



**Land and Environment
Court**
of New South Wales

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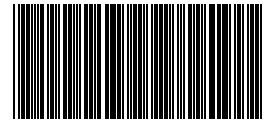
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Your Ref:



D0001AM47A

2 July 2020

NOTICE OF ORDERS MADE

Case number 2018/00391777
Case title Eric SANDERSON v Northern Beaches Council

On 2 July 2020 the following orders (and/or directions) were made:

The Court orders that:

- (1) The appeal is upheld.
- (2) Development consent is granted for the consolidation of the two lots known as Lot 9 of DP 242284 and Lot 36 of Sec 1 DP 6462, and the subdivision of the consolidated lot into two lots of land, subject to the conditions of consent in Annexure A.
- (3) Exhibits 1-6 and 9 are returned.

For the Registrar

Sanderson v Northern Beaches Council
Attachment B

Planning Agreement

between

Keenwill Pty Limited
ACN 010 968 706
and
Robert Corless
(Developer)

and

Northern Beaches Council
ABN 57 284 295 198
(Council)

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This Planning Agreement is made on

XX/XX/2020.

Parties

Keenwill Pty Limited of Level 1, 101 Darley Street, Mona Vale NSW 2103
and **Robert Corless** of 66 Powderworks Road
(Developer)

Northern Beaches Council
of 725 Pittwater Road, Dee Why NSW 2099
(Council)

Background

- A The Developer owns the Land which is located within the Council's local government area.
- B On 13 August 2018 the Developer caused a Development Application, DA2018/1335, to be made to Council for Development Consent to carry out the Development on the Land, being a boundary adjustment between two adjoining lots (Lot 9 in DP 242284 and Lot 36 Sec 1 DP 6462) so as to create 2 new lots with new dwelling entitlement (the DA).
- C During a conciliation conference on 29 August 2019 under s34 of the *Land and Environment Court Act* 1979 the Developer offered, subject to obtaining Development Consent to DA2018/1335, to enter into a Voluntary Planning Agreement to construct a three-point turn bay on part of Lot 9 in DP 242284 being land adjoining Bellara Road and dedicate this land to Council equating to 101.4sqm and as shown on the draft Plan of Subdivision prepared by CMS Surveyors.
- D The dedication of the above land allows for a three-point turn bay for public use.

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 the planning agreement

The planning agreement constituted by this Agreement is subject to the grant of Development Consent to DA2018/1335 and applies to the Land, being Lot 9 in Deposited Plan 242284 and Lot 36 Sec 1 in Deposited Plan 6462, the subject of Development Application DA2018/1335.

3. Operation of this planning agreement

- 3.1 Subject to clauses 3.2 and 3.3, the Parties agree that the terms of this agreement will take effect and bind the parties from the Commencement Date.
- 3.2 The Agreement, executed by both Parties must be provided to Council prior to the issue of the subdivision certificate in respect of the Development. The Developer's obligations within this Agreement must be satisfied prior to the issue of the subdivision certificate, except where a contrary intention is indicated.
- 3.3 Council may rescind this Agreement if the Developer's obligations herein have not been satisfied within 3 years from the Commencement Date.

4. Definitions and interpretation

4.1 Definitions

"Act" means the *Environmental Planning and Assessment Act 1979*.

"Bank Guarantee" means a written guarantee or an undertaking by a trading bank or another financial institution acceptable to the Council (acting reasonably) with no expiry date, whereby that bank or institution unconditionally and irrevocably agrees to pay the Council on written demand the sum of \$36,540.

"Commencement Date" means, subject to and following the grant of Development Consent in respect of the Development, the date this Agreement is signed by both parties.

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

"Dedication" means the dedication of the 101.4sqm of land in Bellara Avenue to Council for the purposes of allowing for a three-point turn bay for public use as shown on the draft Plan of Subdivision prepared by CMS Surveyors at Schedule 3.

"Development" means the development contemplated by DA2018/1335.

"Development Application" has the same meaning as in the Act.

"Development Consent" has the meaning given to that term in the Act and means any consent issued by Northern Beaches Council or the Land and Environment Court.

"Development Contribution" means the development contributions referred to in clause 5.

"Explanatory Note" means the explanatory note relating to this Agreement, as required by clause 25E of the Regulation, and attached as Exhibit A to this Agreement.

"GST" has the same meaning as in the GST Act.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Land" means Lot 9 in DP242284, known as 31 Bellara Avenue, North Narrabeen and Lot 36 Sec 1 in DP 6462, known as 66 Powderworks Road, North Narrabeen.

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

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

4.2 General

In this Agreement unless the contrary intention appears:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) 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) dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (e) 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) any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

- (j) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (k) references to the word 'include' or 'including' are to be construed without limitation;
- (l) a reference to this Agreement includes the agreement recorded in this Agreement;
- (m) a reference to a party 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 Contribution to be made under this Agreement

The provision of the Development Contribution to Council is subject to the grant of Development Consent to DA2018/1335. The Developer will at no cost to Council and free from all encumbrances provide, or procure the provision of, the following Development Contribution to Council:

Item	Name	Description
1	Dedication of land	Approximately 101.4 sqm as shown on draft plan of subdivision prepared by CMS Surveyors Pty Limited, attached to this Agreement in Schedule 3.
2	Construction of road surface and retaining wall to function as a three point turn bay	Construction of road surface and retaining wall to function as a three-point turn bay as shown on engineering plan by Taylor Consulting, attached to this Agreement in Schedule 3.

6. Application of the Development Contribution

The Developer will provide, or procure the provision of, the Development Contribution at the following times.

Item of Work	Development Stage		Relevant Drawing
1 Dedication of land	Upon the registration of the Plan of Subdivision for the Development		Draft plan of subdivision prepared by CMS Surveyors Pty Limited, attached to this Agreement in Schedule 3.
2 Construction of road surface and retaining wall to function as a three point turn bay	Prior to the issue of the Subdivision Certificate for the Development		Engineering drawings prepared by Taylor Consulting, attached to this Agreement in Schedule 3.

7. Application of s7.11 and s7.12 of the Act to the Development

The application of sections 7.11 and 7.12 of the Act to the Development is not excluded.

8. Registration of this Agreement

The Developer is to register this Agreement on the Land in accordance with s7.6 of the Act.

9. Review of Agreement

The Parties may agree to review this Agreement. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties. Any agreed amendment of this Agreement will:

- (a) be evidenced in writing; and
- (b) accurately record the agreement of the parties.

