

Planning Agreement

42-50 and 52-60 Railway Parade, Burwood

Burwood Council

(ABN 84 362 114 428)

And

Burwood Tower Holdings Pty Ltd

(ABN 72 615 842 290)

And

Wynne Ave Property Pty Limited atf Wynne Ave Property Trust

(ABN 72 980 694 511)

Dated _____ 2020

Developer: Initial Here Council: Initial Here

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DRAFT - for exhibition purposes

Parties

Burwood Council (ABN 84 362 114 428) of Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW 2134
(Council)

Wynne Ave Property Pty Ltd (ACN 600 212 324) of Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113 as Trustee for Wynne Ave Property Trust (ABN 72 980 694 511) (**Landowner**)

Burwood Tower Holdings Pty Ltd (ABN 72 615 842 290) of Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113 (**Developer**)

Background

The subject Development concerns land designated Lot 1 in DP 588368 known as 42-50 Railway Parade, Burwood and Lot 16 in DP 832440 known as 52-60 Railway Parade, Burwood.

The Development has a combined land area of approximately 14,400m² (excluding Wynne Avenue) and has frontages to Railway Parade, Wynne Avenue and Clarendon Place.

In September 2015, a planning proposal was submitted to Council for consideration. The Development generally consisted of podium levels of retail and commercial premises supporting five towers of residential uses including approximately 1,044 dwellings, as well as, commercial and hotel floorspace.

On 2 March 2017, gateway approval for a planning proposal was issued by the Department of Planning and Environment for amendments to the Burwood Local Environmental Plan (BLEP) in regards to the Development including 144m maximum height, 93,972m² residential floorspace, 48,410m² non-residential floorspace, maximum FSR of 9.9:1 and maximum residential FSR of 6.53:1.

During 2017 and 2018, and Council commenced negotiations in relation to the Developer's offer to pay a monetary contribution and perform works for public purposes within the Burwood Town Centre.

The negotiations identified the opportunity for the Developer to supply an additional 8,943m² of gross floor area (GFA) in exchange for public purposes including a new urban park, a Council car park and an expanded library for the Burwood Town Centre on the site of the Council's current library at 2-4 Conder Street, Burwood, being Lot 15 in Deposited Plan 832440. Monetary contributions and the dedication of commercial office space to Council were also offered.

On 13 February 2020, the Department of Planning, Industry and Environment (formerly the Department of Planning and Environment) (Department) approved with conditions an amended planning proposal resulting in an increase in total FSR to 10.54:1; increase of total GFA to 151,325m²; increased residential GFA to 102,858m² and increased residential FSR to 7.16:1; and an increase in non-residential GFA to 48,467m² include an increased FSR to 3.37:1.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this Planning Agreement, unless the context clearly indicates otherwise:

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

Authorised Representative means any representative of the Developer, authorised in writing by the Developer to undertake the Works the subject of this Planning Agreement.

Planning Authority has the same meaning as in the Act.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Construction Certificate means a certificate issued under Part 6 of the Act 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.

Completion Notice means certification issued in writing by the Works Inspector that the Works or a component of the works required to be carried out by the Developer under this Planning Agreement have achieved practical completion in accordance with the specifications for the Work.

Contributions Plan means the current Section 7.12 Local Infrastructure Contributions Plan for Burwood Town Centre adopted by the Council at the time of the Effective Date of this Planning Agreement, or subsequent amendments.

Council means Burwood Council.

Defects Liability Period means the period of 12 months after the date of the Completion Notice.

Defect means anything which adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Development means the redevelopment of the Land permitted by the Development Consent(s) in accordance with the Planning Proposal.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act, including multiple Development Consents for the Works.

Effective Date means the date on which all signatures from all parties to this Planning Agreement have been obtained.

GST means any form of goods and services tax payable under the GST Legislation.

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

Land means the land described in Schedule 2 of this Planning Agreement.

Developer: Initial Here Council: Initial Here

Library Site means that land described in Schedules 2, 3.1 and 3.2 of this Planning Agreement.

Monetary Contribution means the monetary contributions to be provided by the Developer and Landowner in accordance with Schedule 1 of this Planning Agreement.

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

Party A means Burwood Council (ABN 84 362 114 428) of Suite 1, Level 2, 1-17 Elsie Street, Burwood NSW 2134 (Council).

Party B means Wynne Ave Property Pty Ltd (ACN 600 212 324) of Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113 as Trustee for Wynne Ave Property Trust (ABN 72 980 694 511) (Landowner).

Party C means Burwood Tower Holdings Pty Ltd (ABN 72 615 842 290) of Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113 (Developer).

Planning Agreement means this planning agreement.

Planning Proposal means PP 2016 BURW 005 00 issued by the Department of Planning, Industry and Environment with an alteration of the Gateway Determination on 2 March 2017 and as amended with conditions on 13 February 2020.

Practical Completion for the purposes of this Planning Agreement means that stage in the construction of the Works or relevant part of the Works when such construction prior to the Notice of Completion:

- (a) Is complete except for minor defects:
 - (i) which do not prevent the relevant part of the Works from being reasonably capable of being used for their stated purpose;
 - (ii) which the Works Inspector determines that Party C has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the Works; and
- (b) Any tests which are required by Party C to be carried out under contracts have been carried out and passed; and
- (c) Any documents and other information required or reasonably necessary in the Works Inspector's opinion, acting reasonably, which are essential for the use, operation and maintenance of the Works have been supplied to Party B and to the Party A (in respect of those elements of the Works which are deliverable to the Party A under this Planning Agreement).

Public Benefit means the provision of benefits to the community by Party C in the form and at the times specified in Schedule 3.

Public Purpose means the public purpose described in Schedule 3.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Schedule means the schedule or schedules to this Planning Agreement.

Stage 1 means those components of the Development specified as Stage 1 in Schedule 5.

Stage 2 means those components of the Development specified as Stage 2 in Schedule 5.

Sunset Date means the date by which Party C must provide the agreed Public Benefit and Monetary Contribution to Party A in accordance with the timeframe in Schedule 4 of this Planning Agreement.

Trust means Wynne Ave Property Trust (ABN 72 980 694 511).

Work(s) means any work undertaken by Party C on the Land as required by this Planning Agreement.

Works Inspector means the person appointed by the Parties under clause 20.

1.2 Interpretation

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

- (a) headings are inserted for convenience only and do not affect the interpretation of this Planning Agreement;
- (b) a reference in this document to dollars or \$ means Australian dollars and all amounts payable under this document are payable in Australian dollars;
- (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 document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (f) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document;
- (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (h) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (i) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (j) references to the word 'include' or 'including' are to be construed without limitation;
- (k) a reference to this document includes the agreement recorded in this document;
- (l) a reference to a party to this document includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns;
- (m) any schedules and attachments form part of this document.

2. Compliance with New Laws

If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and Party C is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Planning Agreement or which was not contemplated at the time of

entering into this Planning Agreement, then, to the extent that the relevant obligation is required under the New Law and this Planning Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Planning Agreement.

3. 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.

4. Application of this Planning Agreement

The Planning Agreement applies to the Land and the Development.

5. Operation of this Planning Agreement

- (a) The Effective Date of this Planning Agreement is defined in Section 1.1.
- (b) This Planning Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) the last Sunset Date is reached; or
 - (iv) the Development Consent is surrendered in accordance with the Act; or
 - (v) a new Development Consent or new modification application is surrendered in accordance with the Act; or
 - (vi) it is otherwise discharged or terminated in accordance with the terms of this Planning Agreement.

