

**Douglas Dewey**

**27 March 2020**

**Chief Executive  
Northern Beaches Council  
725 Pittwater Road  
Dee Why NSW 2099**

**Submission against Draft Voluntary Planning Agreement - 31 Bellara Avenue  
and 66 Powderworks Road, North Narrabeen VPA2020/0001**

Dear Sir,

The dedication of land at the east end of Bellara Ave should provide an opportunity to rectify the existing hazardous termination which requires garbage trucks and other service vehicle to reverse significant distances. It is regrettable that over the last 50 years, successive councils have failed to apply applicable planning rules and design standards to eliminate this and other hazards and otherwise improve the amenity of the area. It should be noted that since 2011 there have been three Development Applications and two Land and Environment Court Cases regarding the site (including 84 Nareen Pde). It is reasonable to assume that further development will be undertaken and that a concept plan for a staged development of the entire site is required before a proper assessment can be undertaken.

Reason why Council should reject the VPA include: -

1. The proposed turning area is too small and does not comply with road design standards and planning rules and makes no provision for road reserve, footpaths and other infrastructure. Service vehicles will not be able to turn and will need to reverse hundreds of metres to complete each run risking the lives of pedestrians as they do so. The absence of a footpath or verge makes the proposed turning area even more dangerous for pedestrians, who will have no way of escaping a reversing service vehicle and may easily be crushed.
2. The community benefit claimed by the developers will not occur.
3. Stormwater management is effectively non-existent and geotechnical risks have not been adequately addressed.
4. The proposal will block access to the timbered area to the east for fire and weed control and for orderly development.
5. The proposed turning area will encroach on building set backs and leave less than 2m between the public road pavement and proposed building foot print. Applicable planning controls have been ignored and amenity and views will be adversely affected.
6. There appear to be no written offers from the owners and the draft VPA is not signed. The offer of the VPA is conditional on a LEC Act Section 34 agreement for development consent. There is considerable inconsistency amongst the VPA plans and DA plans. The VPA survey plan specifies that the turning area will be constructed to Council specifications. No Council

Specifications have been provided. These facts and other anomalies leave considerable doubt as to whether the owners are bound by the offer, whether or not the VPA is void and exactly what development is proposed. Agreeing to the VPA under these circumstances may expose the Council to legal challenges and considerable costs.

7. The VPA does not satisfy Council goals and planning objectives.

## **1 Non-compliant, dangerous road design**

A most striking feature of the site is the angular truncation of the end of Bellara Avenue. The current unsafe road design resulted from a stalled development in the early 1970s which left the end of Bellara Avenue unfinished and non-compliant with historic and current planning rules and road design standards.

Without a suitably sized turning area garbage trucks travel east to pick up from the north side of Bellara Ave, reverse back to the middle turning area (if clear of parked vehicles otherwise to the west end of Bellara), turn, then reverse to the east end, turn, then pick up bins on the south side of Bellara.

The potential severity of this unsafe practice was demonstrated when a grandmother was killed by a garbage truck reversing up a similar narrow cul de sac at Dee Why in February 2018<sup>i</sup>. The hazard is also identified in the Workcover Collection of Domestic Waste Code of Practice at p 3.2.<sup>ii</sup>

Swept path diagrams provided by Terraffic Pty Ltd have not been overlaid against the VPA Engineering Plan showing the pavement and retaining wall making proper assessment of the proposed turning area extremely difficult.

The swept paths provided with the VPA are based on a small MRV with an overall length of 8.8m, wheel base of 5m, width 2.5m and kerb to kerb turning radius of 10m. Minimum width between inner and out turn radius 3.595m The swept paths shown for this vehicle are peculiar with the first right hand turn radius being considerably less than the exit right hand turn radius.

The turn area is required to accommodate vehicles which are considerably larger than the 8.8m vehicle. Vehicles required to turn at the end of Bellara Ave will be similar to: -

- Dennis Elite Rear Loader Garbage Truck
  - Overall length of 10.5m, wheel base of 5.5m, width 2.85m and kerb to kerb turning radius of 10m. Minimum width between inner and outer turn radius 5m
- Fire and Rescue NSW General Fire Appliance<sup>iii</sup>
  - Overall length of 10m, wheel base of 5m, width 3.0m and kerb to kerb turning radius of 11.5m. Minimum width between inner and out turn radius 5m. Fire and Rescue NSW also require a hard stand area of 13m by 6m which is not provided in the plans attached to the draft VPA.

NSW Rural Fire Service uses similar size vehicle and requires that dead ends that are longer than 200m are provided with a turning head area that avoids multipoint turns.<sup>iv</sup>

At approximately 250m Bellara Ave exceeds this 200m length and must be provided with a full 24m diameter circular cul de sac turning bowl.

