

NORTH SYDNEY COUNCIL  
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# North Sydney Council

## Legal Document

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Attached

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# **Voluntary Planning Agreement**

**Roger Simpson and Sally Irwin (Owner)**

**North Sydney Council (Council)**

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## Details

Date *21 June* 2013

## Parties

Name	<b>Roger Simpson and Sally Irwin</b>	
Description	<b>(Owner)</b>	
Notice details	Address	Ground Floor, 100 William St, Woolloomooloo, NSW 2011
	Attention	Mark Sydney
Name	<b>North Sydney Council</b>	
Description	<b>(Council)</b>	
Notice details	Address	200 Miller Street, North Sydney, New South Wales
	Attention	The General Manager

## Background

- A. The Owner is the registered proprietor of Lot 10 DP 748772 (known as 2 Vale Street, Cammeray, New South Wales) (**Land**).
- B. The Land is situated in the local government area of North Sydney, and adjoins:
  - a) Tunks Park to the north (zoned Bushland).
  - b) Various apartment buildings to the east and south (zoned Residential C).
- C. The Land comprises an area of 4,754m<sup>2</sup>.
- D. Prior to 18 April 2008:
  - (a) 4,047m<sup>2</sup> of the Land was zoned Public Open Space, and was identified in Schedule 9 (Local Open Space Reservations) of North Sydney Local Environmental Plan 2001.
  - (b) 707m<sup>2</sup> of the Land was zoned Residential C.
- E. On 14 July 2005, the Owner applied to the Council to have a portion of the Land zoned Public Open Space rezoned to Residential C. On the same date, at the behest of Council, the Owner lodged the Development Application with the Council in relation to the Land.
- F. The Development Application proposed the following works:
  - (a) construction of a residential apartment building containing 23 units and associated basement car park. The number of units proposed was later amended to 21 units.
  - (b) construction of a driveway enabling vehicular access via Cambridge Street.
  - (c) minor alterations and additions to the existing heritage item.
  - (d) associated building works.

- (e) landscaping of the site.
- G. In December 2005, the Council resolved to rezone part of the Land from Public Open Space to Residential C. A draft Local Environmental Plan was subsequently prepared and identified by Council as Draft North Sydney Local Environmental Plan 2001 (Amendment No.27) (**Draft LEP Amendment No.27**).
- H. On 18 April 2008, Draft LEP Amendment No.27 was gazetted (**LEP Amendment No.27**).
- I. Following gazettal of LEP Amendment No.27, the Land comprised:
  - (a) 750m<sup>2</sup> of Public Open Space land (**Public Open Space Land**).
  - (b) 4,004m<sup>2</sup> of Residential C land.
- J. This Agreement represents an offer by the Owner to the Council to make a Development Contribution to the Council in respect of the Development Application, upon the terms set out in this Agreement.

## **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 Application.

### **3. Operation of this Agreement**

This Agreement commences on the Commencement Date and continues until the Sunset Date.

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

#### **4.1 Definitions**

In this Agreement, unless the context otherwise requires

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

**Agreement** means this voluntary planning agreement.

**Asset Protect Zone** means the land identified as the Asset Protection Zone as set out in the Vegetation Management Plan.

**Commencement Date** means the date that the parties enter into this agreement.

**Owners Corporation** means any association that is created as a result of the registration of the subdivision plan in connection with the Development Application.

**Council** means the Council of North Sydney.

**Day means** business day, and excludes weekends and gazetted public holidays.

**Date of the Agreement** means the date on which the Agreement is entered into by the Parties.

**Development Application** means the development application lodged with Council in July 2005 and identified by Council as DA No.305/05, as amended or modified by the Owner from time to time prior to its determination by the Land and Environment Court of New South Wales.

**Development Consent** means the approval by the Council or the Land and Environment Court of New South Wales of the Development Application and includes any amendment or modification of the Development Consent.

**Development Contribution** means the dedication of the Public Open Space Land to the Council and the payment of the Monetary Contribution by the Owner to the Council in accordance this Agreement.

**Easement** means a s 88B instrument for access and for the purposes of maintenance of the Asset Protection Zone and Riparian Zone in the terms set out in Schedule "A" to this Agreement.

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

**Land** means Lot 10 in Deposited Plan 748772, known as 2 Vale Street, Cammeray, NSW.

**LEP** means the North Sydney Local Environment Plan 2001 (as amended).

**LEP Amendment No.27** means North Sydney Local Environmental Plan 2001 (Amendment No.27), prepared in connection with the Land and gazetted on 18 April 2008.

