

Planning Agreement

7 Deane Street & 1-3 Marmaduke Street, Burwood, NSW

Burwood Council (Council)

ABN 84 362 114 428

and


Dean Street Holdings Pty Ltd (Developer)

ACN 630 119 425

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Details

Date: 11 October 2019

Parties

Name **Burwood Council (hereinafter "the Council")**
ABN ABN 84 362 114 428
Description **Council**
Notice details Address Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW
Post PO Box 240, Burwood, NSW 1805
Fax 02 9911 9900
Attention The General Manager

Name **Dean Street Holdings Pty Ltd (hereinafter "the Developer")**
ABN ACN 630 119 425
Description **Developer**
Notice details Address Level 10, 6 Mount Olympus Boulevard, Wollie Creek, NSW 2205
Post Level 10, 6 Mount Olympus Boulevard, Wollie Creek, NSW 2205
Fax n/a
Attention Mark Taouk

Background

- A The Developer is the registered proprietor and developer of the Land comprised as follows:
- (a) Lot 10 in DP 80891, known as 7 Deane Street, Burwood NSW.
 - (b) Lot B in DP 329694, known as 1 Marmaduke Street, Burwood NSW.
 - (c) Lot A in DP 329694, known as 3 Marmaduke Street, Burwood NSW.
- (hereinafter "the Land")
- B The Land is situated on the corner of Deane Street and Marmaduke Street, Burwood NSW.
- C On or about 6 March 2013 the Joint Regional Planning Panel granted approval for Development Application No.136/2012 (hereinafter DA 136/2012) in respect of the Land for the demolition of the existing residential flat buildings on the Land and the erection of a new 22 storey mixed use development comprising ground floor retail space, 61 serviced apartments at levels 1-11, 36 residential apartments at levels 12-21, and 4 levels of basement parking for 108 vehicles.
- D On or about 14 October 2014 the Joint Regional Planning Panel granted approval to a modification application pursuant to section 96 (now section 4.55) of the Environmental Planning and Assessment Act 1979 (NSW) seeking to modify DA 136/2012. The granting of consent to the aforesaid modification application resulted in the modification of DA

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136/2012 by allowing for the erection of a new 23 storey mixed use development comprising ground floor retail space, 112 serviced apartments at levels 1-13, 34 residential apartments at levels 15-23, and 4 levels of basement parking for 102 vehicles.

- E On or about 3 March 2016 the Council granted development consent in respect of a New Development Application, known as Development Application No. 98/2015 (hereinafter DA 98/2015), in respect of the Land. The consent resulted in an approval to construct on the Land 8 additional residential apartments and additional levels 24-26 .
- F The granting of consent to DA 98/2015 has resulted in a 10% increase in the Floor Space Ratio ("FSR") for the proposed development.
- G Council has conducted an Urban Design Study which revealed that in parts of the Burwood Town Centre there is some potential for a maximum increase of 10% in FSR and public benefit requirements in the Commercial Core (Area 1) and Middle Ring (Area 2). Council has also conducted a Burwood Open Space and Community Facilities Study which revealed the need for more open space and community facilities (**Studies**).
- H On or about 3 March 2017 the Council granted approval of a New Modification Application in respect of the Development Consent (DA 136/2012) seeking approval for various and minor design amendments to the Development Consent arising out of the works comprising the New Development Application. It has been determined that this modification application will not significantly change the development as proposed in accordance with DA 98/2015.
- I In accordance with section 7.4 (1)(a) of the Act, the parties are entitled to enter into a Planning agreement. For the sake of clarity, the parties indicate that they wish to enter into a Planning Agreement to cater for the aforesaid 10% increase in residential FSR for the Development Site, being an increase that is associated with the New Development Application.
- J The developer by this Planning Agreement voluntarily agrees to pay and the Council by this agreement voluntarily agrees to accept a monetary contribution as set out in Schedule 1 being a monetary contribution referred to at section 7.4 of the Act and the parties agree that the said contribution may accordingly be the subject of a Planning Agreement.

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Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

The following words have the corresponding meanings for the purposes of this Agreement:

Act means the *Environmental Planning and Assessment Act 1979 (NSW)*, as amended, and includes any regulations made under the Act.

Agreement means this planning agreement.

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 for Saturday or Sunday or a day which is a public holiday in Sydney.

Development Consent means the consent granted by the Joint Regional Planning Panel in connection with Development Application No.136/2012, as modified by the Joint Regional Planning Panel.

