

BETWEEN
NORTHERN BEACHES COUNCIL
AND
METROPOLITAN LOCAL ABORIGINAL LAND COUNCIL

VOLUNTARY PLANNING AGREEMENT

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THIS AGREEMENT is made the _____ day of _____ 2015

BETWEEN **NORTHERN BEACH COUNCIL** (ABN 31 565 068
406) of Civic Drive, 725 Pittwater Road, Dee Why
NSW 2099 (**Council**)

AND **METROPOLITAN LOCAL ABORIGINAL LAND
COUNCIL** (ABN 80 842 843 816) of 36 – 38 George
Street, Redfern NSW 2016 (**Developer**)

BACKGROUND

- A. On, ## the Developer made an application to Council for the Instrument Change for the purpose of making a Development Application to Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities in the event Development Consent was granted.
- C. The Instrument Change was published in the New South Wales Government Gazette No. ## on ## and took effect on ##.
- D. On ##, the Developer made a Development Application to Council for Development Consent to carry out the Development on the Land.

OPERATIVE PROVISIONS

1. Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of division 6 of Part 4 of the Act.

2. Application of this Agreement

This Agreement applies to the Land and the Development.

3. Operation of this Agreement

This Agreement operates as a Planning Agreement on the granting of Development Consent for the Development. Nothing in this Agreement requires the Developer to undertake any of the Development Contributions until this Agreement operates as a Planning Agreement.

4. Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979 (NSW).

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

Development means the provision of about 18 hectares of the Land for residential and public recreation areas.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or Regulation relating to the imposition or administration of the GST.

Instrument Change means rezoning the Land by way of an amendment to the Warringah Local Environmental Plan 2011.

Land means lot 1 in deposited plan 1139826

Party means a party to this agreement, including their successors and assigns.

Public Facilities means the facilities referred to in Item 1 of the table in clause 5 of this Agreement.

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

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- A. Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- B. A reference in this Agreement to 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. A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- E. A reference in this Agreement to 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. A reference in this Agreement to 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 to this Agreement 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 Contributions to be made under this Agreement

SCHEDULE 1 – REFERENCE SCHEDULE

Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made.

Item	Name	Description
1	Public Benefit - Traffic treatment	Design and construct new traffic treatment at Forest Way/ Ralston Ave Belrose. <i>Estimated value of \$150,000.</i>
2	Public Benefit - New internal roads	Design and construct new public roads, internal to site (approx. 3,700m). <i>Estimated value of \$3,100,000.</i>
3	Public Benefit - Upgrade external road	Upgrade existing external Council road (Ralston Ave - external to site - approx. 270m) <i>Estimated Value of \$1,000,000.</i>
4	Public Benefit - New external road	Design and construct new external Council road (Wyatt Ave - external to site - approx. 680m) <i>Estimated value of \$2,541,000.</i>

5	Public Benefit - New external footpaths	Design and construct new Council footpaths (Ralston Ave & Wyatt Ave – external to site - approx. 800 lineal metres) and existing Road corridor (approx. 950 lineal metres) and new formed Ralston and Wyatt Ave – external to site. <i>Estimated value of \$175,000.</i>
6	Public Benefit - New internal footpaths	Design and construct new internal 1m wide footpaths (approx. 3,700 m). <i>Estimated value of \$166,500.</i>
7	Public Benefit - Upgrade/ new walking trails	Upgrade walking trails/paths to National Park (approx. 1.5 km). <i>Estimated value of \$162,500.</i>
8	Public Benefit - Public access & signage	Public access to New Warringah Aboriginal Nature Reserve (approx. 119 hectares), with direct access to the Garigal National Park – including provision of cultural interpretative signage – (also covers insurance & signage costs). <i>Estimated value of \$50,000.</i>
9	Public Benefit - New public park (land)	Dedication of land for 3,000 m2 for public park and valley view lookout. <i>Estimated value of \$300,000 in accordance with Council valuation 27 July 2016.</i>
10	Public Benefit - New public park (construction & maintenance)	Construction of new 3,000 m2 public park, and maintenance for 2 years. <i>Estimated value of \$340,000</i>
11	Public Benefit - New public outdoor gym	Public outdoor gymnasium equipment supply and installation of 15 items. <i>Estimated value of \$37,500</i>
12	Public Benefit - New public Nature Run	Design and construct new Belrose Nature Run (3km running track) <i>Estimated value of \$45,000</i>
13	Public Benefit - Water management facilities	Design and construct water management facilities, including ongoing maintenance <i>Estimated value of \$800,000</i>
14	Public Benefit - Bus shelters	Provision of four new bus shelters. <i>Estimated value of \$40,000.</i>
15	Public Benefit - Contribution to community facility	\$100,000 Contribution to Council for Local Community facility <i>Nominated Value of \$100,000</i>
16	Public Benefit - Waratah Park Ecology Officer	Waratah Park - Engagement of MLALC Ecological and Cultural Heritage Officer for 5 years <i>Estimated value of \$425,000</i>

