

Planning Agreement

between

Avalon Central Pty Limited
ABN 45 633 675 582
19 The Rampart
CASTLECRAG NSW 2068
(Developer)

and

Northern Beaches Council
ABN 57 284 295 198
725 Pittwater Road
DEE WHY NSW 2099
(Council)

30 December 2021

Northern Beaches Council
Civic Centre
DEE WHY NSW 2099

RE: Offer to Northern Beaches Council to enter into a planning agreement; 3 Central Road Avalon Beach

This letter is an offer to Northern Beaches Council to enter into the attached voluntary planning agreement pursuant to Section 7.4 of the *Environmental Planning and Assessment Act 1979*. The offer is consistent with the Deferred Commencement consent of No. DA2020/0008 for; "Demolition works and construction of a seniors housing development", specifically Condition 1 which states:

Condition 1: VPA for dedication of land to relevant roads authority

The developer shall enter into a Voluntary Planning Agreement (VPA) with Council pursuant to s7.4 of the Environmental Planning and Assessment Act, 1979 (NSW) to dedicate to Council, free of cost to Council, land at least one metre wide adjoining the whole of the eastern boundary of the subject land adjoining Patterson Lane.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000.

This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as part Council's Schedule of Fees and Charges.

Based on Council's adopted Policy (Version 1 Dec 2019 Voluntary Planning Agreements Policy Council document number: 2019/489894), this letter of offer is accompanied by the following:

- Dedication of land of approximately 70.5sqm as shown on draft plan of subdivision prepared by *Anna Illona Paterak Surveyor* – Schedule 3 of this Agreement.
- Civil Engineering Plans showing the subdivision overlaid by the infrastructure to be constructed, prepared by *M+G Consulting Engineers*

In terms of timing, we are looking to satisfy the deferred commencement condition and register the new subdivision plan as according to the planning agreement.

We hope this offer will be received by Council favourably.

Please contact Mitchell Drake on 0469 748 569 to discuss any of the above details.

Yours faithfully

MHD PLANNING AND DEVELOPMENT



Mitchell Drake
TOWN PLANNING MANAGER

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This Planning Agreement is made on XX/XX/2022

Parties

Avalon Central

ABN 45 633 675 582.

Of 19 The Rampart

CASTLECRAG NSW 2068

(Developer)

And

Northern Beaches Council

of 725 Pittwater Road, Dee Why NSW 2099

(Council)

Background

- A The Developers own the Land which is located within the Northern Beaches Local Government Area.
- B On 8 January 2020 the Developer caused a development application, DA2020/0008, to be made to Council for Development Consent to carry out the Development on the Land, being Lot 27, DP 9151 for; "Demolition works and construction of a senior's housing development" (the DA).
- C During assessment of the DA, the Developer offered and negotiated with Council for a condition to be imposed via a Deferred Commencement Consent. That condition requiring the Developer make an offer to Council to enter into a Voluntary Planning Agreement to dedicate land being part of the subject site, adjacent to Patterson Lane equating to 70.5sqm and as shown on the draft Plan of Subdivision prepared by *Anna Ilona Paterak, Surveyor* – Schedule 3 of this Agreement.
- D The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, issued the Deferred Commencement Consent (DA2020/0008) on 9 December 2020. Deferred Commencement Condition 1 reads as follows:

1. VPA for dedication of land to relevant roads authority

The developer shall enter into a Voluntary Planning Agreement (VPA) with Council pursuant to s7.4 of the Environmental Planning and Assessment Act, 1979 (NSW) to dedicate to Council, free of cost to Council, land at least one metre wide adjoining the whole of the eastern boundary of the subject land adjoining Patterson Lane.

Evidence required to satisfy the deferred commencement condition must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with section 95 of the Environmental Planning and Assessment Regulation 2000.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent

will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

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 applies to Lot 27, DP 9151, the subject of Development Application DA2020/0008.

