

PLANNING AGREEMENT

PARTIES

BURWOOD COUNCIL of 2 Conder Street Burwood in the State of New South Wales
(Council)

AND

PROGRESS & SECURITIES BUILDING PTY LTD ACN 001 735 253 of Suite 709, 1
Newland Street, Bondi Junction in the State of New South Wales (**Developer**)

BACKGROUND

- A The Developer has lodged with the Council a S96 Modification Application relating to the Development.
- B The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.
- C Until the Planning Agreement operates, this Agreement constitutes the Developer's offer to make Development Contributions in connection with the Development on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1 Definitions and interpretation

- 1.1 In this Agreement the following definitions apply:

Acquired Land means Council's sub-stratum land beneath Railway Parade Burwood generally adjacent to Lots 14 and 15 in DP749949 as depicted in the diagram annexed to this Agreement and marked "A" (subject to Final Survey)

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

BPSO means the Burwood Planning Scheme Ordinance as amended from time to time

Contribution Value means the amount specified in Column 4 of Schedule 1

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

Development means the development on the Land proposed by DA306/05 (as amended), namely a mixed use development building complex comprising a 3-level retail/commercial podium over four levels of basement car park (331 parking spaces) partly within Railway Parade, Burwood below ground level, residential floor space above in 3 residential tower structures of a total of 16, 19 and 19 storeys above footway level (from west to east) on top of a podium structure.

Development Application means the development application within the meaning of the Act for the Development.

Development Consent has the same meaning as in the Act.

Development Contributions Schedule means Schedule 1 of this deed.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit provided for in the Development Contributions Schedule

Easement means a public positive covenant within the meaning of s.88E of the Conveyancing Act 1919 in favour of the Council, providing for a right of public access of variable width over the land the subject of the Development, as shown on the plan in Annexure "B" (subject to final survey) and in a form satisfactory to the Council.

EPA Act means the Environmental Planning & Assessment Act, 1979 as amended.

Former Planning Agreement means the planning agreement made between the Parties on 23 April 2007 and required to be entered into by condition 4B of the Development Consent granted in respect of DA306/05

Floor space has the same meaning as in the BPSO

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 Lots 14 and 15 in DP 749949 and the Acquired Land.

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

Public Facilities means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purposed specified in s93F(2) of the Act.

Regulation means the Environmental Planning and Assessment Regulation 2000.

1.2 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 any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- (g) 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.
- (h) 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 gender.
- (i) A reference to a party in this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (j) Any Schedules and attachments form part of this Agreement.

2 Planning Agreement under the Act

The parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.

3 Application of this Agreement

Subject to clause 13, this Agreement applies to the Land and to the Development as modified

4 Operation of this Agreement

- 4.1 Until the Planning Agreement operates, this document constitutes the Developer's offer to enter into the Planning Agreement if consent under S96 of the Act is granted to the Development.
- 4.2 The Planning Agreement operates only if:
 - 4.2.1 the carrying out of the Development is subject to a condition imposed under section 93I(3) of the Act requiring this Planning Agreement to be entered into, and
 - 4.2.2 the Planning Agreement is entered into as required by the condition in accordance with clause 25C(1) of the Regulation.
- 4.3 Upon the operation of this Planning Agreement, the Former Planning Agreement is revoked in accordance with clause 25C (3) of the Regulation. The Parties agree that neither Party is entitled to make any claim against the other in respect of obligations under that agreement.

5 Further Agreements Relating to this Agreement

The Parties may, at any time, enter into such other agreements relating to any matter the subject of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.

6 Application of s94 and s94A of the Act to the Development

For the purposes of section 93F (5) of the Act, this Agreement excludes the application of s94 and s94A, of the Act to the Development.

7 Provision of Development Contributions under this Agreement

Subject to this Agreement, the Developer is to make Development Contributions towards the Public Facilities specified in Column 1 of Schedule 1 to the Contribution Value specified in Column 4 of that Schedule in relation to the Public Facilities.

8 Determination of Value

8.1 Where the Development Contribution is in the form of the dedication of land, the Contribution Value is the amount of compensation agreed between the parties to be the amount to which the Developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land. All values are expressed as the Value attributable to the Land and the Facilities as at the date of this Agreement and where applicable, as at the date of the Former Planning Agreement.

