

# **Planning Agreement**

between

**Keenwill Pty Limited**

**ACN 010 968 706**

**and**

**Robert Corless**

and

**Northern Beaches Council**

**ABN 57 284 295 198**

**(Council)**

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This Planning Agreement is made on

XX/XX/2020.

## **Parties**

### **Keenwill Pty Limited**

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

### **Northern Beaches Council**

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

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## **Background**

- A The Developers own the Land which is located within the Council's Local Government Area.
- B On 13 August 2018 the Developer caused a development application, DA2018/1335, to be made to Council for Development Consent to carry out the Development on the Land, being a boundary adjustment between two adjoining lots 9/242284 and 36/6462 so as to create a lot capable of containing a dwelling the subject of a future and separate development application (the DA).
- C During a conciliation conference on 29 August 2019 under s34(3)(b) of the *Land and Environment Court Act*, 1979 the Developer offered to enter into a Voluntary Planning Agreement to construct a three-point turn bay on part of Lot 9 in DP 242284 being land adjoining Bellara Road and dedicate this land to Council equating to 101.4sqm and as shown on the draft Plan of Subdivision prepared by CMS Surveyors.
- D The dedication of the Land allows for a three-point turn bay for public use.

## **Operative provisions**

### **1. Planning agreement under the Act**

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of division 7.1 of Part 7 of the Act.

### **2. Application of the planning agreement**

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

### **3. Operation of this planning agreement**

- 3.1 Subject to clauses 3.2, 3.3 and 3.5, the Parties agree that the terms of this agreement will take effect and bind the parties from the Commencement Date.
- 3.2 The Agreement, executed by both Parties must be provided to Council prior to the issue of the subdivision certificate. The Developer's obligations within the VPA will be provided prior to the issue of the subdivision certificate.
- 3.3 Council may rescind the VPA if the developer's obligations have not been provided within 3 years from the date of execution.

### **4. Definitions and interpretation**

#### **4.1 Definitions**

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

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

**"Commencement Date"** means the date this Agreement is signed by both parties.

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

**"Dedication"** means the dedication of the 101.4sqm of land in Bellara Avenue to Council for the purposes of allowing for a three-point turn bay for public use.

**"Development"** means DA2018/1335.

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

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

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

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

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

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

North Narrabeen.

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

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

## 4.2 General

In this Agreement unless the contrary intention appears:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;
- (c) if the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day;
- (d) dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (e) any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (f) any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (k) references to the word 'include' or 'including' are to be construed without limitation;

- (l) a reference to this Agreement includes the agreement recorded in this Agreement;
- (m) a reference to a party includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns;
- (n) any schedules and attachments form part of this Agreement.

**5. Development Contribution to be made under this Agreement**

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

**6. Application of the Development Contribution**

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

Item of Work	Development Stage	Final Inspection Stage	Relevant Drawing Numbers
1	Upon the registration of the Plan of Subdivision		Draft plan of subdivision prepared by CMS Surveyors Pty Limited – Attached to this Agreement.
2	Prior to the issue of the Subdivision Certificate		Engineering drawings prepared by Taylor Consulting, attached to this Agreement.

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

The application of sections 7.11 and 7.12 of the Act are not excluded for the purposes of the grant of development consent to DA2018/1335.

**8. Registration of this Agreement**

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

**9. Review of Agreement**

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

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

## **10. Dispute resolution**

### **10.1 Notice of Dispute**

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

### **10.2 Response to Notice**

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

### **10.3 Negotiation**

The nominated representative must:

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

### **10.4 Further Notice if Not Settled**

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Dispute Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

### **10.5 Mediation**

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

- (1) the parties must agree to the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (2) the Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (3) the Mediator appointed pursuant to this clause 10.5 must:
  - (a) have reasonable qualifications and practical experience in the area of the dispute; and
  - (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;

- (4) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (5) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (6) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (7) in relation to costs and expenses:
  - (a) each party will bear their own professional and expert costs incurred in connection with the mediation; and
  - (b) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

#### **10.6 Expert Determination**

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

- (1) the dispute must be determined by an independent expert in the relevant field:
  - (a) agreed upon and appointed jointly by Council and the Developer; or
  - (b) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
- (2) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- (3) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (4) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (5) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (6) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding



appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

**10.7 Litigation**

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

**10.8 Continue to perform obligations**

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

**11. Security and enforcement**

11.1 Nothing in this Agreement prevents Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.

11.2 Until such time as the Development Contribution noted at Clause 5 above has been paid in full the Developer must:

- a) notify Council in writing of the name and contact details of any Certifying Authority to which it has applied for a Construction Certificate at the same time that such application is made;
- b) at the time it lodges any application for a construction certificate notify the Certifying Authority in writing of the existence and terms of this Agreement;

11.3 The Developer acknowledges and agrees that Council has a caveatable interest in the Land from the date of this Agreement and shall be entitled to lodge and maintain a caveat on the title to the Land notifying Council's interest created by this Agreement.

