



Voluntary Planning Agreement

Under section 7.4 of the Environmental Planning and Assessment Act, 1979

Central Coast Council & Doyalson Wyee RSL Club Limited

Draft/Final Version

Central Coast Council

date



Voluntary Planning Agreement

Author: Central Coast Council

Central Coast Council & Proponent

Date: date

Draft/Final Version

Approved by:

Date of Approval: date

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Gosford Office: 49 Mann St / PO Box 21 Gosford NSW 2250 | **P** 02 4325 8222

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Voluntary Planning Agreement

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Voluntary Planning Agreement

SUMMARY SHEET

Council:

Name: Central Coast Council

Wyong Office: 2 Hely St / PO Box 20 Wyong NSW 2259 | P 02 4350 5555

Gosford Office: 49 Mann St / PO Box 21 Gosford NSW 2250 | P 02 4325 8222

Email: ask@centralcoast.nsw.gov.au

Representative: Chief Executive Officer

Proponent:

Name: Doyalson Wyee RSL Club Limited

Address: 80 Pacific Highway, Doyalson

Telephone: (02) 4390 0622

Email: brette@doylo.com.au

Representative: Brett Elliss (Chief Operating Officer)

Land:

See definition of *Land* in clause 4.1

Development:

See definition of *Development* in clause 4.1

Application of s7.11 s7.12 and s7.24 of the Act:

See clause 3.3

Registration:

See clause 14

Dispute Resolution:

See clause 10

DATE: **date**

Central Coast Council (ABN 73 149 644 003) of 2 Hely St, Wyong and 49 Mann Street Gosford, in the State of New South Wales (**Council**)
and

Doyalson Wyee RSL Club Limited (ACN 000 985 008) of 80 Pacific Highway, Doyalson, in the State of New South Wales (**Proponent**)

BACKGROUND

- A. The Proponent is the registered proprietor of the Land.
- B. The Proponent has sought the Instrument Change for the purpose of enabling the Development to be carried out.
- C. Subject to the Instrument Change being made, the Proponent intends to lodge one or more Development Applications for the Development.
- D. The Proponent has agreed to make the Contribution on, and subject to, the terms of this Agreement.

OPERATIVE PROVISIONS

1 PLANNING AGREEMENT UNDER THE ACT

- 1.1 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 THIS AGREEMENT

- 2.1 This Agreement applies to the Instrument Change and the Development.

3 OPERATION OF THIS AGREEMENT

- 3.1 This Agreement takes effect upon the last to occur of:
 - (a) the date of this Agreement; and
 - (b) the date that the Instrument Change enters into force.
- 3.2 By complying with the terms of this Agreement, the Proponent will provide material public benefits in the form of the Contribution.
- 3.3 This Agreement does **not** exclude the operation of section 7.11, section 7.12 or section 7.24 of the Act.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

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

Authority means (as appropriate) any:

- (a) federal, state or local government;
- (b) department of any federal, state or local government;
- (c) any court or administrative tribunal; or
- (d) statutory corporation or regulatory body.

Bank Guarantee means an irrevocable and unconditional undertaking by a financial institution or trading bank carrying on business in Sydney issued:

- (a) in favour of Council;
- (b) specifying the Proponent as the customer;
- (c) for an amount in accordance with Schedule 2;
- (d) as security for the performance by the Proponent of the obligations under this Agreement;
- (e) with an expiry date which must not be earlier than five years after the date the bank guarantee is issued; and
- (f) on terms which provide that the bank guarantee may be called on by Council upon presentation and without reference to the Proponent (however this does not affect Council's obligations under clause 11.4).

Biodiversity Corridors means the corridors as described in clause 3 of Schedule 2 and which are generally depicted in the plan in Annexure B. **Corridors A, B, C and F** have an associated meaning.

Business Day means a day which is not a Saturday, Sunday or a gazetted public holiday in New South Wales.

