwise than by sale to transfer or assign its interest in the Land or any part thereof to a transferee or assignee, then it shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.
- 8.2 The Proprietor and the Developer further covenant and agree with the Council that pending the registration of this Agreement on the title of the Land as required by clause 8.1, the Council shall be entitled to register a caveat at Land & Property Information over the title to the Land to protect its interest therein pursuant to this Agreement
- 9. Acknowledgements
 - 9.1 The Developer and the Proprietor acknowledge that the Council may include a notation on Planning Certificates under section 10.7(2) and 10.7(5) of the Act in relation to this Agreement.
 - 9.2 The parties acknowledge that the Council is a consent authority with statutory rights and obligations pursuant to the terms of the Act and other legislation.
- 10. Dispute resolution
 - 10.1 If a party believes that there is a dispute in respect of this Agreement then:
 - (a) the party must give notice in writing to the other party stating that there is a dispute (the Dispute Notice); and
 - (b) the Dispute Notice must outline:
 - (i) what the party believes the dispute to be;
 - (ii) what the party wants to achieve;
 - (iii) what the party believes will settle the dispute; and
 - (iv) who will be the party's representative to negotiate the dispute.
 - 10.2 Within fifteen (15) business days of a Dispute Notice being served, the representatives of each of the parties must meet in order to resolve the dispute.
 - 10.3 Both parties must adhere to the dispute resolution procedure set out in this Planning Agreement. The only time that either party may depart from the dispute resolution

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procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Planning Agreement.

10.4 If the parties cannot resolve the dispute after adhering to the dispute resolution procedure set out in this Planning Agreement then either party may seek any other avenues available to it in order to resolve the dispute.

11. Enforcement

11.1 This Planning Agreement may be otherwise enforced by either party in any court of competent jurisdiction.

11.2 For the avoidance of doubt, nothing in this Planning Agreement prevents:

(a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Planning Agreement or any matter to which this Planning Agreement relates; and

(b) the Council from exercising any function under the Act or law relating to the enforcement of any aspect of this Planning Agreement or any matter to which this Planning Agreement relates.

11.3 The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of the Council existing at law or which the Council would otherwise have available to it.

12. Notices

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

(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) Email 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 2134

Post: PO Box 240, Burwood NSW 1805

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Fax Number: (02) 9911 9900
Email: council@burwood.nsw.gov.au

Proprietor

Attention: [Insert Director's Name]
Address: [Insert Business Address]
Post: [Insert Postal Address]
Fax Number: [Insert Fax Number]
Email: [Insert Email Address]

Developer

Attention: [Insert Director's Name]
Address: [Insert Business Address]
Post: [Insert Postal Address]
Fax Number: [Insert Fax Number]
Email: [Insert Email Address]

- 12.2 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 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, two (2) business days after it is posted.
 - (c) 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.

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12.4 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 5:00pm on that day on 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 Planning Agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this Planning Agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14. Assignment and dealings

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

15. Costs

15.1 The Proprietor and/or Developer shall bear the Council's costs directly related, and incidental to negotiating, preparing, executing, stamping and registering the Planning Agreement, including any costs of lodging/removing caveats on the title to the Land.

15.2 The Proprietor and/or Developer will pay Council's reasonable legal costs not exceeding \$5,000.00 (five thousand dollars) directly related, and incidental to negotiating, preparing, executing, stamping and registering the Planning Agreement and of drafting, registering and removing caveats on the title to the Land.

16. Entire Agreement

This Planning Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Planning 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 Planning Agreement and all transactions incidental to it.

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Planning Agreements Policy

18. Governing law and jurisdiction

This Planning Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

19. Joint and individual liability and benefits

Except as otherwise set out in this Planning Agreement, any agreement, covenant, representation or warranty under this Planning Agreement by two (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 Planning 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 constructed 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 Planning Agreement and comply with their obligations under the Planning Agreement and that entry into this Planning Agreement will not result in the breach of any law.

22. Severability

If a clause or part of a clause of this Planning 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 Planning Agreement, but the rest of this Planning Agreement is not affected.

23. Modification

No modification of this Planning Agreement will be of any force or effect unless it is in writing and signed by the parties to this Planning Agreement.

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Planning Agreements Policy

24. Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Planning Agreement, does not amount to a waiver of any obligations of, or breach of obligations 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 Planning Agreement is not to be used in construing the terms of this Planning Agreement.

26. GST

26.1 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 The consideration for any supply under this Planning Agreement excludes GST.

26.3 Where a party to this Planning 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.

26.4 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.

26.5 Despite any other provision of this Planning Agreement, any amount payable under this Planning Agreement, which is calculated by reference to an amount paid or incurred by a party to this Planning 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 Planning Agreement are not confidential and this Planning Agreement may be treated as a public document and exhibited or reported without restriction by any party.

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Planning Agreements Policy

28. Release from Planning Agreement

Once the Council is satisfied that the Proprietor and Developer have fully complied with all of their obligations under this Planning Agreement, the Council agrees to provide a full release and discharge of this Planning 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 Proprietor to remove any caveat and the notation of this Planning Agreement on the title to the Land.

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EXECUTED AS AN AGREEMENT

Signed for and on behalf of Burwood Council by)
its attorney, [Insert Name], under power of)
attorney dated [Insert Date], in the presence of:)

Signature of Witness

(Print) Name of Witness

Signature of Attorney

[Insert Name]

(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 [Insert Proprietor Name]:

[Insert Proprietor Name] ACN [Insert Number] executed this agreement pursuant to section 127 of the Corporations Act in the presence of:

Director/Secretary

Print Full Name of Director/Secretary

Date

Signature of Director

Print Name of Director

Signature of

On behalf of [Insert Developer Name]:

[Insert Developer Name] ACN [Insert Number] executed this agreement pursuant to section 127 of the Corporations Act in the presence of:

Director/Secretary

Signature of Director

Signature of

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.....
Print Full Name of Director/Secretary

.....
Print Name of Director

.....
Date

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ATTACHMENT B

Template explanatory note - bonus development in the public interest

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Planning Agreement for the provision of monetary contribution for public benefit at **[Insert Development Address]**

Under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act)

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (Council)
- (2) **[Insert Proprietor Name]** (Proprietor)
- (3) **[Insert Developer Name]** (Developer)

2. Description of Subject Land

Folio Identifiers: **[Insert Folio ID]**

Location: **[Insert Development Address]**

3. Description of Proposed Development

The Developer has lodged a development application (being **[Insert DA Number]**) for the land which proposes **[Insert details of development]**. An offer of a voluntary planning agreement for a material or financial contribution to the Council as a public benefit is included in the application that seeks approval for additional gross floor space of **[Insert floor space in m²]** of residential floor space above that normally allowed under the Burwood LEP.

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

[Clause 25E(1)(a) of the EP&A Regulation 2000]

The intent of the Planning Agreement is to ensure that public benefits are provided in the form of provision, augmentation or improvement of open space, community facilities or other public facilities as proposed by the development application and determined by Council.

The Planning Agreement is proposed to require a monetary contribution for an amount of **[\$[Insert amount]** (excluding GST) being **[\$[Insert amount]** (excluding GST) (see Council's Schedule of Fees & Charges - http://www.burwood.nsw.gov.au/fees_and_charges.html) per square metre (**[Insert amount]**m²) of GFA in excess of the permitted GFA limit for the development payable after development consent is granted and before issue of a Construction Certificate.

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5. Assessment of the Merits of the Planning Agreement

[Clause 25E(1)(b) of the EP&A Regulation 2000]

5.1 The planning purposes served by the Planning Agreement

[Clause 25E(2)(e) of the EP&A Regulation 2000]

The Planning Agreement serves the following planning purpose:

- The monetary contributions paid by the Developer under this Planning Agreement will be used by Council to provide, augment, or improve open space, community facilities, or other public facilities as determined by Council.

Whether the Planning Agreement provides for a reasonable means of achieving that purpose:

- (i) Council has conducted an Urban Design Study which revealed that in parts of the Burwood Town Centre, including the area in which the subject land is located, there is some potential for a maximum increase of 10% in FSR. Council has also prepared a Burwood Open Space and Community Facilities Study, which identified public benefit requirements in the Burwood Local Government Area.
- (ii) The Planning Agreement will secure a considerable material benefit to the public as the Council is to use, or put the monetary contribution towards, the provision of material benefits such as civil infrastructure, public domain upgrades and facilities for the Burwood Town Centre, which will not only benefit the users and those in the immediate vicinity of the Burwood Town Centre but the wider Burwood population. This is considered to be a substantial public benefit and the Planning Agreement achieves this objective of delivering the benefit.

5.2 Promotion of the public interest

[Clause 25E(2)(a) and (c) 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 public benefits are provided where a development site achieves additional FSR.

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

[Clause 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 (NSW)* as follows [italicised sections come directly from the Charter]:

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Planning Agreements Policy

- (i) Council undertakes to provide *adequate, equitable and appropriate services for the community*. The Planning Agreement provides the monetary resources to assist Council in the provision of civil infrastructure, public domain upgrades and facilities for the augmentation, or improvement of open space, community facilities, and other public facilities for the Burwood Town Centre and ensures 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*.
- (ii) 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*.

5.4 Capital Works Program

[Clause 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 or promotes that capital works program:

- Council has in place a capital works program, but the program does not, to date, identify public benefits within the Burwood Town Centre.
- Council has prepared a Burwood Community Facilities and Open Space Study which identifies works and improvements to community facilities and open space to be carried out. These are known as public benefits. This study will inform the capital works program as it is reviewed annually where those public benefits will be included within the capital works program including when and where sufficient funds are available.

6. Whether the draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate is issued.

The Planning Agreement provides that the Monetary Contribution be paid prior to the issue of a construction certificate for the proposed development.

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ATTACHMENT C

Template planning agreement - monetary contribution in lieu of on-site car parking space(s) provision

(Between Council and Developer)

PARTIES

Burwood Council of Suite 1, Level 2, 1-17 Elsie Street Burwood in the State of New South Wales (Council).

and

[Insert Proprietor Name] ACN [Insert Number] of [Insert Business Address] in the State of New South Wales (Proprietor).

and

[Insert Developer Name] ACN [Insert Number] of [Insert Business Address] in the State of New South Wales (Developer).

[Drafting Note: If the Developer is the registered proprietor of the Land, delete the proprietor section above and elsewhere in this document. Insert instead into the "Background" section, the text: 'A. The Developer is the registered proprietor of the Land']

Background

- A. On [Insert Date of Lodgement], the Developer submitted a Development Application, [Insert DA Number], to the Council for Development Consent to carry out the Development on the Land.
- B. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if the Development Consent was granted.

Operative Provisions

1. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

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2. Application of this Agreement

This Agreement applies to both the Land and the Development.

3. Operation of this Agreement

This Agreement shall operate from the date of the approval by the Council of the Development Application [Insert DA Number].

Any approval given by the Council for Development Consent for [Insert DA Number] shall not come into effect until this Agreement is executed.

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

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

Development means [Insert DA Number] issued by the Council in respect of the property known as [Insert Development Address].

Development Application has the same meaning as in the Act.

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.

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 Lot [Insert Lot Number] in Deposited Plan [Insert DP Number], known as [Insert Development Address].

Monetary Contribution means \$ [Insert Amount of Monetary Contribution]

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

Public Facility means car parking within the Burwood Town Centre for use by the public.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

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- 4.2 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) A reference in this Agreement 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 Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - (e) 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.
 - (f) A reference in this Agreement 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 Agreement.
 - (h) An expression importing a natural person including 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 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 Agreement includes the agreement recorded in this Agreement.
 - (m) 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.
 - (n) Any schedules and attachments form part of this Agreement.
5. Development Contributions to be made under this Agreement

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- 5.1 The Developer will pay to the Council a monetary contribution at the sum of **[Insert Amount of Contribution in Words]** (**[\$[Insert Amount of Contribution in Numbers]**) on the date of the execution of this Agreement.
- 5.2 The Developer and/or the Proprietor must deliver to Council a bank cheque in a form acceptable to the Council for the amount of the monetary contribution on the date of the execution of this Agreement, which shall occur prior to the issue of any Construction Certificate with respect to the Development.
- 5.3 The Developer and the Proprietor each covenant and agree with the Council not to make an application for the issue of any Construction Certificate until the payments required to be made to the Council hereunder have been paid.
- 6. **Application of the Development Contributions**
 - 6.1 The monetary contributions paid by the Proprietor and/or the Developer under this Agreement will be used by Council to develop Public Facilities.
 - 6.2 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 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.
- 7. **Application of section 7.11 and section 7.12 of the Act to the Development**

This Agreement does not exclude the application of section 7.11 or section 7.12 of the Act to the Development. Benefits under the Planning Agreement are not to be taken into account in determining a development contribution under section 7.11 or section 7.12.
- 8. **Registration of this Agreement**
 - 8.1 The Proprietor and the Developer each further covenant with the Council:
 - (a) that prior to the issue of any Construction Certificate for the Development, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this Agreement over the title to the Land pursuant to Section 7.6 of the Act from all persons who have an interest in the Land;
 - (b) that forthwith after receiving the consents specified in subclause (a) hereof they shall cause this Agreement to be registered on the title of the Land;
 - (c) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose to sell the Land or any part thereof then it shall.

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- (i) within seven (7) days of listing the Land or any part thereof for sale, either through an agent or privately, notify the Council of such intention;
 - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like agreement to this present Agreement in which substantially the same covenants as set out herein shall apply;
 - (iii) within seven (7) days of exchange of contracts, notify the Council of the sale and provide the Council with a copy of the contract;
 - (iv) within twenty one (21) days of receipt from the Council of a replacement agreement between the Council and the purchaser substantially in the form of this Agreement, have it executed by the purchaser and return it to the Council;
 - (v) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose otherwise than by sale to transfer or assign its interest in the Land or any part thereof to a transferee or assignee, then it shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.
- 8.2 The Proprietor and the Developer further covenant and agree with the Council that pending the registration of this Agreement on the title of the Land as required by clause 8.1, the Council shall be entitled to register a caveat at Land & Property Management Authority over the title to the Land to protect its interest therein pursuant to this Agreement.
9. Acknowledgements
- 9.1 The Developer and the Proprietor acknowledge that Council may include a notation on Planning Certificates under section 10.7(2) and 10.7(5) of the Act in relation to this Agreement.
- 9.2 The parties acknowledge that 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 If a party believes that there is a dispute in respect of this Agreement then:
- (a) the party must give notice in writing to the other party stating that there is a dispute (the Dispute Notice); and
 - (b) the Dispute Notice must outline:
 - (i) what the party believes the dispute to be;
 - (ii) what the party wants to achieve;

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- (iii) what the party believes will settle the dispute; and
 - (iv) who will be the party's representative to negotiate the dispute.
- 10.2 Within fifteen (15) business days of a Dispute Notice served, the representatives of each of the parties must meet in order to resolve the dispute.
- 10.3 Both parties must adhere to the dispute resolution procedure set out in this Agreement. The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.
- 10.4 If the parties cannot resolve the dispute after adhering to the dispute resolution procedure set out in this Agreement then either party may seek any other avenues available to it in order to resolve the dispute.
- 11. Enforcement**
- 11.1 This Agreement may be otherwise enforced by either party in any court of competent jurisdiction.
- 11.2 For the avoidance of doubt, nothing in this Agreement prevents:
- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (b) 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.
- 11.3 The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of the Council existing at law or which the Council would otherwise have available to it.
- 12. Notices**
- 12.1 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) Email to that Party at its email address set out below.

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Council

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

Proprietor

Attention: [Insert Director's Name]
Address: [Insert Business Address]
Fax Number: [Insert Fax Number]
Email: [Insert Email Address]

Developer

Attention: [Insert Director's Name]
Address: [Insert Business Address]
Fax Number: [Insert Fax Number]
Email: [Insert Email Address]

- 12.2 If a party gives the other Party three (3) business days notice of a change of its address or fax number or email, 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, fax number or email address.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, two (2) business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machines a report of an error-free transmission to the correct fax number.

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(d) If it is sent by email, at the time it is sent.

12.4 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 5.00pm on that day on the place of the Party to whom it is sent, its 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 obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14. Assignment and dealings

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

15. Costs

The Proprietor and/or the Developer shall bear the Council's costs directly related, and incidental, to negotiating, preparing, executing, stamping and registering the Agreement, including any costs of lodging/removing caveats on the title to the Land.

16. Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, 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

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

26. GST

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- 26.1 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 The consideration for any supply under this Planning Agreement excludes GST;
- 26.3 Where a party to this Planning 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;
- 26.4 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;
- 26.5 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 Planning 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. Once the Council is satisfied that the Proprietor and Developer have fully complied with all of their obligations under this Planning Agreement, the Council agrees to provide a full release and discharge of this Planning Agreement with respect of the whole of the Land. In such circumstances Council will do all things reasonably necessary, including the execution of any documents to enable the Proprietor to remove any caveat and the notation of this Planning Agreement on the title to the Land.

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EXECUTED AS AN AGREEMENT

Signed for and on behalf of **Burwood Council**)
by its attorney, **[Insert Name]**, under power of)
attorney **[Insert Date]**, in the presence of.)
)
)

.....
Signature of Witness

.....
Signature of Attorney

.....
(Print) Name of Witness

[Insert Name]
.....
(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 **[Insert Proprietor Name]**:

[Insert Proprietor Name] (ACN **[Insert Number]**) executed this agreement pursuant to section 127 of
the Corporations Act in the presence of:

.....
Signature of Director/Secretary

.....
Signature of Director

.....
Print Full Name of Director/Secretary

.....
Print Name of Director

.....
Date

On behalf of **[Insert Developer Name]**:

[Insert Developer Name] (ACN **[Insert Number]**) executed this agreement pursuant to section 127 of
the Corporations Act in the presence of:

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.....
Signature of Director/Secretary

.....
Signature of Director

.....
Print Full Name of Director/Secretary

.....
Print Name of Director

.....
Date

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ATTACHMENT D

Template explanatory note - monetary contribution in lieu of on-site car parking space(s) provision

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Planning Agreement for the provision of monetary contribution in lieu of on-site car parking spaces at **[Insert Development Address]**

Under Section 7.4 of the Environmental Planning and Assessment (EP&A) Act 1979

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (Council)
- (2) **[Insert Proprietor Name]** (Proprietor)
- (3) **[Insert Developer Name]** (Developer)

2. Description of Subject Land

The land to which the Planning Agreement relates is as follows:

Folio Identifiers: **[Insert Folio ID]**
Location: **[Insert Development Address]**

3. Description of Proposed Change to Development

The Developer has lodged a Development Application (being **[Insert DA Number]**) which provides a shortfall of **[Insert Parking Spaces Shortfall in Words and Bracketed Numbers]** Parking spaces.

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

[Section 25E(1)(a) of the EP&A Regulation 2000]

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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 \$[Insert Contribution Amount], payable on the date of execution of the agreement and before issue of any Construction Certificate.

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 car parking facilities within the [insert name] 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 car parking 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 car parking facilities function effectively and safely. The Planning Agreement provides for the provision of public car parking in lieu of private-use 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

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- 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 car parking 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 car parking facilities within the [insert name] Town Centre. The capital works program is subject to annual review and any proposal for additional public car parking would be initiated where sufficient funds are available.

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ATTACHMENT E

Use of parking contributions funds

(Adopted 4 December 2012 as an Addendum to the Planning Agreements Policy)

Purpose

This statement provides a framework for Council's expenditure of funds received as monetary contributions under voluntary planning agreements (VPAs) in lieu of the provision of car parking on site for a development in accordance with the Burwood Development Control Plan (BDCP). It is advisable to read this document in conjunction with the relevant part (3.7) of the BDCP.

Strategic Context

The BDCP establishes requirements for the provision of on-site car parking based on the kind of development, the zone/location of the development and the purpose (use) of the car parking.

The BDCP recognises that in some business zones, it is appropriate to allow part of the parking required for a development to be provided outside the development site. The BDCP therefore enables an applicant for a development in specific locations to offer a monetary contribution in lieu of providing certain car parking spaces on-site. Council will consider and may accept the offer, and use the funds to expand public parking supply. In some locations where this is not viable, funds may be used to improve the quality of existing public parking areas.

This option for a parking contribution is not part of a Contributions Plan. It involves a voluntary offer from an applicant which is implemented through a VPA finalised in accordance with legislative requirements and Council's Planning Agreements Policy. In all cases it is at Council's discretion whether or not to accept the offer.

Visitors Parking

The BDCP identifies specific parking generated by certain residential and commercial development in the **Burwood and Strathfield Town Centres** as Visitors Parking for which an applicant may make an offer of a voluntary contribution through a VPA. In all cases only a

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limited proportion of total parking requirements can be dealt with through offers of monetary contributions. The planning reasons for this approach include:

- Locating spaces in consolidated public car parks that have extended opening hours, higher turnover and safe and secure access will make available better, more useable parking facilities to the general public. Some parking spaces provided within developments can be hard for people to find and access, particularly in small buildings.
- Locating spaces in consolidated public parking areas means better use of resources and value for money for developers and the community. Some parking spaces constructed on-site can be expensive in terms of excavation costs, land allocation and design impacts.
- Locating spaces in consolidated public parking areas supports greener and cleaner outcomes for the community. Business centres need adequate parking supply to meet the needs of users and to compete with other centres, balanced with encouragement of public transport use, walking and cycling that helps reduce on-street traffic congestion, and improve a centre's amenity and attractiveness to visitors.
- The BDCP therefore provides a "discount" for Visitors Parking spaces that encourages developers to consider offering a monetary contribution. This helps reduce the overall growth in parking supply compared to the traditional approach, but makes better use of the available parking.

Other Parking

The characteristics of some sites mean that it is difficult or impossible to provide all or even part of the required parking on the site. Where an applicant cannot provide the required parking on a difficult development site the BDCP provides for the acceptance of a monetary contribution instead under a VPA in specific locations and zones and for specific types of development. This facilitates the development of the site, while also increasing the availability or quality of parking supply in the business area.

Council may accept implementation of this option at its discretion. The BDCP sets out criteria to be used in determining what constitutes a difficult site. These include:

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- The site is small and isolated, i.e. less than the minimum subdivision lot size for the area in the BLEP 2012 with no opportunities for amalgamation.
- The site is less than 600 sqm and there are limited options on-site, e.g. the site is mostly occupied by existing buildings and involves only a change of use.
- Vehicular access is severely constrained, e.g. by the area, configuration or frontage of a site or the location of existing buildings such that applicable Australian Standards cannot be met.

It is the responsibility of the applicant to demonstrate that one or more of the above features applies and that development proposal is unlikely to be viable practically or economically if parking requirements are applied strictly.

