

Planning Agreement

Burwood Council
ABN 84 362 114 428

and

Seiner Pty Ltd
ACN 605 893 392

26 Parnell Street, Strathfield


Developer : Initial Here 

Attorney: Initial Here 

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PARTIES

THIS PLANNING AGREEMENT is made on 10/1/2019

BETWEEN:

- (1) **Burwood Council** ABN 84 362 114 428 of Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW (Council).
- (2) **Seiner Pty Ltd** ACN 605 893 392 of 50 The Boulevard, Strathfield NSW (**Developer**)


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BACKGROUND

- (A) The Developer is the owner of the Land.
- (B) The Land has a 15.24m primary frontage to Parnell Street, a maximum site depth of 38.35m and a total site area of 584.6 sqm.
- (C) On or about 19 October 2016 the Council granted development consent for Development Application No. 46/2016, involving demolition works and the construction of a Residential Flat Building of 8 storeys comprising 30 apartments and basement parking for 27 cars.
- (D) On or about 4 April 2017 the Council granted approval for a section 96 modification application associated with Development Application No. 46/2016 for additional basement car parking.
- (E) On or about 23 August 2017 the Developer lodged a section 96 modification application associated with Development Application No. 46/2016 seeking approval for an additional residential storey.
- (F) The Developer has prepared and submitted, in connection with the Modification Application:
- (1) a statement of environmental effects and accompanying plans.
 - (2) a written request seeking an exception to the 'height of building' development standards set out in clause 4.3 of the Burwood LEP 2012.
 - (3) a written request seeking an exception to the 'floor space ratio' development standards set out in clause 4.4 of the Burwood LEP 2012.
- (G) The Developer has also prepared and submitted, in connection with the Modification Application, an offer by the Developer to the Council to enter into this Agreement seeking approval for an additional 0.334:1 FSR over the maximum FSR for the Land (3:1), in exchange for providing the Public Benefits set out in this Agreement, comprising:
- (1) a monetary contribution to Council for Public Facilities.
- subject to the terms of this Agreement.
- (H) The Modification Application lodged with Council on 23 August 2017 was granted approval by the Burwood Local Planning Panel at its meeting held 13 November 2018.
- (I) As contemplated by section 93F of the Act, the parties wish to enter into an Agreement to give effect to the proposal made by the Developer.

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OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 Definitions

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

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

Agreement means this planning agreement.

Approval means any approvals, consents, section 96 modifications, Part 4A 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 Law for the commencement and carrying out of the Development.

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

Burwood LEP 2012 means Burwood Local Environmental Plan 2012.

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

Development means the development of the Land in accordance with:

- (a) Development Application No. 46/2016.
- (b) modification application in relation to Development Application No. 46/2016, approved on or about 4 April 2017.
- (c) Modification Application, the subject of this Agreement.

Development Consent means the consent granted to Development Application No. 46/2016


Explanatory Note means the Explanatory Note set out in **Schedule 2** of this Agreement.

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

GST has the meaning as in the GST Law.

GST law has the same meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of GST.

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Land means the whole of the Land described in the certificate of title Lot 140 in DP 1211528, known as 26 Parnell Street, Strathfield.

Law means:

- (a) the common law including principles of equity, and
- (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority,

that presently apply or that may apply in the future.

Modification Application means the modification application lodged with Council on or about 23 August 2017 in relation to Development Application No. 46/2016.

Monetary Contribution means the sum set out in **Schedule 1**.

Public Benefits mean:

- (a) Monetary Contribution,

as set out in **Schedule 1** of this Agreement.

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


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

1.2 Interpretation

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

- (a) headings are for convenience only and do not affect interpretation.
- (b) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation.
- (d) a reference to a party to the Agreement includes a reference to servants, representatives, agents, and contractors of the party.
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified, supplemented or replaced from time to time.
- (f) a reference in this Agreement to any Law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

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- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender.
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it.
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.
- (j) A reference to the word "include", "includes" or "including" is to be interpreted without limitations.
- (k) the Explanatory Note set out in this Agreement is not to be used to assist in construing the Agreement.
- (l) a reference to "\$" or "dollar" is to Australian currency.

1.3 Compliance with New Laws

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

2. Planning Agreement under the Act

The Parties acknowledge and agree that this Agreement is a planning agreement within the meaning of section 93F of the Act and is governed by Part 4 of the Act.


