

COUNCIL COPY.

Legal Doc.
No 449

Planning Agreement

Burwood Council

Seven Stars Property Development Pty Limited

13-17 Oxford Street,
Burwood

Allens Arthur Robinson
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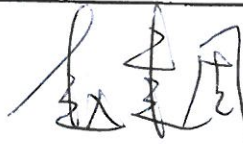
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449

Table of Contents

1. Definitions and Interpretation	2
1.1 Dictionary	2
1.2 Deed does not fetter discretion	3
1.3 Interpretation Act 1987	4
1.4 Headings	4
1.5 Subject to applicable laws	4
1.6 Compliance with New Laws	4
1.7 Conflicting interpretations	5
1.8 Severance of invalid provisions	5
1.9 Approvals and consents	5
1.10 Effect of this deed	5
2. Commencement, term and amendment of this deed	5
2.1 Commencement of this deed	5
2.2 Term of this deed	5
2.3 Amendment of this deed	5
3. Confidentiality and public announcements	6
3.1 This deed is not confidential	6
3.2 Other information confidential	6
4. Default	6
4.1 Notice of default	6
4.2 Reasonable time	6
4.3 Remedies	7
4.4 No waiver	7
5. Dispute resolution	7
5.1 Dispute resolution	7
6. Dealings with this deed	8
6.1 Assignment, novation etc	8
7. Goods and Services Tax	8
7.1 Definitions	8
7.2 GST to be added to amounts payable	8
7.3 Liability net of GST	9
7.4 GST obligations to survive termination	9
8. Miscellaneous	9
8.1 Choice of Law	9
8.2 Further assurance	9
8.3 Legal Costs	9
9. Monetary Contribution	10
9.1 Contribution by Seven Stars	10
9.2 Developer obligations	10
9.3 Refund of Development Contribution	10


Planning Agreement

Allens Arthur Robinson

Date	14th SEPTEMBER 2006
Parties	
1.	Burwood Council of 2 Conder Street, Burwood, New South Wales (<i>Burwood Council</i>); and
2.	Seven Stars Property Development Pty Limited (ABN 096 780 086) of Suite 1E, 9 Burwood Road, Burwood, New South Wales (<i>Seven Stars</i>).
Recitals	
A	Seven Stars is the applicant for the Development Application for the Land.
B	The Land is within Burwood Council's Local Government Area.
D	On 8 December 2004, Burwood Council granted the Development Consent, which in part included a condition that Seven Stars undertake the Utility Alterations.
E	On 20 May 2005, Seven Stars submitted a Modification Application for the Development Consent.
F	On 17 August 2005, Burwood Council determined the Modification Application which in part amended the condition that Seven Stars undertake the Utility Alterations.
I	Seven Stars has made an offer to Burwood Council to enter into this deed to make a Development Contribution in lieu of undertaking the Utility Alterations.
J	This deed is a planning agreement which is governed by Subdivision 2 of Division 6 of Part 4 of the Act, but which does not exclude the application of sections 94 and 94A of the Act to the Development. The benefits under this deed are not to be taken into consideration in determining any development contribution under section 94 of the Act for the Development.

It is agreed as follows.

PART 1 – Formal Matters

1. Definitions and Interpretation

1.1 Dictionary

The following words have these meanings in this deed unless the contrary intention appears:

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

Authority means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other agency or body with relevant power.

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

Commencement Date means the date of this deed.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

Default Notice has the meaning given in clause 4.1.

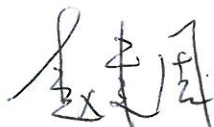
Development means the erection of 9 two-storey townhouses, comprising 7 two-bedroom townhouses and 2 three-bedroom townhouses over a basement carpark with 17 car spaces, in accordance with the Development Consent.

Development Application means development application (as defined by the Act) being number D244/2004 for the Development.

Development Consent means the development consent (as defined by the Act) of the Development Application.

Development Contribution means \$60,000, being a monetary contribution to be used by the Council for all or some of the Utility Alterations or, subject to clause 9.1(c), applied towards the upgrade of infrastructure or facilities or the provision of services.

Discretion has the meaning given in clause 1.2.



Land means Lot A and Lot B DP 377843 and Lot 1 DP 90036, known as 13-17 Oxford Street, Burwood.