Other requirements for implementation of this option are:

- It applies to parking other than Visitor Parking referred to above.
- The development cannot be for residential accommodation or serviced apartments.
- For land in the Burwood and Strathfield Town Centres zoned B4 Mixed Use, the BDCP does not provide for any "discount" on the contribution and the full cost of providing replacement spaces (as per the formula in the BDCP) must be offered through the VPA.
- In other business zones the BDCP provides that Council may accept a discount of up to 50% on the amount of the contribution (as per the formula in the BDCP) offered to facilitate development in the other business zones and in recognition that some or all of the received funds may be spent on improving the quality of existing parking because it is not viable to increase the number of parking spaces.

Principles for Using the Funds

The following general principles apply:

- Funds will be spent providing an increased number of off-street parking spaces within the same centre as the development from which funds have been contributed.

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- Expenditure will aim to provide as many parking spaces as possible using the total funding available from VPAs. There is no obligation on Council to augment the funding.
- Received funds will need to be pooled over time to reach a sufficient level for concrete action to increase parking supply. This may take considerable time dependent on offers of VPAs and the scale of expenditure that will be necessary.
- Funds will be kept in a separate account for this purpose and not used for any other purpose.
- The additional parking may be located on existing public land and operated by or on behalf of Council, or within a private development under a contractual arrangement with Council.
- In some locations Council may use funds to provide additional spaces on-street within a road reserve if practicable, or to improve the useability of, or access to, existing public parking areas. This may occur where it is not viable to increase the number of additional public off-street parking spaces because additional land is unlikely to be available or because it will take too long to accumulate sufficient funds from contributions. Actions to improve existing public parking areas may include reconfiguration of layouts, paving works to improve access, upgraded signage, maintaining turnover of uses through enforcement, or landscaping.
- Funds dormant for an extended period due to lack of additional contributions may be expended outside the area of contribution.

Implementation

Burwood Town Centre and Strathfield Town Centre

Council will expend the funds received through one or both of the following actions:

1. Embellish or expand an existing public parking area, for example by adding an additional floor or floors of parking.
2. Advertise for expressions of interest from parties intending to undertake new development in the BTC to include public parking spaces in the development additional to the requirements of the BDCP. Council will indicate criteria for proposals responding to the call for expressions of interest, including number of spaces, location, access, and signage.

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Negotiations will finalise these matters, the cost contribution from Council and the management arrangements.

It is not considered viable to formally identify new sites for acquisition for future parking provision because this may result in acquisition obligations when funds may not be available, and because future market conditions will vary.

Implementation will take place through the normal budget process. The level of accumulated funds will be assessed each year and actions 1 and/or 2 will be undertaken if warranted by the available funds. Budget responsibility will lie with the Capital Program Working Party.

The tender/proposal process if implemented will make it explicit that it has no bearing on Council's consideration or determination of any application for development that includes the public parking spaces.

Enfield Local Centre and Croydon Park Local Centre

Expenditure of funds received in the B2 zone will be subject to a similar process to the Town Centres through the annual budget. However as contributions may be offered only in respect of agreed difficult sites and a 50% discount applies, accumulation of funds is likely to be much slower. Also the extended linear character of the Centres fronting three major roads presents limited opportunities for consolidated public parking provision.

In these B2 Local Centres zones, the BDCP recognises that funds may be used to construct additional spaces on-street in road reserves where such opportunities are available, or to improve the useability of existing public parking areas.

Croydon Neighbourhood Centre

The BDCP provides only for voluntary contributions to be offered and considered by Council in cases where it is agreed that the applicant is unable to provide on-site parking due to site constraints and a 50% discount applies. Redevelopment opportunities in the centre are very

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limited and the BDCP recognises that funds are most likely to be spent on the improvement of the existing public parking area. This will be dealt with through the annual budget process.

In any of the other small areas of B1 Neighbourhood Centre in the Burwood Council area, it is not expected that it would be viable to provide any public car parking or that it would be necessary to do so.

Parramatta Road Corridor

In the Parramatta Road B6 Enterprise Corridor, a voluntary contribution in lieu of on-site provision is not an option and all parking must be provided on development sites. The B6 Corridor is very long and narrow, making it unsuited to effective public parking areas. It is also important to minimise overflow parking into adjoining residential areas.

Planning and Administration

Some of the funds received under VPAs may be used on activities ancillary to the provision of parking, such as engaging consultants to provide specialist advice on parking matters or auditing parking provision within private developments in accordance with consents.

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ATTACHMENT F

State Government Documents on Planning Agreements

(Last updated on)

Documents on the preparation and implementation of planning agreements published by the State Government and currently in force or applicable are:

- Determinations and/or directions made by the Minister for Planning under Section 7.9 of the *EP&A Act 1979* - **NONE**
- Practice notes and/or Planning Circulars issued by the Secretary of the Department of Environment & Planning since amendments to the *EP&A Act* commenced on 1 March 2018 - **NONE**

(ITEM 80/18) ADOPTION - PLANS OF THE SECTION 7.12 (FORMERLY SECTION 94A) LOCAL INFRASTRUCTURE CONTRIBUTIONS PLANS FOR THE BURWOOD LOCAL GOVERNMENT AREA (LGA)

File No: 18/26791

REPORT BY ACTING DIRECTOR PLANNING & ENVIRONMENTAL SERVICES

Summary

The two draft revised Section 7.12 (formerly Section 94A) Local Infrastructure Contributions Plans were considered by Council on 26 June 2018. The draft Contributions Plans have been publicly exhibited. No submissions were received. It is recommended that the draft Plans be formally adopted by Council.

Operational Plan Objective

2.1.3 Ensure transparency and accountability in decision making.

Background

Council, at its Ordinary Meeting on 26 June 2018 resolved the following:

1. *That Council endorse the draft revised Section 94A (now Section 7.12) local infrastructure contributions plans for public exhibition in accordance with the relevant legislation.*
2. *That the General Manager be authorised to endorse minor revisions to the contributions plans prior to public exhibition.*
3. *That a further report be provided to Council detailing the results of the public exhibition.*

Proposal

A review of Council's existing Section 94A (now Section 7.12) Infrastructure Contributions Plans (the draft Contributions Plans) was undertaken with changes made to capital works and new infrastructure or upgrades that have been identified since the implementation of the plans.

The draft Contributions Plans seek to reflect the following key aspects:

Proposed Changes to the Works Schedules:

- The deletion of existing works due to their completion.
- The identification of new infrastructure works to be funded wholly or in part by contributions.
- The adjustment of priorities and the timings for the delivery of works.
- The deletion of works which are now redundant or no longer funded by contributions.
- The revision of cost estimates on account of inflation and construction costs increases generally.

Proposed Changes to the Plan Content:

- The numbering of all parts and sections of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) were recently changed. Accordingly, the Section 94A is now Section 7.12. The draft Contributions Plans have also been revised to reflect new terms such as 'Principal Certifier' and 'Local Infrastructure Contributions'.
- Minor editorial changes have also been made in the interests of clarity and consistency.

Consultation

In accordance with the Council resolution, the draft Contributions Plans were exhibited for 28 days between 10 July 2018 and 8 August 2018. A notice was displayed in the local newspaper, in the foyer of Council's Administration Building and on Council's website. The draft Contributions Plans were made available for viewing at Council's Customer Service Centre and on Council's website. No submissions were received.

Planning or Policy Implications

The EP&A Act and EP&A Regulation provide the strategic framework for the draft Contributions Plans. The Framework sets out the requirements to make or amend contributions plans. The legislation enables Council to place a condition on development consents or complying development consents requiring the payment of monetary contributions.

Financial Implications

The two Contributions Plans for the Burwood LGA enable provisions that allow for Council to fund the provision, extension or augmentation of public amenities or public services through developer contributions.

Conclusion

The draft Section 7.12 (formerly Section 94A) Local Infrastructure Contributions Plans have now been publicly exhibited and no submissions were received. Council's adoption of the Section 7.12 Local Infrastructure Contributions Plans is recommended.

Recommendation(s)

1. That Council adopt the two draft revised Section 7.12 (formerly Section 94A) Local Infrastructure Contributions Plans.
2. That Council authorise the General Manager to allow further editorial or minor changes to the draft amended Section 7.12 (formerly Section 94A) Local Infrastructure Contributions Plans.
3. That the draft revised Section 7.12 (formerly Section 94A) Local Infrastructure Contributions Plans becomes effective on 1 September 2018.

Attachments

- 1 [↓](#) Draft Local Infrastructure Contributions Plan for Burwood Town Centre.
- 2 [↓](#) Draft Local Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre).

SECTION 7.12 LOCAL INFRASTRUCTURE
CONTRIBUTIONS PLAN
For Burwood Town Centre



Burwood Council
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Public Document
Adopted by Council 24 July 2012
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Introduction

Section 7.12 of the Environmental Planning and Assessment Act 1979 (the Act) gives Council the power to impose as a condition of development consent a requirement that the applicant pay a levy of a fixed percentage of the cost of the proposed development. Section 7.13 of the Act requires that a condition imposed under Section 7.12 must be in accordance with a contributions plan. Subject to the contributions plan, money received as payment under a condition must be applied towards the provision, extension or augmentation of public amenities or public services.

Pursuant to Section 7.12(5) of the Act, the Minister for Planning has notified the Environmental Planning and Assessment (Burwood Town Centre Levies) Regulation 2010 on 10 May 2010 to amend Clause 25K of the Environmental Planning and Assessment Regulation 2000 (the Regulation). This notice establishes the maximum percentage of the proposed cost of carrying out development that may be imposed by a levy under Section 7.12 for the Burwood Town Centre.

Requirements of the Plan

1. What is the name of this contributions plan?

This plan is called the "Burwood Council Section 7.12 Local Infrastructure Contributions Plan for Burwood Town Centre".

2. Where does this plan apply?

This plan applies to the development of land in the Burwood Town Centre that is identified in the Land Application Map under Burwood Local Environment Plan (Burwood Town Centre) 2010, or thereafter, the Burwood Town Centre Location Map under Burwood Local Environmental Plan (BLEP) 2012.

3. When does this plan commence?

This Plan commences on 10 May 2010. It applies to development applications determined after the plan commences.

4. What is the relationship with other contributions plans?

This plan replaces any other Section 7.11 or Section 7.12 Contributions Plan insofar as it applies to the Burwood Town Centre.

5. What is the Section 7.12 contributions levy?

The rate of the Section 7.12 contributions levy for the Burwood Town Centre is established in the Table to Clause 25K (b) of the Regulation which provides the following:

Proposed cost of carrying out the development	Maximum percentage of the levy
Up to and including \$250,000	Nil
More than \$250,000	4 per cent

Council cannot impose as a condition of the same development consent a condition under Section 7.11 as well as a condition under Section 7.12 of the Act.

A condition imposed under Section 7.12 is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money to be paid by the condition.

A condition imposed under Section 7.12 that is allowed by or determined in accordance with a contributions plan may not be disallowed or amended by the Court on appeal.

6. What is the purpose of this contributions plan?

The primary purposes of this Section 7.12 Contributions Plan are:

- To authorise the imposition of a condition on certain development consents and complying development certificates requiring the payment of a contribution pursuant to Section 7.12 of the Act;
- To provide for funding towards the provision, extension or augmentation of public amenities and public services identified by Burwood Council as necessary to support the expected growth and development in the Town Centre (or towards recouping the cost of their provision, extension or augmentation);
- To publicly identify the purposes for which the levies are required. The main amenities and services which the contributed funds will assist in providing are those set out in Schedule 1. The priorities for expenditure of funds are also indicated in the Schedule. In this Plan, the listed public amenities or public services are generally referred to as the works.

7. What is the demand for public amenities and public services?

This plan is based on the provision of public amenities and services to support the growth and development of Burwood Town Centre. As the Major Centre for the Inner West Subregion in the NSW Government's Metropolitan Strategy, there is expected to be substantial growth in employment, services and housing. The increased capacity provided by Burwood Local Environmental Plan (Burwood Town Centre) 2010 – and subsequent BLEP 2012 – is expected to result in an additional 2,700 jobs and 5,000 residents in the Town Centre over the next 25 years.

The growth in residential population, employment and use of services in Burwood Town Centre will require and generate demand for new, extended and augmented public amenities, services and infrastructure. New residents, workers and visitors to Burwood will have inadequate levels of service if Council does not take action to provide new public amenities and infrastructure, or extend and augment existing facilities. The levels of service for the existing population will also decline if there is inadequate public investment.

Administration and Operation of the Plan**8. How is the amount of the levy calculated?**

The levy will be determined on the basis of the rate as set out in Section 5. The levy will be calculated as follows:

$$\text{Levy payable} = \%C \times \$C$$

Where

%C is the levy rate applicable

\$C is the proposed cost of carrying out the development

9. Complying development certificates

Pursuant to Section 7.20 and Section 4.12 of the Act, where an accredited certifier issues a Complying Development Certificate (CDC) in respect of development to which this Plan applies, the certificate must be subject to a condition requiring the applicant to pay to Council the levy in accordance with this Plan.

The condition imposed by an accredited certifier on a CDC must include details of the requirements of Clause 10 of this Plan. Any required contribution payment shall be made to Council **within two days of the issue of a CDC** by a Principal Certifier. Should a payment be made after the two day period, Council may require the amount be indexed in accordance with the Consumer Price Index to adjust the amount of the payment to account for the time between the consent date and payment date.

A suggested condition for use by an accredited certifier imposing a condition on a CDC that requires an applicant to pay to Council a levy in accordance with this Plan is included in Schedule 5.

The imposition of a condition on a CDC issued by an accredited certifier as authorised by this Plan is subject to compliance with any directions given under Section 7.17 of the Act with which Council would be required to comply if issuing the CDC is concerned.

10. How is the cost of development assessed?

The cost of carrying out a proposed development will be determined in accordance with clause 25J of the Regulation. A copy of this clause is provided in Schedule 2.

To provide Council with reliable information on the cost of carrying out a development, the applicant is to provide details with the development application. There are two levels of information provision, dependent on the scale and cost of construction:

- **Between \$250,000 and \$500,000**– where the cost of carrying out a proposed development is in this range, a Cost Summary Report must be completed by the applicant or a nominated representative such as the Project Architect or Project Manager;
- **Above \$500,000** – where the cost of carrying out a proposed development is in this range, a Detailed Cost Report must be completed by a Quantity Surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate an equivalent qualification.

Without limitation to the above, Council may review the valuation of works and may seek the services of an independent qualified person to verify the development cost assessment. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant.

11. When is payment made and how will the contribution be adjusted?

In accordance with clause 146 of the Regulation, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it has verified that each condition requiring the payment of levies has been satisfied.

In particular, the certifier must ensure that the applicant provides a receipt(s) confirming that levies have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the council in accordance with clause 142(2) of the of the Regulation. Failure to follow this procedure may render such a certificate invalid. Council also requires payment of any costs associated with verification of the cost of construction assessment prior to the issue of the construction certificate.

The only exceptions to the requirement are where a works in kind, material public benefit or dedication of land has been agreed by the council. In such cases, council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

As the date of payment of a contribution under a consent condition may be later than the consent date, Clause 25J (4) of the Regulation allows Council to adjust the contribution to reflect cost increases during this period. Contributions will be adjusted at the time of payment of the contribution in accordance with the following formula:

Contribution at time of payment

$$C_2 = \frac{C_1 \times CPI_2}{CPI_1}$$

Where:

C ₁	Monetary contribution imposed on the development consent
C ₂	Monetary contribution at the time that the contribution is paid
CPI ₁	Latest "Consumer Price Index: All Groups Index Number 6401.0" for Sydney

available from the Australian Bureau of Statistics at the time of granting the relevant development consent

CPI₂ Latest "Consumer Price Index: All Groups Index Number 6401.0" for Sydney available from the Australian Bureau of Statistics at the time the contribution is to be paid

Refer **Section 9** for requirement of contribution payment under a CDC.

12. Will Council accept alternatives to a levy?

The Council may at its absolute discretion accept the dedication of land or provision of a material public benefit or works-in-kind in part or full satisfaction of a Section 7.12 levy under this plan.

As a general rule, only land or works directly associated with the roads and traffic improvements, public domain improvements and community facilities as indicated in Schedule 1 may be considered as a material public benefit or work-in-kind in satisfaction of the contributions levy. Applicants must provide full details, costs and valuations of the land or works.

If Council agrees to an alternative to the levy, it will either require the alternative as a condition of consent, or accept it under the terms of a Voluntary Planning Agreement.

13. How will the Section 7.12 funds be administered?

Burwood Council is to administer money obtained from the 7.12 levy and make decisions on the application of funds applied towards the provision, extension or augmentation of public amenities, infrastructure or public services for the Town Centre in accordance with the Act and Regulation 2000.

This plan expressly authorises section 7.12 levies paid for different purposes to be pooled and applied (progressively or otherwise) for the purposes indicated in Schedule 1.

Schedule 1 –Works Schedule

In the following Table and Maps, Schedule 1 provides a summary of the main local public amenities, infrastructure or public services towards which funds collected under this Contributions Plan will be used to provide, extend or augment, (or used towards recouping the cost of provision, extension or augmentation). The Table in Schedule 1 includes the estimated cost of the public amenities or public services. Funds collected under the contributions plan will provide only a part of the indicated cost of works, infrastructure and services. The Table in Schedule 1 also indicates the estimated priority timeframe of their provision, extension or augmentation in full or in large part (see clarification note at end of Schedule 1).

The Maps following the Table are included in Schedule 1 to indicate the location of the main works, infrastructure and services. The proposed works listed in the Table and shown on the Maps in Schedule 1 are indicative and implementation is subject to the budgetary and operational resources of Council. Not all works shown on the maps are prioritised in the section 7.12 plan for the Burwood Town Centre. Regard should also be given to the Land Reservation Acquisition Map in the BLEP 2010 and 2012 which shows the land to be acquired for implementation of certain projects, as indicated in the Table.

Table – Provision or improvement of public amenities, infrastructure or services

	Public Amenities, Infrastructure and Services	Cost	Category Totals	Priority Time Frame *
	Roads and Traffic	\$47,993,808		
	Intersection Works Sub-Total	11,380,055	11,380,055	
A	Burwood Road & Livingstone Street/Clearance Street - New Traffic Signals Multi Purpose Poles (MPP)	\$500,000		B1
B	Burwood Road & Belmore Street - Traffic Signals Upgrade (MPP)	\$500,000		A3
				B1
D	Burwood Road & George Street - New Traffic Signals (MPP)	\$500,000		B1
E	Burwood Road & Victoria Street/East – New Traffic Signals (MPP)	\$1,400,000		B1
F	Railway Parade & Conder Street - New Traffic Signals (MPP)	\$600,000		A3
G	Burwood Road & Deane Street Traffic Signal Upgrade (MPP)	\$500,000		B1
H	Shaffesbury Road & Clarence Street – New Traffic Signals	\$500,000		B1
I	Belmore Street & Elizabeth Street – Footpath/Road Widening	\$50,000		B1
J	Shaffesbury Road & Victoria Street East – Road Widening	\$1,400,000		B1
K	Shaffesbury Road & Wilga Street – Road Widening	\$1,500,000		B1
L	Shaffesbury Road & Belmore Street – New Traffic Signals	\$500,000		B1
M				
N	Shaffesbury Road & Deane Street – New Traffic Signals and Road Widening	\$2,330,055		A3
P	Marmaduke & Deane Street – Road Widening	\$100,000		A3
Q				A3
R	Belmore Street & Wynne Avenue – New Traffic Signals	\$500,000		A3
S	Belmore Street & Conder Street – New Signals	\$500,000		A3
	Street Openings Sub-Total	\$10,860,000	\$10,860,000	
A	Victoria Street West – Future opening of the eastern end at Burwood Road – civil works	\$ 300,000		C1
B	Victoria Street West - Future opening of the eastern end at Burwood Road - land acquisition (refer A on Map 3)	\$4,800,000		C1
C	Victoria Street East Future opening of the eastern end at Burwood Road – land acquisition (refer F and G on Map 3)	\$5,760,000		C1

ITEM NUMBER 80/18 - ATTACHMENT 1

Draft Local Infrastructure Contributions Plan for Burwood Town Centre.

	Carriageway Widening – Footway Setbacks Sub-Total	\$7,522,500	\$7,522,500	
A				A3
	Completed			A3
C	Victoria Street East	\$200,000		A3
D	George Street (East)	\$400,000		A3
E	Shaftesbury Road (various - east and west sides)	\$550,000		A3
F	Being Constructed by RMS			
G	not required			B2
H	Wentworth Rd south of Railway Parade (West Side)	\$400,000		A3
I	Shaftesbury Road - Land Acquisition (refer D on Map 3)	\$2,600,000		A3
J	Shaftesbury Road - Sliplane Land Acquisition	\$145,000		A3
K	Victoria Street East Land Acquisition (refer C on Map 3)	\$298,000		A3
L	Railway Pde (Burwood Plaza Site) Land Acquisition (refer E Map 3)	\$1,522,500		A3
M	George St East between Burwood Rd and Shaftesbury Rd - southern side - land acquisition (refer B on Map 3)	\$1,407,000		A3
	Street Widening - Shaftesbury and Wentworth Rd Bridges	\$50,000,000	\$50,000,000	
A	Shaftesbury Road Bridge	\$25,000,000		B2
	Wentworth Road Bridge	\$25,000,000		B2
	Street Resurfacing	\$40,000,000	\$40,000,000	
A	Street Re-surfacing – Burwood CBD Various Roads	\$40,000,000		A3
	Open Space & Recreation	\$1,155,915		
	New Public Open Space Acquisition Sub-Total			
	Public Open Space (SE Corner Railway Pde & Burwood Rd) Square - land acquisition (refer H on Map 3)	\$12,000,000	\$12,000,000	B3
	New Public Space Embellishment Sub-Total	\$1,155,915	\$1,155,915	
D	Public Open Space/Pedestrian Link (Deane St - Mary St)	\$1,155,915		B1
	Town Centre Existing Open Space Embellishment Sub-Total	\$300,000	\$300,000	
D	Burwood Park Stormwater Harvesting – Pond Upgrade Sydney Water project	\$300,000		A3
	Community	\$3,374,816		
	Childcare Sub-Total	\$3,374,816	\$3,374,816	
A	Long Day Care - Pre School Centre 1	\$1,349,914		B1
B	The Community Centre (Woodstock)	\$500,000		A1
B	Pre-School - OOSH Centre 2	\$1,524,902		B2
	Public Domain Improvements	\$39,134,845		

ITEM NUMBER 80/18 - ATTACHMENT 1

Draft Local Infrastructure Contributions Plan for Burwood Town Centre.