**LPMA** means the Land and Property Management Authority including its successors or assigns.

**Monetary Contribution** means the amount set out in clause 5.4 to be paid by the Owner to the Council in accordance with this Agreement.

**Party or Parties** means a party or parties to this Agreement including their respective successors and assigns, as the case may be.

**Public Open Space Land** means that portion of the Land zoned Public Open Space under LEP Amendment No.27.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW) (as amended).

**Riparian Zone** means the land identified as the Riparian Zone as set out in the Vegetation Management Plan.

**Sunset Date** means the date, if any, when the Development Consent lapses.

**Third Party Claim means** any actions, suits, causes of action, proceedings, claims or demands brought by any person against the Owner and/or the Owner's Corporation.

**Vegetation Management Plan** means the Vegetation Management Plan of Abel Ecology dated 30 April 2009, as amended in accordance with Schedule B of this Agreement.

#### **4.2 Interpretation**

In the interpretation and application of this Agreement, 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 any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulation issued under that legislation or legislative provision
- (c) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency
- (d) 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

- (e) references to the word "include" or "including" are to be construed without limitation
- (f) 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,
- (g) any schedule and attachments form part of this Agreement, and
- (h) the explanatory note set out in this Agreement is not to be used to assist in construing the Agreement, pursuant to clause 25E(7) of the Regulation.

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

### **5.1 The Development Contribution**

- (a) The Development Contribution to be made under this Agreement is the:
  - i. dedication of the Public Open Space Land to the Council; and
  - ii. payment by the Owner to Council of the Monetary Contribution in accordance with clause 5.4.

### **5.2 Dedication of Public Open Space Land**

- (a) Prior to dedication by the Owner to Council of the Public Open Space Land, the Owner will commence any work required to implement the Vegetation Management Plan in respect of the Public Open Space Land including the creation of an Asset Protection Zone and Riparian Zone, in accordance with the requirements of the Rural Fire Service and the Department of Environment, Climate Change and Water.
- (b) Once the requirements of clause 5.2(a) have been satisfied, the Owner will:
  - i. register the Easement on the title of the Public Open Space Land, burdening the Public Open Space Land and benefitting the Land for the purpose of enabling the Owner to fulfil its obligations set out in clause 5.3(a) below, and
  - ii. dedicate to Council the whole of its right, title and interest in the Public Open Space Land by lodging a transfer document with the LPMA for registration, and
  - iii. release Council from any claim for compensation arising out of the dedication of the Public Open Space Land.
- (c) 5.2(b)(i) and (ii) are to occur concurrently.



- (d) The work and dedication referred to in clause 5.2 shall take place prior to the issue of any occupation certificate in connection with the Development Application or the issue of the subdivision certificate by Council for the subdivision plan relating to the Development Application, whichever will occur first.

### **5.3 Post Dedication Responsibility for the Public Open Space Land**

- (a) Upon the dedication of the Public Open Space Land as contemplated by clause 5.2(b) of this Agreement, the Owner will assume the following rights, obligations and responsibilities over and in connection with the Public Open Space Land:
  - i. the ongoing maintenance of the Asset Protection Zone and Riparian Zone to the standard outlined in the Vegetation Management Plan and in accordance with the requirements of the Rural Fire Service and the Department of Environment, Climate Change and Water
  - ii. have the benefit of the Easement over the Public Open Space Land for the purpose of fulfilling the obligations and responsibilities set out in 5.3(a)(i), and
  - iii. provide an undertaking that upon the registration of any future strata subdivision plan in connection with the Development Application, the Owner's Corporation will assume the rights, obligations and responsibilities as set out in paragraphs 5.3(a)(i) and 5.3(a)(ii). This undertaking will be discharged by the incorporation of the rights, obligations and responsibilities as set out in paragraphs 5.3(a)(i) and 5.3(a)(ii) in the Owner's Corporation by-laws registered in respect of the future strata subdivision plan in connection with the Development Application.
- (b) Upon the dedication of the Public Open Space Land as contemplated by clause 5.3(b)(ii) of this Agreement, the Council will assume the following obligations and responsibilities:
  - i. any and all insurance obligations, including public liability, in connection with the Public Open Space Land, and
  - ii. indemnify and keep indemnified the Owner and /or any Owner's Corporation from and against any and all Third Party Claims if the Third Party Claim arises out of or is in any way connected to the Public Open Space Land,

other than in respect of work carried out by the Owner and/or Owner's Corporation on the Public Open Space Land pursuant to the Development Consent.

