

Planning Agreement

23-27 George Street, Burwood

Burwood Council (Council)

ABN 84 362 114 428

and

George St Property Pty Ltd (Developer)

ACN 607 853 770

Developer: Initial Here

PS BS

Attorney: Initial Here



Contents

1.	Planning agreement under the Act	2
2.	Application of this Agreement	2
3.	Operation of this Agreement	2
4.	Application of section 7.11 and section 7.12 of the Act to the Development	2
5.	Definitions and interpretation	2
5.1	Definitions.....	2
5.2	Interpretation	4
6.	Development Contributions to be made under this Agreement	4
7.	Application of the Development Contributions	5
7.1	Use of Monetary Contribution by Council	5
7.2	Public Facilities.....	5
8.	Assignment and dealing with Land	5
9.	Acknowledgements	6
9.1	Planning Certificates	6
9.2	Consent Authority.....	6
10.	Dispute Resolution	6
10.1	Not commence	6
10.2	Written notice of dispute.....	6
10.3	Attempt to resolve	6
10.4	Mediation.....	6
10.5	Court proceedings	6
10.6	Not use information	6
10.7	No prejudice	7
11.	Enforcement	7
11.1	Enforcement in Court	7
12.	Notices	7
12.1	Written Notice.....	7
12.2	Change of Address	8
12.3	Time for Service of Notice.....	8
12.4	Service after hours, on Weekends and Holidays.....	8
13.	Approvals and consent	8
14.	Assignment and Dealings	8
15.	Costs	8
16.	Entire agreement	8
17.	Further acts	9
18.	Governing law and jurisdiction	9

19.	Joint and individual liability and benefits	9
20.	No fetter	9
21.	Representations and warranties	9
22.	Severability	9
23.	Modification	9
24.	Waiver	9
25.	Explanatory Note.....	10
26.	GST.....	10
26.1	Words	10
26.2	Supply	10
27.	Confidentiality	10
28.	Release from Agreement.....	10
	Execution Page	12
	Explanatory Note	13

Details

Date

14 November 2019

Parties

Name **Burwood Council**
ABN 84 362 114 428
Description **Council**
Notice Details Address Suite 1, Level 2, 1-17 Elsie Street
Burwood NSW 2134

Name **George St Property Pty Ltd**
ACN 607 853 770
Description **Developer**
Notice Details Address Shop 1, 36 Victoria Street
Burwood NSW 2134

Background

- A. The Developer is the registered proprietor of all strata properties that make up the Land.
- B. On 16 December 2016, the Developer made a Development Application to the Council for Development Consent to carry out the construction of a 20 storey mixed use development comprising a café on Level 1, commercial tenancies on Levels 2 and 3 and 58 residential units above basement car parking on the Land. The Development Application (No. 179/2016) seeks a 10% increase in FSR.
- C. As contemplated by section 7.4 of the Act, the parties wish to enter into an Agreement with respect to the 10% increase in FSR contemplated by the Development Application, and for the Developer to make a Development Contribution towards Public Facilities if Development Consent is granted to the Development Application.
- D. Development Application No. 179/2016 was approved by the Burwood Local Planning Panel on 10/07/2018.

Developer: Initial Here

B.B.S.

Attorney: Initial Here

[Signature]

Page 1

Operative Provisions

1. 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 Subdivision 2 of Division 7.1 of Part 7 of the Act.

2. Application of this Agreement

This Agreement applies to the Land and the Development.

3. Operation of this Agreement

- (a) This Agreement takes effect on the date of this Agreement after execution by both Parties.
- (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) Development Consent for the Development is surrendered in accordance with the Act; or
 - (iv) it is otherwise discharged or terminated in accordance with the terms of this Agreement.

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

- (a) This Agreement does not exclude the application of:
 - (i) section 7.11 or section 7.12 of the Act;
 - (ii) any Affordable Housing Levy;
 - (iii) any other monetary contributions;in connection with the Development Consent granted in respect of the Development.
- (b) The obligations of the Developer under this Agreement involve a Development 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**).

5. Definitions and interpretation

5.1 Definitions

In this Agreement the following definitions apply:

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

Approval means any approvals, consents, section 4.55 modifications, Part 6 certificates or approvals under the Act, certificates, construction certificates, occupation certificates,

complying development certificates, permits, endorsements, licences, conditions or requirements (and any variation to them) which may be required by this Agreement or the Development Consent granted for the Development.

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

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

Construction Certificate means a certificate issued under Part 6 of the *Environmental Planning and Assessment Act 1979* (NSW) approving building work to be carried out on the Land for the whole or part of the work granted by the Development Consent for the Development.

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

Development means the development of the Land in accordance with the Development Application No. 179/2016 for the construction of a 20 storey mixed use development comprising of a café on Level 1, commercial tenancies on Levels 2 and 3, and 58 residential units above basement car parking on the Land.

Development Application means Development Application No. 179/2016 lodged with the Council on 16/12/2016 and approved by the Burwood Local Planning Panel on 10/07/2018.

Development Consent has the same meaning as in the Act.

