

Burwood Council

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ORDINARY MEETING

Notice is hereby given that a meeting of the Council of Burwood will be held in the Council Chamber, Suite 1, Level 2, 1-17 Elsie Street, Burwood on Tuesday 12 December 2017 at 6.00pm to consider the matters contained in the attached Agenda.

Bruce Macdonnell
ACTING GENERAL MANAGER

Our Mission

**Burwood Council will create a quality lifestyle for its citizens
by promoting harmony and excellence in the delivery of its services**

CONFLICT OF INTERESTS

What is a "Conflict of Interests" - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Non-pecuniary – are private or personal interests the Council official has that do not amount to a pecuniary interest as defined in the Local Government Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

Who has a Pecuniary Interest? - A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- The person, or
- The person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or
- A company or other body of which the person, or a nominee, partner or employer of the person, is a member.

No Interest in the Matter - However, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
- Just because the person is a member of, or is employed by, a Council or statutory body or is employed by the Crown.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter so long as the person has no beneficial interest in any shares of the company or body.

N.B. "Relative", in relation to a person means any of the following:

- a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - A person does not breach the Act if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

What interests do not have to be disclosed (S 448 Act)?

- (a) an interest as an elector,
- (b) an interest as a ratepayer or person liable to pay a charge,
- (c) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this Part,
- (d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,
- (e) an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not),
- (f) an interest of a member of a council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee,
- (g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:
 - (i) land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or
 - (ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i), if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal,
- (h) an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company,

- (i) an interest of a person arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership,
- (j) an interest of a person arising from the making by the council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
 - (i) the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation,
 - (ii) security for damage to footpaths or roads,
 - (iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council or by or under any contract,
- (k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),
- (l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252,
- (m) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor,
- (n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,
- (o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,
- (p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 448 of the Local Government Act.

Non-pecuniary Interests - Must be disclosed in meetings.

If you are a Council official, other than a member of staff of Council and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) Remove the source of the conflict by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official;
- b) Have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in Section 451(2) of the Act apply.

If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.

Disclosures to be Recorded - A disclosure (and the reason/s for the disclosure) made at a meeting of the Council or Council Committee must be recorded in the minutes of the meeting.

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AGENDA

FOR AN ORDINARY MEETING OF BURWOOD COUNCIL
TO BE HELD ON TUESDAY 12 DECEMBER 2017 IN THE COUNCIL CHAMBERS, 1-17 ELSIE STREET,
BURWOOD COMMENCING AT 6.00 PM.

I DECLARE THE MEETING OPENED AT (READ BY MAYOR)

ACKNOWLEDGEMENT OF COUNTRY (READ BY MAYOR)

"I would like to acknowledge the Wangal people who are the Traditional Custodian of this Land. I would also like to pay respect to the Elders both past and present of the Wangal Nation and extend that respect to other Aboriginals present".

PRAYER (READ BY MAYOR)

"Lord, we humbly beseech thee to vouchsafe thy blessing on this Council, direct and prosper its deliberations for the advancement of this area and the true welfare of its people."

TAPE RECORDING OF MEETING (READ BY MAYOR)

"Members of the Public are advised that Meetings of Council and Council Committees are audio recorded for the purpose of assisting with the preparation of Minutes.

The tape recordings will be subject to the provisions of the Government Information (Public Access) Act 2009 (GIPA).

Tapes are destroyed two (2) months after the date of the recording"

APOLOGIES/LEAVE OF ABSENCES

DECLARATIONS OF INTERESTS BY COUNCILLORS

DECLARATION OF POLITICAL DONATIONS (READ BY MAYOR)

"Councillors & Members of the Gallery

As a result of recent changes to the Legislation that governs the legal process for the determination of Development Applications before Council, a person who makes a relevant application to Council or any person with a financial interest in the application must now disclose any reportable political donation or gift made to any local Councillor or employee of Council. Council will now require in its Development Application Forms this disclosure to be made.

Council is also required to publish on its website all reportable political donations or gifts. Should any person having business before Council this evening and being an applicant or party having a financial interest in such application feel that they have not made the appropriate disclosure, Council now invites them to approach the General Manager and to make their disclosure according to Law."

RECORDING OF COUNCILLORS VOTING ON PLANNING DECISIONS

In accordance with Section 375A of the Local Government Act a division must be called for and taken on every Environmental Planning & Assessment decision. The names of those Councillors supporting and those opposed to the decision are to be recorded in the meeting minutes and the register retained by the General Manager.

OPEN FORUM ACKNOWLEDGMENT (READ BY MAYOR)

The Mayor to ask each speaker to confirm that they had read the guidelines about addressing the Council and acknowledge that they had been informed that the meeting was being recorded and that the Council accepts no responsibility for any defamatory comments made. Speakers should refrain from providing personal information unless it is necessary to the subject being discussed, particularly where the personal information relates to persons not present at the meeting

OPEN FORUM COMMENCES

CONFIRMATION OF MINUTES

Recommendation

That the Minutes of the following Meeting of Burwood Council:

A. Council Meeting held on 28 November 2017

copies of which were previously circulated to all Councillors be and hereby confirmed as a true and correct record of the proceedings of that meeting.

ADDRESS BY THE PUBLIC ON AGENDA ITEMS ACKNOWLEDGMENT (READ BY MAYOR)

The Mayor to ask each speaker to confirm that they had read the guidelines about addressing the Council and acknowledge that they had been informed that the meeting was being recorded and that the Council accepts no responsibility for any defamatory comments made.

ADDRESS BY THE PUBLIC ON AGENDA ITEMS COMMENCES

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QUESTIONS WITHOUT NOTICE

Councillors are requested to submit any Questions Without Notice in writing.

(ITEM 91/17) DRAFT - VOLUNTARY PLANNING AGREEMENT FOR 14 BURWOOD ROAD BURWOOD

File No: 17/53940

REPORT BY ACTING DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES

Summary

Applicant: Urban Link
Owner: James Trung Vinh Ngo
Developer: James Trung Vinh Ngo

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with a Development Application (DA) for 14 Burwood Road Burwood have been publicly notified in accordance with the relevant legislation. The draft VPA will provide for the developer to pay a monetary contribution to Council in lieu of a shortfall in parking. Council's endorsement is now sought to enter into the VPA after the granting of the DA.

Background

A draft VPA and EN were submitted to Council in conjunction with DA BD.2016.013. The DA proposes the construction of a boarding house. The VPA provides for a contribution of \$49,500 in lieu of one car parking space, which is required but cannot be provided on-site.

The documents were referred to Council's solicitors for their advice and vetting. The draft VPA and EN have been modified in negotiation with the applicant to resolve discrepancies and anomalies identified by Council's solicitors.

Further minor revision of the draft VPA may be necessary prior to execution, e.g. updating footer or insertion of dates. Any changes will not alter the purpose or intention of the VPA.

Consultation

Following the modification and negotiation of the document contents, the draft VPA and EN were publicly notified for a period of 28 days from 31 October 2017 to 28 November 2017. The public notice was placed in the local newspaper and on Council's website. Hard copies were also made available to view at Council's Customer Service Centre. No submissions have been received in response to the public exhibition.

Planning or Policy Implications

Council has in place a *Planning Agreement Policy*. The Policy contains an acceptability test which stipulates the matters that Council should consider when determining whether or not to enter into a VPA. Consideration of these matters against the draft VPA is outlined below:

1. The VPA is directed towards a proper or legitimate planning purpose. The planning purpose of the VPA is to provide funds to Council to provide additional car parking to redress the parking shortfall within the development. The VPA is generally consistent with Council's DCP in allowing monetary contributions in lieu of the on-site parking provision for land zoned B4 Mixed Use.
2. The VPA would result in a public benefit. The VPA would seek to provide public car parking, being made available to the general public, in place of parking within a private development.
3. The VPA provides a reasonable means of achieving the relevant purpose. The VPA provides for the monetary contribution in exchange for the parking shortfall within the development. Council will utilise the funds provided for public car parking that will ultimately be more

beneficial to the community.

4. The VPA would be taken into consideration in the assessment of the DA. The DA must stand on its own merits from a design, planning and amenity perspective, which is the subject of a separate planning assessment. If the VPA is not entered into, the applicant would be expected to amend the DA or its approval could not be granted.
5. The VPA would produce outcomes that meet the general values and expectations of the community, and protect the overall public interest. The provision of safe and practical public parking by Council is an expectation of the community. The VPA provides Council with the financial resources to assist in this provision.
6. The VPA promotes Council's strategic objectives as outlined in Clause 2.1 of Council's *Planning Agreements Policy*, particularly:
 - Objective 'a' – *to provide an enhanced and more flexible development contributions system for Council.* The VPA encourages flexibility by enabling a monetary contribution towards public amenities, as opposed to strict compliance with on-site parking requirements, to the mutual benefit of the developer and the community.
 - Objective 'b' – *to supplement or replace, as appropriate, the application of s94 and s94A of the Act to development.* The use of the VPA in this instance supplements Council's Section 94A Plan because the existing plan cannot be used to obtain contributions in the case of parking shortfall.
 - Objective 'e' – *to lever planning benefits from development wherever possible.* The VPA would facilitate the provision of public car parking in place of private parking, which represents a public benefit.
7. The VPA conforms to the fundamental principles governing the Council's use of planning agreements as set out in Clause 2.2 of the *Planning Agreements Policy*, particularly:
 - *Principle 'a' – planning decisions may not be bought or sold through planning agreements.* Council is not obliged to support the DA and instead, each application must be considered on its merits.
 - *Principle 'd' – Council will not use planning agreements for any purpose other than a proper planning purpose.* The manner in which the VPA is proposed to be used is generally in accordance with Council's DCP.
8. These are not considered to be any circumstances that may preclude the Council from entering into the VPA should it determine to do so.

Financial Implications

The VPA would provide for a monetary contribution of \$49,500 to Council towards the provision of public car parking within the Burwood Town Centre. Council would be obliged under legislation to allocate the contributions and any return on its investment to the provision of, or the recoupment of, the cost of providing public car parking.

The provision of public parking by Council would not coincide with the completion of the subject development and would be undertaken at a time determined by Council at its discretion.

Conclusion

Council's endorsement is now sought to enter into the VPA for 14 Burwood Road Burwood. The VPA would provide Council with a monetary contribution of \$49,500 for public car parking. It is recommended that arrangement be made for the execution of the VPA by Council authorising the

signing of the agreement, after the granting of the DA, which would include a condition on the consent requiring that the VPA be entered into.

Recommendation(s)

1. That Council enter into the Voluntary Planning Agreement for 14 Burwood Road Burwood for the provision of a monetary contribution of \$49,500 towards public facilities after the granting of the consent for Development Application BD.2016.013, which would include a condition on the consent requiring that the VPA be entered into.
2. That Council authorise the Acting General Manager to sign the Voluntary Planning Agreement and any related documentation under his Power of Attorney.
3. That Council authorise the Acting General Manager to endorse the minor revisions of the Voluntary Planning Agreement documents prior to execution.
4. That the Developer pay the monetary contribution to Council, on or before, the execution of the Voluntary Planning Agreement by Council.

Attachments

- 1 [↓](#) Attachment to Council Report - VPA and EN for 14 Burwood Road, Burwood

ATTACHMENT 1

ITEM /17 Draft - Voluntary Planning Agreement for 14 Burwood Road Burwood.DOC Attachment to Council Report - VPA and EN for 14 Burwood Road, Burwood

DEED OF PLANNING AGREEMENT

PARTIES

Burwood Council of Suite 1, Level 2, 1-17 Elsie Street Burwood in the State of New South Wales
(**Council**).

and

James Trung Vinh Ngo of 14 Burwood Road, Burwood in the State of New South Wales
(**Developer**).

Background

- A. On 18 November 2016 the Developer submitted a Development Application DA 13/2016 to the Council for Development Consent to carry out the Development on the Land.
- B. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if the Development Consent was granted.
- C. The Developer is the registered proprietor of the Land.

Operative Provisions

1. Planning Agreement under the Act

The parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act and is governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2. Application of this Agreement

This Agreement applies to both the Land and the Development.

3. Operation of this Agreement

This Agreement operates from the date that it is executed by both parties and ends on the first to occur of the following:

- (1) It is terminated by operation of law.
- (2) All the obligations on the parties under this Agreement are performed or satisfied by the parties.
- (3) The parties agree in writing that the Development will not proceed and the Developer surrenders the Development Consent to Council.
- (4) The Development Consent lapses within the meaning of section 95 of the Act.

4. Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

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

Agreement means this Deed which witnesses the parties' Voluntary Planning Agreement herein. Wherever the word "Agreement" appears herein and the context permits, it shall be read as a reference to this Deed.

Version Control: 19/09/17

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

Development means DA 13/2016 issued by the Council in respect of the property known as 14 Burwood Road, Burwood NSW 2134

Development Application has the same meaning as in the Act.

Development Consent means a Development Consent granted by Council in favour of the Developer in respect of DA 13/2016.

Development Contribution means a monetary contribution in the sum of \$49,500.00 exclusive of GST required to be made by the Developer.

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 Lot 6 in Deposited Plan 771894, known as 14 Burwood Road, Burwood NSW 2134.

Monetary Contribution means \$49,500.00 exclusive of GST.

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

Public Facility means car parking within the Burwood Town Centre for use by the public.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to 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 including any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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- (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 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.

5. Development Contributions to be made under this Agreement

- 5.1 The Developer will pay to the Council a Monetary Contribution in the sum of forty nine thousand and five hundred dollars (\$49,500.00) (exclusive of GST) on or before the execution of this Agreement.
- 5.2 The Developer must deliver to Council a bank cheque in a form acceptable to the Council for the amount of the Monetary Contribution.
- 5.3 Execution of this Agreement and payment of the Monetary Contribution shall occur prior to the issue of any Construction Certificate with respect to the Development.
- 5.4 The Developer covenants and agrees with the Council not to make or permit an application for the issue of any Construction Certificate until the payment required to be made to the Council hereunder has been paid.

6. Application of the Development Contributions

- 6.1 The Monetary Contribution paid by the Developer under this Agreement will be used by Council to develop its Public Facility.
- 6.2 The Public Facility will:
 - (a) not be provided to coincide with the conduct or completion of the Development;
 - (b) be constructed at a time determined by 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.

7. Application of Section 94 and Section 94A of the Act to the Development

This Agreement does not exclude the application of section 94 or section 94A of the Act to the Development. Benefits under the Planning Agreement are not to be taken into account in determining a development contribution under section 94 or section 94A.

8. Registration of this Agreement

- 8.1 The Proprietor further warrants and covenants with the Council:
 - (a) that he has the consent to the registration of this Agreement over the title to the Land pursuant to section 93H of the Act from all persons who have an interest in the Land;
 - (b) that prior to the issue of any Construction Certificate for the Development, he shall cause this Agreement to be registered on the title of the Land;

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- (c) that if this Agreement is not registered on the title to the Land, the Developer must not assign any interest in the Land or any part thereof unless:
 - (i) Council consents to the assignment (acting reasonably); and
 - (ii) the proposed assignee has entered into an agreement to the satisfaction of Council under which the assignee agrees to be bound by terms equivalent to the terms of this Agreement; and
 - (iii) the Developer is not in breach of any terms of this Agreement.

8.2 The Developer further covenants and agrees with the Council that pending the registration of this Agreement on the title of the Land as required by clause 8.1, the Council shall be entitled to register a caveat at Land & Property Management Authority over the title to the Land to protect its interest therein pursuant to this Agreement

9. Acknowledgements

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

9.2 The parties acknowledge that 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 If a party believes that there is a dispute in respect of this Agreement then:

- (a) the party must give notice in writing to the other party stating that there is a dispute (the Dispute Notice); and
- (b) the Dispute Notice must outline:
 - (i) what the party believes the dispute to be;
 - (ii) what the party wants to achieve;
 - (iii) what the party believes will settle the dispute; and
 - (iv) who will be the party's representative to negotiate the dispute.

10.2 Within fifteen (15) business days of a Dispute Notice served, the representatives of each of the parties must meet in order to resolve the dispute.

10.3 Both parties must adhere to the dispute resolution procedure set out in this Agreement. The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.

10.4 If the parties cannot resolve the dispute after adhering to the dispute resolution procedure set out in this Agreement then either party may seek any other avenues available to it in order to resolve the dispute.

11. Enforcement

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

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- 11.2 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.

11.3 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.

12. Notices

12.1 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) Email 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: 9911 9900
Email: council@burwood.nsw.gov.au

Developer

Attention: James Trung Vinh Ngo
Address: 14 Burwood Road Burwood 2134
(mail to PO Box 1168, Burwood NSW 2134)
Fax Number: 9747 1288
Email: jamesngo@dentalnet.com.au

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

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two (2) business days after it is posted.

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(c) 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.

12.4 If any notice, consent, information, application or request is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5.00pm on that day on 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 obligated 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 any respective transferees, assignees or successors.

15. Costs

The Developer shall bear the Council's 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.

16. Entire Agreement

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

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 constructed as limiting or fettering in any way the exercise of any statutory discretion or duty.

ATTACHMENT 1

ITEM /17 Draft - Voluntary Planning Agreement for 14 Burwood Road Burwood.DOC Attachment to Council Report - VPA and EN for 14 Burwood Road, Burwood

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 non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

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

26. GST

26.1 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 The consideration for any supply under this Planning Agreement does not include any amount for GST.

26.3 Where a party to this Planning 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.

26.4 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.

26.5 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 Planning 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.

ATTACHMENT 1

ITEM /17 Draft - Voluntary Planning Agreement for 14 Burwood Road Burwood.DOC Attachment to Council Report - VPA and EN for 14 Burwood Road, Burwood

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

ATTACHMENT 1

ITEM /17 Draft - Voluntary Planning Agreement for 14 Burwood Road Burwood.DOC
Attachment to Council Report - VPA and EN for 14 Burwood Road, Burwood

EXECUTED AS A DEED

Signed for and on behalf of **Burwood Council** by its attorney, **Michael Gerard McMahon**, under power of attorney dated 6 July 2011 registered book 4615 number 590, in the presence of:)
)
)
)
)
)
)

.....
Signature of Witness

.....
Signature of Attorney

.....
(Print) Name of Witness

Michael Gerard McMahon
.....
(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.

Signed by **James Trung Vinh Ngo** in the presence of

.....
James Trung Vinh Ngo

.....
Signature of Witness

.....
(Print) Name of Witness

Explanatory Note

Planning Agreement for the provision of monetary contribution in lieu of Visitor Parking spaces at 14 Burwood Road, Burwood NSW.
Under Section 93F of the Environmental Planning and Assessment (EP&A) Act 1979

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2) James Trung Vinh Ngo (**Developer**)

2. Description of Subject Land

The land to which the Planning Agreement relates is as follows:

Folio Identifiers: 6/771894
Location: 14 Burwood Road, Burwood NSW

3. Description of Proposed Change to Development

The Developer has lodged a Development Application (being DA 13/2016) which provides a shortfall of one Visitor Parking space.

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

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

The offer made by the **Developer** as set out in the Planning Agreement is based on the parking provision of Burwood Council's Development Control Plan and is consistent with that provision.

The intent of the Planning Agreement is to ensure that the parking needs of the incoming population into the Burwood local government area are met.