6. Monetary Contributions

- 6.1** Party C will, upon the granting of the first Development Consent, pay to Party A the Monetary Contribution 1 (MC1) and any other payments required within the Development Consent and commence the delivery of the Monetary Contributions and Public Benefits according to Schedules 1, 3, 3.1, 3.2, 3.3, 3.4 and 4.
- 6.2** The payment of the Monetary Contributions will be by way of bank cheque made payable to Party A and in a form acceptable to Party A.
- 6.3** Parties B and C covenant and agree not to make an application for the issue of any construction certificate until the Monetary Contribution identified as MC1 in Schedule 1 is paid and received by Party A.
- 6.4** Subsequent to payment of the Monetary Contributions, in the event the Development Consent is not taken up by Party B or Party C or an application for the issue of the Construction Certificate is refused, Party A will refund the amount of any paid Monetary Contribution minus any associated fees or charges incurred by Party A to Party C within 14 days of notice being given to Party A by Party C of such event.
- 6.5** Notwithstanding any refund of the Monetary Contribution pursuant to clause 6.4 of this Planning Agreement, the Planning Agreement shall continue to have effect.
- 6.6** Party C acknowledges and agrees that this Planning Agreement will bind all purchasers, assignees and transferees and that the existence of this agreement shall be brought to the attention of all purchasers, assignees and transferees prior to any interest in the Land or in the Development being sold, transferred or assigned.

7. Acknowledgments

- 7.1** The Parties acknowledge and agree that:
- (a) the Monetary Contribution and Public Benefits are voluntarily offered by Party C to Party A as part of this Planning Agreement; and
 - (b) Party A may include a notation on Planning Certificates under section 10.7 of the Act in relation to this Planning Agreement; and
 - (c) the Monetary Contribution when paid will represent a monetary contribution towards a public benefit for the purposes identified in the Act; and
 - (d) the Monetary Contribution when paid will represent a monetary contribution towards a public benefit unrelated to the Development Consent.
- 7.2** Party A acknowledges and agrees that the Monetary Contribution, when paid, will be received by Party A and spent by Party A on the provision, augmentation or improvement of open space, community facilities or other public facilities as determined by Party A as a statutory authority.
- 7.3** Notwithstanding any other provision of this Planning Agreement, the Parties acknowledge and agree that nothing in this Planning Agreement in any way fetters or attempts to fetter the discretion of Party A in the performance of its obligations.

8. Application of the Act to the Development

- 8.1 This Planning Agreement does not exclude
- (a) the application of section 7.11 or section 7.12 of the Act; or
 - (b) any Affordable Housing Levy; or
 - (c) any other monetary fees and charges in connection with the Development Consent.
- 8.2 Public Benefits under this Planning Agreement are not to be taken into account in determining a development contribution under section 7.11, section 7.12 or section 7.24 of the Act.

9. Registration

- 9.1 Land ownership
- (a) Party B represents and warrants that:
 - (i) It is the registered proprietor of the Land; and
 - (ii) it has obtained the consent of all persons that have an interest in the Land prior to executing this Planning Agreement.
- 9.2 Registration of Planning Agreement
- (a) Party C agrees that it will lodge the Planning Agreement at the NSW Land Registry Services to enable the registration of this Planning Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act as soon as reasonably practicable after the Effective Date of this Planning Agreement.
 - (b) Party C at its own expense will, prior to the execution of this Planning Agreement, take all practical steps and otherwise do anything that Party A reasonably requires, to procure:
 - (i) The consent of each person who:
 - (A) has an estate or interest in the Land registered in the Land; and
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title
- to enable the registration of this Planning Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.

9.3 Party C acknowledges that this Planning Agreement will be registered in Party A's Government Contract Register in accordance with the requirements of Division 5 of Part 3 of the Government Information (Public Access) Act 2009 (GIPA Act).

9.4 Release and discharge of Planning Agreement

Party A agrees to do all things reasonably required by Party B to release and discharge this Planning Agreement with respect to the Land upon Party B satisfying all of the Public Benefits and Monetary Contributions obligations of this Planning Agreement in respect of that part of the Land in accordance with Schedule 6.

9.5 Lodgement of caveat by Party A

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

10. Dealings with the Land

The Parties acknowledge and agree that nothing in this Planning Agreement abrogates, fetters or in any way prevents Party B from selling, transferring, assigning, subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land except as set out in clause 17.

11. Taxes and GST

11.1 Responsibility for Taxes

- (a) Party C is responsible for any and all taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this Planning Agreement.
- (b) Party C must indemnify Party A in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which Party C is responsible under this clause 11.

11.2 Interpretation

In this clause:

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

11.3 GST free supply

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this Planning Agreement:

- (a) No additional amount will be payable by a Party on account of GST; and

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- (b) No tax invoices will be exchanged between the Parties.

11.4 Supply subject to GST

To the extent that clause 11.3 does not apply to a supply made under this Planning Agreement, this clause 11.4 will apply.

- (a) If one party (Supplying Party) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (Receiving Party) must also pay an amount (GST Amount) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must pay or reimburse another party (Payee) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 11.4(a) if the payment is consideration for a taxable supply.
- (d) Party C will assume Party A is not entitled to any input tax credit when calculating any amounts payable under this clause 11.4.
- (e) In this Planning Agreement:
 - (i) Consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) In addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

11.5 Tax invoice

The Supplying Party must deliver a tax invoice to the Receiving Party before the Supplying Party is entitled to payment of the GST Amount under clause 11.4. The Receiving Party can withhold a payment of the GST Amount until the Supplying Party provides a tax invoice.

12. Adjustment Event

- 12.1** If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 11.4 will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.

13. Default

13.1 Notice

In the event a party considers another party has failed to perform and fulfil an obligation under this Planning Agreement, it may give notice in writing to that party (Default Notice) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

13.2 Reasonable Time

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

13.3 Suspension of time-dispute

If a party disputes the Default Notice it may refer that dispute to dispute resolution under clause 15 of this Planning Agreement.

14. Communication Between Parties

14.1 Party C agrees to participate in the Burwood Place Delivery Working Group and to have monthly progress meetings with Party A in accordance with the Terms of Reference for that group.

14.2 If Party C becomes aware of events arising from clause 23 of this Planning Agreement, Party C is to notify Party A as soon as reasonably practicable after the event has occurred, and at the meeting(s) provided for in clause 14.1 of this Planning Agreement:

14.3 All communications pursuant to clause 23 must be in writing in accordance with clause 18 of this Planning Agreement. Such communications must:

- (a) describe the nature of the delay
- (b) state the expected period of the delay
- (c) set out the measures being taken to reduce the period of the delay
- (d) provide a statement as to whether the Sunset Date is expected to change.

15. Dispute Resolution

15.1 Notice of Dispute

If a Party claims that a dispute has arisen under this Planning Agreement (**Claimant**), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 15.

15.2 Response to Notice

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

15.3 Negotiation

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

15.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 15.5 or by expert determination under clause 15.8.

15.5 Mediation

If a party gives a Dispute Notice calling for the dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within 3 Business Days of the receipt of the Dispute Notice (the terms will include a requirement that the mediation rules of the Resolution Institute apply);
- (b) the Mediator will be agreed between the parties, or failing agreement within 3 Business Days of receipt of the Dispute Notice, either party may request the President of the Resolution Institute to appoint a mediator;
- (c) the Mediator appointed pursuant to this clause 15.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (d) the Mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (e) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) must convene and attend the mediation within 20 Business Days of the date of the Dispute Notice;
- (h) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

15.6 Litigation

If the dispute is not finally resolved in accordance with this clause 15, either party is at liberty to litigate the dispute.

15.7 Continue to perform obligations

Each party must continue to perform its obligations under this Planning Agreement, despite the existence of a dispute.

15.8 Expert Determination

If the dispute is not resolved under clause 15.3 or 15.5, the dispute may, by agreement between all parties, acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the Parties; or
 - (ii) in the event that no agreement is reached or appointment made within 20 Business Days, appointed on application of a party by the then current President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this Planning Agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 Business Days of the expert giving his or her decision.