8.2 The Contribution Value is the dollar amount as agreed between the Parties.

8.3 The Council and the Developer agree that the Developer Contribution required, together with the value of the Acquired Land required to be transferred to the Developer by the Council in accordance with clause 9, is met by the Development Contributions made under the Former Planning Agreement or to be made by the Developer under the Development Contributions Schedule to this Agreement.

9 Application of the monetary contribution

The Council must apply a Development Contribution made by the Developer under this Agreement towards the Public Purpose for which it is made and at the locations, in the manner and to the standards required by or under this Agreement.

10 Closure and transfer of Acquired Land to the Developer

10.1 In consideration of the Developer agreeing to and making the Developer Contribution, the Council shall do all things necessary and within its power to cause the Acquired Land to be closed pursuant to the Roads Act 1993 and transferred to the Developer.

- 10.2 Notwithstanding clause 10.1, the Council shall have no obligation to cause the Acquired Land to be transferred to the Developer until the Developer has made the Development Contributions specified in Schedule 1.
- 10.3 If access to the Acquired Land is required by the Developer for commencement of construction works prior to its transfer, Council shall do everything within its power to provide such access, including but without limitation, the grant to the Developer of a lease containing the following fundamental terms and conditions:
- 10.3.1 Rent: \$1.00,
- 10.3.2 Term: the maximum term permitted under Part 10 Division 2 of the Roads Act 1993 with provision for the immediate determination of the lease upon transfer to the Developer of the Acquired Land
- 10.3.3 Works: in accordance with ss157 (2) and (3) of the Roads Act 1993, express permission shall be given for such works as are within the power of the Council to the carrying out of construction works within the Acquired Land for the purpose of the Development.

11 Monetary Contributions

- 11.1 The Developer is not required to pay a Monetary Contribution under this Agreement unless the Council has given the Developer a tax invoice for the amount of the contribution that the Developer intends to pay.
- 11.2 The Developer is not in breach of this Agreement if its fails to pay a Monetary Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by the Developer.

12 Dedication of Land

- 12.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when the Council is given an instrument under the *Real Property Act 1900* that is effective to transfer title to the land to the Council when registered.

- 12.2 To allow for the registration of an instrument of transfer referred to in clause 12.1, the Developer is to produce to the Department of Lands (NSW) the Certificates of Title to the Land to be dedicated under this Agreement or a direction allowing the Certificates of Title to be used for that purpose.

13 Further consent

In the event that, prior to the carrying out of the Development Consent, any further development or modification application is made for development of the Land then any Development Contribution made pursuant to this agreement and/or the Former Planning Agreement shall, to the extent that it is lawful:

- 13.1 be taken into account as part of any development contribution for the purpose of any planning agreement relating to a later application in respect of the Land
- 13.2 taken into account in determining any development contribution under s.94 of the Act
- 13.3 taken into account in determining whether or not any planning agreement excludes the operation of s94 and/or s94A of the Act
- 13.4 taken into account for the purposes of s94 (6) of the Act
- 13.5 taken into account for the purposes of s79 C of the Act.

14 Costs

- 14.1 Each party shall bear its own costs of this Agreement and shall bear equally any stamp duty and any fees and charges associated with its registration.
- 14.2 The Council shall bear any stamp duty and any fees and charges associated with the dedication of land or the registration of the Easement by the Developer.
- 14.3 The Developer shall bear any stamp duty and the costs of registration of the transfer from Council of the Acquired Land.

15 Review of this Agreement

This planning agreement may be reviewed or modified by the agreement of the parties using their best endeavours and acting in good faith.

16 Dispute Resolution

- 16.1 Should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.
- 16.1 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a dispute, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales that are current at the time the dispute is mediated and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 16.3 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.

17 Enforcement

- 17.1 This Agreement may be otherwise enforced by either Party in any court of competent jurisdiction.
- 17.2 As further security for the performance by the Developer of the terms and conditions of this Agreement, Council shall not be required to tender a transfer or any other document of title to the Developer for the Acquired Land until a date that is seven (7) days following payment by the Developer of all Monetary Contributions required to be paid and specified in Schedule 1 Part A of this Agreement.