17	Public Benefit - Waratah Park Upgrades	MLALC Waratah Park – facilities upgrades <i>Estimated value of \$1,000,000</i>
18	Public Benefit - Aboriginal Services	MLALC aboriginal services (housing, employment, training, health, youth) <i>Estimated value of \$5,000,000</i>
19	Public Benefit - Aboriginal Services	Establishment of Aboriginal Youth Foundation <i>Estimated value of \$500,000</i>
20	Public Benefit - APZ management	Bush Fire APZ Management contract <i>Estimated value of \$350,000</i>
21	Public Benefit - Ecology	Implementation of a Bio-Certification agreement across the MLALC Ralston Ave, Belrose Site area for the ongoing preservation on the Offset land area (approximately 119 ha) in accordance with the Ralston Avenue, Belrose – Biodiversity Assessment Report & Biodiversity Certification Strategy document dated 14 January 2016.

6. Application of the Development Contributions

SCHEDULE 2 – DEVELOPER'S WORK

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 Design and construct new traffic treatment at Forest Way/ Ralston Ave	As a condition of Development Consent	Not applicable	
2 Design and construct new public roads, internal to site (approx. x 3700m)	Following DA	Prior to issue Subdivision Certificate	
3 Upgrade existing external Council road (Ralston Ave – external to site) (approx.. x 270m)	Following DA	Prior to issue Subdivision Certificate	
4 Design and construct new external Council road (Wyatt Ave –	Following DA	Prior to issue Subdivision Certificate	

external to site) (approx.. x 680 m)			
5 Design and construct new Council footpaths (Ralston Ave & Wyatt Ave – external to site) (approx. 800 lin. Metres) existing Road corridor & (approx.. 950 lin Metres) new formed Ralston and Wyatt Ave – external to site	Following DA	Prior to issue Subdivision Certificate	
6 Design and construct new internal 1m wide footpaths (approx. x 3700 m)	Following DA	Prior to issue Subdivision Certificate	
7 Upgrade walking trails/paths to National Park (approx.. 1.5 km)	Following DA	Prior to issue of OC	
8 Public access to Warringah Aboriginal Nature Reserve (119 hectares), with direct access to the Garigal National Park– including provision of cultural interpretative signage – covers insurance & works cost.	Following DA	Prior to issue of OC	
9 Dedication of land for 3,000 m2 for public park and valley view lookout	Following DA	Prior to issue of OC	
10 Construction of new 3,000 m2 public park, and maintenance for 2 years	Following DA	Prior to issue of OC	
11 Public outdoor gymnasium – based on 15 items	Following DA	Prior to issue of OC	
12 Design and construct new Belrose Nature Run (3km running track)	Following DA	Prior to issue of OC	