3. Application of this Agreement

The Agreement applies to the Land and the Development.

4. Operation of this Agreement

- (a) This Agreement takes effect on the date of this Agreement after execution by both parties, subject to clause 4(b).
- (b) This Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) the Sunset Date is reached, or
 - (iv) the Development Consent is surrendered in accordance with the Act; or

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- (v) it is otherwise discharged or terminated in accordance with the terms of this Agreement.
- (c) If a legal challenge to the Modification Application by a third party results in the Modification Application being rendered invalid or unenforceable, then the Developer may, in its absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.

5. Monetary Contribution

5.1 Payment

- (a) The Developer must, upon the Council granting consent for the Modification Application, pay the Monetary Contribution to the Council in accordance with Schedule 1 of this Agreement.

5.2 No trust

- (a) Nothing in this Agreement creates any form of trust arrangement or fiduciary duty between the Council and the Developer. Following receipt of the Monetary Contribution, the Council is not required to separately account for the Monetary Contribution or to report to the Developer regarding expenditure of the Monetary Contribution.

5.3 Expenditure by the Council

- (a) The Council will, in its absolute discretion, use and apply the funds comprising the Monetary Contribution towards the Public Facilities.
- (b) The Public Facilities will:
 - (i) not be provided to coincide with the conduct or completion of the Development;
 - (ii) be constructed at a time determined by the Council at its absolute discretion;
 - (iii) be available for use by the general public and will not be restricted for use by owners, occupiers or patrons of the Development.

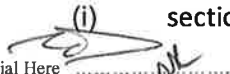
5.4 Monetary Contributions to be made under this Agreement


- (a) The payment of the Monetary Contribution will be by way of the 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.

6. Application of the Act to the Development

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

(i) sections 94 and 94A of the Act

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- (ii) any Affordable Housing Levy;
- (iii) any other monetary contributions;

in connection with the Development.

- (b) The obligations of the Developer under this Agreement involve a contribution to or provision of public amenities and services over and above those which would otherwise be imposed under section 94 and section 94A of the Act ('the benefits'). The benefits are not to be taken into consideration by the Council in determining contributions under s94 and s94A of the Act.

7. Registration of Agreement

7.1 Land ownership / Mortgagees consent

The Developer represents and warrants that:

- (a) it is the registered proprietor of the Land; and
- (b) it has obtained the consent of all persons that have an interest in the Land prior to executing this Agreement.


7.2 Registration of Agreement

- (a) The Developer agrees it will procure the registration of this Agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the register for the Land in accordance with section 93H of the Act prior to the issue of any Construction Certificate for the works comprising the Modification Application.
- (b) The Developer at its own expense will, prior to the execution of this Agreement, take all practical steps and otherwise do anything that Council reasonably requires, to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered in the Land; and
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title;

to enable the registration of this Agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the register for the Land in accordance with section 93H of the Act; and

- (c) The Developer, at its own expense, will take all practical steps, and otherwise do everything that the Council reasonably requires:

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- (i) to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the Agreement is entered into by the Parties but in any event, no later than 20 Business Days after that date;
- (ii) to procure the registration of this Agreement by the Registrar-General either in relevant folios of the register for the Land; or in the General Register of Deed if this Agreement relates to land not under the *Real Property Act 1900* (NSW) as soon as reasonably practicable after the Agreement is lodged for registration but, in any event, no later than 20 Business Days after the date on which the Developer lodges this Agreement with the Registrar-General.

7.3 Release and discharge of Agreement

The Council agrees to do all things reasonably required by the Developer to release and discharge this Agreement with respect to any part of the Land upon the Developer satisfying all of the Public Benefit obligations of this Agreement in respect of that part of the Land.

7.4 Lodgment of Caveat by Council

- (a) Until such time as registration of this Agreement on the Certificates of Title to the Land, the Developer agrees that Council may lodge any caveat reasonably necessary to prevent any dealing with the Land or any part of it in a manner which is inconsistent with this Agreement.
- (b) If Council lodges a caveat in accordance with this clause, then the Council will do all things reasonably required to ensure that the caveat does not prevent or delay either the registration of this Agreement or any related Dealing with the Land. The Council will promptly, following registration of this Agreement, do all things reasonably required to remove the caveat from the title to the Land.