18 Assignment

The Developer agrees not to transfer the Land or part of the Land, (other than the land required to be dedicated under this Agreement) unless:

- 18.1 it has, at no cost to the Council, first procured the execution, by the person with whom it is dealing of a Deed in favour of the Council in the form set out in Schedule 2
- 18.2 the Developer is not in breach of an essential provision of this Agreement,

19 Notices

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

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

Council

Attention:
Address:
Fax Number:
Email:

Developer

Attention: Mr Tibor Balog/Ms Katherine Strelein
Address: Suite 709, 1 Newland Street,
Bondi Junction 2026
Fax Number: 9389 2040
Email: prosec@ozemail.com.au

- 19.2 If a Party gives the other 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.
- 19.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - 19.3.1 If it is delivered, when it is left at the relevant address;
 - 19.3.1 If it is sent by post, 2 business days after it is posted;
 - 19.3.2 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.
- 19.4 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, or if on a business day, after 5pm on that day in the place of the Party whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

20 No registration of this Agreement

The parties agree not to register this Agreement under s93H of the Act.

21 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.

22 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.

23 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 of appeal from them. The Parties will not object to the exercise or jurisdiction by those courts on any basis.

24 Joint and individual liability and benefits

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

25 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.

26 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.

27 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.

28 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.

29 Waiver

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

30 GST

30.1 Any consideration expressed in this Agreement is, unless otherwise specified, GST exclusive and does not include any amount for, or on account of, GST.

30.2 If any supply under or in connection with this deed constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply ("GST Amount").

30.3 The GST Amount is:

- (a) equal to the value of the supply calculated in accordance with the GST Act multiplied by the applicable GST rate; and
- (b) payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the GST payable on the relevant taxable supply is attributable under the GST Act.

30.4 The supplier of a taxable supply made under or in connection with this Agreement must issue a tax invoice for the supply in accordance with the GST Act to the recipient of the supply.

30.5 Despite any other provision of this deed, any amount payable under or in connection with this Agreement which is calculated by reference to a cost, expense or amount paid or incurred by a Party, will be reduced by an amount equal to any input tax credit to which that party, or the representative member of a GST Group of which the party is a member, is entitled in respect of that cost, expense or amount.

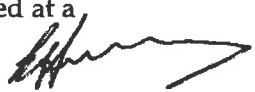
30.6 Words and expressions used in this clause 28 have the meaning given to them in the GST Act.

31 Explanatory Note Relating to this Agreement

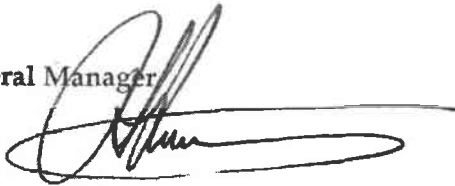
Schedule 3 contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.

EXECUTED AS AN AGREEMENT

On behalf of Burwood Council:

The seal of Burwood Council was affixed in accordance with a resolution passed at a duly convened meeting held on *12 June, 2008* in the presence of: 

General Manager



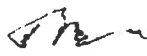
Mayor



On behalf of Progress & Securities Building Pty Ltd:

Progress & Securities Building Pty Limited (CAN 001 735 253) executed this agreement pursuant to s127 of the *Corporations Act 2001*.

Director



Director/Secretary

Desmond Wilcox

Date

12 June 2008



Schedule 1

The Development Contributions Table

	Column 1	Column 2	Column 3
Item No	Public Purpose	Timing	Contribution Value
Part A – Monetary Contributions (TOTAL \$4,070,000.00)			
A	<p>For the provision of off-site car parking spaces required by the Development;</p> <p style="text-align: center;">AND</p> <p>Otherwise for the public amenities and public services within or adjacent to the Town Centre.</p>	<p>By way of three (3) instalments as follows:</p> <p>\$1,825,000.00 paid on 13 November 2007 under the former Planning Agreement</p> <p>\$1,225,000.00 on the date of this Agreement</p> <p>\$1,020,000.00 on or before the release of the construction certificate for the Development</p>	<p style="text-align: right;">\$4,070,000.00</p>
Contribution Value Subtotal (being the total monetary contribution amount agreed to be paid by the Developer under the Former Planning Agreement and under this Planning Agreement)			\$4,070,000.00

