



Burwood Council

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PLANNING AGREEMENTS POLICY

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Purpose

The purpose of this document is to set out Council's additional or supplementary policy guidelines and procedures relating to the use of planning agreements in the Burwood Local Government Area (LGA).

Scope

The Planning Agreements Policy is integral to the implementation of Council's Policy on *Carrying Out Bonus Development in the Public Interest*, and the *Burwood Development Control Plan* (BDCP) parking guidelines in business zones. This Policy is not legally binding. However, it is intended that Council and all persons dealing with Council in relation to planning agreements will follow this Policy.

This Policy was adopted by a resolution of Council on 6 December 2005, and most recently amended by a resolution of Council on 30 October 2018.

Legislation

- The *Environmental Planning and Assessment Act 1979*
- The *Environmental Planning and Assessment Regulation 2000*
- Directions or determinations concerning planning agreements made by the Minister for Planning and/or Practice Notes issued by the Department of Planning and Environment.

Definitions

Act means the Environmental Planning and Assessment Act 1979

complying development certificate has the same meaning as in the Act

developer (in this Policy) means any person or party developing land, whether for profit or not for profit, and may include the proprietor of the land or their representative

development application has the same meaning as in the Act

development contribution means the kind of provision made by a developer (a person who may be an applicant, proponent or land owner) under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit, or the recoupment of the cost of providing these, or any combination of them, to be used for or applied towards a public purpose

instrument change means a change to an environmental planning instrument to enable a development application to be made to carry out development the subject of a planning agreement

planning obligation means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution

public benefit is a benefit enjoyed by the public as a consequence of a development contribution

public purpose includes public amenities or services, affordable housing, transport or other infrastructure related to land, recurrent expenditure related to these matters, monitoring the planning impacts of development, or the conservation or enhancement of the natural environment

public includes a section of the public

Regulation means the *Environmental Planning and Assessment Regulation 2000*

Related Information/Glossary

Other planning documents and policies directly relevant to this Policy include:

- The BDCP
- The Policy titled *Carrying Out Bonus Development in the Public Interest*.

Review

Amendments may be made to the Policy over the course of its operation or the Policy will be reviewed every four years.

Contact

Council's Strategic Planning team is responsible for administering this Policy.

1. Introduction

- 1.1 The *Environmental Planning and Assessment Act 1979* (the Act) provides that a planning agreement may be made between Council and a developer for a contribution that is used for or applied towards a public purpose.
- 1.2 The legal framework for a planning agreement is provided by:
 - (a) the provisions of the Act in Subdivision 2 of Division 7.1 of Part 7 - Planning Agreements
 - (b) the provisions of the Regulation in Division 1A of Part 4 - Planning Agreements
 - (c) Directions or determinations concerning planning agreements made by the Minister for Planning (under Section 7.9 of the Act) and/or Practice Notes issued by the Secretary of the Department of Planning and Environment (under Section 25B(2) of the Regulation).

2. Policy on the Use of Planning Agreements

Principles ***governing*** the use of planning agreements

- 2.1 Council's use of planning agreements will be governed by the following principles. These complement the provisions of Section 7.4 of the Act.
 - (a) Planning decisions may not be bought or sold through planning agreements
 - (b) Planning agreements must result in a public benefit, and must provide for a reasonable means of achieving the public benefit
 - (c) Development that is unacceptable on planning grounds will not be permitted because of public benefits offered by developers that do not make the development acceptable on planning grounds
 - (d) Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act or law
 - (e) Council will not use planning agreements for any purpose other than a proper planning purpose, having regard to the applicable planning instruments, strategies and

development control plans, other planning policies and strategies adopted by Council, and the circumstances of the case

- (f) Council will not seek public benefits under a planning agreement that are unrelated to particular development
- (g) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement
- (h) Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements
- (i) Where Council has a commercial stake in a development the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development.

Outcomes from the use of planning agreements

2.2 The outcomes sought by Council from the use of planning agreements are to:

- (a) Provide an enhanced and more flexible system of contributions by developments towards the provision of public benefits, related to the impacts of development
- (b) Obtain additional public benefits for the wider community by sharing in the increased land value accruing to a developer from a rezoning or development approval
- (c) Enable community awareness of and input to the public benefits of particular developments, related to the impacts of the developments.

Circumstances in which Council will consider negotiating a planning agreement

2.3 Council, in its complete discretion, may negotiate a planning agreement with a developer in connection with any proposed application by the developer for a change to a planning instrument or for development consent relating to any land in the Burwood LGA.

Without limitation of the above, the use of planning agreements for development applications in Burwood LGA will be derived mainly from two key planning documents that guide and control development in the LGA, and relate to two specific aspects of development:

- (a) Council's Policy on *Carrying Out Bonus Development in the Public Interest* that may enable bonus floor space in development in certain circumstances and areas of the LGA, or
- (b) The BDCP that may provide flexibility in the provision for certain car parking space(s) for development on sites mainly in the Burwood Town Centre (including the Burwood Road North area) or the Strathfield Town Centre.

The use of planning agreements in connection with an application for an instrument change may involve other public purposes and public benefits, consistent with the Act.

2.4 The amendments to the Act that commenced on 1 March 2018 provide that a planning agreement may be made in respect of an application for a complying development certificate.

Notwithstanding, the Act and the Regulation are silent on the mechanisms or process by which that would occur. In addition the Minister has not issued any determinations or directions and the Secretary has not issued any practice notes that concern planning agreements in relation to complying development certificates.

Until such determinations, directions or practice notes are made available Council will not consider any planning agreements in association with applications for complying development certificates.

Application of BLEP Clause 4.6 to development to which a planning agreement relates

- 2.5 Council will not agree to a provision in a planning agreement requiring the public benefit provided by the developer under the agreement to be used to justify a contravention of an applicable development standard under Clause 4.6 of the *Burwood Local Environmental Plan* (BLEP) 2012.

Notwithstanding a proposed planning agreement, Council cannot approve an exception to a development standard under BLEP Clause 4.6 unless compliance has been achieved with the requirements of Clause 4.6.