10. Dispute resolution

10.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 10.

10.2 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.

10.3 Negotiation

The nominated representative must:

- (1) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative;
- (2) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

10.4 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 10.5 or by expert determination under clause 10.6.

10.5 Mediation

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

- (1) the parties must agree to the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);

- (2) the Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (3) the Mediator appointed pursuant to this clause 10.5 must:
 - (a) have reasonable qualifications and practical experience in the area of the dispute; and
 - (b) 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;
- (4) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (5) 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;
- (6) 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;
- (7) in relation to costs and expenses:
 - (a) each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) 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.

10.6 Expert Determination

If the dispute is not resolved under clause 10.3 or 10.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (1) the dispute must be determined by an independent expert in the relevant field:
 - (a) agreed upon and appointed jointly by Council and the Developer; or
 - (b) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
- (2) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;

- (3) 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;
- (4) 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;
- (5) 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
- (6) 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 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.

10.7 Litigation

If the dispute is not finally resolved in accordance with this clause 10, either party is at liberty to litigate the dispute.

10.8 Continue to perform obligations

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

11. Security and enforcement

- 11.1 Nothing in this Agreement prevents Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.
- 11.2 Until such time as the Development Contribution noted at Clause 5 above has been provided in full the Developer must:
 - a) notify Council in writing of the name and contact details of any certifying authority to which it has applied for a construction certificate at the same time that such application is made;
 - b) at the time it lodges any application for a construction certificate notify the certifying authority in writing of the existence and terms of this Agreement;
- 11.3 The Developer acknowledges and agrees that Council has a caveatable interest in the Land from the date of this Agreement and shall be entitled to lodge and maintain a caveat on the title to the Land notifying Council's interest created by this Agreement.
- 11.4 The Developer will upon execution of this Agreement register a caveat over the Land that will exclude all dealing in the land with the exception of its consolidation and subdivision in accordance with the plans attached to this Agreement. Upon registration of the subdivision the Developer shall remove the caveat.

- 11.5 Council will provide such written consents and registrable documents to the Developer to enable the Land to be mortgaged provided that the mortgagee acknowledges Council's interest in the Land under this Agreement and agrees to the registration of this Agreement in accordance with its terms.
- 11.6 Upon registration of the Agreement on the title to the Land in accordance with clause 8 or payment/provision of the Development Contribution to Council or surrender of the Development Consent for the Development, the Developer will be entitled to withdrawal of the caveat.
- 11.7 In addition to the above, the Developer must provide the Security Arrangements as set out in Schedule 2.

12. Notices

- 12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Council

Address: Civic Centre, 725 Pittwater Road, Dee Why NSW 2099

Fax: (02) 9971 4522

Email: council@northernbeaches.nsw.gov.au

Attention: Chief Executive Officer

Developer

Address: Level 1, 101 Darley Street, Mona Vale NSW 2103

Email: sandobda@bigpond.com

Attention: Eric Sanderson

And

Address: 66 Powderworks Road, Narrabeen NSW

Email: sandobda@bigpond.com

Attention: Robert Corless

12.2 If a Party gives the other Party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

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

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

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 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

13. Approvals and Consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14. Assignment and dealings

Until the Development Contribution is provided in full, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so unless the Developer:

- (a) gives Council no less than ten (10) Business Days' notice in writing of the proposed sale, transfer, assignment, novation, charge, encumbrance or other dealing with its rights in respect of the Land;
- (b) procures that any buyer, transferee, assignee or novatee promptly executes an Agreement in favour of Council whereby the buyer, transferee, assignee or novatee becomes contractually bound with Council to perform the Developer's obligations under this Agreement;
- (c) in the event of a proposed charge, mortgage, encumbrance or other dealing with the Land, provides to Council a bank guarantee that does not have an expiry date.

15. Costs

All costs associated with the preparation and execution of this Agreement, including the registration of the Plan of Subdivision, are to be borne by the Developer.

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 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 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 construed 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

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

- (b) A waiver by a Party is only effective if it is in writing.
- (c) 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. GST

- 25.1 Unless otherwise indicated, all amounts payable by one party to the other party in relation to a supply under this Agreement have been calculated exclusive of any GST which may be imposed on the supply.
- 25.2 If any supply made under this Agreement is, or becomes, subject to GST, the party to whom the supply is made ("Recipient") must pay to the party making the supply ("Supplier"), as consideration, in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- 25.3 Any amount in respect of GST payable under clause 25.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.
- 25.4 If any party is required to reimburse or indemnify the other party for a cost or expense ("Cost") incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.
- 25.5 If GST is linked with the abolition or reduction of other taxes and charges, all amounts payable by the Recipient to the Supplier under this Agreement (excluding GST) must be reduced by the same proportion as the actual total costs of the Supplier (excluding GST) are reduced either directly as a result of the abolition or reduction of other taxes and charges payable by the Supplier or indirectly by way of any reduction in prices (excluding GST) charged to the Supplier. Both parties must also comply with Part VB of the *Trade Practices Act 1974* (Cth).