11.4 The Developer will upon execution of this Agreement register a caveat over the Land that will exclude all dealing in the land with the exception of its consolidation and subdivision in accordance with the plans attached to this Agreement. Upon registration of the subdivision the Developer shall remove the caveat.

11.5 Council will provide such written consents and registrable documents to the Developer to enable the Land to be mortgaged provided that the mortgagee acknowledges Council's interest in the Land under this Agreement and agrees to the registration of this Agreement in accordance with its terms.

11.6 Upon registration of the Agreement on the title to the Land in accordance with clause 8 or payment/provision of the Development Contribution to Council or surrender of the Development Consent for the Development, the Developer will be entitled to withdrawal of the caveat.

11.7 In addition to the above, the Developer must provide the Security Arrangements as set out in Schedule 2.

## **12. Notices**

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

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

### **Council**

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

Fax: (02) 9971 4522

Email: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Attention: Chief Executive Officer

### **Developer**

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

Email: [sandobda@bigpond.com](mailto:sandobda@bigpond.com)

Attention: Eric Sanderson

And

Address: 66 Powderworks Road, Narrabeen NSW

Email: [sandobda@bigpond.com](mailto:sandobda@bigpond.com)

Attention: Robert Corless

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

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

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax

machine a report of an error free transmission to the correct fax number.

- 12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

**13. Approvals and Consent**

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

**14. Assignment and dealings**

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

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

**15. Costs**

The preparation of the VPA is to be at no cost to council.

**16. Entire agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

**17. Further Acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

**18. Governing Law and Jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from

them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

**19. Joint and individual liability and benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

**20. No fetter**

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**21. Representations and warranties**

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

**22. Severability**

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

**23. Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

**24. Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **25. GST**

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

## **26. Explanatory Note**

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

## Schedule 1 – Section 7.4 Requirements

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

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or development application - (Section 7.4(1))</b></p> <p>The Developer has:</p> <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) No;</li> <li>(b) Yes, for the Development;</li> <li>(c) Not applicable.</li> </ul>
<p><b>Description of land to which this Agreement applies - (Section 7.4(3)(a))</b></p>	<p>Lot 9 in DP242284, known as 31 Bellara Avenue, North Narrabeen and Lot 36 Sec 1 in DP 6462, known as 66 Powderworks Road, North Narrabeen.</p>
<p><b>Description of change to the environmental planning instrument to which this Agreement applies - (Section 7.4(3)(b)(i))</b></p>	<p>Not applicable.</p>
<p><b>Description of the development to which this Agreement applies - (Section 7.4(3)(b)(ii))</b></p>	<p>Construction of a three-point turn bay and dedication of this land to Council, being 101.4sqm of land in Bellara Avenue to allow the three-point turn bay for public use.</p>
<p><b>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))</b></p>	<p>The construction of the three-point turn bay is to occur prior to the release of the Subdivision Certificate. The dedication of land is to occur through the registration of the Plan of Subdivision.</p>
<p><b>Applicability of section 7.11 of the Act - (Section 7.4(3)(d))</b></p>	<p>The application of section 7.11 of the Act to the Development is not excluded.</p>

<b>Applicability of section 7.12 of the Act -</b> (Section 7.4(3)(d))	The application of section 7.12 of the Act to the Development is not excluded.
<b>Applicability of section 7.24 of the Act -</b> (Section 7.4(3)(d))	The application of section 7.24 of the Act to the Development is not excluded.
<b>Consideration of benefits if under this Agreement section 7.11 applies -</b> (Section 7.4(3)(e))	Not applicable.
<b>Mechanism for Dispute resolution -</b> (Section 7.4(3)(f))	See clause 10
<b>Enforcement of this Agreement –</b> (Section 7.4(3)(g))	See clause 11
<b>No obligation to grant consent or exercise functions –</b> (Section 7.4(9))	See clause 13

## **Schedule 2 – Security Arrangements**

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- 1.1 Upon execution of this Agreement the Developer must provide to the Council:
  - (a) a Bank Guarantee in the sum of \$36,540, such Bank Guarantee not to have an expiry date; and
  - (b) 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 the Transfer pending registration of the subdivision creating the Dedication Area.
- 1.3 Deleted.
- 1.4 In the event this Agreement is rescinded in accordance with clause 3.5 or otherwise, the Council must return the Bank Guarantee and the Transfer to the Developer in accordance with clause 3.2.