The monetary contributions to be provided by the **Developer** under the Planning Agreement is an amount of \$49,500.00, payable on the date of execution of the Agreement and before issue of any Construction Certificate.

5. Assessment of the Merits of the Planning Agreement

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

5.1 The planning purposes served by the Planning Agreement

[Section 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 develop public carparking facilities within the Burwood Town Centre.

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

The planning provision enabling monetary contributions in lieu of parking on-site is contained within Burwood Development Control Plan, a publically exhibited document which was initially adopted by Council on 12 February 2013. The mechanism allows the aggregation of funds by Council for the provision of efficient and sensitively located public carparking facilities.

5.2 Promotion of the public interest

[Section 25E(2)(a) 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 the location and design of public carparking facilities function effectively and safely. The Planning Agreement provides for the provision of public carparking in lieu of private-use Visitor Parking.

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

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

The Planning Agreement promotes one or more of the elements of Council's charter under Section 8 of the Local Government Act 1993 as follows [italicised sections come directly from the Charter]:

Council undertakes to provide *adequate, equitable and appropriate services for the community*. The Planning Agreement provides the monetary resources for Council to assist in the provision of additional public carparking and ensure 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*.

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*.

Council seeks to ensure that it *acts consistently and without bias*, which is why Council's provisions for Planning Agreements which allow for contributions in lieu of parking is set out in its Development Control Plan.

5.4 Capital Works Program

[Section 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 that capital works program:

Council has in place a capital works program, but the program does not, to date, identify additional public carparking facilities within the Burwood Town Centre. The capital works program is subject to annual review and any proposal for additional public carparking would be initiated where sufficient funds are available.

(ITEM 92/17) DRAFT - VOLUNTARY PLANNING AGREEMENT FOR 2A-8 BURWOOD ROAD, BURWOOD

File No: 17/53289

REPORT BY ACTING DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES

Summary

Applicant: Urban Link Pty Ltd
Owner: BRD Apartments Pty Ltd
Company Director: Peter Sleiman

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) in connection with a Modification Application for 2A-8 Burwood Road Burwood have been publicly notified in accordance with the relevant legislation. The draft VPA will provide for the developer to pay a monetary contribution as well as dedicate land to Council for the widening of Esher Lane Burwood, in exchange of additional gross floor area (GFA), which is 14.12% above the maximum GFA permitted under the *Burwood Local Environmental Plan* (BLEP).

Council previously resolved to allow up to a maximum of 15% increase in GFA to development in the Commercial Core and Middle Ring of the Burwood Town Centre if the development involves an infrastructure upgrade. This site is outside of the Commercial Core and the Middle Ring and, as such, the VPA cannot be endorsed by Council.

Background

The Modification Application to modify Development Consent BD.2014.205 proposes an additional apartment on Level 8 and an additional Level 9 of six apartments to an approved mixed use development. The proposal seeks to provide a total of 518.50 square metres of additional Gross Floor Area (GFA), or a 14.12% increase in the maximum Floor Space Ratio (FSR) permitted by the BLEP.

Draft VPA and EN

Under the draft VPA, the developer proposes to:

- Provide a monetary contribution of \$403,887 to Council for the purposes of providing, augmenting or improving open space, community facilities or other public facilities as determined by Council in accordance with the *Burwood Open Space and Community Facilities Study*, in exchange for 367.17 square metres, or a 10% additional GFA, based on the monetary contribution of \$1,100 per square metre additional GFA for Burwood Road North
- Dedicate 2.775 metre wide strip of land, totaling 88.3 square metres, to Council for the widening of Esher Lane Burwood, in exchange for 151.33 square metres, or a 4.12% further additional GFA

Note: The additional GFAs quoted in the VPA differ slightly to the plans for the Modification Application.

Should Council resolve to approve the Modification Application as well as endorse the VPA, the developer will be required to make an additional payment to Council for constructing the widened road, which will be imposed as a condition on the amended consent.

Legal Advice

The draft VPA and EN were referred to Council's solicitors for their advice and vetting. The

documents have been modified in negotiation with the applicant in response to the legal advice.

Peer Review of Land Dedication Valuation

The developer submitted a valuation report prepared by their valuation consultant. This report claims that:

- The land dedication would incur a commercial GFA loss and loss of balcony space for a number of units. A dollar per square metre commercial GFA loss and a dollar per unit balcony space loss rates were provided.
- The estimated value of the land to be dedicated for Esher Lane Burwood widening is \$360,000 (excluding GST). This figure is written in the draft VPA.

The developer's valuation report was referred to a property valuation consultant engaged by Council for a peer review. The review concludes:

- The dollar per square metre commercial GFA loss and the dollar per unit balcony space loss rates are questionable. This would affect the estimated value of the land to be dedicated.
- For future, Council should be involved in the wording of any valuation request seeking to assess value of land being the subject of either formal acquisition or forming part of any VPA. This will ensure the basis of valuation assessment does not later become a point of contention which impacts on the suitability of the valuation advice obtained by the developer

Should Council resolve to endorse the draft VPA, the valuation of \$360,000 needs to be deleted from the VPA, or be revised following further negotiations between the valuation consultants of both Council and the developer.

Consultation

Following the modification and negotiation of the document contents, the draft VPA and EN were publicly notified for a period of 28 days from 31 October 2017 to 28 November 2017. The public notice was placed in the local newspaper and on Council's website. Hard copies were also made available to view at Council's Customer Service Centre. No submissions have been received in response to the public exhibition.

Planning or Policy Implications

Council Resolution of 13 September 2016

At its Ordinary Meeting of 13 September 2016, Council resolved that:

1. *That a maximum floor space ratio bonus of not exceeding 10% be allowed in Burwood Road North where the development demonstrates a commitment to the delivery of social and community infrastructure as part of our public benefits policy.*
2. *That Council approve the monetary contribution rate for bonus development in Burwood Road North being set at \$1,100 per square metre additional floor area in principle, in accordance with the recommendations of the independent consultant, and that the rate be placed on public exhibition in accordance with Sections 610F and 705 of the Local Government Act 1993.*
3. *That Council's Public Benefit policy also allows for an extra 5% bonus to be used to upgrade infrastructure such as road widening. This is in addition to the 10% Voluntary Planning Agreement (VPA) policy. The 5% cap cannot be purchased for a dollar value and can only be used for infrastructure upgrades where Council deems the upgrade works*

necessary. The 5% is in addition to where the 10% VPA policy applies and only applicable to the core and middle ring of the town centre.

As the subject land is outside of the Commercial Core and Middle Ring of the Burwood Town Centre, the part of the VPA involving land dedication to widen Esher Lane Burwood, in exchange of 151.33 square metres of additional GFA, cannot be approved under the Council resolution.

Planning Agreement Policy

Council has a *Planning Agreement Policy*. The Policy contains an acceptability test which stipulates the matters that Council should consider when determining whether or not to enter into a VPA. Consideration of these matters against the draft VPA is outlined below:

1. The VPA is directed towards a proper legitimate planning purpose. The VPA provides funds to Council to be used to provide the augmentation or improvement of open space, community facilities or other public facilities, consistent with the *Burwood Open Space and Community Facilities Study*, as well as the widening of a narrow lane way.
2. The VPA would result in a public benefit. The contribution to Council would be used towards public facilities.
3. The VPA provides a reasonable means of achieving the relevant purpose. The *Burwood Open Space and Community Facilities Study* recommended a monetary contribution rate for additional development.
4. The VPA would be taken into consideration in the assessment of the Modification Application. The Modification Application must stand on its own merits from a design, planning and amenity perspective, which has been the subject of a separate and independent planning assessment. If the VPA is not entered into, approval of the Modification Application could not be granted.
5. The VPA would produce outcomes that meet the general values and expectations of the community, and protect the overall public interest. The provision, augmentation and improvement of public facilities by Council are an expectation of the community. The VPA provides Council with the financial resources to assist in the delivery. The widening of Esher Lane, although primarily serving the development on the subject land, would benefit the surrounding land owners and/or occupants who use Esher Lane for access.
6. The VPA promotes Council's strategic objectives as outlined in Clause 2.1 of Council's *Planning Agreements Policy*, particularly:
 - Objective 'a' – to provide an enhanced and more flexible development contributions system for Council. The VPA encourages flexibility by enabling a monetary contribution towards public facilities, to the mutual benefit of the developer and the community.
 - Objective 'b' – to supplement or replace, as appropriate, the application of s94 and s94A of the Act for development. The VPA supplements Council's Section 94A Plan because the VPA contribution is on top of established Section 94A contributions.
 - Objective 'e' – to lever planning benefits from development wherever possible. The VPA would facilitate the provision of public facilities, which represent a public benefit.
7. The VPA conforms to the fundamental principles governing the Council's use of planning agreements as set out in Clause 2.2 of the *Planning Agreements Policy*, particularly:
 - Principle 'a' – planning decisions may not be bought or sold through planning agreements. Council is not obliged to support the Modification Application and instead, each application

must be considered on the individual merit.

- Principle 'd' – Council will not use planning agreements for any purpose other than a proper planning purpose. The manner in which the VPA is proposed to be used is in accordance with Council's studies.

8. Council's resolution of 13 September 2016 precludes the Council from entering into the VPA. Should Council determine to enter into the VPA with the developer, the Council resolution needs to be amended.

Financial Implications

The VPA if endorsed by Council would provide for a monetary contribution of \$403,887 (depending on the final determination of the Modification Application), based on the 1,100 per square metre of additional GFA rate to Council for the provision of the augmentation or improvement of open space, community facilities, or other public facilities. Council would be obliged under legislation to allocate, the contribution and any return on its investment to the provision of, or the recoupment of the cost of providing public facilities.

The provision of public facilities by Council would not coincide with the completion of the subject development, and would be undertaken at a time determined by Council at its discretion.

The VPA, if endorsed by Council, would also provide for the dedication of 88.3 square metres of land for Esher Lane Burwood widening. The developer would be required to pay for the construction of the road widening.

Conclusion

The draft VPA cannot be recommended for approval as it does not meet the criteria of the Council Resolution of 13 September 2016, which allows for a 10% maximum bonus in Burwood Road North, and an additional 5% bonus in Burwood Town Centre's Commercial Core and Middle Ring areas only, where necessary infrastructure upgrade works are provided.

The Modification Application which the draft VPA was submitted in conjunction with is being separately assessed. It is understood that a letter has been sent to the applicant, raising several planning issues, which may preclude the Modification Application from being approved.

The VPA would otherwise provide a monetary contribution of \$403,887 to Council for the provision of public facilities and provide for land dedication to widening a section of Esher Lane.

Should Council decide to enter into the VPA, its resolution of 13 September 2016 must be revised with the deletion of '*and only applicable to the core and middle ring of the town centre*'. Endorsement of the VPA must also be subject to the approval of the Modification Application. The VPA also requires amendment in that the valuation of \$360,000 for the land to be dedicated needs to be deleted from the VPA, or to be revised following further negotiations between the valuation consultants of both Council and the developer.

Recommendation(s)

That the Voluntary Planning Agreement for 2A-8 Burwood Road Burwood not be entered into, as it does not conform to the Council resolution of 13 September 2016.

Attachments

- 1 [Draft Voluntary Planning Agreement and Explanatory Note for 2A-8 Burwood Road Burwood](#)

PROJECT
LAWYERS

Planning Agreement

Burwood Council

ABN 84 362 114 428

and

BRD Apartments Pty Ltd

ACN 168 722 736

2A-8 Burwood Road, Burwood

ATTACHMENT 1

ITEM /17 Draft - Voluntary Planning Agreement for 2A-8 Burwood Road, Burwood.DOC
Draft Voluntary Planning Agreement and Explanatory Note for 2A-8 Burwood Road Burwood

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PARTIES

THIS PLANNING AGREEMENT is made on 2017.

BETWEEN:

- (1) **Burwood Council** ABN 84 362 114 428 of Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW (Council).
- (2) **BRD Apartments Pty Limited** ACN 168 722 736 of Unit 5, 37 Roberts Street, Strathfield NSW (Developer).

ATTACHMENT 1

ITEM /17 Draft - Voluntary Planning Agreement for 2A-8 Burwood Road, Burwood.DOC Draft Voluntary Planning Agreement and Explanatory Note for 2A-8 Burwood Road Burwood

BACKGROUND

- (A) The Developer is the owner of the Land.
- (B) The Land fronts Burwood Road, Esher Lane and Webbs Lane, Burwood.
- (C) Esher Lane a single carriage roadway.
- (D) Esher Lane, between Esher Street and Webbs Lane, is scheduled for road widening, as identified in:
 - (1) Burwood LEP 2012 (Land Acquisition Map).
 - (2) Section 94A Contributions Plan For the Burwood Local Government Area (Excluding Burwood Town Centre), Adopted 24 July 2012.
- (E) On or about 23 December 2015 the Council granted development consent for Development Application No.DA 205/2014 comprising demolition works and the construction of a 9 storey mixed use development comprising 2 commercial and retail premises and 50 residential apartments over 2 basement car parking levels.
- (F) On or about 10 February 2017 the Council granted approval for a section 96 modification application associated with Development Application No.DA 205/2014 for the excavation and construction of an additional basement car parking level, taking the total number of basement car parking levels to 3.
- (G) On or about 3 July 2017 the Council granted approval for a section 96 modification application associated with Development Application No.DA 205/2014 resulting in, amongst other changes, a reduction in the number of apartments from 50 to 48 and the reconfiguration of the built form associated with the Esher Lane frontage.
- (H) On or about 4 August 2017 the Developer lodged a section 96 modification application associated with Development Application No.DA 205/2014 seeking approval for an additional residential storey comprising 6 residential apartments plus an additional 3 bedroom apartment located on the uppermost level, replacing an area of communal open space.
- (I) 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.

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ITEM /17 Draft - Voluntary Planning Agreement for 2A-8 Burwood Road, Burwood.DOC Draft Voluntary Planning Agreement and Explanatory Note for 2A-8 Burwood Road Burwood

- (4) a written request seeking an exception to the 'floor space ratio' development standards set out in clause 4.4A of the Burwood LEP 2012.
- (J) The Developer has also prepared and submitted, in connection with the Modification Application, an offer by the Developer to Council to enter into this Agreement seeking approval for an additional 0.42:1 FSR over the maximum FSR for the Land, in exchange for providing the Public Benefits set out in this Agreement, comprising:
- (1) a monetary contribution to Council for Public Facilities .
 - (2) the dedication of part of the land fronting Esher Lane to Council to facilitate the widening of Esher Lane (**Road Dedication Land**) for the purposes of creating a dual carriage roadway; and
- subject to the terms of this Agreement.
- (K) 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.

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.

Dedicate means the transfer of the fee simple of the Road Dedication Land to the Council.

Development means the development of the Land in accordance with:

- (a) Development Application No.DA 205/2014,
- (b) Modification Application in relation to Development Application No.DA 205/2014 approved on or about 10 February 2017,
- (c) Modification Application in relation to Development Application No.DA 205/2014 approved on or about 30 June 2017, and
- (d) Modification Application, the subject of this Agreement.

Development Consent means the consent granted to Development Application No. DA 205/2014.

Explanatory Note means the Explanatory Note set out in **Schedule 4** 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.

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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.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW)

Land means the whole of the Land described in the certificates of title previously known as Lots 40, 41 and 42 in DP 1216986, and now Lot 2308 in DP 1233213 known as 2A-8 Burwood Road, Burwood.

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 4 August 2017 in relation to Development Application No. DA 205/2014.

Monetary Contribution means the sum set out in No. 1 in Column 2 of **Schedule 1** of this Agreement.

Public Benefits mean:

- (a) Monetary Contribution, and
- (b) Road Dedication,

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.

Road Dedication means the dedication to the Council of the Road Dedication Land which is valued in the sum set out in No. 2 in Column 2 of **Schedule 1** of this Agreement.

Road Dedication Land means that part of the Land to be dedicated to Council identified in **Schedule 2** of this Agreement.

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.

ATTACHMENT 1

ITEM /17 Draft - Voluntary Planning Agreement for 2A-8 Burwood Road, Burwood.DOC Draft Voluntary Planning Agreement and Explanatory Note for 2A-8 Burwood Road Burwood

- (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.
- (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.

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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
 - (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 No. 1 of Column 3 of 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:

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- (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. Road Dedication Land

6.1 Obligations to Transfer

- (a) The Developer shall use its best endeavours to effect the Road Dedication and dedicate the Road Dedicated Land as public road pursuant to the *Roads Act 1993* (NSW) and the *Real Property Act 1900* (NSW) upon the Council granting consent for the Modification Application free of cost to the Council.
- (b) The Road Dedication is taken to have been made (and made free of cost) if the Road Dedication Land is dedicated to the Council and vests in the Council as public road under the *Roads Act 1993* (NSW) and the *Real Property Act 1900* (NSW).
- (c) A reference to the granting of consent for the Modification Application is a reference to the Modification Application as lodged by the Developer with the Council or as otherwise modified with the approval of both the Developer and the Council.
- (d) The Developer and the Council acknowledge and agree that, should the Modification Application not be approved by Council, the Agreement is terminated.
- (e) The Developer and the Council acknowledge and agree that the Road Dedication must occur before the issue of any amended construction certificate (as set out in No. 2, Column 3 of Schedule 1).
- (f) The Developer agrees and warrants that it will not seek any amended construction certificate until the Road Dedication has occurred.

6.2 Date of Transfer

- (a) The Parties acknowledge and agree that at the date of this Agreement the Road Dedication Land is not contained in a separate legal Lot to the Land, and cannot be transferred to the Council until the Land is subdivided to create the Road Dedication Land as a separate legal Lot capable of transfer.

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- (b) The Developer will use its best endeavours to transfer the Road Dedication Land to the Council as soon as practicable after the granting of consent for the Modification Application.
- (c) The Developer will prepare at its own cost and lodge all documents necessary to have the Road Dedication Land created as a separate Lot with the Land & Property Information. The Developer will use its best endeavours to ensure that this is done within 6 weeks after the granting of consent for the Modification Application.
- (d) The Developer and the Council agree and warrant that they will do all things necessary and sign all documents required to facilitate the subdivision of the Land and the subsequent dedication of the Road Dedication Land.
- (e) Nothing in this clause 6.2 shall prevent the dedication of the Road Dedication Land by the registration of the Developer's plan of subdivision.

7. Application of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) sections 94 and 94A of the Act;
 - (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.

8. Registration of Agreement

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 prior to the issue of any Interim or Final Occupation Certificate for the Development.

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- (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:
- (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.

8.3 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 Benefits obligations of this Agreement in respect of that part of the Land.

8.4 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.

9. 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 (excluding, after the Road Dedication of the Road Dedication Land).

10. GST

10.1 Interpretation

In this clause 10:

- (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.

10.2 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.

10.3 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 10.3(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 10.3 in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

10.4 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 10.3. The Recipient can withhold a payment of the GST Amount until the Supplier provides a tax invoice.

10.5 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 10.3 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.

10.6 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 10.3 in respect of the reimbursement.

11. Default

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

11.2 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.

11.3 Suspension of time-dispute

If a party disputes the Default Notice it may refer that dispute to dispute resolution under clause 12 of this Agreement.

12. Dispute Resolution

12.1 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 clauses 12.1 – 12.5.

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12.2 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.

12.3 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.

12.4 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 12.5 or by expert determination under clause 12.6.