Part B – Land Dedication				
C1	Land (approximately 658 square metres subject to final survey) as shown on the plan Annexure "B" to be dedicated as a public road and	Public Open Space (agreed to be dedicated under the Former Planning Agreement)	Within 6 weeks from the date the Developer's S96 modification application is approved, subject to final survey	
	Land (approximately 463 square metres subject to final survey) of variable width between 1.6 and 3 metres as shown on the plan in Annexure "B" to be dedicated as public road	Road Widening (agreed to be dedicated under the Former Planning Agreement)	Within 6 weeks from the date the Developer's S96 modification application is approved, subject to final survey	\$5,267,381.00
	Land (approximately 49.6 square metres of additional land subject to final survey) as shown on the plan Annexure "B " to be dedicated as a public road	Road Widening (additional land area for wider bus-bays)		\$ 235,000.00
				\$5,502,381.00
Contribution Value Subtotal				\$9,572,381.00

Part D – Other Material Public Benefits

D1	Public positive covenant within the meaning of s88E of the Conveyancing Act 1919 in favour of the Council, providing for a right of public access of variable width over the land the subject of the Development as shown on the plan in Annexure " B " (subject to final survey) and in a form satisfactory to Council.	Pedestrian access (agreed to be granted under the Former Planning Agreement).	Prior to the issuing of the first occupation certificate in respect of the Development.	(No value ascribed)
D2	Additional land area of 210sm to include in the above public positive covenant for pedestrian access	Additional area for pedestrian access		\$1,470,000.00
D3	Easement for support of Council's road, including planned bus bays, services, utilities and smart poles Easement for support of the structure providing vertical support of the structure from the base of the stratum			

	<p>Easement for support of Council's road providing lateral support from the perimeter walls of the development.</p> <p>Easement for support of the slabs within the Development</p>			(No value ascribed)
Contribution Value Subtotal				\$11,042,381.00
LESS value of Acquired Land				\$ 1,097,000.00
Contribution Value Sub-total				\$ 9,945,381.00
Contribution Required Under this Agreement (after deducting payment of \$1,825,000.00 made on 13 November 2007				\$ 8,120,381.00

SCHEDULE 2

DEED OF ADOPTION AND ACKNOWLEDGMENT

Parties

Progress & Securities Building Pty Ltd of CAN 001 735 253 of Suite 709, 1 Newland Street, Bondi Junction in the State of New South Wales (**Developer**)

Burwood Council of 2 Conder Street, Burwood, New South Wales, 2134 (**Council**)

"## Insert name of Purchaser" of # (**Purchaser**)

Recitals

1. The Developer and the Council are parties to the Agreement, under which the Developer is not to sell any of the land the subject of the agreement without entering and procuring the purchaser to enter into a deed in this form.
2. The Developer wishes to sell to the purchaser the Sale Land.

Operative Provisions

1 Interpretation

- 1.1 In this Deed the following definitions apply:

The agreement means the planning agreement dated "## insert date" 200"##insert year" between the Developer and the Council made pursuant to s93F of the *Environmental Planning and Assessment Act 1979*.

Facilities means the facilities agreed to be provided by the Developer to the Council as described in Schedule 1 to the Agreement.

Sale Land means the land described in the first schedule to this deed.

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

1.2.1 Words or expressions defined in the agreement bear the same meaning in this deed.

1.2.2 Words importing the singular include the plural and vice versa.

1.2.3 Words importing any gender include any other gender.

2. Adoption of Agreement by Purchaser

- 2.1 The purchaser has read the agreement and agrees to be bound by it in so far as it applies to the Sale Land as if the purchaser were named as a party to it in the place of the Developer.
- 2.2 In particular, but without limiting the generality of the foregoing, the purchaser must comply with the provisions of clause 7 of the Agreement to the extent that the Developer has not done so at the date of this deed.

3. Conditions of Consent for Sale Land

- 3.1 The purchaser acknowledges and agrees that the Council has or will require, as a condition of any development consent with respect to the whole or part of the Sale Land, that the agreement be complied with as regards the land the subject of that consent.