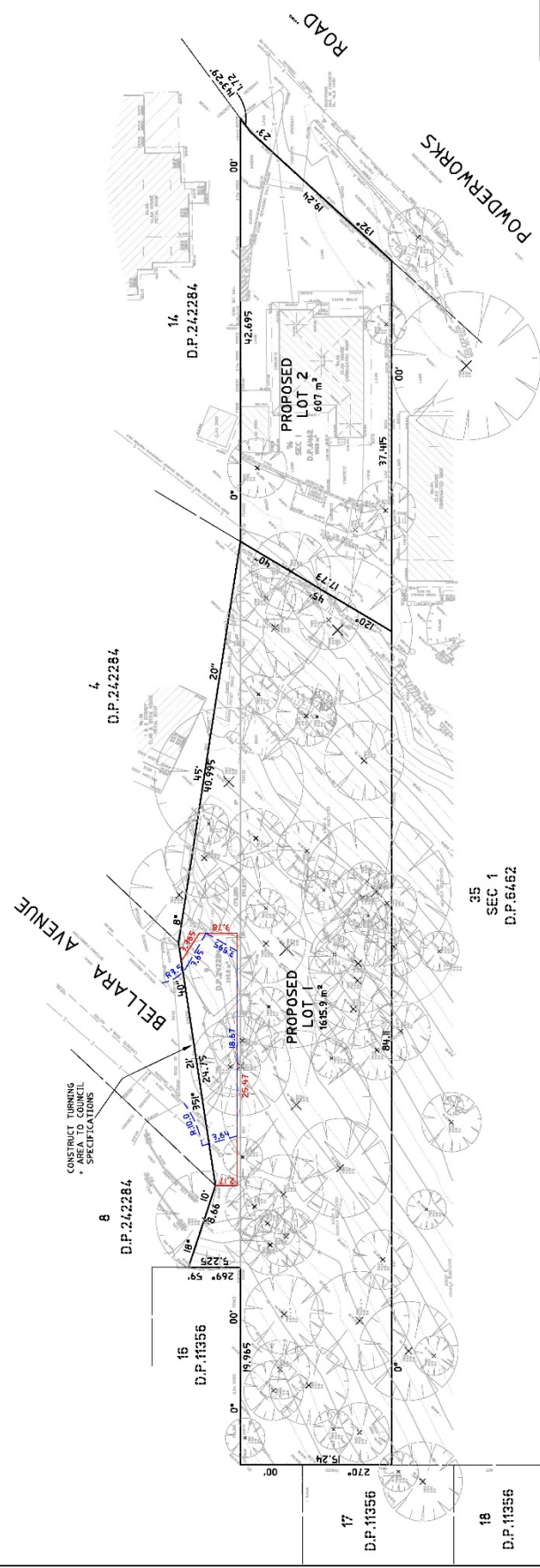


### **Schedule 3 – Plans identifying contributions**

Plans showing location and detail of relevant contributions

A1

TOTAL PROPOSED ROAD RESERVE AREA 101.4m<sup>2</sup>  
TOTAL PROPOSED KERB AREA 84.3m<sup>2</sup>

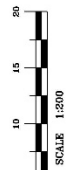


NOTE:  
EXISTING AREA TO BE  
CONSTRUCTED WITH  
APPROPRIATE SIGNAGE TO  
MAINTAIN CLEAR ACCESS.

SUBJECT TO COUNCIL AND REGULATORY APPROVALS.