8. Dealing with the Land

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

9. GST

9.1 Interpretation

In this clause 9:

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

9.2 Consideration GST exclusive

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

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9.3 Payment of GST - additional payment required

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

9.4 Tax invoice

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

9.5 Adjustment event

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

9.6 Reimbursements

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

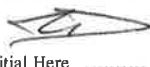
- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under clause 9.3 in respect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

10. Default

10.1 Notice

In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to that party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such

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notice require the default to be remedied within a reasonable time not being less than 21 days.

10.2 Reasonable Time

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

10.3 Suspension of time-dispute

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

11. Dispute Resolution

11.1 Notice of Dispute

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

11.2 Response to Notice

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

11.3 Negotiation

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

11.4 Further Notice if Not Settled

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

11.5 Mediation

- (a) If a party gives a dispute Notice calling for the dispute to be mediated:
- (i) the parties must agree to the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a

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requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);

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

11.6 Expert Determination

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

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- (iii) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (iv) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (v) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs.

11.7 Litigation

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

12. Notices

- (a) Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (i) delivered or posted to that Party at its address set out below; or
 - (ii) faxed to that Party at its fax number as set out below; or
 - (iii) emailed to that Party at its email address as set out below.


Council

Attention: The General Manager
 Address: Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW
 Post: P.O. Box 240, Burwood NSW 1805
 Facsimile: 02 9911 9900
 Email: council@burwood.nsw.gov.au

Developer

Attention: Mr Steven Devine
 Ms Tanya Devine
 Address: 50 The Boulevard, Strathfield
 Post: As above.
 Facsimile: N/A

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Attorney: Initial Here 

Email: sdevine@devinere.com.au

- (b) If a Party gives another Party 3 Business Days notice of a change of its address, fax number or email address, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address, fax number or email.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted;
 - (iii) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number;
 - (iv) if it is sent by email, 2 Business Days after it is emailed.
- (d) If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

13. Enforcement

13.1 This Agreement may be otherwise enforced by either party in any court of competent jurisdiction.

13.2 For the avoidance of doubt, nothing in this Agreement prevents:


- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) 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.

13.3 The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of the Council existing at law or which the Council would otherwise have available to it.

14. General

14.1 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, agent or employee of the Party, before this Agreement was executed, except as permitted by Law.

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14.2 Further acts

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

14.3 Governing Law and Jurisdiction

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

14.4 Joint and individual liability and benefits

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

14.5 No fetter

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

14.6 Representations and warranties

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

14.7 Severability

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

14.8 Release and Discharge

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

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the Council will provide a release and discharge of this Agreement with respect to all or any part of the Land, as the case may be:

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

14.9 Modification, Review and Replacement

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

14.10 Waiver

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

14.11 Confidentiality

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

14.12 Assignment and Novation

- (a) This Agreement may be assigned or novated by the Developer in accordance with any dealings the Developer may have with respect to its interests in the Land without requiring the Developer to obtain Council's Approval in respect of either the dealing or the assignment or the novation of this Agreement.

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- (b) Council agrees to execute any deeds of assignment or novation or other documents necessary to assign, novate or otherwise transfer all of the Developer's rights and obligations under the Agreement to a successor as contemplated by the agreement.

14.13 Force Majeure

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

14.14 Legal and associated costs


- (a) The Developer will pay to the Council the Council's reasonable costs and disbursements of preparing, negotiating, executing, stamping and carrying into effect this Agreement and any document related to this Agreement within 7 days of a written demand by the Council for such payment.
- (b) The Developer will also pay the Council's reasonable costs of engaging qualified persons to verify any costing and/or valuation reports submitted in conjunction with this Agreement within 7 days of a written demand by the Council for such payment.
- (c) The Developer will also pay the Council the Council's reasonable Costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

14.15 Counterparts

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

14.16 Effect of Scheduled terms and conditions

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

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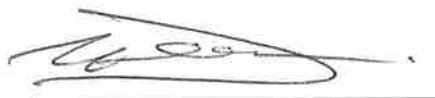
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Execution Page

Dated: 10/1/2019

Executed as an Agreement

Signed by Seiner Pty Ltd (ACN 605 893 392) under section 127(1) of the Corporations Act 2001



Signature

DIRECTOR

Office (director)

STEVEN DEVINE

Full Name

25/12/18

Date



Signature

DIRECTOR

Office (director or secretary)

TANYA DEVINE

Full Name

25/12/18

Date

Signed for and behalf of Burwood Council by its attorney, Bruce Gordon Macdonnell under Power of Attorney dated 29 November 2017 registered book 4736 number 451 who has no notice of the revocation of that Power of Attorney, in the presence of



Witness

Vera Karpowicz

Full Name

10/1/2019

Date



Signature of Attorney

Bruce Gordon Macdonnell, General Manager

Name and Position

10/1/2019

Date

SCHEDULE 1 - PUBLIC BENEFITS


Overview


The Developer is to pay, dedicate or complete, as the case may be, the Public Benefits under this Agreement strictly in accordance with the table below.