13 Design and construct water management facilities, including ongoing maintenance	Following DA	Prior to issue Subdivision Certificate	
14 Provision of four bus shelters	Following DA	Prior to issue of OC	
15 Contribution to community facility	Following DA	Prior to issue of OC	
16 Waratah Park - engagement of Ecological and Cultural Heritage Officer for 5 years	Following DA	On and from issue of Subdivision Certificate	
17 Waratah Park – facilities upgrades	Following DA	On and from issue of Subdivision Certificate	
18 MLALC aboriginal services (housing, employment, training, health)	Following DA	From issue of OC	
19 Establishment of Aboriginal Youth Foundation	Prior to Subdivision Certificate	Prior to issue of OC	
20 Bush Fire APZ Management contract in place	Prior to Subdivision Certificate	Ongoing management by Community Title arrangements	
21 Bio Certification agreement for MLALC Ralston Ave Belrose Land.	Following DA	Agreement place prior to issue of the first Occupation certificate	

7. Application of s94 and s94A of the Act to the development

SCHEDULE 3 – PUBLIC BENEFITS

Public Benefits Offer and section 94 Contributions

Table 1 identifies the section 94 Contributions payable in respect of the proposal calculated in accordance with Northern Beaches Council section 94A Development Contributions Plan.

Northern Beaches Council s94A Development Contribution Plan			
Contribution based on a total development cost of \$[insert Actual - Estimate \$140,000] Estimated Value of works @ \$14,000,000 , this will be confirmed at DA stage			
Contributions	Total development cost (as defined in the s94A Development Contribution Plan	Levy Ra	Payable
Section 94A Levy	Estimate of \$14,000,000 , to be confirmed at DA stage.	1%	Prior to issue of Subdivision Certificate

8. Registration of this Agreement

- (a) The Developer and Council agree this deed will be registered on title of the Land pursuant to 93H of the Act. The Developer will at its own expense do all things necessary to procure registration of this deed at Land and Property Information as soon as reasonably practicable after this deed has been entered into.
- (b) Council must at the Developer's expense do all things necessary to provide a release and discharge of this deed and remove the registration of this deed against the relevant folio or folios of the Land as soon as reasonably practical after the Developer satisfies all of its obligations under this deed in respect of the Land.

9. Review of this Agreement

Not used

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:

- a) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative;
- b) 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 behavior 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. 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 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;
- (c) procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue a Construction Certificate until Council provides written confirmation that the Development Contribution has been paid.

11.3 The Developer acknowledges and agrees that 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 caveat in registrable form with the consent to caveat signed by the Developer notifying Council's interest created by this Agreement together with a cheque in favour of Land & Property Information, NSW for the registration fee on 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 of the Development Contribution to Council or surrender of the Development Consent, the Developer will be entitled to withdrawal of the caveat.

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

Attention: General Manager

Address: 725 Pittwater Road, Dee Why, New South Wales, 2099

Fax Number: 02 9971 4522

Email: council@northernbeaches.nsw.gov.au

Developer

Attention: Nathan Moran

Address: 36-38 George Street, Redfern NSW 2016

Fax Number: (02) 8394 9733

Email: nmoran@metrolalc.org.au

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:

- 14.1 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;
- 14.2 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;
- 14.3 in the event of a proposed charge, mortgage, encumbrance or other dealing with the Land, provides to Council a bank guarantee unlimited in time from a bank and on terms acceptable to Council to secure the payment of the Development Contribution.

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

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 breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. 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).

EXECUTED AS AN AGREEMENT

The seal of **NORTHERN BEACHES COUNCIL** (ABN 31 565 068 406) was affixed by authority of the Mayor and General Manager

.....
Mayor

.....
General Manager

.....
Signature of Witness

.....
Name of Witness

EXECUTED by **METROPOLITAN LOCAL ABORIGINAL LAND COUNCIL** (ABN 80 842 843 816) pursuant to Section 245 of the Aboriginal Land Rights Act 1983 by its chairman

.....
Chairman

.....
Full name of Chairman (BLOCK LETTERS)

.....
Witness

.....
Full Name of Witness (BLOCK LETTERS)

Note: this explanatory note providing details on this Agreement may not be used to assist in construing this Agreement

Attachment A

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Proposed draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

1. Parties

Northern Beaches Council (Council)

Metropolitan Local Aboriginal Land Council (Developer)

2. Description of subject land

Lot 1 in deposited plan 1139826 being the western end of Ralston Avenue Belrose.