	Streetscape Upgrades (Town Centre Beautification)			
	Sub-Total	\$37,400,817	\$37,400,817	
A	Burwood Rd - East side (Meryla St - Church St)	\$2,542,601		A3
B	Burwood Rd - West side (Burwood Pk - Woodside St)	\$2,606,523		A3
C	Wilga Street - South side	\$609,635		A3
D	Victoria Street East - North side	\$703,345		A3
E	Victoria Street East - South side	\$644,418		A3
F	George St - North side (Shaftesbury Rd - Burwood Rd)	\$559,533		A3
G	George St - South side (Shaftesbury Rd - Burwood Rd)	\$876,549		A3
H	Marmaduke Street between Deane St and George St – both sides	\$436,109		A3
I	Deane Street between Shaftesbury Road and Youth Lane – both sides	\$436,109		A3
J	Railway Pde - South side (Burwood Rd - Shaftesbury Rd)	\$1,440,812		A3
K	Belmore Street - North side (Conder Street - Shaftesbury Road)	\$2,100,464		A3
L	Belmore Street - South side (Conder Street - Shaftesbury Road)	\$1,054,562		A3
M	Conder St - West side (Livingstone St to Railway Pde)St	\$565,689		A3
N	Conder St - East side (Norwood St to Railway Pde)	\$509,667		A3
	Wynne Ave - Both sides	\$916,178		A1
P	George Street - North side (Park Road - Burwood Road)	\$553,326		A3
Q	George Street - South side (Park Road - Burwood Road)	\$669,515		A3
S	Victoria Street West - South side (Dunns Lane – Park Road)	\$387,878		A2
T				
U	Park Avenue - South side	\$882,763		A3
V	Park Avenue - North side	\$1,345,574		A3
W	Mary Street - both sides	\$1,267,400		A3
Y	Comer Street - South side (Park Rd - Burwood Rd)	\$1,022,411		A3
Z	Railway Crescent from Park Rd to John St North Side and John St from Railway Cres to George St – both sides	\$105,780		A3
AA	John Street - George St to Victoria St – both sides	\$85,656		A3
AB	Place Underground Low Voltage Aerial Supply Line	\$10,653,984		C1
AC	Place Underground Low Voltage Customer Service Line	\$2,812,813		B3
AD	Bus Stops, Shelters, Seats, Bins	\$839,889		A3
AE	Shaftesbury Rd - East side (Victoria St East to Deane St)	\$771,634		A3
AF	Town Centre Beautification - various locations (not mentioned above)	\$750,000		A3
	Street Closures and Shared Ways Sub-Total	\$1,250,000	\$1,250,000	
A	Conder Street - pedestrianised zone outside Burwood Public School	\$250,000		A3
B	Clarendon Place – pedestrianised zone	\$250,000		A3
C	Deane Street (Mary to Burwood Rd) - Shared Zone)	\$250,000		A3
D	Wynne Avenue pedestrianised zone	250,000		
E	Railway Crescent (John St to Burwood Rd) - closure for pedestrian use	\$250,000		A3
	Plan Preparation and Administration	\$300,000	\$300,000	A1
	GRAND TOTAL		\$ 175,244,103	

ITEM NUMBER 80/18 - ATTACHMENT 1

Draft Local Infrastructure Contributions Plan for Burwood Town Centre.

Note on Table to Schedule 1

Each item of works has been provided with a priority ranking which provides an indicative timing for the delivery of the work items, as shown in the following table.

Priority ranking	Indicative timing
A	2018-2021
B	2021-2024
C	2024-2027
D	After 2027

The priority ranking and actual timing of delivery of works is subject to change as it is influenced by the following factors:

- The rate and timing of development from which contributions are collected;
- The pooling of sufficient funds to enable provision, extension or augmentation of amenities and services;
- The requirements of Council's annual works program from year to year;
- The relationship between works and other events e.g. land acquisitions may depend on whether the properties are on the market.

Map 2



Map 3



Schedule 2 - Determination of Proposed Cost of Development

Clause 25J of the Environmental Planning and Assessment Regulation 2000

25J Section 7.12 levy—determination of proposed cost of development

- (1) *The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 7.12 levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:*
 - (a) *if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,*
 - (b) *if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,*
 - (c) *if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.*
- (2) *For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.*
- (3) *The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:*
 - (a) *the cost of the land on which the development is to be carried out,*
 - (b) *the costs of any repairs to any building or works on the land that are to be retained in connection with the development,*
 - (c) *the costs associated with marketing or financing the development (including interest on any loans),*
 - (d) *the costs associated with legal work carried out or to be carried out in connection with the development,*
 - (e) *project management costs associated with the development,*
 - (f) *the cost of building insurance in respect of the development,*
 - (g) *the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),*
 - (h) *the costs of commercial stock inventory,*
 - (i) *any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law,*
 - (j) *the costs of enabling access by disabled persons in respect of the development,*
 - (k) *the costs of energy and water efficiency measures associated with the development,*
 - (l) *the cost of any development that is provided as affordable housing,*
 - (m) *the costs of any development that is the adaptive reuse of a heritage item.*
- (4) *The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date the levy is required to be paid.*
- (5) *To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.*

Schedule 3 – Form for a Cost Summary Report



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Cost Summary Report

- To be completed for all development costing between \$100,000 and \$500,000.
- To be completed by the applicant or a nominated representative such as the Project Architect or Project Manager.
- Please have regard to the legal requirements for the determination of the proposed cost of development provided in Clause 25J of the EP&A Regulation 2000 (see Schedule 2).

DEVELOPMENT APPLICATION No.

and/or

COMPLYING DEVELOPMENT CERTIFICATE APPLICATION No.

and/or

CONSTRUCTION CERTIFICATE No. DATE:

Applicant's Name:

Applicant's Address:

Development Description:

Development Address:

Parking/Garaging Area (m²)

Total Construction Area (exc. Parking/Garaging) (m²)

DESCRIPTION OF COST	APPLICANT'S GENUINE ESTIMATE
Demolition	\$
Site preparation (e.g. clearing vegetation, decontamination or remediation)	\$
Excavation	\$
Preliminaries (e.g. scaffolding, hoarding, fencing, site sheds, waste management)	\$
Construction and Engineering Costs	\$
Change of Use	\$
Subdivision (planning, executing and registering, inc. covenants and easement)	\$
Services (e.g. plumbing, mechanical, fire lift)	\$
External work (e.g. landscaping, driveways, parking, pools)	\$
External services (e.g. gas, telephone, electricity connection to mains)	\$
Other (specify)	\$
Margin	\$
Goods and Services Tax	\$
TOTAL	\$

ITEM NUMBER 80/18 - ATTACHMENT 1

Draft Local Infrastructure Contributions Plan for Burwood Town Centre.

I certify that I have:

- Provided the genuine costs of the development proposed by this application and these costs are based on industry recognised prices;
- Included GST in the calculation of development costs;
- Calculated the development costs in accordance with the definition of development costs in Section 25J of the Environmental Planning and Assessment Regulation 2000, at current prices;
- Acknowledged that Council may review the information provided and may seek further information or make its own fee determination.

Signed: _____

Name: _____

Position: _____

Company: _____

Date: _____

Contact Number: _____

Contact Address: _____

Schedule 4 – Form for a Detailed Cost Report by a Quantity Surveyor



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Detailed Cost Report by a Registered Quantity Surveyor

- To be completed for all development that costs more than \$500,000 (that is, not covered by Schedule 3).
- To be completed by a Quantity Surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate an equivalent qualification.
- Please have regard to the legal requirements for the determination of the proposed cost of development provided in Clause 25J of the EP&A Regulation 2000 (see Schedule 2).

DEVELOPMENT APPLICATION No.

and/or

COMPLYING DEVELOPMENT CERTIFICATE APPLICATION No.

and/or

CONSTRUCTION CERTIFICATE No.

DATE:

Applicant's Name:

.....

Applicant's Address:

.....

Development Description:

.....

Development Address:

.....

DEVELOPMENT DETAILS:	
Gross Floor Area – Commercial	m ²
Gross Floor Area – Residential	m ²
Gross Floor Area – Retail	m ²
Gross Floor Area – Car Parking	m ²
Gross Floor Area – Other	m ²
Total Gross Floor Area	m ²
Total Site Area	m ²
Total Car Parking Spaces	
Total Development Cost	\$
Total Construction Cost	\$
Total GST	\$

ITEM NUMBER 80/18 - ATTACHMENT 1

Draft Local Infrastructure Contributions Plan for Burwood Town Centre.

ESTIMATE DETAILS:	
Excavation	\$
Cost per square metre of site area	\$/m ²
Demolition and Site Preparation	\$
Cost per square metre of site area	\$/m ²
Construction – Commercial	\$
Cost per square metre of commercial area	\$/m ²
Construction - Residential	\$
Cost per square metre of residential area	\$/m ²
Construction – Retail	\$
Cost per square metre of retail area	\$/m ²
Car Parking	\$
Cost per square metre of site area	\$/m ²
Cost per space	\$/space
Fit-out – Commercial	\$
Cost per m ² of commercial area	\$/m ²
Fit-out – Residential	\$
Cost per m ² of residential area	\$/m ²
Fit-out – Retail	\$
Cost per m ² of retail area	\$/m ²
Professional Fees	\$
% of Development Cost	%
% of Construction Cost	%

I certify that I have:

- Inspected the plans the subject of the application for development consent or construction certificate;
- Prepared and attached an elemental estimate generally prepared in accordance with the Australian Cost Management Manuals from the Australian Institute of Quality Surveyors (AIQS);
- Calculated the development costs in accordance with the definition of development costs in Section 25J of the Environmental Planning and Assessment Regulation 2000, at current prices;
- Included GST in the calculations of development costs;
- Measured gross floor areas in accordance with the Method of Measurement of Building Area in the AIQS Cost Management Manual Volume 1 (Appendix A2);
- Acknowledged that Council may review the information provided and may seek further information or make its own fee determination.

Signed: _____

Name: _____

Position: _____

Company: _____

Registration as Member of the Australian Institute of Quality Surveyors: _____

Date: _____

Contact Number: _____

Contact Address: _____

Schedule 5 – Suggested Condition of Consent For Use By Private Certifiers

This is a suggested condition for use by an accredited certifier imposing a requirement that an applicant must pay to Burwood Council a levy in accordance with this Plan.

Section 94A Contributions

Pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979 and the Section 7.12 Contributions Plan for Burwood Town Centre, the following contributions levy towards public services and amenities is required to be paid to Burwood Council:

Contribution Element	Contribution
A levy of <i>(insert %)</i> per cent of the cost of carrying out the development, where the development cost is <i>\$(insert development cost)</i>	<i>\$(insert contribution)</i>

The contribution is to be paid in full to Burwood Council **within two days of the issue of the Complying Development Certificate.**

Evidence in the form of bank cheque(s) or receipt(s) confirming that payment has been made is to be submitted to the Principal Certifier.

The above contribution may be adjusted in accordance with the Consumer Price Index in the event of late payment.

Note: Credit cards and personal cheques are not accepted by Burwood Council for the payment of Section 7.12 contributions.



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SECTION 7.12 LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

For the Burwood Local Government Area
(Excluding Burwood Town Centre)

PO Box 240, BURWOOD NSW 1805
Suite 1, Level 2, 1-17 Elsie St. BURWOOD NSW 2134
Phone: (02) 9911-9911 Fax: (02) 9911-9900
www.burwood.nsw.gov.au
Council@burwood.nsw.gov.au

Adopted by Council: 24 July 2012
Trim No. 18/18972
Effective from 1 September 2012

Amendment Adopted: [insert date] Effective Date: [insert date]

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Introduction

Section 7.12 of the Environmental Planning and Assessment (EP&A) Act 1979 (the Act) gives Council the power to impose as a condition of development consent a requirement that the applicant pay a levy of a fixed percentage of the cost of the proposed development. Section 7.12 (1) of the Act requires that a condition imposed under Section 7.12 must be in accordance with a contributions plan. Subject to the plan, money received as payment under a condition must be applied towards the provision, extension or augmentation of public amenities or public services.

Pursuant to Section 7.12 (5) of the Act, the Minister for Planning has established in Clause 25K (1)(a) of the Environmental Planning and Assessment Regulation 2000 (the Regulation) the maximum percentages of the proposed cost of carrying out development that may be imposed by a levy under Section 7.12 of the Act.

Requirements of the Plan

1. What is the name of this contributions plan?

This Plan is called the "Burwood Council Section 7.12 Local Infrastructure Contributions Plan for the Burwood Local Government Area (Excluding the Burwood Town Centre)".

2. Where does this plan apply?

This Plan applies to the development of all land that is identified in the Land Application Map under Burwood Local Environment Plan 2012 (BLEP 2012), except land in the Burwood Town Centre as defined in BLEP 2012.

This Plan applies to applications for development consent and applications for complying development certificates under Part 4.26 of the Act. A requirement for an application for development consent or a complying development certificate may be specified in a Local Environmental Plan (LEP) or a State Environmental Planning Policy (SEPP) applying to the land.

3. When does this plan commence?

This Plan was adopted by Council on 24 July 2012 and commences on 1 September 2012. It applies to development applications and complying development certificates determined after the Plan commences.

If a development application has been made but has not been determined before this Plan commences, the application is to be determined in accordance with the contribution plan or plans in force at the time the application was made.

4. What is the relationship with other contributions plans?

This Plan repeals and replaces any other Section 7.11 contributions plan insofar as it applies to the Burwood Local Government Area outside the Burwood Town Centre. This Plan does not replace the Section 7.12 Contributions Plan that applies to the Burwood Town Centre.

5. What are the Section 7.12 contributions levies?

The Section 7.12 contributions levies under this Plan are set out in the following table for types of development and the percentage levies on the costs of development:

Type of development	Levy
<ul style="list-style-type: none"> All development (except development pertaining to a dwelling house as described below). 	<ul style="list-style-type: none"> Nil for cost of development up to and including \$100,000; 0.5% of the cost of development of more than \$100,000 and up to and including

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Draft Local Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre).

	<p>\$200,000;</p> <ul style="list-style-type: none"> • 1% of the cost of development of more than \$200,000.
<ul style="list-style-type: none"> • Development of a dwelling house and alterations, additions or ancillary structures thereto. • For the avoidance of doubt, any development of a dwelling house that would result in the creation of an additional dwelling or lot, such as a granny flat or subdivision, is excluded from this category. 	<ul style="list-style-type: none"> • Nil for cost of development up to and including \$100,000; • 0.5% of the cost of development of more than \$100,000 and up to and including \$300,000; • 0.25% of the cost of development of more than \$300,000.

The determination of the cost of development is explained in Clause 9 of this Plan.

A council cannot impose as a condition of the same development consent a condition under Section 7.11 as well as a condition under Section 7.12 of the Act.

A condition imposed under Section 7.12 is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money to be paid by the condition.

A condition imposed under Section 7.12 that is allowed by or determined in accordance with a contributions plan may not be disallowed or amended by the Court on appeal.

Conditions on development consents or complying development certificates authorised by this Plan are subject to any direction by the Minister under Section 7.17 of the Act. This Plan authorises the imposition of conditions in accordance with any such direction.

6. What are the purposes of this plan?

The primary purposes of this Section 7.12 Contributions Plan are:

- To authorise the imposition of a condition on certain development consents and complying development certificates requiring the payment of a contribution pursuant to Section 7.12 of the Act.
- To provide for funding towards the provision, extension or augmentation of public amenities and public services identified by Burwood Council as necessary to support the expected growth and development in the Burwood Local Government Area (or towards recouping the cost of their provision, extension or augmentation);
- To publicly identify the purposes for which the levies are required. The main amenities and services which the contributed funds will assist in providing are those set out in Schedule 1. The priorities for expenditure of funds are also indicated in the Schedule. In this Plan, the listed public amenities or public services are generally referred to as the works.

7. What is the demand for public amenities and public services?

This Plan is based on the provision of new, extended and augmented public amenities, services and infrastructure to support the growth and development of the Burwood Local Government Area. New residents, workers and visitors to Burwood will have inadequate levels of service if Council does not take action to provide new public amenities and infrastructure, or extend and augment existing facilities. The levels of service for the existing population will also decline if there is inadequate public investment.

For the purposes of this Plan most of the demand for provision of public amenities and services will be generated from growth and development on land outside the Burwood Town Centre. In the

medium term life (out to 2025) of the BLEP 2012 this may result in some 2800 additional dwellings and approximately 15,000 sq m of additional commercial floor space. This is broadly consistent with the scale of growth anticipated in the NSW Government's relevant strategic planning documents.

A small proportion of the demand for the provision of public amenities and services under this Plan may be generated from growth and development in the Burwood Town Centre. As the Major Centre for the Inner West Subregion in the NSW Government's Metropolitan Strategy, there is expected to be substantial growth in employment, services and housing in the Burwood Town Centre. The increased capacity provided by Burwood Local Environmental Plan (Burwood Town Centre) 2010 – and the subsequent BLEP 2012 – is expected to result in an additional 2,700 jobs and 5,000 residents in the Town Centre over the next 25 years.

Administration and Operation of the Plan

8. How is the amount of the levy calculated?

The levy will be determined on the basis of the rate as set out in Section 5. The levy will be calculated as follows:

$$\text{Levy payable} = \%C \times \$C$$

Where

%C is the levy rate applicable

\$C is the proposed cost of carrying out the development

9. How is the cost of development assessed?

The cost of carrying out a proposed development will be determined in accordance with clause 25J of the Regulation. A copy of this clause is provided in Schedule 2.

To provide reliable information on the cost of carrying out a development, the applicant for development consent or a complying development certificate is to provide details with the application in accordance with this Plan. There are two levels of information provision, dependent on the scale of cost and the type of development:

- **For all single dwelling house development regardless of the type or the cost, and for other development between \$100,000 and \$500,000** – where the cost of carrying out a proposed development is in this range, a **Cost Summary Report** must be completed by the applicant or a nominated representative such as the Project Architect or Project Manager;
- **For all other development above \$500,000** – where the cost of carrying out a proposed development is in this range, a **Detailed Cost Report** must be completed by a **Quantity Surveyor** registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate an equivalent qualification.

The form that should be used for a Cost Summary Report is included in Schedule 3, and the form for a Detailed Cost Report by a Quantity Surveyor is included in Schedule 4.

Without limitation to the above, the valuation of the cost of development may be reviewed and the services of an independent qualified person may be sought to verify the development cost assessment. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant.

10. When is payment made and how will contributions be adjusted?

In accordance with Clause 146 of the Regulation, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it

has verified that each condition requiring the payment of a contributions levy under this Plan has been satisfied.

In particular, the certifying authority must ensure that the applicant provides a receipt(s) confirming that levies have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the council in accordance with Clause 142(2) of the Regulation. Failure to follow this procedure may render such a certificate invalid. Burwood Council also requires payment of any costs associated with verification of the assessment of the cost of development is prior to the issue of the construction certificate.

The only exceptions to the requirement are where a works in kind, material public benefit or dedication of land has been agreed to by the council. In such cases, the council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

As the date of payment of a contribution under a consent condition may be later than the consent date, Clause 25J (4) of the Regulation allows Council to adjust the contribution to reflect cost increases during this period. Contributions will be adjusted at the time of payment of the contribution in accordance with the following formula:

Contribution at time of payment

$$C_2 = \frac{C_1 \times CPI_2}{CPI_1}$$

Where:

C ₁	Monetary contribution imposed on the development consent
C ₂	Monetary contribution at the time that the contribution is paid
CPI ₁	Latest "Consumer Price Index: All Groups Index Number 6401.0" for Sydney available from the Australian Bureau of Statistics at the time of granting the relevant development consent
CPI ₂	Latest "Consumer Price Index: All Groups Index Number 6401.0" for Sydney available from the Australian Bureau of Statistics at the time the contribution is to be paid

Refer **Section 11** below for requirement of contribution payment under a complying development certificate.

11. Complying development certificates

Pursuant to Section 4.28 (9) of the Act, where an accredited certifier issues a Complying Development Certificate (CDC) in respect of development to which this Plan applies, the certificate must be subject to a condition requiring the applicant to pay to Council the levy in accordance with this Plan.

The condition imposed by an accredited certifier on a CDC must include details of the requirements of Clause 10 of this Plan. Any required contribution payment shall be made to Council **within two days of the issue of a CDC** by a Principal Certifier. Should a payment be made after the two day period, Council may require the amount be indexed in accordance with the Consumer Price Index to adjust the amount of the payment to account for the time between the consent date and payment date.

A suggested condition for use by an accredited certifier imposing a condition on a development consent that requires an applicant to pay to Council a levy in accordance with this Plan is included in Schedule 5.

The imposition of a condition on a CDC issued by an accredited certifier as authorised by this Plan is subject to compliance with any directions given under Section 7.17 of the Act with which Council would be required to comply if issuing the CDC concerned.

12. Will Council accept alternatives to a levy?

Council may at its absolute discretion accept the dedication of land or provision of a material public benefit or works-in-kind in part or full satisfaction of a Section 7.12 levy under this Plan.

As a general rule, only land or works directly associated with the roads and traffic improvements, public domain improvements and community facilities as indicated in Schedule 1 may be considered as a material public benefit or work-in-kind in satisfaction of the contributions levy. Applicants must provide full details, costs and valuations of the land or works.

If Council agrees to an alternative to the levy, it will either require the alternative as a condition of consent, or accept it under the terms of a Voluntary Planning Agreement.

13. Are there any exemptions to the levy?

Clause 25J of the Regulation, that governs the determination of the cost of development, states the matters that are excluded from the determination.

At Council's absolute discretion exemptions to the payment of levies under this Plan may apply to the following types of approvals:

- Developments to be carried out by or on behalf of Burwood Council for the provision of public infrastructure including infrastructure funded by Section 7.12 levies;
- Other developments in applications submitted by Burwood Council;
- Developments where a condition has been applied under Section 7.11 or 7.12 for a previous development consent relating to the subdivision of the land on which the development is to be carried out;
- Developments that involve rebuilding or repair after State Government-declared natural disasters.
- Developments by a not-for-profit charity (as defined by the Australian Taxation Office), but only in cases where the development is of a small scale, and where Council considers that there will not be an increase in the demand for public works or infrastructure as a result of the development which would warrant the payment of a Section 7.12 levy; and
- For residential development, payment of the Section 7.12 levy may be waived in situations where Council can be paid a comparable amount under the Federal Government's Housing Affordability Fund, and where the amount paid is deducted from the total cost of the development and is passed onto the purchaser;

14. How will the Section 7.12 funds be administered?

Burwood Council is to administer money obtained from the Section 7.12 levy and make decisions on the application of funds applied towards the provision, extension or augmentation of public amenities, infrastructure or public services for the Burwood Local Government Area in accordance with the Act and Regulation.

This Plan expressly authorises Section 7.12 levies paid for different purposes to be pooled and applied (progressively or otherwise) for the purposes indicated in Schedule 1, including with funds from other Council sources.

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Draft Local Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre).

This Plan also expressly authorises that unspent monies collected through previous (and now repealed) Section 7.11 Plans are to be expended as if they were funds received under a Section 7.12 Plan on works identified in the previous plans where those works have been carried across to the Works Schedules included in this Plan.