Planning agreement development contributions and local infrastructure contributions

- 2.6 The general policy of Council is that a planning agreement will not exclude the application of s7.11 or s7.12 of the Act (concerning local infrastructure contributions) to development to which the agreement relates. The public benefit conferred by a planning agreement is to be over and above a consent condition for a local infrastructure contribution under these sections of the Act.

Standardised monetary contributions

- 2.7 Where a development contribution is made up fully or partly by a monetary contribution, Council has adopted some standardised rates. This aims to streamline negotiations and provide fairness, predictability and certainty for developers.

The standardised monetary contributions that may be accepted are set out as follows:

- (a) for bonus floor space, see Council's Policy on *Carrying Out Bonus Development in the Public Interest* and Council's *Schedule of Fees and Charges*
- (b) for a monetary contribution in lieu of the provision of car parking space(s) on a development site in business zones, see the BDCP Section 3.7 and Council's *Schedule of Fees and Charges*

The amounts in (a) and (b) are kept under review and indexed from time to time in accordance with accepted accounting practice.

The monetary contributions payable will be at the contribution rates current at the time when the planning agreement is endorsed by Council at a Council Meeting.

Recurrent expenditure

- 2.8 A planning agreement may provide for a developer to make monetary contributions towards the funding of recurrent expenditure related to the provision of a public purpose under the agreement. Where the public purpose primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity. However, where the public purpose is intended to serve the wider community, the planning agreement may only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

Pooling of development contributions

- 2.9 Where a proposed planning agreement provides for a monetary contribution by the developer, Council may include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements, or money paid as local infrastructure contributions. The funds may be applied progressively for the different purposes, subject to the specific requirements of the relevant agreements or consent conditions.

Methodology for valuing public benefits under a planning agreement

- 2.10 Unless otherwise agreed, where the public benefit under a planning agreement is the provision of land for a public purpose, Council will generally seek to value the benefit on the basis of the estimated amount of compensation to which the developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land. Regard may also be given to whether the developer is likely to be affected by the loss of development potential.
- 2.11 Unless otherwise agreed, where the benefit under a planning agreement is the carrying out of works for a public purpose, Council will generally seek to value the benefit on the basis of the estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.

Refunds and Offsets

- 2.12 Council will not endorse a planning agreement that provides for any part of the development contribution being refunded to the developer or offset against any other contribution under another planning agreement or a local infrastructure contribution required to be made by the developer in respect of other development in the Burwood LGA.

Time when developer's obligations arise under a planning agreement

- 2.13 For a planning agreement relating to a development application or a modification application, Council will generally require the monetary contribution to be paid to Council and the agreement to be executed following granting of the development consent or the modified consent and prior to the issue of a Construction Certificate or a modified Construction Certificate.

For other kinds of contributions relating to a development application or a modification application, the timing and manner of completion of the contribution will be determined on a case-by-case basis.

In the case of applications for a planning instrument change, Council will require that the planning agreement be executed prior to the planning instrument change being effective. Specific aspects of the agreement such as the payment of monetary contributions may be implemented subsequently through the development consent process.

Implementation agreements

- 2.14 In appropriate cases, Council may require a planning agreement to provide that before the development the subject of the agreement is commenced (i.e. prior to the issue of a Construction Certificate for the development), the parties are to enter into an *implementation agreement* that provides for matters such as:
- (a) the times at which and, if relevant, the period during which, the developer is to make provision under the planning agreement

- (b) the design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer
- (c) the manner in which a work is to be handed over to Council
- (d) the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

Monitoring and review of a planning agreement

- 2.15 In applicable cases Council will continuously monitor the performance of the developer's obligations under a planning agreement.

Council may require the planning agreement to contain a provision establishing a mechanism under which the planning agreement is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance of the agreement.

Council may require the planning agreement to contain a provision requiring the parties to use their best endeavours to agree on a modification to the agreement having regard to the outcomes of the review.

Modification or discharge of the developer's obligations under a planning agreement

- 2.16 Council may agree to a provision in a planning agreement permitting the developer's obligations under the agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- (a) the developer's obligations have been fully carried out in accordance with the agreement
- (b) the developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become bound to Council to perform the developer's obligations under the agreement
- (c) the development consent to which the agreement relates has lapsed
- (d) the performance of the planning agreement has been frustrated by an event beyond the control of the parties
- (e) other material changes affecting the operation of the planning agreement have occurred
- (f) Council and the developer otherwise agree to the modification or discharge of the agreement.

- 2.17 Such a provision will require the modification or revocation of the planning agreement in accordance with the Act and Regulation.

Registration of planning agreements

- 2.18 Council will generally require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to s7.6 of the Act if the requirements of that section are satisfied. A planning agreement may specify the procedures and requirements to be followed in the registration of the agreement.

Assignment and dealings by the developer

- 2.19 Council will require every planning agreement to provide that the developer may not assign its rights or obligations under the agreement nor have any dealing in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:
- (a) the developer has, at no cost to Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement, and
 - (b) the developer is not in breach of the Agreement.

Provision of security under a planning agreement

- 2.20 Council may require a planning agreement to make provision for security by the developer of the developer's obligations under the agreement. The form of security will generally be the unconditional bank guarantee from an Australian Bank in favour of Council to the full value of the Developer's provision under the Agreement and on terms otherwise acceptable to Council.

Preparation of the planning agreement and explanatory note

- 2.21 In the interests of process efficiency, Council uses standard templates for its planning agreements related to development applications. There are two templates for the planning agreements that will mainly be entered into by Council:
- (a) Under Council's Policy on *Carrying Out Bonus Development in the Public Interest* - for a development contribution (commonly a monetary contribution) for a public purpose related to bonus floor space
 - (b) Under the BDCP - for a monetary contribution in lieu of the provision of on-site car parking space(s) on a development site mainly in the Burwood Town Centre (including the Burwood Road North area) or the Strathfield Town Centre.

The two templates are provided in Appendixes A and C of this policy.