Explanatory Note means the Explanatory Note set out in this Agreement.

Force Majeure means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.

GST has the meaning as in the GST Law.

GST law has the same 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

- (a) Lot 10 in DP 80891, known as 7 Deane Street, Burwood NSW.
- (b) Lot B in DP 329694, known as 1 Marmaduke Street, Burwood NSW.
- (c) Lot A in DP 329694, known as 3 Marmaduke Street, Burwood NSW.

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 set out in Column 3 of Schedule 1 of this Agreement.

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Version Control: 27 June 2019

New Development Application means Development Application No. 98/2015 lodged with Council on or about 13 July 2015 seeking approval for 8 additional residential apartments at proposed additional levels 24-26 to the Development Consent.

New Development Consent means the granting of approval by the Council or the Joint Regional Planning Panel of:

- (a) the New Development Application, and
- (b) the New Modification Application.

New Modification Application means the modification application lodged with Council on or about 9 December 2016 seeking approval for various and minor design amendments to the Development Consent arising out of the works comprising the New Development Application.

Sunset Date means the date on which the Development Consent lapses.

1.2 Interpretation

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

- (a) headings are for convenience only and do not affect interpretation.
- (b) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation.
- (d) a reference to a party to the Agreement includes a reference to servants, representatives, agents, and contractors of the party.
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified, supplemented or replaced from time to time.
- (f) 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.
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender.
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it.
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.
- (j) A reference to the word "include", "includes" or "including" is to be interpreted without limitations.

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(k) the Explanatory Note set out in this Agreement is not to be used to assist in construing the Agreement.

(l) a reference to "\$" or "dollar" is to Australian currency.

1.3 Compliance with New Laws

If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement or which was not contemplated at the time of entering into this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.

2. Planning Agreement under the Act

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

3. Application of this Agreement

The Agreement applies to the Land and the Development Consent.

4. Operation of this Agreement

(a) This Agreement takes effect on the date of this Agreement after execution by both parties, subject to clause 4(b).

(b) This Agreement will remain in force until:

(i) it is terminated by operation of Law; or

(ii) all obligations are performed or satisfied; or

(iii) the Sunset Date is reached; or

(iv) the Development Consent is surrendered in accordance with the Act; or

(v) the New Development Consent or New Modification Application is surrendered in accordance with the Act; or


(vi) it is otherwise discharged or terminated in accordance with the terms of this Agreement.


(c) If a legal challenge to the New Development Consent and/or the New Modification Application by a third party results in the New Development Consent being rendered invalid or unenforceable, then the Developer may, in its absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.

5. Monetary Contribution

5.1 Payment of Monetary Contribution

(a) Subject to clause 5.1(c) below the Developer will, after the granting of consent to the New Development Application, pay to the Council the Monetary Contribution.

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- (b) The payment of the Monetary Contribution will be by way of bank cheque made payable to the Council.
- (c) With reference to clause 5.1(a) above, the Developer acknowledges that the Monetary Contribution must be paid prior to and as a precondition of the issuing of any construction certificate in connection with the New Development Consent.
- (d) The Developer covenants and agrees not to make an application for the issue of any construction certificate until the Monetary Contribution required to be paid to the Council has been received by the Council.
- (e) The developer agrees not to act on and to surrender any construction certificate to the Council in the event that a construction certificate is issued in respect of the New Development Consent prior to the monetary contribution being received by the Council.
- (f) The developer acknowledges and agrees that this agreement will bind all purchasers, assignees and transferees and that the existence of this agreement shall be brought to the attention of all purchasers, assignees and transferees prior to any interest in the Land or in the development being sold, transferred or assigned.

5.2 Acknowledgments

- (a) The parties acknowledge and agree that the Monetary Contribution:
 - (i) is based upon the sale price of residential floor space within the Burwood Town Centre in the current market.
 - (ii) is voluntarily offered by the Developer to the Council as part of this Planning Agreement.
- (b) The parties acknowledge and agree that the Monetary Contribution, when paid, will:
 - (i) constitute the payment of funds over and above the development contributions imposed or otherwise payable under the Council's Section 94A Contributions Plan for the Burwood Town Centre (now known as Section 7.12 Local Infrastructure Contributions Plan for Burwood Town Centre) in connection with the Development Consent and the New Development Consent (**the benefits**). The benefits are not to be taken into consideration by the Council in determining contributions under section 7.11 and section 7.12 of the Act.
 - (ii) represent a monetary contribution towards a public benefit for the purposes identified in the Studies.
 - (iii) represent a monetary contribution towards a public benefit unrelated to the Development Consent, the New Development Consent or the New Modification Consent.