3. Description of proposed change to environmental planning instrument/development application

Amend Warringah Local Environmental Plan 2011 so that approximately 17.27 hectares of the site is zoned R2 Low Density Residential, 0.3 hectares is zoned RE1 Public Recreation and the remainder of the site is zoned E3 Environmental Management of approximately 119 hectares.

4. Summary of objectives, nature and effect of the proposed draft Planning Agreement

The Planning Agreement provides for the following contributions by the Developer:

1. Obtaining necessary approval and construction of a seagull treatment to Ralston Avenue to improve traffic movement to and from the proposed development and existing street areas.
2. Design and implementation of a desired road layout to deliver internal roads in accordance with Council's requirements and so as to comply with bushfire management requirements and dedication back to council. (approx. x 3700m)

3. Upgrade existing external Council road (Ralston Ave - external to site) (approx. x 270m)
4. Design and construction of desired road layout to deliver external roads (part Wyatt approx.680m) in accordance with the Development application approval and Councils standards then dedication back to Council.
5. Design and construct new Council footpaths (Ralston Ave & Wyatt Ave – external to site) (approx. 800 lineal. metres) existing Road corridor & (approx. 950 lineal metres) new formed Ralston and Wyatt Ave – external to site and dedication back to Council.
6. Design and construct new Council footpaths within the internal road corridors (approx. x 3700m) and dedication back to Council.
7. Upgrade walking trails/ paths to connect to National Parks areas (approx. 1500m), these trail will also cross through and be managed with the asset protections zones.
- 8.
9. Public access to Warringah Aboriginal Nature Reserve (119 hectares), with direct access to the Garigal National Park– including provision of cultural interpretative signage - covers insurance & works cost.
10. The dedication of Land area to council for proposed 3000m² Public Park.
11. The embellishment of the proposed park including establishment & maintenance for the park, to provide park land for community use in accordance with Warringah Council's Recreation Strategy 2009 so as to promote recreational non-competitive activities for fun, enjoyment, fitness and health. The Park is to be dedicated to Council.
12. Public outdoor gymnasium – based on supply and install of 15 pieces of equipment
13. Design and construction of and 3 km new Belrose nature running track. This is to be located all within the Asset Protection Zone.
14. The design and implementation of water management facilities including maintenance so as to manage and improve the storm water leaving the proposed development area into existing water drainage corridors. Located within the Asset Protection Zone and be managed under the Community title arrangement.
15. Provision of four bus shelters on the Wyatt and Ralston Ave bus route.
16. Provision of \$100,000 contribution to Belrose Community facilities.
17. Waratah Park - Engagement of Ecological and Cultural Heritage Officer for 5 years (refer to section 7)

18. Waratah Park facilities upgrades in accordance with MLALC requirements.
 19. MLALC aboriginal services (housing, employment, training, health)
 20. Establishment of Aboriginal Youth Foundation
 21. The design and implementation of a Bush fire asset protection zone (APZ) to the perimeter of the development area, including the ongoing management in accordance with the Asset Protection Zone Fuel Management Plan and to be managed under the community title arrangements.
 22. Implementation of a Bio-Certification agreement across the MLALC Ralston Ave, Belrose Site area for the ongoing preservation on the Offset land area (approximately 119 ha) in accordance with the Ralston Avenue, Belrose – Biodiversity Assessment Report & Biodiversity Certification Strategy document dated 14 January 2016.
5. Timing of delivery of the public community benefit
1. Seagull treatment:
 - Design and approval of design – as a condition of Development Consent.
 - Construction prior to Subdivision Certificate.
 2. Design of desired internal road layout – prior to Construction Certificate.
Implementation of desired internal road layout – prior to Subdivision Certificate.
 3. Design and construction of desired external Council road to Ralston Ave
 - Designed prior to Construction Certificate.
 - Completed prior to Subdivision Certificate.
 4. Design and construction of desired external Council road to Wyatt Ave
 - Designed prior to Construction Certificate.
 - Completed prior to Subdivision Certificate.
 5. Design and construct new Council footpaths (Ralston Ave & Wyatt Ave – external to site) (approx. 800 lin. Metres) existing Road corridor & (approx. 950 lin. Metres) new formed Ralston and Wyatt Ave – external to site
Embellishment of park – completed before any Subdivision Certificate.