Furthermore, where works identified in previous Section 7.11 and 7.12 Plans are no longer considered necessary then this Plan authorises that the unspent money be transferred to this Plan and spent on the works identified in the Works Schedule included in Appendix B of this Plan, which are similar to the works categories included in the previous Section 7.11 and 7.12 Plans.

Schedule 1 – Works Schedule Table and Maps

In the following Table and Maps, Schedule 1 provides a summary of the main local public amenities, infrastructure, works or services towards which funds collected under this Plan will be used to provide, extend or augment, (or used towards recouping the cost of provision, extension or augmentation). The Table in Schedule 1 includes the estimated cost of the public amenities or public services. Funds collected under this Plan may provide only a part of the indicated cost of works, infrastructure and services. The Table in Schedule 1 also indicates the estimated priority timeframe of their provision, extension or augmentation in full or in large part (see clarification note at end of Schedule 1), which may be subject to availability of supplementary funding in some cases.

The Maps following the Table are included in Schedule 1 to indicate the location of the main works, infrastructure and services by way of a Map Reference and Item Number. The proposed works, infrastructure and services listed in the Table and shown on the Maps in Schedule 1 are indicative and implementation is subject to the budgetary and operational resources of Council. Regard should also be had to the Land Reservation Acquisition Map in the BLEP 2012 which shows the land to be acquired for implementation of certain projects, as indicated in the Table.

Note on Table to Schedule 1

Each item of works in the Table has been provided with a priority ranking in the column headed Priority Time Frame which provides an indicative timing for the delivery of the work items, as follows.

Priority ranking	Indicative timing
A	2018-2021
B	2021-2024
C	2024-2027
D	After 2027

The priority ranking and actual timing of delivery of works is subject to change as it is influenced by the following factors:

- The rate and timing of development from which contributions are collected;
- The pooling of sufficient funds to enable provision, extension or augmentation of amenities and services;
- The requirements of Council’s annual works program from year to year;
- The relationship between works and other events e.g. land acquisitions may depend on whether the properties are on the market.

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Draft Local Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre).

Works Schedule Table

Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
OPEN SPACE				
A. LAND ACQUISITION FOR NEW OPEN SPACE	Acquire 4 Portland Street, Enfield to enlarge Grant Park	\$1,500,000	Timing of acquisitions will depend on funding availability and any owner requests.	A-1C
	Acquire 37A Brighton Street, Croydon to enlarge Keith Smith Park	\$1,500,000		A-2 C
	Acquire 39 Brighton Street, Croydon to enlarge Keith Smith Park	\$1,500,000		C
	Acquire 14 Burleigh Street to consolidate Site E being Elizabeth carpark	1,500,000		B
	Shop 4a & 4b 1-17 Elsie Street (currently RMS office)	2,000,000		C
	TOTAL - A. ACQUISITION OF LAND FOR NEW OPEN SPACE	8,000,000		
B. EMBELLISHMENT OF EXISTING OPEN SPACE	Blair Park			B-1
	Upgrade of Amenities Building	250,000	A	
	Stage 3 perimeter fencing (Queen St and Acton St)	75,000	A	
	Upgrade of irrigation, improved drainage and re turf of playing field	250,000	A	
	Installation of root barrier along southern side of playing field	50,000	A	
	Replace existing bubbler	15,000	A	
	New and replace park signage	10,000	A	
	Equal Access paths and ramps and steps	30,000	A	
	New soccer goal posts	10,000	A	
	Subtotal	690,000		
	Brown Reserve			B-2
	Install picnic shelter and seating	30,000	C	
	Replace bubblers x 1	5,000	C	
	Install bins x2	10,000	C	
	Replace solar lights	70,000	A	
	Subtotal	115,000		

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Burwood Park			B-3
	Tree Planting x 50 including Palm tree succession planning	50,000	A	
	Off-street parking upgrade and equal access	200,000	A	
	Equal access barbecues	50,000	A	
	Replacement and addition of CCTV	50,000	A	
	Install new bins x 10	50,000	A	
	Renew soft and hard landscapes	50,000	B	
	Repair/Replace the irrigation system	200,000	A	
	Repair and maintain the erosion and wear under the brush box trees on the southern side	30,000	A	
	Repair or install a new pond pump and filter and clean the pond	200,000	A	
	Install park ordinance (alcohol) signs to prevent ball games in the area of Confucius sculpture	5,000	A	
	Install more picnic shelters x 3	100,000	B	
	Concrete steps to oval area	30,000	B	
	New bubblers x2	15,000	B	
	Remove the chain wire fence on the southern side of the community centre and regrade	50,000	A	
	Landscaping around the stage pavilion	40,000	A	
	Upgrade of Chess Board Facility	50,000	A	
	Stormwater Drainage improvements whole of park	500,000	A	
	Stormwater harvesting and re use	300,000	A	
	Lighting Upgrades	140,000	B	
	New signage (interpretive and way finding)	20,000	A	
	Subtotal	2,130,000		
	Everton Road Park			B-4
	Revised design and community consultation project management, Stage one construction of park development	45,000	C	
	Stage two construction of park development	30,000	C	
	Install 2 x park seats	5,000	A	
	Subtotal	80,000		

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Wangal Park			B-5
	New fencing	100,000	A	
	New park ordinance signage	10,000	A	
	New additional planting	100,000	A,B	
	New park interpretive and way finding signage	150,000	A	
	Install of Table Tennis Table	15,000	B	
	Subtotal	375,000		
	Cooindoo Reserve			B-6
	Tree planting x 10	2,400	C	
	Replace fencing to King Street	35,000	B	
	Install picnic shelter x1	25,000	C	
	Install bubbler x 1	5,000	C	
	Subtotal	67,400		
	Coronation Parade			B-7
	Tree planting x 50	10,000	A	
	Replace and new seating x 5	15,000	A	
	Pathway construction	100,000	C	
	Subtotal	125,000		
	Flockhart Park			B-8
	Install new shade over new play equipment	40,000	C	
	Upgrade of Cricket Nets including Synthetic grass practice cricket pitches	40,000	A	
	New Floodlighting of playing fields	250,000	B	
	Playing field upgrade (stripping, drainage, irrigation)	300,000	B	
	Replace existing bubblers x 4	20,000	A	
	Upgrade solar lights	40,000	A	
	Additional seating x 8	30,000	B	
	Install barbecue and picnic area shelters x 3	120,000	B	

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Draft Local Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre).

Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	New bins x4	15,000	B	
	Subtotal	855,000		
	Froggart Crescent Reserve			B-9
	Replace existing timber bollards	10,000	C	
	Subtotal	10,000		
	Henley Park			B-10
	Solar lighting along walking track	150,000	A	
	New Floodlights to playing sports fields	500,000	A	
	Subsoil drainage improvements to the playing fields	500,000	A	
	Shade structure near BBQ includes concrete floor excavation and project management	30,000	B	
	Cricket practice nets replacement and other minor works	50,000	A	
	Upgrade to Amenities Building	1,200,000	A	
	New Automated Toilet Facility	500,000	B	
	Replacement of Fitness stations	125,000	A	
	Replace picnic tables and shelters	200,000	A	
	Equal Access Barbeques	60,000	A	
	New Bins	40,000	A	
	New fence along Portland St from Amenities block to Enfield Aquatic Centre	50,000	A	
	Replacement of Synthetic cricket wickets w/	35,000	A	
	Proposed multi purpose synthetic court	500,000	A	
	New Park signage	20,000	A	
	Installation of double cable ride	100,000	A	
	Subtotal	4,060,000		
	Enfield Aquatic Centre			B-10A
	Review design and structure and finalise	Detailed costing is being developed Approx. estimate		
	Strip out 50m pool to structure, repair and upgrade as required			
	Build wet deck gutters to 50m pool			

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Remove asbestos piping	\$2,000,000		
	Lay return pipes to sides of pool			
	Render pool, supply and fix tiling throughout			
	Reinstote concourse paving (basic concrete, option tiled) and drainage			
	EAC Preliminary Master Plan – Detail design and documentation for all stages	\$670,000	A	
	Stage 2A Front foyer refurbishment (short term)	\$100,000	A	
	Stage 2B New Male and Female change rooms (mezzanine level), café, undercover walkway and grandstand seating on southern side of the site	\$2,000,000	A	
	Stage 3 New LTS indoor pool / new perimeter fencing	\$2,200,000	A	
	Stage 3A New foyer design/control design (long term)	\$800,000	A	
	Stage 4 Rear Entrance	\$1,100,000	A	
	Stage 5 Expansion of the existing car park between Shelley and Anne Street – 80 spaces , including drainage upgrading, lighting etc	\$1,200,000	A	
	BCA works Landscaping and Perimeter Fencing	\$210,000	A	
	Subtotal	\$10,280,000		
	Wyatt Ave landscaped median (Horton Reserve)			B-11
	Install park ordinance signage x 3	1,500	A	
	Install seats x 4	8,000	A	
	Subtotal	9,500		
	Grant Park			B-12
	New Fencing	60,000	B	
	Signage	10,000	B	
	New Solar Lighting	20,000	A	
	Subtotal	90,000		

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Jackett Reserve			B-13
	Picnic tables and shelter x 1	20,000	B	
	Replace/ install bubblers x 1	5,000	A	
	Fencing to Minna Street	35,000	C	
	Install park ordinance signage	1,500	A	
	Subtotal	61,500		
	Jackson Park			B-14
	Tree planting x 10	2,000	A	
	New Signage	5,000	A	
	Picnic table and shelter x 1	20,000	A	
	Replacement of Play equipment and soft fall	240,000	A	
	Replacement of Bubbler	10,000	A	
	Installation of new fencing	25,000	A	
	Subtotal	302,000		
	Keith Smith Park			B-15
	Install of Picnic table and shelter	25,000	A	
	New bins x 2	10,000	B	
	New Water Bubbler	10,000	A	
	Installation of new fencing	40,000	A	
	New Signage	5,000	A	
	Subtotal	90,000		
	King Edward Street Landscape traffic control area			B-16
	Replace bench seat x 1	3,500	B	
	New signage	2,000	A	
	Subtotal	5,500		
	Luke Avenue Landscaped traffic control area			B-17
	Install park ordinance signage	1,500	A	

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Subtotal	1,500		
	Martin Reserve			B-18
	Replace bins x 1	5,000	A	
	Fencing to Seymour Street and Baresford Street	115,000	B	
	Install bubblers x 1	25,000	B	
	Install picnic shelter x 1	25,000	B	
	Ordinance and park signage	1,500	A	
	Junior playground equipment replacement	150,000	B	
	Subtotal	321,500		
	Willee St landscaped median			B-19
	Replace seating x 4	10,000	A	
	New signage	5,000	A	
	Subtotal	15,000		
	McCall Avenue Landscaped traffic control area			B-20
	Replace bollards	10,000	B	
	Seating x 2	5,000	B	
	Subtotal	15,000		
	Prowse Reserve			B-21
	Replace seats x 2	5,000	B	
	Fencing (bollards) to streets	30,000	B	
	Install park ordinance signage	1,500	A	
	Replace bubbler x 1	5,000	A	
	Subtotal	41,500		
	Rochester Reserve			B-22
	Replacement of palms	20,000	C	
	Subtotal	20,000		

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Russell Street Reserve			B-23
	Install parks ordinance signage	3,000	A	
	Subtotal	3,000		
	Sanders Reserve			B-24
	Install picnic shelter x 1	20,000	B	
	Fencing along Oxford Street	30,000	A	
		10,000		
	Replace bubbler x1		A	
	Install park ordinance signs	5,000	A	
	Subtotal	65,000		
	St. Pauls Close			B-25
	New Park Signage	3,000	A	
	Subtotal	3,000		
	Stanley Street Reserve			B-26
	Install seating x 1	3,000	A	
	Install park signage	2,000	A	
	Subtotal	5,000		
	Tangarra Street Landscaped verge			B-27
	Extend existing pathway	30,000	A	
	Subtotal	30,000		
	The Parade			B-28
	Install seats x 2	5,000	C	
	Install park and ordinance signage	1,500	A	
	Subtotal			

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Trelawney Street Landscaped verge	6,500		B-29
	Replace existing seats	6,500	A	
	Install park and ordinance signage	1,500	A	
	Subtotal	8,000		
	Fitzroy St traffic control area (Reed Reserve)			B-30
	Install seating x 2	5,000	B	
	Replace existing bollards	15,000	A	
	Install signage	2,000	A	
	Subtotal	22,000		
	Walsh Avenue Reserve			B-31
	Replace playground and new shade structure for playground	230,000	B	
	Replace bubbler	5,000	A	
	New Shelter and seating	25,000	A	
	Replace solar lighting	30,000	A	
	Install 10 trees	2,500	A	
	Install park signage and bollards	15,000	A	
	Install new bins	10,000	B	
	Subtotal	317,500		
	Whiddon Reserve			B-32
	Replace seat x 2	5,000	A	
	Install/replace fencing to Lees Avenue	15,000	A	
	Replace bubbler x 1	5,000	A	
	Install bollards	15,000	B	
	Bins x 2	10,000	B	
	Install park ordinance signage x 2	3,000	A	
	Solar lighting	30,000	A	

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Tree planting x10	2,500	B	
	Subtotal	85,500		
	Willie Street Landscaped verge			B-33
	Install seeding x 2	5,000	A	
	Replace existing play equipment to include rubber soft fall and shade structure	100,000	A	
	Install park ordinance signage	2,000	A	
	New Fencing	25,000	A	
	Subtotal	132,000		
	Woodstock Park			B-34
	New playground equipment soft fall and shade x 2	300,000	A	
	Installation of bins x 6	30,000	A	
	Restoration of gazebo	40,000	A	
	Installation of signage	5,000	A	
	Installation of seating x 6	15,000	A	
	Install picnic tables and shelters x 3	75,000	A	
	Install new equal access BBQ	10,000	A	
	New boundary fencing along adjoining properties	25,000	A	
	Modifications to Amphitheatre	100,000	A	
	New Sensory Garden	200,000	A	
	Installation of 2 bubblers	10,000	A	
	Subtotal	810,000		
	Wyatt Avenue Park			B-35
	Remove and replace bollards along Wyatt Ave	30,000	A	
	Replace existing play equipment to include rubber soft fall and shade	130,000	A	
	Install park ordinance signage	1,500	A	
	Replace existing bin	5,000	A	

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Subtotal	166,500		
	Barbara Holborow Reserve			
	How seats x 3	9,000	A	
	Install park signage	3,000	A	
	Subtotal	12,000		
	TOTAL – B. EMBELLISHMENT OF EXISTING OPEN SPACE			
ROADS				
C. ROAD WIDENING	Esher Lane, Burwood, north side between Webbs Lane & Esher Street – acquisition of land	162,500	Land acquisition will be negotiated upon Council receiving a pre-Development Application (DA) Road works will be undertaken after completion of development and in line with Council's Capital Works Program.	C-1
	As above – construction of road widening	49,750		C-1
	Webbs Lane, Burwood - west side, rear of 58-60 Burwood Road - acquisition of land	131,720		C-2
				C1
	As above - construction of road widening	22,895		C-2
	Nicholson Street, Burwood, north side between Conder Street and No. 13 Nicholson Street - acquisition of land	317,504		C-3
	As above - construction of road widening	121,285		C-3
	Nicholson Street, Burwood, north west corner with Burwood Road – land acquisition	2,091		C-4
	As above - construction of splay corner	1,610		C-4
	Woodside Avenue, Burwood, SW corner of intersection with Burwood Road-land acquisition	64,516		C-5
	As above - construction of splay corner	35,130		C-5
	Ethel Street, Burwood, south east corner with Burwood Road - acquisition of land	37,566		C-6
	As above - construction of splay corner	28,745		C-6
	16 Lyons Street for Belts Lane widening	4,200,000		C-1
	As Above - construction of road widening	200,000		
	Ethel Street, Burwood, north east corner with Burwood Road - acquisition of land	4,136		C-7
	As above - construction of splay corner	1,875		C-7
	Fitzroy Street, Burwood, SE corner of intersection with Weidon Street - acquisition of land	37,236		C-8
	As above - construction of splay corner	17,065		C-8
	Shelley Street, Enfield, NE corner intersection with Cobden Street - construction of splay	10,380		C-8

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	corner			
	Shelley Street, Enfield, south side between Portland Street and vicinity of Trevena Lane - construction of road widening	671,435		C-10
	Wentworth Road, Strathfield, west side between Russell Street and Morwick Street - acquisition of land	263,061		C-11
	As above - construction of additional approach lane	114,500		C-11
	Boundary Street, Croydon, north side between Croydon Public School and Young Street - acquisition of land for kiss and ride lane	154,318		C-12
	As above - construction of kiss and ride lane	211,365		C-12
	Shaftesbury Road, Burwood, west side to Parramatta Road - acquisition of land	145,000		C-13
	As above - construction of additional approach lane	233,500		C-13
	Wentworth Road, Burwood, east side to Liverpool Road - acquisition of land	148,591		C-14
	As above - construction of additional approach lane	59,405		C-14
	TOTAL - C. ROAD WIDENING	7,447,209		
D. TRAFFIC IMPROVEMENTS				
	Ban right turnings movements into and out of Railway Crescent at Wentworth Road	6,000	To be undertaken depending on funds availability, analysis of yearly crash data and Council requests	D-1
	New traffic signals at the intersection of Burwood Road with Nicholson Street	450,000		D-2
	Cleanway restrictions along Burwood Road between Nicholson Street & Georges River Rd	15,000		D-3
	Cleanway restrictions along Queen Street and Victoria Street	12,000		D-4
	Install pedestrian safety fencing at The Strand, west side	45,000	A	D-5
	Local Area Traffic Management devices at various locations	35,000	A	
	TOTAL - D. TRAFFIC IMPROVEMENTS	563,000		
E. PAVEMENT UPGRADES				
	Baker Street (Ann St - End)	90,000	B	E-2
	Blair Avenue	60,000	A	E-4

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Boyle Street (Georges River Rd – Violet St)	120,000	C	E-5
	Claude Lane	40,000	D	E-8
	Esher Lane (Webbs Ln - Burwood Rd)	30,000	D	E-13
	Esher Street	200,000	B	E-13A
	Everton Lane (Railway Ave- No. 10)	60,000	B	E-14
	Gordon Street	250,000	C	E-17
	Grogan Street	140,000	C	E-18
	Launcelot Avenue	100,000	A	E-20
	Llangollan Avenue	55,000	C	E-21
	Meta Street (Young St - End)	50,000	A	E-23
	Mt Pleasant Avenue	150,000	D	E-25
	Nance Lane	40,000	D	E-27
	Neich Parade	400,000	A	E-28
	Orontes Lane	60,000	D	E-29
	Park Rd (No 4 - Parramatta Rd)	400,000	A	E-31
	Sherars Avenue	50,000	D	E-33
			A	E-34
			A	E-35
			A	E-36
	Victoria St (Burwood Rd - Shaftesbury Rd)	600,000	A	E-37

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Walsh Avenue (No 72 - No 9)	100,000	D	E-39
	Waratah Street (Violet St - Lily St)	180,000	C	E-40
	Waratah Street (Arthur St - Ardgyffe St)	120,000	C	E-40A
	Webbs Lane (Milton St - Esher La)	75,000	A	E-41
	Wellington Street	50,000	D	E-42
	Wentworth Road (Railway Pde - Russell St)	350,000	A	E-43
	Woodside Avenue (Corder St - Wentworth Rd)	240,000	D	E-46
	Wright Street (Queen St - Macgregor St)	240,000	C	E-47
	TOTAL - E. PAVEMENT UPGRADES	4,250,000		
F. KERB AND GUTTER UPGRADES			B	
	Albert Crescent (Cheltenham Rd - Webb St), North / West	70,000		F-1
	Alexandra Avenue, both sides	50,000	B	F-2
	Angelo Street (Ireland St - Liverpool Rd), both sides	80,000	A	F-3
	Blair Avenue	50,000	A	F-5
	Burwood Road (Violet St - Llangofan Ave), both sides	70,000	B	F-7
	Claremont Road (Liverpool Rd - Arthur St), South / East	70,000	B	F-9
	Fitzroy Street (Brady St - Reed St), both sides	40,000	B	F-14
	Kater Place (Boyle St - Beaufort St), North / West	30,000	B	F-17
	King Street, North / West	30,000	B	F-18

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Launcelet Avenue, both sides	50,000	A	F-19
	Norwood Street (Conder St - Oxford St), both sides	70,000	B	F-24
	Portland Street (Georges River Rd - Tangara St), North / West - both sides	110,000	B	F-26
	Richmond Street, both sides	30,000	B	F-30
	Rockleigh Street, both sides	60,000	B	F-31
	Tangara Street (Blenheim St - Portland St), both sides	40,000	B	F-35
	Tavistock Street (Georges River Rd - Tullimbar St & Tullimbar St - Tangara St), both sides	110,000	B	F-36
	Tullimbar Street (Blenheim St to Portland St both sides)	100,000	A	F-37
	Waratah Street (Arthur St - Ardgyffe St), South / East	20,000	B	F-41
	Wentworth Road (Rowley St - Gladstone St), both sides	75,000	B	F-42
	TOTAL - F. KERB AND GUTTER UPGRADES	1,155,000		
PUBLIC DOMAIN				
G. FOOTPATH				G-1, G-2

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
UPGRADES				
	Albert Crescent (Cheltenham Rd - Lucas Rd), North / West	40,000	A	G-3
	Albert Crescent (Cheltenham Rd - Brand St), North / West	20,000	A	G-4
	Alfred Street (Grogan St - No 3 & No 2), both sides	50,000	A	G-6
	Angelo Street, both sides	120,000	A	G-7
	Arrowfield Avenue, South / East	20,000	B	G-8
	Arthur Street (Badminton Rd - Beaufort St), South / East	15,000	B	G-9
	Bay Street (Acton St - Dawson St), North / West	25,000	C	G-10
	Bay Street (Dawson St - Lang St), North / West	25,000	C	G-11
	Blair Avenue, North / West	40,000	A	G-12
	Boronia Avenue, Croydon – both sides	60,000	A	G-13
	Boronia Avenue, Burwood - South / East	30,000	D	G-13A
	Britannia Avenue (No 29 – Corner St), North / West	100,000	D	G-14
	Burwood Road (Lily to Bligh), North / West	40,000	A	G-16
				G-17
	Clifton Avenue (Shaftesbury Rd - Clifton), South / East	40,000	A	G-19
	Condar Street (Hornsey St - Livingston), North / West	100,000	A	G-21
	Coronation Parade (Liverpool Rd - Plymouth St), South / East	75,000	A	G-22
	Coronation Parade (Mitchell St - Tangara St), South / East	40,000	A	G-23
	Coronation Parade (Tangara St - Tullimber St), South / East	30,000	A	G-24
	Cross Street, North / West	30,000	A	G-25
				G-26
	Esher Street (New St - Menzies St), South / East	30,000	A	G-30
	Ethel Street, both sides	100,000	A	G-30A

