

Planning Agreement

Burwood Council (Council)

ONEMark One Property Group Pty Ltd | ACN 605 499 661 (Developer)

Contents

1.	Planning agreement under the Act	2
2.	Application of this Agreement.....	4
3.	Operation of this Agreement	4
4.	Application of section 94 and section 94a of the Act to the Development	4
5.	Definitions and interpretation.....	Error! Bookmark not defined.
5.1	Definitions.....	Error! Bookmark not defined.
5.2	Interpretation	Error! Bookmark not defined.
6.	Development Contributions to be made under this Agreement	4
7.	Application of the Development Contributions.....	5
7.1	Use of Contribution by Council	5
7.2	Public Facilities.....	5
8.	Registration on Title	5
8.1	Land ownership / Mortgagees consent.....	5
8.2	Registration of Agreement	5
8.3	Release and discharge of Agreement	6
8.4	Registration of Caveat by Council.....	6
9.	Assignment and dealing with Land.....	6
10.	Acknowledgements	7
10.1	Planning Certificates	7
10.2	Consent Authority.....	7
11.	Dispute Resolution	7
11.1	Not commence	7
11.2	Written notice of dispute.....	8
11.3	Attempt to resolve	8
11.4	Mediation.....	8
11.5	Court proceedings.....	8
11.6	Not use information	8
11.7	No prejudice	8
12.	Enforcement.....	8
12.1	Enforcement in Court	8
13.	Notices.....	9
13.1	Written Notice.....	9
13.2	Change of Address	9
13.3	Time for Service of Notice.....	9
13.4	Service after hours, on Weekends and Holidays.....	10
14.	Approvals and consent	10
15.	Assignment and Dealings	10
16.	Costs.....	10
17.	Entire agreement	10

18.	Further acts	10
19.	Governing law and jurisdiction	10
20.	Joint and individual liability and benefits	11
21.	No fetter	11
22.	Representations and warranties	11
23.	Severability	11
24.	Modification	11
25.	Waiver	11
26.	Explanatory Note	11
27.	GST	11
27.1	Words	11
27.2	Supply	11
28.	Confidentiality	12
29.	Release from Agreement	12

Details

Date

Parties

Name	Burwood Council	
Description	Council	
Notice Details	Address	Suite 1, Level 2, 1-17 Elsie Street Burwood NSW
Name	ONEMark One Property Group Pty Ltd	
ACN	605 499 661	
Description	Developer	
Notice Details	Address	Suite 3, Level 9, 99 York St, Sydney NSW 2000

Background

- A. The Developer is the registered proprietor of the land at Nos. 32-34 Burwood Road, Burwood with respective legal descriptions of Lot 2 and Lot 3 in DP607913 (**the Land**).
- B. On 21 March 2017, the Developer made Development Application BD.2017.039 to the Council for Development Consent to carry out the construction of nine storey mixed use development above basement parking on the Land.
- C. The Developer is prepared to make a Development Contribution towards Public Facilities if Development Consent is granted to the Development.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement the following definitions apply:

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

Approval means any approvals, consents, section 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 this Agreement or the Development Consent.

Authority means any 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 4A 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 for the Development granted Development Consent.

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 BD.2017.039 for the construction of a part four and part five storey mixed-use development above basement car parking on the Land.

Development Application has the same meaning as in the Act.

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.

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 the land at Nos. 32-34 Burwood Road, Burwood with respective legal descriptions of Lot 2 and Lot 3 in DP607913

Monetary Contribution means the sum of \$259,600.00 (two hundred and fifty-nine thousand six hundred dollars) (excluding GST) representing \$1,100 (excluding GST) per square metre for 236m² FSR in excess of the permitted FSR for the Development pursuant to Burwood Local Environmental Plan 2012.

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).

1.2 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) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) 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.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) 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.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) 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.
- (n) Any schedules and attachments form part of this Agreement.

2. Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

This Agreement applies to the Land and the Development.

4. Operation of this Agreement

The Parties agree that this Agreement:

- (a) is effective and binding on the Parties upon execution by both Parties of this Agreement;
- (b) will operate from the date of the grant of Development Consent for the Development;
- (c) will remain in force and effect until the earlier of:
 - (i) termination by operation of the Law;
 - (ii) satisfaction of all the obligations under this Agreement; or
 - (iii) termination in accordance with the terms of this Agreement.

5. Application of section 94 and section 94A of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) section 94 or section 94A of the Act;
 - (ii) any Affordable Housing Levy;
 - (iii) any other monetary contributions;in connection with the Development Application for the Development.
- (b) Benefits under this Agreement are not to be taken into account in determining a development contribution under section 94 or section 94A.