26. Explanatory Note

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

Schedule 1 – Section 7.4 Requirements

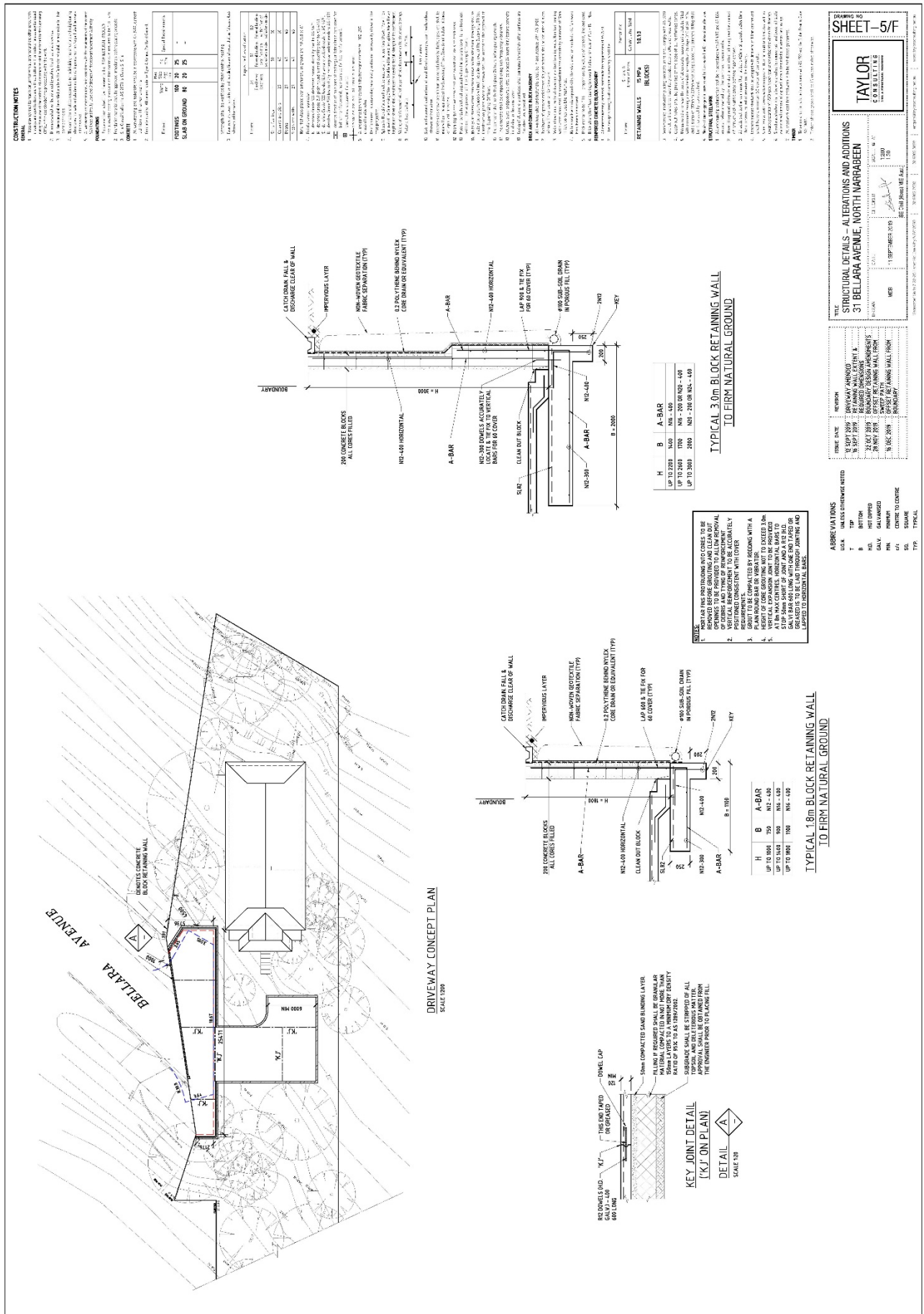
The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures to ensure that the planning agreement complies with the Act.

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application - (Section 7.4(1))</p> <p>The Developer has:</p> <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No; (b) See (c) below; (c) Yes, for the Development.
<p>Description of land to which this Agreement applies - (Section 7.4(3)(a))</p>	<p>Lot 9 in DP242284, known as 31 Bellara Avenue, North Narrabeen and Lot 36 Sec 1 in DP 6462, known as 66 Powderworks Road, North Narrabeen.</p>
<p>Description of change to the environmental planning instrument to which this Agreement applies - (Section 7.4(3)(b)(i))</p>	<p>Not applicable.</p>
<p>Description of the development to which this Agreement applies - (Section 7.4(3)(b)(ii))</p>	<p>DA2018/1335 for consolidation of two lots and resubdivision into two lots with new dwelling entitlement.</p>
<p>Description of the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made. (Section 7.4(3)(c))</p>	<p>The construction of the three-point turn bay is to occur prior to the release of the Subdivision Certificate for the Development. The Dedication of land is to occur through the registration of the Plan of Subdivision for the Development.</p>
<p>Applicability of section 7.11 of the Act - (Section 7.4(3)(d))</p>	<p>The application of section 7.11 of the Act to the Development is not excluded.</p>
<p>Applicability of section 7.12 of the Act - (Section 7.4(3)(d))</p>	<p>The application of section 7.12 of the Act to the Development is not excluded.</p>

Applicability of section 7.24 of the Act - (Section 7.4(3)(d))	The application of section 7.24 of the Act to the Development is not excluded.
Consideration of benefits if under this Agreement section 7.11 applies - (Section 7.4(3)(e))	Not applicable.
Mechanism for Dispute resolution - (Section 7.4(3)(f))	See clause 10
Enforcement of this Agreement – (Section 7.4(3)(g))	See clause 11
No obligation to grant consent or exercise functions – (Section 7.4(9))	See clauses 13 and 20

Schedule 2 – Security Arrangements

- 1.1 Upon execution of this Agreement the Developer must provide to the Council:
 - (a) a Bank Guarantee in the sum of \$36,540, such Bank Guarantee not to have an expiry date; and
 - (b) if required by Council, a signed transfer (Transfer) in registrable form at the LPI NSW (but not stamped for stamp duty) in respect of the Dedication.
- 1.2 The Council will hold the Bank Guarantee and the Transfer pending registration of the subdivision creating the Dedication.
- 1.3 Deleted.
- 1.4 In the event this Agreement is rescinded in accordance with clause 3.3 or otherwise, the Council must return the Bank Guarantee and the Transfer to the Developer.



EXPLANATORY NOTE

Planning Agreement

between

Keenwill Pty Limited
ACN 010 968 706
And
Robert Corless

and

Northern Beaches Council
ABN 57 284 295 198
(Council)

Exhibit A - Explanatory Note

Planning Agreement – Dedication of land at Bellara Avenue for public road

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (the “**Planning Agreement**”), under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (the “**EPA Act**”), for the granting of a development consent (the “**Consent**”) involving the following:

- (a) boundary adjustment between two adjoining lots; lot 9 in deposited plan 242284 and lot 36 in Deposited Plan 6462, so as to create a new lot capable of containing a dwelling; and
- (b) the construction of a three-point turn bay and the dedication of land to the Council as a public road,

(all known as the “**Development**”).

This explanatory note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

1. Parties to the Planning Agreement

Keenwill Pty Limited and Robert Corless (**Developer**) has made an offer to Northern Beaches Council (**Council**) to enter into a Planning Agreement, for the dedication of part of the Land (namely approximately 101.4sqm of land as shown on draft plan of subdivision prepared by CMS Surveyors Pty Limited – attached to this Agreement) (called the **Dedication Area**) so as to enable a three-point turn bay for public use.

2. Description of the Subject Land

The land to which this Planning Agreement applies is described as follows: Lot 9 in Deposited Plan 242284 known as 31 Bellara Avenue, North Narrabeen and Lot 36 Sec 1 in DP 6462, known as 66 Powderworks Road, North Narrabeen.