	Public Benefit	Value	Due date for Payment, Dedication or Completion
1.	Monetary Contribution	\$302,100.00	Payment to Council before the issuing of any additional Construction Certificate in connection with the Development.
	Total:	\$302,100.00	

Calculation of Monetary Contribution and Public Benefits Generally

The Modification Application seeks approval for a revised GFA of 1,955.2 sqm, which is **201.4 sqm** above the allowable GFA under the Burwood LEP 2012. For the additional GFA of 201.4 sqm, the Developer has relied upon a rate of \$1,500 rate per square metre, equating to \$302,100.00 (201.4sqm x \$1,500.00). This represents the Monetary Contribution.

Developer : Initial Here 

Attorney: Initial Here 

SCHEDULE 2 - EXPLANATORY NOTE

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979 (NSW)

1. Parties

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

Seiner Pty Ltd. ACN 605 893 392. 50 The Boulevard, Strathfield NSW (**Developer**)

2. Description of Subject Land

The subject Land means the whole of the Land described in the certificate of title Lot 140 in DP 1211528, known as 26 Parnell Street, Strathfield.

The Developer is the registered proprietor of the subject land.

3. Description of Proposed Modification Application

The development is documented in:

- (a) Development Application No. 46/2016.
- (b) Modification Application in relation to Development Application No. 46/2016, approved on or about 4 April 2017.
- (c) Modification Application, the subject of this Agreement.

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

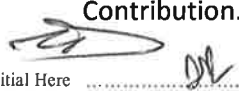
4.1 Summary of Objectives

The objectives of the draft Planning Agreement are to:

- (a) make a Monetary Contribution to Council for the augmentation or improving of open space, community facilities, or other public facilities as determined by the Council, in its absolute discretion.

4.2 Nature and Effect of the Draft Planning Agreement

- (a) The draft Planning Agreement requires the Developer to provide a Monetary Contribution.

Developer : Initial Here 

Attorney: Initial Here 

- (b) The obligations of the Developer, and the costs consequences for the Developer, are over and above those contributions imposed under section 94, section 94A and section 94EF of the Environmental Planning and Assessment Act 1979 (NSW) in connection with the proposed development.

5. Assessment of the Merits of the Draft Planning Agreement

5.1 The Planning Purposes Served by the Draft Planning Agreement

In accordance with section 93F(2) of the Environmental Planning and Assessment Act 1979 (NSW), the Planning Agreement promotes the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services;
- (b) the provision of (or the recoupment of the cost of providing) transport or other infrastructure;
- (c) the funding of recurrent expenditure relating to the provision of public amenities or public services.

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

The draft Planning Agreement promotes the following objects of the Environmental Planning and Assessment Act 1979 (NSW):

- (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, 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;

The draft Planning Agreement provides for a reasonable means of achieving those purposes.

6. How the Draft Planning Agreement Promotes the Public Interest

6.1 How the Draft Planning Agreement Promotes the Elements of the Council's Charter (now Principles)

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

- (a) the provision of monetary resources to assist Council in the provision of civil infrastructure, public domain upgrades and facilities for the augmentation, or improvement of open space, community facilities, and other public facilities for the Burwood Town Centre and ensures that those facilities are managed efficiently and effectively. Council is the custodian and trustee of public assets and has a responsibility to effectively plan for, account for, and manage the assets.

Developer: Initial Here

Attorney: Initial Here

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

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

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

The draft Planning Agreement provides that the Monetary Contribution be made prior to the issue of any interim or final occupation certificate in accordance with the Environmental Planning and Assessment Act 1979 (NSW) as the Monetary Contribution is payable upon the Council granting consent for the Modification Application.

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

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

8. Other Matters

None.

Developer : Initial Here 

Attorney: Initial Here 