16. Reporting

Every six months from the Effective Date of this Planning Agreement or as otherwise agreed with Party A, until such time as this Planning Agreement is no longer in effect, Party C agrees to provide Party A, either by written report or in a meeting of the Burwood Place Delivery Working Group with Party A the following:

- (a) Summary of all Development Consents granted in relation to the Development;
- (b) A schedule that details all Monetary Contributions and Public Benefits provided under this Planning Agreement as at the date of the report;
- (c) A schedule of planned and future Monetary Contributions and Public Benefits to be provided under this Planning Agreement; and,
- (d) An estimated date for when Party C expects to lodge the next Development Application, if applicable.

17. Restrictions on Dealings

17.1 Party B is not to:

- (a) sell or transfer the Land; or
- (b) assign their rights or obligations under this Planning Agreement, or novate this Planning Agreement,

to any person unless:

- (c) Party B has, at no cost to Party A, first procured the execution by the person to whom the Land or part is to be sold or transferred Party B's rights or obligations under this Planning Agreement are to be assigned or novated, of a deed in favour of Party A on terms reasonably satisfactory to Party A; and
- (d) Party A has given written notice to Party B stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Planning Agreement, and
- (e) Party B is not in material breach of this Planning Agreement; and
- (f) Party A otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

17.2 Party B agrees that:

- (a) Party A may lodge a caveat on the title of the Land to which the Charge applies, and
- (b) Party A cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 17.3.

17.3 Party A is to withdraw the caveat from the title to the Land when this Planning Agreement is registered on the title to the Land.

18. Notices

18.1 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 below; or
- (b) emailed to that Party at its email address as set out below.

Party A

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

Party B

Attention: General Counsel
Address: Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113
Post: Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113

email: Info@Holdmark.com.au

Party C

Attention: General Counsel

Address: Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113

Post: Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113

email: Info@Holdmark.com.au

- 18.2** If a Party gives another Party three (3) Business Days' notice of a change of its address, or email address, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address, or email address.
- 18.3** Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) if it is delivered, when it is left at the relevant address;
 - (b) if it is sent by post, two (2) Business Days after it is posted;
 - (c) if it is sent by email, two (2) Business Days after it is emailed.
- 18.4** If any notice, consent, information, application or request is delivered, or a notice of delivery in relation to it is received, on a day that is not a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

19. Appointment of Works Inspector

- 19.1** The Parties agree to jointly appoint a Works Inspector to perform the tasks described within clause 20. Such appointee must be experienced to perform the said tasks.
- 19.2** The Works Inspector will perform its duties under the direction of Party A and on behalf of Party A in order to ensure the delivery of the Public Benefits and Monetary Contribution according to this Planning Agreement.
- 19.3** The responsibilities of the Works Inspector will be independent to and separate from those of Party C's appointed private certifier.
- 19.4** The Parties agree to share equally the cost of the Works Inspector and any costs associated with the Works Inspector in relation to works within this Planning Agreement.
- 19.5** The Works Inspector may from time to time organise inspections for representatives of Party A and as such provide appropriate site induction activities in accordance with Work Health and Safety Act 2011 (NSW) and workplace health and safety procedures imposed by Party C.

20. Works

- 20.1** Without limiting any other provision of this Planning Agreement, the Works are to be carried out:
- (a) in a good and workmanlike manner; and
 - (b) to the reasonable satisfaction of Party A; and

- (c) in accordance with the Building Code of Australia, National Construction Code and Australian Standards; and
- (d) in accordance with the Library Site – Underground Car Park Specification set out in Schedule 3.1 of this Planning Agreement; and
- (e) in accordance with the Library Site – Urban Park Specification set out in Schedule 3.2 of this Planning Agreement including the payment of costs incurred by Party A for the removal and storage, if applicable, of Party A's existing assets and relocation of existing services; and
- (f) in accordance with the Library Site – Extension Specification set out in Schedule 3.3 of this Planning Agreement; and
- (g) in accordance with the Commercial Office Space Specification set out in Schedule 3.4 of this Planning Agreement.

20.2 Party C agrees that after the Sunset Date:

- (a) Party A will not be restricted from entering or exiting Party A land on account of other work or construction by Party C that may be continuing on the Land; and
- (b) Any defects identified by Party A (**Defects**) will be rectified by Party C within 90 days of such notice being given to Party C in accordance with this Planning Agreement. Should the defects not be rectified to Party A's satisfaction, Party A may undertake the rectification works itself. The parties agree that the cost incurred by Party A for the rectification works shall be moneys due from Party C to Party A.

20.3 Completion of Works

- (a) Party C is to give the Works Inspector and Party A written notice of the date on which it intends to complete the Works (or a part of the Works) required to be carried out under this Planning Agreement.
- (b) Notwithstanding the duties of a private certifying authority and any conditions of consent within the Development Consent, the Works Inspector is to:
 - (i) inspect the Work the subject of the notice referred to in clause 20.3(a) within three (3) Business Days of the date specified in the notice for completion of the Work; and
 - (ii) where Practical Completion has been achieved in accordance with the specifications for that item of the Work, issue a Completion Notice in respect of the Work or item of the Work.
- (c) Party A may attend the inspection described in clause 20.3(b)(i).
- (d) Works or a part of the Works required to be carried out by Party C under this Planning Agreement is completed for the purposes of this Planning Agreement when the Works Inspector gives Party A and Party C a Completion Notice.
- (e) If Party A is the owner on which Work the subject of a Completion Notice is located, Party A assumes responsibility for the Work upon the issuing of the Completion Notice and Party C's receipt of an Occupation Certificate.
- (f) If clause 20.4(e) does not apply when a Completion Notice is issued, Party A assumes responsibility for the Work if (and when) Party A becomes the owner of the land on which the Work is located.

20.4 Defect rectification

- (a) In this clause a "Rectification Notice" means a notice in writing;
 - (i) identifying the nature and extent of a Defect;
 - (ii) specifying the Works or actions that are required to rectify, remedy or correct the Defect; and
 - (iii) specifying the date by which the Defect is to be rectified, remedied or corrected.
- (b) During the Defects Liability Period, Party A may, acting reasonably, request the Works Inspector to:
 - (i) inspect the completed Work; and
 - (ii) where the Works Inspector identifies Defects in the Work, give Party C a Rectification Notice.
- (c) Party C, at its own cost, is to comply with a Rectification Notice according to its terms.
- (d) Party A is to do such things as are reasonably necessary to enable Party C to comply with such a Rectification Notice.
- (e) Following rectification of the Defects, Party C is to request the Works Inspector to:
 - (i) inspect the work carried out pursuant to the Rectification Notice within 5 Business Days; and
 - (ii) certify in writing within 3 Business Days that each Defect described in the Rectification Notice has been rectified (Certification).
- (f) The Works Inspector's Certification is final and binding on the parties, as to Party C's compliance with the Rectification Notice.

20.5 Works-as-executed-plan

- (a) No later than 60 days after the Works (or a part of the Works) are completed for the purposes of this Planning Agreement and in accordance with clause 20.3, Party C is to submit to Party A a full works-as-executed-plan in respect of the Work so completed.
- (b) Party C must give or procure for the benefit of Party A a non-exclusive licence to use the copyright in the plans for the purposes of this Planning Agreement.
- (c) "Plan" and "plans" for the purpose of this clause 20.5 means the architectural, engineering, site survey and site plans usually made available by consultants and/or contractors to an owner after completion of a development of the nature of the Works to be delivered by Party C to Party A.

20.6 Equipment removal

When work on any Party A owned or controlled land is completed for the purposes of this Planning Agreement, Party C, without unreasonable delay, is to:

- (a) remove any equipment from the land and make good any damage or disturbance to the land as a result of that removal; and

- (b) leave the land in a neat and tidy state, clean and free of rubbish.