3. Description of Proposed Change to Environmental Planning Instrument

Not applicable

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

The objective of the Planning Agreement is to ensure that Bellara Avenue remains a safe and trafficable public road for the benefit of current and future users.

5. Timing of delivery of the public community benefit

The construction of the three-point turn bay is required prior to the issue of the Subdivision Certificate. The dedication of the land containing the three-point turn bay will occur upon the registration of the Plan of Subdivision.

6. Assessment of the Merits of this Planning Agreement

(a) The Planning Purposes Served by this Planning Agreement

In accordance with Section 7.4(2) of the EPA Act 1979, this Planning Agreement promotes the following public purpose;

- *the provision of (or the recoupment of the cost of providing) public amenities or public services*

The parties have assessed this Planning Agreement and state that the provisions of this Planning Agreement, in particular the Proposed Development, provide a reasonable means of achieving the public purposes set out above by reason that the Dedication Area will be vested under the care and control of the relevant Roads Authority.

(b) How this Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

In accordance with the EPA Act 1979, this Planning Agreement and the Proposed Development promotes its intent to encourage;

- (ii) *the promotion and co-ordination of the orderly and economic use and development of the Land; and*
- (v) *the provision and co-ordination of community services and facilities; and*

The Planning Agreement achieves these Objects by requiring the Developer to make the dedication of the Dedication Area which will enable Bellara Avenue to have a turning head to allow for three-point turns to be controlled by the relevant Roads Authority as a public road.

By providing the dedication of land the Planning Agreement will result in:

- promotion of the social and economic welfare of the community and a better environment;
- promotion and co-ordination of the orderly and economic use and development of land (a better trafficable public road); and
- provision and co-ordination of community services and facilities (being a public road).

(c) How this Planning Agreement Promotes the Public Interest

This Planning Agreement's intent is to promote the Public Interest through the acquisition of land for public purposes to the relevant Roads Authority without the relevant Roads Authority having to pay for the land. This in turn promotes further Public Interest by ensuring that the scarce and valuable resources of the relevant Roads Authority (and State government at large) are maintained and preserved for the betterment and enjoyment of the community at large.

(d) How this Planning Agreement Promotes one or more of the elements of Council's Charter under section 8 of the *Local Government Act 1993*

This Planning Agreement promotes the following elements of the Council's Charter:

- to provide 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; and
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development

This Planning Agreement promotes the above elements of the Council's Charter by providing appropriate safe and trafficable public road within the Council's local government area under the care and control of the relevant Roads Authority for the benefit of current and future users.

(e) The Impact of this Planning Agreement on the Public or any Section of the Public

The growing population of the Northern Beaches local government area requires public roads – particularly those that are both appropriate and safe. This Planning Agreement provides the relevant Roads Authority with land which will be dedicated to the relevant Roads Authority for use as a public road. As a public road, the Dedication Area will be available to all road users to use.

(f) Identify whether the Planning Agreement conforms with Council's capital works program (if any)" CI 25E(2)(f)

Not applicable

State whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued CI 25E(2)(g)

The Planning Agreement includes a provision that the construction of the three-point turn bay must be provided prior to the issue of a Subdivision Certificate. The dedication of the Dedication Area will occur upon the registration of the Plan of Subdivision.

Execution Page

Executed as an Agreement.

Executed for and on behalf of Northern Beaches Council)
by)
)

Signature

Signature of Witness

Executed by Keenwill Pty Limited)
ACN 010 968 706 in accordance with)
s.127 Corporations Act)

Secretary/Director

Director

Name of Witness (print)

Name of Director (print)

Executed by Robert Corless [Owner)
of 66 Powderworks Rd])
)

Secretary/Director

Director

Name of Witness (print)

Name of Director (print)

Annexure A
Sanderson v Northern Beaches Council
Conditions of Consent

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans – Endorsed by the Consent Authority		
Drawing No.	Dated	Prepared By
Survey Plan Showing Proposed Subdivision Over Lots 36 Sec.1 in D.P.6462 and Lot 9 in D.P.242284	7 April 2020	CMS Surveyors

Engineering Plans		
Drawing No.	Dated	Prepared By
Sheet – 1/H Stormwater Management Details 31 Bellara Avenue, North Narrabeen	10 June 2020	Taylor Consulting
Sheet – 5/G Proposed Turning Area 31 Bellara Avenue, North Narrabeen	10 June 2020	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation J1789B	12 June 2020	White Geotechnical Group
Tree Protection Plan	September 2019	Urban Forestry Australia
Flora and Fauna Assessment	6 August 2018	GIS Environmental Consultants
Arborist Report (Arboricultural Opinion)	28 July 2019	Urban Forestry Australia
Letter	8 June 2020	Urban Forestry Australia

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Applicant

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- i) protect and support the adjoining premises from possible damage from the excavation, and
 - ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday, and
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Subdivision Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

4. **No Consent for Dwelling House**

No consent is granted for the construction of a dwelling house including that part of the driveway and turning area servicing the dwelling house shown hatched in red on the plan annexed to these conditions and marked "A".

Reason: To ensure consistency with the consent.

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

6. Construction, Excavation and Associated Works Bond (Road Works)

The applicant is to lodge a bond with Council of \$30,000 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works as part of this consent. Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. Retaining Walls to Vehicle Turning Area and Driveway

All block retaining walling to the vehicle turning area and driveway shall be finished with sandstone facing. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce visual impact and comply with Clause D11.1 and D11.14 of the Pittwater 21 Development Control Plan 2014.

8. Submission of Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the turning head in Bellara Ave adjoining the site which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- The design is to ensure a Medium Rigid Vehicle MRV can adequately turn at the end of the road and exit in a forward direction.
- Pavement design for the new road pavement.
- Structural details for any retaining walls required to achieve the levels for the road design.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

9. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to issue of any Construction Certificate. The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites". All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the CTMP Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

10. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater from proposed Lot 2 shall be conveyed from the site to the kerb in Powderworks Rd and the stormwater from proposed Lot 1 shall be conveyed to the proposed kerb in Bellara Ave. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from the development.

11. Geotechnical Report Recommendations Incorporated Into Designs and Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the approved Geotechnical Report are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. Construction Management Program

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

13. Utilities Services

Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that services have been provided as required by this Consent.

