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Deed

1-3 Elizabeth Street, Burwood

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Burwood Council

Tasman Serviced Apartments Pty Ltd

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1-3 Elizabeth Street, Burwood Planning Agreement

Table of Contents

Summary Sheet	4
Parties	6
Operative provisions	6
Part 1 - Preliminary	6
1 Interpretation	6
2 Status of this Deed	8
3 Commencement	8
4 Application of this Deed	8
5 Warranties	8
6 Further agreements	9
7 Surrender of right of appeal, etc.	9
8 Application of s94, s94A and s94EF of the Act to the Development	9
Part 2 – Development Contributions	9
9 Provision of Development Contributions	9
10 Payment of monetary Development Contributions	9
Part 3 – Dispute Resolution	10
11 Dispute resolution – expert determination	10
12 Dispute Resolution - mediation	10
Part 4 - Enforcement	11
13 Enforcement in a court of competent jurisdiction	11
Part 5 – Registration & Restriction on Dealings	11
14 Registration of this Deed	11
15 Restriction on dealings	11
Part 6 – Other Provisions	12
16 Notices	12
17 Approvals and Consent	13
18 Costs	13
19 Entire Deed	13
20 Further Acts	14
21 Governing Law and Jurisdiction	14
22 Joint and Individual Liability and Benefits	14



23	No Fetter	14
24	Illegality	14
25	Severability	14
26	Amendment	15
27	Waiver	15
28	GST	15
29	Explanatory Note	16
Schedule 1		17
Execution		18

1-3 Elizabeth Street, Burwood

Burwood Council

Tasman Serviced Apartments Pty Ltd



1-3 Elizabeth Street, Burwood

Summary Sheet

Council:

Name: Burwood Council

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

Telephone: 9911 9911

Facsimile: 9911 9900

Email: council@burwood.nsw.gov.au

Representative: General Manager

Developer:

Name: Tasman Serviced Apartments Pty Ltd

Address: Suite 704, 53 Walker Street, North Sydney NSW 2060

Telephone: 0432 303 130

Email: eric@tasmanfunds.com.au

Representative: Dr Yihao (Eric) Zhang

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 8.

1-3 Elizabeth Street, Burwood

Burwood Council

Tasman Serviced Apartments Pty Ltd



Security and Enforcement:

Clause 9 and Schedule 1 and Part 4.

Registration:

See clause 14.

Restriction on dealings:

See clause 15.

Dispute Resolution:

See Part 3.

1-3 Elizabeth Street, Burwood

Burwood Council

Tasman Serviced Apartments Pty Ltd



1-3 Elizabeth Street, Burwood

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Burwood Council ABN 84 362 114 428 of Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW 2134 (**Council**)

and

Tasman Serviced Apartments Pty Ltd ABN 63 168 765 697 of Suite 704, 53 Walker Street, North Sydney NSW 2060 (**Developer**)

Background

- A The Developer is the registered proprietor of the Land.
- B The Developer has lodged a Development Application for the carrying out of Development on the Land.
- C The Developer is prepared to make Development Contributions in lieu of the provision of on-site car parking if Development Consent is granted to the Development Application for the Development, in order for the Council to fund additional car parking elsewhere in the Burwood Town Centre.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Burwood Town Centre has the same meaning as in the *Burwood Local Environmental Plan 2012*.

Construction Certificate has the same meaning as in the Act.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Development means a change of use of the commercial stratum of the existing building at 1-3 Elizabeth Street, Burwood, to a thirteen (13) room boarding house and seven (7) serviced apartments.

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, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F (3) (g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as 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 Lots 1, 2, 3, and 4 in SP 89332.

Party means a party to this Deed.

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

Work means the physical result of any building, engineering or construction work in, on, over or under land.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 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.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.



- 5.2 In particular, the Developer warrants that it has obtained the written consent of any mortgagee or chargee of the Land to the Developer entering into this Deed and to the registration hereof under the *Real Property Act 1900*.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed does not exclude the application of s94, 94A and 94EF of the Act to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make a Development Contribution to the Council in accordance with Schedule 1.
- 9.2 The Council is to apply the Development Contribution towards the provision of 2 car parking spaces within the Burwood Town Centre.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.



Part 3 – Dispute Resolution

11 Dispute resolution – expert determination

- 11.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 11.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 11.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 11.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 11.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 11.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 11.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

12 Dispute Resolution - mediation

- 12.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 11 applies.
- 12.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 12.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.



- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

13 Enforcement in a court of competent jurisdiction

- 13.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 13.2 For the avoidance of doubt, nothing in this Deed prevents:
- 13.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 13.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

14 Registration of this Deed

- 14.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 14.2 Not later than 30 days after the commencement of this Deed , the Developer is to deliver to the Council in registrable form:
- 14.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
 - 14.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration
- and produce the title deed to Land and Property Information for the purpose of the registration hereof.
- 14.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 14.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

15 Restriction on dealings

- 15.1 The Developer is not to:

- 15.1.1 sell, transfer, mortgage or charge the Land, or
- 15.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
to any person unless:
 - 15.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold, transferred, mortgaged or charged or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 15.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, mortgagee, charge, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 15.1.5 the Developer is not in breach of this Deed, and
 - 15.1.6 the Council otherwise consents to the transfer, mortgage, charge, assignment or novation, such consent not to be unreasonably withheld.
- 15.2 Clause 15.1 does not apply in relation to any sale, transfer, mortgage or charge of the Land if this Deed is registered on the title to the Land at the time of the sale.
- 15.3.1 Upon the commencement of this Deed, the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council has a sufficient interest in the Land to lodge and maintain with the Land and Property Management Authority a caveat notifying that interest.
- 15.3.2 The Developer consents to the Council lodging a caveat on the Land where this Deed is not registered on the title to the Land due to a breach by the Developer of its obligations under this Deed.

Part 6 – Other Provisions

16 Notices

- 16.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 16.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 16.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 16.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 16.2 If a Party gives the other Party 3 business days notice of a change of its address, 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, faxed or emailed to the latest address or fax number.

- 16.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 16.3.1 delivered, when it is left at the relevant address,
 - 16.3.2 sent by post, 2 business days after it is posted,
 - 16.3.3 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, or
 - 16.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 16.4 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 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

17 Approvals and Consent

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

18 Costs

- 18.1 The Developer is to pay to the Council the Council's reasonable costs not exceeding \$5,000 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 18.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

19 Entire Deed

- 19.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 19.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.



20 Further Acts

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

21 Governing Law and Jurisdiction

- 21.1 This Deed is governed by the law of New South Wales.
- 21.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 21.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

22 Joint and Individual Liability and Benefits

- 22.1 Except as otherwise set out in this Deed:
- 22.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 22.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

23 No Fetter

- 23.1 Nothing in this Deed 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.

24 Illegality

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

25 Severability

- 25.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 25.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

26 Amendment

- 26.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

27 Waiver

- 27.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 27.2 A waiver by a Party is only effective if it is in writing.
- 27.3 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.

28 GST

- 28.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 28.2 Subject to clause 28.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 28.3 Clause 28.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 28.4 No additional amount shall be payable by the Council under clause 28.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 28.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

- 28.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 28.5.2 that any amounts payable by the Parties in accordance with clause 28.2 (as limited by clause 28.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 28.6 No payment of any amount pursuant to this clause 28, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 28.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 28.8 This clause continues to apply after expiration or termination of this Deed.

29 Explanatory Note

- 29.1 Council warrants that it will exhibit an explanatory note relating to this Deed as required by clause 25E of the Regulation, with this Deed.



Schedule 1

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Contribution	Public Purpose	Manner & Extent	Timing
1. Monetary Contribution	2 car parking spaces within the Burwood Town Centre	\$93,000 (exclusive of GST)	Prior to the issue of a Construction Certificate for the Development

1-3 Elizabeth Street, Burwood

Burwood Council

Tasman Serviced Apartments Pty Ltd



Execution

Executed as a Deed

Dated: 2 June 2017

Executed on behalf of the Council

Signed for and on behalf of **Burwood Council** by its attorney, **Michael Gerard McMahon**, under power of attorney dated 6 July 2011 registered book 4615 number 590, in the presence of:

)
)
)
)
)
)
)

Signature of Witness

Veta Karpowicz

(Print) Name of Witness

Signature of Attorney

Michael Gerard McMahon

(Print) Full Name of Attorney

Level 2, 1 – 17 Elsie Street, Burwood,
New South Wales, 2134

(Print) Address

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

1-3 Elizabeth Street, Burwood



Burwood Council

Tasman Serviced Apartments Pty Ltd

[Handwritten signature]
Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Dr. Eric Zhang / Director

Name/Position

HANG YE *[Handwritten signature]*

~~Name/Position~~ Witness