Even if a multipoint turn area were permitted the T head style proposed in the VPA must be 24m in length. The length of the proposed T Head is only 18.67m. To comply with the T head requirements a 29% increase in length and 67% increase in width is required along with an inside turn radius of 6m. The inside turn radius shown on the north end of the turn area on the Plan of Subdivision is only 3.5m and an increase of 71% would be required.

The proposed VPA does not provide any kerb or clearance from the kerb to the retaining wall. RFS Section A3.6 requires a 250mm kerb which is *free of vertical obstructions at least 300mm back from the kerb face*

The repurposed Driveway Concept plan submitted with the VPA shows features that are unsafe and will adversely affect the amenity of the area, including: -

- An abrupt termination of Bellara Avenue at a retaining wall up to 3 metres in height.
- No road reserve and no room for a footpath or services. Australian standards require a road reserve of 4m in width between the pavement and property boundaries.<sup>v</sup>
- A building within 2 metres of the road pavement. The Pittwater LEP requires that buildings are more than 10m from the pavement after allowing for the 4 metre road reserve width and front building set back of 6 metres.
- AUSTRROAD standards require a turning swept path check vehicle of 12.5m 25% more than the 10m radius shown in the swept path diagrams.<sup>vi</sup>

For an 8.8m service vehicle Austroads requires a minimum design outer wheel turn radius of 9m and check with a 12.5m vehicle and 13.2m radius for the outer body which suggests that a turning area of 500 square metres is required.

This standard also requires a 0.5m clearance between the kerb and vehicle swept path, a 0.5m clearance from the swept path and objects such as road furniture and utility poles.

These standards require approximately 570 square metres of road reserve and 283 square metres of pavement for a cul de sac turning area. Other dead-end streets in North Narrabeen have an average turning area road reserve of 400 square metres and 193 square metres of pavement. The 84 square metres proposed in the VPA is grossly inadequate.

The VPA Survey Plan proposes the construction of a turning area to Council Specifications. No Council specifications for a cul de sac turning area have been provided in the VPA or Explanatory Note. AUSPEC#1 included in the documents on the Council website does not provide specifications for a cul de sac, T Head, Y Head or other turning area. Council specifications should comply with AUSTRROADS

standards, NSW Fire and Rescue requirements, RFS requirements, applicable planning instruments and be consistent with existing cul de sacs in North Narrabeen

In developing specification Council could consider a specification published by Lake Macquarie Council which requires a 29m "T" head turning area (the proposed VPA is less than 16m), a "Y" head of two 14.5m arms (the average of the proposed VPA is less than 11m) or 10m radius circular turning bowl.

AUS-SPEC#1 at Annexure DSB-B and Geometric Road design requires a number of Roadworks Plans to be submitted. The Keenwill Pty Ltd VPA proposal contains none of the required plans.

Safe access for pedestrians has not been provided anywhere in the turning area and the driveway plan requires residents and visitor to climb a 2 to 3 m sheer retaining wall as no steps are provided between the turning bay, parking area and dwellings.

## **2 Community Benefit**

The only community benefit claimed in the VPA was providing a appropriate safe and trafficable public road. Unless the turning area is safe and trafficable it does not provide the promised benefit. The particular design is neither safe nor trafficable for service vehicles and does not provide the promised benefits. By blocking access to the east, exacerbating stormwater inundation, reducing on-street parking, detrimentally affecting views and other aspects of amenity the proposed VPA will have a negative community benefit.

**Local context and street patterns** -The locality is generally characterised by 550 m<sup>2</sup> lots as regulated by the key density control being the LEP minimum lot size. The proposed development creates a lot of 1,616m<sup>2</sup> nearly 3 times the area of the LEP minimum lot size and recently developed lots in the area. The end of cul de sacs in the region are generally characterised by a turning bowl and not the unsafe acute termination of Bellara Ave or hammerheads.

**Character as viewed from a public place** – The proposed dwelling and parking area will completely dominate the view from the street. This significant and adverse environmental impact is unacceptable.

As a result of the reduced set back and siting directly at the end of Bellara Ave the built form will completely dominate the view from the street. No road reserve is provided for landscaping, services and footpaths and rear set back is below the required minimum.

**Local context and street patterns** - The DA proposes a lot significantly in excess of the 550m<sup>2</sup> minimum lot size in 4.1 PLEP 2014 and surrounding developed lots the proposal does not respect local context and street patterns. Replacing the proposed T head turning area with a cul de sac turning bowl in part of 66 Powderworks Rd would see the termination of Bellara Ave and surrounding lots sizes consistent with the local context and street patterns.