#### **5.4 Monetary Contribution**

- (a) For the purposes of enabling the Council to fund the provision, upgrading and/ or augmentation of public facilities and services by Council as follows:

<b>Services and facilities</b>	<b>Amount</b>
Administration Costs	\$2,940.21
Child Care Facilities	\$5,093.13
Community Centres	\$13,348.86
Library Acquisition	\$2,489.76
Library Premises & Equipment	\$7,701.96
Multi Purpose Indoor Sports Facility	\$2,103.15
Open Space Acquisition	\$48,407.58
Open Space Increased Capacity	\$166,412.40
Olympic Pool	\$6,850.41
Public Domain Improvements	\$6,578.25
Traffic Improvements	\$8,074.29
<b>The total contribution</b>	<b><u>\$ 270,000.00</u></b>

the Owner will make a Monetary Contribution to Council of \$270,000 prior to and as a precondition of the granting of an occupation certificate or subdivision certificate in relation to the Development Application, whichever occurs first.

- (b) except that if the Monetary Contribution is not paid within one calendar year of the date on which this Agreement was entered into, then the amount payable shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time the payment is made."

#### **6. Application of sections 94 and 94A of the Act to the Development**

This Agreement wholly excludes the application of sections 94 and 94A of the Act, or any other contributions required under the Act or the Regulation, to the Development Application or to any subsequent section 96 modification applications lodged in connection with the Development Application, with the exception of any modifications which result in increased resident occupancy on the site compared to the approved development DA 305/05, as calculated in accordance with Council's S94 Contributions Plan.

#### **7. Registration of this Agreement**

The Parties shall as soon as practicable do all things reasonably necessary to enable the Council to expeditiously register this Agreement under section 93H of the Act at the LPMA, such that on registration of this Agreement, the Register General will have made an entry in the relevant Folios of the Register kept pursuant to the Real *Property Act 1900* in relation to the Land.

## **8. Review of this Agreement**

If, in the opinion of the Parties to this Agreement, it appears necessary or desirable to review this Agreement, this Agreement may only be amended by way of an instrument in writing setting out the amendments to be made to this Agreement which shall take effect when signed by all Parties to this Agreement.

## **9. Dispute Resolution**

- (a) If a dispute arises out of or in connection with this Agreement, including any dispute as to breach or termination of this Agreement or to any claim in tort, in equity or under any legislation, a Party cannot commence any court proceedings relating to the dispute unless and until that Party has complied with the following clauses, except where that Party seeks urgent interlocutory relief.
- (b) A Party claiming that a dispute has arisen must serve a notice on the other Party specifying the nature of the dispute in accordance with clause 10 of this Agreement.
- (c) On receipt of that notice by that other Party, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as meditation, expert evaluation or similar techniques agreed by the Parties.
- (d) If the Parties do not agree within 7 days of service of the notice of dispute, or any further period agreed in writing by them, as to:
  - i. the dispute resolution technique and procedures to be adopted
  - ii. the timetable for all steps in those procedures, and
  - iii. the selection and compensation of any independent person required for that technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

- (e) Each Party to the dispute must pay its own costs of complying with this clause 9. The Parties to the dispute must equally pay the costs of any mediator.

- (f) If the dispute is not finally resolved through the forum of mediation, each Party is at liberty to litigate the dispute.

## 10. Notices

- (a) 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:

- i. delivered or posted to that Party at its address set out below, or
- ii. emailed to that Party at its email address set out below.

### **Council**

Attention: The General Manager

Address: 200 Miller Street

NORTH SYDNEY NSW 2060

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

### **Owner**

Attention: Mark Sydney

Address: Ground Floor, 100 William Street,

Woolloomooloo, NSW 2011

Email: [mark.sydney@pamada.com](mailto:mark.sydney@pamada.com)

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

- i. if it is delivered, when it is left at the relevant address, or
- ii. if it is sent by post, 2 business days after it is posted.

- (c) If any notice, consent, information, application or request is delivered on a day that is not a business day, or of 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.

## 11. Assignment

This Agreement may be assigned by the Owner in accordance with any dealings the Owner might have with respect to its interests in the Land without requiring the Owner to obtain Council's approval in respect if either the dealing or the assignment of this Agreement.

