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Voluntary Planning Agreement

between

Warringah Road Developments Pty Ltd
ACN 602 140 634
(Developer)

and

Northern Beaches Council
ABN 57 284 295 198
(Council)

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This Planning Agreement is made on

2020.

Parties

Warringah Road Developments Pty Ltd

of Level 2, 39 Hume Street, Crows Nest NSW 2065

(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 2 May 2018 the Developer caused a development application to be made to Council in respect of the Development.
- C On 3 May 2019 the Developer offered to enter into a Planning Agreement to dedicate by way of Development Contribution, the Road Dedication Area to Council as the relevant Roads Authority if the Development Consent was granted to carry out the Development. The Developer and Council reached agreement under s34(3)(b) of the Land and Environment Court Act, 1979 to give effect to the said Developer's offer.
- D The Road Dedication Area is necessary for the road widening of Warringah Road, which is the Public Purpose under this Agreement. The parties have agreed to enter into this Agreement so as to give effect to the proposal in recital "C".

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 the Land, including the Road Dedication Area.

3. Operation of this planning agreement

- 3.1 The Parties agree that the terms of this Agreement will take effect and bind the parties from the Commencement Date and will remain in force and effect until the Dedication of the Road Dedication Area is completed by the Developer and dedicated to the Council as the relevant Roads Authority at no

cost and free from all encumbrances in accordance with the terms of this Agreement and all obligations by the Developer herein have been satisfied.

4. Definitions and interpretation

4.1. Definitions

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

"Agreement" means this planning agreement under the Act.

"Application" means an application for any Development Consent.

"Assignment and Dealing Terms" means the obligations imposed on the relevant Parties under, and by virtue of, clause 14.

"Authorised Officer" means, in the case of any Party, a director or secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this Agreement.

"Authority" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under section 6 of the *Building Professionals Act 2005*.

"Bank Guarantee" means a written guarantee or an undertaking by a trading bank or another financial institution acceptable to the Council whereby that bank or institution unconditionally and irrevocably agrees to pay the Council on written demand the sum of \$70,000.00, and must include an expiry date which is not less than 5 years from the issue date and includes any renewed bank guarantee as referred to in Schedule 6.

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

"Certificate of Title" means the certificate of title issued by LRS NSW in respect of the Road Dedication Area.

"Commencement Date" means the date of this Agreement.

"Control" or "Controlled" means in respect of an entity the possession, directly, or indirectly, of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly, to control the membership of the board of directors of the entity or to otherwise, directly or indirectly, direct or influence the direction of the management and/ or policies of that entity, whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock or units or other interests of that entity or otherwise.

"Cost(s)" includes costs, charges and expenses, including those incurred in connection with advisers.

"Council" means Northern Beaches Council.

"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 Road Dedication Area, to the Council as Relevant Roads Authority for the purposes of future road widening of Warringah Road, including the carrying out of the RMS Works and Requirements for no consideration, free of encumbrances and at no cost to Council.

"Development" means the proposal to redevelop the Land by construction of a centre based childcare facility for a maximum of 146 children.

"Development Application" has the meaning given to that term in the Act.

"Development Contribution Date" means the date by which the Development Contribution must be delivered to Council (by way of registration in the name of Council as Relevant Roads Authority of the Road Dedication Area and is to be prior to any Occupation Certificate issuing in respect to the Development).

"Development Consent" has the meaning given to that term in the Act and means the consent issued by the Land and Environment Court on 3 May 2019.

"Development Contribution" means the provision of the Dedication as a public road.

"Development Contribution Schedule" means Schedule 2 of this Agreement.

"Development Procedures" means the terms and conditions imposed on the relevant Parties under, and by virtue of, Schedule 3 of this Agreement.

"Development Program" means the timetable and milestones for each Development Contribution described in Schedule 4 of this Agreement.

"Dispute Resolution Procedures" means the procedures imposed on the relevant Parties under clause 10.

"Encumbrances" means all claims, limitation on, liability against land and includes but is not limited to, liens, restrictions, easements, encroachments interests, whether or not registered.

"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 meaning it has in the GST Act.

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

"Land" means Lot 3 in DP25050, Lot 2 in DP25050 and Lot 1 in DP25050 known as 723-727 Warringah Road, Forestville.