Claim means any allegation, action, demand, cause of action, suit, proceeding, judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Club means the Doyalson Wyee RSL Club.

Column means a column in the Table.

Construction Certificate has the meaning given in section 6.4(a) of the Act.

Contribution means each contribution set out in Column 1 in Schedule 2.

Development means the development of the Land generally in accordance with the following description:

- (a) relocation of the existing Doyalson Wyee RSL Club from its current location to 110 Pacific Highway and incorporation of Club space, function centres, cafes and restaurants within relocated Club;
- (b) construction of a 102 room hotel and 72 villa style tourist accommodation at the rear of the Club;
- (c) construction of a health and wellness precinct comprising fitness centre, swimming pool and allied health facilities;

- (d) construction of indoor and outdoor recreational space including, but not limited to, the (existing) Raw Challenge outdoor course, go-kart, paintball and indoor recreational warehouse and arrival centre;
- (e) construction of a neighbourhood centre comprising childcare centre, medical centre, service station and fast food outlets;
- (f) construction of seniors living accommodation in southeast portion of the site including 220 dwellings with private open space, car parking and communal facilities;
- (g) construction of residential accommodation comprising 141 dwellings with access to communal open space, car parking, health facilities, childcare and food outlets;
- (h) creation of new internal vehicle and pedestrian access routes to connect the RSL Club, recreational uses, neighbourhood service centre and residential areas; and
- (i) provision of landscaping and open space,

which will be permissible with consent after the Instrument Change.

Development Application means a development application under Part 4 of the Act seeking consent to undertake the Development on the Land.

Development Consent means a consent issued under the Act for the Development.

Dispute has the meaning given in clause 10.1.

Gas Pipeline means a licensed high pressure gas pipeline (along the southern boundary of Lot 7 DP 240685) operated by Jemena.

GST has the meaning given in the GST Law.

GST Law means *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 an amendment to the LEP in accordance with the Planning Proposal.

Land means the land contained in the following folio identifiers:

- (a) Lots 1-9 DP 215875;
- (b) Lot 1 DP 503655;
- (c) Lot 11 DP 240685;
- (d) Lot 49 DP 707586;
- (e) Lot 7 DP 240685; and
- (f) Lot 62 DP 755266,

as depicted in the Sporting Field Location Plan contained in Annexure A.

Landscape Corridors means the corridors described in clause 2.1 of Schedule 2 and which are generally depicted in the plan in Annexure B. **Corridors D** and **E** have an associated meaning.

Law means all legislation, regulations, by-laws, common law and other binding order made by an Authority.

LEP means the Wyong Local Environmental Plan 2013.

Parties mean the Council and the Proponent, including both their successors and assigns.

Party means a party to this Agreement including its successors and assigns.

Planning Proposal means the planning proposal number PP_2020_CCOAS_005_00 to amend the LEP to allow the following:

- (a) amend the zoning of 100-120 Pacific Highway from RU6 Transition to RE2 Private Recreation;
- (b) amend the LEP to include an additional permitted use schedule for 80-120 Pacific Highway which includes the following land uses: tourist and visitor accommodate, health services facility, service station, centre-based child care facilities, seniors housing and residential; and
- (c) amend the LEP to remove the minimum lot size requirements to allow future subdivision to reflect the land uses,

as described in the Gateway Determination dated 12 October 2020.

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

Remedy Period means has the meaning given in clause 11.4(a)(ii).

Sporting Clubs means the Doyalson Wyee Soccer Club and the Doyalson Dragons Touch Football Club.

Sporting Fields means the area of approximately 6 hectares of land at Lot 11 DP 240685 (also known as 80-90 Pacific Highway, Doyalson) used periodically on the date of this Agreement by the Sporting Clubs, as depicted in the map in Annexure A.

Table means the table in Schedule 2.

VMP means the Vegetation Management Plan to be prepared by the Proponent in respect of the Biodiversity Corridors in accordance with the requirements set out in Schedule 2. .