- 2.22 The Regulation requires that Council prepare an explanatory note for any planning agreement that it proposes to enter into. The explanatory note must comply with the requirements of Clause 25E(1) and (2) of the Regulation and must be prepared jointly with the other parties proposing to enter into the planning agreement. The explanatory note must be exhibited with the proposed planning agreement.

In the interests of process efficiency Council uses two standard templates for the explanatory notes for the most common types of planning agreements for development applications as stated in Clause 2.24 (a) and (b) above.

The two templates are provided respectively in Appendixes B and D of this policy

- 2.23 The standard templates and explanatory notes in Appendixes A - D have been drafted for planning agreements that accompany development applications that involve bonus floor space or deficient parking provision.

In all other cases templates do not exist, and generally planning agreements will be drafted by the developer's legal representatives based on the circumstances of each case. The draft planning agreements would be reviewed by Council's legal advisors.

Council's costs of negotiating, entering into, monitoring and enforcing a planning agreement

- 2.24 Council will generally require a planning agreement to make provision for payment by the developer of Council's costs of and incidental to:
- (a) negotiating, preparing and entering into the agreement
 - (b) enforcing the agreement.
- 2.25 In particular cases, Council may require the planning agreement to make provision for a monetary contribution by the developer towards the on-going administration of the agreement.

Notations on Certificates under s10.7(5) of the Act

- 2.26 Council will generally require a planning agreement to contain an acknowledgement by the developer that Council may, in its absolute discretion, make a notation under s10.7(5) of the Act about a Planning Agreement on any certificate issued under s10.7(2) of the Act relating to the land the subject of the agreement or any other land.

Dispute resolution and Enforcement

- 2.27 Council will require a planning agreement to provide procedures for resolution of disputes to be adhered to by both parties to the agreement. Provisions relating to the enforcement of a planning agreement also will be required to be included in an agreement.

Notices

- 2.28 Council will require a planning agreement to provide procedures for giving of any notice, consent, information, application or request to a part under the planning agreement.

3. Procedures Relating to the Use of Planning Agreements

Council's negotiation system

- 3.1 Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable. The system seeks to ensure that the final negotiation of planning agreements runs in parallel with the assessment of applications for instrument changes or development applications.

When should a planning agreement be negotiated?

- 3.3 Council prefers that discussions, consultations and negotiations for a planning agreement commence before lodgement of the relevant application. If practicable an offer of a planning agreement including the draft agreement should accompany the application on lodgement. In some cases the later submission of a draft planning agreement may be appropriate. See Section 3.8 for key steps in the negotiation process.

Who will negotiate a planning agreement on behalf of Council?

- 3.4 A council officer with appropriate delegated authority will negotiate a planning agreement on behalf of Council.
- 3.5 The councillors will not be involved in the face to face negotiation of the agreement.

Separation of Council's planning assessment and negotiation roles

- 3.6 Council will, in all cases, ensure that the person who undertakes the assessment of the application (to which a planning agreement relates) for the purpose of determining the application or reporting on it to Council, is not the same person who negotiated the planning agreement on behalf of Council.

Involvement of independent third parties in the negotiation process

- 3.7 Council may appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, particularly where:
- (a) an independent assessment of a proposed Environmental Planning Instrument change, or development application is necessary or desirable
 - (b) factual information requires validation in the course of negotiations
 - (c) sensitive financial or other confidential information must be verified or established in the course of negotiations
 - (d) facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved
 - (e) dispute resolution is required under a planning agreement.

Key steps in the negotiation process

- 3.8 The negotiation of a planning agreement will generally involve the following key steps:
- (a) Where a planning agreement is likely to be offered for a development proposal the preparation of the agreement by the developer must be based on the relevant standard templates for a draft agreement and the accompanying draft explanatory note contained in the Appendixes A-D of this policy (if applicable). Consultation with Council at this stage on relevant matters is encouraged.
 - (b) Where possible a draft planning agreement and explanatory note should accompany lodgement of the development application or the application for planning instrument change. In some cases the appropriateness of a planning agreement may be identified by the developer or Council during the assessment of the application, leading to the later submission of a draft planning agreement and explanatory note.
 - (c) On receipt by Council, the draft agreement and explanatory note will be subject to initial assessment having regard to this policy and the development proposal. Advice will be provided to the developer by Council indicating any changes that should be made to the draft agreement and explanatory note before Council refers the draft agreement and explanatory note to its solicitors for vetting.
 - (d) On receipt of its solicitors' advice Council will provide the draft agreement and explanatory note containing its solicitors' tracked changes to the developer for review and in-principle agreement.

Note: Council will generally require that the reimbursement of Council's legal costs (as incurred to date) occurs at this point.

- (e) When this is received the draft agreement and explanatory note will be subject to public notification in compliance with the requirements of the Act and the Regulation (see Section 3.9 below)

- (f) Following notification the draft agreement will be reported to Council for its endorsement. In some cases Council may decline to enter into the agreement and further negotiations with the developer may ensue.
- (g) Assessment and processing of the application for development consent or planning instrument change to which the draft planning agreement relates will proceed on a parallel path.
- (h) Development applications involving a planning agreement will not be determined unless and until the planning agreement has been endorsed by Council for execution. In the main the consent will include a condition about the execution of the planning agreement as outlined in Clause 2.14 of this policy.
- (i) In the case of applications for a planning instrument change Council will require that the planning agreement is endorsed by Council and executed prior to the change of the planning instrument being notified. Specific aspects of the agreement may be implemented subsequently through the development consent process.