### **3 Stormwater management and geotechnical risks**

The VPA stormwater system does not connect to any drainage system of the gutter. The VPA Stormwater Plan 2019 shows a 300mm inlet pit on the south side of Bellara Ave and a 150mm grated drain running below the road pavement to the northern kerb. Stormwater from the proposed building footprint runs from the north east corner of the turning bay across the road surface into the 150mm drain. Stormwater from the driveway also runs into this drain. There is no outlet shown for the drain so stormwater will pool in the turning bay before it overflows and then runs across Bellara Ave and inundates the residence at 29 Bellara Ave.

While no elevations are provided it is likely that stormwater will also pool in the eastern section of the driveway and parking area.

The Application's Geotechnical report notes that "No excavations or fills are shown on the plans" This appears to be quite misleading as the Building Envelope and Site Plan show the proposed parking area with an existing ground level height of 32.5m in the NE corner and less than 28.5m in the SW corner. The parking area is required to be nearly level requiring an excavation of approximately 4m and a retaining wall of similar height. The Geotechnical risk of these large retaining walls which will be subject to damage by turning trucks has not been assessed.

The cost of design, excavation, pavement, stormwater drainage and retaining wall for the parking area alone must surely exceed the threshold for minor development and a detailed Geotechnical Investigation should have been completed as required by the Geotechnical Risk Management Policy for Pittwater. Council's SOFC at B.3 – 2. Provides further details for this contention.

### **4 Access to the timbered area to the east**

The track at the end of Bellara Avenue currently used for access to the bushland to the east for fuel reduction and weed control will be blocked by retaining walls and will increase bushfire risk. The steep slope of portions of land between the track and Powderworks Rd. and Nareen Pde. Preclude effective access to these roads for such operations and further development.

Despite there being an area of bushland adjoining the site to the east there is no provision for bushfire protection zones, access for fire fighting and maintenance vehicles so as to minimise the risk of bushfire damage.

Similarly the proposed VPA would block access to the east for weed control and vehicle and pedestrian access to properties to the east with topography which prohibits access from Powderworks Rd or Nareen Pde.

The bushland or timbered area to the east of Bellara Ave is not currently classified as bushfire prone land despite a history of bush fires in the 1940s and 1960s.

With global warming the risk of bushfire is likely to increase and the area may become bushfire prone.

To avoid the significant cost of a fire or retrospectively modifying roadworks and access Council should ensure that any design for the end of Bellara Ave does not block the provision of bushfire prevention and control measures and should require that the development complies with bushfire protection design criteria including: -

- a) A perimeter track with a cleared width of 6m and formed width of 4m.
- b) Road reserve and Fuel Free Zone 20m wide
- c) Fuel reduced zone subject to lot slope

## **5 Turning area has no building set backs**

- The plan prepared by Taylor Consulting appears to show a dwelling within two metres of the road pavement. No allowance has been made for either the standard 4 metre road reserve nor a 6 metre set back.

## **6 No written offers from the owners, conditional offer and potentially void VPA**

The agreement does not properly identify the land to be dedicated nor does it identify required changes to planning instruments. The proposed turning area and building footprint do not comply with applicable planning instruments and do not justify an exemption from those instruments.

The consideration by Council of a Voluntary Planning Agreement associated with Development Application DA 2018/1335 appears to be quite premature, ill-conceived, and a potential waste of Council and community resources.

By their nature the VPA and DA are inextricably linked and interdependent and cannot be considered in isolation. The VPA should not be put on public display until compliant swept path and other plans and elevations are included, the DA amended to be consistent with those plans and a DA approved by the LEC. However, replacing the proposed building footprint with a truck turning area changes the nature of the proposal from one of subdivision and building entitlement to subdivision and truck turning area and is "so significant as to convert the original development concept into something substantially different" and would constitute an entirely different development which the court would not be able to approve under the current application.

In the Draft Planning Agreement Schedule 1 – Section 7.4 Requirements of Planning instrument and/or development application - (Section 7.4(1)) the Developer states at (a) a change to an environmental planning instrument is not sought.

The Documentation contains numerous inconsistencies and omissions and generally does not enable a proper assessment of the application. The Planning Principle established in *Parrott v Kiama* [2004] NSWLEC 77 that a *subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful design to minimise them* has particular application to the proposed subdivision. The Bellara Avenue site is environmentally sensitive because of its moderate slope, numerous trees, breaks the established building line and would block access to and prohibit development of adjoining lots.

The likelihood of adverse impact is high. *The design of the future house (at least the outline design) is not a matter that is appropriately left till later.*

The original development application placed the building footprint adjacent to the end of Bellara Ave in the area that would be needed for the turning area extension of Bellara Ave. or driveway and parking area

An application to dedicate a public road is an entirely different development and must be treated as a new development. By adding the turning area, the essential elements are altered such that they place the development in a different category for the purpose of assessment and change the essential character of the proposed development from being creation of a building entitlement to extension of a roadway.