4.2 Interpretation

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) 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.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) 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.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- (h) 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.
- (i) 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.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to a party means a party to this agreement and includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (l) Any schedules and attachments form part of this Agreement.

5 PAYMENT OF MONETARY CONTRIBUTIONS

5.1 Except as otherwise provided by clause 1.2 in Schedule 2, this Agreement does not require the Proponent to pay any monetary contribution to Council.

5.2 The Parties agree that nothing that the Proponent does to meet its obligations under this Agreement will give rise to a reduction or variation or credit in any monetary contributions that might later be required by a Consent to undertake the Development on the Land.

6 PROPONENT OBLIGATIONS

6.1 The Proponent must provide each Contribution on the terms set out in Schedule 2, at no cost to Council.

7 PROPONENT WARRANTIES AND INDEMNITIES

The Proponent warrants to Council that:

- (a) It is the registered owner of the Land;
- (b) It is able to fully comply with its obligations under this Agreement;
- (c) It has full capacity to enter into this Agreement; and
- (d) There is no legal impediment to it entering into this Agreement, or performing its obligations under this Agreement.

8 REVIEW OF THIS AGREEMENT

8.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of section 7.5 of the Act.

9 FURTHER AGREEMENT RELATING TO THIS AGREEMENT

9.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject matter of this Agreement for the purpose of implementing this Agreement that are not inconsistent with this agreement.

10 DISPUTE RESOLUTION

10.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort,

in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Proponent or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Meeting of parties' senior representatives

- (a) A party claiming that a Dispute has arisen under or in relation to this Agreement must give written notice to the other parties to the Dispute, identifying and providing details of the Dispute.
- (b) Within 20 Business Days after the notice is given, or another period agreed by the parties in writing, a senior representative of each party must meet in good faith with a view to resolving the dispute (**Senior Representatives' Meeting**).
- (c) If the dispute is not resolved within 20 Business Days after the Senior Representatives' Meeting, the parties must either:
 - (i) agree within 5 Business Days to refer the dispute, either to mediation under clause 10.3 or for expert determination under clause 10.4; and
 - (ii) failing agreement under clause 10.2(c)(i), refer the dispute for expert determination under clause 10.4.

10.3 Mediation

- (a) A legal representative acting for either of the Parties may participate in the mediation.
- (b) If the Dispute is referred for mediation, the Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 Business Days of the Senior Representatives' Meeting.
- (c) The mediation is to be conducted by a mediator agreed by the Parties, or failing their agreement, by a mediator appointed by the President of the Law Society of New South Wales or the President's nominee (who is also to determine the mediator's remuneration).
- (d) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
- (e) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
- (f) If any procedural aspects are not specified sufficiently in the rules under this clause 10.3, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
- (g) A legal representative acting for either of the Parties may participate in the mediation.
- (h) If the Dispute is not resolved by mediation, the Parties must refer the dispute for expert determination under clause 10.4.

10.4 Expert Determination

- (a) If the Dispute is referred for expert determination, the Dispute must be determined by an independent expert in the relevant field jointly appointed by the Parties. If the Parties cannot agree on the expert to be appointed, the Parties must jointly appoint an expert nominated by the President of the NSW Law Society.
- (b) The expert appointed to determine the Dispute must:
 - (i) have a technical understanding of the subject matter in the Dispute;
 - (ii) not have a significantly greater understanding of one Party's business, functions or operations which might allow the other Party to construe this greater understanding as a bias; and
 - (iii) inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (c) The Parties must promptly enter into a document with the appointed expert setting out the terms of the expert's appointment and the fees payable to the expert (which are to be shared by the Parties equally).
- (d) The Dispute must be referred to the expert by written submissions from each Party, which must include a copy of this Agreement.
- (e) The expert must be instructed to determine the Dispute and provide the expert's determination to the Parties no later than 10 Business Days after receipt of the submissions (or another period agreed by the parties).
- (f) The Parties must promptly provide the expert with any information, assistance and cooperation requested in writing by the expert in connection with the expert's determination. All correspondence between the expert and a Party must be copied to the other Party.
- (g) The expert must act as an expert and not as an arbitrator. The expert's written determination will be final and binding on the Parties in the absence of manifest error.
- (h) If the expert fails to determine the Dispute and provide the expert's determination to the Parties within 20 Business Days after the date on which the determination was due under clause 10.4(e) (including any extension agreed by the parties under that clause), either Party may commence proceedings to determine the dispute.