20.7 Insurance

- (a) Prior to commencing the construction of any Work required under this Planning Agreement, Party C must procure to the reasonable satisfaction of Party A and ensure the currency of the following insurances in relation to the relevant Work up until the Work is taken to have been completed in accordance with this Planning Agreement:
 - (i) contract works insurance, noting Party A as an interested party, for the full replacement value of the work (including the cost of demolition and removal of debris, consultants' fees and authorities fees), to cover Party C's liability in respect of damage to or destruction of the Works;
 - (ii) public liability insurance for at least \$20,000,000 for a single occurrence, which covers Party A, Party C and any subcontractor of Party C, for liability to any third party;
 - (iii) workers compensation insurance as required by law; and
 - (iv) any other insurance required by law.
- (b) If Party C does not comply with clause 20.71.2(a), Party A may effect an keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from Party C to Party A and may be recovered by Party A as a debt due in a court of competent jurisdiction.
- (c) Party C is not to commence the construction of any work required under this Planning Agreement unless it has first provided to Party A satisfactory written evidence of the relevant insurances, specified in clause 20.7(a).
- (d) For the avoidance of doubt the risk in the Works to be delivered by Party C to Party A rests with Party C until the issue of a Completion Notice for the Works or relevant part of the Works to Party A.

21. Enforcement

- 21.1** This Planning Agreement may be otherwise enforced by any Party in any court of competent jurisdiction.
- 21.2** 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 agreement or any matter to which this agreement relates; and
 - (b) Party A 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.
- 21.3** The rights of Party A expressly provided for herein are cumulative and in addition to and not exclusive of the rights of Party A existing at law or which Party A would otherwise have available to it.

22. Security

22.1 Party C will provide security to Party A for its performance of the obligations under this Planning Agreement as follows:

22.2 Bank guarantee

The bank guarantee provided by Party C under this clause must name "Burwood Council ABN 84 362 114 428" as the relevant beneficiary or favouree, not have an expiry date and be issued by an Australian bank acceptable to Party A, acting reasonably.

22.3 Party C to provide bank guarantee as security

On or prior to the Effective Date, Party C must provide to Party A a Bank Guarantee with a total face value equivalent to the sum of \$5,000,000.

22.4 Party A is entitled to retain the Bank Guarantee as security

Upon Practical Completion of the Works by Party C and all conditions precedent as determined in Schedule 6 have been achieved, Party A must return the Bank Guarantee within 5 Business Days.

22.5 Calls upon security

- (a) Party A may call upon the Bank Guarantee where Party C has failed to comply with any obligation in this Planning Agreement, and Party A may retain monies obtained from that security and apply those monies towards the costs and expenses incurred by Party A in rectifying any failures by Party C or to cover any shortfall.
- (b) If Party A calls upon any security in accordance with this clause 22.5 and applies all or part of the monies obtained from that call in the manner authorised in this clause 22.5 of this Planning Agreement, then
- (c) Party A must notify Party C in writing of the amount of the call.

22.6 Top-up of security

If Party A calls upon the Security in whole or in part, Party C within 10 Business Days of receipt of the notification in clause 22.5(b) of this Planning Agreement, must "top up" the quantum of the Security to the sum of \$5,000,000, so indexed at the time of top up.

22.7 Release of Bank Guarantee

If:

- (a) Party C has satisfied all of its obligations to deliver the Works under this Planning Agreement secured by the Bank Guarantee; and
- (b) The whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with clause 22.5 of the Planning Agreement,

then Party A will within 5 Business Days return the Bank Guarantee (less any costs, charges, duties and taxes payable) or the remainder of the money secured by the Bank Guarantee, as

the case may be, to Party C.

23. Extension of Term

- (a) The Sunset Date may be extended as a result of events of delay that are beyond Party C's control, including in circumstances where there is:
 - (i) damage to the development the subject of this Planning Agreement or delay caused by fire, explosion, earthquake, storm, catastrophic event caused by natural causes, tempest, civil commotion, terrorism or any like occurrence including war;
 - (ii) delay caused by an act of public enemy, terrorism, declaration of war or public health crisis;
 - (iii) delay caused by any civil commotion, riot or industrial action beyond the control of Party C which prevents the development the subject of this Planning Agreement from proceeding;
 - (iv) delay in any responsible Authority giving any necessary approval or consent or any other necessary legislative requirement;
 - (v) delay caused by rain, wind or inclement weather; or
 - (vi) delay caused by court order, including an injunction.
- (b) The duration of the extension of time will be as determined by the Parties acting reasonably following notification by Party C to Party A.
- (c) Party A cannot unreasonably withhold consent to an extension of the Sunset Date.
- (d) Party A may request evidence of the cause of the delay and its duration from Party C if it considers necessary.
- (e) If Party A does not agree with the duration of the extension of time determined by Party C, the Parties may proceed to dispute resolution and issue a Notice of Dispute immediately, in accordance with clause 15.1.

24. Delay by Party C

- 24.1** If Party C does not give effect to the timeframes within the Schedules of this Planning Agreement, or such other date of extension in accordance with clause 23 of this Planning Agreement, liquidated damages in the sum of \$7,500 per day (indexed at the time of payment) for every day after the Sunset Date or any extension of the Sunset Date under clause 23 will be owed forthwith by Party C to Party A until Party A receives the respective Public Benefit or Monetary Contribution.
- 24.2** Party C acknowledges that liquidated damages are payable in accordance with clause 24.1, and that Party A may claim from Party C the accrual of any liquidated damages as a debt due to Party A.

25. General

25.1 Approvals and consent

Except as otherwise set out in this Planning Agreement, and subject to any statutory obligations, a party must act promptly and reasonably in giving or withholding an approval or consent to be given under this document.

25.2 Legal and associated costs

- (a) Party C will bear its own and Party A's costs of the initial negotiating, preparing and executing of this Planning Agreement or future amendments. Party A's costs will be limited to a maximum of \$10,000.
- (b) Party C will bear any costs associated with the stamping and registration of this Planning Agreement or future amendments and associated documents.

25.3 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, anything said or done by another Party, agent or employee of the Party, before this Planning Agreement was executed, except as permitted by Law.

25.4 Further acts

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

25.5 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.

25.6 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.

25.7 No fetter

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

25.8 Representations and warranties

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

25.9 Severability

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

25.10 Release and discharge

- (a) Notwithstanding the requirements of Schedule 6 and to the extent Party C has:
 - (i) satisfied all of its obligations under this Planning Agreement in respect of the Land or part thereof; or
 - (ii) this Planning Agreement no longer applies as a consequence of any event referred to in clause 5(b) of this Planning Agreement;

Party A will provide a release and discharge of this Planning Agreement with respect to any part of the Land:

- (iii) if Party B requests a partial release and discharge of this Planning Agreement for the purpose of selling part of the Land as a Developed Lot; or
 - (iv) if Party B requests a partial release and discharge of this Planning Agreement in connection with the completion of a sale contract for a Developed Lot.
- (b) Party A will execute any form, and supply such other information, as is reasonably required to enable the removal of the Planning Agreement from the title to the Land or part of the Land in accordance with this clause 25.10.

25.11 Modification, review and replacement

- (a) 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.
- (b) The Parties agree that this Planning Agreement may be reviewed or modified in the circumstances using their best endeavours and acting in good faith, and in accordance with this clause 25.11.
- (c) Any review or modification will be conducted in the circumstances and in the matter determined by the Parties and in accordance with the provisions of the Act and Regulations. For clarity, no such review or replacement shall have any force or effect unless and until formal documents are signed by the Parties in accordance with this clause 25.11.

25.12 Waiver

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

25.13 Public Information

The Parties agree that 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.

25.14 Assignment and novation

- (a) This Planning Agreement may be assigned or novated by Party C in accordance with any dealings Party C may have with respect to its interests in the Land without requiring Party C to obtain Party A's approval in respect of either the dealing or the assignment or the novation of this Planning Agreement.
- (b) Party A agrees to execute any deeds of assignment or novation or other documents necessary to assign, novate or otherwise transfer all of Party C's rights and obligations under the Planning Agreement to a successor as contemplated by the agreement.

25.15 Force majeure

- (a) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this Planning Agreement, it must give to the other Party prompt notice of the force majeure with reasonably full particulars.
- (b) The obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under clause 15 of this Planning Agreement.