A Building footprint and a road extension must be categorised entirely differently and any attempted amendment must be treated as a new application in which case the court does not have the power to grant consent to the current application.

“It is not open to a consent authority to grant consent upon conditions which significantly alter the development for which consent was sought”

VPA Schedule 1 (c) Also appears to be misleading. As the applicants and owners are different entities there must be some form of agreement between the owners and the DA applicants which must be disclosed.

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The description of land provided in the VPA definitions being the whole of land at 66 Powderworks Rd and 31 Bellara Ave is inconsistent with the 101 square metres shown in the council agenda and explanatory note.

There is no mention of any mortgage over the land and agreement of any mortgagee to the dedication of the land. Does a mortgage exist and has the mortgagee approved the offer of the VPA?

The plans do not identify areas for essential public services such as footpaths, stormwater, sewer, communication and electricity supply.

The Taylor Consulting Plans show a driveway concept not a turning area for a public road. The driveway concept does not demonstrate that a vehicle can turn on the property and exit in a forward direction as required by the DCP.

The sharp angles used in the proposed Taylor Consulting Plans cannot be accessed by Council street sweeping machines and are likely to trap rubbish and sediment. Stormwater run off is likely to be quickly become an issue if the proposed design is adopted.

## **7 Orderly development**

By blocking access to properties to the east and south the proposal will result in the inefficient and uncoordinated development of the area as large Powderworks Road and Nareen Parade facing lots require access to Bellara Ave for further development such as secondary dwellings and subdivision. These lots would be left in isolation as vehicle access is not possible to either Powderworks Road or Nareen Parade. .

## **8 Non compliance with Council goals**

The proposed VPA does not meet Council's Transport, Infrastructure and Connectivity Goal 16 – Our integrated transport network meets the needs of our community as service vehicle will still not be able to turn.

Council's Governance Goal 19 - Our Council is transparent and trusted to make decisions that reflect the values of the community has not been met.

Submissions against the development application have made it quite clear that the local community requires that any turning area at the end of Bellara Avenue must be safe and comply with applicable design and planning standards. The VPA does not satisfy these requirements and Council staff appear to have agreed with the inadequate and non-complying plans proffered by the developer with no explanation or justification as to why Australian Standards, planning instruments and precedent design of other turning areas in the locality are being ignored.

The Partnerships and Participation Goal 22 – Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community has not been met.

With so many errors, inconsistencies and areas of non-compliance with applicable Road Construction and planning standards placing the VPA on public display will be a gross waste of Council and Community resources.

Further details are provided in the various submissions against the development application lodged with Council and the Land and Environment Court.

For these reasons the offer of VPA in the form provided should be rejected.

Yours faithfully

Douglas Dewey



## 9 Appendix 1 Infrastructure Design Standards

### 9.1 AUS-SPEC #1

#### 9.1.1 Objectives

##### 9.1.1.1 *Functional, attractive and safe environment*

The design submitted for the proposed VPA fails all objectives

- The turning area is too small to be functional as a turning area for garbage trucks, fire engine etc.
- The stormwater system does not connect to any drainage system and is too flat to flow into the street kerb and is not at all functional
- The retaining wall and dwelling within 2m of the road pavement will dominate views from the street and is not attractive
- With no verge or room for any footpath the turning area is unsafe. With garbage trucks still required to reverse up and down Bellara Ave the plan is unsafe. Blocking access to bush to the east makes the proposal unsafe from firefighting, fuel reduction and weed control perspectives.

##### 9.1.1.2 *Minimise adverse effects on the natural environment*

- Several trees are removed to accommodate the development. The VPA should provide for replanting an equivalent number of trees
- Blocking access to the bushland will prevent proper care of the natural environment

##### 9.1.1.3 *Provide for the needs of future users.*

- The proposed development does not provide a plan which complies with applicable planning rules and will adversely impact views, privacy, stormwater inundation, on-street parking and general amenity for residents to the west and will block access to the east. The inadequate turning area does not provide any compensating amenity.

##### 9.1.1.4 *Economic utilisation*

- The cost of a safe and compliant turning at the end of Bellara Ave. may be substantial. Unfortunately, the VPA does not properly identify the cost of the proposed turning area nor the cost of a compliant turning area. Without this information it is not possible to assess the economic land resource in the area. There is a large area of vacant land to the east which could be developed so that the cost of a complying turning area could be defrayed over several lots. It is understood that owners are keen that a complying turning area and access be provided for their properties.
- The design of the currently proposed VPA has not incorporated the submissions from residents.
- The preferred course of action would be to refuse the current proposal and work with residents to prepare a compliant turning area and economic development of the area.