SCHEDULE 1
(Clause 1.1)

Signed as a Deed

Signed sealed and delivered on behalf of)
the Developer) _____

Signed sealed and delivered on behalf of) _____

Signed sealed and delivered as Attorney for)

"## insert name of council" pursuant to)

Power of Attorney registered No.)

Book and in the presence of) _____

SCHEDULE 3

Environmental Planning and Assessment Regulation 2000

Explanatory Note (clause 30)

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

Parties

Progress & Securities Building Pty Ltd of ACN 001 735 253 of 1 Newland Street, Bondi Junction in the State of New South Wales (**Developer**)

Burwood Council of 2 Conder Street, Burwood, New South Wales, 2134 (**Council**)

1 Description of Subject Land

Lots 14 and 15 in DP 749949 together with Council's sub-stratum land beneath Railway Parade depicted in the diagram annexed to the Planning Agreement and marked "A" (**Land**).

2 Description of Proposed Development Application

A mixed use development building complex comprising a 3-level retail/commercial podium over four levels of basement car park (331 parking spaces) partly within Railway Parade, Burwood below ground level, residential floor space above in 3 residential tower structures of a total of 16, 19 and 19 storeys above footway level (from west to east) on top of a podium structure.

3 Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objective of the draft planning agreement is to ensure that the Development provides appropriate contributions for public amenities and public services within or adjacent to the Town Centre being the facilities envisaged by the Draft Contributions Plan (**Public Facilities**).

The draft planning agreement proposes that, in conjunction with the carrying out of the Development, the Developer must make a Development Contribution to the Council to the value of AUD\$4,070,000.00 less the cash contribution of \$1,825,000.00 made on 12 November 2007 under the prior executed Voluntary Planning Agreement. The Development Contribution required under this Agreement is fully detailed in Schedule 1.

The Council and the Developer have agreed that the contribution of \$4,070,000.00 together with the value of the sub-stratum land beneath Railway Parade (to be

transferred to the Developer by the Council in conjunction with the contribution), is satisfied by the contributions already paid by the Developer being:

- (a) the monetary payment made by the Developer to the Council of \$1,825,000.00 paid on 12 November 2007;
- (b) the monetary payment to be made by the Developer to the Council of \$1,225,000.00 following the grant to the Developer of the S96 approval and by no later than 14 days following execution of this Planning Agreement.
- (c) the monetary payment to be made by the Developer to the Council of \$1,020,000.00 prior to the issue of a construction certificate
- (b) plus the dedication of land as public road which will be used generally as open space at the east of the site as shown on the plan in Annexure "A"
- (c) plus the dedication of land as public road for road widening of Railway Parade by variable width of between 1.6 and 3 metres as shown on the plan in Annexure "B" (a total of 512.9 sqm subject to final survey) (road widening)
- (d) plus the provision of an easement for public access of variable width affecting the setback of the building from Railway Parade as widened as shown on the plan in Annexure "B" of the Agreement (subject to final survey);

The Agreement further provides that the Development will not be subject to any condition requiring further contributions for public amenities or public services under s.94 or s.94A of the Environmental Planning and Assessment Act 1979.

The Council has agreed to apply the monetary contribution towards:

- (a) the provision of 54 off-site car parking spaces required by the Development;
- (b) the embellishment of the public open space in accordance with the Development Consent (as modified if at all) prior to the issuing of an occupation certificate for the Development;
- (c) otherwise, for the provision of other Public Facilities.

4 ASSESSMENT OF THE MERITS OF THE DRAFT PLANNING AGREEMENT

4.1 The Planning Purposes Served by the Draft Planning Agreement

The draft planning agreement facilitates the orderly and progressive provision of the physical and human infrastructure required for the implementation of the Draft Contributions Plan as identified in Council infrastructure planning studies.

The Agreement facilitates the provision of the monetary contributions and dedication of land for road widening and public open space prior to the carrying out of the Development.