## 12. Miscellaneous

- (a) The Parties acknowledge that nothing in this Agreement abrogates or fetters, or is intended to abrogate or fetter, the lawful and proper discharge by Council of its statutory responsibilities, whether in relation to the subject-matter of this Agreement or otherwise.
- (b) The Parties acknowledge and agree that nothing in this Agreement abrogates, fetters or in any way prevents the Owner from selling, mortgaging or in any other way dealing with the Land (excluding, after dedication, the Public Open Space Land). The Parties further acknowledge and agree that the rights, obligations and responsibilities pertaining to the Owner under this Agreement pertain only to the current registered proprietor of the Land, and otherwise have no force or effect against past or former registered proprietors of the Land.
- (c) Each party will pay its own costs associated with the preparation of this Agreement, but the Council will pay the Owner's reasonable costs of transferring the Public Open Space Land.
- (d) Each Party to this Agreement undertakes to sign and execute all documents and do all things reasonably necessary to give effect to the terms of this Agreement.
- (e) This Agreement contains everything to which the Parties have agreed in relation to the Development Contribution referred to in this Agreement. 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.
- (f) Except as otherwise provided by this Agreement, any undertaking, agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and severally.
- (g) 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.
- (h) 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.

- (i) If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply upon receipt of a valid GST invoice.
- (j) 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. The Parties will not object to the exercise of jurisdiction by those courts on any basis.
- (k) 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.
- (l) The fact that a Party fails to do, or delays in doing, something the Party is required to do under this Agreement, does not amount to a waiver of any obligation of any other Party.

RECEIVED BY CS  
18 JUN 2013  
N.S.C.


**Signing page**

Signed seated and delivered by each Party as a deed

**Owner**

Signed by Roger Simpson

  
\_\_\_\_\_  
sign (signatory)

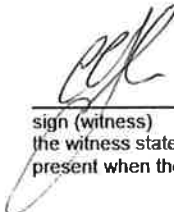
  
\_\_\_\_\_  
sign (witness)  
the witness states that he or she is not a party and was present when the signatory signed

CHRISTOPHER JOHNS  
\_\_\_\_\_  
full name (witness)

35 CAIRO ST, CAMMERAY, NSW 2062  
\_\_\_\_\_  
address (witness)

Signed by Sally Irwin

  
\_\_\_\_\_  
sign (signatory)

  
\_\_\_\_\_  
sign (witness)  
the witness states that he or she is not a party and was present when the signatory signed

CHRISTOPHER JOHNS  
\_\_\_\_\_  
full name (witness)


35 CAIRO ST, CAMMERAY, NSW, 2062  
\_\_\_\_\_  
address (witness)



**Council**

Signed on behalf of  
North Sydney Council  
by an authorized officer

\_\_\_\_\_  
sign (authorized officer)

  
\_\_\_\_\_  
sign (witness)  
the witness states that he or she is not a party and was present when the signatory signed

General Manager  
\_\_\_\_\_  
title (authorized officer)

Jilly Gibson  
\_\_\_\_\_  
full name (witness)

Penny Holloway

Mayor  
North Sydney Council

## **Schedule A**



**INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED PURSUANT  
TO SECTION 88B OF THE CONVEYANCING ACT, 1919.**

Lengths are in metres

(Sheet 1 of 6 Sheets)

Plan:

Subdivision of Lot 245 in DP270298 covered by  
Subdivision Certificate No.  
of

Full name and address of  
Owner of the land.

**Roger Simpson and Sally Irwin**

2 Vale Street  
CAMMERAY, NSW

**PART 1 (Creation)**

Item	Identity of easement, profit a pendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot (s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for emergency egress (A) 1wide & variable width	2	1
2	Restriction on the use of land (whole of lot)	1	3
3	Right of Carriageway (C) (whole of lot)	Lot 12 DP599070	1
4	Easement for Access (D) 2 wide	1	2
5	Easement for Drainage (E) 2 wide	1	2
6	Easement for repairs and maintenance (F) variable width	1	2
7	Easement for repairs and maintenance (G) 2 wide	2	1
8	Easement for access and maintenance (H) (whole of lot)	3	1

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED PURSUANT  
TO SECTION 88B OF THE CONVEYANCING ACT, 1919.**

Lengths are in metres

(Sheet 2 of 6 Sheets)

Plan: Subdivision of Lot 245 in DP270298 covered by  
Subdivision Certificate No.  
of

Full name and address of  
Owner of the land.