25.16 Counterparts

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

25.17 Explanatory Note

The Explanatory Note in Schedule 7 must not be used to assist in construing this Planning Agreement.

25.18 Effect of Scheduled Terms and Conditions

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

Execution Page

Party A – Signed for and on behalf of **Burwood Council** by its attorney under power of attorney dated X registered **book X number X**. By executing this document, the attorney certifies that he/she has not received notification of revocation of the power of attorney.

In the presence of:

Signature of Witness

Signature of Attorney

(Print) Full Name of Witness

(Print) Full Name of Attorney

Date

Party B – Signed for and on behalf of **Burwood Tower Holdings Pty Ltd (ABN 72 615 842 290)** executed this agreement pursuant to section 127 of the Corporations Act:

Signature of Sole Director/Secretary

(Print) Full Name of Sole Director/Secretary

Date

Party C – Signed for and on behalf of **Wynne Avenue Property Pty Limited atf Wynne Ave Property Trust (ABN 72 980 694 511)** by its attorney under power of attorney dated X registered **book X number X**. By executing this document, the attorney certifies that he/she has not received notification of revocation of the power of attorney.

In the presence of:

Signature of Witness

Signature of Attorney

(Print) Full Name of Witness

(Print) Full Name of Attorney

Date

Developer: Initial Here Council: Initial Here

Schedules

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Schedule 1 – Monetary Contribution

Monetary contributions totalling \$30,000,000 (indexed annually from the date of the Development Consent) will be provided to Party A for the provision of public purposes in accordance with Section 7.4(2) of the Environmental Planning and Assessment Act 1979 (as amended) according to the following timetable:

Column 1	Column 2	Column 3	Column 4
Item Number	Description	Sunset Date	Value (all to be indexed at time of delivery)
MC1	Cash payment	Refer to Schedule 4 MC1	\$5,000,000
MC2	Cash payment	Refer to Schedule 4 MC2	\$5,000,000
MC3	Cash payment	Refer to Schedule 4 MC3	\$5,000,000
MC4	Cash payment	Refer to Schedule 4 MC4	\$5,000,000
MC5	Cash payment	Refer to Schedule 4 MC5	\$5,000,000
MC6	Cash payment	Refer to Schedule 4 MC6	\$5,000,000

Index Period	XX	CPI1	XX
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All monetary contributions will be indexed at the time of payment according to the following methodology:

$$\text{Contribution (at time of payment)} = \frac{C \times \text{CPI2}}{\text{CPI1}}$$

Where:

C: the original contribution amount as shown in this schedule;

CPI2: the Consumer Price Index: All Groups Index for Sydney, for the immediate past quarter (available from the Australian Bureau of Statistics at the time of payment)

CPI1: the Consumer Price Index: All Groups Index for Sydney, applied at the time of granting the development consent as shown on the development consent.

Note: The minimum payment will not be less than the contribution amount stated above.

When a Monetary Contribution is to be paid to Party A in accordance with Schedule 4, evidence that payment has been made is to be submitted to the Principal Certifying Authority, prior to the issuing of the Construction Certificate.

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Schedule 2 – The Land

The Land for purposes of this Planning Agreement includes the following:

Development Site

The Development Site means land designated Lot 1 in Deposited Plan 588368 known as 42-50 Railway Parade, Burwood and Lot 16 in Deposited Plan 832440 known as 52-60 Railway Parade, Burwood.

The Development Site also includes land below Wynne Avenue which will be the subject of a lease between Parties and negotiated independently of this Planning Agreement.

Library Site

Library Site means the public library and car park at 2-4 Conder Street, Burwood, being Lot 15 in Deposited Plan 832440, together with the means of access to and egress from such library and public places in its immediate vicinity and includes, where relevant the existing surface car park.

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Schedule 3 – Public Benefits

Column 1	Column 2	Column 3	Column 4	Column 5
Item Number	Description	Sunset Date	Approximate Value (as of January 2020)	Technical Reference
PB1	Library Site – Underground car park consisting of 180 spaces (approximately 5,100m2 gross)	Refer to Schedule 4 PB1	\$7,900,000	Schedule 3.1
PB2	Library Site – Urban park (approximately 2,200m2) 8910 to replace the current Council car park at ground level above Item PB1	Refer to Schedule 4 PB2	\$5,100,000	Schedule 3.2
PB3	Library Site – Extension of 800m2 net leasable area (NLA) or approximately 1,000m2 gross of the current library	Refer to Schedule 4 PB3	\$2,750,000	Schedule 3.3
PB4	Office Space – 4,242m2 NLA or approximately 5,300m2 gross A-grade commercial office space	Refer to Schedule 4 PB4	Approximate value of \$35,000,000	Schedule 3.4
PB5	Office Space – 40 basement car spaces	Refer to Schedule 4 PB5		Same specifications as Schedule 3.1

Note: Items PB1, PB2 and PB3 have a combined total current present value of \$15,750,000. These items are to be assessed by an independent Quantity Surveyor at the time of delivery. If the value of the works exceeds \$15,750,000, a value engineering exercise will be conducted through the Burwood Place Delivery Working Group.

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Schedule 3.1 – Library Site - Underground Car Park Specifications

Notwithstanding clause 20, the following table provides specific Party A requirements for the construction and quality of the underground car park.

Item	Specification / Comment
Electrical conduits and communication cables	<ul style="list-style-type: none"> For the purpose of (but not limited to) CCTV, parking meters, illuminated signage. Independent switch board. Subject to an electrical/lighting/CCTV/meter plan to be determined and agreed by the parties.
Parking spaces	<ul style="list-style-type: none"> 180 spaces to be provided, in a contiguous location, accessible by a shared access and ramp system. Over a minimum of three basement levels. Colour-coded levels (to be confirmed by Party A).
Parking space requirements	<ul style="list-style-type: none"> Wheel stops fitted to each parking space.
Car park configuration / layout	<ul style="list-style-type: none"> Motorbike parking. Bicycle racks and “end of journey” facilities.
Parking Access / Management System	<ul style="list-style-type: none"> Parking guidance and information (PGI) system, including adaptive lighting sensors/detectors, parking space LED indicators, associated signage, and indoor positioning system (IPS). Party A to specify the system type. Security gate/shutter at entrance to allow for car park closure.
Mechanical Ventilation	<ul style="list-style-type: none"> Unobtrusive position for vents in the urban park. CO2 sensor.
Sprinkler System / Safety Systems	<ul style="list-style-type: none"> Repeater station, mobile repeaters.
Finishes	<ul style="list-style-type: none"> Shot-crete finish of car park walls. Polished concrete to increase reflectivity.
Drainage	<ul style="list-style-type: none"> Independent drainage system (i.e. not linked to the Development Site).
Signage Requirements	<ul style="list-style-type: none"> Signage including (but not limited to) emergency exit signs, directional signage, signs associated with PGI.
Shopping Trolley Management System	<ul style="list-style-type: none"> No trolleys permitted into the Council car park area, e.g. magnetic device prohibiting access to Council car park area.
Lifts	<ul style="list-style-type: none"> Lift access to each basement car park. Brand: Kone or Scheindler. Small shelter area/foyer around lift at surface level. Complementary to park design. Bollards preventing trolleys accessing lifts.
Construction Specifications	<ul style="list-style-type: none"> Constructed to bear loads of the urban park, including deep soil areas and large gatherings of people.
Traffic Generation	<ul style="list-style-type: none"> Compliant with RTA Guide to Traffic Generating Developments.

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Item	Specification / Comment
Pedestrian Crossing	<ul style="list-style-type: none"> • Conder Street crossing shall be located north of the car park exit.
Further work	<ul style="list-style-type: none"> • Site Analysis and park design to be undertaken by the architect with approval of the Burwood Place Delivery Working Group.

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Schedule 3.2 – Library Site - Urban Park Specifications

Notwithstanding clause 20, the following table provides specific Party A requirements for the construction and quality of the urban park.