Public notification of planning agreements

- 3.9 In accordance with the Act a planning agreement cannot be entered into, amended or revoked unless public notice has been given of the proposed agreement, amendment or revocation and a copy of the proposed agreement has been available for inspection by the public for a period of not less than 28 days.
- 3.10 Generally public notice of a proposed planning agreement will take place as soon as possible after public notice has been given for the development application or application for a planning instrument change that is required to be given by a consent authority under the Act or under Council's Development Control Plan. In cases where a draft planning agreement is lodged with Council during assessment of the relevant application, public notice will take place at a later time.
- 3.11 Public notice of a proposed planning agreement will generally take place prior to the planning agreement being reported to a Council meeting. The public notice will be implemented through placement of a notice once in a newspaper circulating in the Burwood Local Government Area, placement of a notice on Council's website under the heading Public Exhibitions and Public Notices for the 28 day notification period, and making the draft planning agreement and explanatory note available for public inspection at Council's Administration Centre for the 28 day notification period. Information about the application to which the proposed planning agreement relates will be provided with the notification of the proposed planning agreement.
- 3.12 Council will publicly re-notify and make available for public inspection a proposed planning agreement and information on the application to which it relates if, in Council's opinion a material change is made to the terms of the agreement after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification, or its formal consideration by Council, or for any other reason.
- 3.13 On completion of the notification the draft agreement and explanatory note will be reported to Council with the results of the notification. Where appropriate the draft agreement will be reported to Council with a recommendation for endorsement and execution of the agreement.
- 3.14 Completed planning agreements that are entered into by Council will be made available for public inspection in accordance with the Act and Regulation. While such planning agreements with Council remain in force Council will include in its annual report particulars of

compliance with and the effects of the planning agreements during the year to which the report relates.

When is a planning agreement required to be entered into?

- 3.15 A planning agreement is entered into when it is signed by all of the parties.
- 3.16 A planning agreement can be entered into at any time after the agreement is publicly notified in accordance with the Act and Regulation, and Council has endorsed entering into the agreement.

APPENDIX A - Template of Planning Agreement - Bonus Development in the Public Interest

PLANNING AGREEMENT

PARTIES

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

and

[Insert Proprietor Name] ACN **[Insert Number]** of **[Insert Business Address]** in the State of New South Wales (**Proprietor**).

and

[Insert Developer Name] ACN **[Insert Number]** of **[Insert Business Address]** in the State of New South Wales (**Developer**).

[Drafting Note: If the Developer is the registered proprietor of the Land, delete the proprietor section above and elsewhere in this document. Insert instead into the "Background" section, the text: 'A. The Developer is the registered proprietor of the Land']

Background:

- A. The Land is situated **[Insert Development Address]**.
- B. On **[Insert Date of Lodgement]**, Development Application No. **[Insert DA Number]** was submitted by the Developer to Council for development consent for development to be carried out on the Land for the purpose of **[Insert Description of Development]**.
- C. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make a monetary contribution towards the provision, augmentation or improvement of open space, community facilities, and other public facilities as determined by Council if the Development Consent was granted.
- D. As contemplated by section 7.4 of the Act, the parties wish to enter into this Planning Agreement with respect to the **[Insert number%]** increase in FSR for the Land contemplated by the Development upon the Development Consent.

Operative Provisions

1. Planning Agreement under the Act

The Parties acknowledge and agree that this Planning Agreement is a planning agreement within the meaning of section 7.4 of the Act and is governed by Part 7 of the Act.

2. Application of this Planning Agreement

This Agreement applies to the Land.

3. Operation of this Planning Agreement

- 3.1 The parties are to execute this Agreement immediately following the grant by Council of Development Application No. **[Insert DA Number]**.

3.2 This Planning Agreement shall operate from the date of execution of this Agreement.

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

Approval means any approvals, consents, section 4.55 modifications, Part 6 certificates or approvals under the Act, certificates, construction certificates, occupation certificates, complying development certificates, permits, endorsements, licences, conditions or requirements (and any variation to them) which may be required by this Planning Agreement or the Development Consent.

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.

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

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

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

Development means the development of the Land in accordance with the Development Application No. [Insert DA Number] as made by the Developer and as a result of any conditions of Development Consent.

Development Consent means the consent granted in connection with Development Application No. [Insert DA Number].

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

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

GST has the 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 GST.

Land means [Insert Lot Number] in Deposited Plan [Insert DP Number] situated at and known as [Insert Development Address].

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.

Monetary Contribution means the sum of \$[Insert Amount of Monetary Contribution] excluding GST representing [Insert Rate of Monetary Contribution] {see Council's Schedule of Fees and Charges - http://www.burwood.nsw.gov.au/fees_and_charges.html } x [Insert Number]m2.

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

Planning Agreement means this Planning Agreement.

Public Benefit means the Monetary Contribution.

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

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.
- (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 Council the Monetary Contribution after Development Consent and prior to the issue of the Construction Certificate for the Development.
- 5.2 The payment of the Monetary Contribution will be by way of the delivery of a bank cheque to Council which must be:
 - (a) made payable to Council and
 - (b) in a form acceptable to Council.
- 5.3 The Developer and the Proprietor each covenant and agree not to make an application for the issue of any Construction Certificate until the Monetary Contribution required to be made to Council hereunder has been paid.
- 5.4 Subsequent to payment of the Monetary Contribution, in the event the Development Consent is not taken up by the Developer or an application for the issue of the Construction Certificate is refused, Council will refund the amount of the Monetary Contribution to the Developer within 14 days of notice being given to Council by the Developer of such event.
- 5.5 Notwithstanding any refund of the Monetary Contribution pursuant to clause 5.4 of this Agreement, the Planning Agreement shall continue to have effect.
- 5.6 In the event the Original Consent or Development Consent expires, is abandoned, is surrendered, or ceases to have effect, the Planning Agreement will also expire and cease to have effect and from that point on not be binding on any party.

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 and provide Public Facilities.
- 6.2 The Public Facilities will:
 - (a) not be provided to coincide with the conduct or completion of the Development
 - (b) be constructed at a time determined by 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 7.11 and section 7.12 of the Act to the Development

This Planning Agreement does not exclude the application of:

- (a) section 7.11 or section 7.12 of the Act
- (b) any affordable Housing Levy
- (c) any other monetary contributions

In connection with Development Application No. **[Insert DA Number]**. Benefits under the Agreement are not to be taken into account in determining a development contribution under section 7.11 or section 7.12 of the Act.