12.5 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 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 12.5 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;

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- (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.

12.6 Expert Determination

- (a) If the dispute is not resolved under clause 12.3 or 12.5, 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;
 - (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.

12.7 Litigation

If the dispute is not finally resolved in accordance with Clause 12.3 or 12.5, either party is at liberty to litigate the dispute.

13. 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

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- (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 Pierre Sleiman
Address: Unit 5, 37 Roberts Street, Strathfield NSW
Post: As above.
Facsimile: N/A
Email: pierre@sleiman.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.

14. Enforcement in relation to the Dedication of the land

14.1 Agreement under the Just Terms Act

(a) Subject to clause 14.2, if the Developer does not dedicate the land required to be dedicated under this Agreement:

(i) at the time at which it is required to be dedicated; or

(ii) at any point after that time,

the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

(b) Clause 14.1(a) is an agreement for the purposes of section 30 of the Just Terms Act.

14.2 Limitations on that agreement

The Council may only acquire land pursuant to clause 14.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.

14.3 Ancillary obligations

(a) If, as a result of the acquisition referred to in clause 14.1, the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council.

(b) The Developer indemnifies and keeps indemnified, the Council against all claims made against the Council under the Just Terms Act as a result of any acquisition by the Council of the whole or any part of the Dedicated Land under clause 14.1(a).

(c) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 14, including:

(i) signing any documents or forms;

(ii) producing certificates of title to the Registrar-General under the Real Property Act 1900 (NSW); and

(iii) paying the Council's reasonable costs arising under this clause 14.

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15. Enforcement

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

15.2 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.

15.3 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.

16. General

16.1 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.

16.2 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.

16.3 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.

16.4 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.

16.5 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

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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.

16.6 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.

16.7 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.

16.8 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;

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 16.8.

16.9 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.

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- (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 16.9.
- (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 16.9.

16.10 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.

16.11 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.

16.12 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.
- (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.

16.13 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.

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16.14 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 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.

16.15 Counterparts

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

16.16 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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Draft Voluntary Planning Agreement and Explanatory Note for 2A-8 Burwood Road Burwood

Execution Page

Dated:

Executed as an Agreement

Signed by **BRD Apartments Pty Ltd (ACN 168 722 736)** under s.127(1) of the *Corporations Act 2001*

sign

sign

office (director)

office (director or secretary)

full name

full name

Signed for and behalf of **Burwood Council** by its attorney, **Michael Gerard McMahon**, under Power of Attorney dated 6 July 2011 registered book 4615 number 590 in the presence of

Witness

Signature of Attorney

full name

Michael Gerard McMahon

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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.

	Column 1	Column 2	Column 3
	Public Benefit	Value	Due date for Payment, Dedication or Completion
1.	Monetary Contribution	\$403,887.00	Payment to Council by the Developer on the date upon which the Council grants consent for the Modification Application.
2.	Road Dedication of the Road Dedication Land	\$360,000.00	Dedication to Council prior to the issuing of any amended Construction Certificate.
	Total:	\$763,887.00	

Calculation of Monetary Contribution and Public Benefits Generally

The Modification Application seeks approval for a revised GFA of 4,190.2, which is **518.5 sqm** above the allowable GFA under the Burwood LEP 2012.

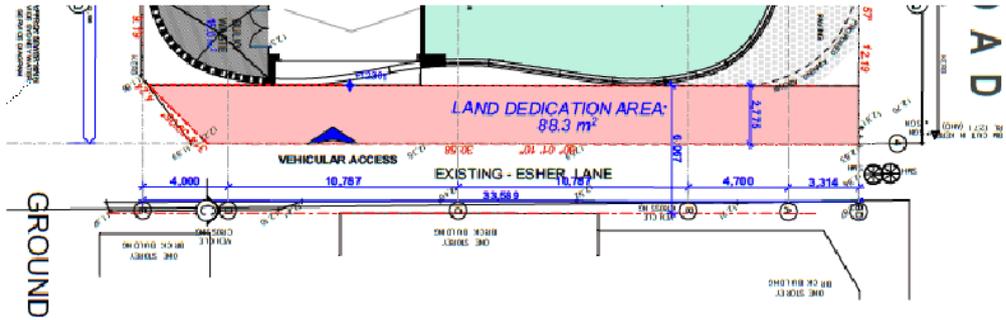
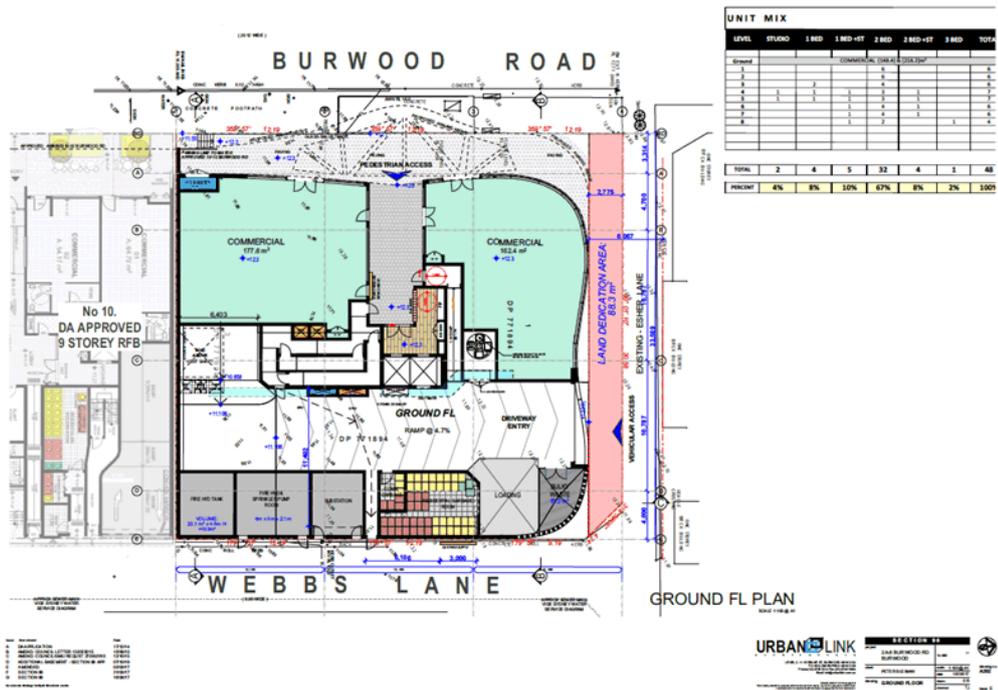
For the additional GFA of **367.17 sqm**, the Developer has relied upon the \$1,100 rate per square metre equating to \$403,887.00 (367.17 sqm x \$1,100.00). This represents the Monetary Contribution.

For the additional GFA of **151.33 sqm**, the Developer has relied upon the value attributable to the Road Dedication Land, valued at \$360,000. The value of the Road Dedication Land, as against the additional 151.33 square metres, equates to \$2,379 per square metre of additional floor space.

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SCHEDULE 2 - ROAD DEDICATION LAND



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SCHEDULE 3 - MODIFICATION APPLICATION

SCHEDULE 4 - 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)* (Act)

1. **Parties**

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

BRD Apartments Pty Ltd. ACN 168 722 736. Unit 5, 37 Roberts Road, Strathfield NSW (**Developer**).

2. **Description of Subject Land**

The subject land means the whole of the Land comprised in the certificate of title formerly Lots 40, 41 and 42 in DP 1216986, now Lot 2308 in DP 1233213.

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.DA 205/2014.
- (b) Modification Application relating to Development Application No.DA 205/2014 approved on or about 10 February 2017.
- (c) Modification Application relating to Development Application No.DA 205/2014 approved on or about 3 July 2017.
- (d) Modification application relating to Development Application No.DA 205/2014 lodged on 4 August 2017

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:

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ITEM /17 Draft - Voluntary Planning Agreement for 2A-8 Burwood Road, Burwood.DOC Draft Voluntary Planning Agreement and Explanatory Note for 2A-8 Burwood Road Burwood

- (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.
- (b) dedicate land to Council for the purposes of widening Esher Lane from its current single lane capacity to a dual lane carriageway,

in order to provide a benefit for the public in terms of traffic flow and associated reduction in traffic congestion in and around Esher Lane.

4.2 Nature and Effect of the Draft Planning Agreement

The draft Planning Agreement requires the Developer to provide a Monetary Contribution and to:

- (a) dedicate to Council approximately 88.3 sqm of land for the purposes of widening Esher Lane at some future point in time to be determined by the Council, to facilitate its conversion from a single lane carriageway to a dual lane carriageway.
- (b) The estimated value of:
 - (i) the Road Dedication Land is **\$360,000** (excl. of GST).
- (c) 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 Act 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 Act, the Planning Agreement promotes the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

5.2 How the Draft Planning Agreement Promotes the Objects of the Act

The draft Planning Agreement promotes the following objects of the Act:

- (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;
- (c) the provision of land for public purposes.

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

ATTACHMENT 1

ITEM /17 Draft - Voluntary Planning Agreement for 2A-8 Burwood Road, Burwood.DOC Draft Voluntary Planning Agreement and Explanatory Note for 2A-8 Burwood Road Burwood

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

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

- (d) 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, and
- (e) the provision of adequate, equitable and appropriate services and facilities for the community in the form of providing land for road widening purposes.

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 an occupation certificate is issued

The draft Planning Agreement provides that the dedication of land be delivered prior to the issue of any amended construction certificate for the proposed development in accordance with the Act.

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.

(ITEM 93/17) REQUEST FOR WAIVING OF A FEE - ENFIELD AQUATIC CENTRE MEETING ROOM

File No: 17/54524

REPORT BY DEPUTY GENERAL MANAGER CORPORATE, GOVERNANCE & COMMUNITY

Summary

A local resident from the Enfield area wrote to Council on 18 October 2017, requesting free use of a Council meeting room to conduct regular community meetings to discuss the future development of the Flower Power and Vision Australia sites in Enfield.

Background

In September 2017 a number of residents attended a community meeting held in Henley Park regarding the development of the Flower Power and Vision Australia sites in Enfield.

Subsequently, on 18 October 2017 Council received a request from one of the residents, seeking the free use of a meeting room space for regular community meetings to discuss the development of the two sites.

The request specified that the community meetings would be held on a Monday or Tuesday evening and that the meeting room be accessible and have suitable car parking facilities.

Following initial assessment of the request, it was identified that in accordance with Section 610E (1) of the *Local Government Act 1993* (the Act) “a council may waive payment of, or reduce, a fee (whether expressed as an actual or a maximum amount) in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.”

Given the request does not meet the requirements of Section 610E (1) of the Act, in particular the category of hardship, it is advised that if Council decides to support the request, it should do so by granting a donation from the Mayor’s donations budget.

Due to the request involving a recurring booking a Council resolution is required under Section 356 (1) of the Act to approve such donation.

Proposal

That Council consider the request to provide a space for regular monthly meetings.

It is recommended that the arrangement be limited in time between January 2018 to June 2018, and only for one hour per month.

It is believed the meeting room located at Enfield Aquatic Centre (EAC) would be suitable for the community meetings based on the location and proximity to Henley Park. The room has independent access from the Shelley Street carpark and it includes a toilet, kitchenette and chairs to accommodate up to 20 people.

The EAC meeting room hire fee is \$20.00 per hour for community groups in accordance with Council’s 2017/2018 Schedule of Fees and Charges.

The applicant will be required to submit an application to nominate the preferred monthly meeting dates and confirmation will be provided by Council Officers.

It is important to consider that providing financial support for the use of the Council meeting room, could lead to a community expectation that Burwood Council will provide free use for future

requests of similar nature.

Consultation

Advice was sought from the Manager Enfield Aquatic Centre regarding the EAC meeting room.

Planning or Policy Implications

Due to the request involving a recurring booking a Council resolution is required under Section 356 (1) of the Act to approve a donation from the Mayor's donations budget.

Financial Implications

The total cost of the Enfield Aquatic Centre meeting room for a one hour booking, once a month from January 2018 to June 2018 is \$120.

Options

1. Council can resolve that a donation of \$120.00 be made available from the Mayor's donation budget
2. Council can decline the request to provide a meeting room and the residents group can apply to book a Council venue in accordance with the Community Facilities Policy

Conclusion

The financial impact of waiving fees for the resident group is minimal and can be supported.

However, it is important for Council to consider that providing financial support for the use of the Council meeting room on this instance could lead to a community expectation that Burwood Council will provide free use of venues for future requests of similar nature.

Recommendation(s)

1. That Council donates \$120.00 to be funded from the Mayor's the donation budget to cover hire fees associated with the use of the Enfield Aquatic Centre meeting room.
2. That the Council meeting room be made available for monthly, one hour meetings until the 30 June 2018.

Attachments

There are no attachments for this report.

(ITEM 94/17) MONETARY CONTRIBUTION RATES FOR BONUS DEVELOPMENT IN BURWOOD AND STRATHFIELD TOWN CENTRES AND BURWOOD ROAD NORTH

File No: 17/53817

REPORT BY ACTING DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES

Summary

Following a review by an external consultant, it is recommended that the monetary contribution rates for bonus development be increased from the current \$1,500 to \$1,750 per square metre bonus gross floor area (GFA) for Burwood and Strathfield Town Centres, and from the current \$1,100 to \$1,500 per square metre bonus GFA for Burwood Road North. It is recommended that the increased rates be approved in principle and be placed on public exhibition in accordance with the relevant provisions of the *Local Government Act 1993*.

Background

Council commissioned an *Open Space and Community Facilities Study for Burwood* in 2014. The Study discussed funding opportunities and a potential bonus development scheme for the Burwood Town Centre. In the Study dated July 2014 it was recommended that:

- both the developer and Council share equally the financial benefit from the bonus scheme
- a monetary contribution rate be set at \$800 per square metre bonus GFA for the Burwood Town Centre in the current market
- the above rate be subject to periodic reviews

On 27 April 2015, Council adopted a policy titled *Carrying Out Bonus Development in the Public Interest*. Effective from 1 May 2015, the Policy set the monetary contribution rate at \$800 per square metre of bonus GFA in the BTC, as per the Study recommendations.

On 23 February 2016, Council resolved to increase the rate from \$800 per square metre to \$1,100 per square metre bonus GFA, following a review by an external consultant, and to apply this rate to both Burwood and Strathfield Town Centres.

On 13 September 2016, Council resolved to adopt a rate of \$1,100 per square metre bonus GFA, to apply to Burwood Road, between Parramatta Road and Meryla Street Burwood (known as Burwood Road North).

On 28 March 2017, Council resolved to increase the rate from \$1,100 per square metre to \$1,500 per square metre bonus GFA for Burwood and Strathfield Town Centres, and to apply this rate to all VPAs for bonus development received on and/or after 30 October 2017, when the review report by the external consultant was provided to Council.

Since 2015, over 20 VPAs involving bonus development have been received by Council.

On 14 November 2017, a report by an external consultant on a further review of the rates was provided to Council.

Proposal

The consultant's recommendations, received on 14 November 2017, are:

- \$2,000 per square metre bonus GFA for Burwood and Strathfield Town Centres (currently \$1,500)
- \$1,750 per square metre bonus GFA for Burwood Road North (currently \$1,100)

The consultant's report notes that there is some evidence of localised oversupply of residential units in the Burwood Local Government Area, with vendor expectations becoming increasingly difficult to achieve. Therefore, the following rates, of a lesser value than the consultant's recommendations, are proposed:

- \$1,750 per square metre bonus GFA for Burwood and Strathfield Town Centres (currently \$1,500)
- \$1,500 per square metre bonus GFA for Burwood Road North (currently \$1,100)

These proposed rates should apply to all VPAs received by Council on or after 14 November 2017. The rates will be reviewed further within a year.

Consultation

No consultation has been undertaken in preparing this report.

Planning or Policy Implications

Should Council adopt the increased monetary contribution rates, the Policy on *Carrying Out Bonus Development in the Public Interest* should be updated accordingly. Council's *Schedule of Fees and Charges for 2017-18* should also be updated to reflect the new rates.

Financial Implications

The increased monetary contribution rates are likely to result in more revenue for Council. Any monetary contribution (over and above Section 94A contributions) paid to Council through a VPA is expected to be kept in the VPA account. The funds must be used for the provision of public benefits, and shall not be used for other purposes.

Conclusion

Following a further review of the monetary contribution rates for bonus development by an external consultant, it is recommended that the increased rates be approved in principle and be placed on public exhibition in accordance with the provisions of the *Local Government Act 1993*.

Recommendation(s)

1. That Council approve the monetary contribution rates for bonus development in Burwood and Strathfield Town Centres and in Burwood Road North being set at \$1,750 per square metre and \$1,500 per square metre bonus gross floor area in principle and that the rates be placed on public exhibition in accordance with Sections 610F and 705 of the *Local Government Act 1993*.
2. That the results of the public exhibition be reported back to Council.
3. That the new monetary contribution rates be applied to any Voluntary Planning Agreements involving bonus development received by Council on or after 14 November 2017.
4. That the General Manager be delegated to review and adjust the rates periodically, and/or negotiate a rate as part of a Voluntary Planning Agreement.

Attachments

There are no attachments for this report.

(ITEM 95/17) INTEGRATING STREET TREES AND PLANNED INFRASTRUCTURE WORKS

File No: 17/52034

REPORT BY ACTING DIRECTOR ENGINEERING AND OPERATIONAL SERVICES

Summary

At the Ordinary Council Meeting of 26 September 2017, Mayoral Minute 7/17 was adopted in relation to Street Trees and Planned Infrastructure Works. It has been requested that the General Manager investigate how to better integrate the protection of street trees when undertaking planned civil infrastructure improvement works.

Background

Following the Mayor's extensive community engagement over the past 12 months, a number of residents provided feedback with respect to Council processes and functions. One area that the community felt could be improved is in relation to street trees and their preservation. As such, Council Officers began investigating better ways to protect street trees when undertaking infrastructure works.

Proposal

The protection of street trees is vital to retaining Burwood Council's character and environment. Trees grow in a delicate balance with their environment and any changes to that balance must be minimised if the tree is to remain healthy and fulfil its potential. It is rarely possible to repair stressed and injured trees, so damage needs to be avoided during all stages of construction.

Technical Council Officers focused on five categories of infrastructure improvement works that have a direct impact on the safety of street trees. The five categories are:

- Road Widening and Road Narrowing
- Kerb and Gutter Replacement
- Drainage Improvement Works
- Footpath Replacement and Footpath Widening
- Construction of Off-Street Parking Bays

Below is a brief outline of the common planning and design requirements needed to determine if the treatments can be implemented:

- Road Classification – Confirm the road reserve is Council owned
- Traffic Impact Study – Ensure the traffic volumes and speeds are within allowable parameters for the treatment required
- Australian Standards – Make sure all relevant standards are complied with and can be achieved within the project area
- Onsite Constraints – Identify any trees, power poles and other services etc. that might impact the project. Discuss with relevant service providers or Council's Tree Management Officer
- Consultation – Undertake public consultation as per Council requirements in order to provide residents an opportunity to comment
- Survey and Design – Complete concept and/or detailed design ensuring compliance with current Austroads Design Guides
- Council Specifications – Ensure that all construction works undertaken meet Council's approved specifications
- Construction – Commence construction as per Council approved procedure

However, other planning requirements also include:

- Kerb and Gutter Replacement – Allow for increased tree root space although still taking into consideration common planning requirements above
- Drainage Improvement Works – Storm water drainage to be designed and constructed away from the root zone area of influence
- Footpath Replacement and Footpath Widening – Allow for increased tree root space when reconstructing footpaths while still ensuring that the Australian Standards are met for footpath widths. New footpaths incorporating new street tree plantings within the town centres will include the installation of suspended pavements over non-compacted soils using modular root cell systems or structural soil
- Construction of Off-Street Parking Bays – Width of existing roadways and footpaths to determine if parking bays can be constructed to Australian Standards. Identify onsite constraints such as trees, power poles etc

Notwithstanding the above, it should be noted that all works that have a direct impact on any street trees will be investigated and determined on a case by case basis with the priority being that all street trees are retained.