"Law" means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

"LEP" means *Warringah Local Environmental Plan 2011*.

"LGA" means the *Local Government Act 1993*, as amended.

"LRS NSW" means Land Registry Services New South Wales.

"Modification Application" means an application to modify, or that has the effect of modifying, the Development so as to include the provision of a 3m wide cycle/footpath running the length of the street frontage of the Land.

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

"Plan of Road Dedication" means a plan in registerable form to be lodged and registered with LRS for the purposes of the Dedication in lieu of the provision of a Transfer to Council of the Road Dedication Area.

"Public Purpose" has the same meaning as under the Act and means for the purposes of this Agreement, the widening of Warringah Road Forestville.

"Real Property Act" means the *Real Property Act 1900*.

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

"Related Entity" has the meaning "related entity" has in the *Corporations Act 2001* (Cth).

"Register" means the Torrens title register maintained under the Real Property Act.

"Release and Discharge Terms" means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 5.

"Review Procedures" means the procedures set out in clause 9.

“RMS” means the Roads and Maritime Services.

“RMS Works and Requirements” means those works and requirements of RMS referred to in the RMS letter to Council dated 5 June 2018 as varied by the email correspondence from RMS to Council dated 25 September 2019 (which is attached hereto) including the provision of a 3m wide cycle/footpath running the length of the street frontage of the Land as shown in plan attached and marked “B”.

“Road Dedication Area” means the strip of land of at least 3.5m wide along and from the northern boundary of the Land shown hatched in the attached plan marked “A” and in which the 3m wide cycle/footpath running the length of the street frontage of the Land is to be constructed.

“Roads Authority” has the same meaning as under the *Roads Act*.

“Security Arrangements” means those security arrangements set out in clause 11 and Schedule 6.

“Subdivision Application” means an application to subdivide the Land to enable the Dedication to occur.

“Transfer” means the transfer (free from any stamp duty and Encumbrances) of the Road Dedication Area from the Developer to the Council (if in paper in registerable form and stamped by Revenue NSW).

4.2. General

In this Agreement unless the contrary intention appears:

- (a) a reference to a document or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;

- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (i) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (j) if a Party is prohibited from doing anything, it is also prohibited from:
 - (i) allowing or causing it to be done; and
 - (ii) doing or omitting to do anything which results in it happening;
- (k) a reference to a statute, ordinance, code or law includes a statute, ordinance code or law of the Commonwealth of Australia;
- (l) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (m) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement;
- (n) any capitalised term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act; and
- (o) the Schedules and Exhibits form part of this Agreement.

5. Development Contribution to be made under this Agreement

The Developer will provide, or procure the provision of, the Development Contribution (in Schedule 2) (following the Developer having undertaken/complied with the RMS Works and Requirements) by following the Development Procedures (in Schedule 3) in accordance with the Development Program (in Schedule 4).

6. Application of the Development Contribution

The Developer will provide, or procure the provision of, the Development Contribution (in Schedule 2) at the time or times and in accordance with and in the manner set out in the Development Contribution Schedule (in Schedule 2) by following the Development Procedures (in Schedule 3) in accordance with the Development Program (in Schedule 4).

7. Application of s7.11, s7.12 and s7.24 of the Act to the Proposed Development

The application of sections 7.11, 7.12 and 7.24 of the Act are not excluded.

8. Registration of this Agreement

This Agreement is proposed to be registered in accordance with s7.6 of the Act as soon as possible after the date of this Agreement.

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, subject to the provisions of the Act. 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 has been delivered 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 any certificate under the Act at the same time that such application is made;
- b) at the time it lodges any application for a certificate under the Act notify the certifying authority in writing of the existence and terms of this Agreement.

11.3 The Developer acknowledges and agrees that the Land is charged as security for Council's interests under this Agreement and Council has a caveatable interest in the Land from the date of Development Consent 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 deliver to Council a form of written authority as required by Council which recites the consent to caveat signed by the Developer and acknowledging Council's interest created by this Agreement together with a cheque in favour of LRS NSW for the registration fee in respect to lodgement of the caveat.
- 11.5 Council will provide written consent 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 payment/provision of the Development Contribution to Council or surrender of the Development Consent for the Development (but only if such surrender is prior to the carrying out of any works), the Developer will be entitled to withdrawal of the caveat and return of the Bank Guarantee.
- 11.7 In addition to the above, the Developer must provide the Security Arrangements as set out in Schedule 6.