8. Registration of this Agreement

8.1 The Proprietor and the Developer each further covenant with Council:

- (a) that prior to the issue of any Construction Certificate for the Development, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this Agreement over the title to the Land pursuant to section 7.6 of the Act from all persons who have an interest in the Land
- (b) that forthwith after receiving the consents specified in subclause (a) hereof they shall cause this Agreement to be registered on the title of the Land
- (c) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose to sell the Land or any part thereof then it shall:
 - (i) within seven days of listing the Land or any part thereof for sale, either through an agent or privately, notify Council of such intention
 - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like agreement to this present Agreement in which substantially the same covenants as set out herein shall apply
 - (iii) within seven days of exchange of contracts for the sale, notify Council of the sale and provide Council with a copy of the contract
 - (iv) within 21 days of receipt from Council of a replacement agreement between Council and the purchaser substantially in the form of this Agreement, have it executed by the purchaser and return it to Council
 - (v) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose otherwise than by sale to transfer or assign its interest in the Land or any part thereof to a transferee or assignee, then it shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with Council substantially in the form of this Agreement insofar as concerns the interest assigned or transferred and shall provide same to Council.

8.2 The Proprietor and the Developer further covenant and agree with Council that pending the registration of this Agreement on the title of the Land as required by clause 8.1, Council shall be entitled to register a caveat at Land and Property Information over the title to the Land to protect its interest therein pursuant to this Agreement.

9. Acknowledgements

9.1 The Developer and the Proprietor acknowledge that Council may include a notation on Planning Certificates under section 10.7(2) and 10.7(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 15 business days of a Dispute Notice being 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 Planning 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 Planning Agreement.

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

11. Enforcement

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

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

- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Planning Agreement or any matter to which this Planning Agreement relates and
- (b) Council from exercising any function under the Act or law relating to the enforcement of any aspect of this Planning Agreement or any matter to which this Planning Agreement relates.

11.3 The rights of Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of Council existing at law or which 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 Planning 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 as follows.
- (b) Faxed to that party at its fax number set out as follows.
- (c) Email to that party at its email address set out as follows.

Council

Attention: The General Manager

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

Post: PO Box 240, Burwood NSW 1805

Fax Number: (02) 9911 9900

Email: council@burwood.nsw.gov.au

Proprietor

Attention: [Insert Director's Name]

Address: [Insert Business Address]

Post: [Insert Postal Address]

Fax Number: [Insert Fax Number]

Email: [Insert Email Address]

Developer

Attention: [Insert Director's Name]

Address: [Insert Business Address]

Post: [Insert Postal Address]

Fax Number: [Insert Fax Number]

Email: [Insert Email Address]

12.2 If a party gives the other party three 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 business days after it is posted.
- (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.
- (d) If it is sent by email, at the time it is sent.

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 Planning Agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this Planning 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 Proprietor and the Developer agree that this Planning Agreement shall be binding upon the Proprietor and the Developer and upon their respective transferees, assignees or successors.

15. Costs

15.1 The Proprietor and/or Developer shall bear Council's costs directly related, and incidental to negotiating, preparing, executing, stamping and registering the Planning Agreement, including any costs of lodging/removing caveats on the title to the Land.

15.2 The Proprietor and/or Developer will pay Council's reasonable legal costs not exceeding \$5,000.00 directly related, and incidental to negotiating, preparing, executing, stamping and registering the Planning Agreement and of drafting, registering and removing caveats on the title to the Land.

16. Entire Agreement

This Planning 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 Planning 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 Planning Agreement and all transactions incidental to it.

18. Governing law and jurisdiction

This Planning 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 Planning Agreement, any agreement, covenant, representation or warranty under this Planning 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.

20. No fetter

Nothing in this Planning 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.

21. Representations and warranties

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

22. Severability

If a clause or part of a clause of this Planning 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 Planning Agreement, but the rest of this Planning Agreement is not affected.

23. Modification

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

24. Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Planning Agreement, does not amount to a waiver of any obligations of, or breach of obligations by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25. Explanatory note

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

26. Goods and Services Tax (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 excludes 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 Planning Agreement, any amount payable under this Planning 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 Planning Agreement are not confidential and this Planning Agreement may be treated as a public document and exhibited or reported without restriction by any party.

28. Release from Planning Agreement

Once Council is satisfied that the Proprietor and Developer have fully complied with all of their obligations under this Planning Agreement, 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.

EXECUTED AS AN AGREEMENT

Signed for and on behalf of **Burwood Council**)
 by its attorney, **[Insert Name]**, under power of)
 attorney dated **[Insert Date]** registered book)
[Insert] number **[Insert]**, in the presence of:)

.....
 Signature of Witness

.....
 (Print) Name of Witness

.....
 Date

.....
 Signature of Attorney

[Insert Name]

.....
 (Print) Name of Attorney

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

.....
 (Print) Address

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

On behalf of **[Insert Proprietor Name]**:

[Insert Proprietor Name] ACN **[Insert Number]** executed this agreement pursuant to section 127 of the
 Corporations Act in the presence of:

.....
 Signature of Director/Secretary

.....
 (Print) Name of Director/Secretary

.....
 Date

.....
 Signature of Director

.....
 (Print) Name of Director

On behalf of **[Insert Developer Name]**:

[Insert Developer Name] ACN **[Insert Number]** executed this agreement pursuant to section 127 of the
 Corporations Act in the presence of:

.....
 Signature of Director/Secretary

.....
 (Print) Name of Director/Secretary

.....
 Date

.....
 Signature of Director

.....
 (Print) Name of Director

APPENDIX B - Template of Explanatory Note - Bonus Development in the Public Interest**PLANNING AGREEMENT – Explanatory Note**

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Planning Agreement for the provision of monetary contribution for public benefit at **[Insert Development Address]**

Under Section 7.4 of the *Environmental Planning and Assessment Act* 1979 (NSW) (EP&A Act)

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2) **[Insert Proprietor Name]** (**Proprietor**)
- (3) **[Insert Developer Name]** (**Developer**)

2. Description of Subject Land

Folio Identifiers: **[Insert Folio ID]**
Location: **[Insert Development Address]**

3. Description of Proposed Development

The Developer has lodged a development application (being **[Insert DA Number]**) for the land which proposes **[Insert details of development]**. An offer of a voluntary planning agreement for a material or financial contribution to Council as a public benefit is included in the application that seeks approval for additional gross floor space of **[Insert floor space in m²]** of residential floor space above that normally allowed under the Burwood LEP.