##### 9.1.1.5 *Achieve balance between the subdivision of residential land and the amenity of existing residents.*

- This and other issues should have been addressed in a Statement of Environmental Effects. Unfortunately, the turning area of the proposed VPA was not included in the DA ESS. To comply with correct planning procedure and ministerial guidance notes the DA should be amended to be consistent with the VPA and DA re-exhibited before any further decisions are made.

#### 9.1.1.6 *To minimise Council's future maintenance cost for roads services and open spaces.*

- The unsafe non-compliant design of the turning area in the VPA with no verge for footpaths and services, no kerbs, retaining walls on the edge of the edge of the road pavement, stormwater drain to nowhere and 90° and sharper angles with no radius will result in the build-up of sediment and rubbish which will be almost impossible to clean with normal street sweeping trucks. Specialist sweepers or manual sweeping will be required to keep the roadway clear.
- The lack of proper stormwater facilities is likely to result in pooling of water leading to damage of the road pavement and frequent renewal.
- The difficulty trucks will encounter in attempting to manoeuvre in an area which is too small and partly surrounded by retaining walls is likely to damage vehicles.
- The complete lack of escape route for pedestrians in the turning area may see serious injuries and fatalities with significant costs to Council.

#### 9.1.2 **A2 -Sketch Plan**

No sketch plan showing the details required by AUSPEC#1 A2 has been provided. The VPA should be rejected or withdrawn until consistent and compliant details are provided for both the VPA and DA.

#### 9.1.3 **R2 Subdivision – Urban Residential Areas**

AUSPEC#1 R2 requires that the subdivision provide fully serviced subdivisions including: -

- Sealed road system – the proposed **road does not comply with relevant standards**
- The proposed VPA plan shows no kerb and gutter or verge for footpaths and creates an unsafe termination
- The drive way and parking do not appear to provide for a turning area to enable vehicle to enter and leave in a forward direction.
- The VPA and DA make no mention of the provision of services such as sewer, water, gas, underground electricity and communication. There appears to be no allowance in the estimated costs for such services.

#### 9.1.4 **R4 Subdivision Design – Natural Hazard Areas**

- Despite there being an area of bushland adjoining the site to the east there is no provision for bushfire protection zones, access for fire fighting and maintenance vehicles so as to minimise the risk of bushfire damage.
- Similarly the proposed VPA would block access to the east for weed control and vehicle and pedestrian access to properties to the east with topography which prohibits access from Powderworks Rd or Nareen Pde.
- The plans submitted with the VPA do not identify the flow of stormwater from the site. It is likely that it will exacerbate the flooding problem at the intersection of Bellara Ave and Tatiara Cres, the inundation of 29 Bellara Ave or both.

#### 9.1.5 **R5 Provision of Open Space and other Contributions**

- The VPA makes no provision for areas of public reserve (open space) useable for recreation or a contribution for public reserve.

#### **9.1.6 D10.04 - Bushfire protection**

- The bushland or timbered area to the east of Bellara Ave is not currently classified as bushfire prone land despite a history of bush fires in the 1940s and 1960s.
- With global warming the risk of bushfire is likely to increase and the area may become bushfire prone.
- To avoid the significant cost of a fire or retrospectively modifying roadworks and access Council should ensure that any design for the end of Bellara Ave does not block the provision of bushfire prevention and control measures and should require that the development complies with bushfire protection design criteria including: -
  - A perimeter track with a cleared width of 6m and formed width of 4m.
  - Road reserve and Fuel Free Zone 20m wide
  - Fuel reduced zone subject to lot slope