14. Preparation of Erosion and Sedimentation Control

An Erosion and Sediment Control Plan is to be prepared in accordance with Landcom Managing Urban Stormwater: Soil and Construction Manual (2004) by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect natural features and habitats.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. Tree Removal

A total of nineteen (19) existing trees are granted removal based on the assessment of the Arboricultural Opinion dated 28 July 2019 and the Tree Protection Plan dated September 2019, both prepared by Urban Forestry Australia:

- T7, T8, T9, T10, T12, T13, T14, T19, T20, T22, T23, T30, T32, T33, T34, T35, T36, T37, and T39. T35 is the sole existing tree of High retention value to be removed.

Reason: To ensure tree removal in accordance with plans.

17. Tree Retention

A total of eight (8) High retention value trees are to be retained within the site:

- T11, T16, T18, T27, T29, T38, T43 and T47.

A total of fourteen (14) Medium retention value trees are to be retained within the site:

- T15, T25, T28, T40, T41, T42, T44, T45, T46, T49, T51, T53, T54, and T55

A total of eleven (11) Low retention value trees are to be retained within the site:

- T1, T2, T3, T4, T5, T6, T17, T24, T48, T52, and T56

All existing trees located within adjoining properties including the road reserve shall be retained, including T21, T26, T31, and T50 identified within the Arboricultural Opinion and Tree Protection Plan authored by Urban Forestry Australia, and all others identified or not identified by survey or by report.

Reason: To ensure tree retention in accordance with plans.

18. Traffic Management

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by Northern Beaches Council Traffic Team prior to the issue of any construction certificate.

Reason: To ensure pedestrian safety and continued efficient network operation.

19. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be

impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the CTMP procedures agreed and are held liable to the conditions of consent rather than any secondary approval.

20. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

21. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

22. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control at Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public safety.

23. Installation of Subsurface Utilities

A Project Arborist with AQF Level 5 qualifications in arboriculture/horticulture shall be engaged to agree to the excavation alignments for utilities within the tree protection zones of existing trees to be preserved. The Arborist shall inspect, accept and certify during the works that the location of utilities is in accordance with the recommendations in the Arboricultural Opinion dated 28 July 2019 and the Tree Protection Plan dated September 2019, as prepared by Urban Forestry Australia, and in accordance with AS4970- 2009 Protection of Trees on Development Sites.

Reason: To ensure utilities are located to ensure tree protection.

24. Project Arborist

A Project Arborist with AQF Level 5 qualifications in arboriculture/horticulture shall be engaged to provide inspection and certification of tree protection measures at the commencement of works, in accordance with the recommendations in the Arboricultural Opinion for retention and the Tree Protection Plan, as prepared by Urban Forestry Australia. The Project Arborist shall supervise and certify that:

- a) tree protection fencing;
- b) tree trunk/branch guards as identified and located are in accordance with Appendix C of the Tree Protection Plan; and
- c) all the activities and actions of the Tree Protection Plan have been satisfied as listed under Section 4 Tree Protection Measures, Section 5 Monitoring and Supervision, and Section 6 Schedule of Recommended Site Inspections and Hold Points.

Specifically, the Project Arborist shall attend the site, inspect, provide on-site directions, and certify excavation works within the tree protection zone of the following existing trees: T27, T31, T38, T40, T42, T43, as identified in the Tree Protection Plan. Additionally, the Project

Arborist shall attend site during works near all High retention value trees identified as T11, T16, T18, T26, and T29, in accordance with the recommendations of the Arboricultural Opinion. The Project Arborist shall approve the location of all excavation activities within the tree protection zone of existing trees to be retained, and shall submit documentary evidence, including on site instructions and photographs to the Certifying Authority of supervision of such works and acceptance of the works. The tree protection measures specified in this clause must:

- c) be in place before work commences on the site, and
- d) be maintained in good condition during the construction period, and
- e) remain in place for the duration of the construction works.

Additionally, the Certifying Authority or the Project Arborist AQF Level 5 must ensure that: the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the designated tree protection fenced and mulched areas as illustrated in Appendix C of the Tree Protection Plan September 2019 by Urban Forestry Australia. The Arborist shall provide the Certifying Authority with certification details that the tree protection measures are in place at the commencement of works. A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed. All documentary evidence requires submission and approval of compliance with the relevant conditions by the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure tree protection is provided and maintained.

25. General Tree Protection

- a) Existing trees and vegetation shall be retained and protected as set out within the Tree Protection Plan, dated September 2019 authored by Urban Forestry Australia and:
 - i) all trees and vegetation within the site recommended for retention in the Arboricultural Opinion and Tree Protection Plan, as prepared by Urban Forestry Australia, excluding exempt vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be generally undertaken as follows:
 - i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
 - iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
 - iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
 - v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
 - vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
 - viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,

- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority prior to the issue of the Subdivision Certificate,
- x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- xi) tree pruning to enable construction should not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees. Pruning of more than 10% shall be subject of separate application to Council for approval to prune and be accompanied by a pruning specification in accordance with Australian Standard 4373-2007 Pruning of amenity trees, prepared by an AQF Level 5 Arborist.
- c) all protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: To retain and protect significant planting on development and adjoining sites.

26. Compliance with Arborist Recommendations – During Construction

All tree protection measures to be implemented during construction, as specified in the Tree Protection Plan & New Driveway Impact Assessment Plan dated September 2019, authored by Catriona Mackenzie of Urban Forestry Australia, and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with these measures is to be certified by the project arborist in writing, including photographic evidence, prior to issue of the Subdivision Certificate. Should at construction stage the removal of Tree 11 and Tree 29 be required, a Modification Application will be required

Reason: To confirm compliance with tree protection/replacement measures.

27. Compliance with Ecologist's Recommendations – During Construction

All biodiversity-related measures are to be implemented during construction, as specified in Section 6 within the approved Flora & Fauna Assessment authored by GIS Environmental Consultants and these conditions of consent. Evidence of compliance is to be provided to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

28. Dead or Injured Wildlife

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016.

29. Protection of Habitat Features – During Works

All natural landscape features, including rock outcrops, native vegetation, soil and watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

30. Works to Cease if Aboriginal Heritage Item Found

Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.