Item	Specification / Comment
Electrical conduits and communication cables	<ul style="list-style-type: none"> For the purpose of (but not limited to) CCTV, PA system, illuminated signage, WI-FI, charging stations (smart seats). Subject to an electrical/lighting/CCTV plan to be determined and agreed by the Burwood Place Delivery Working Group prior to submission of the development application.
Lighting	<ul style="list-style-type: none"> Subject to a lighting plan to be determined and agreed by the Burwood Place Delivery Working Group prior to submission of the development application. Decorative lighting, e.g. uplighting of trees or fairy lights. Possible re-use of multi-function poles along the roadway edge. Compliant with CPTED principles.
Vision	<ul style="list-style-type: none"> Consistent with Party A's Local Strategic Planning Statement and Party A's LGA Masterplan Maximise deep-soil where possible. Activities for school children during after-school hours. Lunch time congregation of workers. Public art and quality finishes/fixtures. Visual cohesion with surrounding spaces and buildings, including library, school, plantings. Compartmentalised spaces. Limited play equipment for infants to primary-school age market, e.g. Luna development at Summer Hill. Adaptability for use for events, gatherings, intimate concerts and buskers.
Car park intrusions	<ul style="list-style-type: none"> If necessary, accommodate the car park vents in an unobtrusive position within the urban park, with minimal disruption to park users. Integrate the design of the car park lifts and fire stairs into the urban park. The lifts are expected to provide a small shelter/lobby area. The lift entrance would have a system to prevent shopping trolley access to the lifts.
Cycle racks and end of journey facilities	<ul style="list-style-type: none"> Provision for a minimum of 20 bicycles. Provision of shower, basin and change room facilities reflective of contemporary expectation of commuters traveling by walking, cycling or other pedestrian methods.
Existing assets	<ul style="list-style-type: none"> Party A will determine which existing assets it wishes to retain. At Party B's expense, Party A will remove and store these assets in consultation with Party B to ensure efficiency in the construction program. Existing in-ground infrastructure is to be relocated by Party A at Party B's expense prior to any excavation work on-site, thereby minimising impacts to the operation of the library, e.g. hydraulic system, cabling, etc.
Signage	<ul style="list-style-type: none"> Wayfinding signage. Historical interpretation, see below Avenue of Nations.

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Item	Specification / Comment
Planting	<ul style="list-style-type: none"> • Integrating existing trees (e.g. cabbage tree palms) into the new design consistent with Party A landscape plans, masterplans and/or strategies. • Low level planting within the centre of park for enhanced safety and visual surveillance. • Retain and protect the existing established trees in the scope of works areas (e.g. Eucalyptus) where possible and incorporate them into the new design. • Consider vertical gardens.
Public Domain	<ul style="list-style-type: none"> • A range of tables and seating options. A mix of seating configurations, e.g. benches, two-player chess style, group seating, individual seating. • Paving: consider the use of standard Burwood paving with banding for major access routes to visually link with Railway Parade and other town centre streets. Provide a mix of ground plane materials off the major access ways for visual interest and to delineate and define passive areas. • Bins, number sufficient to service the space. • PA system. • Public TV screen. • Bubblers x 2. • Shade structures in select locations. • All work to be compliant with Party A's Public Works Manual or similar • All design to be consistent with Party A's LGA Masterplan
Public Art	<ul style="list-style-type: none"> • A Public Art Plan will be provided at development application stage giving consideration of Party A's Public Art Strategy. • Integrate with the 'themes' developed for the Avenue of Nations, e.g. heritage interpretive plaques. Party A will provide details of this scheme. • Reinstatement of 'Awakening'. • Seating and other fixtures to have architectural quality.
Water Sensitive Urban Design / Water Feature	<ul style="list-style-type: none"> • Water-based feature to be provided. Cooling effect. • If depth over 300mm, design and integrate required fencing • Child-play friendly. • Rain gardens to capture surface runoff for irrigation.
Public Steps	<ul style="list-style-type: none"> • Large expanses of steps shall be broken up by seating and planting. • Non-slip nosing. • Handrails and ramps may be required.
Power	<ul style="list-style-type: none"> • Three-phase outlet/s. • Location of metre box to be determined by agreement of the parties. • If required, any Ausgrid transformer compartments to be integrated within the Development and not installed on Party A land.
Water	<ul style="list-style-type: none"> • Automatic irrigation system. • Drainage, linked to stormwater system. • Potable water supply (for maintenance and bubblers).
Bus Shelter	<ul style="list-style-type: none"> • The existing bus stop located on the eastern side of Conder Street will be relocated north between the roundabout and pedestrian crossing. • A bus shelter to Party A's specifications is to be provided. • A continuous at grade path is to be provided from the bus stop to the library entrance.

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Item	Specification / Comment
Pedestrian Crossing	<ul style="list-style-type: none"> • The existing pedestrian crossing on Conder Street is to be relocated north of the new car park exit. • The crossing is to incorporate a raised threshold ensuring a continuous at-grade path from the western side of Conder Street to the Library entrance. • Pedestrian fencing will be required on both sides of Conder Street on either side of the pedestrian crossing.
Accessibility	<ul style="list-style-type: none"> • Equal access requirements. • Ramp within the park. • Emergency access.
Finishes	<ul style="list-style-type: none"> • Highly-architectural fixtures and high-quality finishes. • Vandal proofed. • Low maintenance.
Maintenance	<ul style="list-style-type: none"> • Ramp for removal/movement of bins. • Vehicle access facilitated for maintenance, events etc.
Miscellaneous	<ul style="list-style-type: none"> • Adherence to CPTED principles. • Anti-Terrorism principles
Further work	<ul style="list-style-type: none"> • Site Analysis and park design to be undertaken by Party C's architect with approval of the Burwood Place Delivery Working Group prior to submission of the development application.

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Schedule 3.3 – Library Site - Extension Specifications

Notwithstanding clause 20, the following table provides specific Party A requirements for the construction and quality of the Library extension.

Item	Specification / Comment
Electrical conduits and communication cables	<ul style="list-style-type: none"> • For the purpose of (but not limited to) lighting, illuminated signage, CCTV, WI-FI, network cabling, and recording system (meeting rooms). • Subject to an electrical/lighting/CCTV plan to be determined and agreed by the parties. • Separate electrical board on level 3 • All lighting network – fitting with motion sensors
Lifts	<ul style="list-style-type: none"> • New lift access to all floors, new and existing. • Brand: Kone or Schindler • Lift lobbies shall be capable of isolation during after-hours use. • Preference for new lift well on northern side of building.
Floor Space	<ul style="list-style-type: none"> • 800m2 NLA equivalent to approximately 1,000 m2 of gross floor area. • Appropriate location and format of floor space yet to be determined.
Roof-top equipment	<ul style="list-style-type: none"> • Relocation of air conditioning units, antennas, and any other roof infrastructure.
Maximum periods of shut-down	<ul style="list-style-type: none"> • Minimal to no disruption to existing library use. • Equipment, e.g., technology and air conditioning shall remain operable throughout construction.
Construction implications	<ul style="list-style-type: none"> • Disruption to library patrons shall be minimised. • Safe pedestrian access (including access for people with disabilities) shall be maintained to the Library entrance throughout construction. • Party A shall be provided with at least 21 days (minor work) or 40 days (major disruption) notice of any construction work to the fabric of the existing Library building.
Technology	<ul style="list-style-type: none"> • Network cabling fitted to new level, if applicable.
Building envelope	<ul style="list-style-type: none"> • Premium grade building • External wall- double glazed and energy efficient curtain walls with external shading elements • Class 1 concrete • Class 1 pre-cast concrete panel or composite metal cladding over concrete block masonry wall
Interior finishes	<ul style="list-style-type: none"> • Flooring- premium grade carpet • Ceiling –pressed metal perforated panel ceiling with power coat/anodized finish or equivalent • Doors- solid core timber doors or premium aluminium frame doors with double glazing • Wet Area tiles- Large format (min 600x600mm) natural stone or equivalent quality fully vitrified tiles with corrected edges • Wet Area bench top- natural granite or marble • Wet Area fixtures- premium grade fixtures (Villeroy & Boch or equal) • Tap wares- premium grade (Grohe or equal) • Lighting – premium grade lighting (e.g., ERCO or equal) • Air conditioning: with UV anti-microbial filters or equal)

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Item	Specification / Comment
Future proofing	<ul style="list-style-type: none"> • Roof capable of supporting solar panels. North facing roof plane preferable.
Sustainability	<ul style="list-style-type: none"> • In line with 5* NABERS rating.
Further work	<ul style="list-style-type: none"> • Site analysis and extension design to be undertaken by Party C's architect with approval of the Burwood Place Delivery Working Group.