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Gala Avenue, both sides	30,000	A	G-33
	Georges River Road (Burwood Rd - Beaufort St), North / West	100,000	A	G-38
	Georges River Road (Brighton St - Croydon Ave), North / West	50,000	A	G-39
	George Street (Burwood Rd - Shaftesbury Rd), both sides	160,000	A	G-40
	Goucester Avenue, Both Sides	30,000	B	G-41
	Grogan Street (Acton St - Lang St), North / West	45,000	A	G-42
	Henry Street, Both Sides	20,000	A	G-43
	Homsey Street (Condar St - Wentworth), Both Sides	85,000	A	G-44
	Ilfracombe Avenue (Park to End), Both sides	45,000	B	G-45
	Launceston Avenue Both Sides	50,000	A	G-47
	Liverpool Road (Greenhills St - Coronation Pde), both sides	1,000,000	A,B,C	G-48
	Lucas Road - various between Parramatta Rd and Albert Cres	400,000	A,B,C	G-50
	Lycns Street (No 8 - The Boulevard), South / East	40,000	A	G-51
	Marmaduke Street, both sides	30,000	A,B	G-52
	McCall Avenue (Eden Ave - Weil Ave), Both Sides	50,000	A	G-53
	Nicholson Street (various sections between Bold St, Isoton St and St Pauls Cl)	50,000	A	G-57
	Paisley Road (Shaftesbury Rd - The Strand), Both Sides	150,000	A,B	G-60
	Parramatta Road (Luke Ave - Shaftesbury Rd), South / East	70,000	A	G-64
	Parramatta Road (No 314 - Esher St - Burwood Rd), South / East	50,000	C	G-65
	Parramatta Road (Burwood Rd - Neiche Pde), South / East	50,000	C	G-66

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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
	Queen Street (Robinson St - Ivanhoe Rd), South / East	15,000	C	G-72
	Richmond Street, both sides	45,000	C	G-73
	Royce Avenue (Cheltenham Rd – Parramatta Rd, both sides)	60,000	C	G-75
	Sesle Street (Burwood Rd-Quandong Ave, both sides; & Quandong Ave-Angelo St, South/East)	51,000	A,B,C	G-76
	Shaftesbury Road (various between Milton St and Meryla St)	85,000	B,C	G-77
	Shaftesbury Road (various between Meryla St & Wyalong St)	200,000	A,B,C	G-78
	Short Street, Croydon, both sides	40,000	A	G-82
	Simpson Avenue, both sides	30,000	A,B	G-83
	Tahlee Street, South / East	72,210	C	G-85
	The Strand, South / East & Thomas Street, North / West	30,000	C	G-86
	Victoria Street (Flo 1 - Shaftesbury Rd), Both Sides	120,000	B,C	G-87
	Waimea Street (Cheltenham Rd - No 1B - Lucas Rd), South / East	20,000	C	G-89
	Webb Street (Irina St - Orchard St), Both Sides	35,000	A,C	G-90
	Wentworth Road (Russell St - Hornsey St), South / East	25,000	C	G-93
	Wentworth Road (Arrowfield Ave - Liverpool Rd), North / West	20,000	C	G-94
	Wilce Street (Liverpool Rd - Henry St), North / West	30,000	C	G-95
	Young Street (Queen St - Orchard St), North / West	15,000	C	G-96
	Young Street (Froggatt Cres South Entrance - Gibbs St), North / West	45,000	C	G-97
	TOTAL - G. FOOTPATH UPGRADES	4,473,210		
DRAINAGE				
	Diameter of Pipes (mm)		Length (m)	

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Category & Sub-category	Project and Purpose or Location		Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.	
H. UPGRADES OF STORMWATER PIPES	150		113	58,500	A	No specific location – subject to more detailed investigation
	225		1557	778,500	A	
	300		3352	1,676,250	A	
	375		4,906	2,453,125	A	
	450		2,400	1,200,375	A	
	525		502	250,875	A	
	600		1337	668,625	A	
	675		290	146,500	A	
	750		543	271,625	A	
	900		998	498,750	A	
	1050		225	112,250	A	
	1200		507	253,500	A	
	1350		211	105,500	A	
	1500		213	106,625	A	
	1650		151	75,625	A	
	Open Chanel – 1		391	195,625	A	
	Open Chanel – 2				A	

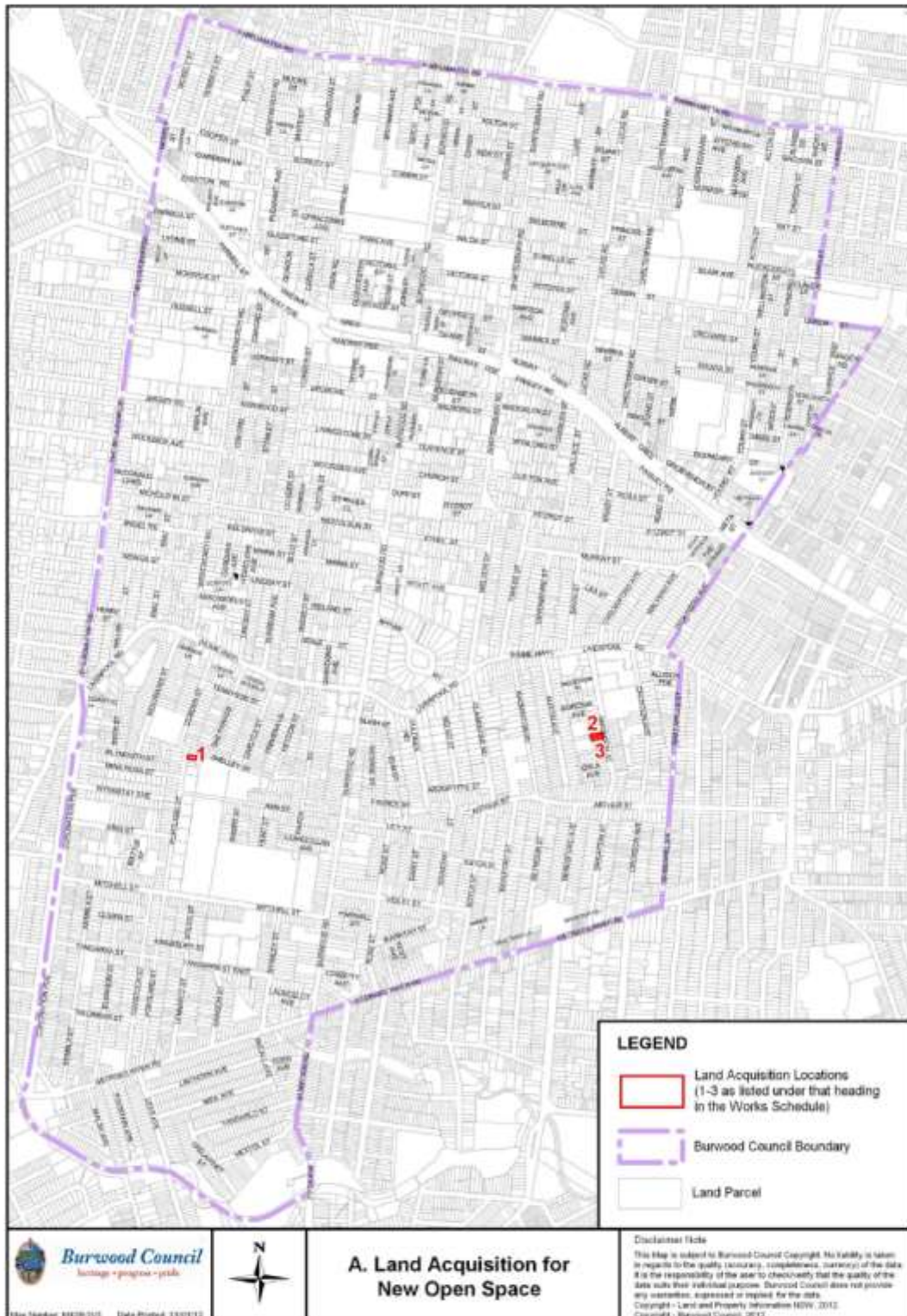
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Category & Sub-category	Project and Purpose or Location	Estimated Cost (\$)	Priority Time Frame	Map Ref. & Item No.
		766	383,000	
	TOTAL – H. UPGRADE OF STORMWATER PIPES	9,233,250		
SECTION 94A PLAN				
Preparation & administration		75,000 (per year)	Ongoing	
PLAN TOTAL		56,548,069	(NB: excludes Plan preparation and administration annual cost)	

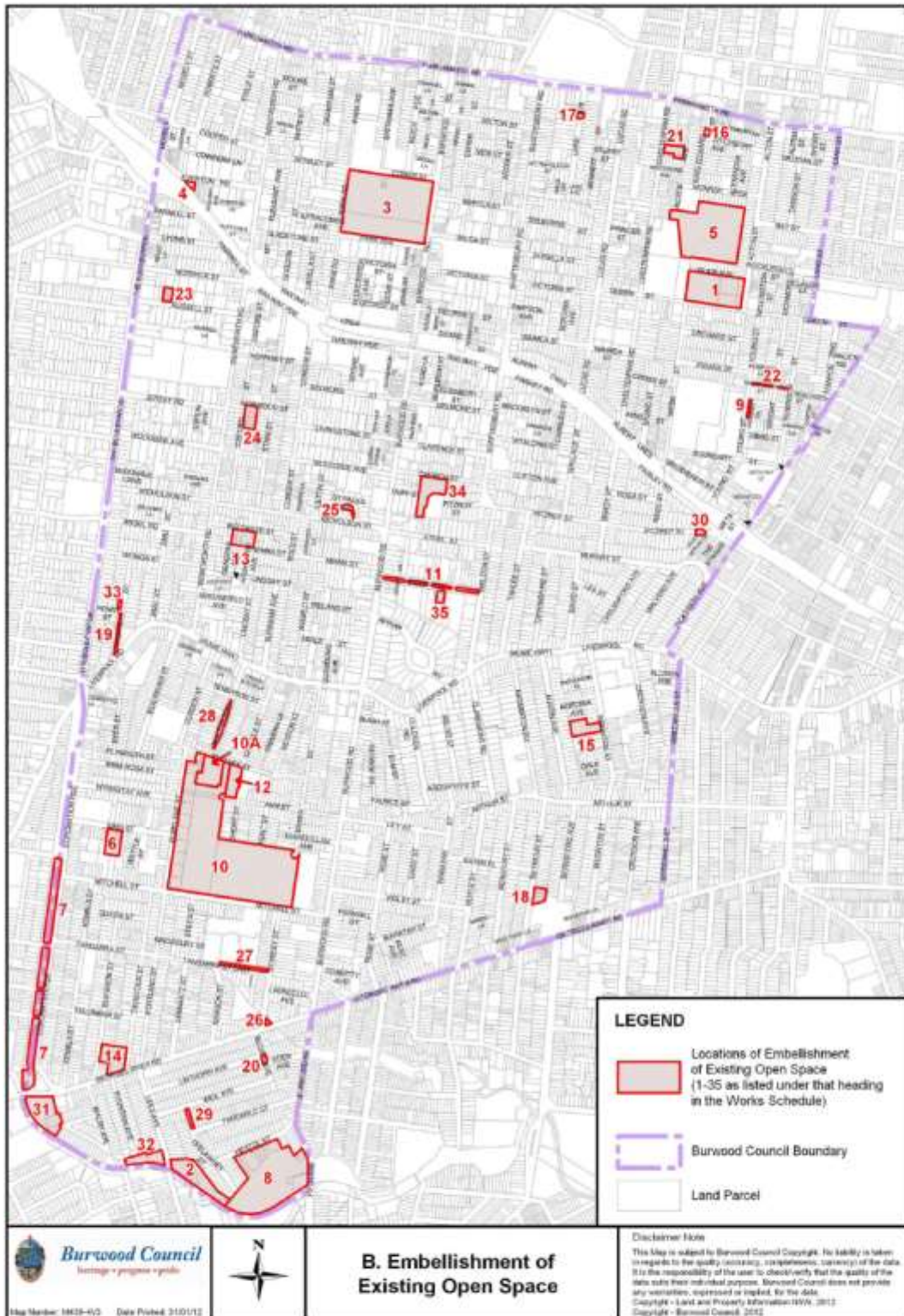
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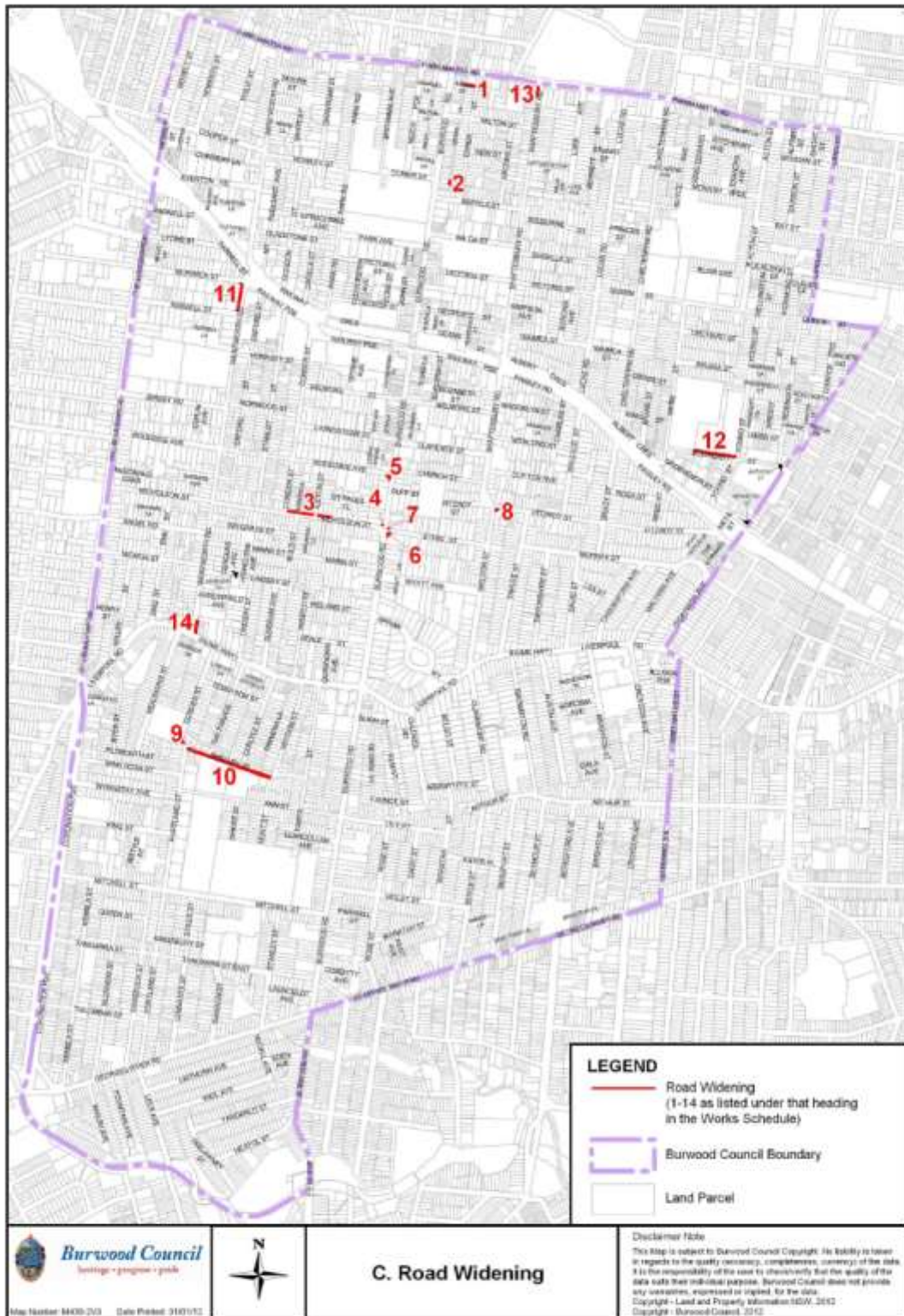
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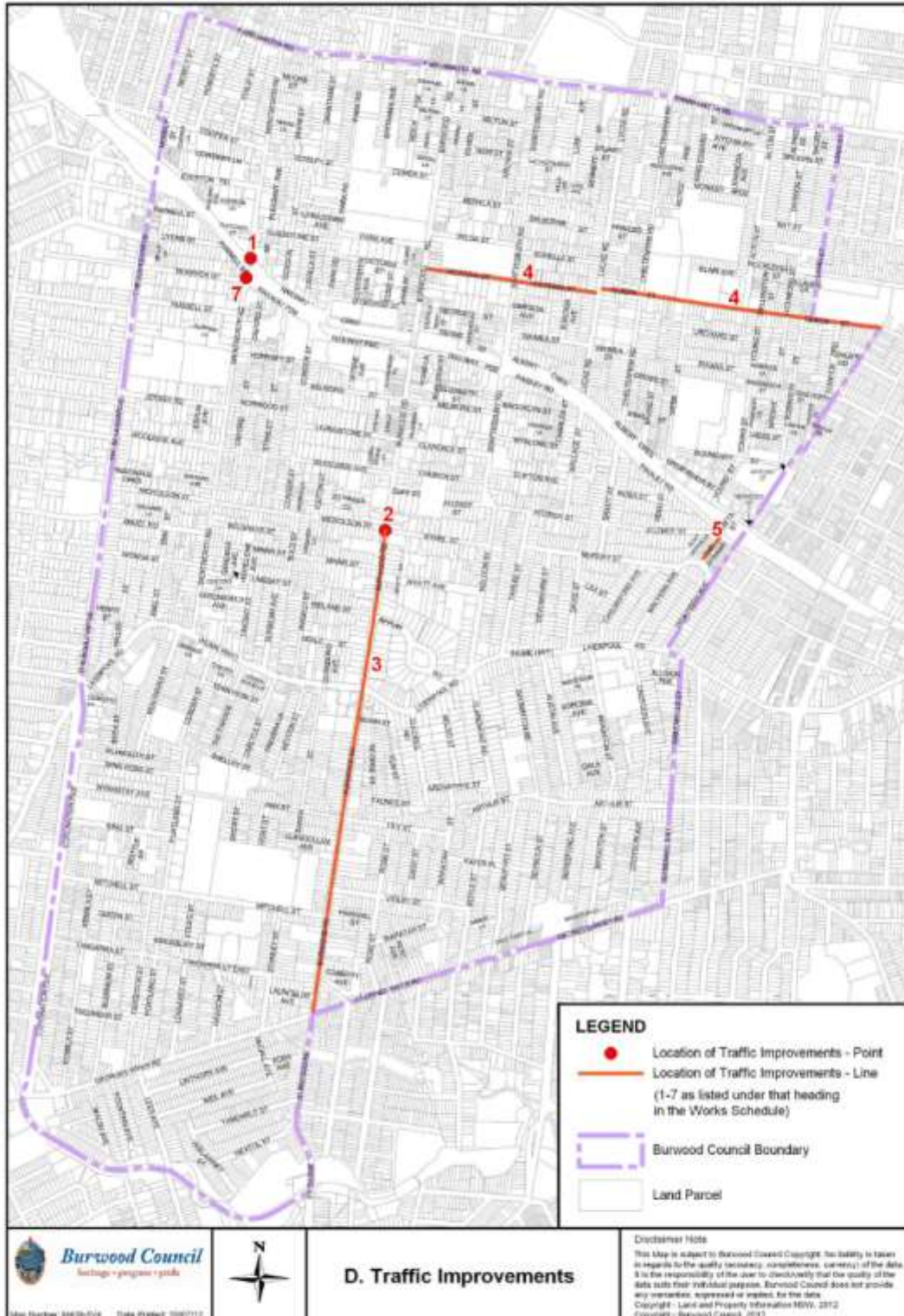
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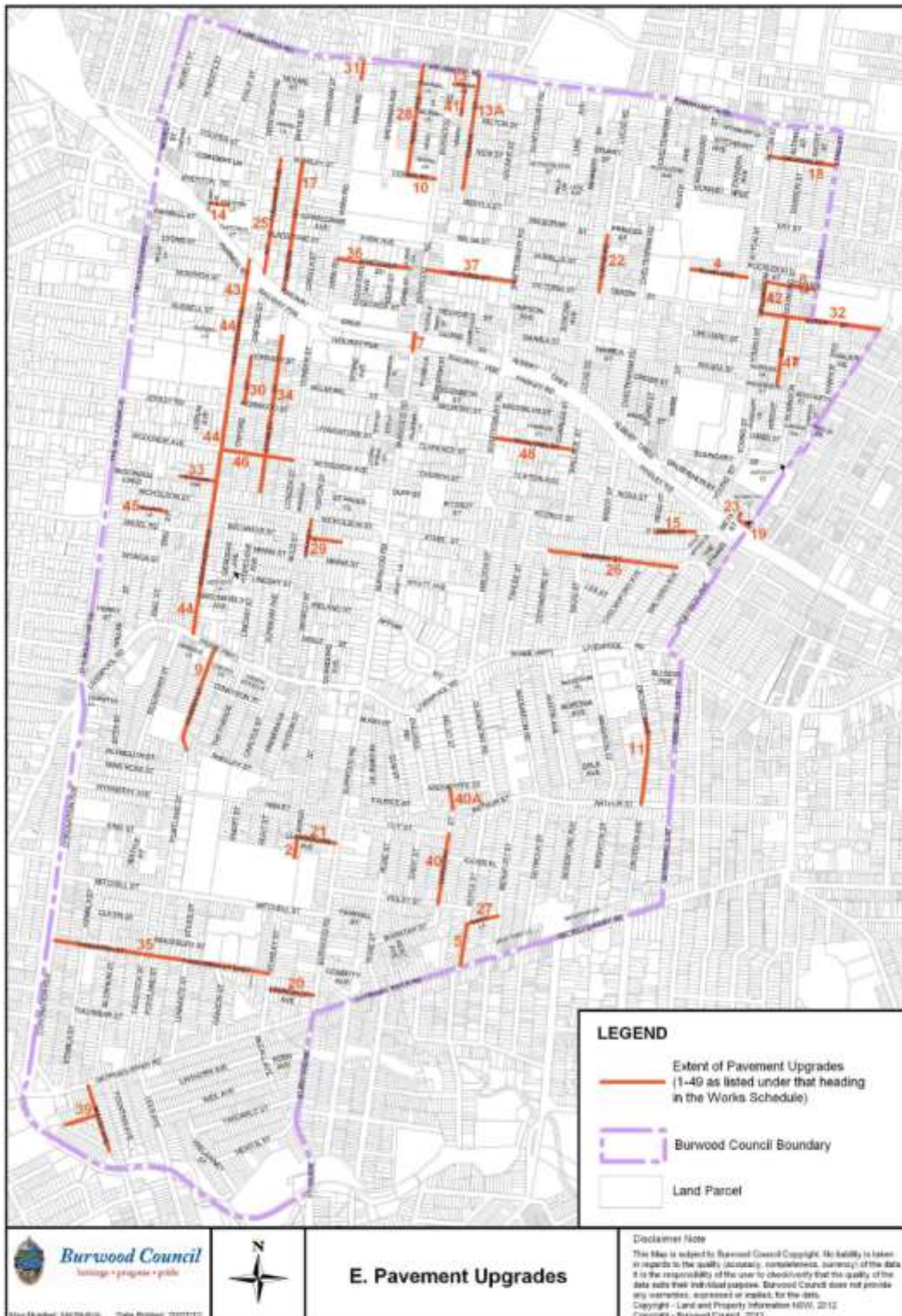
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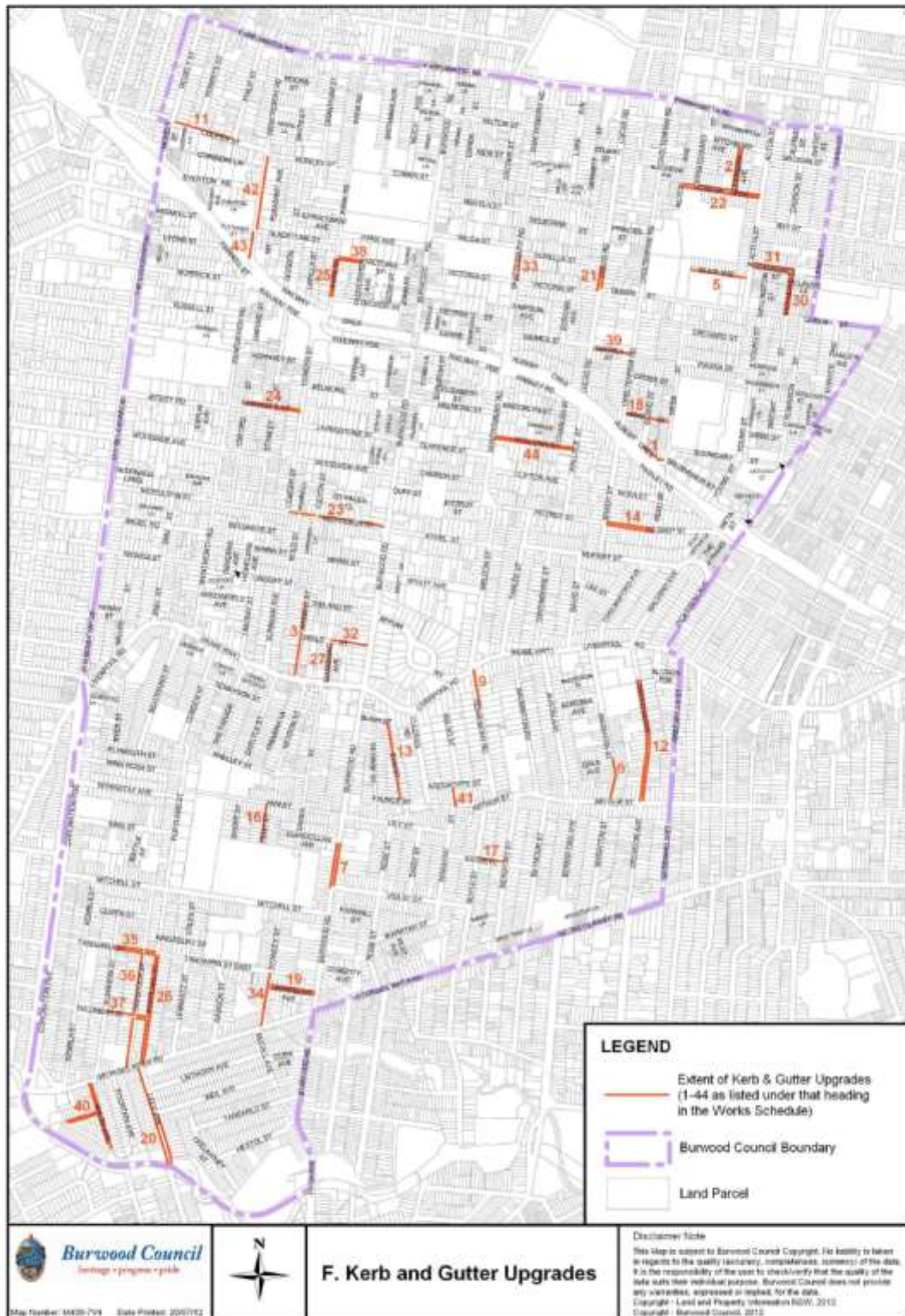
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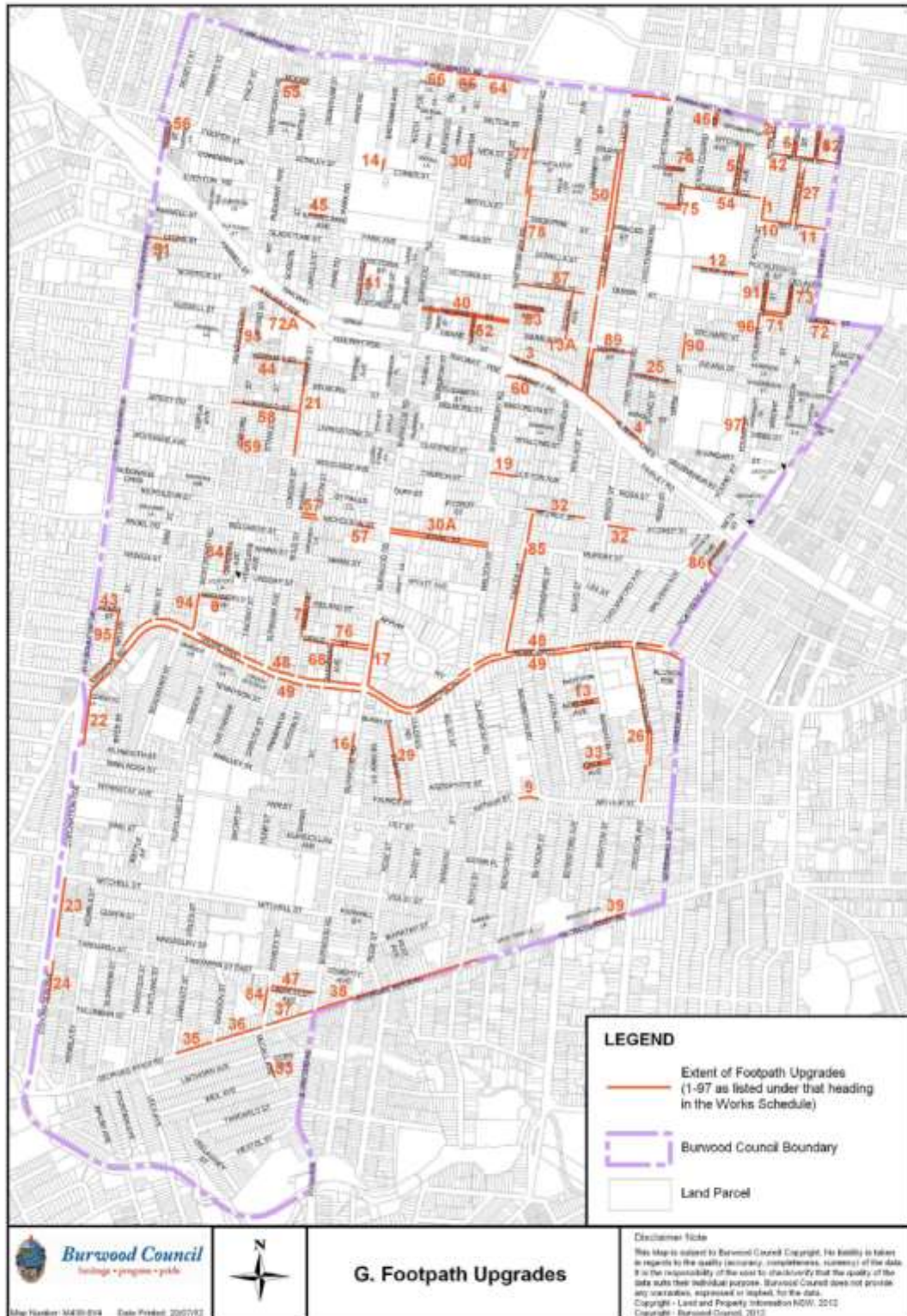
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Schedule 2 - Determination of proposed cost of development**Clause 25J of the Environmental Planning and Assessment Regulation 2000****25J Section 7.12 levy—determination of proposed cost of development**