3. Operation of this planning agreement

3.1 Subject to clauses 3.2, 3.3 and 3.4, 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 from the Commencement date.

3.3 The Developer's obligations within the Agreement will be provided in accordance with the timing expressed in the Agreement.

3.4 Council may rescind the Agreement if the developer's obligations have not been provided within 3 years from the Commencement Date.

4. Definitions and interpretation

4.1 Definitions

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

"Commencement Date" means 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 70.5sqm of land in Patterson Lane to Council for the purposes of allowing for future road reserve free of charge

"Developer" means Avalon Central Pty Ltd, including their respective successors and assigns.

"Development" means the development contemplated by DA2020/0008.

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

"Development Consent" has the meaning given to that term in the Act and means the Deferred Commencement consent (DA2020/0008) 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 27, DP 9151 known as 3 Central Road, Avalon.

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

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

"Relevant Roads Authority" means Northern Beaches Council for the purposes of this Agreement.

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 DA2020/0008. 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 | Relevant Drawing Numbers |
|------|--|---|
| 1 | Dedication of land to Council free of charge | Approximately 70.5sqm (1.00m wide x 70.455m long) as shown on Plan of Subdivision prepared by <i>Anna Ilona Paterak, Surveyor</i> – Schedule 3 of this Agreement. |

6. Application of the Development Contribution – Developer’s Work

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

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| Item of Work | Development Stage | Description |
|--------------|---|---|
| 1 | Relocation of existing retaining wall | The existing retaining wall is to be relocated in accordance with the Approved Plans under the development consent of DA2020/0008. |
| 2 | Prior to and during construction of infrastructure works required under DA2020/008 on the development contribution. | <p>In accordance with Condition 42 of the Conditions of Consent under DA2020/0008, the works on the development contribution shall be in accordance with the following:</p> <ul style="list-style-type: none"> a) All footpath works are to be constructed in accordance with the Section 138 Roads Act approval. b) Northern Beaches Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Roads Act approval for footpath. c) On completion of the footpath works, Northern Beaches Council is to inspect the footpath works and confirm satisfactory completion of such works as well as the relocated retaining wall to ensure no part of that structure (e.g. footings) are on the land to be dedicated to Council. <p>Details demonstrating compliance are to be submitted to the Principal Certifying Authority.</p> |
| 3 | Application to Northern Beaches Council to issue the Subdivision Certificate | <p>Northern Beaches Council is the certifier of the Subdivision Certificate for the development contribution.</p> <p>On completion of the development proposed under DA2020/0008 and prior to the issue of any Occupation Certificate, the Developer is to lodge an application for a Subdivision Certificate with Northern Beaches Council.</p> <p>The application for Subdivision which proposes to realign the Patterson Lane boundary is to be accompanied by a boundary survey to demonstrate the building works under DA2020/0008 are fully located within the proposed new boundary alignment. The Patterson Lane boundary survey is to be prepared by a registered surveyor.</p> |
| 4 | Registration of the Plan of Subdivision with NSW Land Registry Services. | <p>On issue of the Subdivision Certificate by Northern Beaches Council, the Developer is to register the Plan of Subdivision with the NSW Land Registry Services.</p> <p>This is to be completed by the Developer prior to the issue of any Occupation Certificate.</p> |

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 are not excluded for the purposes of the grant of development consent.

8. Registration of this Agreement

The Developer is to register this Agreement on the Land in accordance with s7.6 of the Act within one month of the Commencement Date.

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 paid 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

Contact (Fax): (02) 9971 4522

Email: council@northernbeaches.nsw.gov.au

Attention: Chief Executive Officer

Developer

Name: Avalon Central Pty Ltd

ABN: 45 633 675 582

Address: 19 The Rampart, CASTLECRAG NSW 2068

Contact (Phone): 0403 575 606

Email: wei Huang@bigpond.net.au

Attention: Director

- 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 paid 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

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents, including the registration of the Plan of Subdivision, and registration of same, shall 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 providing details on this Agreement may 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

Planning instrument and/or development application - (Section 7.4(1))

The Developer has:

- (a) Sought a change to an environmental planning instrument.