4.2 How the Draft Planning Agreement Promotes the Public Interest

The contribution toward the above infrastructure will result in the provision of infrastructure that will be utilised by the public and will facilitate the development of the Burwood Town Centre

4.3 For Planning Authorities:

4.3.1 Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities – N/A

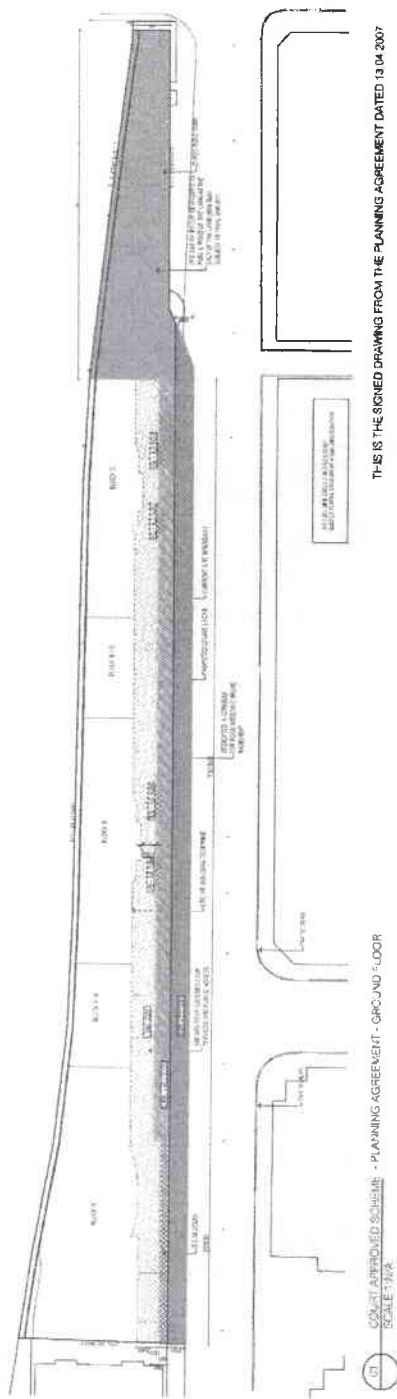
4.3.2 Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted – N/A

4.3.3 Councils – How the Draft planning Agreement Promotes the Elements of the Council's Charter

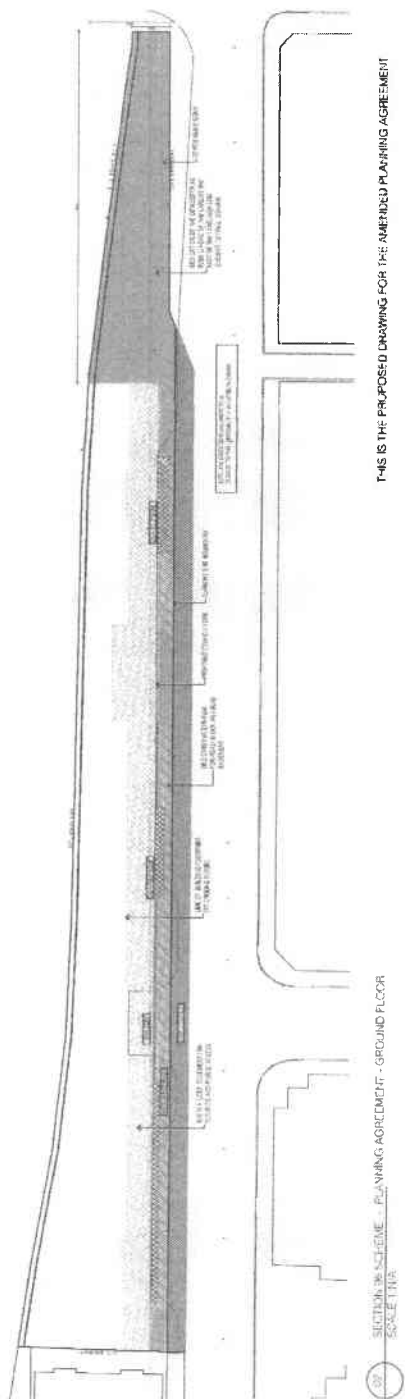
Council, as part of its charter, is the custodian and trustee of public assets and has to effectively account for and manage the assets for which it is responsible. The draft agreement provides for the contribution proposed by the development to be applied to appropriate public infrastructure.