Reason: To protect Aboriginal Heritage in accordance with the NSW National Parks and Wildlife Act 1974.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

31. Registration of VPA on Title

- a. Prior to the issue of a subdivision certificate a planning agreement shall be entered into in the form of the draft planning agreement which Keenwill Pty Limited and Robert Corless offered to enter into and which Northern Beaches Council accepted and agreed to enter into at its meeting held on 26 May 2020, a copy of which is attached to these conditions and marked "B".
- b. The Voluntary Planning Agreement (VPA) for 'dedication of land' and 'construction of road surface and retaining wall to function as a three-point turn bay' as supported by Council at its meeting of 26 May 2020 as attached to these conditions is to be registered on the titles of the land for Lots 1 and 2 prior to the issue of the Subdivision Certificate.

Reason: To ensure the obligations and terms under the VPA are binding and associated with the land.

32. Amendment to Subdivision Plan

The approved subdivision plan is to be amended to indicate that the portion of land contained within the red outline is to be dedicated to Council for the purpose of a road reserve. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure the relevant land is dedicated to Council in accordance with the executed VPA.

33. Geotechnical Certification Prior to Subdivision Certificate

Prior to issue of the Subdivision Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

34. Geotechnical Certification Recommendations Implemented

Prior to issue of the Subdivision Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. Signage and Linemarking – External

A plan demonstrating any proposed signage and line marking within Council's Public Road Reserve shall be prepared by a suitably qualified person and submitted to and approved by the Local Traffic Committee prior to the issue of the Subdivision Certificate.

Note: The applicant is advised that the plan will require approval by the local Traffic Committee if the proposal requires change in existing parking conditions and hence, adequate time should be allowed for this process.

Reason: To ensure consistent parking amenity.

36. Compliance with Ecologist's Recommendations

Details demonstrating compliance with the Ecologist's recommendations are to be provided to the Principal Certifying Authority prior to issue of the Subdivision Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

37. Protection of Habitat Features – Certification

Details demonstrating compliance with protection of habitat requirements are to be provided to the Certifying Authority prior to issue of the Subdivision Certificate.

Reason: To protect wildlife habitat.

38. Priority Weed Removal and Management

All Priority weeds (as specified in Appendix 1 of the Greater Sydney Regional Strategic Weed Management Plan 2017 – 2022) on the site are to be removed and managed. Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of the Subdivision Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

39. Implementation of Erosion and Sediment Control Plan

The Erosion and Sediment Control Plan is to be fully implemented and measures are to remain in effective operation until all development activities have been completed and the site fully stabilised. Evidence of compliance is to be certified by a suitably qualified engineer and submitted to the Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To protect natural features and habitats.

40. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

41. Services

All utilities/services and street lighting is to be installed by the applicant/developer. Certification is to be provided to Council stating the above requirement has been complied with. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Public safety and to ensure services have been provided for the newly created lots.

42. Sydney Water Compliance Certification

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance. Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other

services and building, driveway or landscape design. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

43. Subdivision Certificate Application

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

44. Restriction on Use of Land

A Restriction on Use of Land is to be created, burdening Lot 1, restricting future building within Lot 1 to the building area/s (including the driveway and turning area) shown on Sheet – 5/G Proposed Turning Area 31 Bellara Avenue, North Narrabeen prepared by Taylor Consulting dated 10 June 2020. Full details in this regard are to be submitted to Council on the final plan of Subdivision and an accompanying Section 88B instrument. The creation of the Restriction on Use of Land is achieved through registration of the Plan of Subdivision.

Reason: To ensure building on the approved lot is constructed safe of hazards.

45. Stormwater Disposal – Certification

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

46. Title Encumbrances

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

47. Civil Works Compliance Certification

Prior to issue of the Subdivision Certificate, the road works approved in the S138 approval must be certified by a consulting engineer and include a "works as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved plans.

Reason: To ensure stormwater disposal is constructed to standard specifications AUSPEC 1.

48. Replacement Trees

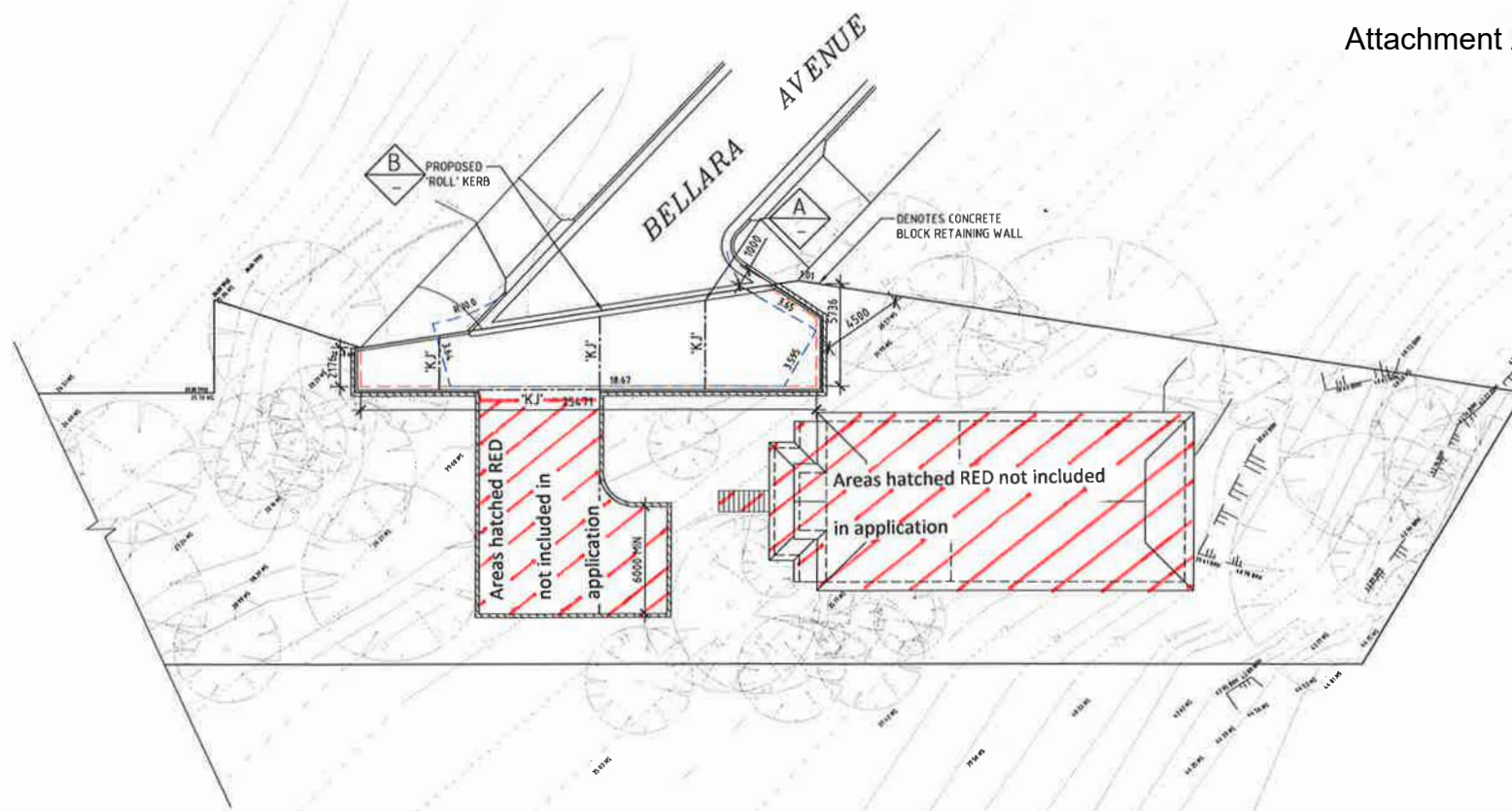
The four trees to be removed for the purpose of the three-point turn bay (T35, T36, T37 and T39) are to be replaced on site with four locally indigenous species prior to the issue of the Subdivision Certificate. Trees are to be planted outside of the location of the building area/s (including the driveway and turning area) shown on Sheet – 5/G Proposed Turning Area 31 Bellara Avenue, North Narrabeen prepared by Taylor Consulting dated 10 June 2020. Two of the four trees are to be planted within the upper slopes and the remaining two trees are to be planted within the lower slopes. All four trees are to be planted a minimum of 5 metres