Law means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future.

Local Government Area means an area proclaimed under section 204(1) of the *Local Government Act 1993*.

Modification Application means an application in accordance with section 96 of the Act.

Party means a party to this deed. **Parties** has a corresponding meaning.

Proceedings means Burwood Council v Seven Stars Property Development Pty Limited Land and Environment Court Proceedings Number 11209 of 2005.

State means the State of New South Wales and, where the context permits, includes a public authority as defined in section 4(1) of the Act.

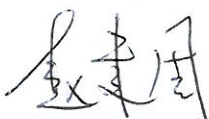
State Government means the government of the State, including its elected and appointed representatives.

Utility Alterations means the undergrounding of overhead power and telecommunication mains and services along the Hornsey Street frontage of the Land between Wentworth Road and Oxford Street to the requirements of the relevant public utility authorities, including:

- (a) the undergrounding of the affected private property services to the Land;
- (b) the undergrounding of the existing road crossing in Hornsey Street and Oxford Street;
- (c) the provision of 1 decorative street light in Hornsey Street;
- (d) the removal of an existing power pole in Hornsey Street; and
- (e) the provision of spare conduits for public utility authorities.

1.2 Deed does not fetter discretion

- (a) This deed is not intended to operate to fetter, in any manner:
 - (i) the power of Burwood Council to make any Law; or
 - (ii) the exercise by Burwood Council of any statutory power or discretion, (all referred to in this deed as a **Discretion**).
- (b) No provision of this deed is intended to, or does, constitute any fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 1.2 is substantially satisfied; and



- (ii) in the event that clause 1.2(b)(i) cannot be achieved without giving rise to a fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect; and
- (iii) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this deed which is held to be a fetter to the extent that is possible, having regard to the relevant court judgement.
- (c) Where a Law permits Burwood Council to contract out of a provision of that Law or gives Burwood Council power to exercise a Discretion, then if Burwood Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with that Law.
- (d) Without limiting this clause 1.2, nothing in this deed operates to limit the availability of any remedies available to Burwood Council under sections 123, 124 and 125 of the Act.

1.3 Interpretation Act 1987

Subject to clause 1.2 of this deed, section 3, Part 2, and sections 36, 38 and 76 of the *Interpretation Act 1987* (NSW) govern the interpretation of this deed to the extent to which they are applicable as if a reference in that Act to an *Act* or *instrument* is a reference to this deed and with such other modifications or adaptations as may be necessary for that governing purpose.

1.4 Headings

The headings in this deed do not form part of the operative provisions of this deed but are provided merely for the assistance of the reader.

1.5 Subject to applicable laws

This deed is to be read and performed subject to:

- (a) any Law or statutory rule; and
- (b) any lawful decision, direction, requirement or the like of any Authority of the State, which relates to the subject matter of this deed, and any act, matter or thing which is required or forbidden to be done by such a Law, statutory rule, decision, direction, or requirement does not constitute a breach of this deed even if it is contrary to this deed.

1.6 Compliance with New Laws

If a Law is changed or a new Law comes into force (both referred to as *New Law*) and Seven Stars is obliged by the New Law to do something or pay an amount which it is already contractually obliged to do or pay under this deed then, to the extent only that the relevant obligation is required under both the New Law and this deed, compliance with the New Law will constitute compliance with the relevant obligation under this deed.



1.7 Conflicting interpretations

If a provision of this deed is genuinely capable of different interpretations, the interpretation which:

- (a) is consistent with clause 1.2; and
 - (b) best meets the purposes of this deed,
- is to be preferred.

1.8 Severance of invalid provisions

Subject to clause 1.2, if a provision of this deed is declared to be invalid by a court, the remainder of this deed will, to the fullest extent possible, be read and performed as if the invalid provision did not form part of this deed.

1.9 Approvals and consents

Where this deed calls for a Party to give its consent or approval, that consent or approval may be given or withheld, or given subject to conditions, in the absolute discretion of the Party, except where otherwise provided in this deed.

1.10 Effect of this deed

- (a) The Parties agree that this deed is a planning agreement which is governed by Subdivision 2 of Division 6 of Part 4 of the Act, but which does not exclude the application of sections 94 and 94A of the Act to the Development.
- (b) The benefits under this deed are not to be taken into consideration in determining any development contribution under section 94 of the Act for the Development.
- (c) This deed applies to the Development.