However, where a tree is adversely impacted and is removed, it will be replaced with two trees using a species selected from Council's Street Tree Management Strategy.

Planning or Policy Implications

It is proposed to draft an 'Integrating Street Trees and Planned Infrastructure Works Policy'. Once it is finalised the policy will be submitted to Council's Policy, Corporate Practices and Procedures Panel for endorsement and the consideration of the General Manager prior to the reporting to Council for adoption.

Consultation

Consultation has been undertaken with Council's Land, Infrastructure & Environment Team that have a direct influence on the proposal. Further community consultation will be undertaken once a policy has been drafted and endorsed.

Financial Implications

There are no financial implications at this stage.

Conclusion

It is appropriate that a draft Integrating Street Trees and Planned Infrastructure Works Policy be developed and the reporting to Council for adoption.

Recommendation(s)

That Council authorise the General Manager to undertake the preparation of a draft 'Integrating Street Trees and Planned Infrastructure Works Policy' for the endorsement of Council prior to placement on public exhibition.

Attachments

There are no attachments for this report.

(ITEM 96/17) ADOPTION - REVISED - DISCRETIONARY GRANTS - SMALL DONATIONS POLICY

File No: 17/46955

REPORT BY DEPUTY GENERAL MANAGER CORPORATE, GOVERNANCE & COMMUNITY

Summary

Council has an adopted Discretionary Grants – Small Donations Policy, allowing one off donations to be made by the Mayor to organisations or individuals that predominantly reside or operate within the Burwood Local Government Area or registered charitable organisations providing benefits to the residents of Burwood.

The overall budget available under this Policy is \$10,000 per annum. The current amount for each donation is currently capped at \$500, but in light of a recent review, the Policy has been revised to increase such limit up to \$1,000.

The Policy is now submitted to Council for adoption.

Background

The Discretionary Grants – Small Donations Policy allows the allocation of small donations to organisation or individuals who meet one of the following four categories:

1. Personal development and achievements of individual community members representing NSW or higher in their chosen fields, including sporting, academic, cultural and artistic endeavours who require financial assistance to attend events or activities or compete in their chosen field.
2. Relief and other emergency organisations.
3. Charitable organisations (registered) which provide benefits to the Burwood Local Government Area.
4. Locally based groups and organisations located in the Burwood Local Government Area that have not applied under the community grants program and are established as not-for-profit, community based which includes P & C associations.
5. Mayor's discretion for requests of a humanitarian nature.

Note: Community-based projects and activities of benefit to residents of Burwood Council which are substantial donations are to be applied through the Community Grants Program in accordance with Section 356 of the *Local Government Act 1993*.

Each year the Mayor is allocated a budget for these donations which is currently \$10,000 per financial year.

Proposal

The Policy has been revised and it is suggested that the financial assistance cap for all categories is increased from \$500 to \$1,000. This will allow a better flexibility in assessment when a more substantial donation is warranted.

The Policy is now submitted to Council for adoption.

Consultation

The General Manager and the Policy, Corporate Practice and Procedures Panel have endorsed the Policy.

Planning or Policy Implications

Once adopted, this policy will be made publicly available on Council's website.

Financial Implications

No further financial implications. The overall budget for the year remains capped at \$10,000.

Conclusion

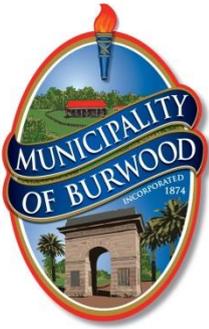
It is now in order for Council to adopt the Discretionary Grants – Small Donations Policy with the amendment increasing the capped donation from \$500 to \$1,000.

Recommendation(s)

That Council adopt the revised – Discretionary Grants – Small Donations Policy.

Attachments

1 [↓](#) Revised - Discretionary Grants - Small Donations Policy



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DRAFT - DISCRETIONARY GRANTS – SMALL DONATIONS POLICY

Public Document
Approved by Council: 28 September, 2010 (Min. No. 231/10)
Amended: Council Resolution Mayoral Minute (Min. No. 84/13)
Trim No: 17/46933
Ownership: Governance

Purpose

Council recognises that there are many situations where it is appropriate to make a one off donation. This Policy establishes guidelines on donations which are determined by the Mayor of the Day.

Scope

Applies to the Mayor and Council Officers when determining the allocation of Council funds.

Criteria

The objective of Discretionary Grants – Donations is to provide civic leadership by supporting, through the allocation of small donations on behalf of Council to organisations or individuals. The categories are as follows:

1. Personal development and achievements of individual community members representing NSW or higher in their chosen fields, including sporting, academic, cultural and artistic endeavours who require financial assistance to attend events or activities or compete in their chosen field.
2. Relief and other emergency organisations.
3. Charitable organisations (registered) which provide benefits to the Burwood Local Government Area.
4. Locally based groups and organisations located in the Burwood Local Government Area that have not applied under the community grants program and are established as not-for-profit, community based which includes P and C associations.
5. Mayor's discretion for requests of a humanitarian nature.

ATTACHMENT 1

ITEM /17 Adoption - Revised - Discretionary Grants - Small Donations Policy.DOC Revised - Discretionary Grants - Small Donations Policy

Note: Community-based projects and activities of benefit to residents of Burwood Council which are substantial donations are to be applied through the Community Grants Program in accordance with Section 356 of the *Local Government Act 1993*.

Monetary Limits

Financial assistance for all categories is capped at \$1,000.

An annual budget allocation is provided to the Mayor in accordance with this policy.

Approval

Checklist for the provision of assistance under this policy is as follows:

1. All applications must be in writing, on letterhead where applicable, and addressed to Council stating the purpose of the donation.
2. If the applicant has previously made an application through the Burwood Community Grant Program they are not eligible under this policy.
3. Criteria 1 - individuals must be a resident of the Burwood Local Government Area.
4. Criteria 2 - donations to relief and other emergency organisations must be declared as national or international natural disasters
5. Criteria 3 - charitable organisations must be a registered charity and provide benefits to Burwood.
6. Criteria 4 - groups and organisations must be located in the Burwood Local Government Area and service the Burwood Community.
7. Criteria 5 - Mayoral discretion for requests of a humanitarian nature.

Reporting to Council

A summary register of all donations made will be maintained by the Mayor's Executive Assistant. A list of all donations under this policy will be reported to Council on a quarterly basis.

Related Information/Glossary

- Councillors' Expenses and Facilities Policy
- Community Grants Program
- *Local Government Act 1993* Section 356

Review

Every four years

Contact

Governance Co-ordinator on 9911 9910

(ITEM 97/17) PUBLIC EXHIBITION - REVISED CODE OF MEETING PRACTICE

File No: 17/53269

REPORT BY DEPUTY GENERAL MANAGER CORPORATE, GOVERNANCE & COMMUNITY

Summary

The Code of Meeting Practice has been reviewed in line with the changes to legislation that mandate the creation of an Independent Hearing and Assessment Panel and to remove clauses that relate to the Building and Development Committee.

It is a requirement of Section 361 of the *Local Government Act 1993* (the Act) to give public notice of the draft code and that it is placed on public exhibition for a period of 28 days. In addition, the Act allows members of the public to make comments for a period of not less than 42 days after the public exhibition date.

Placing the Code on public exhibition at this time will give Council ample time to adopt the Code prior to the Independent Hearing and Assessment Panel (the IHAP) commencing on 1 March 2018.

Background

The objective of the Code is to provide for the convening and conduct of Council and Committee meetings (where all members are Councillors). The provisions of the Code are substantially based on the provisions of the Act, the *Local Government (General) Regulations 2015* (the Regulation), Council policy and good governance practices. All Council and Committee Meetings must be conducted in accordance with this code.

The Council in adopting the Code commits itself to the following principles:

- Council and Committee meetings are conducted expeditiously in an orderly, efficient and equitable manner and earn the respect of the Burwood Community
- Council and Committee meetings promote open government and maximise community access and participation
- Councillors display high standards of behaviour, making a positive contribution to all debates and decisions of the Council
- Council and Committee meetings restrict themselves to matters of policy, direction, resource allocation and statutory decisions by the Council

The Code was last reviewed in 2014 and adopted by Council on 17 February 2014.

Proposal

The draft Code meets the requirements of the Act, the Regulations, guidelines issued by the Office of Local Government (OLG) and good governance practices.

The draft Code main amendments are the:

1. removal of any reference to the Building and Development Committee and where appropriate to make reference to the IHAP
2. changes to the Act and the Regulation since its adoption
3. inclusion of the relevant sections of the Act, clauses of the Regulation, the Meeting Practice Note issued by the OLG and a Burwood Council Practice (items considered as a good governance practice or Council policy) to provide further information to stakeholders to determine where all clauses have originated from

All amendments and enhancements have been made in red to assist Councillors with their

determination.

The draft Code of Meeting Practice is now submitted to Council for endorsement to be placed on public exhibition in accordance with the Act.

Consultation

The Code has been endorsed by the General Manager and the Policy, Corporate Practice and Procedures Panel consisting of the:

1. Deputy General Managers
2. Manager Organisation Development
3. Chief Finance Officer
4. Governance Co-ordinator

Planning or Policy Implications

The draft Code will be placed on public exhibition in line with the requirements of Section 361 of the Act for public comment. At the expiration of the public comments period the draft Code will be reported back to Council for adoption.

Financial Implications

Costs of advertising for the purpose of public exhibition are within allocated budget.

Conclusion

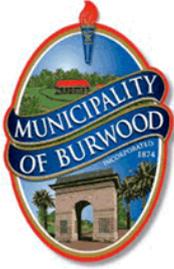
The draft Code meets the requirements of both the Act, the Regulations and any directives from the OLG and it is in order for Council to endorse the Code for placement on public exhibition in accordance with the requirements of the Act.

Recommendation(s)

1. That Council endorse the draft Code of Meeting Practice for placement on public exhibition in line with the requirements of Section 361 of the *Local Government Act 1993*.
2. That the draft Code of Meeting Practice be reported to Council after the public comment period for adoption.

Attachments

- 1 [↓](#) Draft - Code of Meeting Practice



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DRAFT - CODE OF MEETING PRACTICE – OCTOBER 2017

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Public Document
Adopted by Council: 17 February 2014 (Min No. 13/14)
Amended by Council: 28 September 2015 (Min. No. 149/15)
Trim No.: 14/11994
Version No.: 6
Ownership: Governance

ATTACHMENT 1

ITEM /17 Public Exhibition - Revised Code of Meeting Practice.DOC Draft - Code of Meeting Practice

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Code of Meeting Practice

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ATTACHMENT 1

ITEM /17 Public Exhibition - Revised Code of Meeting Practice.DOC
Draft - Code of Meeting Practice

Code of Meeting Practice

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Part 1 – About the Code of Meeting Practice

1. Introduction

- 1.1 This Code of Meeting Practice (the Code) is made under the *Local Government Act 1993* (the Act) and in accordance with the *Local Government (General) Regulation 2005* (the Regulation) and subsequent amendments.
- 1.2 The object of this Code is to provide for the convening and conduct of meetings of Burwood Council and of Committees of Council. The provisions of this Code are substantially based on the provisions of the Act, the Regulation and Council policy decisions.
- 1.3 Council and all Committees of Council of which all members are Councillors must conduct their meetings in accordance with this Code.
- 1.4 In adopting this Code of Meeting Practice, Burwood Council commits itself to the following principles:
- Council and Committee meetings are conducted expeditiously in an orderly, efficient and equitable manner and earn the respect of the Burwood community.
 - Council and Committee meetings promote open government and maximise community access and participation.
 - Councillors display high standards of behaviour, making a positive contribution to all debates and decisions.
 - Council meetings restrict themselves to matters of policy, direction, resource allocation and statutory decisions by Council.

2. Compliance of the Code (Sect. 360(3) of Act)

- 2.1 The regulations may make provision with respect to the conduct of meetings of Councils and Committees of Council of which all the members are Councillors.
- 2.2 A Council may adopt a code of meeting practice that incorporates the regulations made for the purposes of this Section and supplements those regulations with provisions that are not inconsistent with them.
- 2.3 A Council and a Committee of the Council of which all the members are Councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

3. Public Notice of the Code (Sect. 361 of the Act)

- 3.1 The Council must give public notice of the draft code after it is prepared.
- 3.2 The period of public exhibition must not be less than 28 days.
- 3.3 The public notice must also specify a period of not less than 42 days after the date on which the draft code is placed on public exhibition during which submissions may be made to Council
- 3.4 The Council must publicly exhibit the draft code in accordance with this notice.

4. Adopting the Code (Sect. 362 of the Act)

- 4.1 After considering all submissions received by it concerning the draft code Council may decide:

- a. to amend those provisions of its draft code
- b. to adopt the draft code as its code of meeting practice.

5. Availability of the Code

- 5.1 The Code must be available for public inspection free of charge at the office of the Council during ordinary hours. (Sect. 364 (1) of the Act).
- 5.2 Copies of the code must be available free of charge or, if the Council determines, on payment of the approved fee (Sect. 364 (2) of the Act). Burwood Council does not charge for copies of the Code.
- 5.3 The Code is made available on Council's website (Sect. 9(5) of the Act).

Part 2 – Convening of Council Meetings

6. Ordinary Council and Committee Meetings

- 6.1 Council is required to meet at least ten times each year, each time in a different month (Sect. 365 of the Act).
- 6.2 Council via a resolution of Council will set the time, date and place of the Ordinary Meetings of Council and Committees on an annual basis (Meetings Practice Note - OLG).
- 6.3 The Ordinary Meetings of the Council are held on the 4th Tuesday of each month (February to December) at 6.00 pm in the Council Chamber, Administration Building, Suite 1, Level 2, 1-17 Elsie Street, Burwood and in accordance with Council's adopted meeting schedule (Sect. 9 (1) of the Act).

7. Convening a Meeting (Sect. 9 of the Act) (Cl. 232 of the Regulation)

- 7.1 A meeting cannot be held unless due notice in writing has been given to all members and a quorum is present (see Clauses 7.2 and 14 of this Code).
- 7.2 At least three days before a Council or Committee meeting (Council of the Whole) the General Manager must send each councillor a notice of the time, place and business on the agenda of the meeting (Sect. 367 of the Act and Cl. 262 of the Regulation).

8. Calling of Extraordinary Meetings (Sect. 366 of the Act)

- 8.1 If the Mayor receives a request in writing signed by at least two Councillors (one of which may be the Mayor), the Mayor must call an extraordinary meeting of Council to be held as soon as practicable, but in any event within 14 days after receipt of the request.
- 8.2 The purpose of the meeting must be stated in the Notice of the Meeting.
- 8.3 The copy of the Councillors' request must be forwarded by the Mayor to the General Manager.
- 8.4 If the Mayor refuses or delays to call an extraordinary meeting after receiving a request, signed by at least two Councillors, those Councillors may, in writing, request the General Manager to call the extraordinary meeting. The General Manager shall call the meeting as soon as it is practicable.
- 8.5 The Mayor may call extraordinary meetings of the Council on any matter(s) considered necessary.

- 8.6 Extraordinary Meetings are usually held on a Tuesday at 6.00 pm.
- 9. Public Notice of Meetings (Cl. 232 of the Regulation)**
- 9.1 A notice of a meeting of Council or of a Committee of Council must be published in a newspaper circulating in the area before the meeting takes place through the Mayoral Column. **There is no requirement for publication in the newspaper for extra-ordinary meetings (Cl. 232 of the Regulation).**
- 9.2 **The Council Meeting Schedule is also published on Council's website (Burwood Council clause).**
- 9.3 The notice must specify the time and place of the meeting. Notice of more than one meeting may be given in the same notice. This clause does not apply to an extraordinary meeting of a Council or Committee **(Sect. 9 of the Act).**
- 9.4 Proceedings at a meeting of Council or a Committee are not invalidated because of a failure to give notice of the meeting to any Councillor **(Sect. 374 of the Act).**
- 10. Notice of the Meeting to Councillors (Sect. 367 of the Act and Cl. 262 of the Regulation)**
- 10.1 Notice of all Ordinary, Extraordinary and Council Committees Meetings will be provided to Councillors **electronically via email via the Councillor Portal and an email notification will also be sent.**
- 10.2 Notice of less than three days may be given of an Extraordinary Meeting if called in an emergency.

Part 3 – Business Papers for Meetings

- 11. Business Papers for Council Meetings**
- 11.1 The General Manager must ensure that the business paper for a meeting of the Council states **(Cl. 240 of the Regulation):**
1. all matters to be dealt with arising out of the proceedings of former meetings of the Council
 2. if the Mayor is the Chair - any business that the Mayor may decide to put before the meeting at the time when the business paper is being prepared as a Mayoral Minute **(Cl. 243 of the Regulation)**
 3. any business of which due notice has been given
- 11.2 **The General Manager must (Cl. 240 of the Regulation):**
1. **send to each councillor, at least 3 days before each meeting of the Council, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting (Sect. 367 (1) of the Act)**
 2. **not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is (or the implementation of the business would be) unlawful**
 3. **ensure the business paper for a meeting of the Council is prepared as soon as practicable before the meeting**
 4. **ensure that the details of any item of business in closed session must be included in a business paper for the meeting concerned (Sect. 9 (2A) of the Act)**
 5. **nothing in the Clause limits the powers of the Chair (Cl. 243 of the Act)**

- 11.3 Copies of agendas and business papers for Council and Committee Meetings (not being confidential business papers) will be available free of charge at Council's Administration Building and at each meeting, for inspection or taking away by members of the Public free of charge (Sect. 9 (2) of the Act).
- 11.4 Copies of business papers will also be available for inspection at the Library and will be published on Council's website at least 3 days before each meeting of the Council.
- 11.5 The business paper will be provided to Councillors in an electronic format via their iPads the Councillor Portal.
- 12. Business Papers for Confidential Items (Cl. 240(4) of the Regulation)**
- 12.1 The General Manager must make sure that any confidential items are recorded in a confidential business paper.
- 13. Business Papers for Extraordinary Meetings (Cl.242 of the Regulation)**
- 13.1 The General Manager must ensure that the agenda for an extraordinary meeting of Council deals only with matters stated in the public notice of the meeting.
- 13.2 Other business may be transacted at an extraordinary meeting of a Council even though due notice of the business has not been given to the Councillors. However, this can happen only if:
1. a motion is passed to have the business transacted at the meeting
 2. the business proposed to be brought forward is ruled by the Chair to be of great urgency, but only after the business in the agenda is finished
- 13.3 Such a motion can be moved without notice but only after the business notified in the agenda for the meeting has been disposed of.
- 13.4 Only the mover of a motion referred can speak to the motion before it is put.
- 14. Notices of Motions for Council Meetings (Cl. 241 of the Regulation)**
- 14.1 The notice is to be in writing, signed by the Councillor and dated and delivered to the General Manager by 10 am on Friday of the week immediately preceding the meeting (i.e. one week and one day before the Council Meeting).
- 14.2 All Motions received shall be placed on the business paper in the order in which they are received (Burwood Council clause).