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

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

FSR means the floor space ratio as defined in the Burwood Local Environmental Plan 2012.

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 SP47, known as 23-27 George Street, Burwood.

Monetary Contribution means the sum of \$817,500.00 (eight hundred and seventeen thousand and five hundred dollars).

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

Public Benefit means the Monetary Contribution.

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

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

5.2 Interpretation

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) 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.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (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) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) 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.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.

6. Development Contributions to be made under this Agreement

- (a) Subject to clause (c) the Developer must pay to the Council the Monetary Contribution prior to the issue of the first Construction Certificate for the Development.
- (b) The Monetary Contribution reflects the additional 545 square metres of floor space sought in the Development Application for the Development, representing \$1,500 per additional square metre of floor space.
- (c) The payment of the Monetary Contribution will be by way of delivery of a bank cheque to the Council which must be:

- (i) made payable to the Council; and
- (ii) in a form acceptable to the Council.
- (d) The Monetary Contribution will be taken to have been paid when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds have been deposited in the Council's bank account.
- (e) The Developer covenants and agrees with the Council not to make an application for the issue of any Construction Certificate until the Monetary Contribution has been paid by the Developer to the Council.
- (f) If the Developer determines not to take up the Development Consent for the Development, the Developer must provide written notice to the Council of the Developer's:
 - (i) intention to not take up the Development Consent and
 - (ii) surrender of the Development Consent for the Development in accordance with section 4.63 of the Act.

7. Application of the Development Contributions

7.1 Use of Monetary Contribution by Council

The Monetary Contribution paid by the Developer under this Agreement will be used by the Council to develop Public Facilities.

7.2 Public Facilities

The Public Facilities will:

- (a) not be provided to coincide with the conduct or completion of the Development;
- (b) be constructed at a time determined by the Council at its absolute discretion;
- (c) be available for use by the general public and will not be restricted for use by patrons of the Development.

8. Assignment and dealing with Land

- (a) Subject to paragraph (b), the Developer must not transfer its interest in any of the whole or any part of the Land unless the proposed transferee accepts the obligations of this Agreement.
- (b) For the purpose of giving effect to paragraph (a) the Council, the Developer and any transferee must enter into a novation agreement where the transferee agrees to carry out the obligations of the Developer under this Agreement and the Developer is released, from the date of execution of the novation agreement, from the obligations contained in this Agreement to the extent that they:
 - (i) are novated to the transferee; and
 - (ii) remain to be performed.

9. Acknowledgements

9.1 Planning Certificates

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.

9.2 Consent Authority

The Parties acknowledge that the Council is a consent authority with statutory rights and obligations pursuant to the terms of the Act and other legislation.

10. Dispute Resolution

10.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause.

10.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the dispute.

10.3 Attempt to resolve

On receipt of notice under clause 10.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

10.4 Mediation

If the parties do not agree within 7 days of receipt of notice under clause 10.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

10.5 Court proceedings

If the dispute is not resolved within 42 days after notice is given under clause 10.2 then any party which has complied with the provisions of this clause may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

10.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution

process undertaken under this clause for any purpose other than in an attempt to settle the dispute.

10.7 No prejudice

This clause does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

11. Enforcement

11.1 Enforcement in Court

- (a) This Agreement may be otherwise enforced by either party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
 - (i) a party from bringing proceedings in the Land Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) the Council from exercising any function under the Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

12. Notices

12.1 Written Notice

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

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

Council

Attention: The General Manager

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

Post: PO Box 240, Burwood NSW 1805

Fax Number: (02) 9911 9900

Email: council@burwood.nsw.gov.au

Developer

Attention: Peter Sleiman

Address: Shop 1, 36 Victoria Street, Burwood NSW 2134

Post: Shop 1. 36 Victoria Street, Burwood NSW 2134

Fax Number: N/A

Email: peter@sleiman.com.au

12.2 Change of Address

If a Party gives the other Party three (3) Business Days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Time for Service of Notice

Any notice, consent, information, application or request is to be treated as given or made at the following time if it is:

- (a) delivered, when it is left at the relevant address.
- (b) sent by post, two (2) Business Days after it is posted.
- (c) 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.

12.4 Service after hours, on Weekends and Holidays

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

13. Approvals and consent

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

14. Assignment and Dealings

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

15. Costs

- (a) The Developer agrees to pay its own costs directly related and incidental to negotiation, preparing, executing, stamping and registering the Agreement, including any costs of lodging / removing caveats on the title to the Land.
- (b) The Developer agrees to pay the Council's reasonable costs in relation to the preparation of this Agreement.

16. Entire agreement

- (a) This Agreement constitutes the entire agreement between the Parties regarding the matters set out on it and superseded any prior representations,

understandings or arrangements made between the Parties, whether orally or in writing.

- (b) No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

17. Further acts

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

18. Governing law and jurisdiction

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

19. Joint and individual liability and benefits

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

20. No fetter

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

21. Representations and warranties

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

22. Severability

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

23. Modification

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

24. Waiver

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

25. Explanatory Note

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

26. GST

26.1 Words

All words in this clause which are also defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("the GST Act") have a corresponding meaning to that in the GST Act.