5.3 Purpose for which the Monetary Contribution is paid

- (a) The Council acknowledges and agrees that the Monetary Contribution, when paid, will be received by Council and spent by Council on the provision, augmentation or improvement of open space, community facilities or other public facilities as determined by the Council, in accordance with the Studies.

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- (b) Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that nothing in this Agreement in any way fetters or attempts to fetter the discretion of the Council in the performance of its obligations.

6. Application of the Act to the Development

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

- (i) sections 7.11 and 7.12 of the Act;
- (ii) any Affordable Housing Levy;
- (iii) any other monetary contributions;

in connection with the Development Consent, the New Development Consent or the New Modification Consent granted in respect of the Land.

- (b) The obligations of the Developer under this Agreement involve a contribution to or provision of public amenities and services over and above those which would otherwise be imposed under section 7.11 and section 7.12 of the Act (**benefits**). The benefits are not to be taken into consideration by the Council in determining contributions under section 7.11 and section 7.12 of the Act.

7. Registration

- (a) The Parties will take all practical steps to procure:

- (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900 (NSW)*; or
 - (B) is seized or possessed of an estate or interest in the Land; and
- (ii) the execution of any documents; and
- (iii) the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the register for the Land in accordance with section 7.6 of the Act.

- (b) The Parties will take all practical steps to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the Agreement is entered into by the Parties.

8. Dealing with the Land

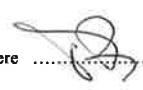
The Parties acknowledge and agree that nothing in this Agreement abrogates, fetters or in any way prevents the Developer from selling, transferring, assigning, subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land.

9. GST

9.1 Interpretation

In this clause 9:

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- (a) Words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

9.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

9.3 Payment of GST - additional payment required

- (a) If GST is payable by an entity (**Supplier**) in respect of any supply made under this Agreement (**Relevant Supply**), then the party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under clause 9.3(b).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money, the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate of GST for that Relevant Supply.
- (c) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, no additional amount shall be payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (d) The Recipient will pay the GST Amount referred to in this clause 9.3 in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

9.4 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under clause 9.3. The Recipient can withhold a payment of the GST Amount until the Supplier provides a tax invoice.


9.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the Recipient under clause 9.3 will be recalculated to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

9.6 Reimbursements

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under clause 9.3 in respect of the reimbursement.

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10. Default

10.1 Notice

In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to that party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

10.2 Reasonable Time

In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

10.3 Suspension of time-dispute

If a party disputes the Default Notice it may refer that dispute to dispute resolution under clause 11 of this Agreement.

11. Dispute Resolution

11.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (**Claimant**), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 11.

11.2 Response to Notice

Within 10 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

11.3 Negotiation

- (a) The nominated representative must:
 - (i) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative; and
 - (ii) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

11.4 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 11.5 or by expert determination under clause 11.6.

11.5 Mediation

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

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- (i) the parties must agree to the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
 - (ii) the Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (b) the Mediator appointed pursuant to this clause 11.5 must:
- (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (c) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (d) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (e) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement, or in the event the parties are unable to reach a mediation settlement;
- (f) each party will bear their own professional and expert costs incurred in connection with the mediation.

11.6 Expert Determination

- (a) If the dispute is not resolved under clause 11.3 or 11.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:
- (i) the dispute must be determined by an independent expert in the relevant field:
 - (A) agreed upon and appointed jointly by the Council and the Developer; or
 - (B) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
 - (ii) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
 - (iii) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
 - (iv) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;

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- (v) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (vi) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this Agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

11.7 Litigation

If the dispute is not finally resolved in accordance with this clause 11, either party is at liberty to litigate the dispute.


12. Acknowledgements

12.1 The Developer acknowledges that the Council may include a notation on Planning Certificates under section 10.7(5) of the Act in relation to this Agreement

12.2 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.

13. Notices

- (a) 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:
 - (i) delivered or posted to that Party at its address set out on numbered page 2 of this Agreement; or
 - (ii) faxed to that Party at its fax number on numbered page 2 of this Agreement.
- (b) If a Party gives another Party 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.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted;
 - (iii) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- (d) 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, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

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14. Reporting

14.1 Every six months from the date of execution of this Agreement or as otherwise agreed with the Council, until such time as this Agreement is no longer in effect, the Developer must deliver to the Council a report which must include those matters set out under clause 14.2.