Part 4 – Attendance at Council Meetings

- 15. What is the Quorum for a Meeting? (Sect. 368 of the Act)**
- 15.1 The quorum for a meeting is a majority of the Councillors of the Council who hold office for the time being and are not suspended from office. Burwood Council has seven Councillors. A quorum is four Councillors.
- 16. What happens when a quorum is not present? (Cl. 233 of the Regulation)**
- 16.1 The meeting must be adjourned if a quorum is not present:
1. within half an hour after the time designated for the holding of the meeting

2. at any time during the meeting

16.2 In either case, the meeting must be adjourned to a time, date and place fixed:

1. by the Chair
2. in his or her absence - by the majority of the Councillors present
3. failing that, by the General Manager

16.3 The General Manager must record in Council's Minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of Council, together with the names of the Councillors present.

17. Presence at Council Meetings

17.1 A Councillor cannot participate in a meeting of Council unless personally present at the meeting (Cl. 235 of the Regulation).

17.2 In the event that a Councillor is physically within the Council Chamber, the Councillor is taken to be present at the meeting (Cl. 251(1) of the Regulation).

17.3 Protocol requires Councillors present at the meeting to be seated at the Council Meeting table while the meeting is in progress (Burwood Council Clause).

18. Departure from Council Meetings (Meetings Practice Note - OLG)

18.1 Councillors are required, on proposing to retire from a meeting of the Council for the remainder of that meeting, to give prior notice of the intended departure to the Chair.

18.2 Prior to leaving their seat at a meeting of the Council, Councillors are required to seek permission of the Chair.

19. Who is entitled to attend meetings? (Sect. 10 of the Act)

19.1 Everyone is entitled to attend a meeting of the Council and those of its Committees of which all the members are Councillors.

19.2 Council must ensure that all meetings of the Council and of such Committees are open to the Public.

19.3 However, a person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or of such a Committee if expelled from the meeting:

1. by a resolution of the meeting
2. by the person presiding at the meeting of the Council has, by resolution, authorised the person presiding to exercise the power of expulsion

19.4 A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the Regulation (Cl. 271 of the Regulation).

20. Which parts of a meeting can be closed to the Public? (Sect. 10A of the Act)

20.1 Despite the right of members of the Public to attend meetings of a Council or a Committee of Councillors, the Council or the Committee may still close to the Public, parts of the meeting that involve the discussion or receipt of any of the following matters or information:

- personnel matters concerning particular individuals (other than Councillors)

- the personal hardship of any resident or ratepayer
 - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
 - commercial information of a confidential nature that would, if disclosed:
 - prejudice the commercial position of the person who supplied it
 - confer a commercial advantage on a competitor of the Council
 - reveal a trade secret
 - information that would, if disclosed, prejudice the maintenance of law
 - matters affecting the security of the Council, Councillors, Council Officer or Council property
 - advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
 - information concerning the nature and location of a place or an item of Aboriginal significance on community land
 - alleged contraventions of the Council's Code of Conduct
- 20.2 In order to close a meeting to the Public, a Council or Committee must be satisfied that the matter or information being discussed or received falls within at least one of the above grounds.
- 20.3 It should be noted that the existence of any of these grounds does not place any obligation on a Council to close its meeting to consider a matter or information, (though in many cases, it would be appropriate for it to do so). It simply permits a Council to do so. As will be discussed below, in the case of most of these grounds, the Council will also need to demonstrate why it is in the Public Interest to close the meeting to discuss the matter or information.
- 21. When can a Council Meeting be closed? (Sect. 10 of the Act)**
- 21.1 A Council or Committee of Councillors can close its meeting to the Public without further discussion to consider three types of matters:
- personnel matters concerning particular individuals
 - matters involving the personal hardship of a resident or ratepayer
 - matters that would disclose a trade secret
- 21.2 However, in the case of the other grounds listed in Clause 20.1 of this Code, the existence of these grounds on their own is not enough to allow the closure of a meeting. In such cases, the Council or Committee must also be satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the Public Interest (**Section 10B(1)(b) of the Act**).

This in effect creates a two-step process:

- first, the Council must be satisfied that the matter falls within at least one of the grounds listed in Clause 20.1 of this Code
- second, the Council must be satisfied that if the matter does not fall within one of the three grounds set out in Clause 21.1 of this Code, that discussion of the matter in an open meeting would, on balance, be contrary to the Public Interest

Example

To illustrate, consider the example of a proposal to sell off Council-owned land by

auction. The Council would not be able to close the meeting to consider a proposal to sell the land or the reasons for the sale. These are not matters that fall within the grounds listed above.

However, where the discussion concerns the valuation of the land and the reserve price, this would potentially fall within one of the grounds for closure because the disclosure of a reserve price could confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

The existence of these grounds is not on its own enough to permit the closure of the meeting to the Public. The Council also needs to demonstrate why it would, on balance, be in the Public Interest for it to do so.

In such circumstances, it could be argued that the disclosure of the reserve price would, on balance be contrary to the Public Interest because it would put the Council at a competitive disadvantage in its negotiations preventing it from achieving a 'best value for money' outcome for the community.

22. What matters should not be considered when determining the Public Interest? (Sect. 10B(4) of the Act)

22.1 The Act states that when determining whether the discussion of a matter in an open meeting would be contrary to the Public Interest, it is irrelevant that:

- a person may misinterpret or misunderstand the discussion
- the discussion of the matter may:
 - cause embarrassment to the Council or Committee concerned, or to Councillors or to employees of the Council
 - cause a loss of confidence in the Council or Committee

23. When can a meeting be closed to consider legal advice? (Sect. 10B(2) of the Act)

23.1 The Act states that a meeting is not to be closed for the receipt and consideration of information or advice concerning litigation or the subject of legal professional privilege unless the advice concerns legal matters that:

- are substantial issues relating to a matter in which the Council or Committee is involved
- are clearly identified in the advice
- are fully discussed in that advice

24. Can a meeting be closed to consider a conduct reviewer's report? (Sect. 10A(2)(i) of the Act)

24.1 The Act specifically allows a meeting to be closed to the Public to consider alleged contraventions of a Council's Code of Conduct. Clause 8.45 of the prescribed Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW state that a Council is to close its meeting to the Public to consider a final investigation report, it is permitted to do so (Section 10A of the Act). However, in closing a meeting to consider a conduct reviewer's report, the Council is still required to apply the Public Interest Test (Sect. 10B(1)(b) of the Act).

25. Do members of the Public have any say on the closure of Council Meetings? (Sect. 10A(4) of the Act)

25.1 A Council, or a Committee of a Council, may allow members of the Public to make representations to or at a meeting, before any part of the meeting is closed to the Public, as to whether that part of the meeting should be closed.

26. How long can a Council meeting remain closed? (Section 10B(1)(a) of the Act)

26.1 The Act requires Councils to close their meeting for only so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security being protected.

Example

In the proposal to auction Council-owned land, the relevant confidentiality in relation to the proposed sale is limited to the valuation and the reserve price information.

As such, discussion of the reasons justifying the sale could occur while the meeting was open. However, when the discussion turned to the valuation and reserve price, the meeting may then be closed to the Public.

27. What notice must be given of matters that are proposed to be considered in a closed meeting? (Sect. 9(2)A of the Act)

27.1 Where the General Manager is of the opinion that the agenda includes the receipt of information or discussion of matters that are likely to take place when the meeting is closed to the Public, the agenda for the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item) (Sect. 9(2A) of the Act).

27.2 It should be noted that the ultimate decision to close the meeting rests with the Council. This means that the Council is not under any obligation to close the meeting where the General Manager identifies a matter in the agenda as being one that the Council may close its meeting to discuss (Sect. 10A(2) of the Act).

27.3 Conversely, where a matter has not been identified in the agenda for the meeting as one that is likely to be considered when the meeting is closed, Council can still close the meeting to consider the item.

However, it can only do so if:

- it becomes apparent during the discussion of a particular matter that the matter is one for which any of the grounds for closure exist (see above)
 - the Council or Committee, after considering any representations made by members of the Public, resolves that further discussion of the matter:
 - should not be deferred (because of the urgency of the matter)
 - should take place in a part of the meeting that is closed to the Public
- (Sect. 10C of the Act)

Example

In the proposed auction of Council-owned land case, the agenda for the meeting would identify the matter as one that is likely to be considered when the meeting is closed.

A best practice approach would be for the valuation and reserve price information to be included in a confidential attachment to the report that is not made available to the Public. This would enable the report, including the reasons justifying the sale to be made public prior to the meeting and at the same time preserve the confidentiality of the valuation and reserve price information.

28. What must be recorded in the minutes about the decision to close part of a Council meeting? (Sect. 10D of the Act)

28.1 The Act requires that the grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:

- the relevant grounds on which the meeting is being closed
- the matter that is to be discussed during the closed part of the meeting
- the reasons why the part of the meeting is being closed, including an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the Public Interest (unless the matter relates to a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret).

Example

The decision to close the meeting to consider the auction of a parcel of Council-owned land may be recorded as follows:

RESOLVED: Councillor Borg/Councillor Lee

1. That the meeting is closed during the discussion of the matter "Item 1 - Sale of 393 Smith Street, Jonestown by public auction" in accordance with Section 10A(2)(c) on the basis that:

Item 1 involves the receipt and discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

On balance, the Public Interest in preserving the confidentiality of information about the reserve price outweighs the Public Interest in maintaining openness and transparency in Council decision-making because the disclosure of this information would put the Council at a competitive disadvantage in its negotiations with a prospective purchaser, preventing it from achieving a 'best value for money' outcome for the community.

29. Must a decision made during a closed part of a meeting be made public? (Cl. 253 and Cl.269 of the Regulation)

29.1 It is important to remember that the purpose of Section 10A of the Act is to protect the confidentiality or privilege of the information upon which Council relies. It does not allow Council to make secret decisions.

29.2 Where a Council passes a resolution during a meeting or a part of a meeting that is closed to the Public, the Chair must make the resolution public as soon as practicable after the meeting or the relevant part of the meeting has ended (Cl. 253 of the Regulation).

30. Do resolutions made during a closed part of a meeting have to be recorded in the minutes? (Cl. 254 of the Regulation)

30.1 Details of each motion moved at a Council meeting (including those moved when the meeting is closed to the Public) must be recorded in the minutes as well as whether the motion is passed or lost. Once passed, a motion becomes a resolution.

30.2 This means that when framing a motion relating to a matter being considered in a closed part of a meeting, Council needs to be careful to ensure that the wording of the motion

does not disclose any confidential information.

- 30.3 However, the resolution should be sufficiently clearly framed to enable the Public to identify the decision that has been made by the Council. A resolution to “adopt the recommendation contained in the Council Officer’s report” for instance does not meet the requisite standards of accountability expected of Council decision making.
- 30.4 In addition, a recommendation made in a report of a Council employee is, so far as adopted by the Council, a resolution of the Council (**Cl. 243(3) of the Regulation**). As a result, where a Council resolves to accept a recommendation contained in a report of a Council employee, that recommendation is deemed to be the resolution and must be made public as soon as practicable (**Cl. 253 of the Regulation**) and recorded in the minutes of the meeting.
- 30.5 This means that when framing a recommendation relating to a matter being considered in a closed part of a meeting, the Council Officer needs to be careful to ensure that the wording of the recommendation does not disclose any confidential information.

Example

The motion or Council Officer’s recommendation on the proposed auction of Council-owned land could be worded as follows:

- 1. That Council proceed with the sale of 393 Smith Street, Jonestown (**NB clearly identify the parcel of land**) by way of public auction.*
- 2. That the reserve price be set at the amount specified in the confidential attachment to the report.*

31. When can members of the Public access confidential business papers?
(Government Information (Public Access) Act 2009)

- 31.1 The business papers and minutes of Council meetings are deemed to be open access information under the *Government Information (Public Access) Act 2009* (the GIPA Act) and the *Government Information (Public Access) Regulation 2009*. This means they must be publicly available for inspection by anyone free of charge, including on the Council’s website.
- 31.2 However, where a matter is considered in a part of a meeting that is closed to the Public, only the resolutions and recommendations of the meeting are open access information.
- 31.3 This does not necessarily mean that reports and business papers cannot be otherwise accessed under the GIPA Act. Where a Council receives a request for access to a confidential business paper under the GIPA Act it must comply with the provisions of that Act. This means that it must be decided whether there is an overriding Public Interest against disclosure which outweighs the Public Interest in favour of disclosure. Further information about Council obligations under the GIPA Act is available on the Office of the Information Commissioner’s website www.oic.nsw.gov.au.

Example

If the Council received a request for access to the confidential valuation and reserve price information after the sale of the land has been completed, the reason for confidentiality (i.e. putting Council at a competitive disadvantage in its negotiations with a prospective purchaser) no longer exists. Similarly, the relevant Public Interest consideration against disclosure for the purposes of the GIPA Act (see part 4 of the table to Section 14 of the Act) no longer exists. In such circumstances, the Council may be obliged to provide access to the report.

- 32. What obligations do Council Officials have in relation to information about matters that were considered in a part of a meeting that was closed to the Public? (Sect. 664 of the Act)**
- 32.1 Under the Model Code of Conduct for Local Councils in NSW, all Council Officials have an obligation to maintain the integrity and security of confidential documents or information in their possession, including confidential business papers. In particular, all Council Officials must:
- protect confidential information
 - only release confidential information if they have authority to do so
 - only use confidential information for the purpose it is intended to be used
 - not use confidential information for the purpose of securing a private benefit for themselves or for any other person
 - not use confidential information with the intention to cause harm or detriment to the Council or any other person or body
 - not disclose any information discussed during a confidential session of a Council meeting.
- 32.2 It is also an offence to disclose information about a matter that was considered in a meeting that was closed to the Public (Sect. 10 of the Act and Sect. 664(1A) of the Act).
- 33. What happens if a Council Official inappropriately discloses information about a matter that was considered in a part of a meeting that was closed to the Public?**
- 33.1 Where a Council Official fails to comply with their obligations in relation to the protection of confidential information they may face disciplinary action. This might include termination of employment for the Council Officer or suspension or disqualification from civic office for a Councillor. *The Act states that a person who fails, without lawful excuse, to comply with a direction given to the person is guilty of an offence and the maximum penalty is 20 penalty units (Sect. 661 of the Act). Section 17 of the Crimes (sentencing Procedures) Act 1997 states that the offence is calculated by multiplying \$110 by that number of penalty units.*
- 33.2 A Council Official may also face prosecution if they disclose information about a matter that was considered in a meeting that was closed to the Public (Sect. 664 of the Act and Sect. 10A of the Act).
- 33.3 The inappropriate disclosure of such information can also have broader ramifications for the trust and constructive working relationships between Council Officers and Councillors so necessary to the effective functioning of a Council.
- 34. Attendance of General Manager at Meetings (Sect. 376 of the Act)**
- 34.1 The General Manager is entitled to attend, but not to vote at, any meeting of Council or any meeting of a Committee of Council of which all the members are Councillors.
- 34.2 The General Manager is entitled to attend a meeting of any other Committee of Council and may, if a member of the Committee, exercise a vote.
- 34.3 However, the General Manager may be excluded from a meeting of Council or a Committee while Council or a Committee deals with a matter relating to the standard of performance of the General Manager or the terms of the employment of the General Manager.

Part 5 – Procedure for the Conduct of Council Meetings

35. Who presides at meetings of Council? (Sect. 369 of the Act)

- 35.1 The Mayor or, at the request of or in the absence of the Mayor, the Deputy Mayor (if any), presides at meetings of Council.
- 35.2 If the Mayor and the Deputy Mayor (if any) are absent, a Councillor elected to Chair the meeting by the Councillors present presides at the meeting of Council.
- 35.3 If no Chair is present at the meeting of Council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a Chair to preside at the meeting.
- 35.4 The election must be conducted:
 - 1. by the General Manager or, in his/her absence, a Council Officer of Council designated by the General Manager to conduct the election
 - 2. if neither of them is present at the meeting or there is no General Manager or designated employee - by the person who called the meeting or a person acting on his or her behalf

36. Chair to have Precedence (Cl. 237 of the Regulation)

- 36.1 When the Chair rises or speaks during a meeting of Council:
 - 1. any Councillor then speaking or seeking to speak must immediately resume his or her seat and be silent to enable the Chair to be heard without interruption
 - 2. every Councillor present must be silent to enable the Chair to be heard without interruption
 - 3. any Councillor wishing to move or amend a motion or speak to a motion or address the meeting of the Council in any way shall stand and direct all matters to the Chair
 - 4. any contravention of this sub-clause shall constitute an Act of Disorder

37. Chair's Duty with Respect to Motions (Cl. 237 of the Regulation)

- 37.1 It is the duty of the Chair at a meeting of Council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 37.2 The Chair must rule out of order any motion that is unlawful or the implementation of which would be unlawful.
- 37.3 Any motion, amendment or other matter that the Chair has ruled out of order is taken to have been rejected.
- 37.4 The Chair of a Committee or Council Meeting is required to verbally nominate:
 - 1. the names of the respective Councillors moving and seconding all motions and amendments
 - 2. with respect to divisions, the names of the Councillors who voted for the motion and those who voted against

38. Order of Business (Cl. 239 and Cl. 240 of the Regulation)

- 38.1 Ordinary Council meetings shall proceed according to the following order of business:
 - 1. Acknowledgement of Country
 - 2. Prayer
 - 3. Apologies/Leave of absence

4. Declarations of Interests by Councillors
 5. Declaration of Political Donations
 6. Open Forum
 7. Confirmation of minutes
 8. Address by the Public on agenda items
 9. Mayoral Minutes
 10. Notices of Motion
 11. Reports of Committees
 12. General Business
 13. Information Items
 14. Confidential Matters
 15. Questions Without Notice
- 38.2 Business at Council or Council Committee Meetings will be transacted in the order in which it appears on the Agenda of the Business Paper for the meeting.
- 38.3 The order of business fixed under sub-clause 40.1 of this Code may, however, be altered if a motion to that effect is carried. Such a motion can be moved without notice.
- 38.4 Only the Mover of a Motion to alter the Order of Business may speak to the Motion before it is put (Cl. 239(3) of the Regulation).
- 39. Giving Notice of Business (Cl. 241 of the Regulation)**
- 39.1 Council must not transact business at a meeting of the Council unless:
1. notice of the business has been sent to the Councillors in accordance with clause 7 of this Code.
 2. a Councillor has given notice of the business in accordance with clause 11 and sub-clause 12.5 of this Code.
- 39.2 Sub-clause 40.4 of this Code does not apply to the consideration of business at a meeting if the business:
1. is already before, or directly relates to a matter that is already before, the Council
 2. is the election of a Chair to preside at the meeting (Cl. 236(1) of the Regulation)
 3. is a matter or topic put to the meeting by the Chair (Cl. 243 of the Regulation)
 4. is a motion for the adoption of recommendations of a Committee of the Council
- 39.3 Despite sub-clause 38.3 of this Code, business may be transacted at a meeting of Council when due notice of the business has not been given to Councillors, only if:
1. a motion (which may be moved without notice) is passed to have the business transacted at the meeting
 2. the business proposed to be brought forward is ruled by the Chair to be of great urgency
 3. in respect to Rescission Motions, the following procedure may be invoked when appropriate:
 - the Mayor, the Deputy Mayor or Councillor presiding at the meeting may, on the motion of another Councillor to consider the Rescission Motion(s) as a matter of great urgency, rule that the matter is of great urgency and if the motion is passed, the Rescission Motion(s) will be transacted at that meeting.
- 39.4 Despite sub-clause 38.4 of this Code, only the mover of a motion referred to in sub-clause 39.3 of this Code can speak to the motion before it is put.