from existing dwelling or indicative proposed dwellings, at least 3 metres from existing trees, and at least 2 metres from common boundaries. All replacement trees are to be planted at 45 litre container size and maintained for a 12 month period.

Reason: To ensure appropriate tree planting on site.

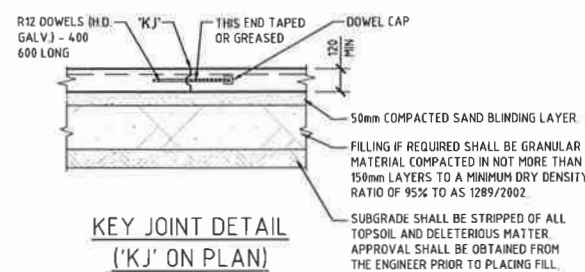
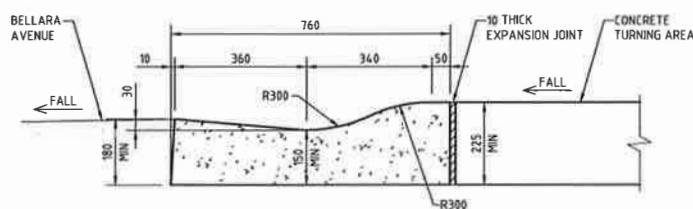
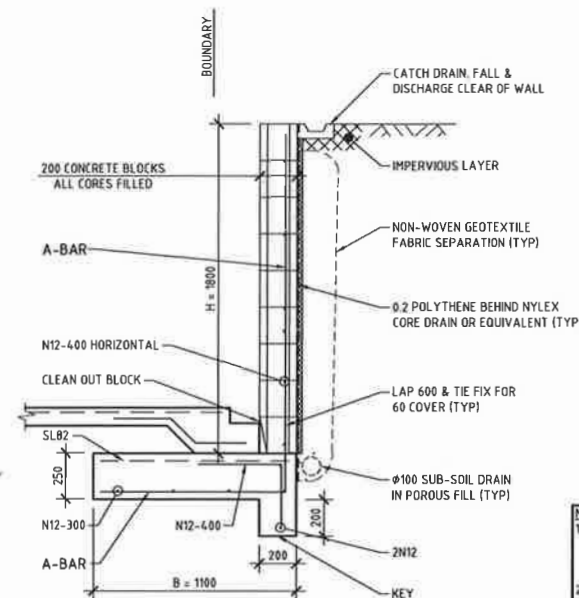
Sanderson v Northern Beaches Council

Attachment A to the Conditions



DRIVEWAY CONCEPT PLAN

SCALE 1:200

KEY JOINT DETAIL
('KJ' ON PLAN)DETAIL A
SCALE 1:20DETAIL B
SCALE 1:10
TYPICAL ROLL KERB & GUTTER

H	B	A-BAR
UP TO 1000	750	N12 - 400
UP TO 1400	900	N16 - 400
UP TO 1800	1100	N16 - 400

TYPICAL 1.8m BLOCK RETAINING WALL
TO FIRM NATURAL GROUND

- NOTES:**
- MORTAR FINS PROTRUDING INTO CORES TO BE REMOVED BEFORE GROUTING AND CLEAN OUT OPENINGS TO BE PROVIDED TO ALLOW REMOVAL OF DEBRIS AND TYPING OF REINFORCEMENT.
 - VERTICAL REINFORCEMENT TO BE ACCURATELY POSITIONED CONSISTENT WITH COVER REQUIREMENTS.
 - GROUT TO BE COMPACTED BY RODDING WITH A PLAIN ROUND BAR OR VIBRATOR.
 - HEIGHT OF CORE GROUTING NOT TO EXCEED 3.0m.
 - VERTICAL EXPANSION JOINT TO BE PROVIDED AT 6m MAX CENTRES. HORIZONTAL BARS TO STOP 50mm SHORT OF JOINT AND A R12 (H.D. GALV) BAR 600 LONG WITH ONE END TAPED OR GREASED IS TO BE LAID THROUGH JOINTING AND LAPPED TO HORIZONTAL BARS.