**Roger Simpson and Sally Irwin**

2 Vale Street  
CAMMERAY, NSW

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## PART 2 (Terms)

1. Easement for emergency egress 1 wide and variable width  
An Easement for emergency egress in the terms set out in Part XY of Schedule 8 of the Conveyancing Act 1919 (as amended) is created.  
**Name of the authority empowered to release, vary or modify the Easement numbered A in the plan.**  
North Sydney Council
2. Restriction of the use of land  
A Restriction on use of land in the terms set out in Part XY of Schedule 8 of the Conveyancing Act 1919 (as amended) is created. Refer to restrictions in the Vegetation Management Plan (Schedule B)  
**Name of the authority empowered to release, vary or modify the Restriction numbered B in the plan.**  
North Sydney Council
3. Right of carriageway (whole of lot)  
A Right of Access in the terms set out in Part XY of Schedule 8 of the Conveyancing Act 1919 (as amended) is created.  
**Name of the authority empowered to release, vary or modify the Right of Access numbered C in the plan.**  
North Sydney Council
4. Easement for access 2 wide  
An Easement for Access in the terms set out in Part XY of Schedule 8 of the Conveyancing Act 1919 (as amended) is created.  
**Name of the authority empowered to release, vary or modify the Easement numbered D in the plan.**  
North Sydney Council

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED PURSUANT  
TO SECTION 88B OF THE CONVEYANCING ACT, 1919.**

Lengths are in metres

(Sheet 3 of 6 Sheets)

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Plan:	Subdivision of Lot 245 in DP270298 covered by Subdivision Certificate No. of
Full name and address of Owner of the land.	<b>Roger Simpson and Sally Irwin</b>  2 Vale Street CAMMERAY, NSW

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5. Easement for drainage 2 wide  
An Easement for Drainage in the terms set out in Part XY of Schedule 8 of the Conveyancing Act 1919 (as amended) is created.  
**Name of the authority empowered to release, vary or modify the Easement numbered E in the plan.**  
North Sydney Council
  
6. Easement for repairs and maintenance, variable width  
An Easement for Repairs in the terms set out in Part 5 of Schedule 8 of the Conveyancing Act 1919 (as amended) is created.  
**Name of the authority empowered to release, vary or modify the Easement numbered F in the plan.**  
North Sydney Council
  
7. Easement for repairs and maintenance, 2 wide  
An Easement for Repairs in the terms set out in Part 5 of Schedule 8 of the Conveyancing Act 1919 (as amended) is created.  
**Name of the authority empowered to release, vary or modify the Easement numbered G in the plan.**  
North Sydney Council
  
8. Easement for access and maintenance (whole of lot)  
Full and free right for the registered proprietor and any contractor or employee of the registered proprietor of the lot benefited to access and traverse the lot burdened for the purpose of maintenance of the Asset Protection Zone and Riparian Zone in the area marked '(H)' referred to in the plan in accordance with the standards and guidelines set out in the Vegetation Management Plan and the requirements of the Rural Fire Service and the Department of Environment, Climate Change and Water.  
In so doing, the registered proprietor and any contractor or employee of the registered proprietor may take anything onto the lot burdened.

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED PURSUANT  
TO SECTION 88B OF THE CONVEYANCING ACT, 1919.**

Lengths are in metres

(Sheet 4 of 6 Sheets)

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Plan:

Subdivision of Lot 245 in DP270298 covered by  
Subdivision Certificate No.  
of

Full name and address of  
Owner of the land.

**Roger Simpson and Sally Irwin**

2 Vale Street  
CAMMERAY, NSW

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**Definitions**

In this instrument

**Council** means North Sydney Council

**Vegetation Plan of Management** means the Vegetation Plan of Management for 2 Vale Street, Cammeray dated 30 April 2009 prepared by Blue Mountain Wilderness Services Pty Limited trading as Abel Ecology, as amended by reference to Schedule B of the Voluntary Planning Agreement between Council and the owner.

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED PURSUANT  
TO SECTION 88B OF THE CONVEYANCING ACT, 1919.**

Lengths are in metres

(Sheet 5 of 6 Sheets)

Plan:

Subdivision of Lot 245 in DP270298 covered by  
Subdivision Certificate No.  
of

Full name and address of  
Owner of the land.