TITLE INDICATES THAT LOT 9 IN D.P.242284 IS SUBJECT TO:  
- RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S).  
- FINANCY CAVANAGH (NOT INVESTIGATED)

TITLE INDICATES THAT LOT 10 IN D.P.242284 IS SUBJECT TO:  
- RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S).  
- FINANCY CAVANAGH (NOT INVESTIGATED)



SURVEYED		DRAWN		CHECKED		APPROVED	
SURVEY	INSTRUMENT	DATE	SCALE	DATE	SCALE	DATE	SCALE
1/1/2018	1/1/2018	1/1/2018	1/1/2018	1/1/2018	1/1/2018	1/1/2018	1/1/2018

SURVEYED		DRAWN		CHECKED		APPROVED	
SURVEY	INSTRUMENT	DATE	SCALE	DATE	SCALE	DATE	SCALE
1/1/2018	1/1/2018	1/1/2018	1/1/2018	1/1/2018	1/1/2018	1/1/2018	1/1/2018

SURVEY PLAN SHOWING PROPOSED SUBDIVISION OVER LOTS 96 SEC.1 IN D.P.6462 AND LOTS 1 AND 2 IN D.P.242284 FOR 31 BELLARA AVENUE, NORTH MARRABEE NSW 2101		CLIENT: KEENWILL PTY LTD TRADING AS "RAISE THE ROOF" PO BOX1147, MONA VALE NSW 1860		VERTICAL DATUM: DATUM, AUSTRALIAN HEIGHT B.M. ADAPTED, 1985 R.L. 12.456 (ORDER 12) SOURCE: S.C.M.S. (15/03/04)		HORIZONTAL DATUM: 19/12/19 20/12/19 21/12/19 22/12/19 23/12/19 24/12/19 25/12/19 26/12/19 27/12/19 28/12/19 29/12/19 30/12/19 31/12/19 1/1/20 2/1/20 3/1/20 4/1/20 5/1/20 6/1/20 7/1/20 8/1/20 9/1/20 10/1/20 11/1/20 12/1/20 13/1/20 14/1/20 15/1/20 16/1/20 17/1/20 18/1/20 19/1/20 20/1/20 21/1/20 22/1/20 23/1/20 24/1/20 25/1/20 26/1/20 27/1/20 28/1/20 29/1/20 30/1/20 31/1/20 1/2/20 2/2/20 3/2/20 4/2/20 5/2/20 6/2/20 7/2/20 8/2/20 9/2/20 10/2/20 11/2/20 12/2/20 13/2/20 14/2/20 15/2/20 16/2/20 17/2/20 18/2/20 19/2/20 20/2/20 21/2/20 22/2/20 23/2/20 24/2/20 25/2/20 26/2/20 27/2/20 28/2/20 29/2/20 30/2/20 31/2/20 1/3/20 2/3/20 3/3/20 4/3/20 5/3/20 6/3/20 7/3/20 8/3/20 9/3/20 10/3/20 11/3/20 12/3/20 13/3/20 14/3/20 15/3/20 16/3/20 17/3/20 18/3/20 19/3/20 20/3/20 21/3/20 22/3/20 23/3/20 24/3/20 25/3/20 26/3/20 27/3/20 28/3/20 29/3/20 30/3/20 31/3/20 1/4/20 2/4/20 3/4/20 4/4/20 5/4/20 6/4/20 7/4/20 8/4/20 9/4/20 10/4/20 11/4/20 12/4/20 13/4/20 14/4/20 15/4/20 16/4/20 17/4/20 18/4/20 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## **EXPLANATORY NOTE**

### **Planning Agreement**

between

**Keenwill Pty Limited**  
**ACN 010 968 706**  
**And**  
**Robert Corless**

and

**Northern Beaches Council**  
**ABN 57 284 295 198**  
**(Council)**

## Exhibit A - Explanatory Note

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

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

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

(all known as the “**Development**”).

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

#### 1. Parties to the Planning Agreement

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

#### 2. Description of the Subject Land

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

#### 3. Description of Proposed Change to Environmental Planning Instrument

Not applicable

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

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

#### 5. Timing of delivery of the public community benefit

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

## **6. Assessment of the Merits of this Planning Agreement**

### **(a) The Planning Purposes Served by this Planning Agreement**

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

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

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

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

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

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

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

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

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

### **(c) How this Planning Agreement Promotes the Public Interest**

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

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

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

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; and
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development

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

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

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

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

Not applicable

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

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

## Execution Page

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Executed as an Agreement.

The seal of Northern Beaches Council     )  
was affixed by authority of the         )  
Chief Executive Officer                     )

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Name of Witness

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

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Director (print)

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

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Director (print)