NO

- (b) Made, or proposes to make, a Development Application.

YES – FOR THE DEVELOPMENT

- (c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.

NOT APPLICABLE

Description of land to which this Agreement applies -

(Section 7.4(3)(a))

Lot 27, DP 9151, known as 3 Central Road Avalon.

Description of change to the environmental planning instrument to which this Agreement applies -

(Section 7.4(3)(b)(i))

Not applicable.

Description of the development to which this Agreement applies -

(Section 7.4(3)(b)(ii))

Dedication of this land to Council, being 70.5sqm of land, for inclusion into Patterson Lane road reserve.

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))

The nature and extent of the development contribution under the Agreement is to be made as per clauses 5 and 6 of the operative provisions of this Agreement. The nature and extent of the provision is re-outlined below.

Development Contribution to be made under this Agreement (clause 5)

| Item | Name | Relevant Drawing Numbers |
|------|--|---|
| 1 | Dedication of land to Council free of charge | Approximately 70.5sqm (1.00m wide x 70.455m long) as shown on Plan of Subdivision prepared by <i>Anna Ilona Paterak, Surveyor</i> – Schedule 3 of this Agreement. |

Application of the Development Contribution – Developer’s Work (clause 6)

The times at which, the manner in which and the public purposes for which development contributions are to be applied.

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| Item of Work | Development Stage | Description |
|--------------|---|---|
| 1 | Relocation of existing retaining wall | The existing retaining wall is to be relocated in accordance with the Approved Plans under the development consent of DA2020/0008. |
| 2 | Prior to and during construction of infrastructure works required under DA2020/008 on the development contribution. | <p>In accordance with Condition 42 of the Conditions of Consent under DA2020/0008, the works on the development contribution shall be in accordance with the following:</p> <ul style="list-style-type: none"> a) All footpath works are to be constructed in accordance with the Section 138 Road Act approval. b) Northern Beaches Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath. c) On completion of the footpath works, Northern Beaches Council is to inspect the footpath works and confirm satisfactory completion of such works as well as the relocated retaining wall to ensure no part of that structure (e.g. footings) are on the land to be dedicated to Council. <p>Details demonstrating compliance are to be submitted to the Principal Certifying Authority.</p> |
| 3 | Application to Northern Beaches Council to issue the Subdivision Certificate | <p>Northern Beaches Council is the certifier of the Subdivision Certificate for the development contribution.</p> <p>On completion of the development proposed under DA2020/0008 and prior to the issue of any Occupation Certificate, the Developer is to lodge an application for a Subdivision Certificate with Northern Beaches Council.</p> <p>The application for Subdivision which proposes to realign the Patterson Lane boundary is to be accompanied by a boundary survey to demonstrate the building works under DA2020/0008 are fully located within the proposed new boundary alignment. The Patterson Lane boundary survey is to be prepared by a registered surveyor.</p> |
| 4 | Registration of the Plan of Subdivision with NSW Land Registry Services. | <p>On issue of the Subdivision Certificate by Northern Beaches Council, the Developer is to register the Plan of Subdivision with the NSW Land Registry Services.</p> <p>This is to be completed by the Developer prior to the issue of any Occupation Certificate.</p> |

Applicability of section 7.11 of the Act -

(Section 7.4(3)(d))

The application of section 7.11 of the Act to the Development is not excluded.

Applicability of section 7.12 of the Act -

(Section 7.4(3)(d))

The application of section 7.12 of the Act to the Development is not excluded.

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.