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Schedule 3.4 – Commercial Office Space Specifications

Notwithstanding clause 20, the following table provides specific Party A requirements for the construction and quality of the commercial office space.

Item	Specification / Comment
Electrical conduits and communication cables	<ul style="list-style-type: none"> • For the purpose of (but not limited to) lighting, office operations, network cabling. • Subject to an electrical/lighting plan to be determined and agreed by the parties.
Commercial Space parameters	<ul style="list-style-type: none"> • At least 4,242sq.m. NLA of commercial floor space. • All space to be contiguous, over a maximum of four levels, having access to shared lift well and shared stair well. • At least 40 car parking spaces. All parking spaces contiguous and on one level. Line marked and wheel stops etc. capable of use at time of dedication. • Parking on Basement Level 1, or first level of car parking from the vehicle access point. • Access at ground floor level shall be via a shared foyer area which provides direct access to the lifts, stairs and allocated car parking spaces.
Title / Dedication to Party A	<ul style="list-style-type: none"> • The commercial floor space and parking spaces shall be transferred to Party A as a stratum. • Any equipment that solely services the dedicated commercial space and parking (e.g. roof-top air conditioning units) shall be appropriately titled and included in the transfer to Party A. • Party A shall be granted an easement allowing access to any equipment transferred to Party A.
Warm Shell	<ul style="list-style-type: none"> • Carpeted, suspended ceiling panels, lighting. • Mechanical system (i.e. air con.) • Lighting lux (min. 350 lux) suiting the office environment. • LED lighting. Motion-sensor. • Walls painted – 3 coats.
Wet Areas	<ul style="list-style-type: none"> • Amenities and kitchen on each floor of commercial space. • Tiles for wet area – toilets / shower rooms. • Vinyl floor finishes for kitchens • Splash backs and kitchen benches. • Tap wear included. • Carpet tiles, e.g. 500x500 direct stick carpet tiles to office areas.
Technology	<ul style="list-style-type: none"> • Incoming NBN supply. • NBN ready. • Internal room, or similar, for network equipment and storage
Further Information	<ul style="list-style-type: none"> • Indicative plan of the dedicated Commercial Space, configuration, layout, floor levels, parking, etc. Plan to be agreed by the Burwood Place Delivery Working Group prior to submission of the development application. • Office Finishes Schedule to be supplied and agreed upon by the Burwood Place Delivery Working Group prior to submission of the development application. Detailing material, finish, colour, manufacturer, supplier, description etc.

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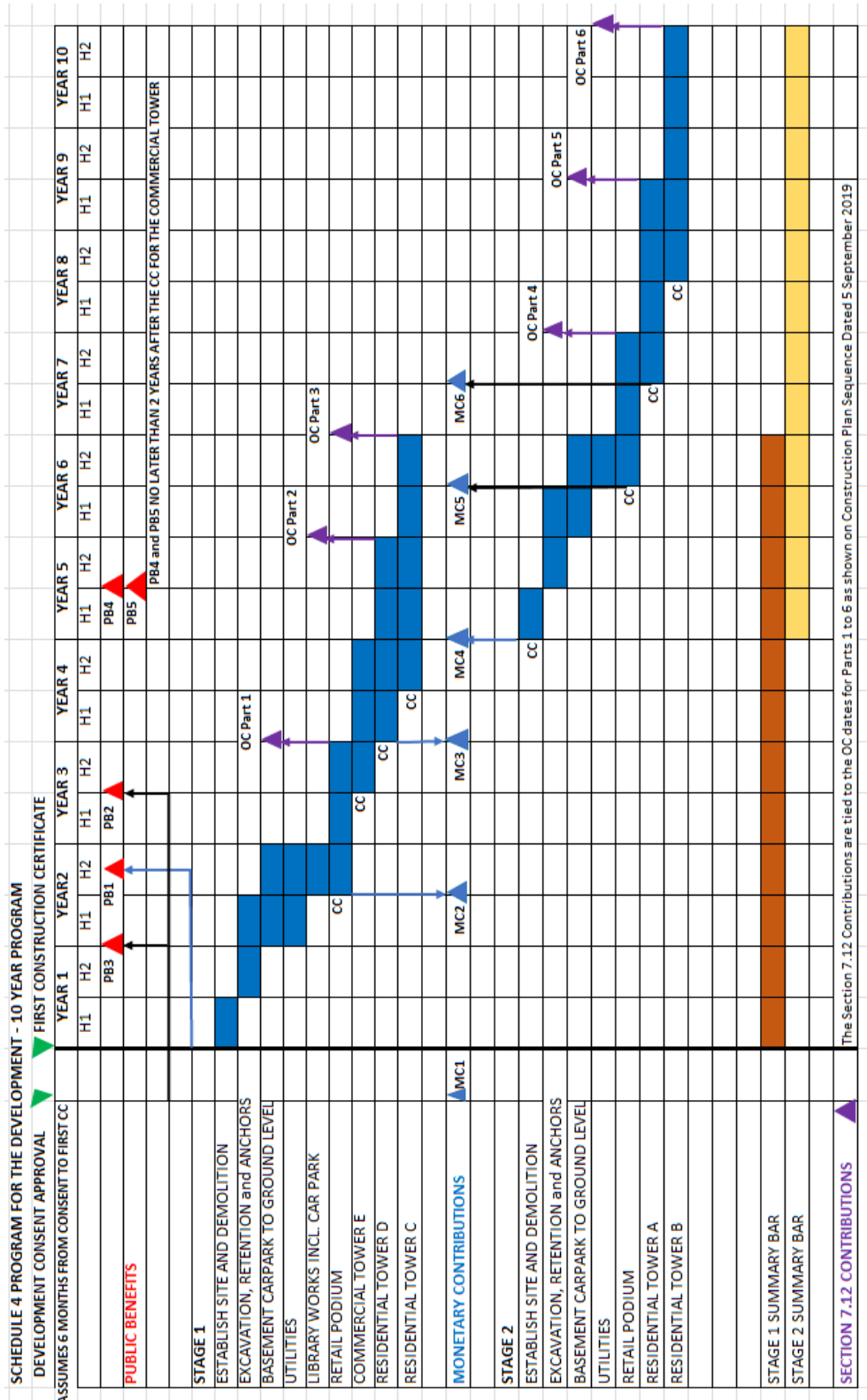
Item	Specification / Comment
Sustainability	<ul style="list-style-type: none"> • Compliant with BCA/NCC. • Party C to provide the warm shell in line with a 5* NABERS rating. • Party A to ensure that its fitout is in line with a 5* NABERS rating.