**Roger Simpson and Sally Irwin**

2 Vale Street  
CAMMERAY, NSW

Signed by Roger Simpson

\_\_\_\_\_  
sign (signatory)

\_\_\_\_\_  
sign (witness)

the witness states that he or she is not a party and was  
present when the signatory signed

\_\_\_\_\_  
full name (witness)

\_\_\_\_\_  
address (witness)

Signed by Sally Irwin

\_\_\_\_\_  
sign (signatory)

\_\_\_\_\_  
sign (witness)

the witness states that he or she is not a party and was  
present when the signatory signed

\_\_\_\_\_  
full name (witness)

\_\_\_\_\_  
address (witness)

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED PURSUANT  
TO SECTION 88B OF THE CONVEYANCING ACT, 1919.**

Lengths are in metres

(Sheet 6 of 6 Sheets)

Plan:

Subdivision of Lot 245 in DP270298 covered by  
Subdivision Certificate No.  
of

Full name and address of  
Owner of the land.

**Roger Simpson and Sally Irwin**

2 Vale Street  
CAMMERAY, NSW

Easements Accepted by Council

\_\_\_\_\_  
Authorised Officer

\_\_\_\_\_  
[Print Name]

## Schedule B

(refers to Part 4.1 'definitions' - definition of "Vegetation Management Plan")

Amendments required to the Vegetation Management Plan dated 30 April 2009, prepared by Abel Ecology, and received by Council on 1 May 2009:

- Figure 1 - Site Map for 2 Vale Street, Cammeray: amend to show the plans as approved in compliance with condition AA2 of the Development Consent and the extent of the Asset Protection Zone.
- Section 1.1 - Purpose of the Vegetation Management Plan: Delete 'for at least five (5) years after final planting' and add 'in perpetuity'.
- Section 1.2 - Land to which the VMP applies: Delete 'Important Note' concerning fencing (to be replaced by new section 5.5 'fencing' as indicated below);
- Section 1.3 - Management authority, tenure and ownership:- add paragraph to the effect that 'the management authority has the option of transferring the implementation of the VMP either wholly or in part to Council subject to agreement on funding' and 'the arrangements and timing for the management and funding of the implementation of the VMP and the transfer of the gifted portion to Council shall be subject to the relevant terms of the Voluntary Planning Agreement';
- Section 1.5 - Planning framework:- add reference to Water Management Act 2000;
- Section 1.6 - Management objectives -- add after the word 'protect' the word 'enhance' in the introductory paragraph indicating the dominant purpose of the VMP;
- Section 2 - Natural resource information:- delete last paragraph referring to Tunks Park (the reference is out of context and not considered an accurate reflection of the situation);
- Section 4.2 - Vegetation management & weeds:- in 'vegetation removal' any non-native vegetation which is removed should be disposed of 'off-site unless it is considered that there is no potential for spread of seed or nutrients into bushland resulting from disposal elsewhere on the site';

In 'tree preservation' add a paragraph as follows: 'all Blackbutt trees (*Eucalyptus pilularis*) shall be protected, with the exception of the tree identified as Tree 14 in the documentation by Treescan submitted with this development application, and also those Blackbutts within the footprint of the approved building';

- Section 4.3 Fauna :- in the paragraph on 'threatened fauna' amended the wording to make clear that threatened fauna, namely, Powerful owl (*Ninox strenua*) a listed vulnerable species, have been observed within 10m of the site;
- Section 4.4 Bushfire:- in the paragraph concerning 'bushfire hazard reduction' make it clear that the nature of the Inner Protection Area (IPA) to be created and maintained in this case, is a 'modified IPA involving retention of all trees and the tree canopy (with the exception of Tree 14 in the documentation by Treescan submitted with this development application and non-native trees), staged and targeted removal of weeds, establishment of a ground cover of suitable fire retardant native species with minimum 80% by ground cover species and intermittent understorey plantings of native fire retardant species '(ie: the IPA is not strictly as described in the 'Standards for Asset Protection Zone - Rural Fire Service 2003');

In the paragraph concerning 'emergencies' make it clear that the VMP authorizes any necessary activities to be carried out during bushfire emergencies 'declared and carried out by a bushfire authority';

- Section 4.5 Stormwater management /runoff:- under 'drainage and stormwater', reword 2nd paragraph as follows:

"Runoff from driveways and hard-surfaces and any excess stormwater which exceeds natural flows on the site shall be directed to a combined retention/ detention water storage tanks system thence to Council's drainage reserve on the eastern side of the site, as required by the relevant condition of this consent relating to 'stormwater drainage'." And

reword 3rd paragraph as follows:

"Clean stormwater runoff from rooftops is to discharge into the bushland area below approximately RL 40 AHD along the whole of the site, with measures to ensure dissipation of stormwater velocity, discharge to ground water by an absorption trench or pits (not spreader pits) above the line of the Blackbutt trees, but no closer than 2m from the trunk of any Blackbutt tree. The system is to designed to operate and be maintained to ensure continuing soil moisture to those trees, and replicate as far as possible pre development surface and ground water flow into the bushland slope."