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

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

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

The Planning Agreement is proposed to require a monetary contribution for an amount of \$**[Insert amount]** (excluding GST) being \$**[Insert amount]** (excluding GST) {see Council's Schedule of Fees and Charges - http://www.burwood.nsw.gov.au/fees_and_charges.html } per square metre (**[Insert amount]**m²) of GFA in excess of the permitted GFA limit for the development payable after development consent is granted and before issue of a Construction Certificate.

5. Assessment of the Merits of the Planning Agreement

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

5.1 The Planning Purposes Served by the Planning Agreement

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

The Planning Agreement serves the following planning purpose:

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

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

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

5.2 Promotion of the Public Interest

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

The Planning Agreement promotes the public interest by:

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

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

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

5.3 Promotion of Council's Charter

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

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

- (i) Council undertakes to provide *adequate, equitable and appropriate services for the community*. The Planning Agreement provides the monetary resources to assist Council in the provision of civil infrastructure, public domain upgrades and facilities for the augmentation, or improvement of open space, community facilities, and other public facilities for the Burwood Town Centre and ensures that those *facilities are managed efficiently and effectively*. Council is the *custodian and trustee of public assets* and has a responsibility to *effectively plan for, account for, and manage the assets*.
- (ii) Council undertakes to involve *councillors, members of the public, users of facilities and services, and council staff* in its activities. The Planning Agreement process provides an opportunity for the community and stakeholders to be involved and interested people are invited to make comment during the exhibition period. The public exhibition and the

consideration of this matter at Council meetings are intended to *keep the local community informed*.

Capital Works Program

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

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

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

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

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

APPENDIX C – Template of Planning Agreement - Monetary Contribution in Lieu of On-site Car Parking Spaces Provision

PLANNING AGREEMENT

PARTIES

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

and

[Insert Proprietor Name] ACN **[Insert Number]** of **[Insert Business Address]** in the State of New South Wales (**Proprietor**).

and

[Insert Developer Name] ACN **[Insert Number]** of **[Insert Business Address]** in the State of New South Wales (**Developer**).

[Drafting Note: If the Developer is the registered proprietor of the Land, delete the proprietor section above and elsewhere in this document. Insert instead into the “Background” section, the text: ‘A. The Developer is the registered proprietor of the Land’]

Background

- A. On **[Insert Date of Lodgement]**, the Developer submitted a Development Application, **[Insert DA Number]**, to 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.

Operative Provisions

1. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 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 shall operate from the date of the approval by Council of the Development Application **[Insert DA Number]**.

Any approval given by Council for Development Consent for **[Insert DA Number]** shall not come into effect until this Agreement is executed.

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

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

Development means [Insert DA Number] issued by Council in respect of the property known as [Insert Development Address].

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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 [Insert Lot Number] in Deposited Plan [Insert DP Number], known as [Insert Development Address].

Monetary Contribution means \$ [Insert Amount of Monetary Contribution]

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

- (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 Council a monetary contribution at the sum of **[Insert Amount of Contribution in Words]** (\$**[Insert Amount of Contribution in Numbers]**) on the date of the execution of this Agreement.
- 5.2 The Developer and/or the Proprietor must deliver to Council a bank cheque in a form acceptable to Council for the amount of the monetary contribution on the date of the execution of this Agreement, which shall occur prior to the issue of any Construction Certificate with respect to the Development.
- 5.3 The Developer and the Proprietor each covenant and agree with Council not to make an application for the issue of any Construction Certificate until the payments required to be made to Council hereunder have been paid.

6. Application of the Development Contributions

- 6.1 The monetary contributions paid by the Proprietor and/or the Developer under this Agreement will be used by Council to develop Public Facilities.
- 6.2 The Public Facilities will:
 - (a) not be provided to coincide with the conduct or completion of the Development,
 - (b) be constructed at a time determined by 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 7.11 and section 7.12 of the Act to the Development

This Agreement does not exclude the application of section 7.11 or section 7.12 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 7.11 or section 7.12.

8. Registration of this Agreement

- 8.1 The Proprietor and the Developer each further covenant with Council:
 - (a) that prior to the issue of any Construction Certificate for the Development, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this Agreement over the title to

the Land pursuant to Section 7.6 of the Act from all persons who have an interest in the Land

- (b) that forthwith after receiving the consents specified in subclause (a) hereof they shall cause this Agreement to be registered on the title of the Land
- (c) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose to sell the Land or any part thereof then it shall:
 - (i) within seven days of listing the Land or any part thereof for sale, either through an agent or privately, notify Council of such intention
 - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like agreement to this present Agreement in which substantially the same covenants as set out herein shall apply
 - (iii) within seven days of exchange of contracts, notify Council of the sale and provide Council with a copy of the contract
 - (iv) within 21 days of receipt from Council of a replacement agreement between Council and the purchaser substantially in the form of this Agreement, have it executed by the purchaser and return it to Council
 - (v) that if this Agreement is not registered on the title to the Land, and if the Proprietor should propose otherwise than by sale to transfer or assign its interest in the Land or any part thereof to a transferee or assignee, then it shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with Council substantially in the form of this Agreement insofar as concerns the interest assigned or transferred and shall provide same to Council.

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

9. Acknowledgements

- 9.1 The Developer and the Proprietor acknowledge that Council may include a notation on Planning Certificates under section 10.7(2) and 10.7(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 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.

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) 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 Council expressly provided for herein are cumulative and in addition to and not exclusive of the rights of Council existing at law or which 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 as follows
- (b) Faxed to that Party at its fax number set as follows
- (c) Email to that Party at its email address set as follows

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

Proprietor

Attention: [Insert Director's Name]

Address: [Insert Business Address]

Fax Number: [Insert Fax Number]

Email: [Insert Email Address]

Developer

Attention: [Insert Director's Name]

Address: [Insert Business Address]

Fax Number: [Insert Fax Number]

Email: [Insert Email Address]

12.2 If a party gives the other Party three business days' notice of a change of its address or fax number or email, 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, fax number or email address.