- (1) The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a Section 7.12 levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:
 - (a) if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,
 - (b) if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,
 - (c) if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.
- (2) For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.
- (3) The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:
 - (a) the cost of the land on which the development is to be carried out,
 - (b) the costs of any repairs to any building or works on the land that are to be retained in connection with the development,
 - (c) the costs associated with marketing or financing the development (including interest on any loans),
 - (d) the costs associated with legal work carried out or to be carried out in connection with the development,
 - (e) project management costs associated with the development,
 - (f) the cost of building insurance in respect of the development,
 - (g) the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),
 - (h) the costs of commercial stock inventory,
 - (i) any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law,
 - (j) the costs of enabling access by disabled persons in respect of the development,
 - (k) the costs of energy and water efficiency measures associated with the development,
 - (l) the cost of any development that is provided as affordable housing,
 - (m) the costs of any development that is the adaptive reuse of a heritage item.
- (4) The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date the levy is required to be paid.
- (5) To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.

Schedule 3 – Form for a Cost Summary Report



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Cost Summary Report

- To be completed for all single dwelling house development regardless of the type or the cost, and for other development costing between \$100,000 and \$500,000.
- To be completed by the applicant or a nominated representative such as the Project Architect or Project Manager.
- Please have regard to the legal requirements for the determination of the proposed cost of development provided in Clause 25J of the EP&A Regulation 2000 (see Schedule 2).

DEVELOPMENT APPLICATION No.
and/or
COMPLYING DEVELOPMENT CERTIFICATE APPLICATION No.
and/or
CONSTRUCTION CERTIFICATE No. DATE:

Applicant's Name:

Applicant's Address:

Development Description:

Development Address:

Parking/Garaging Area (m²)

Total Construction Area (exc. Parking/Garaging) (m²)

DESCRIPTION OF COST	APPLICANT'S GENUINE ESTIMATE
Demolition	\$
Site preparation (e.g. clearing vegetation, decontamination or remediation)	\$
Excavation	\$
Preliminaries (e.g. scaffolding, hoarding, fencing, site sheds, waste management)	\$
Construction and Engineering Costs	\$
Change of Use	\$
Subdivision (planning, executing and registering, inc. covenants and easement)	\$
Services (e.g. plumbing, mechanical, fire lift)	\$
External work (e.g. landscaping, driveways, parking, pools)	\$
External services (e.g. gas, telephone, electricity connection to mains)	\$
Other (specify)	\$
Margin	\$
Goods and Services Tax	\$
TOTAL	\$

ITEM NUMBER 80/18 - ATTACHMENT 2

Draft Local Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre).

I certify that I have:

- Provided the genuine costs of the development proposed by this application and these costs are based on industry recognised prices;
- Included GST in the calculation of development costs;
- Calculated the development costs in accordance with the definition of development costs in Section 25J of the Environmental Planning and Assessment Regulation 2000, at current prices;
- Acknowledged that Council may review the information provided and may seek further information or make its own fee determination.

Signed: _____

Name: _____

Position: _____

Company: _____

Date: _____

Contact Number: _____

Contact Address: _____

Schedule 4 – Form for a Detailed Cost Report by a Quantity Surveyor



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Detailed Cost Report By a Registered Quantity Surveyor

- To be completed for all development that is not for a single dwelling house and that costs more than \$500,000 (that is, not covered by Schedule 3).
- To be completed by a Quantity Surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate an equivalent qualification.
- Please have regard to the legal requirements for the determination of the proposed cost of development provided in Clause 25J of the EP&A Regulation 2000 (see Schedule 2).

DEVELOPMENT APPLICATION No.
and/or
COMPLYING DEVELOPMENT CERTIFICATE APPLICATION No.
and/or
CONSTRUCTION CERTIFICATE No. DATE:

Applicant's Name:

Applicant's Address:

Development Description:

Development Address:

DEVELOPMENT DETAILS:	
Gross Floor Area - Commercial	m ²
Gross Floor Area - Residential	m ²
Gross Floor Area - Retail	m ²
Gross Floor Area - Car Parking	m ²
Gross Floor Area - Other	m ²
Total Gross Floor Area	m ²
Total Site Area	m ²
Total Car Parking Spaces	
Total Development Cost	\$
Total Construction Cost	\$
Total GST	\$

ESTIMATE DETAILS:	
Excavation	\$
Cost per square metre of site area	\$/m ²
Demolition and Site Preparation	\$
Cost per square metre of site area	\$/m ²

ITEM NUMBER 80/18 - ATTACHMENT 2

Draft Local Contributions Plan for the Burwood Local Government Area (Excluding Burwood Town Centre).

Construction - Commercial	\$
Cost per square metre of commercial area	\$/m ²
Construction - Residential	\$
Cost per square metre of residential area	\$/m ²
Construction - Retail	\$
Cost per square metre of retail area	\$/m ²
Car Parking	\$
Cost per square metre of site area	\$/m ²
Cost per space	\$/space
Fit-out - Commercial	\$
Cost per m ² of commercial area	\$/m ²
Fit-out - Residential	\$
Cost per m ² of residential area	\$/m ²
Fit-out - Retail	\$
Cost per m ² of retail area	\$/m ²
Professional Fees	\$
% of Development Cost	%
% of Construction Cost	%

I certify that I have:

- Inspected the plans the subject of the application for development consent or construction certificate;
- Prepared and attached an elemental estimate generally prepared in accordance with the Australian Cost Management Manuals from the Australian Institute of Quality Surveyors (AIQS);
- Calculated the development costs in accordance with the definition of development costs in Section 25J of the Environmental Planning and Assessment Regulation 2000, at current prices;
- Included GST in the calculations of development costs;
- Measured gross floor areas in accordance with the Method of Measurement of Building Area in the AIQS Cost Management Manual Volume 1 (Appendix A2);
- Acknowledged that Council may review the information provided and may seek further information or make its own fee determination.

Signed: _____

Name: _____

Position: _____

Company: _____

Registration as Member of the Australian Institute of Quality Surveyors: _____

Date: _____

Contact Number: _____

Contact Address: _____

Schedule 5 – Suggested Condition of Consent For Use By Private Certifiers

This is a suggested condition for use by an accredited certifier imposing a requirement that an applicant must pay to Burwood Council a levy in accordance with this Plan.

Section 94A Contribution

Pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979 and the Section 7.12 Contributions Plan for Burwood Local Government Area (Excluding Burwood Town Centre), the following contributions levy towards public services and amenities is required to be paid to Burwood Council:

Contribution Element	Contribution
A levy of <i>(insert %)</i> per cent of the cost of carrying out the development, where the development cost is <i>\$(insert development cost)</i>	<i>\$(insert contribution)</i>

The contribution is to be paid in full to Burwood Council **within two days of the issue of the complying development certificate.**

Evidence in the form of bank cheque(s) or receipt(s) confirming that payment has been made is to be submitted to the Principal Certifier.

The above contribution may be adjusted in accordance with the Consumer Price Index in the event of late payment.

Note: Credit cards and personal cheques are not accepted by Burwood Council for the payment of Section 7.12 contributions.

(ITEM 81/18) ADOPTION - REVISED DEBT RECOVERY POLICY

File No: 18/25934

REPORT BY CHIEF FINANCE OFFICER

Summary

The Revised - Debt Recovery Policy has been reviewed and updated in accordance with Council's Policy Review Corporate Practice. The Policy is now submitted to Council for adoption.

Operational Plan Objective

2.3.1. – Identify and maintain additional revenue sources to ensure financial sustainability

Background

Council's current Debt Recovery Policy was adopted in July 2013 and, now in accordance with Council's policy review Corporate Practice, a review of the current Policy has been undertaken.

Comment

The current Policy adopted on 23 July 2013 has been reviewed. The following amendments have been made in line with Council's Review Corporate Practice:

AMENDMENT	COMMENT
Division of Local Government	Change to reflect current name – Office of Local Government
Rates and Charges	Debt Recovery commencement has been changed from three missed instalments to four and outstanding balance increased from \$1,100 to \$1,300
Miscellaneous Sundry Debtors	Outstanding balance increased from \$300 to \$400
Debt Recovery Options	More transparency in steps available to Council in debt recovery processes
Contact	Updated Position Title

Consultation

The Policy has been endorsed by the General Manager and the Policy, Corporate Practice and Procedures Panel.

Proposal

It is recommended that Council adopts the Revised - Debt Recovery Policy to provide Council Officers with a formal framework for debt collection on behalf of Council.


Conclusion

The Revised - Debt Recovery Policy, once adopted by Council, will be implemented by the Finance and Resource Management Team.

Recommendation(s)

That Council adopts the Revised - Debt Recovery Policy.

Attachments

[1](#)  Draft - Debt Recovery Policy 3 Pages



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REVISED - DEBT RECOVERY POLICY

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
Website: www.burwood.nsw.gov.au

Corporate Document
Adopted by Council:
Trim No: 18/20889
Version No. 2
Ownership: Finance

Purpose

The objectives of this policy are to:

- ensure effective recovery of overdue rates and annual charges and miscellaneous sundry debts owed to Burwood Council
- ensure a consistent approach to Burwood Council's debt management and collection practices
- be empathetic to ratepayers and sundry debtors that can demonstrate genuine financial hardship
- work within the statutory requirements of the *Local Government Act 1993* (the Act), inter alia, in relation to the recovery of rates and annual charges and miscellaneous sundry debts
- to meet, or better, the debt recovery financial benchmarks set by the NSW **Division Office** of Local Government

Scope

Applies to all rates and annual charges levied, and miscellaneous sundry debts duly owed to Burwood Council.

Dictionary

- **Rates and charges** – all balances listed on a rates and annual charges notice or legal notice
- **Miscellaneous sundry debts** – non rates and charges debts listed in Council's accounts receivable ledger
- **Financial Hardship** – demonstrable personal circumstances that indicate an inability to pay
- **Financial Benchmarks** – NSW Local Government industry standard benchmarks or performance indicators
- **Key Performance Indicator** – Council's internal rates and annual charges outstanding ratio limit
- **Debt Recovery Procedure** – procedure to follow in order to meet the objectives of this policy

Debt Recovery Standards

Rates and Charges

1. The recovery of rates and annual charges outstanding percentage at the end of each financial year will be not more than 5%
2. Ratepayers that can demonstrate genuine financial hardship and enter into, and execute, an acceptable payment arrangement, will not be subject to a final notice
3. Debt recovery will commence when either **three four** instalments are overdue or the outstanding balance on the property is ~~\$4,100~~ **\$1,300** or more
4. Where a ratepayer fails to meet the payment arrangement, recovery action shall (re)commence in accordance with the Debt Recovery Procedure

Miscellaneous Sundry Debts

1. A sundry debt that is more than ~~\$300~~ **\$400** or 90 days overdue will be referred to Council's Debt Recovery Agency for collection – unless otherwise provided for under the Debt Recovery Procedure

Debt Recovery Options

1. Garnishee of salary or wages **or rent (Section 569 Notice of the Act)**
2. Writ of Execution and have the **NSW Sheriff** levy goods
3. Examination Summons

4. Warrant of Apprehension
5. *Wind-Up or Bankruptcy proceedings*
6. *NSW Sheriff Writ on Land Title*
7. *Sale of Land due to Overdue Rates proceedings (Section 713 of the Act)*

Related Information

- *NSW Local Government Act 1993*
- Financial Benchmarks – NSW *Division Office* of Local Government
- Debt Recovery Procedure
- Rates and Charges Hardship Assistance Policy
- Hardship Resulting from Certain Valuation Changes – Section 601
- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*

Review

This policy will be reviewed every four years

Contact

Revenue Team Leader Financial Operations Accountant on 9911 9836

(ITEM 82/18) ADOPTION - REVISED AGGREGATION OF LAND VALUES FOR RATING PURPOSES POLICY

File No: 18/25968

REPORT BY CHIEF FINANCE OFFICER

Summary

Council's Revised Aggregation of Land Values for Rating Purposes Policy has been reviewed and updated in accordance with Council's Policy Review Corporate Practice. This Policy was introduced to assist ratepayers to minimise the level of rates paid following the registration of subdivision plans.

Operational Plan Objective

2.3.1. – Identify and maintain additional revenue sources to ensure financial sustainability

Background

The current policy was adopted by Council on 26 May 2014 and, now in accordance with Council's policy review Corporate Practice, a review of the current Policy has been undertaken.

Proposal

The following amendments have been made in line with Council's Review Corporate Practice:

AMENDMENT	COMMENT
Application Process	Insert NSW Valuer General
Assessment	Replace "endorsed" with "approved"
Division of Local Government	Change to reflect current name – NSW Office of Local Government

Consultation

The Policy has been endorsed by the General Manager and the Policy, Corporate Practice and Procedures Panel.

Resource/Financial Implications

No financial implications.

Conclusion

That Council adopts the Revised Aggregation of Land Values for Rating Purposes Policy to enable the Finance and Resource Management Team to aggregate future land values for rating purposes. The Policy will be published on Council's Website.

Recommendation(s)

That Council adopts the Revised - Aggregation of Land Values for Rating Purposes Policy.

Attachments

1 [↓](#) Revised - Aggregation of Land Values for Rating Purposes Policy 2 Pages



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REVISED - AGGREGATION OF LAND VALUES FOR RATING PURPOSES - POLICY

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
Website: www.burwood.nsw.gov.au

Corporate Document
Adopted by Council
Trim No:
Version No. 3
Ownership: Finance

Purpose

To assist ratepayers to minimise the level of rates paid pursuant to Section 548A of the *Local Government Act 1993* (the Act).

Scope

To set out the mechanisms under which applications for rates relief for owner occupiers of residential property of the Burwood Council Local Government Area who wish to make application for the aggregation of land values for rating purposes.

Introduction

The Valuer General issues separate values to licences, permissive occupancies and enclosure permits where land subject to Crown Land Lease does not adjoin the freehold property e.g. a wharf separated by a road or a reserve.

The *Local Government Act 1993* requires rates to be levied on each 'parcel of land' which is separately valued. Where in Council's opinion the levying of separate rates applies unfairly the council may aggregate the land values for rating purposes through the application of this policy. The policy may also be applied to multiple lot assessments containing separate values for garages and car spaces.