4.3.4 All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

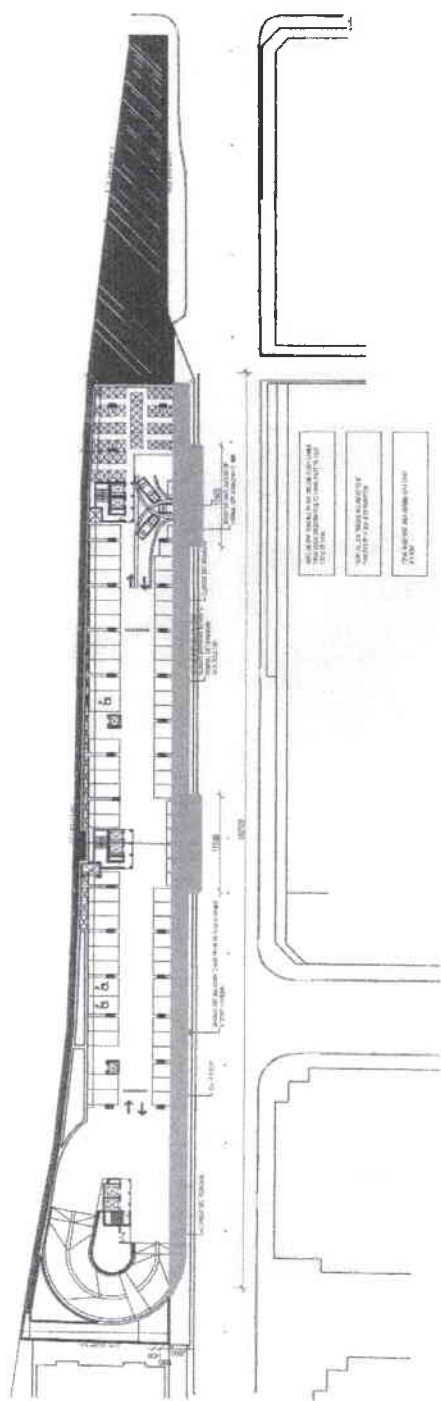
The draft planning agreement provides funding for components of Council's current Capital Works Programme. It also provides for additional infrastructure and will enable Council to fund the provision of additional infrastructure that is not currently within Council's works programme and financial resources. This agreement thus facilitates the integration, conformance and extension of Council's capital works plan.



DEDICATED AREA	
PUBLIC OPEN	
TOTAL: 185.00 SQM	
DEDICATED IN STRIP FOR ROAD WIDENING ABOVE	
TOTAL: 185.00 SQM	
BASEMENT	
TOTAL: 185.00 SQM	
(INCLUDING AREA FOR OVERPASS)	
TOTAL NEW DEDICATED AREAS:	
(D-POS) 185.00 SQM + (D-NW) 185.00 SQM =	
TOTAL: 370.00 SQM	
ORIGINAL DEDICATED ROAD WIDENING STRIP: C. 1968	
TOTAL: 371.00 SQM	
DEDICATED IN STRIP FOR ROAD WIDENING ABOVE	
BASEMENT AND BELOW BUILDING OVERPASS	
TOTAL: 371.00 SQM	
(AREA INCLUDED IN ROAD WIDENING DEDICATION)	
100 MIN DEEP EASEMENT FOR	
SERVICES AND PUBLIC ACCESS: 400 SQM	
TOTAL LAND DEDICATED:	
(D-POS) 371.00 SQM +	
(D-NW) 371.00 SQM =	
(SERVICE EASEMENT) 600 SQM	
TOTAL: 1343.00 SQM	