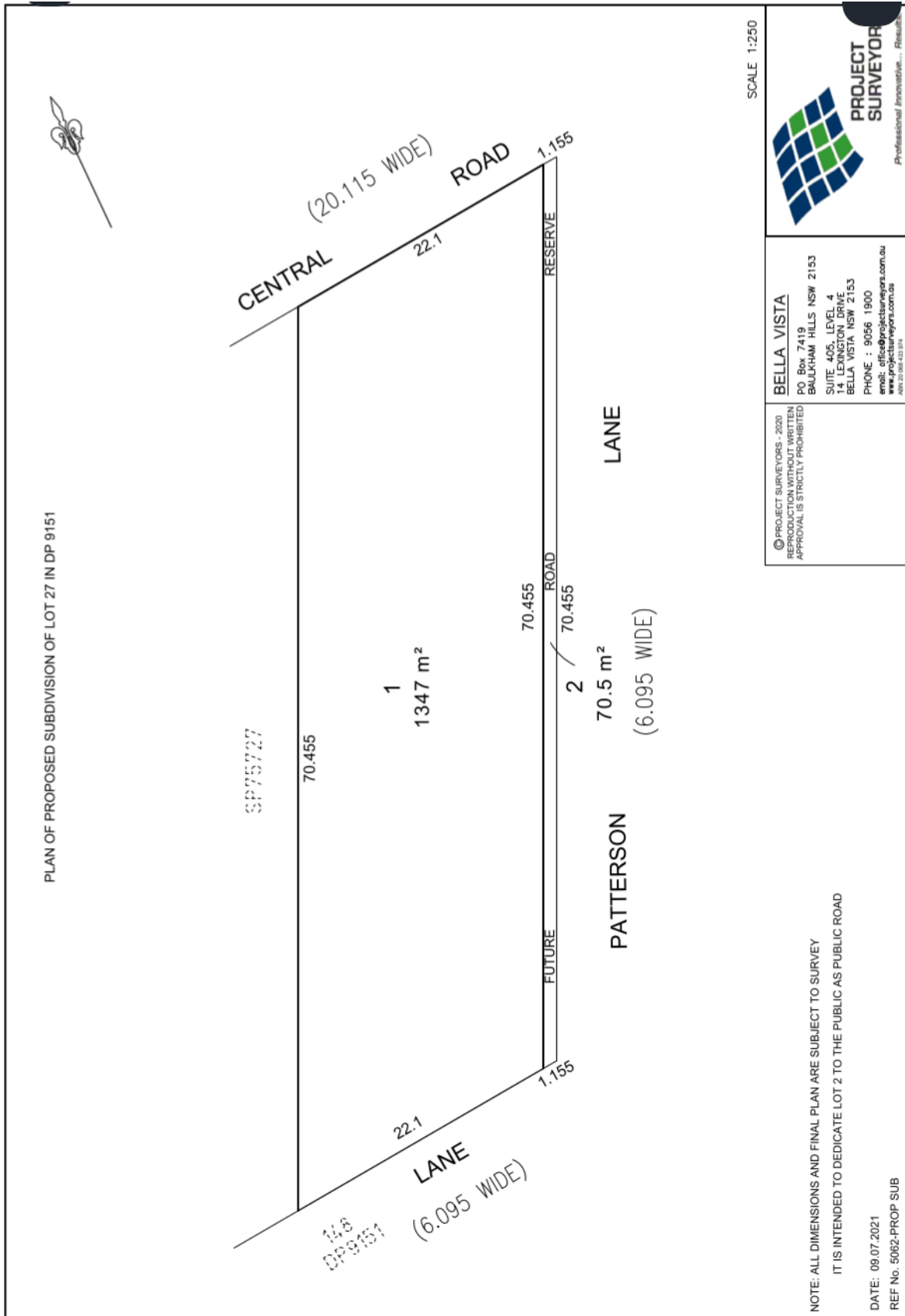
SCHEDULE 2 – SECURITY ARRANGEMENTS

1.1 Upon execution of this Agreement the Developer must provide to the Council:

- (a) a signed transfer in registrable form at the NSW Land Registry Services (but not stamped for stamp duty) in respect of the Dedication Area.