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 business days after it is posted
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machines a report of an error-free transmission to the correct fax number
- (d) If it is sent by email, at the time it is sent.

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

15. Costs

The Proprietor and/or the Developer shall bear 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.

21. Representations and warranties

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

22. Severability

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

23. Modification

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

24. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligations of, or breach of obligations by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

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

26. Goods and Services Tax (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 excludes 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.

- 28.** Once Council is satisfied that the Proprietor and Developer have fully complied with all of their obligations under this Planning Agreement, 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.

EXECUTED AS AN AGREEMENT

Signed for and on behalf of **Burwood Council** by its attorney, **[Insert Name]**, under power of attorney dated **[Insert Date]** registered book **[Insert]** number **[Insert]**, in the presence of:

)
)
)
)
)
)

.....
Signature of Witness

.....
Signature of Attorney

.....
(Print) Name of Witness

[Insert Name]

.....
(Print) Name of Attorney

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

.....
Date

.....
(Print) Address

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

On behalf of **[Insert Proprietor Name]**:

[Insert Proprietor Name] (ACN **[Insert Number]**) executed this agreement pursuant to section 127 of the Corporations Act in the presence of:

.....
Signature of Director/Secretary

.....
Signature of Director

.....
Print Full Name of Director/Secretary

.....
Print Name of Director

.....
Date

On behalf of **[Insert Developer Name]**:

[Insert Developer Name] (ACN **[Insert Number]**) executed this agreement pursuant to section 127 of the Corporations Act in the presence of:

.....
Signature of Director/Secretary

.....
Signature of Director

.....
Print Full Name of Director/Secretary

.....
Print Name of Director

.....
Date

APPENDIX D - Template of Explanatory Note - Monetary Contribution in Lieu of On-site Car Parking Spaces Provision

PLANNING AGREEMENT – Explanatory Note

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Planning Agreement for the provision of monetary contribution in lieu of on-site car parking spaces at **[Insert Development Address]**

Under Section 7.4 of the Environmental Planning and Assessment (EP&A) Act 1979

1. Parties

The parties to the Planning Agreement are:

- (1) Burwood Council (**Council**)
- (2) **[Insert Proprietor Name]** (**Proprietor**)
- (3) **[Insert Developer Name]** (**Developer**)

2. Description of Subject Land

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

Folio Identifiers: **[Insert Folio ID]**
Location: **[Insert Development Address]**

3. Description of Proposed Change to Development

The Developer has lodged a Development Application (being **[Insert DA Number]**) which provides a shortfall of **[Insert Parking Spaces Shortfall in Words and Bracketed Numbers]** Parking spaces.

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 **Proprietor** and **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 **Proprietor** and **Developer** under the Planning Agreement is an amount of \$**[Insert Contribution Amount]**, 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 **Proprietor** and **Developer** under this Planning Agreement will be used by **Council** to develop public car parking facilities within the **[insert name]** 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 car parking 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 car parking facilities function effectively and safely. The Planning Agreement provides for the provision of public car parking in lieu of private-use parking.

- a) The Planning Agreement promotes one or more of the objects of the EP&A Act as follows:
- b) The proper management and development of land for the purpose of promoting the social and economic welfare of the community and a better environment
- c) The provision and co-ordination of community services and facilities and

Opportunities for public involvement and participation in environmental planning and assessment.

5.3 Promotion of 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 car parking 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 car parking facilities within the **[insert name]** Town Centre. The capital works program is subject to annual review and any proposal for additional public car parking would be initiated where sufficient funds are available.

APPENDIX E - Use of Parking Contributions Funds (Adopted 4 December 2012 as an Addendum to the Planning Agreements Policy)

Purpose

This statement provides a framework for Council's expenditure of funds received as monetary contributions under voluntary planning agreements (VPAs) in lieu of the provision of car parking on site for a development in accordance with the Burwood Development Control Plan (BDCP). It is advisable to read this document in conjunction with the relevant part (3.7) of the BDCP.

Strategic Context

The BDCP establishes requirements for the provision of on-site car parking based on the kind of development, the zone/location of the development and the purpose (use) of the car parking.

The BDCP recognises that in some business zones, it is appropriate to allow part of the parking required for a development to be provided outside the development site. The BDCP therefore enables an applicant for a development in specific locations to offer a monetary contribution in lieu of providing certain car parking spaces on-site. Council will consider and may accept the offer, and use the funds to expand public parking supply. In some locations where this is not viable, funds may be used to improve the quality of existing public parking areas.

This option for a parking contribution is not part of a Contributions Plan. It involves a voluntary offer from an applicant which is implemented through a VPA finalised in accordance with legislative requirements and Council's Planning Agreements Policy. In all cases it is at Council's discretion whether or not to accept the offer.

Visitors Parking

The BDCP identifies specific parking generated by certain residential and commercial development in the **Burwood and Strathfield Town Centres** as Visitors Parking for which an applicant may make an offer of a voluntary contribution through a VPA. In all cases only a limited proportion of total parking requirements can be dealt with through offers of monetary contributions. The planning reasons for this approach include:

- Locating spaces in consolidated public car parks that have extended opening hours, higher turnover and safe and secure access will make available better, more useable parking facilities to the general public. Some parking spaces provided within developments can be hard for people to find and access, particularly in small buildings.
- Locating spaces in consolidated public parking areas means better use of resources and value for money for developers and the community. Some parking spaces constructed on-site can be expensive in terms of excavation costs, land allocation and design impacts.
- Locating spaces in consolidated public parking areas supports greener and cleaner outcomes for the community. Business centres need adequate parking supply to meet the needs of users and to compete with other centres, balanced with encouragement of public transport use, walking and cycling that helps reduce on-street traffic congestion, and improve a centre's amenity and attractiveness to visitors.
- The BDCP therefore provides a "discount" for Visitors Parking spaces that encourages developers to consider offering a monetary contribution. This helps reduce the overall growth in parking supply compared to the traditional approach, but makes better use of the available parking.