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: General Manager

Developer

Address: Warringah Road Development Pty Ltd
Level 2, 39 Hume Street
Crows Nest NSW 2065

Email: steve@lodestonehq.com.au

Attention: Steve Schlederer

- 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 delivered 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; and
- (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.

15. Costs

Council's Costs of and incidental to the preparation and execution of this Agreement and any related documents 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 under the relevant legislation relating to GST (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.

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
Planning instrument and/or development application - (Section 7.4(1))	
The Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No;
(b) made, or proposes to make, a Development Application.	(b) Yes, for the Development;
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) Not applicable.
Description of land to which this Agreement applies - (Section 7.4(3)(a))	The Land.
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))	The Development.
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))	See Schedules 3, 4 & 5.
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 clause 13

Schedule 2 – Development Contribution Schedule

1. Development Contributions

The Developer undertakes to make the following Development Contribution:

Column 1	Column 2
Development Contribution	Intended use
The provision of the Dedication to the Council including having undertaken/ complied with the RMS Works and Requirements in accordance with this Agreement.	Public Road.

Schedule 3 – Development Procedures

- 1.1 Unless it has already done so, as soon as practicable after entering into this Agreement, the Developer shall:
 - (a) lodge a Subdivision Application or if required by Council a Plan of Road Dedication, with Council for approval, for the purposes of the Dedication; and
 - (b) lodge the Modification Application
- 1.2 The Council must, if it is the consent authority and as necessary, process the Subdivision Application and Modification Application (as the case may be), as proposed by clause 1.1 of this schedule, in accordance with the Act and in accordance with its obligations as a Local Government authority, paying specific regard to clauses 13 and 20 of this Agreement. If a Plan of Road Dedication is required by Council in lieu of a Subdivision Application and Transfer of the Road Dedication Area, it must promptly advise the Developer (acting reasonably) in writing whether it approves such a plan or if not it must advise of any amendments that it seeks to be made to the plan to make it acceptable. .
- 1.3 On receipt of all necessary approvals/ consents under clause 1.2 for the purposes of facilitating the Dedication:
 - (a) the Developer must take all necessary and reasonable steps so as to:-
 - (i) procure the registration of a subdivision of the Land so as to sever the Road Dedication Area from it; or
 - (ii) register the Plan of Road Dedication;
 - (b) upon any subdivision to create a separate Lot referred to in clause 1.3(a)(i) occurring (and any separate titles issuing), the Developer and Council must do all things necessary to facilitate registration of a transfer, including within the PEXA on line forum (free from stamp duty) in respect of the Road Dedication Area and if available, procure the Certificate of Title for the Road Dedication Area or do all things necessary to facilitate registration of a Plan of Road Dedication referred to in clause 1.3(a)(ii) prior to the Development Contribution Date;
 - (c) Carry out the RMS Works and Requirements
- 1.4 The Council and the Developer must do all things necessary and reasonably required so as to register the Plan of Road Dedication (as the case may be).

Schedule 4 – Development Program

- 1.1 The Developer shall deliver the Development Contribution by either:
- (a) Effecting a subdivision to facilitate the transfer of the Road Dedication Land by way of Transfer to Council by:
 - (i) procuring the registration of a subdivision of the Land so as to sever the Road Dedication Area from it;
 - (ii) upon the subdivision referred to in clause 1.1(a)(i) occurring (and separate titles issuing), the Developer must provide to the Council a Transfer in registrable form (but not stamped for stamp duty) in respect of the Road Dedication Area or do all things necessary on the PEXA forum to facilitate registration of the Transfer to Council and the Certificate of Title for the Road Dedication Area(if available); and
 - (iii) the Council and Developer must take all steps necessary to then procure the registration of that transfer, effecting the Dedication of the Road Dedication Area as a public road by the Development Contribution Date, or if required by Council in lieu of 1.1(a); or
- procuring the registration of a Plan of Road Dedication approved by Council ,
by the Development Contribution Date.
- 1.2 The Development Contribution shall be delivered to Council in accordance with this Agreement, once the RMS Works and Requirements have been carried out by the Developer:
- (a) at its cost in accordance with the RMS Works and Requirements; and
 - (b) to the satisfaction of both the Council and RMS,
- by the Development Contribution Date.