Application Process

Applications for Aggregation of Land Values must be determined in accordance with Section 548A of the *Local Government Act 1993*, made in writing and meet the following criteria:

- a. The applicant must be the owner of the property
- b. The property for which the application for aggregation applies must be the principal place of residency of the applicant(s)
- c. Parcels must have been separately valued by the **NSW** Valuer General
- d. Contiguous (adjoining) or for Licences, associated with a residential assessment
- e. Parcels must have the same Ordinary Rate Category or same Special Rate Category or Sub-Category
- f. Parcels must be within the same Deposited Plan or Strata Plan

The inclusion of a lot within an aggregation shall cease upon:

- a. The sale, conveyance or resumption of the lot (land parcel)
- b. The erection of a building on the lot (land parcel)

Land Parcels that do not comply with the aggregation guidelines will be charged the full rates and charges.

Assessment

Applications will be assessed by the Finance and Resource Management Team and **endorsed approved** by the Financial Operations Accountant. Any ratepayer, who is dissatisfied with the determination by the Finance and Resource Management Team under this policy may request that the Deputy General Manager, Corporate, Governance and Community review the decision.

Related Information

- *Local Government Act 1993*
- *Local Government (General) Regulations 2005*
- Council Rating & Revenue Raising Manual – NSW **Division Office** of Local Government
- *Privacy and Personal Information Protection Act 1998*

Review

This policy will be reviewed every four years.

Contact

Financial Operations Accountant on 9911-9836

(ITEM 83/18) INVESTMENT REPORT AS AT 31 JULY 2018

File No: 18/28843

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*.

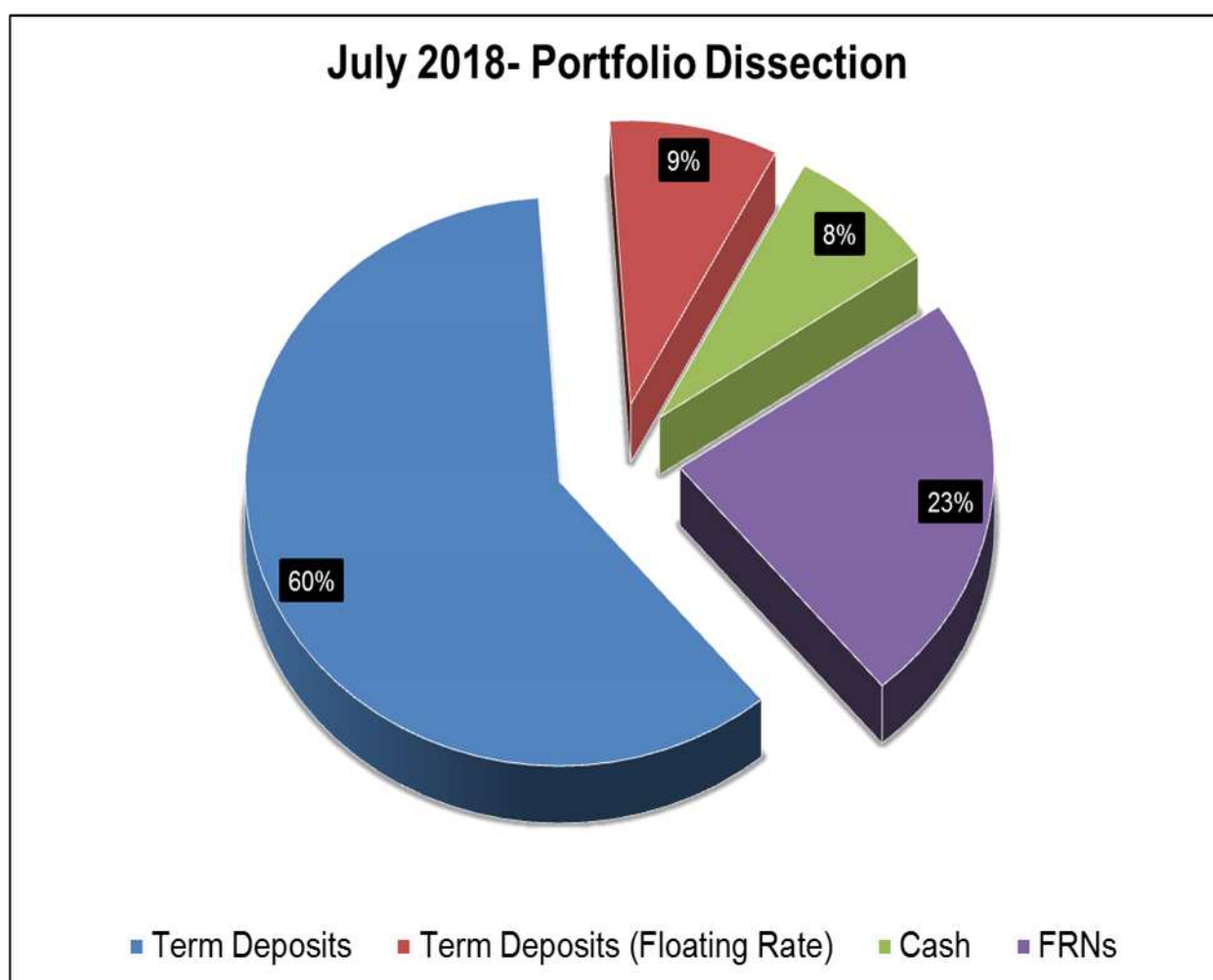
Background

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.

Investment Portfolio

Council has a diversified investment portfolio and has a number of direct investments in term deposits. Its investment portfolio as at 31 July 2018 is:



As at 31 July 2018 Council held the following term deposits:

Purchase Date	Financial Institution	Principal Amount	Interest Rate	Investment Days	Maturity Date
31 Aug 17	Westpac	3,000,000	2.61%	365	31 Aug 18
23 May 18	Bankwest	3,000,000	2.60%	120	20 Sep 18
23 Feb 18	Commonwealth Bank	2,500,000	2.57%	270	20 Nov 18
16 Jan 18	Commonwealth Bank	2,000,000	2.64%	365	16 Jan 19
21 Mar 18	Westpac - Quarterly Interest	3,000,000	2.70%	365	21 Mar 19
01 Jun 18	AMP Bank (Imperium)	3,000,000	2.75%	368	04 Jun 19
14 Jun 18	National Australia Bank	3,000,000	2.80%	365	14 Jun 19
11 Jul 18	National Australia Bank	3,000,000	2.80%	365	11 Jul 19
24 Jul 18	Westpac - Quarterly Interest	2,000,000	2.79%	365	24 Jul 19
23 Oct 17	ING Bank (Curve)	3,000,000	2.96%	730	23 Oct 19
30 Oct 17	ING Bank (Imperium)	2,000,000	2.91%	730	30 Oct 19
07 Nov 17	ING Bank (Imperium)	2,000,000	2.90%	730	07 Nov 19
07 Dec 17	ING Bank (Imperium)	3,000,000	2.83%	732	09 Dec 19
Total		34,500,000			

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

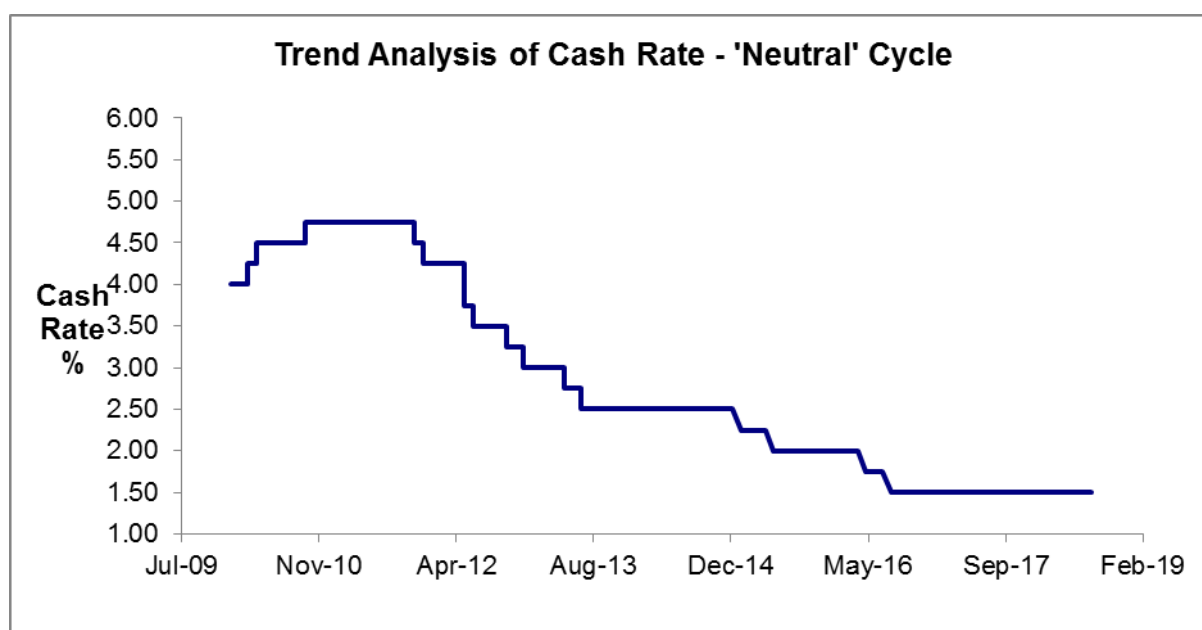
The Reserve Bank of Australia (RBA) at its 7 August 2018 Board Meeting kept the official cash rate unchanged at 1.50% per annum. According to the RBA Governor "...The global economy is continuing to expand with a number of advanced economies growing at an above-trend rate and unemployment rates are low. Growth in the Chinese economy has slowed a little with authorities easing policy while continuing to pay attention to risks in the financial sector.

Domestically, the recent data on the Australian economy has been consistent with the RBA forecast for GDP growth to pick up to average a bit above 3 per cent in 2018 and 2019 as business conditions are looking positive and non-mining business investment has improved with increased public infrastructure investment also supporting the economy. One continuing source of uncertainty is the outlook for household consumption, household income is growing slowly while debt levels remain high.

The outlook for the labour market remains positive. The strong growth in employment has been accompanied by a significant rise in labour force participation, particularly by women and older Australians. Notwithstanding the improving labour market, wage growth remains low which is likely to continue for a while yet, although the stronger conditions in the labour market should see some lift in wage growth over time. Inflation remains low and is expected to pick up gradually as the economy strengthens.

The low level of interest rates is continuing to support the Australian economy, progress in reducing unemployment and having inflation return to target is expected, although this progress is likely to be gradual. 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 – 7 August 2018.

The following graph provides information on the current RBA monetary policy:



Recommendations(s)

1. That the investment report for 31 July 2018 be received and endorsed.
2. That the Certificate of the Responsible Accounting Officer be received and noted.

Attachments

- 1 [↓](#) Investment Register July 2018 1 Page
- 2 [↓](#) Investment Types 1 Page

Investment Register July 2018

BURWOOD COUNCIL
INVESTMENT PORTFOLIO
as at 31 July 2018

Investment Adviser	Issuer	ADI or N-ADI	Investment Name	Type	Rating S&P	Invested Amount	Market Value as at 31 May 2018	Market Value as at 30 June 2018	Market Value as at Reporting Date	% of Total Invested
Goal										
Council	Commonwealth Bank	ADI	Operating Account	Cash	AA-	4,333,307	3,699,362	4,333,307	4,333,307	7.64
Council	Commonwealth Bank	ADI	Online Saver	At Call	AA-	63,526	63,399	63,526	63,526	0.11
Council	AMP Bank Limited	ADI	AMP Business Saver & Notice Account	At Call / Notice 30 days	A	59,370	59,183	59,269	59,370	0.10
Term Deposits										
Council	Commonwealth Bank of Australia	ADI	Commonwealth Bank of Australia	Term Deposit	AA-	2,500,000	2,500,000	2,500,000	2,500,000	4.35
Council	ING Bank (Imperium)	ADI	ING Bank	Term Deposit	AA-	2,000,000	2,000,000	2,000,000	2,000,000	3.46
Council	Westpac	ADI	Westpac	Term Deposit	AA-	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	Auswide Bank	ADI	Auswide Bank	Term Deposit	BBB-	-	-	-	-	-
Council	ING Bank (Impenium)	ADI	ING Bank	Term Deposit	A-	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	Commonwealth Bank of Australia	ADI	Commonwealth Bank of Australia	Term Deposit	AA-	2,000,000	2,000,000	2,000,000	2,000,000	3.48
Council	ING Bank (Curve)	ADI	ING Bank	Term Deposit	A-	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	AMP Bank (Impenium)	ADI	AMP Bank	Term Deposit	A	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	National Australia Bank	ADI	National Australia Bank	Term Deposit	AA-	-	-	-	-	-
Council	National Australia Bank	ADI	National Australia Bank	Term Deposit	AA-	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	Westpac	ADI	Westpac	Term Deposit	AA-	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	AMP Bank (Impenium)	ADI	AMP Bank	Term Deposit	AA-	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	BankWest	ADI	BankWest	Term Deposit	A	-	-	-	-	-
Council	Westpac	ADI	Westpac	Term Deposit	AA-	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	National Australia Bank	ADI	National Australia Bank	Term Deposit	AA-	2,000,000	2,000,000	2,000,000	2,000,000	3.48
Council	National Australia Bank	ADI	National Australia Bank	Term Deposit	AA-	-	-	-	-	-
Council	ING Bank (Impenium)	ADI	ING Bank	Term Deposit	BBB+	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Council	ING Bank (Impenium)	ADI	ING Bank	Term Deposit	A-	2,000,000	2,000,000	2,000,000	2,000,000	3.48
Term Deposits - Fixed & Floating Rates										
Council	Commonwealth Bank	ADI	Commonwealth Bank	Global Fixed Income Deposit 0.5 Yr fixed plus 4.5 Yr (90day BBSW + 0.80 bps)	AA-	2,000,000	2,000,000	2,000,000	2,000,000	3.48
Council	Westpac	ADI	Westpac	Coupon Struct Deposit 2 Yr Fixed plus 3 Yr (90day BBSW + 1.05 bps)	AA-	3,000,000	3,000,000	3,000,000	3,000,000	5.22
Floating Rate Notes										
Council	Suncorp-Metway Limited	ADI	Suncorp-Metway Limited	Floating Rate Notes (90 day BBSW mid +94 bps)	A+	2,000,000	2,004,190	2,003,530	2,005,136	3.49
Council	Bank of Queensland	ADI	Bank of Queensland	Floating Rate Notes (90 day BBSW +100 bps)	A-	1,000,000	1,003,625	1,003,345	1,003,698	1.75
Council	Bendigo Adelaide	ADI	Bendigo Bank & Adelaide Bank	Floating Rate Medium Term Notes (90 day BBSW +110 bps)	BBB+	1,000,000	1,004,815	1,004,065	1,004,467	1.75
Council	Suncorp-Metway Limited	ADI	Suncorp-Metway Limited	Floating Rate Notes (90 day BBSW mid +94 bps)	A+	1,500,000	1,503,623	1,502,868	1,503,957	2.62
Council	Bendigo-Adelaide	ADI	Bendigo Bank & Adelaide Bank	Floating Rate Notes (90 day BBSW mid + 105 bps)	BBB+	1,500,000	1,492,224	1,488,101	1,492,052	2.60
Council	ANZ Group	ADI	ANZ Group	Floating Rate Notes (90 day BBSW mid + 77 bps)	A+	2,000,000	1,990,072	1,988,414	1,991,236	3.47
Council	Newcastle Permanent Building Society	ADI	Newcastle Permanent Building Society	Floating Rate Notes (90 day BBSW +140 bps)	BBB	1,250,000	1,243,683	1,242,821	1,243,235	2.16
Council	AMP Bank Limited	ADI	AMP Bank Limited	Floating Rate Notes (90 day BBSW +110 bps)	A	790,000	793,596	792,969	792,800	1.31
Council	Members Equity Bank Pty Ltd	ADI	ME Bank	Floating Rate Notes (90 day BBSW mid +127 bps)	BBB	2,500,000	2,499,255	2,496,465	2,499,770	4.35
Grand Total						57,456,262	59,023,285	57,890,863	57,452,774	100.00

Investment Types

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 – Operating Bank Account AA-
- Commonwealth Bank of Australia – Online Saver AA-
- AMP Business Saver and Notice – At Call/Notice 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 84/18) REFERRAL OF THE ANNUAL FINANCIAL REPORTS FOR 2017-2018 TO COUNCIL'S AUDITOR

File No: 18/28844

REPORT BY CHIEF FINANCE OFFICER

Summary

Council's Financial Reports must be in accordance with the *Local Government Act 1993* (the Act) and *Local Government (General) Regulation 2005* (the Regulation), the Australian Accounting Standards, the Local Government Code of Accounting Practice and Financial Reporting and the Local Government Asset Accounting Manual. This is to ensure that the Financial Reports for each year fairly present the Council's operating result and financial position for the year.

In accordance with Section 413 of the Act, Council's Annual Financial Reports must be authorised for referral to the Auditor for audit.

Operational Plan Objective

2.3.1 - Identify and maintain additional revenue sources to ensure financial sustainability

Background

Sections 413, 415 and 416 of the Act require Council's Annual Financial Reports for 2017-2018 to be prepared, referred to audit and audited by 31 October 2018.

In relation to this process, Council is required to authorise the referral of the Annual Financial Reports to Council's External Auditor.

Section 413 of the Act states that the Annual Financial Reports must be accompanied by a Statement of Council's opinion on the general purpose financial report (Attachment 1) made pursuant to a resolution of Council and signed by the:

- Mayor
- Deputy Mayor
- General Manager
- Responsible Accounting Officer (Chief Finance Officer)

The Annual Financial Reports for 2017-2018 are subject to review by the External Auditor before they can be finalised.

Proposal

The 2017-2018 Annual Financial Reports are due for Audit Referral by 31 August 2018. In order to obtain sign-off prior to the Auditors commencing the audit on 27 August 2018, the draft Annual Financial Reports for 2017-2018 will be tabled on the night of the Council meeting.

Consultation

The audited Annual Financial Reports will be presented to the Audit, Risk and Improvement Committee during October 2018 prior to completion of the external audit process. The Committee's comments will be included as part of the report to Council for the presentation of Council's Audited Annual Financial Reports for 2017-2018.

Conclusion

The Annual Financial Reports provide a snapshot of Council's operating performance and its financial position at a point in time and their completion and presentation is a statutory requirement under the Act and the Regulation.

Recommendation(s)

That in accordance with Section 413(2)(c) of the *Local Government Act 1993* and Clause 215 of the *Local Government (General) Regulation 2005*, Council resolve the following:

1. That authority is granted to the Mayor, the Deputy Mayor, the General Manager and Responsible Accounting Officer to sign the Statements by Councillors and Management for the General Purpose Financial Reports and the Special Purpose Financial Reports for the Year Ended 30 June 2018.
2. That the signed statement be attached to the 2017-2018 Unaudited Annual Financial Reports and presented to Council's Auditor for the completion of the audit.
3. That the Auditor is invited to attend the Audit, Risk and Improvement Committee Meeting in October 2018 that will review the Annual Financial Reports and also to attend the Council Meeting that is to adopt the audited Annual Financial Reports.

Attachments

1 [↓](#) Statement by Councillors and Management 1 Page

Burwood Council

General Purpose Financial Statements
for the year ended 30 June 2018

Statement by Councillors and Management
made pursuant to Section 413(2)(c) of the *Local Government Act 1993 (NSW)* (as amended)

The attached General Purpose Financial Statements have been prepared in accordance with:

- the *Local Government Act 1993 (NSW)* (as amended) and the regulations made thereunder,
- the Australian Accounting Standards and other pronouncements of the Australian Accounting Standards Board
- the Local Government Code of Accounting Practice and Financial Reporting.

To the best of our knowledge and belief, these financial statements:

- present fairly the Council's operating result and financial position for the year,
- accord with Council's accounting and other records.

We are not aware of any matter that would render these statements false or misleading in any way.

Signed in accordance with a resolution of Council made on 21 August 2018.

Councillor Faker
Mayor
21 August 2018

Councillor Furneaux-Cook
Councillor
21 August 2018

Bruce MacDonnell
General Manager
21 August 2018

Wayne Armitage
Responsible Accounting Officer
21 August 2018

(ITEM RC7/18) BURWOOD LOCAL TRAFFIC COMMITTEE - AUGUST 2018 MEETING

File No: 18/29515

REPORT BY ACTING DIRECTOR ENGINEERING & OPERATIONAL SERVICES

Summary

Attached are the Minutes of the Burwood Local Traffic Committee from its meeting of August 2018. The Minutes are hereby submitted to the Ordinary Council Meeting for consideration and adoption by Council.

Operational Plan Objective

4.1.5 - Work with RMS and Transport NSW in the development of integrated transport plans.

Recommendations

That the Minutes of the Burwood Local Traffic Committee of August 2018 are noted and the recommendations of the Committee, as detailed below, be adopted as a resolution of the Council.

(ITEM LTC14/18) BURWOOD ROAD, BURWOOD - WEEKEND TRAFFIC CONGESTION MANAGEMENT

Recommendation

That Council approve the conversion of the existing '1/2P Parking' area on the western side of Burwood Road between George Street and Park Avenue to '1/2P Parking 8:30am-6:00pm Monday-Friday', 'No Parking 8:30am – 6:00pm Saturday and Sunday' for a trial period of 3 months.

(ITEM LTC15/18) ELSIE STREET BURWOOD - INSTALLATION OF MOBILITY PARKING SPACE

Recommendation

That Council approve the installation of one on-street mobility parking space in front of property No. 1-17 Elsie Street Burwood as per the plan in the report.

(ITEM LTC16/18) JERSEY ROAD, STRATHFIELD - TRAFFIC MANAGEMENT

Recommendation

1. That Council approve the modifications to the existing 'No Right Turn' restrictions to all times for traffic exiting Jersey Road onto the Boulevarde.
2. That Council approve the installation of S1 line marking along the eastern end of Jersey Road from the existing BB centre lines to Wentworth Road.

(ITEM LTC17/18) Blich Street Burwood Heights - Changes to Parking Restrictions

Recommendation

That Council approve the changes to parking on the northern side of Blich Street Burwood Heights to 'Loading Zone 6.30am – 5.00pm Monday to Friday & 7.00am – 1.00pm Saturday - Sunday', '1P 6.30am – 5.00pm Monday to Friday & 7.00am – 1.00pm Saturday - Sunday' and 'No Parking - At all other times' between Burwood Road and George Street.

Attachments

- 1 [↓](#) Burwood Local Traffic Committee Agenda - August 2018
- 2 [↓](#) Burwood Local Traffic Committee Minutes - August 2018



Burwood Council

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**NOTICE OF BURWOOD LOCAL TRAFFIC COMMITTEE
MEETING**

The August 2018 meeting of the Burwood Local Traffic Committee will be held electronically with the Agenda emailed to members for review. All comments are requested to be returned to Council by 9.30 am Friday 3 August 2018.