Under 'runoff and erosion control' add the following additional sentence to the end of the 2nd paragraph:

"Mulch shall not be used in the Riparian Zone, and if used in the Landscape Reconstruction Zone (the IPA) shall be clean native mulch."

- Section 4.6 Recreation:- delete 'bushwalking' and 'public entertainment' as not relevant. Delete 'BBQ's and 'recreation equipment' and replace with the following: " 'Recreation equipment, facilities and BBQs' - recreation equipment, facilities and BBQ's shall only be



installed within the 'Landscape Amenity Zone' in accordance with the approved landscape plan nominated in condition A1 of this consent. No recreation equipment or facilities or BBQ's are to be installed within the Landscape Reconstruction Zone or Riparian Zone."

- Section 4.7 Works and infrastructure:- under 'lighting' add extra sentence as follows:

'No lighting shall be provided within the area to be dedicated to Council as Public Open Space, and prior to the provision of any lighting elsewhere within the Landscape Native Reconstruction Zone or Landscape Amenity Zone, the management authority must take into consideration the impact of such lighting on nocturnal fauna, and shall not erect or operate lighting which is inconsistent with the relevant conditions of the consent for the development.", and

Delete 'recreation facilities' (this duplicates section 4.6 as amended), and

Delete 'clearing' - the VMP should not condone clearing; in other sections of the VMP it allows for staged and targeted weed removal and removal and/ or replacement of ground cover and understorey, etc.

Under 'filling' add sentence as follows: 'Any imported fill material if necessary shall be certified virgin excavated natural material (VENM).'

- Section 4.8 Activities and maintenance:- replace (f) with

(f) clearing vegetation or removal of tree branches, except within 2m of the building' and add

(g) dumping of rubbish dumping of garden waste except clean composted green waste to be disposed within the Landscape Amenity Zone or disposed off-site, and

(i) planting of vegetation, except for repair/ reconstruction with native species as specified in this VMP.'

- Section 4.9 Pollution control:- under 'rubbish dumping' add sentence as follows:

'Clean composted garden waste and clippings may be disposed of within the Landscape Amenity Zone only'

- Section 4.10 Access and occupation:- Delete 'track construction' and replace with:

'track construction - walking tracks may be located and constructed within the Riparian Zone and Landscape Reconstruction Zone to enable walking access to defined paths for regeneration purposes and may include a pathway along the northern side of the building for resident use, so as to ensure minimal erosion and soil loss and reduce maintenance requirements' and

delete 'paths and paving' - the provision or upgrading of formal tracks or paths is not envisaged or encouraged at this stage, and would be incompatible with the objectives of the VMP for the Riparian Zone; the future provision of upgrading of tracks within the lands to be dedicated will be matter for Council, once the land has been transferred to Council.

- Section 4.12 Information, monitoring and research:- under 'environmental information, add after the words `established and maintained' the following words:

'by the appointed bushland regenerating contractor and thence by Council once the gifted portion has been transferred to Council.'

- Section 4.13 Administration:- delete 2nd paragraph (to be replaced by new section 5.5 'fencing'), and under `staff resources' add after the words 'appropriate qualifications and experience' the following words:

- 'The supervisor shall be a current member of the Australian Association of Bush Regenerators (AABR), with qualifications of TAFE Certificate 3 in Conservation and Land Management - Natural Areas or equivalent, and all staff shall have minimum qualifications of TAFE Certificate 3 in Conservation and Land Management - Natural Areas restoration or equivalent, or be enrolled for such course.'

- And under 'contract and volunteer labour' add extra sentence:

The supervisor shall be a current member of the Australian Association of Bush Regenerators (AABR), with qualifications of TAFE Certificate 3 in Conservation and Land Management - Natural Areas or equivalent, and all staff shall have minimum qualifications of TAFE Certificate 3 in Conservation and Land Management - Natural Areas restoration or equivalent, or be enrolled for such course'.