2. Commencement, term and amendment of this deed

2.1 Commencement of this deed

This deed commences on the Commencement Date.

2.2 Term of this deed

This deed will remain in force until the earlier of:

- (a) it is terminated by operation of Law;
- (b) all obligations are performed or satisfied;
- (c) the Parties agree in writing that the Development will not proceed and Seven Stars surrenders the Development Consent to Burwood Council; or
- (d) the Development Consent lapses within the meaning of section 95 of the Act.

2.3 Amendment of this deed

The Parties agree that, subject to section 93G of the Act, this deed can be reviewed and amended at any time by mutual agreement.



3. Confidentiality and public announcements

3.1 This deed is not confidential

The terms of this deed are not confidential and this deed may be treated as a public document and exhibited or reported without restriction by any Party.

3.2 Other information confidential

(a) The Parties acknowledge that:

- (i) Confidential Information has been supplied to some or all of the Parties in the negotiations leading up to the making of this deed; and
- (ii) the Parties may disclose to each other further Confidential Information in connection with the subject matter of this deed.

(b) Subject to paragraphs (c) and (d), each Party agrees:

- (i) not to disclose any Confidential Information received before or after the making of this deed to any person without the prior written consent of the Party who supplied the Confidential Information; and
- (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this deed is kept confidential and protected against unauthorised use and access.

(c) A Party may disclose Confidential Information in the following circumstances:

- (i) in order to comply with the Law, State Government policy or local government policy or any listing rule; or
- (ii) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employee, consultant, adviser, financier or contractor undertakes to keep the information confidential.

(d) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

4. Default

4.1 Notice of default

In the event a Party considers another Party has failed to perform and fulfil an obligation under this deed, before it takes any action, it must give notice in writing to that Party (**Default Notice**) giving full 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 15 Business Days.

4.2 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, the weather, availability of labour,



equipment, strikes and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

4.3 Remedies

- (a) If a Party (*Defaulting Party*) fails to perform and fulfil its obligation as specified in a Default Notice (or any Default Notice amended after dispute resolution), the other Party may recover upon demand from the Defaulting Party the whole of the moneys then due to the other Party and not paid by the Defaulting Party.
- (b) However, if the issue of whether or not the Defaulting Party is in default in relation to the relevant matter in the Default Notice has been referred for determination under clause 5, then the other Party may only exercise its rights under this clause once the matter is determined and in accordance with that determination.

4.4 No waiver

Any time or other indulgence which is given by Burwood Council to Seven Stars to enable Seven Stars to perform this deed does not in any way amount to a waiver of any of the rights or remedies of Burwood Council under this deed.

5. Dispute resolution

5.1 Dispute resolution

- (a) The Parties agree to deal with any dispute which may arise between them in relation to this deed in the following manner:
 - (i) Initially the Parties must negotiate in good faith to seek resolution of the dispute.
 - (ii) Failing such resolution, the Parties must engage in mediation, through a process to be agreed or failing agreement as nominated by the President of the Law Society of New South Wales.
 - (iii) If not resolved by mediation, the dispute shall be referred for expert determination by an appropriately qualified expert selected by agreement between the Parties or failing agreement as appointed by the President of the Law Society of New South Wales.
- (b) The determination made pursuant to clause 5.1(a)(iii) shall be final and binding on the Parties, save in the case of manifest error, in which case either Party may have recourse to any available legal process.
- (c) The Parties shall each bear their own costs of the process described in clause 5.1 and one half of the costs of any mediator or expert who is appointed under clause 5.1.

6. Dealings with this deed

6.1 Assignment, novation etc

- (a) Neither Party may assign any of its rights or interests under this deed or novate this deed to any person without 15 Business Days prior written notice to the other Party.
- (b) Any notice issued under this clause 6.1 must include:
 - (i) particulars of the proposed assignee or novatee;
 - (ii) written confirmation that:
 - (A) the assignee or novatee has been provided with a copy of this deed; and
 - (B) the assignee or novatee agrees to be bound by this deed.

7. Goods and Services Tax

7.1 Definitions

In this clause:

Consideration has the meaning given by the GST Law.