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Schedule 4 – Development Construction Sequencing Program

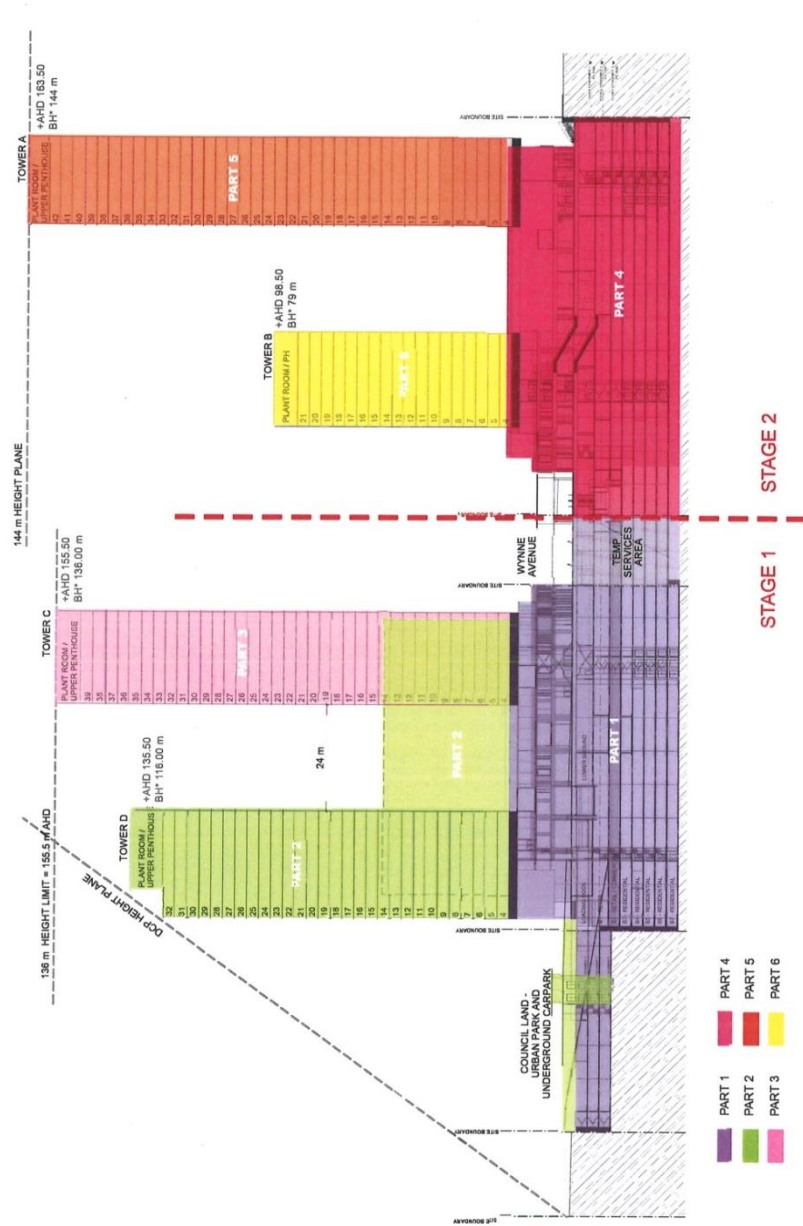
To be updated at time of execution of this Planning Agreement.



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Schedule 5 – Development Construction Sequencing Diagram

CONSTRUCTION SEQUENCE PLAN
05.09.2019



architectus COX
-9-

DENOTES CONSTRUCTION WORKS ONLY AND EXCLUDES DEMOLITION AND EARLY WORKS

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Schedule 6 – Conditions Precedent to Partial Release and Discharge of this Planning Agreement

Note: for explanation of MC and PB see Schedules 1 and 3, respectively

A key requirement for Council is ensuring that all of the Public Benefits associated with the Stage 1 works are delivered within an acceptable timeframe as indicated in Schedule 4.

This Schedule 6 was prepared based on the following key objectives:

- (a) All Monetary Contributions (MC) and Public Benefits (PB) obligations committed to, and due to date, have been paid or provided before partial release of a part of the works; and
- (b) MC2 to MC6 are tied to the issue of a Construction Certificate (CC) for that part of the works, so the sequence of work can change, within reason; and
- (c) Section 7.12 contributions are tied to the completion of building elements, so the sequence of work can change, within reason; and
- (d) PBs are tied to the delivery of physical property or things to Council, and all of these things (PB1 to PB5) are contained in Stage 1, Part 1 and Stage 1, Part 2 of the works.

The table below reflects the flexibility to the staging program (Schedule 4) as follows:

- (e) The sequence of works is indicative, and a change of sequence can be agreed between the Parties, acting reasonably and considering the above key objectives;
- (f) Should a change in sequence be necessary, Party C to demonstrate to Party A how the Public Benefits will be delivered;
- (g) The naming of the towers, Tower A, is generic and does not indicate a prescribed sequence; and
- (h) Stage 1 works may commence after Stage 2 works have commenced.

Construction Item	Scope of Work	Conditions Precedent (CP) (for the partial release and discharge of this item)
Stage 1, Part 1	Excavation, car parks and Retail Podium to Stage 1 and Wynne Avenue works	MC1 and MC2 have been paid, and PB1, PB2 and PB3 have been provided
Stage 1, Part 2	Council car park, Urban Park and Library Extension, and the first Residential Tower and Commercial Tower to Stage 1	MC3 has been paid, and PB4 and PB5 have been provided
Stage 1, Part 3	Second Residential Tower to Stage 1	None. (All conditions previously met under Stage 1, Parts 1 and 2)
Stage 2, Part 4	Excavation, car parks and Retail Podium to Stage 2	MC4 and MC 5 have been paid

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Construction Item	Scope of Work	Conditions Precedent (CP) (for the partial release and discharge of this item)
Stage 2, Part 5	The first Residential Tower to Stage 2	MC6 has been paid
Stage 2, Part 6	The second Residential Tower to Stage 2	None (all MCs have previously been paid and all PBs have been previously provided)

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Schedule 7 – Explanatory Note

Note: Updating and/or minor amendments may be made to this Schedule at the time of execution of this Planning Agreement.

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Planning Agreement

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

1. Parties

Burwood Council (Council)

ABN 84 362 114 428

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

and

Wynne Ave Property Pty Ltd (Landowner)

ACN 600 212 324

Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113

as Trustee for Wynne Ave Property Trust (ABN 72 980 694 511)

and

Burwood Tower Holdings Pty Ltd (Developer)

ABN 72 615 842 290

Suite 2, 2-4 Giffnock Avenue, Macquarie Park NSW 2113

2. Description of the Land to which the Agreement Applies

The subject Development concerns land designated Lot 1 in DP 588368 known as 42-50 Railway Parade, Burwood and Lot 16 in DP 832440 known as 52-60 Railway Parade, Burwood.

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

3. Description of Proposed Development

The Development generally consists of podium levels of retail and commercial premises supporting five (four residential and one commercial) towers with a maximum height of 144m including approximately 1,044 dwellings. The Development has a total FSR to 10.54:1 resulting in a total GFA of 151,325m² including a residential GFA of 102,858m² resulting in a

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residential FSR of 7.16:1; and a non-residential GFA of 48,467m2 resulting in an FSR of 3.37:1.

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

4.1 Summary of Objectives

The objective of the Agreement is for the Developer to make a development contribution to the Council.

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

4.2 Effect of the Planning Agreement

The Planning Agreement:

- (a) relates to the carrying out of the Development on the Land;
- (b) does not exclude the application of s7.11 & s7.12 of the Act to the Development;
- (c) does not exclude the application of s7.24 of the Act to the Development;
- (d) requires the Developer to make a monetary contribution as well as providing additional public benefits as works in kind.

5. Assessment of the Merits of the Planning Agreement

5.1 The Planning Purposes Served by the Planning Agreement

The Planning Agreement serves the following planning purposes:

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

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

The Planning Agreement promotes the following objects of the Act:

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

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- (c) the provision and co-ordination of community services and facilities.

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

6. How the Planning Agreement Promotes the Public Interest

6.1 How the Planning Agreement Promotes the Purposes of the Local Government Act 1993 (NSW)

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

The Planning Agreement promotes the following purposes of this Act:

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

- (b) Section 7(d):
 - (i) to give councils: "... the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public ... to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities"

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

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

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

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

- (b) It does this through the means set out in section 5.1 above.

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

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

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

The Planning Agreement specifies that certain requirements must be complied with before a Construction Certificate, Occupation Certificate or Subdivision Certificate is issued.

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

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

8. Other Matters

None.

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