40. Council Meeting Prayer and Acknowledgement of Local Indigenous People
(Meetings Practice Note – OLG)

40.1 That a prayer and acknowledgement of local indigenous people be offered at the commencement of each Ordinary and Extraordinary Meeting of the Council as follows:

Acknowledgement of Country

"I would like to acknowledge the Wangal people who are the Traditional Custodian of this Land. I would also like to pay respect to the Elders both past and present of the Wangal Nation and extend that respect to other Aboriginals present".

Prayer

"Lord, we humbly beseech thee to vouchsafe thy blessing on this Council, direct and prosper its deliberations for the advancement of this area and the true welfare of its people."

41. Addressing of Council and Committee Meetings by Members of the Public (Meetings Practice Note – OLG)

41.1 There is no automatic right under the Act or the Regulation for the Public to participate in a Council meeting, either by written submission or oral presentation. This includes being able to ask questions or address Council at meetings, or to comment on matters during meetings.

41.2 At Burwood Council we conduct an "Open Forum" and "Address by the Public on Agenda Items".

Open Forum

The Public may address Council at an Ordinary Council Meeting on a matter that is not on the agenda of that meeting. The Forum takes place after the adoption of the minutes of the previous meeting.

Members of the Public are required to either register fifteen minutes prior to the Meeting or by contacting one of Council's Governance Team Members.

The guidelines, which apply to public address, are:

1. a time limit of three minutes per speaker
2. discussion, debate or questions involving Councillors or Council Officers are not permitted
3. the subject matter only is to be discussed
4. personalities are not to be addressed

Address by the Public on Agenda Items

The Public may address items listed on the Council or Committee Agendas.

Persons from the Public gallery may address the Council or Council Committee and answer questions from Council or Council Committee Members. Persons who have registered will be invited to speak at the beginning of the item before the Council or Committee.

Members of the Public are required to either register 15 minutes prior to the Meeting or by contacting one of Council's Governance Team Members.

The guidelines, which apply to public address, are:

1. a time limit of three minutes per speaker
2. discussion, debate or questions involving Councillors or Council Officers are not permitted
3. the subject matter only is to be discussed
4. personalities are not to be addressed

41.3 The Council or Council Committee can grant an extension of time for a speaker by a motion to that effect being put and carried.

41.4 The Council may further resolve to alter the order of business of the meeting and bring forward the matter for consideration at the conclusion of the address, by means of a procedural motion.

42. Petitions (Meetings Practice Note – OLG)

42.1 The Act and the Regulation do not refer to the submission or tabling of petitions to the Council.

42.2 All petitions received by Council will be listed on the business paper for an Ordinary Council Meeting and will include:

1. date received
2. petition subject
3. number of signatures within the local government area
4. number of signatures outside the local government area
5. responsible Council Division

42.3 Copies of Petitions will be made available to Councillors if required.

42.4 Any Councillor presenting a petition will be responsible for ensuring that:

1. he or she is familiar with the contents and purpose of the petition
2. the petition is not derogatory or defamatory

43. Method of Adoption of Reports (Reports of Committee) (Cl. 259 and Cl. 269 of the Regulation)

43.1 In dealing with and considering the Reports and Recommendations of Committees of the Council which do not have delegated authority, the following procedures shall apply:

1. Each Report of a Committee shall be dealt with separately.
2. The Chair shall nominate the Committee Report under consideration and shall call the number of each item in that Committee's report. "Seriatim" inviting Councillors(s) to nominate a challenge to any item they require to be excluded from a general resolution of the Council adopting the remainder of that Committee Report and Recommendations, "in total".
3. The Mayor shall then call for the Chair of that Committee as mover and for a member as seconder, to a resolution in the following terms:

"That the minutes of the <Name of the Committee> of <insert meeting date> be noted and the recommendations of the Committee as detailed below be adopted as a resolution of the Council."

4. The Minutes of the Council Meeting shall record in full the content of all Motions, Amendments, etc. arising from any challenged item.

44. Disclosure of Interests (Pecuniary and Non-pecuniary Interests) (Sect. 451 of the Act)

- 44.1 A Councillor who has a pecuniary or non-pecuniary interest in any matter with which Council is concerned and who is present at a meeting of Council at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. Disclosures are to be made verbally at Council and Committee Meetings.
- 44.2 If any Councillor declares a Pecuniary Interest in any matter, the Councillor must not be present at, or in sight of, the meeting of the Council:
1. at any time during which the matter is being considered or discussed by the Council
 2. at any time during which the Council is voting on any question in relation to the matter
- 44.3 Councillors who aren't permitted to take part in a discussion because of a pecuniary interest cannot escape this by addressing the meeting as a 'resident' or 'ratepayer'. The Act states that a Councillor must not be present at or in the sight of the meeting of Council at any time during which the matter (for which the Councillor has declared a pecuniary interest) is being considered, discussed or voted on. This has been interpreted as excluding Councillors in both their official capacity and as a member of the Public.
- 44.4 Further information on Pecuniary Interests can be found in Council's Conflicts of Interest Policy.

45. Disclosure by Advisors (Sect. 456 of the Act)

- 45.1 A person who, at the request or with the consent of the Council, or a Council Committee, gives advice on any matter at any meeting of the Council or a Council Committee must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given.
- 45.2 The person is not required to disclose the person's interest as an adviser.

46. Disclosures to be Recorded (Sect. 453 of the Act)

- 46.1 A disclosure made at a meeting of Council and the reasons for the disclosure must be recorded in the minutes of the meeting.
- 46.2 All disclosures are also recorded in Council's Declaration of Interest at Council Meetings on Agenda Items Register. The Register is available for viewing on Council's website.

47. Mayoral Minutes (Cl. 243 of the Regulation)

- 47.1 The Mayor may put to an Ordinary Council Meeting any matter which the Council is allowed to deal with or which the Council officially knows about via a Mayoral Minute. This would cover any Council function under the Act or other legislation, or any matter that has been brought to the Council's attention, for example, by letter to the Mayor or the General Manager.
- 47.2 This power to make Mayoral Minutes recognises the special role of the Mayor. A Mayoral Minute overrides all business on the agenda for the meeting and the Mayor may move that the Minute be adopted without the motion being seconded.

- 47.3 Mayoral Minutes should not be used to introduce, without notice, matters that are routine, not urgent, or need research or a lot of consideration by the Councillors before coming to a decision. These types of matters would be better placed on the Agenda, with the usual period of notice being given to the Councillors.
- 47.4 Amendments to Mayoral Minutes are not addressed in the Regulation; however, they may be altered as part of the discussion at the Ordinary Council Meeting.
- 47.5 Mayoral Minutes are not moved at Committee Meetings.
- 47.6 In the absence of the Mayor and when acting in the role of the Mayor, the Deputy Mayor is entitled to submit Mayoral Minutes in accordance with this clause.
- 48. Notice of Motion Submission (Cl. 241(1) of the Regulation)**
- 48.1 The notice is to be in writing, signed by the Councillor and dated and delivered to the General Manager by 10 am on Friday of the week immediately preceding the meeting (i.e. one week and one day before meetings).
- 49. Absence of Mover - Notice of Motion (Cl. 245 of the Regulation)**
- 49.1 In the absence of a Councillor who has placed a notice of motion on the business paper for a Council Meeting:
1. any other Councillor may move the motion at the meeting
 2. the Chair may defer the motion until the next meeting of the Council at which the motion can be considered
- 50. Motions to be Seconded (Cl. 246 of the Regulation)**
- 50.1 A motion or an amendment cannot be debated unless there is a 'mover' and 'seconded'. The mover puts forward the motion and if a second person agrees with it, debate on the motion can begin.
- 51. How Subsequent Amendments may be Moved (Cl. 247 of the Regulation)**
- 51.1 If an amendment has been rejected, a further amendment can be moved to the motion to which the rejected amendment was moved, and so on, but no more than one motion and one amendment can be before Council at any one time.
- 52. Procedural Motions (Cl. 239(2) of the Regulation)**
- 52.1 A Procedural Motion is not an amendment to the question before the Chair. As its description implies, it is directed towards the way or manner in which the Council will deal with the matter before it, and does not contain or imply a decision on the matter.
- 52.2 Unless otherwise prohibited, a Procedural Motion may be moved at any time and must be dealt with immediately by the Chair. A Procedural Motion, having been moved and seconded, shall take precedence over the question before the Chair which shall be suspended pending decision on the Procedural Motion.
- 52.3 Unless otherwise provided, debate on a Procedural Motion is not permitted and the mover does not have a right of reply.
- 52.4 Unless otherwise provided, a Procedural Motion cannot be amended.
- 52.5 Where the Procedural Motion is lost, the suspended business shall then proceed.

53. Motions of Dissent (Cl. 248 of the Regulation)

- 53.1 A Councillor can, without notice, move to dissent from the ruling of the Chair on a point of order. If that happens, the Chair must suspend business before the meeting until a decision is made on the motion of dissent. A point of order must relate to a breach of order or an irregularity in proceedings.
- 53.2 If a motion of dissent is carried, the Chair must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been discharged as out of order, the Chair must restore the motion or business to the agenda and proceed with it in due course.
- 53.3 Despite sub-clause 53.2 of this Code, only the mover of a motion of dissent and the Chair can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

54. Items Moved as a Block via a Motion

- 54.1 The Council may follow the practice of withdrawing reports and recommendations from general Council discussion and resolving upon them "in block", thereby requiring only one motion.

55. Questions may be put to Councillors and Council Officers (Cl. 241 of the Regulation)

- 55.1 A Councillor:
1. may, through the Chair, put a question to another Councillor
 2. may, through the General Manager, put a question to a Council Officer
- 55.2 However, a Councillor or Council Officer to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.
- 55.3 Councillors must put every such question directly, succinctly and without argument.
- 55.4 The Chair must not permit discussion on any reply or refusal to reply to a question put to a Councillor or Council Officer under this clause.

56. Limitation as to Number of Speeches (Cl. 259 of the Regulation)

- 56.1 A Councillor who, during a debate at a meeting of Council, moves an original motion has the right of general reply to all observations that are made by another Councillor during the debate in relation to the motion and to any amendment to it, as well as the right to speak on any such amendment.
- 56.2 A Councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- 56.3 A Councillor must not, without the consent of Council, speak more than once on a motion or an amendment, or for longer than five minutes at any one time. However, the Chair may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment and for longer than five minutes on that motion or amendment, to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.

- 56.4 Despite clause 51 of this Code, a Councillor may move that a motion or amendment be now put:
1. if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it
 2. if at least two Councillors have spoken in favour of the motion or amendment and at least two Councillors have spoken against it
- 56.5 The Chair must immediately put to the vote, without debate, a motion moved under sub-clause 56.4. A seconder is not required for such a motion.
- 56.6 If a motion that the original motion or an amendment be now put is passed, the Chair must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised his or her right of reply under sub-clause 56.1.
- 56.7 If a motion that the original motion or amendment be now put is rejected, the Chair must allow the debate on the original motion or the amendment to be resumed.
- 57. What are the voting entitlements of Councillors? (Sect. 370 of the Act)**
- 57.1 Each Councillor is entitled to one vote.
- 57.2 The Chair at a meeting of Council has, in the event of an equality of votes, a second or casting vote. Should the Chair fail to exercise a casting vote, the motion being voted upon would be lost.
- 58. Voting at Council Meetings (Cl. 251 of the Regulation)**
- 58.1 A Councillor who is present at a meeting of Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.
- 58.2 If a Councillor who has voted against a motion put at a Council meeting so requests, the General Manager must ensure that the Councillor's dissenting vote is recorded in the Council's minutes.
- 58.3 The decision of the Chair as to the result of a vote is final, unless the decision is immediately challenged and two Councillors call for a division.
- 58.4 When a division on a motion is called, the Chair must ensure that the division takes place immediately. The General Manager must ensure that the names of those who vote for the motion and those that vote against it are respectively recorded in the Council's minutes.
- 58.5 Voting at a Council meeting is to be by open means (such as on the voices or by show of hands). However, the Council may resolve which option to conduct the election of the Deputy Mayor in accordance with Schedule 7 of the Regulations.
- 59. Recording of Voting on Planning Matters (Sect. 375A of the Act)**
- 59.1 In this CLAUSE, 'planning decisions' means a decision made in the exercise of a function of a Council under the *Environmental Planning and Assessment Act 1979*:
1. Including a decision relating to ~~a development application~~, voluntary planning agreement (VPA) an environmental planning instrument, a development control plan or a development contribution plan under the Act
 2. Not including the making of an order under Division 2A of Part 6 of EP&A Act.

- 59.2 The General Manager is required to keep a register containing, for each planning decision made at a meeting of the Council or ~~Building and Development Committee~~ the Independent Hearing and Assessment Panel (IHAP), the names of the Councillors who supported the decision and the names of any Councillors who opposed (or are taken to have opposed) the decision.
- 59.3 For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the Council or ~~Building and Development Committee~~ IHAP.
- 59.4 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- 59.5 The Register is available on Council's website for public viewing.
- 59.6 This clause extends to a meeting that is closed to the Public.
- 60. Reasons for Decisions**
- 60.1 Council is required to give reasons for their decisions when they approve ~~development applications planning matters or tenders~~ against the recommendation of Council Officers or Council's engaged experts and the reasons are to be included in the minutes of the Council or Committee Meeting. ~~This can reduce the cost to councils of Land and Environment Court litigation, as well as achieving transparency and accountability in decision-making.~~
- 61. What Constitutes a Decision of Council (Sect. 371 of the Act)**
- 61.1 A decision supported by a majority of the votes at a meeting of Council at which a quorum is present is a decision of Council.
- 62. Making Resolutions Public after (part) Meeting Closed (Cl. 253 and Cl. 269 of the Regulation)**
- 62.1 When the Council or a Committee of the Council passes a resolution during a meeting, or a part of a meeting, that is closed to the Public, the Chair must make the resolution public as soon as practicable after the meeting or part of the meeting has ended.
- 63. Council Meeting Adjournment (Cl. 233(1)(a) of the Regulation)**
- 63.1 The Chair is empowered to adjourn a meeting of a Council for a time specified or as agreed to by the Council.
- 64. Rescinding or Altering Resolutions (Sect. 372(1) of the Act)**
- 64.1 A resolution passed by Council, or a Committee whose membership consist only of members of the Council and which has full delegation of authority to determine matters, may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with this Code.
- 64.2 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with. The Act requires notice of a rescission motion to be given in accordance with Council's Code of Meeting Practice. As such, for rescission motions that are lodged at the same meeting as the matter proposed to be rescinded was carried, the rescission

motion will be held over and considered at the subsequent Ordinary or Extraordinary Council Meeting or the next meeting of the relevant Committee, whichever occurs first.

- 64.3 If a motion has been negated by Council, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with this Code.
- 64.4 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negated by Council, must be signed by three Councillors if less than three months have elapsed since the resolution was passed, or the motion was negated, as the case may be.
- 64.5 If a motion to alter or rescind a resolution has been negated, or if a motion which has the same effect as a previously negated motion is negated, no similar motion may be brought forward within three months. This sub-clause may not be evaded by substituting a motion differently worded, but in principle the same.
- 64.6 A motion to which this clause applies may be moved on the report of a Committee of Council and any such motion must be recorded in the minutes.
- 64.7 A notice of motion to rescind a resolution, arising from a meeting of a Committee which has full delegation of authority to determine matters, will be listed on the agenda for the subsequent Ordinary or Extraordinary Council Meeting or a Meeting of that Committee, whichever occurs first, for determination. A notice of motion to rescind a resolution, arising from a Council Meeting, will be listed on the agenda of the next available meeting this could include a Committee Meeting subject to:
1. the matter being a matter which is able to be delegated (**Sect. 377 of the Act**)
 2. the matter being submitted to the most appropriate Committee based on the subject matter of the Rescission Motion
 3. the matter being submitted to a Committee for which all the Councillors are members
- 64.8 A notice of motion to rescind shall not be valid unless received by the General Manager in writing in accordance with this clause.
- 64.9 A Councillor may only withdraw his/her signature from a Notice of Motion to Rescind, with the consent (in writing) of the other signatories (so as to give the other Councillors an opportunity to obtain another signatory to the rescission motion, if necessary). If, as a result of a signature being validly withdrawn, the Notice of Motion to Rescind is left with less than three valid signatures, the motion lapses and subject matter of the motion will be actioned by the General Manager.
- 64.10 Rescission Motions are unable to be withdrawn, by the Councillors who have submitted the Motion, after the deadline for business paper preparation (which is 12 noon on the Monday in the week preceding the meeting in question). Once a Rescission Motion has been listed on a Business Paper (which is taken to be at 12 noon on the Monday in the week preceding the meeting in question) it cannot be removed or withdrawn and will lapse at the meeting in question if no Councillors are prepared to move/second it.
- 64.11 The provisions of this clause concerning negated motions do not apply to motions of adjournment.
- 64.12 The General Manager shall notify all Councillors (by telephone, facsimile or email) within 24 hours of the receipt by the General Manager of a valid rescission motion.
- 64.13 It is Council's practice not to implement decisions of the Council until 12 noon on the working day following the Council and/or Committee Meeting.

64.14 If the General Manager receives a rescission motion after 12 noon on the working day following any meeting and action on the resolution in question has not already been carried into effect but is expected before the rescission motion can be decided on by the Council, the General Manager will not act upon the resolution in question until the rescission motion has been considered.

65. Certain Circumstances do not Invalidate Council's Decision (Sect. 374 of the Act)

65.1 Proceedings at a meeting of Council or a Committee are not invalidated because of:

1. a vacancy in a civic office
2. a failure to give notice of the meeting to any Councillor or Committee member
3. any defect in the election or appointment of a Councillor or Committee member
4. a failure of a Councillor or a Committee member to disclose a pecuniary interest at a Council or Committee meeting (Sect. 451 of the Act)
5. a failure to comply with this Code

66. Apology/Leave of Absence (Sect. 234 of the Act)

66.1 The tendering of an apology is an accepted convention by which those present at a meeting are notified that the person tendering the apology will not be attending the meeting. It is a form of courtesy to those attending the meeting. Its purpose is also to aid the efficient conduct of meetings by informing the Chair as to who will not be attending. This avoids delaying the opening of a meeting pending the arrival of such persons.

66.2 The acceptance of an apology is a positive acknowledgement of the courtesy of the person who tendered it. It does not amount to a grant of a leave of absence.