10.5 Confidentiality of information provided in Dispute resolution process

- (a) The Parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (i) subject to paragraph (b), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (ii) to a Party or adviser or consultant who has signed a confidentiality undertaking; or
 - (iii) if required by law or any authority to do so; and
 - (iv) not to disclose any confidential documents, information and other material except:

- (v) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (b) The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (i) views expressed or proposals or suggestions made by a Party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (ii) admissions or concessions made by a Party during the mediation or expert determination in relation to the dispute; and
 - (iii) information, documents or other material concerning the dispute which are disclosed by a Party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

10.6 Conduct pending resolution

While a dispute is unresolved between the Parties, each party must continue to perform their respective obligations under this Agreement.

10.7 Remedies available under the Act

This clause 10 does not operate to limit the availability of any remedies available to Council under the Act.

10.8 Urgent relief

Despite clause 10.1, either Council or the Proponent may institute court proceedings to seek urgent equitable relief in relation to a Dispute.

11 SECURITY

11.1 Delivery of Bank Guarantees

Prior to commencing the works or actions set out in each stage identified in the VMP, the Proponent must give a Bank Guarantee to Council (or other forms of security to the satisfaction of the Council) in an amount commensurate with the cost of performing those works or actions as set out in the VMP for the relevant stage.

11.2 Replacement of Bank Guarantees

- (a) The Proponent may replace any Bank Guarantees provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this Agreement.
- (b) On receipt of a replacement Bank Guarantee under paragraph (a), Council must immediately release the security being replaced and return it to the Proponent.

11.3 Return of Bank Guarantees

- (a) Within 10 Business Days of any written request being made by the Proponent, after the Proponent has completed a stage of the VMP, Council must return to the Proponent the Bank Guarantee referable to that stage of the VMP , including any replacement Bank Guarantee referable to that stage of the VMP given by the Proponent under clause 11.5, provided that:
 - (i) if Council has made a demand against the relevant Bank Guarantee, Council is only required to return any remaining balance of the Bank Guarantee still held by Council;
 - (ii) the Proponent is not in breach of this Agreement at that time (unless waived by Council).
- (b) Within 10 Business Days after this Agreement is terminated and a request being made by the Proponent, Council must return to the Proponent all of the Bank Guarantees given under clauses 11.1 and 11.5.

11.4 Calling on Bank Guarantees

- (a) If the Proponent has not carried out the work or actions in a stage of the VMP as required under the VMP, before Council may call on the Bank Guarantee under clause 11.4(b), Council must have:
 - (i) given the Proponent notice of Council's intention to call on the Bank Guarantee; and
 - (ii) allowed the Proponent a period of 40 Business Days (or such longer period as the circumstances may reasonably require) to remedy the breach (**Remedy Period**).
- (b) If the Proponent:
 - (i) disagrees that it has failed to carry out work or actions in a stage of the VMP as required under the VMP, this is a dispute to which clause 10 applies. The Proponent must notify Council of the dispute in accordance with clause 10.2(a) within the Remedy Period, failing which the Proponent is taken to accept that the Proponent has failed to carry out work or actions in a stage of the VMP as required under the VMP under clause 11.4(b)(ii); or
 - (ii) accepts that it has failed to carry out work or actions in a stage of the VMP as required under the VMP , and does not remedy the failure within the Remedy Period, Council may remedy the failure and may call on the Bank Guarantee to reimburse Council's reasonable costs of doing so.