14.2 The report must include:

- (a) Details of all Development Consents granted in relation to the Land;
- (b) A schedule that details all monetary Contributions provided under this Agreement as at the date of the report;
- (c) A schedule of planned and future Monetary Contributions to be provided under this Agreement; and
- (d) An estimated date for when the Developer expects to lodge additional Development Applications relating to the Land, if applicable.

15. General

15.1 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, anything said or done by another Party, agent or employee of the Party, before this Agreement was executed, except as permitted by Law.

15.2 Further acts

Each party must promptly sign and execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it, including giving an approval or consent.

15.3 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.


15.4 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 or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

15.5 No fetter

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

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15.6 Representations and warranties

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

15.7 Severability

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

15.8 Release and Discharge

- (a) To the extent the Developer has:
 - (i) satisfied its obligations under this Agreement; or
 - (ii) the Agreement no longer applies as a consequence of any event referred to in clause 4(b) of this Agreement;

the Council will provide a release and discharge of this Agreement with respect to any part of, or the whole of, the Land.

- (b) To the extent the Developer has:
 - (i) satisfied all of its obligations under this Agreement in respect of that part of the Land; or
 - (ii) the Agreement no longer applies as a consequence of any event referred to in clause 4(b) of this Agreement;

the Council will provide a release and discharge of this Agreement with respect to any part of the Land:

- (iii) if the Developer requests a partial release and discharge of this Agreement for the purpose of selling part of the Land as a Developed Lot; or
- (iv) if the Developer requests a partial release and discharge of this Agreement in connection with the completion of a sale contract for a Developed Lot.
- (c) The Council will execute any form, and supply such other information, as is reasonably required to enable the removal of the Agreement from the title to the Land or part of the Land in accordance with this clause 14.8.

15.9 Modification, Review and Replacement

- (a) 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.

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- (b) The Parties agree that this Agreement may be reviewed or modified in the circumstances using their best endeavours and acting in good faith, and in accordance with this clause 14.9.
- (c) Any review or modification will be conducted in the circumstances and in the matter determined by the Parties and in accordance with the provisions of the Act and Regulations. For clarity, no such review or replacement shall have any force or effect unless and until formal documents are signed by the Parties in accordance with this clause 14.9.

15.10 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is required or entitled to do under this Agreement, does not amount to a waiver of any obligation by another Party.

15.11 Confidentiality

The Parties agree that 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.

15.12 Assignment and Novation

- (a) This Agreement may be assigned or novated by the Developer in accordance with any dealings the Developer may have with respect to its interests in the Land without requiring the Developer to obtain Council's Approval in respect of either the dealing or the assignment or the novation of this Agreement.
- (b) Council agrees to execute any deeds of assignment or novation or other documents necessary to assign, novate or otherwise transfer all of the Developer's rights and obligations under the Agreement to a successor as contemplated by the agreement.

15.13 Force Majeure

- (a) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under the Agreement, it must give to the other Party prompt notice of the force majeure with reasonably full particulars.
- (b) The obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under the Agreement.

15.14 Legal and associated costs

Each party is responsible for the payment of its own legal costs and expenses in connection with the preparation, execution and enforcement of this Agreement, unless

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otherwise agreed between the Parties or as may be ordered by a Court of competent jurisdiction.

15.15 Counterparts

This Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.


16. Explanatory Note

The Explanatory Note must not be used to assist in construing the Agreement.

17. Effect of Scheduled terms and conditions

The parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

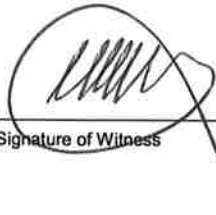
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Execution Page

Executed as an Agreement

Signed by **Dean Street Holdings Pty Ltd (ACN 630 119 425)** in accordance with s.127(1) of the *Corporations Act 2001*



Signature of Witness

MAROU TAOUK

Full Name of Witness (Print)

11/10/19

Date



Signature of Sole Director

Mark Taouk

Full Name (Print)

Signed for and on behalf of **Burwood Council** by its attorney, **Tommaso Briscese**, under Power of Attorney dated 29 May 2019 registered book 4760 number 381 in the presence of