66.3 Although, the practice of tendering of apologies is recognised as a component of good meeting practice, it has no recognition in either the Act or the Regulation.

66.4 By contrast, a leave of absence is a formal permission granted by way of Council resolution to a Councillor excusing that Councillor's attendance at a particular meeting. It is sought by way of application to the Council. It is recognised in both the Act and in the Regulation.

66.5 A Councillor's application for leave of absence from Council Meetings should, if practicable, identify (by date) the meeting(s) from which the Councillor intends to be absent.

66.6 A Councillor who intends to attend a Council Meeting despite having been granted leave of absence should, if practicable, give the General Manager at least two days' notice of his or her intention to attend.

Part 6 – Keeping Order at Meetings

67. Questions of Order (Cl. 255 of the Regulation)

67.1 The Chair, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the Chair, it is necessary to do so.

67.2 A Councillor who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the Chair to the matter.

67.3 The Chair must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.

- 67.4 The Chair's ruling must be obeyed unless a motion dissenting from the ruling is passed.
- 67.5 When the Chair rules that an act of disorder has been committed by a Councillor, the details, as stated by the Chair at the meeting, are to be recorded in the minutes of the meeting.
- 68. Acts of Disorder (Sect. 439 of the Act)**
- 68.1 A Councillor commits an act of disorder if the Councillor, at a meeting of Council or a Committee of Council:
1. contravenes the Act or any Regulation in force under the Act
 2. assaults or threatens to assault another Councillor or person present at the meeting
 3. moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of Council, or addresses or attempts to address Council on such a motion, amendment or matter
 4. insults or makes personal reflections on or imputes improper motives to any other Councillor
 5. says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring Council or the Committee into contempt
- 68.2 The Chair may require a Councillor:
1. to apologise without reservation for an act of disorder referred to in sub-clause 68.1.1 or 68.1.2 of this Code
 2. to withdraw a motion or an amendment referred to in sub-clause 68.1.3 of this Code and, where appropriate, to apologise without reservation
 3. to retract and apologise without reservation for an act of disorder referred to in sub-clause 68.1.4 or 68.1.5 of this Code
 4. to apologise without reservation for an act of disorder (committed at the preceding Council or Committee meetings) for which that Councillor failed to apologise for without reservation when requested by the Chair at the time
- 68.3 Prior to expulsion:
1. A Councillor may, be expelled from a meeting of a Council for having failed to comply with a requirement under clause 68.1. The expulsion of a Councillor does not prevent any other action from being taken against the Councillor for the act of disorder concerned (Sect. 10(2) (a) or (b) of the Act).
 2. Prior to any expulsion the Chair must adjourn the meeting for a minimum period of five minutes.
 3. Upon resumption of the Meeting, and prior to expulsion of a Councillor taking place, the Chair shall specify the breach of the Code/reasons for the proposed expulsion and provide an opportunity for the subject Councillor to respond to the alleged breach/reasons for expulsion.
- 68.4 The Chair may expel from a meeting a Councillor who fails to comply with a requirement made under clause 68.1 of this Code.

69. How Disorder at a Meeting may be Dealt With (Cl. 257 of the Regulation)

- 69.1 If disorder occurs at a meeting of Council, the Chair may adjourn the meeting for a period of not more than 15 minutes and leave the Chair. Council, on reassembling, must, on a question put from the Chair, decide without debate whether the business is to be proceeded with or not. This sub-clause applies to disorder arising from the conduct of members of the Public as well as disorder arising from the conduct of Councillors.
- 69.2 A member of the Public may, be expelled from a meeting of a Council for engaging in or having engaged in disorderly conduct at the meeting (Section 10(2)(a) or (b) of the Act).
- 69.3 The Chair may expel a member of the Public from a Council meeting on the ground that the member is engaging in or has, at the meeting, engaged in disorderly conduct.

70. Power to Remove Persons from a Meeting after an Expulsion Resolution (Cl. 258 of the Regulation)

- 70.1 If a meeting of Council resolves to expel or the Chair expels from the meeting a Councillor for failing to comply with a requirement made under clause 69 of this Code, or a member of the Public for disorderly conduct, and the Councillor or member of the Public fails to leave the meeting immediately after the resolution is passed, a Police Officer, or any person authorised by Council for the purpose, may, by using only such force as is necessary, remove the Councillor or the person from the meeting and, if necessary, restrain the Councillor or the person from re-entering the place where the meeting is being held until that person publicly apologises without reservation.

Part 7 - Council Committees

71. Committee of the Whole (Sect. 373 of the Act) (Cl. 259 of the Regulation)

- 71.1 Council may resolve itself into Committee of the Whole to consider any matter before Council.
- 71.2 All the provisions of this Code relating to meetings of Council, so far as they are applicable, extend to and govern the proceedings of Council when in Committee of the Whole, except the provision limiting the number and duration of speeches.
- 71.3 The General Manager or, in the absence of the General Manager, a Council Officer of the Council designated by the General Manager is responsible for reporting to Council proceedings in Committee of the Whole. It is not necessary to report the proceedings in full but any recommendations of the Committee must be reported.
- 71.4 Council must ensure that a report of the proceedings (including any recommendations of the Committee) is recorded in the Council's minutes. However, Council is not taken to have adopted the report until a motion for adoption has been made and passed.

72. Council may Appoint and Wind up Committees

- 72.1 Council may, by resolution, establish such Committees as it considers necessary and may wind up such Committees.
- 72.2 A Committee is to consist of the Mayor and such other Councillors appointed by Council.

73. Building and Development Committee

- ~~73.1 Burwood Council has resolved to formulate the Building and Development Committee (Committee of the Whole). The functions of this Committee are to determine any~~

~~Development Applications and development/building-related issues that cannot be determined by Council Officers under delegated authority.~~

~~73.2 The Building and Development Committee Meetings are held on the 2nd Tuesday of each month at 6.00 pm in the Council Chamber, Administration Building, Suite 1, Level 2, 1-17 Elsie Street, Burwood and in accordance with Council's adopted meeting schedule.~~

~~73.3 Development Applications that must be referred to the Committee are where:~~

- ~~1. Petitions and more than four valid planning objections to the development application have been received from separate households and the application has not been refused.~~
- ~~2. Development where there is major variation under State Environmental Planning Policy No. 1 (more than a 10%) from Council's Development Standards.~~
- ~~3. Any application specifically required by the Building and Development Committee or Council to be considered at a subsequent Building and Development Committee or Council Meeting.~~
- ~~4. Any matter subject to appeal.~~
- ~~5. Applications having a major environmental impact on the locality and which involve land owned by Council.~~

74. Order of Business Building and Development Committee

~~74.1 The Building and Development Committee meeting shall proceed according to the following order of business:~~

- ~~1. Acknowledgement of Country~~
- ~~2. Council Prayer~~
- ~~3. Apologies/Leave of absence~~
- ~~4. Declarations of Interests by Councillors~~
- ~~5. Declaration of Political Donations only if planning matters appear on the Agenda~~
- ~~6. Confirmation of Minutes~~
- ~~7. Address by the Public on Agenda Items as each item is addressed~~
- ~~8. General Business~~

75. Development Plans – Inclusion in the Business Paper

~~75.1 Applications for development consent, called 'development applications', come with different types of plans under the *Environmental Planning and Assessment Act 1979* (EP&A Act).~~

~~75.2 The EP&A Act does not require a Council to make copies of these plans available in its business papers. Because of copyright issues, development plans are not included in the business papers. Instead, interested members of the Public should be allowed to view these plans at the Council's Administration Building during the exhibition period under the EP&A Act.~~

~~75.3 Copyright raises some very complex issues for Councils, particularly in the area of development applications. Copyright in development plans ('a work') is usually held by the person who drew them. Copyright may be breached when a document is copied and distributed, but not when it is viewed or placed on public exhibition.~~

~~75.4 The EP&A Act and other State legislation does not allow a Council to ignore copyright law when it is dealing with development plans. Councillors are provided with development application plans separately in order to make an informed decision.~~

76. Functions of Committees

- 76.1 Council must specify the functions of each of its Committees when the Committee is resolved, but may from time to time amend those functions.
- 76.2 A Committee cannot act outside the extent of the functions granted by Council.
- 76.3 If Council, by resolution, delegates authority to a Committee to make decisions, then any decisions made by the Committee under such authority shall be decisions of Council (Section 49(6), *Interpretation Act 1987*).

77. Notice of Committee Meetings to be Given (Sect. 367 of the Act and Cl.262 of the Regulation)

- 77.1 The General Manager must send to each member of a Committee at least three days before each meeting of the Committee, a notice specifying:
1. the time and place at which and the date on which the meeting is to be held
 2. the business proposed to be transacted at the meeting
- 77.2 However, notice of less than three days may be given of a Committee meeting called in an emergency.

78. Non-members Entitled to Attend Committee Meetings

- 78.1 A Councillor who is not a member of a Committee is entitled to attend, and speak at, a meeting of the Committee.
- 78.2 However, the Councillor is not entitled:
1. to give notice of business for inclusion in the agenda for the meeting
 2. to move or second a motion at the meeting
 3. to vote at the meeting

79. Chair and Deputy Chair of Committees

- 79.1 The Chair of each Committee must be:
1. the Mayor
 2. if the Mayor does not wish to be the Chair of that Committee - a member of the Committee may be elected by Council
- 79.2 Council may elect a member of a Committee as Deputy Chair of the Committee. If Council does not elect a Deputy Chair of such a Committee, the Committee may elect a Deputy Chair.
- 79.3 The Chair is to preside at a meeting of a Committee. If the Chair is unable or unwilling to preside, the Deputy Chair (if any) is to preside at the meeting, but if neither the Chair nor the Deputy Chair is able or willing to preside, the acting Chair is to preside at the meeting.

80. Absence from Committee Meetings

- 80.1 A member ceases to be a member of a Committee if the member (other than the Mayor):
1. has been absent from three consecutive meetings of the Committee without having given reasons acceptable to the Committee for the member's absences

2. has been absent from at least half of the meetings of the Committee held during the immediately preceding year (being the period beginning 1 July and ending the following 30 June) without having given to the Committee acceptable reasons for the member's absences

80.2 Sub-clause 80.1.1 does not apply if all the members are Councillors of the Committee.

81. Committee Procedures

81.1 Each Committee of a Council may regulate its own procedure. However, all the provisions of this Code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of Committee Meetings.

81.2 For Committees which do not have delegated authority and which only make recommendations to Council, their minutes shall contain the names of movers and seconders and the text of motions and amendments and whether those motions or amendments were passed or lost.

82. Order of Business

82.1 Council Committee meetings shall proceed according to the following order of business:

1. Apologies/Leave of absence
2. Declarations of Interests
3. Confirmation of Minutes
4. General Business

83. Voting at Committee Meetings

83.1 Voting at a Committee meeting is to be by open means (such as on the voices or by show of hands).

83.2 Whenever the voting of a motion put to a meeting of a Committee is equal, the Chair of the Committee is to have a casting vote as well as an original vote.

84. Reports of Committees

84.1 If in a report of a Committee distinct recommendations are made, the decision of Council may be made separately on each recommendation.

84.2 The recommendations of a Committee are, so far as adopted by Council, resolutions of Council.

84.3 If a Committee of a Council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting, that is closed to the Public, the Chair must:

1. make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended
2. report the resolution or recommendation to the next meeting of the Council

85. Committee may Expel Certain Persons from its Meetings

85.1 A Committee may, by resolution, expel from a meeting a Councillor or member of the Public who fails to comply with a requirement under clause 68 of this Code.

85.2 The Chair may expel from a meeting a Councillor or member of the Public who fails to comply with a requirement under clause 68 of this Code.

85.3 If a meeting or part of a meeting of a Committee is closed to the Public in accordance with Section 10(A) of the Act, the Committee may, by resolution expel, from the place where the meeting is being held any person who is not a Councillor or member of the Committee (Section 10(2)(a) or (b) of the Act).

85.4 If any such person, after being notified of such a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a Police Officer, or any person authorised for the purpose, by the Council, Committee or person presiding may, by using only such force as is necessary, remove the person from that place, and, if necessary, restrain the person from re-entering, that place.

86. Committee Meeting Adjournment

86.1 The Chair is empowered to adjourn a meeting of a Committee for a time specified or as agreed to by the Committee.

Part 8 - Minutes

87. Minutes (Sect. 375 of the Act)

87.1 Council and Committees of the Whole (~~Building and Development~~) must ensure that full and accurate minutes are kept of the proceedings of each meeting of Council and of each Committee including:

1. The name of the Councillors present at the meetings and any apologies/leave of absences (Cl. 233 of the Regulation)
2. The names of Council Officers in attendance and their organisational titles (Cl. 257(1) of the Regulation)
3. The name of any other person, excluding members of the Public, in attendance at the meeting and the organisation they represent or the capacity of their attendances
4. The arrival and departure of Councillors during the course of the meeting (including any temporary departures or arrivals) (Cl. 257(1) of the Regulation)
5. Oath and Affirmation for Councillor (1st Council Meeting of the newly elected Council) (Sect. 233A of the Act)
6. Details of each motion moved and of any amendments moved to it (Cl.245(a) of the Regulation)
7. The names of the mover and seconder of any motion or amendment Cl.254(b) of the Regulation)
8. Whether the motion or amendment is carried or lost (Cl. 254(c) of the Regulation)
9. a record of the voting (for and against) each planning matter (Sect. 375A of the Act)
10. a record of the reasons for approving planning matters against the recommendations of Council Officers (Meetings Practice Note August 2009 - OLG)
11. Details of any procedural motions moved (Cl. 254 of the Regulation)
- ~~12. Motions passed unanimously, if requested, should be noted~~
13. Where a valid Division is called, a table of the names of every Councillor and the way their vote was cast, either For or Against (Cl. 251(4) of the Regulation)
14. When requested by Councillors, a record of their opposition to any motion, this is done by calling for a division (Cl. 251(4) of the Regulation)
15. Details of failure to achieve or maintain a quorum and any adjournment whether as a result or otherwise (Cl. 233 of the Regulation)
16. Details of any members of the Public who address meetings (Meetings Practice Note August 2009 - OLG)
17. The time and reason for any adjournment of the meeting or suspension of standing orders
18. The details of any disclosures of pecuniary interests by the Councillors (Sect. 453 of the Act)

19. The details of any acts of disorder as ruled and the reasons as stated by the Chair at any meeting
 20. Minutes of the Committee of the Whole (Cl. 259(3) of the Regulation)
 21. Reports of Committees approved by Council (Cl. 259(3) of the Regulation)
 22. Any other matter which the General Manager thinks should be recorded to clarify the intention of the meeting or the reading of the Minutes
 23. The date, time and venue where the meeting was commenced, adjourned, resumed and/or concluded (Cl. 257(1) of the Regulation)
 24. The report of a council committee leading to a rescission or alteration motion (Sect. 372(6) of the Act)
- 87.2 The correctness of the Minutes of a meeting shall only be confirmed on the motion of two Councillors **at the next Ordinary Council Meeting**.
- 87.3 A motion or discussion with respect to such minutes shall not be in order except with regard to their accuracy as a true record of the proceedings.
- 87.4 The Minutes must, as soon as they have been confirmed at a subsequent meeting of Council or a Committee, be signed by the Chair ~~and the General Manager~~ of that subsequent meeting. At Burwood Council the process is that each page is initialled by the Chair ~~and the General Manager~~ and signed on the last page in full.
- 88. Inspection of the Minutes of Council or a Committee**
- 88.1 Council or Committee Minutes are published on Council's website.
- 88.2 The General Manager must ensure that the minutes of Council and any minutes of a Committee are kept secure and in safe custody and that no unauthorised person is allowed to interfere with them. At Burwood the Minutes are held by the Governance Team or **custody is transferred to State Records after a period of 25 years**. Minutes from 1889 are now contained in Council's document management system (TRIM).

Part 9 - Miscellaneous

- 89. Information Relating to Proceedings at Closed Meetings not to be Disclosed**
- 89.1 A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
1. with the consent of the person from whom the information was obtained
 2. in connection with the administration or execution of this Act
 3. for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings
 4. in accordance with a requirement imposed under the *Ombudsman Act 1974* or the *Government Information (Public Access) Act 2009*
 5. with other lawful excuse
- 89.2 In particular, if part of a meeting of a Council or a Committee of a Council is closed to the Public, a person must not, without the authority of the Council or the Committee, disclose (otherwise than to the Council or a Councillor of the Council) information with respect to the discussion at, or the business of, the meeting (Sect. 10(A)(1) of the Act).
- 89.3 Sub-section 88.2 does not apply to:
1. the report of a Committee of a Council after it has been presented to the Council
 2. disclosure made in any of the circumstances referred to in sub-clauses 1-5 above

3. disclosure made in circumstances prescribed by the Regulations
4. any agenda, resolution or recommendation of a meeting that a person is entitled to inspect in accordance with *Government Information (Public Access) Act 2009*

90. Public Access to Correspondence and Reports

- 90.1 Council and a Committee of which all the members are Councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.
- 90.2 This Section does not apply if the correspondence or reports:
1. relate to a matter that was received or discussed
 2. were laid on the table at, or submitted to, the meeting, when the meeting was closed to the Public
- 90.3 This Section does not apply if the Council or Committee resolves at the meeting, when open to the Public, that the correspondence or reports, because they relate to a matter, are to be treated as confidential (**Section 10A(2) of the Act**).

91. Audio Recording of Council and Committee Meetings by Council (Cl. 273 of the Regulation)

- 91.1 Meetings of Council and Committees, which have full delegation to determine items on their agenda, shall be audio recorded by the Council, except for those portions which the Committee or the Council has resolved to close in accordance with the *Government Information (Public Access) Act 2009*.
- 91.2 The purpose of audio recording meetings of Council and Committees is to:
1. Allow accurate compilation of Minutes of those Meetings and to verify their accuracy upon confirmation of those Minutes.
 2. Audio recordings of meetings will be destroyed immediately after the Minutes for the meeting in question have been confirmed or after two months.
 3. Appropriate signs shall be displayed in the Council Chamber (or any rooms utilised for audio recording of Council/Committee Meetings) alerting attendees to the fact that the proceedings are being recorded for the purposes of sub-clause 90.2 of this Code.
 4. The Chair will, at the commencement of meetings, inform those in attendance that the proceedings are being recorded for the purpose of this clause of the Code of Meeting Practice and remind them that any comments should only include personal information that is relevant or necessary to the matters under consideration by the Council/Committee.

92. Audio Recording/Video Recording of Meetings of Council or a Committee Prohibited without Permission (Cl. 273 of the Regulation)

- 92.1 A person may use an audio recorder to record the proceedings of a meeting of Council or a Committee only with the authority of Council or Committee.
1. A person may, be expelled from a meeting of a Council or a Committee of a

Council, for using of having used an audio recorder in contravention of this clause (Sect. 10(2)(a) or (b) of the Act).

2. If any such person, after being notified of such a resolution, or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a Police Officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the person from that place and, if necessary, restrain the person from re-entering, that place.
3. In this clause, audio recorder includes any device capable of recording or transmitting speech and/or recording or transmitting images.

93. Use of Mobile Phones Prohibited during Council and Committee Meetings (Burwood Council clause)

- 93.1 Councillors and members of the Public are prohibited from using mobile phones for voice conversations in the Council Chamber during meetings of the Council or Council Committees. Mobile phones must be turned-off or changed to 'silent mode' prior to entering the Council Chamber.