#### **9.1.7 D.1.5 Characteristics of Roads in Residential Subdivision Road Networks**

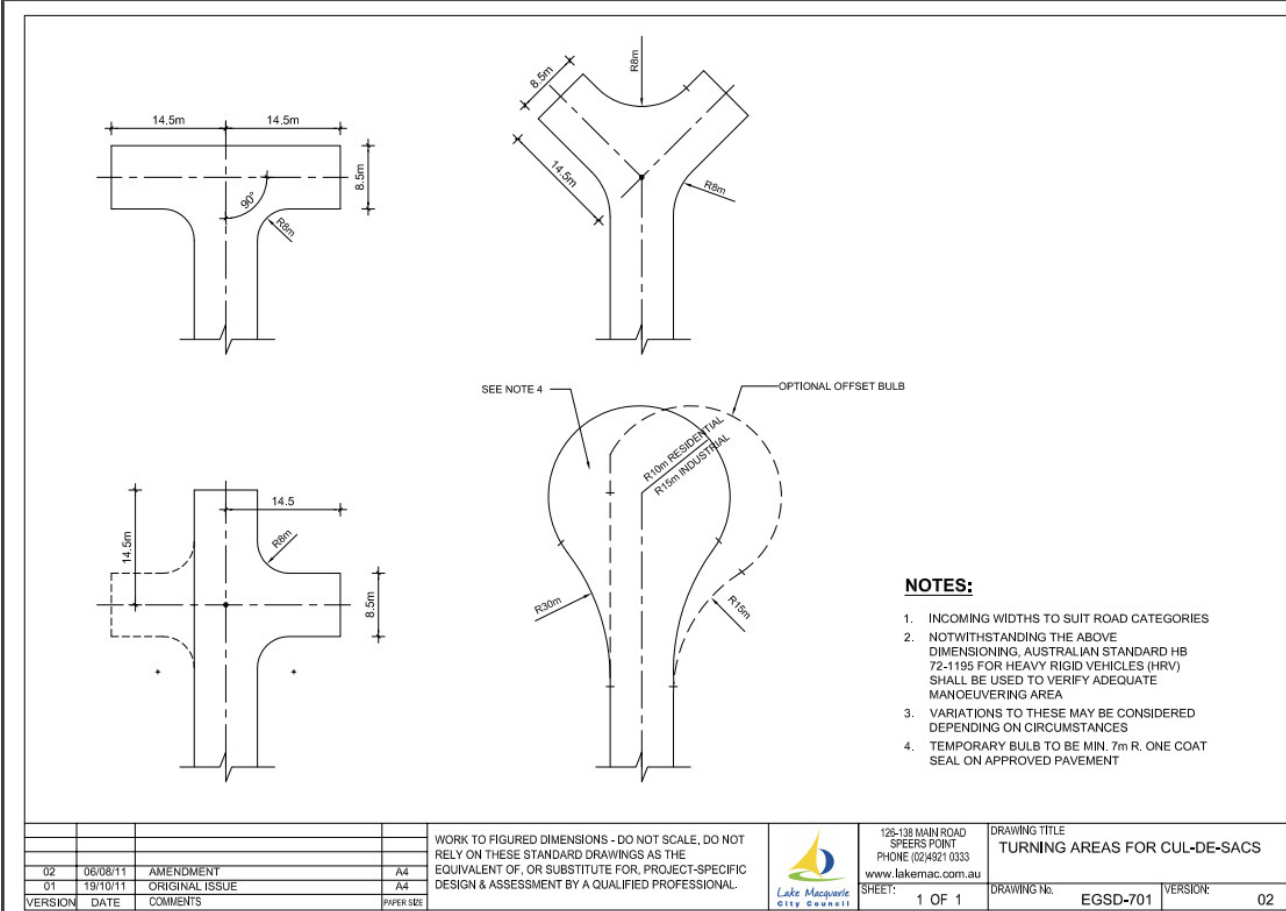
- Table D.1.5 for a local road such as Bellara Ave requires the following which have not been met in the design of the proposed VPA.
  - Carriageway width 7.8m up to 1,000 vehicle per day. The current carriageway is 7m.
  - Parking Provision Carriageway – the proposed design will require no-standing in the entire area which result in the loss of at least 3 on-street parking lots.
  - Footpath requirement 1.82 wide (VPA no footpath)
  - Verge width 4.0m minimum. (VPA non verge)

#### **9.1.8 D.1.16 Verges and Property Access**

- Plans submitted with the VPA do not provide elevation and crossfall details and largely omit the driveway for 30 Bellara Ave which may be adversely affected by the shape angle on the north west corner of the turning area. Combining the survey plan and the engineering plan appears to show that the driveway for 30 Bellara will overlap with the turn area and may create an impassable bump in the driveway. Again the VPA should be refused or at least deferred until proper compliant designs are completed and exhibited concurrently with an amended DA.

#### **9.1.9 D.1.17 Intersections**

- AUS-SPEC#1 does not specify requirements for a cul de sac turning area possibly because dead end streets are considered unsatisfactory as they provide non alternate means of escape in the event of fires, floods and other emergencies. The requirements for Intersections provides some guidance.
- For local streets the required turning path radius is 13m. The VPA uses a 10m radius without allowance for a 0.5m clearance each side from obstructions such as the retaining wall above the kerb.