Schedule 5 – Release and Discharge Terms

The Council agrees:

- (a) that upon the Developer complying with its obligations under this Agreement including undertaken/complied with the RMS Works and Requirements and delivery by the Development Contribution Date of the Development Contribution as set out in Schedule 4, the Developer would have fully satisfied and discharged its obligations under this Agreement; and
- (b) if so requested by the Developer, to provide to the Developer (or to any other person authorised to act on her behalf) a letter within 30 Business Days of receipt of such a request, prepared on the Council's letterhead, confirming the Council's assessment that the Developer has fully discharged its obligations under this Agreement; and
- (c) Clause (a) has effect whether or not the Council gives the letter to the Developer under clause (b); and
- (d) Upon the event in (a) occurring, it will return the Bank Guarantee and withdraw any caveat it has lodged over the Land.

Schedule 6 – Security Arrangements

- 1.1 Upon execution of this Agreement the Developer must provide to the Council:
- (a) a Bank Guarantee in the sum of \$70,000.00, such Bank Guarantee not to have an expiry date that is less than 5 years from the issue date; and
 - (b) if required, a signed transfer in registrable form at the LPI NSW (but not stamped for stamp duty) in respect of the Dedication Area.
- 1.2 The Council will hold the Bank Guarantee (and transfer referred to in 1.1(b)) pending completion by the Developer of the RMS Works and Requirements in accordance with this Agreement and provision of the Dedication. The Council, must, thereafter return the Bank Guarantee and remove any caveat lodged over the Land.
- 1.3 No later than 4 years from the date the Bank Guarantee is issued, including any replacement Bank Guarantee, the Developer must obtain a replacement Bank Guarantee in the sum of \$70,000.00, such replacement Bank Guarantee not to have an expiry date that is less than 5 years from the issue date.
- 1.4 In the event this Agreement is terminated, or the Development Consent is surrendered in accordance with clause 11.6, the Council must return the Bank Guarantee and the Transfer to the Developer in accordance with clause 3.2 and remove any caveat lodged over the Land.

EXPLANATORY NOTE

Planning Agreement

Between

Warringah Road Developments Pty Ltd

&

Northern Beaches Council

Exhibit A - Explanatory Note

Planning Agreement – Dedication of land at Warringah Road 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) the redevelopment of the Land by the construction of a centre based childcare facility for a maximum of 146 children; and
- (b) the dedication of land to the Council as a public road and carrying out of associated road and cycle way works,

(all known as the “**Proposed 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

The Parties to the Agreement are Northern Beaches Council (**Council**) and Warringah Road Developments Pty Limited (**Developer**).

The Developer is the developer and owner of the land described in section 2 below and has made an offer to the Council to enter into the Planning Agreement in conjunction with the Proposed Development and the Consent, for:

- (a) the dedication of part of the Land (namely a strip of land of at least 3.5m in width located on the northern boundary of the Land) (called the **Dedication Area**) to the relevant Roads Authority; and
- (b) the carrying out of associated road and cycleway works to the Dedication Area,

in lieu of Council having to pay for it (and the associated road works) so as to enable Warringah Road to be widened and provide an appropriate and safe trafficable public road. The provision of the Dedication Area (and associated road and cycle way works) is to be at no cost to the Council and free from all encumbrances.

2. Description of the Subject Land

The land to which this Planning Agreement applies is described as follows:

- Lot 3 in DP 25050;
- Lot 2 in DP 25050; and

- Lot 1 in DP 25050,

known as 723-727 Warringah Road, Forestville.

3. Description of Proposed Change to Environmental Planning Instrument

There is no change proposed to the *Warringah Local Environmental Plan 2011*.

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

The Planning Agreement will assist Council in achieving its objectives in providing a material public benefit to users of Warringah Road and those residents adjoining the Development.