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 any Construction Certificate for the Development.
- (b) 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.
- (c) 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 104A of the Act.

7. Application of the Development Contributions

7.1 Use of 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. Registration on Title

8.1 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.

8.2 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.
- (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) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession;
 - (iii) the execution of any documents; and
 - (iv) the production of the relevant duplicate certificates of title.

to enable the registration of this Agreement in accordance with Clause 8.2.

- (c) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (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; and
 - (ii) to procure the registration of this Agreement by the Registrar-General either in the 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.

8.3 Removal from Register

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it):

- (a) provided the Council is satisfied the Developer has duly fulfilled its obligations under this Agreement, and is not otherwise in default of any of the obligations under this Agreement; or
- (b) in the event any Development Consent granted or determination of the Development Application lapses.

8.4 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 Development Contribution obligations of this Agreement in respect of that part of the Land.

8.5 Registration 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.

9. Assignment and Dealings

9.1 Application of Clause

Clause 9.2 and 9.3 of this Agreement do not apply in relation to any sale, transfer, assignment or disposal of the Land if:

- (a) the agreement is registered against the title to the Land in accordance with clause 8, at the time of the sale, transfer, assignment or disposal; or
- (b) the Council has provided a release and discharge under clause 8.4, and

in those circumstances the Developer must notify Council of any transfer, sale, assignment or disposal of any part of its rights, title or interest in the Land or in the Development within 10 Business Days of that transfer, assignment or disposal taking effect.

9.2 Assignment

- (c) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (d) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (e) Any purported Dealing in breach of this clause is of no effect.

9.3 Transfer of Land

- (f) The Developer may not transfer, assign or dispose of the whole or any part of their rights, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with their obligations under this agreement;
 - (ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (v) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

10. Acknowledgements

10.1 Planning Certificates

The Developer acknowledges that the Council may include a notation on Planning Certificates under section 149(5) of the Act in relation to this Agreement.

10.2 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.

11. Dispute Resolution

11.1 Not commence

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

11.2 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 (**Dispute Notice**).

11.3 Attempt to resolve

On receipt of a Dispute Notice, 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.

11.4 Mediation

If the parties do not agree within 7 days of receipt of a Dispute Notice (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 may 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.

11.5 Court proceedings

If the dispute is not resolved within 42 days after a Dispute Notice is received 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.

11.6 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.

11.7 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.

12. Enforcement

12.1 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 and 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.

13. Notices

13.1 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 2134
Post: PO Box 240, Burwood NSW 1805
Fax Number: (02) 9911 9900
Email: council@burwood.nsw.gov.au

Developer

Attention: Ken Peng
Address: Suite 3, Level 9, 99 York St, Sydney NSW 2000
Post: Suite 3, Level 9, 99 York St, Sydney NSW 2000
Fax Number: 02 9299 2363
Email: Kenpeng@onemark.com.au

13.2 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.

13.3 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.

13.4 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.

14. 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.

15. Assignment and Dealings

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

16. Costs

The Developer agrees to pay its own costs directly related and incidental to negotiating, preparing, executing, stamping and registering the Agreement, including any costs of lodging / removing caveats on the title to the Land. The Developer will pay Council's reasonable legal costs not exceeding \$5,500.00 (five thousand five hundred dollars) inclusive of GST directly related, and incidental to negotiating, preparing, executing, stamping and registering the Planning Agreement and of drafting, registering and removing caveats on the title to the Land.

17. Entire agreement

- (a) This Agreement constitutes the entire agreement between the Parties regarding the matters set out in it and supersedes 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. Explanatory Note

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

27. GST

27.1 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.

27.2 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.

28. 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.

29. 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 Developer to remove any caveat and the notation of this Agreement on the title to the Land.

Signing page

EXECUTED AS AN AGREEMENT

Signed for and on behalf of **Burwood Council** by its attorney, **Bruce Gordon MacDonnell**, under Power of Attorney dated 29 November 2017 registered book 4736 number 451, in the presence of:

Signature of Witness

(Print) Name of Witness

Signature of Attorney

Bruce Gordon MacDonnell, Acting General Manager

(Print) Full Name of Attorney

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

(Print) Address

On behalf of ONEMark One Property Group Pty Ltd

ACN 605 499 661, pursuant to section 127 of the Corporations Act by:

Signature of Director/Secretary

Print Full Name of Director/Secretary

Signature of Director

Print Name of Director

PLANNING AGREEMENT - Explanatory Note

Environmental Planning and Assessment Regulation 2000 (NSW) (EP&A Regulation 2000)