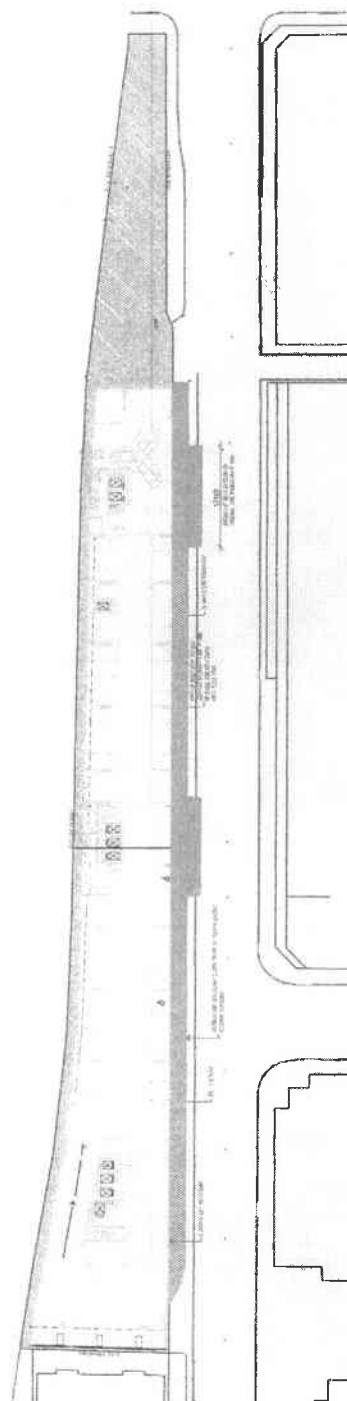


DEDICATED AREA	
PUBLIC OPEN	
TOTAL: 185.00 SQM	
DEDICATED IN STRIP FOR ROAD WIDENING ABOVE	
TOTAL: 185.00 SQM	
BASEMENT	
TOTAL: 185.00 SQM	
(INCLUDING AREA FOR OVERPASS)	
TOTAL NEW DEDICATED AREAS:	
(D-POS) 185.00 SQM + (D-NW) 185.00 SQM =	
TOTAL: 370.00 SQM	
ORIGINAL DEDICATED ROAD WIDENING STRIP: C. 1968	
TOTAL: 371.00 SQM	
DEDICATED IN STRIP FOR ROAD WIDENING ABOVE	
BASEMENT AND BELOW BUILDING OVERPASS	
TOTAL: 371.00 SQM	
(AREA INCLUDED IN ROAD WIDENING DEDICATION)	
100 MIN DEEP EASEMENT FOR	
SERVICES AND PUBLIC ACCESS: 400 SQM	
TOTAL LAND DEDICATED:	
(D-POS) 371.00 SQM +	
(D-NW) 371.00 SQM =	
(SERVICE EASEMENT) 600 SQM	
TOTAL: 1343.00 SQM	



THIS IS THE SIGNED DRAWING FROM THE PLANNING AGREEMENT DATED 13.04.2007

(01) COURT APPROVED SCHEMATIC - PLANNING AGREEMENT - BASEMENT
SCALE 1:100



THIS IS THE PROPOSED DRAWING FOR THE AMENDED PLANNING AGREEMENT

(02) SECTION OF SCHEMATIC - PLANNING AGREEMENT - BASEMENT
SCALE 1:100



Bondi Junction FSC NSW
Lvl 20/800 Oxford St

National Australia Bank Limited
ABN 12 004 044 937

Bank Cheque

Date 19 June 2008



Pay Burwood Council Or Order

the Sum of One million, two hundred and twenty five
thousand dollars

\$ 1 225 000.00

Not Negotiable

for National Australia Bank Limited

① For SECURITY FEATURES See reverse of cheque

① 516713 ① 08200121 1010000611



Westpac Banking Corporation ABN 33 007 457 141

Date 19 06 2008

For CREDIT of (account name)

BURWOOD COUNCIL
GENERAL FUND

Branch BSB no. / ACC NO

032 062 100000

Teller's initials

19 JUN

Cash \$

Cheques \$ 1,225,000.00

Transfer

Fee \$

TOTAL \$1,225,000.00

Please retain for statement verification

Burwood Council
PO Box 240
Burwood NSW 1805

Statement Date

25-06-2008

Page 1

Customer ABN:
84 362 114 428

Current:

\$2,808.76

Period 1:

Period 2:

Period 3:

AMOUNT DUE

\$2,808.76

Please return a copy of this statement with your payment to:

Network Data Solutions Pty Limited

Att: Accounts Department

Level 7, 275 Alfred Street, North Sydney, NSW, 2060

Or email: accounts@nds-it.com / Fax: (02) 8904-9088

Payment Methods: Cheque, EFT or Credit Card

Direct Deposit to: CBA - Martin Place

BSB: 062-000, Account: 1134 0605

Name: The Network Data Solutions Trust