<https://www.lakemac.com.au/files/assets/public/hptrim/traffic-and-transport-policy-engineering-guidelines-standard-drawings/roadway-standard-drawings-oct-2016.pdf>

## 10 Appendix 2 Application of VPA Policy Criteria

In consideration of a VPA offer, the following will be taken into account:

- a) Whether it is acceptable and reasonable to use a VPA.
  - i) The unsafe and non-compliant road design, lack of stormwater management, pre-empting the LEC decision, incorrect and inadequate information and inconsistencies amongst the VPA and DA and amongst the various plans and reports do not enable a proper assessment of what is proposed in which case it is neither acceptable nor reasonable to enter into a VPA in this case.
- c) Whether the VPA meets the requirements of the Act and the Regulation.
  - i) The proposed VPA requires a change in the application of land from Environmental Living residential to public road and associated change in planning maps etc. The VPA does mention or detail the required changes and does not comply with EPA Act Section 7.4 (3) (b)
  - ii) The agreement does not exclude the operation of EPA Act Section 7.11 but claims that consideration of benefits under (Section 7.4(3)(e)) is not applicable and makes no mention as to whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11. This is a further breach of EPA Act Section 7.4 (3) (b)
  - iii) EPA Act 7.4 (9) *A planning agreement cannot impose an obligation on a planning authority (a) to grant development consent*". The offer of the VPA by the developer is conditional on "Council entering into a section 34 agreement and the granting of development consent by the Land & Environment Court to DA2018/1335". Council entering into a section 34 agreement has the effect of granting development consent which is then "rubber stamped" by the LEC. When read together the VPA and the offer are in breach of EPA Act 7.4 (9) which makes the VPA void through the operation of EPA Act 7.4 (10).
  - iv) Council minutes of 25 FEBRUARY 2020 "Note the exhibition of the draft Voluntary Planning Agreement is not pre-empting the outcome of the Development Application." This appears to conflict with the nature of the offer for the VPA which is conditional on Council entering into a Section 34 agreement and the granting of development consent. A LEC Act Section 34 agreement would certainly pre-emp the outcome of the development application.
  - v) Curiously the Assessment of the Draft Voluntary Planning Agreement submitted by the Executive Manager Strategic & Place Planning to the Council meeting of 25 February 2020 neglected to mention that the offer of the VPA was conditional on a section 34 agreement for development consent and that the offer was not made by the owners of the affected land. The conditional offer was not included in Attachment Book 2 which contained the draft VPA Agreement.
  - vi) It is also curious that the offer for the VPA was made by the DA applicants Eric and Jill Sanderson and as owners of Keenwill Pty. Ltd. not as Keenwill P/L itself. Documents listed on the Council website relating to the VPA do not list offers for the VPA by either owner Keenwill Pty Limited or Robert Corless.
  - vii) As the draft VPA is now on exhibition without an offer being made by the owners of the affected property the offer of the VPA must be rejected by Council.
  - viii) The Department of Planning Agreement Practice Note states that "*planning authorities should ensure that their bargaining power is not compromised or their decision-making freedom is not fettered through a planning agreement*". Accepting an offer for a planning agreement which is conditional on a Section 34 agreement will fetter the decision-making freedom of the Council.

- ix) The Planning Agreement Practice Note further requires that *“Step 3. The developer makes the application to the relevant authority, accompanied by the draft planning agreement and the explanatory note. The application must clearly record the developer’s offer to enter into the planning agreement if the application is approved. Preferably, the draft agreement should be executed by the developer to indicate the developer’s commitment to enter into the agreement if the application is approved.”* There is no offer by the owners/developers exhibited and the draft VPA is not signed.
- d) Whether the VPA meets the current and future demands created by the development for new public infrastructure, amenities and services.
  - i) There is no statement of environmental effects (SEE) provided in relation to the VPA and the SEE for the associated development does not mention the proposed turning area or dedication of land. The Explanatory Note fails to identify the current and future demands created by the development for new public infrastructure, amenities and services or whether the VPA meets those demands.
  - ii) The VPA should be withdrawn until an assessment of whether the VPA meets current and future demands is made. This is particularly important in relation to whether the design is sufficient provide adequate turning area for service vehicle, pedestrian safety, sewer connection, stormwater, landscaping, etc.
- e) Whether the VPA aligns with Council’s corporate strategic documents.
  - i) The VPA Explanatory Note 6 (d) states that the Planning Agreement promotes the elements of the Councils Charter by providing appropriate safe and trafficable public road.
  - ii) The design of the turning area is not appropriate, safe or trafficable as the turning area is too small for relevant service vehicles, has no verge for footpaths and services, has no adequate provision for stormwater, and does not comply with applicable planning permissions.
- f) Whether compensation is required for the loss of, or damage to, a public amenity, service, resource, the natural environment or asset caused by the development through its replacement, substitution, repair or regeneration.
  - i) The VPA and Explanatory Note do not identify any compensation for
    - (1) loss of trees or regeneration of an area of bushland
    - (2) loss of on-street parking
    - (3) loss of access to the area of bushland to the east for firefighting, fuel reduction, weed control, future development and other purposes
    - (4) loss of views and privacy for neighbouring properties
    - (5) likely damage due to inadequate stormwater infrastructure, diversion of groundwater and increased non-permeable area.
- g) Whether the VPA rectifies an existing deficiency in the provision of public facilities and services on the Northern Beaches.
  - i) The VPA attempts to rectify the current unsafe termination of Bellara Ave but the design is not adequate to accommodate relevant vehicles and does not provide access to the bushland to the east.
- h) Whether future recurrent funding related to the proposed public benefit is sustainable.