The objective of the Planning Agreement is to ensure that the Proposed Development may proceed by the implementation of the Dedication and carrying out of the associated road and cycle way works (at no cost to the Council) whilst ensuring that Warringah Road remains an appropriate and trafficable public road under the care and control of the relevant Roads Authority for the benefit of current and future generations.

The Planning Agreement meets the current and future demands created by the Proposed Development for new public infrastructure, amenities and services both by the provision of the Dedication Area and the carrying out of the associated road works.

The Planning Agreement is consistent with the Council's transport vision in that:

- it facilitates the freedom to choose between different modes of transport to the Proposed Development
- it provides a safe road network, and specifically, safe entry and exits from the proposed Development
- it improves the efficiency of the road/transport network but provision of deceleration and acceleration lanes
- it integrates the Proposed Development with the existing road network
- it facilitates sustainable development by providing the option of pick up and drop off of children via the transport network
- it effectively provides funding to the improvement of Warringah Road without adversely impacting on Council's revenue bottom line
- it links Forestville with the Dee Why to Chatswood public transport corridor
- it will assist in creating extra jobs on the Northern Beaches

The Planning Agreement is an enforceable arrangement between Council and the Developer under the EPA Act. The Planning Agreement requires the Developer to make a Development Contribution and comply with certain requirements including registration of the Planning Agreement; provision of a Bank Guarantee and Caveat upon/following execution of the Agreement pending delivery of the Development Contribution.

The Planning Agreement also contains provisions as to dispute resolution and

does not exclude application of s7.11, s7.12 or s7.24 of the EPA Act. No Occupation Certificate for the Development is to issue pending delivery of the Development Contribution.

5. Timing of delivery of the public community benefit

The dedication of the public benefit, namely the dedication of the Dedication Area (and consequent carrying out of the associated road and cycle way works – all at no cost to the Council), will occur prior to the issue of an occupation certificate for the Proposed Development. It is anticipated that the Dedication will occur prior to the close of 2021. Importantly, the Dedication will have no ongoing or recurring costs for the Council.

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 (and works within it) will be vested under the care and control of the relevant Roads Authority at the Developers sole cost.

In addition, both the Planning Agreement and the Consent impose obligations upon the Developer to provide bonds (and or carry out rectification works) to make good any damaged public infrastructure when carrying out the Proposed Development. This ensure that Council will have no out of pocket expenses either in acquiring the land or in the physical works themselves.

(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 Warringah Road to

be widened and the area 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 of long day care facilities); and
- provision and co-ordination of community services and facilities (being a public road) as well as a long day care centre.

(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 (and provision of associated road and cycle way works) for public purposes to the relevant Roads Authority without the relevant Roads Authority having to pay for the land or works. 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 facilities for the community and to ensure that those 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 an appropriate and trafficable public road and cycle way within the Council's local government area under the care and control of the relevant Roads Authority for the benefit of current and future generations at no cost.

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

The growing population of Warringah, and 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. The fact that that dedication (and associated road and cycle way works) is at no cost to the Council is a significant positive impact on the public as it frees up funds that might otherwise have been earmarked for the road upgrade works or cycle way works that are proposed as part of this Planning Agreement.

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

The Planning Agreement is not inconsistent with Council's Capital Works program.

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 Dedication of the Dedication Area must be complied with before an occupation certificate is issued.

Executed by Warringah Road)
Development Pty Ltd ACN 602 140)
634 in accordance with s.127)
Corporations Act