- Section 4.15 Site documentation:- delete ESBS (not relevant to subject site).

- Section 4.16 Other issues:- under 'adjoining development delete 3rd sentence (since this VMP cannot apply or effect buffer zones on adjoining land). Under 'emergencies' add after the end of the first sentence the following words: 'declared by an emergency authority such as the NSW Fire Brigade, NSW Rural Fire Service, of NSW Police.'

- Under `public liability' add at the end of the sentence the words; 'with a minimum cover of \$10 million public risk insurance.'

- Section 5 Management Zones:- delete 2nd sentence referring the fence (this duplicates new Section 5.5 'fences').

- Section 5.1 Riparian Regeneration Zone - delete last sentence of last paragraph and insert instead the following sentence:- "Planting densities shall be 5 plants per metre squared in an alternating pattern with one tree and 4 groundcovers in one metre squared, and then one shrub and 4 groundcovers in the adjacent one metre squared, and then alternating continuously; this may be varied due to existing local native vegetation or rocky areas."
- Section 5.2 Reconstruction Zone:- add an extra sentence in last (4th) paragraph as follows: 'The Inner Protection Area (IPA) is to be a modified IPA as described in Section 4.4 of this VMP.', and add an extra (5th) paragraph as follows:

'All the Blackbutt trees (*Eucalyptus pilularis*) within this zone shall be retained and protected except for the tree identified as Tree 14 in the documentation by Treescan submitted with development application No.305/05'. All palm trees (not locally occurring native species) shall be removed.'

- Section 5.5 Fencing:- this is a new section to be inserted as follows:

'**Open pole fence** - an open metal pole fence for demarcation with a minimum height of 1.0m above ground with footings at appropriate intervals (to dissuade casual entry) shall be provided across the site on the location of the boundary between the land to be dedicated as Public Open Space and the proposed neighbourhood lot on the site, except that the fence shall be located 1.0m upslope of the trunk of any Blackbutt tree.'

**Firebreak wall** - a firebreak wall constructed in blocks with appropriate footings shall be constructed generally in the location shown on Figure 1 and 2.0m-3.0m upslope of the small escarpment across the north-west slope (approximately at the RL 33 to RL35 contour) of the Riparian Zone, such wall to be generally 1.0m high at its downslope base, backfilled with clean crushed sandstone, and located to the satisfaction of Council's Bushland Management Co-ordinator to avoid direct interference with or adjacency to any established tree.'

- Section 6.4 - Statement of management objectives for bush regeneration works:- Insert an additional introductory sentence as follows:
  - 'c) All bush regeneration works must be supervised by a current member of the Australian Association of Bush Regenerators (AABR), and Australian Association of Bush Regenerators (AABR), and all staff shall have minimum qualifications of TAFE Certificate 3 in Conservation and Land Management – Natural Areas restoration, or equivalent, or be enrolled for such course.'
- Insert in section 'When to carry out Bush Regeneration Works' the word "preferably" after the words "should be done " and "should be carried out" so as not to entirely prevent bush regeneration works or maintenance works in March to June, which would be impracticable and unnecessary, given the nature of the works.

- Section 7 -- Schedule of works:- The time frames should be more flexible and not restricted to specific numbers of weeks in Year 1, as the timescales set appear unrealistic to achieve, for instance, sourcing local provenance seedlings may take several weeks or even months. Alter in consultation with Councils' Bushland Management Co-ordinator.
- The references to Part 3A permits are now incorrect since the repeal of the Rivers & Foreshores Improvement Act 1948; these references should be replaced by the words 'controlled activity approval'. The references to IPA (Inner Protection Areas) should be followed by the words 'as modified by this VMP', in order to make it clear that the IPA differs to that prescribed in 'Planning for Bush Fire Protection 2006', published by the NSW Rural Fire Service.
- Appendix 3 - Asset Protection Area Maintenance:- alter this to make it clear that the APZ is to consist of a modified Inner Protection Area (IPA) involving retention of the tree canopy, so delete (d) as canopy is to be retained;
- Appendix 4 - (2) Regeneration Areas. Delete 2nd last sentence in 'note' and replace with the following sentence: 'The use of Rusty Fig (*Ficus Rubiginosa*) shall be limited to one plant only in the Riparian Zone'
- Appendix 5:- delete this since it duplicates Appendix 2 in error.