Planning Agreement for the provision of monetary contribution for public benefit at 32-34 Burwood Rd, Burwood

Under Section 93F of the *Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)*

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2) ONEMark One Property Group Pty Ltd (**Developer**)

2. Description of Subject Land

Folio Identifiers: Lot 2 in DP 607913 and Lot 3 in DP 607913
Location: 32-34 Burwood Rd, Burwood

3. Description of Proposed Development

The Developer has lodged a development application (being DA 2017/039) for the land which proposes a mixed-use development comprising commercial floor space and residential units over basement car parking. The application includes a voluntary planning agreement for material and financial contribution to Council as a public benefit as part of the application seeking approval for additional gross floor space of 236m² of residential floor space above what the Burwood LEP would normally allow overall.

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

[Clause 25E(1)(a) of the EP&A Regulation 2000]

The intent of the Planning Agreement is to ensure that public benefits are provided in the form of provision, augmentation or improvement of open space, community facilities or other public facilities as proposed by the development application and determined by Council.

The Planning Agreement is proposed to require a monetary contribution for an amount of \$259,600.00 (excluding GST) being \$1,100.00 (excluding GST) {Note: \$1,100 applies to Burwood Road North only} per square metre 236m² of GFA in excess of the permitted GFA limit for the development payable after development consent is granted and before issue of any Construction Certificate.

5. Assessment of the Merits of the Planning Agreement

[Clause 25E(1)(b) of the EP&A Regulation 2000]

5.1 The planning purposes served by the Planning Agreement

[Clause 25E(2)(e) of the EP&A Regulation 2000]

The Planning Agreement serves the following planning purpose:

- The monetary contributions paid by the **Developer** under this Planning Agreement will be used by **Council** to provide, augment, or improve open space, community facilities, or other public facilities as determined by Council.

Whether the Planning Agreement provides for a reasonable means of achieving that purpose:

- (i) Council has conducted an Urban Design Study which revealed that in parts of the Burwood Town Centre, including the area in which the subject land is located, there is some potential for a maximum increase of 10% in FSR. Council has also prepared a Burwood Open Space and Community Facilities Study, which identified public benefit requirements in the Burwood Local Government Area .
- (ii) The Planning Agreement will secure a considerable material benefit to the public as the Council is to use, or put the monetary contribution towards, the provision of material benefits such as civil infrastructure, public domain upgrades and facilities for the Burwood Town Centre, which will not only benefit the users and those in the immediate vicinity of the Burwood Town Centre but the wider Burwood population. This is considered to be a substantial public benefit and the Planning Agreement achieves this objective of delivering the benefit.

5.2 Promotion of the public interest

[Clause 25E(2)(a) and (c) of the EP&A Regulation 2000]

The Planning Agreement promotes the public interest by:

- Ensuring the orderly use and development of land by ensuring that public benefits are provided where a development site achieves additional FSR.

The Planning Agreement promotes one or more of the objects of the EP&A Act as follows:

- (i) The proper management and development of land for the purpose of promoting the social and economic welfare of the community and a better environment;
- (ii) The provision and co-ordination of community services and facilities; and
- (iii) Opportunities for public involvement and participation in environmental planning and assessment.

5.3 Promotion of the Council's charter

[Clause 25E(2)(d) of the EP&A Regulation 2000]

The Planning Agreement promotes one or more of the elements of Council's Charter (now Principles) under Section 8 of the *Local Government Act 1993* (NSW) as follows [italicised sections come directly from the former Charter]:

- (i) Council undertakes to provide *adequate, equitable and appropriate services for the community*. The Planning Agreement provides the 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*.

- (ii) Council undertakes to involve *councillors, members of the public, users of facilities and services, and council staff* in its activities. The Planning Agreement process provides an opportunity for the community and stakeholders to be involved and interested people are invited to make comment during the exhibition period. The public exhibition and the consideration of this matter at Council meetings are intended to *keep the local community informed*.

5.4 Capital Works Program

[Clause 25E(2)(f) of the EP&A Regulation 2000]

Whether Council has a capital works program, and if so, whether the Planning Agreement conforms with or promotes that capital works program:

- Council has in place a capital works program, but the program does not, to date, identify public benefits within the Burwood Town Centre.
- Council has prepared a Burwood Community Facilities and Open Space Study which identifies works and improvements to community facilities and open space to be carried out. These are known as public benefits. This study will inform the capital works program as it is reviewed annually where those public benefits will be included within the capital works program including when and where sufficient funds are available.

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

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