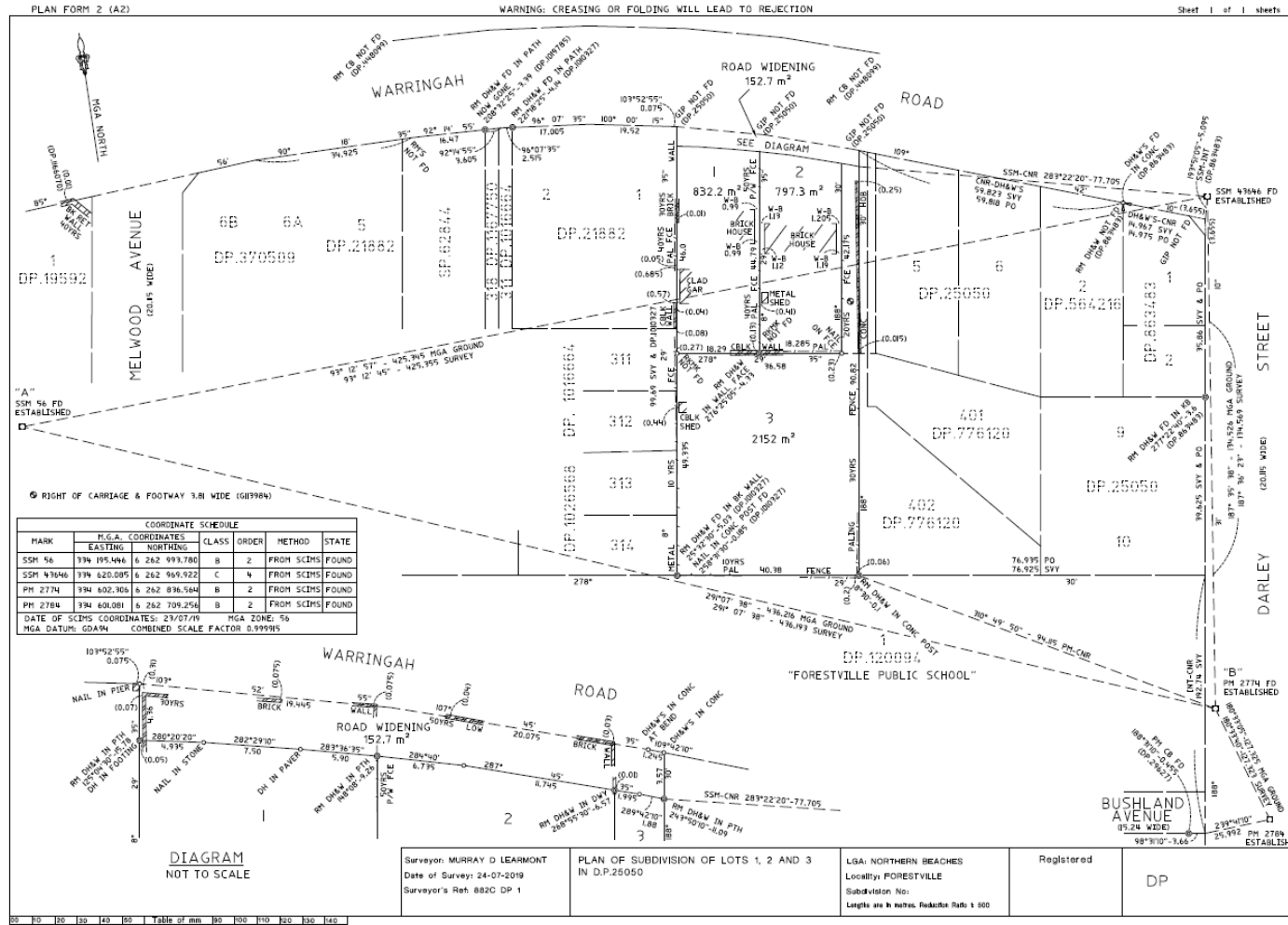
Secretary/Director

Director

Name of Witness (print)

Name of Director (print)

Attachment "A" – plan of Road Dedication Area



Attachment "B" – Plan of

RMS Works and Requirements

Attachment "C" – RMS letter to Council and subsequent email correspondence



Transport
Roads & Maritime
Services

5 June 2018

Our Reference: SYD18/00766 (A22498000)
Council Ref: DA 2018/0697

The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Attention: Nick England

Dear Sir/Madam,

PROPOSED CHILD CARE CENTRE DEVELOPMENT 727 WARRINGAH ROAD, FORESTVILLE

Reference is made to Council's letter dated 11 May 2018, regarding the abovementioned Application which was referred to Roads and Maritime Services (Roads and Maritime) for concurrence under Section 138 of the *Roads Act, 1993*.