Bruce Macdonnell
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**

Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW 2134, PO Box 240 Burwood NSW 1805
phone: 9911 9911 facsimile: 9911 9900
email: council@burwood.nsw.gov.au
website: www.burwood.nsw.gov.au

AGENDA

GENERAL BUSINESS

(ITEM LTC14/18)	BURWOOD ROAD, BURWOOD - WEEKEND TRAFFIC CONGESTION MANAGEMENT	3
(ITEM LTC15/18)	ELSIE STREET BURWOOD - INSTALLATION OF MOBILITY PARKING SPACE	7
(ITEM LTC16/18)	JERSEY ROAD, STRATHFIELD - TRAFFIC MANAGEMENT	9
(ITEM LTC17/18)	BLIGH STREET BURWOOD HEIGHTS - CHANGES TO PARKING RESTRICTIONS	11

(ITEM LTC14/18) BURWOOD ROAD, BURWOOD - WEEKEND TRAFFIC CONGESTION MANAGEMENT

File No: 18/27535

REPORT BY TEMP TRAFFIC ENGINEER

Summary

Council has received concerns from the community regarding excessive traffic delays when travelling along Burwood Road through the Burwood Town Centre on weekends. In order to improve traffic flow in the northbound direction, it is recommended that a 3 month trial of 'No Parking restrictions 8:30am-6:00pm Saturday & Sunday' be introduced on the western side of Burwood Road between Park Avenue and George Street.

Background

Council has had a number of requests from members of the public to introduce weekend clearway restrictions on the western side of Burwood Road between Park Avenue and George Street to reduce traffic congestion and reduce northbound traffic delays in the Town Centre.

There are a total of 13 on street parking spaces signposted '½ hour parking 8:30am-6:00pm Mon-Fri, 8:30am-12:30pm Saturday' and one 'No Parking Police Emergency Vehicles Excepted' in this section of road. This section of Burwood Road is a Collector Road and therefore under the care and control of Council.

A clearway is a section of road where stopping or parking is prohibited. Buses and taxis are permitted to stop when dropping off or picking up passengers. They are introduced to ease congestion where roads are near capacity and parking is disrupting traffic flow. Clearways also allow vehicles that are stopped illegally or broken down to be towed away.

The introduction of a clearway in Burwood Road is not possible as they are only located on strategically important State Roads. Alternatively, a 'No Parking' restriction for weekends is possible to improve weekend traffic flow.

Whilst acknowledging that the removal of on-street parking will increase traffic capacity by adding an additional travel lane and removing delays associated with parking manoeuvres, it is difficult to quantify the benefits associated with travel time reductions from the removal of parking as there are bus stops located south and north of the study area with up to 11 buses per hour stopping at these bus stops to drop off/pick up passengers during the day on weekends which would restrict the ability for the kerbside lane to provide 'free flow' traffic.

The removal of parking will have the added benefit of improving the performance of bus routes along Burwood Road which comprise of the following route services;

- Route M41 Macquarie Park
- Route 415 Chiswick
- Route 461 City-Domain
- Route 462 Mortlake
- Route 463 Bayview Park
- Route 464 Mortlake
- Route 466 Cabarita
- Route 530 Chatswood
- Route M90 Burwood

An independent travel time survey was undertaken by Matrix Traffic and Transport Data on behalf of Council on Saturday 16th June 2018 and Sunday 17th June 2018 between the 4 hour period 10am-2pm along Burwood Road between Belmore Street and Wilga Street, a length of some 560

metres for both northbound and southbound traffic. The location of the survey, existing parking restrictions and survey results are detailed below.



Direction	Saturday		Sunday	
	Average Travel time	Average Delay time	Average Travel time	Average Delay time
Northbound	3 min 47 sec	3 min 3 sec	3 min 7 sec	2 min 22 sec
Southbound	1 min 44 sec	55 sec	1 min 32 sec	40 sec

The surveys indicate that travel times and delay times for northbound movements over the same distance are significantly higher than southbound movements with average northbound travel times 2 minutes 3 seconds higher on a Saturday and 1 minute 35 seconds higher on a Sunday. Given the short distance of travel this is significant.

Average time attributed to delay for northbound trips is 3 minutes 3 seconds on a Saturday and 2 minutes 22 seconds on a Sunday whilst average time attributed to delay for southbound trips is 55 seconds on a Saturday and 40 seconds on a Sunday.

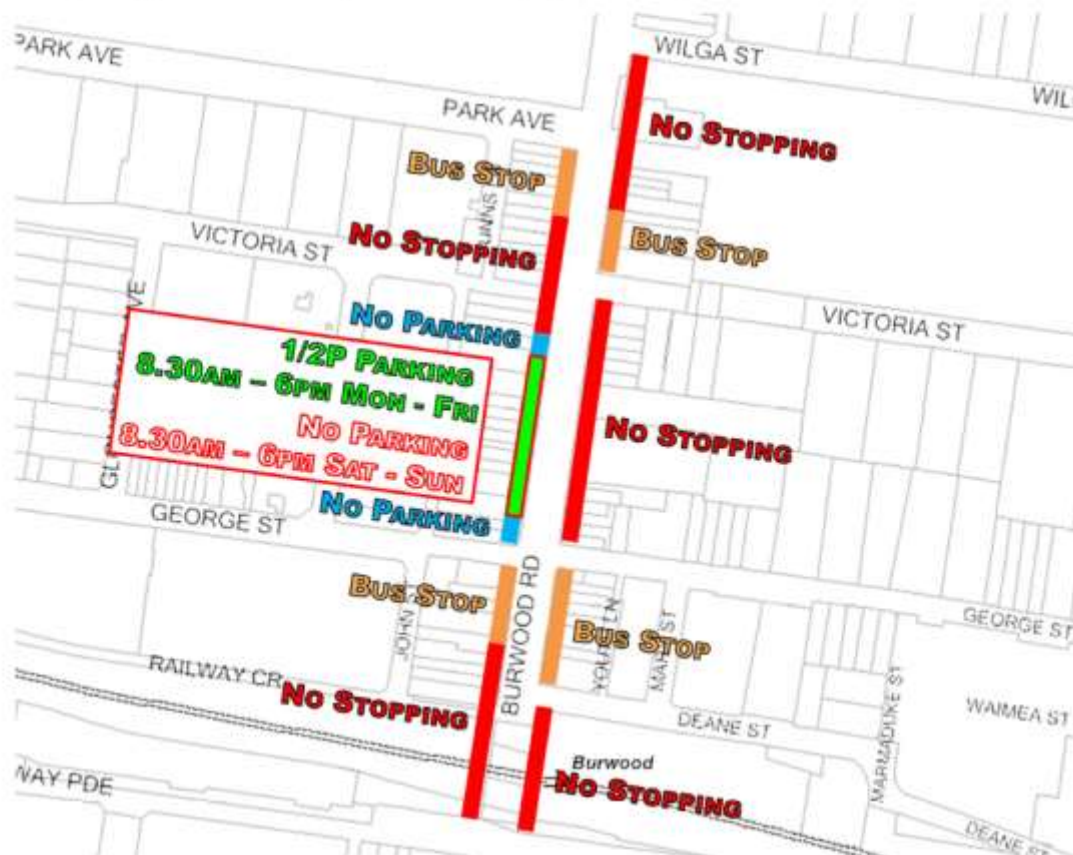
The maximum northbound travel times are 7 minutes 58 seconds on a Saturday and 5 minutes 47 seconds on a Sunday whilst maximum southbound travel times are 3 minutes 13 seconds on a Saturday and 2 minutes 17 seconds on a Sunday. The results of the travel time survey reinforce that southbound traffic congestion is minimal in comparison to northbound traffic.

Proposal

It is proposed to replace the 13 space on the western side of Burwood Road between Park Avenue and George Street from:

- '1/2P Parking 8:30am-6:00pm Mon-Fri, 8:30am-12:30pm Saturday', to
- '1/2P Parking 8:30am-6:00pm Monday-Friday', 'No Parking 8:30am – 6:00pm Saturday and Sunday'

on a trial 3 month basis to improve traffic flow. The 'No Parking Police Emergency Vehicles Excepted' will remain unchanged. This will ensure all northbound lanes of traffic are available during heavy traffic times. The plan details the proposed changes.



Under the proposal, two northbound travel lanes will be provided between Railway Parade and Wilga Street. It should be noted that buses will still stop in the kerbside lane when dropping off/picking up passengers at the bus stops south of Park Avenue and south of George Street and similarly Police vehicles may occasionally park in the 'No Parking Police Emergency Vehicles Excepted' thereby reducing the kerbside lane traffic capacity.

Traffic speeds will increase due to fewer impediments which may impact on pedestrian safety as pedestrians will need to cross 3 lanes of traffic as opposed to 2 lanes.

Consultation

The loss of 13 parking spaces currently signposted as '1/2P Parking 8.30am – 12.30pm Sat' will impact primarily on the businesses on the western side of Burwood Road. It is noted that these 13

parking spaces become unrestricted after 12.30pm on Saturdays, with vehicles permitted to park from Saturday afternoon up until the following Monday morning.

This current lack of turnover does not assist local businesses and so the impact on businesses is expected to be minimal. Adequate on-street and off-street parking is available within the adjacent streets, Council's George Street car park and the privately operated John Street car park. The chamber of commerce is requested to consult with the businesses on the western side of Burwood Road between George Street and Park Avenue.

Financial Implications

The cost to convert the existing parking signs to the new restrictions is approximately \$300.00 and will be funded from the 2018/19 Traffic Facilities budget.

Recommendation

That Council approve the conversion of the existing '1/2P Parking' area on the western side of Burwood Road between George Street and Park Avenue to '1/2P Parking 8:30am-6:00pm Monday-Friday', 'No Parking 8:30am – 6:00pm Saturday and Sunday' for a trial period of 3 months.

Attachments

There are no attachments for this report.

(ITEM LTC15/18) ELSIE STREET BURWOOD - INSTALLATION OF MOBILITY PARKING SPACE

File No: 18/27766

REPORT BY TRAFFIC ENGINEERING OFFICER

Summary

Council has received a request to install a mobility parking space along the western side of Elsie Street Burwood.

Background

Elsie Street Burwood is a local street which currently consist of time restricted '2P Parking' along the western side and 'No Stopping' restrictions on the eastern side of the street. Elsie Street is a one way street with a road width of 6.1 metres kerb to kerb. Elsie Street has a mix of various local businesses as well as Road & Maritime Services.

An inspection by Council Officers confirmed that there are no on-street mobility parking spaces along Elsie Street and in the adjacent Victoria Street, Burwood. Council currently has 6 mobility parking spaces within George Street car park.

Proposal

It is proposed to install a mobility parking space on the western side of Elsie Street Burwood due to the proximity to the local businesses situated on the street. This location is also within the closest proximity to the pedestrian ramp for access to 1-17 Elsie Street. Mobility parking spaces are available for use by any motorists with a mobility parking permit and are not exclusive to any one user.



Consultation

The introduction of one on-street mobility parking space will not significantly impact parking availability for customers. For this reason, no consultation has been undertaken.

Financial Implications

The installation of new signage is estimated to cost \$300. The cost will be funded from the 2018/19 Traffic Facilities Budget.

Recommendation

That Council approve the installation of one on-street mobility parking space in front of property No. 1-17 Elsie Street Burwood as per the plan in the report.

Attachments

There are no attachments for this report.

(ITEM LTC16/18) JERSEY ROAD, STRATHFIELD - TRAFFIC MANAGEMENT

File No: 18/27531

REPORT BY TEMP TRAFFIC ENGINEER

Summary

Council has received concerns from residents of Jersey Road regarding safety issues associated with right turning traffic from Jersey Road into The Boulevarde, as well as associated queueing and congestion for vehicles making a left turn resulting from vehicles attempting to make a right turn.

Background

The issue relates to difficulty in accepting a gap in traffic due to the high volume of traffic in The Boulevarde which has two travel lanes in each direction. Additionally, safety concerns arise for vehicles making a right turn due to the line of street trees in The Boulevarde on both sides of Jersey Road impeding sight lines.

Currently a 'No Right Turn restriction 8:00am-9:30am, 2:30pm-4:00pm School Days Only, Buses Excepted' is in place for vehicles in Jersey Road approaching The Boulevarde. Whilst this prevents excessive queueing during peak traffic generation times associated with the adjacent Santa Sabina School, residents have advised that it also occurs during the AM and PM peak and on weekends when the school has sporting events.

Proposal

It is recommended that the part time right turn restriction be converted to a full time right turn restriction due to safety concerns. A review of alternate locations to make a right turn onto The Boulevarde were investigated to determine the impact of banning the right turn out of Jersey Road. Both Woodside Avenue and Russell Street provide improved sight lines to make the right turn. Additionally, to reduce traffic speeds in the eastern section of Jersey Road it is recommended that S1 lines be marked to provide delineation between opposing traffic flows.



Consultation

Consultation was undertaken with all residents of Jersey Road and Esplin Avenue and Santa Sabina. Only one response was received which was in favour of the proposal.

Financial Implications

Cost associated with line marking and modifications to signage approx. \$600.00 to be funded from the traffic facilities budget.

Recommendation

1. That Council approve the modifications to the existing 'No Right Turn' restrictions to all times for traffic exiting Jersey Road onto the Boulevard.
2. That Council approve the installation of S1 linemarking along the eastern end of Jersey Road from the existing BB centre lines to Wentworth Road.

Attachments

There are no attachments for this report.

(ITEM LTC17/18) BLIGH STREET BURWOOD HEIGHTS - CHANGES TO PARKING RESTRICTIONS

File No: 18/26538

REPORT BY TRAFFIC ENGINEERING OFFICER

Summary

Council has received a request to modify the existing parking restriction times along Bligh Street to ensure adequate space for vehicle thoroughfare at all times.

Background

Bligh Street is a two way local road between Burwood Road and George Street Burwood Heights. The carriageway width is 6.4m which does not allow a clear travel lane when vehicles are parked on both sides of the road simultaneously.

Currently the northern side of Bligh Street between Burwood Road and George Street consist of:

- 'Loading Zone 6.30am – 5.00pm Monday - Sunday' and
- '1P 8.30am – 6.00pm Monday to Friday & 8.30am – 12.30pm Saturday' parking restrictions.

The southern side currently consists of:

- 'No Parking 7.00am – 5.00pm Monday to Friday & 7.00am – 12.30pm Saturday - Sunday'.

This configuration allows vehicles to park on either side of the street in the evenings during the week, from 1.30pm on Saturday and all day Sunday.

Proposal

In order to assist with the safe movement of vehicles along Bligh Street during the morning and evening, it is proposed to change the parking restrictions on the northern side of the street.

The proposed parking restriction would consist of:

- 'Loading Zone 6.30am – 5.00pm Monday to Friday & 7.00am – 1.00pm Saturday - Sunday'
- '1P 6.30am – 5.00pm Monday to Friday & 7.00am – 1.00pm Saturday – Sunday'
- 'No Parking - At all other times' for both the Loading Zone and the 1P areas.

The changes to the parking restrictions will ensure one lane for vehicles to enter and exit Bligh Street at all times.



Consultation

Consultation has been conducted with Inspirations Paint at 28 Burwood Road Burwood Heights. The business was not in favour of the proposed 'No Parking' restrictions outside of business hours on the northern side of Bligh Street, and preferred to retain the parking in the existing 1P area. Given the parking in this area is utilised more by residents after hours and on weekends it is preferred to allow parking on the southern side only.

Financial Implications

The installation of new signage is estimated to cost \$500. The cost will be funded from the 2018/19 Traffic Facilities Budget.

Recommendation

That Council approve the changes to parking on the northern side of Bligh Street Burwood Heights to 'Loading Zone 6.30am – 5.00pm Monday to Friday & 7.00am – 1.00pm Saturday - Sunday', '1P 6.30am – 5.00pm Monday to Friday & 7.00am – 1.00pm Saturday - Sunday' and 'No Parking - At all other times' between Burwood Road and George Street.

Attachments

There are no attachments for this report.



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BURWOOD LOCAL TRAFFIC COMMITTEE MEETING

MINUTES OF THE MEETING OF THE BURWOOD LOCAL TRAFFIC COMMITTEE held electronically with all comments provided by 9.30am Friday 3 August 2018 .

MEMBERS

Cr John Faker (Mayor) Chairperson
Sgt Trudy Crowther, NSW Police Service
Mr Kristian Calcagno, Roads and Maritime Services
Ms Jodi McKay, State Member for Strathfield
Mr Rabih Bekdache, Transit Systems
Mr Doug Sutherland AM, JP, Burwood Chamber of Commerce

Mr Bruce Macdonnell, General Manager
Mr John Inglese, Acting Director Engineering & Operational Services
Mr Roberto Di Federico, Manager Traffic and Transport
Mr Henry Huynh, Traffic Engineering Officer
Ms Megan Pigram, Road Safety Officer

GENERAL BUSINESS

(ITEM LTC14/18) BURWOOD ROAD, BURWOOD - WEEKEND TRAFFIC CONGESTION MANAGEMENT

Summary

Council has received concerns from the community regarding excessive traffic delays when travelling along Burwood Road through the Burwood Town Centre on weekends. In order to improve traffic flow in the northbound direction, it is recommended that a 3 month trial of 'No Parking restrictions 8:30am-6:00pm Saturday & Sunday' be introduced on the western side of Burwood Road between Park Avenue and George Street.

Recommendation

That Council approve the conversion of the existing '1/2P Parking' area on the western side of Burwood Road between George Street and Park Avenue to '1/2P Parking 8:30am-6:00pm Monday-Friday', 'No Parking 8:30am – 6:00pm Saturday and Sunday' for a trial period of 3 months.

(ITEM LTC15/18) ELSIE STREET BURWOOD - INSTALLATION OF MOBILITY PARKING SPACE

Summary

Council has received a request to install a mobility parking space along the western side of Elsie Street Burwood.

MINUTES OF BURWOOD LOCAL TRAFFIC COMMITTEE MEETING 2 AUGUST 2018

Recommendation

That Council approve the installation of one on-street mobility parking space in front of property No. 1-17 Elsie Street Burwood as per the plan in the report.

(ITEM LTC16/18) JERSEY ROAD, STRATHFIELD - TRAFFIC MANAGEMENT

Summary

Council has received concerns from residents of Jersey Road regarding safety issues associated with right turning traffic from Jersey Road into The Boulevard, as well as associated queueing and congestion for vehicles making a left turn resulting from vehicles attempting to make a right turn.

Recommendation

1. That Council approve the modifications to the existing 'No Right Turn' restrictions to all times for traffic exiting Jersey Road onto the Boulevard.
2. That Council approve the installation of S1 linemarking along the eastern end of Jersey Road from the existing BB centre lines to Wentworth Road.

(ITEM LTC17/18) BLIGH STREET BURWOOD HEIGHTS - CHANGES TO PARKING RESTRICTIONS

Summary

Council has received a request to modify the existing parking restriction times along Bligh Street to ensure adequate space for vehicle thoroughfare at all times.

Recommendation

That Council approve the changes to parking on the northern side of Bligh Street Burwood Heights to 'Loading Zone 6.30am – 5.00pm Monday to Friday & 7.00am – 1.00pm Saturday - Sunday', '1P 6.30am – 5.00pm Monday to Friday & 7.00am – 1.00pm Saturday - Sunday' and 'No Parking - At all other times' between Burwood Road and George Street.

This concluded the business of the meeting.

(ITEM IN29/18) PETITIONS

File No: 18/27975

REPORT BY GENERAL MANAGER

Summary

Petitions received are reported to Council on a monthly basis. Council has received one Petition since the last Council Meeting.

Operational Plan Objective

2.1.1 Provide opportunities for discussions and report decisions back to the community.

Background

Date Received	Petition Subject	No. of Households and Businesses within the LGA	No. of Households outside the LGA	Responsible Council Division
13 July 2018	Residents objecting to BD.2015.089 – 7-15 Conder Street and 2-4 Stanley Street Burwood	19	0	Land, Infrastructure and Environment

Comments

That Council notes that the Petition has been referred to the appropriate Council Officers for attention.

No Decision – Information Item Only**Attachments**

There are no attachments for this report.

(ITEM IN30/18) ANSWERS TO QUESTIONS WITHOUT NOTICE - COUNCIL MEETING OF 24 JULY 2018

File No: 18/27976

REPORT BY GENERAL MANAGER

Summary

At the Council Meeting of 24 July 2018 the following Questions Without Notice (QWN) were submitted by Councillors. Council Officers responded to the QWN and Councillors were notified on 1 August 2018 of the outcome of the QWN.

Operational Plan Objective

2.1.3 Ensure transparency and accountability in decision making.

These are now submitted as part of the Council Agenda for Public Notification:

QUESTIONS WITHOUT NOTICE – COUNCIL MEETING OF 24 JULY 2018	
Question	Response
<p><u>Cr Lesley Furneaux-Cook</u></p> <p>Question 1</p> <p>What is the progress of DAs being viewed on our website during public exhibition period?</p>	<p><u>Acting Manager Building and Development</u></p> <p>Meetings are being scheduled for August 2018 with two service providers that offer compatible DA tracking systems to evaluate the best option for Council. Once a provider has been selected, the implementation phase will commence with the aim being for the system to be in place before the end of 2018. Councillors will be advised before the system goes live and the public will be made aware of the new system via usual communications channels.</p>
<p><u>Cr Lesley Furneaux-Cook</u></p> <p>Question 2</p> <p>Regarding notification for DAs, how does Council ensure compliance (due to Australia Post delivery process changes) with our public notification policy?</p>	<p><u>Acting Manager Building and Development</u></p> <p>DA notices are posted to residents and property owners two to three days in advance of the commencement of the exhibition period, to ensure that the full exhibition period is available for the recipient to view the proposal and prepare a submission, should they wish to do so. In addition, Council accepts submissions right up until the date of the determination, therefore, even if submissions are received late they are still considered and included in the assessment of the application.</p>
<p><u>Cr Lesley Furneaux-Cook</u></p> <p>Question 3</p> <p>33 Russell Street Strathfield. This was originally purchased by Council for open space – it is now derelict. What is the update?</p>	<p><u>Senior Manager Property and Building Services</u></p> <p>The property is managed by a local real estate agent. All the maintenance and upkeep of the premises is organised through the agent. Regular inspections are carried out to constantly review the state of the premises. The last inspection of the premises was conducted in May 2018 by Council Officers, together with the Agent. Minor repairs were noted and have</p>

QUESTIONS WITHOUT NOTICE – COUNCIL MEETING OF 24 JULY 2018

	since been rectified. The house is considered to be in habitable condition.
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No Decision – Information Item Only**Attachments**

There are no attachments for this report.