GST has the meaning given by the GST Law.

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

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

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 the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

7.2 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

7.3 Liability net of GST

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.

7.4 GST obligations to survive termination

This clause will continue to apply after expiration or termination of this deed.

8. Miscellaneous

8.1 Choice of Law

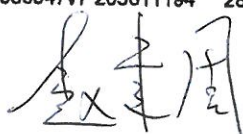
The Laws of New South Wales as in force from time to time govern this deed.

8.2 Further assurance

Each Party to this deed must sign and execute all documents and do all things as may be reasonably required to be done by the Party to give effect to this deed.

8.3 Legal Costs

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed.
- (b) All stamp duty (including fines, penalties and interest) payable on or in connection with this deed and any instrument executed under or any transaction evidenced by this deed must be borne by Seven Stars.





PART 2 - The rights and obligations of Burwood Council and Seven Stars

9. Monetary Contribution

9.1 Contribution by Seven Stars

- (a) In accordance with this deed, Seven Stars must make the Development Contribution at the time of executing this deed to satisfy its obligations under the Development Consent in relation to the Utility Alterations.
- (b) Subject to clause 9.1(c), Burwood Council agrees that Burwood Council must spend the Development Contribution on all or some of the Utility Alterations.
- (c) Where:
 - (i) it is impractical (in reasonable circumstances) for Burwood Council to comply with clause 9.1(b); or
 - (ii) Seven Stars gives its written consent to Burwood Council not complying with clause 9.1(b),

Burwood Council must spend the Development Contribution on the upgrade of infrastructure or facilities or the provision of services other than in the immediate vicinity of the Development on the basis that Seven Stars has satisfied its obligations under the Development Consent in relation to the Utility Alterations.

- (d) If requested by Seven Stars in writing, Burwood Council must provide reasonable evidence to Seven Stars of compliance by Burwood Council with its obligations under clauses 9.1(b) and 9.1(c).
- (e) Seven Stars must give, or procure, access to Burwood Council to the Land (if required) for the Utility Alterations which are to be carried out by Burwood Council for the purposes of carrying out those works.
- (f) Burwood Council indemnifies Seven Stars against all claims for which Seven Stars will or may be or become liable, whether before or after the expiration of this deed, in respect of or arising directly or indirectly from any loss or damage to property or death or injury to any person caused or contributed to by Burwood Council's use of the Land to carry out the relevant works contemplated by this clause 9.1.

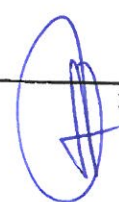
9.2 Developer obligations

Burwood Council and Seven Stars agree that the Development Contribution satisfies Seven Star's obligations in relation to the Utility Alterations arising under the Development Consent.

9.3 Refund of Development Contribution

Burwood Council must refund the Development Contribution to Seven Stars within 20 Business Days of:

- (a) this deed is being terminated by operation of Law;
- (b) the Parties agreeing in writing that the Development will not proceed and Seven Stars surrendering the Development Consent to Burwood Council: or
- (c) the Development Consent lapsing within the meaning of section 95 of the Act.



Planning Agreement

Allens Arthur Robinson 


Execution page

EXECUTED as a deed on ^{12th} day of Sept 2006.

Signed, sealed and delivered by Burwood
Council in the presence of

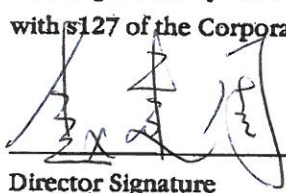

General Manager Signature

Pat Romano
Print Name

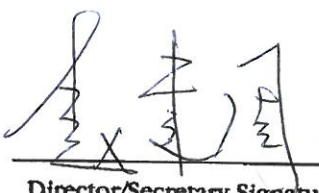

Witness Signature

Brian Olsen
Print Name

Executed by Seven Stars Property
Development Pty Limited in accordance
with s127 of the Corporations Act 2001:


Director Signature

JIANZHU ZHAO
Print Name


Director/Secretary Signature

JIANZHU ZHAO
Print Name

Signed for and on behalf
of GUOZHOU ZHAO by JIANZHU
ZHAO pursuant to Power of Attorney
Granted. No revocation of the
Power of Attorney received at time
of signing.