26.2 Supply

- (a) The consideration for any supply under this Agreement excludes GST.
- (b) Where a party to this Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment.
- (c) The maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply.
- (d) Despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

27. Confidentiality

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

28. Release from Agreement

Once the Council is satisfied that the Developer has fully complied with all of its obligations under this Agreement, the Council agrees to provide a full release and discharge of this Agreement with respect of the whole of the Land. In such circumstances the Council will do all things reasonably necessary, including the execution of any documents to enable the Developers to remove any caveat and the notation of this Agreement on the title to the Land.



Execution Page

EXECUTED AS AN AGREEMENT

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


Melissa Madonna
(Print) Name of Witness

Date

14/11/19

Signature of Attorney


Tommaso Briscese
(Print) Full Name of Attorney

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

(Print) Address

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


On behalf of George St Property Pty Ltd

George St Property Pty Ltd ACN 607 853 770 executed this agreement pursuant to section 127 of the Corporations Act:

Signature of Witness


JOSEPH TANNOUS
Print Full Name of Witness

Signature of Witness


JOSEPH TANNOUS
Print Full Name of Witness

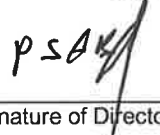
Date

11/11/19

Signature of Director / Secretary


Pierre Sleiman
Print Name of Director / Secretary

Signature of Director


Boutros Saba
Print Name of Director

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979 (NSW)*

1. Parties

Burwood Council (**Council**)

ABN 84 362 114 428

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

and

George Street Property Pty Ltd (**Developer**)

ACN 607 853 770.

Address: Shop 1, 36 Victoria Street, Burwood NSW 2134

2. Description of the Land to which the Agreement Applies

The Land comprises Strata Plan 47 which is otherwise known as 23-27 George Street Burwood.

The Developer is the registered proprietor of all strata properties that make up the Land.

3. Description of Proposed Development

The construction of a 20 storey mixed use development comprising of a café on Level 1, commercial tenancies on Levels 2 and 3 and 58 residential units above basement car parking.

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

4.1 Summary of Objectives

The objective of the Agreement is for the Developer to make a development contribution to the Council upon the granting of Development Consent for the Development.

The Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Agreement is a voluntary agreement under which Development Contributions (as defined in clause 5.1 of the Agreement) are made by the Developer for various public purposes (as defined in s7.4(2) of the Act).

4.2 Effect of the Agreement

The Agreement:

- (a) relates to the carrying out of the Development on the Land;
- (b) does not exclude the application of s7.11 & s7.12 of the Act to the Development;
- (c) does not exclude the application of s7.24 of the Act to the Development;
- (d) requires the Developer to make a monetary contribution as a Development Contribution for a material public benefit.

5. Assessment of the Merits of the Agreement

5.1 The Planning Purposes Served by the Agreement

The Agreement serves the following planning purposes:

- (a) contributing to the Council's public works program to provide for better public facilities within the Council's local government area;
- (c) activating the streetscape and contributing to a diversity of commercial services in the local community through the provision of commercial floor space within the Development; and
- (d) contributing to improved landscaping in the public domain.

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

The Agreement promotes the following objects of the Act:

- (a) the proper management, development and conservation of natural and artificial resources, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- (b) the promotion and co-ordination of the orderly and economic use and development of land; and
- (c) the provision and co-ordination of community services and facilities.

The Agreement provides for a reasonable means of achieving those purposes as set out in section 5.1 above.

6. How the Agreement Promotes the Public Interest

6.1 How Agreement Promotes the purposes of the *Local Government Act 1993 (NSW)*

The Council is the planning authority that would be a party to the Agreement. The Council is a public authority constituted under the *Local Government Act 1993 (NSW)*.

The Agreement promotes the following purposes of this Act:

- (a) Section 7(a):
 - to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales ...

(b) Section 7(d):

to give councils: ... the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public ... to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities ...

The Agreement promotes the above purposes of the Act in the same way that is set out in section 5.1 above.

6.2 How Agreement Promotes the Elements of the Council's Charter

The Agreement promotes Council's Charter under section 8 of the *Local Government Act* 1993 (NSW) by:

- (a) providing directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; bearing in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.

It does this through the means set out in section 5.1 above.

6.3 Whether the Agreement Conforms with the Council's Capital Works Program

The Agreement conforms with Council's Capital Works Program to the extent that it will supplement the Program by providing a monetary contribution and s7.12 Development Contributions to provide public facilities.

6.4 Whether the Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Agreement contains requirements that must be complied with prior to the issue of the first Construction Certificate for the Development.

The Agreement does not specify that certain requirements must be complied with before an Occupation Certificate or Subdivision Certificate is issued.

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

The Agreement has a positive impact on the public, and in particular, the residents of the local community. This is because the Agreement provides an opportunity to improve the range and quality of services available to the local community and contributes to an improved public domain.

8. Other Matters

None.