SCHEDULE 3 – PLANS IDENTIFYING DEVELOPMENT CONTRIBUTION

Plans showing location and detail of Development Contribution:



EXPLANATORY NOTE

Planning Agreement
Between:

Avalon Central
ABN 45 633 675 582.
19 The Rampart
CASTLECRAIG NSW 2068
(Developer)

Northern Beaches Council
ABN 57 284 295 198
(Council)

Exhibit A - Explanatory Note

Planning Agreement – Dedication of land for public footpath and as part of Patterson Lane road reserve.

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").

On 9 December 2020, a Deferred Commencement Consent was issued for DA2020/0008, comprising the Demolition works and the construction of a seniors housing development

As part of the consent, Deferred Commencement Condition 1 was imposed, and reads as follows:

1. VPA for dedication of land to relevant roads authority

The developer shall enter into a Voluntary Planning Agreement (VPA) with Council pursuant to s7.4 of the Environmental Planning and Assessment Act, 1979 (NSW) to dedicate to Council, free of cost to Council, land at least one metre wide adjoining the whole of the eastern boundary of the subject land adjoining Patterson Lane.

Evidence required to satisfy the deferred commencement condition must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with section 95 of the Environmental Planning and Assessment Regulation 2000.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

The draft Planning Agreement seeks to give effect to the condition 1, as stated above.

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

Avalon Central (Developer) has made an offer to Northern Beaches Council (Council) to enter into a Planning Agreement, for the dedication of part of the Land at Lot 27, DP 9151 (approximately 70.5sqm of land as shown on draft plan of subdivision prepared by *Anna Ilona Paterak, Surveyor* – attached to this Agreement as Schedule 3) (called the Dedication Area).

2. Description of the Subject Land

The land to which this Planning Agreement applies is described as follows: Lot 27, DP 9151, 3 Central Road Avalon.

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 Patterson Lane remains a safe and trafficable public road and footpath for the benefit of current and future users.

5. Timing of delivery of the public community benefit

The land dedication is being provided to Northern Beaches Council (the Council) after the infrastructure works to be accommodated on the land, being a public footpath, has been completed to Council satisfaction.

Upon completion of the footpath works, Council's Development Engineers will inspect the works to ensure it has been completed to Council's satisfaction.

The land dedication will be effected by way of a Plan of Subdivision that is to occur before any Occupation certificate is issued for the development. An application for a Subdivision Certificate is to be lodged with Council. This is a condition of this Planning Agreement that Council is the certifier of the Subdivision Certificate.

Once Council is satisfied and issues the Subdivision Certificate, the developer is to submit a formal registration of the Plan of Subdivision to the NSW Land Registry Services. On registration of the Plan of Subdivision, the land dedication is effected and comes into Council ownership.

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 Patterson Lane to have a footpath 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 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 Councils 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

(g) 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 dedication of the Dedication Area ultimately cannot occur unless a Subdivision Certificate has been issued and endorsed by Northern Beaches Council.

Council have conditioned within the Agreement that the Subdivision Certificate application lodgement to Council can only occur on completion of the development proposed under DA2020/0008, or prior to the issue of any Occupation Certificate. This will allow Council to inspect the public footpath at the conclusion of construction on the site.

The Subdivision Certificate issued by Council is needed to support the Developer's lodgement of a 'Plan of Subdivision' with the NSW Land Registry Services. If successful, the 'Plan of Subdivision' will ultimately facilitate the land dedication of the future road reserve coming into Council ownership.

EXECUTION PAGE

Executed as an Agreement.

Executed for and on behalf of Northern Beaches Council)

by)

)

Signature

Signature of Witness

Executed by Avalon Central Pty)
Limited ABN 45 633 675 582 in)
accordance with s.127 *Corporations*)
Act)

Secretary/Director

Director

Name of Witness (print)

Name of Director (print)