- i) The Explanatory Note makes no mention of future funding. The particular design of the proposed turning area with insufficient area, no verge or footpath, lack of access to the east and inadequate provision for stormwater is likely to require future funding to rectify the design issues and remediation in the short term.
- ii) In particular the proposed stormwater arrangement with a drain which is not attached to any stormwater infrastructure is likely to require frequent maintenance to remove silt or considerable expenditure to join the drain to the stormwater main some 150m to the west.
- i) Whether the public benefit accrues over time.
  - i) As described above the proposed design provides insufficient turning to provide the benefits claimed.
- j) Whether the VPA is directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development.
  - i) While a proper compliant turning area would meet legitimate planning purposes the particular design does not comply with planning requirements nor meets planning objectives such as safety, access, etc.
- k) Whether or not there is a nexus between the public benefit and the development application or application for instrument change.
  - i) The minor public benefit of a turning area which will not permit turning for normal service vehicles such as fire engines, garbage trucks and delivery trucks is far outweighed by the detriments created by the unsafe nature of the design without sufficient room for safe turning, footpaths etc, exacerbation of stormwater issues etc.
- l) Producing outcomes that meet the general values and expectations of the public and protect the overall public interest.
  - i) The proposed VPA does not comply with generally accepted design standards, safety requirements and the general pattern of development and does not meet the general values and expectations of the public and protect the overall public interest.
- m) Providing for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits.
  - i) The particular design appears to be unnecessarily confined to 31 Bellara Ave and does not include land from 66 Powderworks Rd despite the owner of 66 Powderworks Rd being included as a developer in the agreement. There would appear to be no impediment to extending the turning area
- n) Protecting the environment and community against planning harm.
  - i) The unsafe truncated end of Bellara Ave and bastard block have been an example of planning harm for the last 50 odd years. The proposed VPA does little to alleviate that harm and creates further planning harm with unsafe turning area, no footpath, aggravating stormwater issues, removal of trees without requiring regeneration, creating an eyesore in the form of a retaining wall and residence that will dominate the landscape and blocking access to the east for firefighting, fuel reduction, weed control, and further development.
  - ii) There is a very clear justification for not proceeding with the proposed VPA.
- o) Whether there any relevant circumstances that may operate to preclude Council from entering into the proposed VPA.
  - i) The conditional nature of the offer requiring Council to enter into a LEC Act Section 34 development consent is likely to breach the EPA act and render the

VPA void or at least expose the council to significant legal costs to defend the VPA against action by affected residents and objectors.

- ii) If Council is considering a LEC Sec 34 agreement they should advise resident and put the amended DA and VPA on exhibition so that they can be properly considered and effective consultations undertaken.

#### End notes

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<sup>i</sup> <https://www.9news.com.au/national/truck-driver-charged-dangerous-driving-dee-why-crash/6c3f4fd1-fbf2-406c-a933-863e751b45be>

<sup>ii</sup> [https://www.safework.nsw.gov.au/data/assets/pdf\\_file/0009/52875/Collection-of-domestic-waste-Code-of-practice.pdf](https://www.safework.nsw.gov.au/data/assets/pdf_file/0009/52875/Collection-of-domestic-waste-Code-of-practice.pdf)

<sup>iii</sup> [https://www.fire.nsw.gov.au/gallery/files/pdf/guidelines/vehicle\\_access.pdf](https://www.fire.nsw.gov.au/gallery/files/pdf/guidelines/vehicle_access.pdf)

<sup>iv</sup> [https://www.rfs.nsw.gov.au/\\_data/assets/pdf\\_file/0005/130667/Planning-for-Bush-Fire-Protection-2019.pdf](https://www.rfs.nsw.gov.au/_data/assets/pdf_file/0005/130667/Planning-for-Bush-Fire-Protection-2019.pdf)

<sup>v</sup> <https://austroads.com.au/publications/road-design/agrd03/cross-section/service-roads-outer-separators-and-footpaths/urban-border>

<sup>vi</sup> <https://austroads.com.au/publications/road-design/ap-g34/using-the-templates/selecting-a-design-vehicle/guidance-for-users>