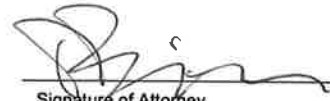
Signature of Witness

NATALIE HOWARD

Full Name of Witness (Print)

11.10.2019

Date



Signature of Attorney


Tommaso Briscese

Full Name (Print)

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

Schedule 1 – Development Contributions

Column 1 Contribution	Column 2 Public Purpose	Column 3 Manner and Extent	Column 4 Timing
Monetary contribution.	Provision, augmentation or improvement of open space, community facilities or other public facilities as determined by the Council.	\$872,960 exclusive of GST (if applicable). Equivalent to 793.6 sq.m. at \$1,100 per sq.m.	Prior to the issue of a Construction Certificate per clause 5.1 of this Agreement.

Developer: Initial Here 

Attorney: Initial Here 

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Planning Agreement

Under 7.4 of the Environmental Planning and Assessment Act 1979 (NSW)

1. Parties

Dean Street Holdings Pty Ltd
ACN 630 119 425
Level 10, 6 Mount Olympus Boulevard, Wollri Creek NSW
(Developer)

Burwood Council.
ABN 84 362 114 428.
1-17 Elsie Street, Burwood NSW
(Council).

2. Description of Subject Land

The Land comprises:

- (a) Lot 10 in DP 80891, known as 7 Deane Street, Burwood NSW.
- (b) Lot B in DP 329694, known as 1 Marmaduke Street, Burwood NSW.
- (c) Lot A in DP 329694, known as 3 Marmaduke Street, Burwood NSW.

The Developer is the registered proprietor of the Land.

3. Description of Proposed Development Application and Modification Application

The proposed development is documented in:

- (a) New Development Application.
- (b) New Modification Application.

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

4.1. Summary of Objectives

The objectives of the draft Planning Agreement are to:

- (a) provide a Monetary Contribution to Council for the purposes of providing, augmenting or improving open space, community facilities or other public facilities as determined by Council, in accordance with the Studies undertaken by the Council being the Urban Design Study and the Burwood Open Space and Community Facilities Study (Studies).

- (b) provide the Developer, in exchange for making the Monetary Contribution, an additional 10% FSR over the Development Site, calculated in accordance with the Urban Design Study.

4.2 Nature and Effect of the Draft Planning Agreement

The draft Planning Agreement requires the Developer to make a Monetary Contribution in the amount prescribed by this Planning Agreement for contribution towards the purposes identified in the Studies.

The purposes set out in the Urban Design Study include:

- parts of Burwood Town Centre, including the area in which the Land is located, there is some potential for a maximum increase of 10% FSR
- public benefit requirements in the Commercial Core (Area 1) and Middle Ring (Area 2)

The purposes set out in the Burwood Open Space and Community Facilities Study include:

Open space and parks

- An additional open space of 165,055m²
- Quality over quantity
- Green open space, especially in the north of the 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

The purposes for which the Monetary Contribution will be used will be at the discretion of the Council in accordance the Studies.

5. Assessment of the Merits of the Draft Planning Agreement

5.1 The Planning Purposes Served by the Draft Planning Agreement

In accordance with section 7.4 of the Act, the Planning Agreement promotes the following public purposes:

- (c) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (d) the provision of (or the recoupment of the cost of providing) affordable housing,
- (e) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (f) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (g) the monitoring of the planning impacts of development,
- (h) the conservation or enhancement of the natural environment.

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

The draft Planning Agreement promotes the following objects of the Act:

- (i) the promotion and co-ordination of the orderly and economic use and development of land;
- (j) the provision of land for public purposes, and
- (k) the provision and co-ordination of community services and facilities.

The draft Planning Agreement provides for a reasonable means of achieving those purposes, subject to the areas of expenditure to which the Monetary Contributions are put in accordance with the Studies.

6. How the Draft Planning Agreement Promotes the Public Interest

6.1 How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The draft Planning Agreement promotes Council's Charter under section 8 of the Local Government Act 1993 (NSW) by providing, augmenting or improving open space, community facilities or other public facilities as determined by the Council, in accordance with the Studies.

6.2 Whether the draft Planning Agreement Conforms with the Council's Capital Works Program

The draft Planning Agreement conforms with Council's Capital Works Program to the extent that it will supplement the Program by providing works and infrastructure.

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

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

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

The draft Planning Agreement impacts on the Public by promoting the Public's interest as outlined above.

8. Other Matters

None.