Other Parking

The characteristics of some sites mean that it is difficult or impossible to provide all or even part of the required parking on the site. Where an applicant cannot provide the required parking on a difficult development site the BDCP provides for the acceptance of a monetary contribution instead under a VPA in specific locations and zones and for specific types of development. This facilitates the development of the site, while also increasing the availability or quality of parking supply in the business area.

Council may accept implementation of this option at its discretion. The BDCP sets out criteria to be used in determining what constitutes a difficult site. These include:

- The site is small and isolated, i.e. less than the minimum subdivision lot size for the area in the BLEP 2012 with no opportunities for amalgamation.
- The site is less than 600 sqm and there are limited options on-site, e.g. the site is mostly occupied by existing buildings and involves only a change of use.
- Vehicular access is severely constrained, e.g. by the area, configuration or frontage of a site or the location of existing buildings such that applicable Australian Standards cannot be met.

It is the responsibility of the applicant to demonstrate that one or more of the above features applies and that development proposal is unlikely to be viable practically or economically if parking requirements are applied strictly.

Other requirements for implementation of this option are:

- It applies to parking other than Visitor Parking referred to above.
- The development cannot be for residential accommodation or serviced apartments.
- For land in the Burwood and Strathfield Town Centres zoned B4 Mixed Use, the BDCP does not provide for any “discount” on the contribution and the full cost of providing replacement spaces (as per the formula in the BDCP) must be offered through the VPA.
- In other business zones the BDCP provides that Council may accept a discount of up to 50% on the amount of the contribution (as per the formula in the BDCP) offered to facilitate development in the other business zones and in recognition that some or all of the received funds may be spent on improving the quality of existing parking because it is not viable to increase the number of parking spaces.

Principles for Using the Funds

The following general principles apply:

- Funds will be spent providing an increased number of off-street parking spaces within the same centre as the development from which funds have been contributed
- Expenditure will aim to provide as many parking spaces as possible using the total funding available from VPAs. There is no obligation on Council to augment the funding
- Received funds will need to be pooled over time to reach a sufficient level for concrete action to increase parking supply. This may take considerable time dependent on offers of VPAs and the scale of expenditure that will be necessary
- Funds will be kept in a separate account for this purpose and not used for any other purpose

- The additional parking may be located on existing public land and operated by or on behalf of Council, or within a private development under a contractual arrangement with Council
- In some locations Council may use funds to provide additional spaces on-street within a road reserve if practicable, or to improve the useability of, or access to, existing public parking areas. This may occur where it is not viable to increase the number of additional public off-street parking spaces because additional land is unlikely to be available or because it will take too long to accumulate sufficient funds from contributions. Actions to improve existing public parking areas may include reconfiguration of layouts, paving works to improve access, upgraded signage, maintaining turnover of uses through enforcement, or landscaping
- Funds dormant for an extended period due to lack of additional contributions may be expended outside the area of contribution.

Implementation

Burwood Town Centre and Strathfield Town Centre

Council will expend the funds received through one or both of the following actions:

1. Embellish or expand an existing public parking area, for example by adding an additional floor or floors of parking
2. Advertise for expressions of interest from parties intending to undertake new development in the BTC to include public parking spaces in the development additional to the requirements of the BDCP. Council will indicate criteria for proposals responding to the call for expressions of interest, including number of spaces, location, access, and signage. Negotiations will finalise these matters, the cost contribution from Council and the management arrangements.

It is not considered viable to formally identify new sites for acquisition for future parking provision because this may result in acquisition obligations when funds may not be available, and because future market conditions will vary.

Implementation will take place through the normal budget process. The level of accumulated funds will be assessed each year and actions 1 and/or 2 will be undertaken if warranted by the available funds. Budget responsibility will lie with the Capital Program Working Party.

The tender/proposal process if implemented will make it explicit that it has no bearing on Council's consideration or determination of any application for development that includes the public parking spaces.

Enfield Local Centre and Croydon Park Local Centre

Expenditure of funds received in the B2 zone will be subject to a similar process to the Town Centres through the annual budget. However as contributions may be offered only in respect of agreed difficult sites and a 50% discount applies, accumulation of funds is likely to be much slower. Also the extended linear character of the Centres fronting three major roads presents limited opportunities for consolidated public parking provision.

In these B2 Local Centres zones, the BDCP recognises that funds may be used to construct additional spaces on-street in road reserves where such opportunities are available, or to improve the useability of existing public parking areas.

Croydon Neighbourhood Centre

The BDCP provides only for voluntary contributions to be offered and considered by Council in cases where it is agreed that the applicant is unable to provide on-site parking due to site constraints and a 50% discount applies. Redevelopment opportunities in the centre are very limited and the BDCP recognises that funds are most likely to be spent on the improvement of the existing public parking area. This will be dealt with through the annual budget process.

In any of the other small areas of B1 Neighbourhood Centre in the Burwood Council area, it is not expected that it would be viable to provide any public car parking or that it would be necessary to do so.

Parramatta Road Corridor

In the Parramatta Road B6 Enterprise Corridor, a voluntary contribution in lieu of on-site provision is not an option and all parking must be provided on development sites. The B6 Corridor is very long and narrow, making it unsuited to effective public parking areas. It is also important to minimise overflow parking into adjoining residential areas.

Planning and Administration

Some of the funds received under VPAs may be used on activities ancillary to the provision of parking, such as engaging consultants to provide specialist advice on parking matters or auditing parking provision within private developments in accordance with consents.

APPENDIX F - State Government Documents on Planning Agreements

Documents on the preparation and implementation of planning agreements published by the State Government and currently in force or applicable are:

- Determinations and/or directions made by the Minister for Planning under Section 7.9 of the *EP&A Act 1979* - **NONE**
- Practice notes and/or Planning Circulars issued by the Secretary of the Department of Environment and Planning since amendments to the EP&A Act commenced on 1 March 2018 - **NONE**