Roads and Maritime has reviewed the submitted application and notes that the development proposal include removal of redundant driveway and construction of a deceleration lane into the site and restricts vehicle movements to left in and left out only which is appropriately separated by a median. Therefore Roads and Maritime would provide concurrence under Section 138 of the *Roads Act 1993* for removal of the redundant driveway and for the proposed deceleration lane subject to the following conditions being included in any consent issued by Council:

1. Roads and Maritime has previously vested a strip of land as road along the Warringah Road frontage of the subject property, as shown by grey colour on the attached Aerial –"X".

Therefore all buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Warringah Road boundary.

2. Any redundant driveways on Warringah Road should be replaced with kerb and gutter to match existing. The design and construction of the access into the site on Warringah Road shall be in accordance Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, State Wide Delivery, Parramatta (telephone 9598 7798).

Detailed design plans of the kerb and gutter are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

Roads and Maritime Services

27-31 Argyle Street, Parramatta NSW 2150 |
PO BOX 973 Parramatta NSW 2150 |

www.rms.nsw.gov.au | 13 22 13

3. The proposed deceleration lane and access into the site shall be designed to meet Roads and Maritime requirements, and endorsed by a suitably qualified practitioner. The design requirements shall be in accordance with AUSTRROADS and other Australian Codes of Practice. The certified copies of the civil design plans shall be submitted to Roads and Maritime for consideration and approval prior to the release of the Construction Certificate by the Principal Certifying Authority and commencement of road works.

The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. Please note that the WAD will need to be executed prior to Roads and Maritime assessment of the detailed civil design plans.

Roads and Maritime fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.

4. The proposed deceleration lane could be constructed within the existing road reserve subject to dedication of the same land (same length & same width) within the property for future deceleration lane (when needed). The land should be dedicated to Roads and Maritime and identified as a separate lot in the sub-division plan. All works to be carried out at no cost to the Roads and Maritime.
5. All vehicles are to enter and exit the site in a forward direction.
6. All vehicles are to be wholly contained on site before being required to stop.
7. Sight distances from the proposed vehicular crossing to vehicles on Warringah Road are to be in accordance with the Austroads 'Guide to Traffic Engineering Practice, Part 5: Intersections at Grade, Section 6.2 – Sight Distance' and AS 2890. Vegetation and landscaping / fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.
8. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

Details and any enquiries should be forwarded to Mr Suppiah Thillai at Suppiah.Thillai@rms.nsw.gov.au or Phone at 8849 2114.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

9. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system in Warringah Road are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.

Details and any enquiries should be forwarded to Mr Suppiah Thillai at Suppiah.Thillai@rms.nsw.gov.au or Phone at 8849 2114.

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

10. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Warringah Road.
11. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Warringah Road during construction activities.

Should you have any further inquiries in relation to this matter, please do not hesitate to contact Hans Pilly Mootanah on telephone 8849 2076 or by email at development.sydney@rms.nsw.gov.au.

Yours sincerely,



Ahsanul Amin
A/Senior Land Use Planner
Sydney Division – North West Precinct

Ian Johnson

From: Pahee Rathan <Pahee.RATHAN@rms.nsw.gov.au>
Sent: Wednesday, 25 September 2019 9:21 AM
To: Ian Johnson
Cc: Lucy Motta
Subject: RE: 118188: Proposed Childcare Centre Development-727 Warringah Road Forestville- Your Reference SYD 18/00766 (A22498000)

Matter: 118188
Saved: -1

Dear Ian,

I refer to your email below in relation to Condition 4 of Roads and Maritime's letter dated 5 June 2018.

As per my discussion With Lucy Motta of your office, the land should be dedicated to Council as road. Hence, Roads and Maritime provide below the amended Condition 4:

"The proposed deceleration lane could be constructed within the existing road reserve subject to dedication of land (with same length and width) within the property for relocation of the deceleration lane (when needed). The land shall be dedicated to Council as public road and shall be identified as a separate lot in the sub-division plan. All works are to be carried out at no cost to Roads and Maritime."

I trust this information is of assistance.

Should you wish to discuss this matter further, please call me on the numbers below.

Regards
Pahee

Pahee Rathan
Senior Land Use Assessment Coordinator
North West Precinct | Greater Sydney Division
T 02 8849 2219 M 0417 246 510
www.rms.nsw.gov.au
Every journey matters

Roads and Maritime Services
27 Argyle Street Parramatta NSW 2150

(37)