94. Public Approaching Councillors during Meetings

- 94.1 Members of the Public are prohibited from approaching Councillors in the Council Chambers when a meeting is in progress.

95. Mode of Address (Meeting Practice Note – OLG)

- 95.1 Councillor and Council Officers shall at all times:
1. Address Councillors by their official designation, as Mr/Madam Mayor or Councillor, as the case may be
 2. Address Council Officers by their position title
- 95.2 All must address their remarks through the Chair.

96. Questions without Notice

- 96.1 Councillors are permitted to ask a maximum of three questions per Council Meeting. The Regulation which states that Council must not transact business unless due notice has been given that is three days prior to the Council Meeting. Councillors are not to address personalities (Cl. 241 of the Regulation).
- 96.2 Any Questions without Notice to Council Officers which in the opinion of the Chair with the referral to the General Manager that requires action involving the employment of unbudgeted resources shall not be allowed (but rather should be the basis of a Notice of Motion(s) duly moved under the Code of Meeting Practice).
- 96.3 Councillors are required to submit their question(s) to the Chair in writing as at the agenda item 'Question without Notice' when it comes to the forum. Councillors must word question(s), succinctly and without argument and may contain supporting information (Burwood Council clause).
- 96.4 The Chair (at the appropriate time during the meeting) will read out the name of the Councillor asking the question and the question itself. No discussion is to take place. Questions without Notice will be recorded in the Minutes of Council Meetings (Cl. 241 of the Regulation).

ATTACHMENT 1

ITEM /17 Public Exhibition - Revised Code of Meeting Practice.DOC Draft - Code of Meeting Practice

Code of Meeting Practice

96.5 Answers will not be provided at the Meeting, however, they will be provided to all Councillors within ten days after the meeting. An Information Item with the answers will be submitted to the following Council Meeting for public information (**Burwood Council clause**).

97. Recess Period Delegations (Sect. 226 of the Act)

97.1 During the December/January recess it is standard procedure for Council to delegate certain functions to the Mayor and General Manager to ensure matters of urgency can be adequately dealt with. This is done via a Council resolution in November/December.

97.2 Functions with the exception of the functions listed under Section 377 and Chapter 7 of the *Local Government Act 1993* equally to the Mayor and General Manager where both are required to agree in their decision and sign off on the matters.

97.3 The regulatory functions under Chapter 7 of the Regulation is delegated solely to the General Manager (the most senior employee of Council) during the recess period (**Section 379 of the Act**).

97.4 All decisions made under the above delegations are subsequently reported to the 1st Council Meeting in February for the information of Councillors.

98. Table of Permissible Motions

Motion	Notice required	Seconder	Debate	Mover in reply
General Motion (cl. 246 and 250 of the Regulation)	Yes	Yes	Yes	Yes
Amendment (cl. 247 Code)	No	Yes	Yes	No
Mayoral Minute (cl. 243 of the Regulation)	No	No	Yes	Yes
Urgency (cl. 241 of the Regulation)	No	Yes	Mover only	No
Rescission (sect. 372 of the Act)	Yes	Yes	Yes	Yes
Procedural Motions	No	Yes	Yes	No
Motion/Amendment be put (cl. 250(5) of the Regulation)	No	No	No	No
Dissent (cl. 248 of the Regulation)	No	Yes	Mover only	No

(ITEM 60/17) REVIEW OF THE GENERAL MANAGER'S DELEGATIONS WITHIN 12 MONTHS AFTER THE ORDINARY ELECTION - S.380 OF THE LOCAL GOVERNMENT ACT 1993

File No: 17/34634

REPORT BY ACTING GENERAL MANAGER

Summary

To seek Council's review and approval of the General Manager's Delegations following the Ordinary Council Election in 2017 as required by Section 380 of the *Local Government Act 1993*.

Background

The General Manager's Delegations were last endorsed by Council on 22 November 2016 (min. no. 130/16). In accordance with Section 380 of the Act the Delegations must be reviewed within twelve months of each Ordinary Council Election.

The Act provides Council with powers, authorities and duties. It is the primary source of Council's functions although other legislation, such as the *Environmental Planning and Assessment Act 1979* and the *Roads Act 1993*, impose further functions for Council to administer.

Due to the nature, scope and complexity of the functions Council has to perform, the Act makes provision for the Council to delegate those functions to the General Manager. However, section 377(1) of the Act provides functions that Council cannot delegate to the General Manager (refer page 2 Attachment 1).

The Delegations by Exception - detail the functions that the General Manager is not authorised to conduct and therefore there is an assumption that all other activities are within the delegation of the General Manager (refer Attachment 1).

In addition, the General Manager may delegate any of the functions of the General Manager (other than the power of delegation) to any person or body (including another employee of the Council). For accountability purposes a copy of the Delegations Register (including the sub-delegations from the General Manager to Council Officers) will be made available on Council's website.

Proposal

That Council endorses the General Manager's Delegations by Exception in accordance with the *Local Government Act 1993*.

Planning or Policy Implications

Council adopted the following document which will now be superseded and to be rescinded by Council:

1. Delegations General Manager - Adopted on 22 November 2016

Financial Implications

No Financial implications.

Conclusion

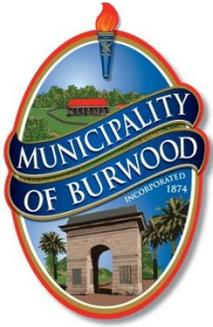
That Council endorse the General Manager's Delegations in accordance with Section 380 of the *Local Government Act 1993* which states that a Council must, within twelve months after each ordinary election, review all of its delegations.

Recommendation(s)

That Council endorses the General Manager's Delegations by Exception in accordance with Section 380 of the *Local Government Act 1993*.

Attachments

1 [↓](#) Draft - General Manager's Delegations by Exception



Burwood Council

heritage ▪ progress ▪ pride

DRAFT - GENERAL MANAGER'S DELEGATIONS

Suite 1, Level 2, 1-17 Elsie Street, BURWOOD NSW 2134
PO Box 240, BURWOOD NSW 1805
Phone: 9911-9911 - Fax: 9911-9900
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Public Document
Adopted by the Council: 22 November 2016 (min. no. 130/16)
Trim No.: 17/34633
Version No.: 3
Ownership: Governance

ATTACHMENT 1

ITEM 60/17 Review of the General Manager's Delegations within 12 months after the Ordinary Election - S.380 of the Local Government Act 1993.DOC

Draft - General Manager's Delegations by Exception

Purpose

To devolve accountability to the General Manager to ensure the uncertainty associated with limit of authority, responsibility and accountability which will improve Council's service through speedier resolution for the organisation and customer needs.

This document outlines what functions are not delegated to the General Manager and thereby the General Manager has delegation to undertake all other functions.

Delegations

The General Manager does not have the delegation to undertake the following in accordance with Section 377 of the *Local Government Act 1993* (the Act):

1. the appointment of a general manager,
2. the making of a rate,
3. a determination under section 549 as to the levying of a rate,
4. the making of a charge,
5. the fixing of a fee,
6. the borrowing of money,
7. the voting of money for expenditure on its works, services or operations,
8. the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),
9. the acceptance of tenders to provide services currently provided by members of staff of the council,
10. the adoption of an operational plan under section 405,
11. the adoption of a financial statement included in an annual financial report,
12. a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,
13. the fixing of an amount or rate for the carrying out by the council of work on private land,
14. the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,
15. the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the Environmental Planning and Assessment Act 1979 ,
16. the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,
17. a decision under section 356 to contribute money or otherwise grant financial assistance to persons,

ATTACHMENT 1

ITEM 60/17 Review of the General Manager's Delegations within 12 months after the Ordinary Election - S.380 of the Local Government Act 1993.DOC

Draft - General Manager's Delegations by Exception

18. a decision under section 234 to grant leave of absence to the holder of a civic office,
19. the making of an application, or the giving of a notice, to the Governor or Minister,
20. this power of delegation,
21. any function under this or any other Act that is expressly required to be exercised by resolution of the council.

Development Application Delegations

The General Manager can not approve Development Applications where:

1. A petition with eight or more signatures from separate households within the notification area has been received and the application has not been refused.
2. Where eight or more valid planning objections to the development application have been received from separate households within the notification area and the application has not been refused.
3. Development where there is major variation (more than a 10%) from Council's Development Standards under Clause 4.6 of BLEP 2012.
4. Where two or more Councillors request a Development Application to be brought to Council.
5. Any matter subject to appeal where the matter has gone to a hearing or Section 34A Conference.
6. Applications having a major environmental impact on the locality and which involve land owned by Council.

These matters must be referred to either Council or the Building and Development Committee for determination.

Other Matters

Writing Off Accounts

The General Manager does not have the delegation to approve the writing off of accounts greater than \$5,000. Write offs are reported to Council on an annual basis.

Writing Off Stores and Materials

The General Manager does not have the delegation to approve the write on and off stores and materials greater than \$5,000.

(ITEM 98/17) DELEGATION TO THE MAYOR AND GENERAL MANAGER TO DEAL WITH MATTERS OF URGENCY DURING THE 2017-2018 RECESS PERIOD

File No: 17/49721

REPORT BY ACTING GENERAL MANAGER

Summary

To seek a determination from Council regarding delegations for the 2017-2018 recess. During the December/January recess it is standard procedure for Council to delegate certain functions to the Mayor and General Manager to ensure matters of urgency can be adequately dealt with.

Background

The recess period for 2017-2018 will be from 13 December 2017 until the first Council Meeting in 2018. During this period, it may be difficult or impractical for urgent matters to be dealt with at an Extraordinary Meeting of Council, as Councillor commitments or absence during the holiday period, may make it difficult to achieve a quorum.

To ensure Council can continue to function during such periods, the *Local Government Act 1993* (the Act) offers a level of flexibility under Sections 226 (Role of the Mayor) and 377 (General Power to Delegate).

Council at its meeting of 22 November 2016 delegated to the General Manager all regulatory functions with the exception of:

Development Application Delegations

The General Manager cannot approve Development Applications where:

1. A petition with eight or more signatures from separate households within the notification area have been received and the application has not been refused.
2. Where eight or more valid planning objections to the development application have been received from separate households within the notification area and the application has not been refused.
3. Development where there is major variation (more than 10%) from Council's Development Standards under Clause 4.6 of BLEP 2012.
4. Any matter subject to appeal where the matter has gone to a hearing or Section 34A Conference.
5. Applications having a major environmental impact on the locality and which involve land owned by Council.

These matters must be referred to either Council or the Building and Development Committee for determination.

Other Matters

Writing Off Accounts

The General Manager does not have the delegation to approve the writing off of accounts greater than \$5,000. Write offs are reported to Council on an annual basis.

Writing Off Stores and Materials

The General Manager does not have the delegation to approve the write on and off stores and materials greater than \$5,000.

Proposal

To ensure that urgent matters regarding Development Applications and other matters listed above are dealt with in matters of urgency, it is proposed that both the Mayor and General Manager are required to agree in their decision and sign off on the matters prior to any action being taken.

Conclusion

It is imperative that Council determine a suitable level of delegations to ensure that matters can be adequately dealt with during the recess period.

Recommendation(s)

1. That for the period from 13 December 2017 until the first Council Meeting of 2018 Council delegates the following to both the Mayor and the General Manager:
 - A petition with eight or more signatures from separate households within the notification area have been received and the application has not been refused.
 - Where eight or more valid planning objections to the development application have been received from separate households within the notification area and the application has not been refused.
 - Development where there is major variation (more than 10%) from Council's Development Standards under Clause 4.6 of BLEP 2012.
 - Any matter subject to appeal where the matter has gone to a hearing or Section 34A Conference.
 - Applications having a major environmental impact on the locality and which involve land owned by Council.
 - Writing Off Accounts - to approve the writing off of accounts greater than \$5,000.
 - Writing Off Stores and Materials – to approve the writing off of items greater than \$5,000.
2. That the Deputy Mayor be granted these delegations in the absence of the Mayor or the General Manager.
3. That all decisions made under the above delegations be subsequently reported for the information of Councillors at the first Council Meeting of 2018.

Attachments

There are no attachments for this report.

(ITEM IN36/17) CODE OF CONDUCT STATISTICS REPORT 1 SEPTEMBER 2016 TO 31 AUGUST 2017

File No: 17/55132

REPORT BY ACTING GENERAL MANAGER

Summary

Following the introduction of the Office of Local Government's Model Code of Conduct on 1 March 2013, Complaints Co-ordinators must report on a range of complaints statistics to the Council and to the Office of Local Government on a yearly basis.

The report for 2016/2017 was lodged with the Office of Local Government on 23 November 2017 and is now presented to Council for information.

Background

Following the introduction of the Office of Local Government's Model Code of Conduct on 1 March 2013, Complaints Co-ordinators must report on a range of complaints statistics to the Council and to the Office within three months of the end of September each year.

Council recently adopted the Code of Conduct and the Procedure for the Administration of the Code of Conduct at its meeting on 28 November 2017 after the Local Government Election as required by the *Local Government Act 1993*.

On 23 November 2017 Council lodged a Code of Conduct Statistics Report with the Office of Local Government, covering the period 1 September 2016 to 31 August 2017.

Proposal

That the annual Code of Conduct Statistics Report be received and noted.

Planning or Policy Implications

Section 12 of the Model Code of Conduct and Council's adopted Procedure for the Administration of the Code of Conduct states:

12 Reporting on Complaints Statistics

- 12.1 *The complaints coordinator must arrange for the following statistics to be reported to the Council within three months of the end of September of each year:*
- a) *the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September,*
 - b) *the number of code of conduct complaints referred to a conduct reviewer,*
 - c) *the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,*
 - d) *the number of code of conduct complaints investigated by a conduct reviewer,*
 - e) *the number of code of conduct complaints investigated by a conduct review committee,*
 - f) *without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,*
 - g) *the number of matter reviewed by the Office and, without identifying particular matters, the outcome of the reviews, and*
 - h) *the total cost of dealing with code of conduct complaints made about councillors and the general manager in the year to September, including staff costs.*

12.2 *The council is to provide the Office with a report containing the statistics referred to in clause 12.1 within three months of the end of September of each year.*

The report was prepared in accordance with these provisions and is attached (Attachment 1) for information.

For the year between 1 September 2016 and 31 August 2017 there were no Code of Conduct complaints responding to Section 12 criteria.

Conclusion

A Report on Code of Conduct Statistics was lodged with the Office of Local Government on 23 November 2017 in accordance with Section 12 of the Model Code of Conduct and Council's Procedures for the Administration of the Code of Conduct. The Report is presented to Council for information.

No Decision – Information Item Only

Attachments

- 1 [↓](#) Code of Conduct Complaints Statistic Report 2016/2017 page 1
- 2 [↓](#) Code of Conduct Complaints Statistics report 2016/2017 page 2-3

Office of Local Government

Model Code of Conduct Complaints Statistics

Reporting Period: 1 September 2016 - 31 August 2017.

Date Due: **31 December 2017**

To assist with the compilation of the Time Series Data Publication it would be appreciated if councils could return this survey by 30 November 2017.

Survey return email address: codeofconduct@olg.nsw.gov.au

Council Name:	Burwood Council
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Contact Name:	Allan Yates
Contact Phone:	9911 9993
Contact Position:	Internal Ombudsman
Contact Email:	allan.yates@burwood.nsw.gov.au

All responses to be numeric.

Where there is a zero value, please enter 0.

Enquiries: Performance Team
Office of Local Government
Phone: (02) 4428 4100
Enquiry email: olg@olg.nsw.gov.au

ATTACHMENT 2

**ITEM /17 Code of Conduct Statistics Report 1 September 2016 to 31 August 2017.DOC
Code of Conduct Complaints Statistics report 2016/2017 page 2-3**

Model Code of Conduct Complaints Statistics Burwood Council			
Number of Complaints			
1	a	The total number of complaints received in the period about councillors and the General Manager (GM) under the code of conduct	0
	b	The total number of complaints finalised in the period about councillors and the GM under the code of conduct	0
Overview of Complaints and Cost			
2	a	The number of complaints finalised at the outset by alternative means by the GM or Mayor	0
	b	The number of complaints referred to the Office of Local Government under a special complaints management arrangement	0
	c	The number of code of conduct complaints referred to a conduct reviewer	0
	d	The number of code of conduct complaints finalised at preliminary assessment by conduct reviewer	0
	e	The number of code of conduct complaints referred back to GM or Mayor for resolution after preliminary assessment by conduct reviewer	0
	f	The number of finalised code of conduct complaints investigated by a conduct reviewer	0
	g	The number of finalised code of conduct complaints investigated by a conduct review committee	0
	h	The number of finalised complaints investigated where there was found to be no breach	0
	i	The number of finalised complaints investigated where there was found to be a breach	0
	j	The number of complaints referred by the GM or Mayor to another agency or body such as the ICAC, the NSW Ombudsman, the Office or the Police	1
	k	The number of complaints being investigated that are not yet finalised	0
	l	The total cost of dealing with code of conduct complaints within the period made about councillors and the GM including staff costs	0

ATTACHMENT 2

Preliminary Assessment Statistics	
3	The number of complaints determined by the conduct reviewer at the preliminary assessment stage by each of the following actions:
a	To take no action 0
b	To resolve the complaint by alternative and appropriate strategies 0
c	To refer the matter back to the GM or the Mayor, for resolution by alternative and appropriate strategies 0
d	To refer the matter to another agency or body such as the ICAC, the NSW Ombudsman, the Office or the Police 0
e	To investigate the matter 0
f	To recommend that the complaints coordinator convene a conduct review committee to investigate the matter 0
Investigation Statistics	
4	The number of investigated complaints resulting in a determination that there was no breach , in which the following recommendations were made:
a	That the council revise its policies or procedures 0
b	That a person or persons undertake training or other education 0
5	The number of investigated complaints resulting in a determination that there was a breach in which the following recommendations were made:
a	That the council revise any of its policies or procedures 0
b	That the subject person undertake any training or other education relevant to the conduct giving rise to the breach 0
c	That the subject person be counselled for their conduct 0
d	That the subject person apologise to any person or organisation affected by the breach 0
e	That findings of inappropriate conduct be made public 0
f	In the case of a breach by the GM, that action be taken under the GM's contract for the breach 0
g	In the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Local Government Act 1993 0
h	In the case of a breach by a councillor, that the matter be referred to the Office for further action 0
6	Matter referred or resolved after commencement of an investigation under clause 8.20 of the Procedures 0

ATTACHMENT 2

Categories of misconduct	
7 The number of investigated complaints resulting in a determination that there was a breach with respect to each of the following categories of conduct:	
a General conduct (Part 3)	<input type="text" value="0"/>
b Conflict of interest (Part 4)	<input type="text" value="0"/>
c Personal benefit (Part 5)	<input type="text" value="0"/>
d Relationship between council officials (Part 6)	<input type="text" value="0"/>
e Access to information and resources (Part 7)	<input type="text" value="0"/>
Outcome of determinations	
8 The number of investigated complaints resulting in a determination that there was a breach in which the council failed to adopt the conduct reviewers recommendation	<input type="text" value="0"/>
9 The number of investigated complaints resulting in a determination that there was a breach in which the council's decision was overturned following a review by the Office	<input type="text" value="0"/>