6. Design and construct new internal 1m wide footpaths (approx. x 3,700m) - prior to subdivision certificate.
7. Upgrade walking trails/paths to National Park (approx. 1,500m) – prior to issue of Occupation Certificate.
8. Public access to Warringah Aboriginal Nature Reserve (119 hectares), with direct access to the Garigal National Park– including provision of cultural interpretative signage - covers insurance & works cost. – prior to issue of Occupation Certificate.
9. Dedication of 3,000m² Public Park – prior to issue of Occupation Certificate.
10. Construction of new 3,000m² Public Park - prior to issue of first Occupation certificate
11. Public outdoor gymnasium – based on supply and install of 15 pieces of equipment completed - prior to issue of first Occupation certificate
12. Design and construct new Belrose Nature Run (3km running track) - prior to issue of first Occupation certificate
13. Design and construct water management facilities - prior to issue of subdivision certificate. (including ongoing maintenance by MLALC)
14. Provision of four bus shelters - prior to issue of first Occupation certificate.
15. Provision of Contribution to community facility - prior to issue of first Occupation certificate.
16. Waratah Park - Engagement of Ecological and Cultural Heritage Officer for 5 years – on and from issue of subdivision certificate (refer to section 7)
17. Waratah Park facilities upgrades – on and from issue of subdivision certificate (refer to section 7)
18. MLALC aboriginal services (housing, employment, training, health) – prior to OC (refer to section 7)
19. Establishment of Aboriginal Youth Foundation – prior to OC (refer to section 7)
20. Design of Bush fire Asset protection zones – prior to the subdivision certificate.
21. Implementation of a Bio-Certification agreement across the MLALC Ralston Ave, Belrose Site area for the ongoing preservation on the Offset land area (approximately 119 ha) in accordance with the Ralston Avenue, Belrose – Biodiversity Assessment Report & Biodiversity Certification Strategy document dated 14 January 2016. – Agreement to be in place prior to the issue of the first occupation certificate.

Note: Information is to be provided on the timing of delivery of the proposed benefits in relation to the issuing of construction, occupation or Subdivision Certificates.

6. The assessment of the merits of the proposed draft Planning Agreement will be assessed against:
- (a) The planning purposes served by the proposed draft Planning Agreement
 - (b) How the proposed draft Planning Agreement promotes the objects of the Environmental Planning and Assessment Act 1979
 - (c) How the proposed draft Planning Agreement promotes the public interest
 - (d) Development corporations – how the proposed draft Planning Agreement promotes its statutory responsibilities
 - (e) Public Authority – how the proposed draft Planning Agreement promotes the objects (if any) of the Act under which it is constituted
 - (f) How the proposed draft Planning Agreement Promotes the elements of Council’s charter under Section 8 of the Local Government Act 1993
 - (g) Whether the proposed draft Planning Agreement conforms with Council’s capital works program
 - (h) The impact of the proposed draft Planning Agreement on the public or any section of the public

7. Other matters

Metropolitan Aboriginal land council are the developer of this land and will maintain the ownership of the ecological zoned land surrounding the development area. As a direct result of proceeds obtained from this development MLALC will directly fund a number of other Key initiatives within the LGA and the greater Sydney Area, these include;-

Item 16 - Waratah Park (Skippy Park) - Funding for the Engagement of Ecological and Cultural Heritage Officer for a period of 5 years, this is to enable MLALC to effectively manage the establishment of the Park and also provide facilities to assist / support other local land care and native animal care groups.

Item 17 - MLALC will directly fund improvement to Waratah Park, including the preservation of existing iconic buildings and also upgrade facilities to provide for effective use of the park by local community groups and the general public.

Item 18 - MLALC will directly fund aboriginal services including housing, employment, training, health within the Greater Sydney area.

Item 19 - MLALC will establishment of Aboriginal Youth Foundation to assist in the development of youth initiatives within the Greater Sydney area.

Signed and Dated by All Parties