ABBREVIATIONS

U.O.N.	UNLESS OTHERWISE NOTED
T	TOP
B	BOTTOM
H.D.	HOT DIPPED
GALV.	GALVANISED
MIN.	MINIMUM
C/C	CENTRE TO CENTRE
SQ.	SQUARE
TYP.	TYPICAL

ISSUE DATE	REVISION
12 SEPT 2019	DRIVEWAY AMENDED
16 SEPT 2019	RETAINING WALL EXTENT & REQUIRED DIMENSIONS
22 OCT 2019	BOUNDARY DESIGN AMENDMENTS
28 NOV 2019	OFFSET RETAINING WALL FROM SWEEP PATH
16 DEC 2019	OFFSET RETAINING WALL FROM BOUNDARY
10 JUNE 2020	KERB AND GUTTER SHOWN

TITLE
PROPOSED TURNING AREA
31 BELLARA AVENUE, NORTH NARRABEEN

DRAWN	DATE	CHECKED	SCALE
JBP	11 SEPTEMBER 2019	Self	1:200 1:20 1:10

BE Civil (Hons) MIE Aust

TAYLOR
CONSULTING
CIVIL & GEOTECHNICAL ENGINEERING

DRAWING NO
SHEET-5/6

CONSTRUCTION NOTES

GENERAL

- These drawings shall be read in conjunction with all architectural and other consultants' drawings and specifications and with such other written instructions as may be issued during the course of the contract. All drawings shall be referred to the Supervising Officer for decision before proceeding with the work.
- Dimensions shall not be obtained by scaling the structural drawings.
- All dimensions shall be verified on site by the Contractor who shall be responsible for their correctness.
- The Contractor shall be responsible for maintaining the structure and neighbouring structures in a safe and stable condition during construction. No part shall be overstressed.
- All workmanship and materials shall be in accordance with the requirements of the current SAA Code and the By-Laws and Ordinances of the relevant Government Authority.

FOUNDATIONS

- Excavation shall be taken into FIRM NATURAL GROUND. The allowable bearing pressure on this material is assumed to be 150 kPa.
- Foundation material shall be approved immediately before placing concrete.
- Site Classification to AS 2890 is Class 5 Site.

CONCRETE

- All workmanship and materials shall be in accordance with AS 3600, current edition with amendments.
- Concrete quality: All concrete shall be Type A Normal Portland Cement.

Element	Slump mm	Max. Size Agg. mm	f'c MPa	Special Requirements
FOOTINGS	100	20	25	-
SLAB ON GROUND	80	20	25	-

Strength shall be verified by plant control testing.

- Clear concrete cover to reinforcement including ties and stirrups shall as follows unless shown otherwise:

Element	Exposure Classification	
	A1 Sheltered locations	B1 External locations with full sun of saltwater splash
Strip footings	50	50
Columns and piers	20	40
Beams	20	40
Slabs and walls	20	40

Note that slabs placed over a membrane on ground are included as A1.

- Reinforcement symbols:
N denotes Grade 500 deformed normal ductility bar to AS 4431.
R denotes Grade 250 plain round normal ductility bar to AS 4671.
SL denotes Grade 500 low ductility square welded mesh to AS 4571.
2L denotes Grade 500 low ductility rectangular welded mesh to AS 4571.
--- denotes direction of main bars of rectangular fabric train bars down for bottom reinforcement, main bars up for top reinforcement.
--- denotes square fabric.
--- denotes extent of reinforcement.
- All reinforcement shall be tied in the transverse direction to N12-200 unless otherwise noted.
- Reinforcement is shown diagrammatically and is not necessarily shown in the true projection.
- Splices in the reinforcement shall be made only in the positions shown. The weld on approval of the Supervising Officer shall be obtained for any other splices where the lap length is not shown. It shall be sufficient to develop the full strength of the reinforcement.
- Welding of reinforcement will not be permitted unless shown on the structural drawings.
- Fabric lap detail: Lap 2 wires.

Slab reinforcement shall extend at least 85mm into masonry support walls unless shown otherwise.

- Concrete slabs shown as minimum and no reductions by ducts, pipes, etc. shall be made without the approval of the Supervising Officer. Slabs do not include thickness of applied finishes.
- Beam depths are as shown and do not include slab thickness.
- Pipes or conduits shall not be placed within the concrete cover to reinforcement without the approval of the Supervising Officer.
- No holes or chases other than those shown on the structural drawings shall be made in concrete members without the prior approval of the Supervising Officer.
- Construction joints where not shown shall be located to the approval of the Supervising Officer.
- The Contractor shall notify the Engineer 24 hours before pouring concrete.
- The concrete shall be compacted using high frequency vibrators.
- Columns, piers, and pedestals shall be placed 24 hours (min) before concrete in slabs or beams over.
- Curing of all concrete surfaces shall commence immediately after surfaces are finished as specified.

BRICK AND CONCRETE BLOCK MASONRY

- All workmanship and materials shall be in accordance with AS 3700.
- Two layers of approved metal based slip joint material shall be laid under all slabs where they bear on brickwork.
- Walls shown on structural drawings are load bearing walls. Non-load bearing walls under slabs shall be separated from the concrete by a minimum of 10mm thick compressible material.
- No brickwork which is supported by the slab shall be erected until formwork has been removed.
- Brick mortar to be 1:16 proportions by volume of cement, lime and sand.
- Brick strength of load bearing brickwork to be a minimum of f'c > 15 MPa.

REINFORCED CONCRETE BLOCK MASONRY

- All concrete masonry units shall conform to the requirements of AS 2733.
- The design strength of concrete masonry shall be:

Element	Strength Grade of Units	Mortar Mix
RETAINING WALLS	15 MPa (BLOCKS)	Cement, Lime, Sand 1:0.1:3

- Workmanship involved in placing concrete units shall comply with AS 3700 and all units shall be fully bedded face shells and cross walls.
- Clean out holes shall be provided at the base of all reinforced cores.
- Unless noted otherwise the cores of all concrete masonry units shall be filled with concrete having a characteristic strength of 28 days (f'c) of 28 MPa and a slump of 180mm to 220mm when being placed. The concrete filling shall be thoroughly compacted.
- Max size of coarse aggregate in concrete used in fill cores shall be 10mm unless shown otherwise.

STRUCTURAL STEELWORK

- All workmanship and materials shall be in accordance with AS 1580 and AS 951 except where varied by the contract documents.
- Three (3) copies of all shop details shall be submitted to the engineer for approval of structural sufficiency before fabrication.
- All units shall be non continuous fillet, all bolts 40mm, all gusset plates 10mm thick, unless noted otherwise on the drawings.
- Concrete encased steelwork shall be wrapped with 3mm wire at 100mm centres and shall have a minimum 50 cover of concrete.
- Steel beams and trusses with span greater than 6m shall be fabricated with an upward camber of 1/500 span in each span unless noted otherwise on the drawings.
- Structural steelwork is to be welded to remove rust and loose mill scale and coated with one coat of approved primer unless noted otherwise on the drawings.
- All steelwork cast into brickwork is to be hot dipped galvanised.

TIMBER

- Timber construction is to be in accordance with AS 1729 and the Timber Framing Code AS 1684.
- Timber stress grade shall be F1 unless noted otherwise.