11.5 Replacement Bank Guarantees

If Council calls on one or more of the Bank Guarantees under clause 11.4(b)(ii), the Proponent must deliver a replacement Bank Guarantee equal to the amount of Bank Guarantee called upon by Council.

12 TERMINATION

12.1 This Agreement terminates in the following events:

- (a) the Instrument Change is not made by the date that is 36 months after the date of this Agreement;
- (b) the parties agree in writing to terminate this Agreement; or

- (c) prior to the issue of the first Construction Certificate for the Development, the Proponent notifies Council that the Proponent no longer intends to carry out the Development on the Land, and surrenders any Development Consent for the Development.

12.2 Upon termination of this Agreement, all future rights and obligations of the parties are discharged and all pre-existing rights and obligations of the parties continue to subsist.

13 COSTS

13.1 The Proponent agrees to pay or reimburse the costs of Council in connection with:

- (a) negotiation, preparation and execution of this planning agreement;
- (b) advertising and exhibiting this planning agreement in accordance with the Act; and
- (c) all properly incurred costs related to registration of this planning agreement,

to a maximum of \$5,000 within 7 Business Days after receipt of a tax invoice from Council.

14 REGISTRATION OF THIS AGREEMENT AND FUTURE SUBDIVISIONS BY PROPONENT

14.1 The parties agree to register this Agreement for the purposes of section 7.6(1) of the Act.

14.2 On execution, the Proponent is to provide Council with each of the following, at no cost to Council:

- (a) An instrument in registrable form requesting registration of this Agreement on the title to the Land duly executed by the Proponent, and
- (b) The written and irrevocable consent of each person referred to in section 7.6(1) of the Act to that registration; and
- (c) Production of the certificate of title for the Land, for the purpose of procuring the registration of this Agreement.

14.3 Council must promptly execute all documents necessary to enable registration of this Agreement on the title to the Land at the Proponent's cost.

14.4 Discharge

- (a) Council must execute any form required by the Registrar-General, and prepared by the Proponent, to enable this Agreement to be removed from the title to the Land or any part of it as soon as reasonably practicable after:
 - (i) the Proponent has fully performed the obligations under this Agreement;
 - (ii) in respect of part performance of the obligations under this Agreement, the Proponent has fully performed the obligations referable to the part of the Land over which the Agreement is sought to be released, provided the Proponent is not in breach of this Agreement at that time, unless waived by Council; or
 - (iii) this Agreement is terminated.

14.5 Future Subdivisions

- (a) Council acknowledges that the Proponent intends to subdivide the Land in future.

- (b) Subject to the Proponent obtaining all required authorisations for subdivision, the Council must promptly upon request by the Proponent complete all documentation required to enable registration of a proposed plan of subdivision.

15 NOTICES

15.1 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 in (b) below.
- (b) Faxed or emailed to that Party at the relevant details set out below.

(i) **Council: Central Coast Council**

Attention: Chief Executive Officer
Address: DX 7306 WYONG
Email: ask@centralcoast.nsw.gov.au

(ii) **Proponent: Doyalson Wyee RSL Club Limited**

Attention: Brett Elliss
Address: 80 Pacific Highway, Doyalson
Email: brette@doylo.com.au

15.2 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.

15.3 Any notice, consent, information, application or request is to be treated or 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.
- (d) If it is sent by email, within 3 hours of the sender having sent the email provided that no error message is received within that 3 hour timeframe.

15.4 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 it is on a business day, after 5.00pm 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.

16 ENTIRE AGREEMENT

16.1 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

17.1 Each Party agrees to promptly execute all documents and do all such 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

18.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the nonexclusive 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 provided that the dispute resolution provisions in clause 10 of this Agreement have first been satisfied.

19 NO FETTER

19.1 Nothing in this Agreement is to 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 is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

20 SEVERABILITY

20.1 If a clause or part of a clause in 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 the Agreement is not affected.

21 WAIVER

21.1 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.

27 EXPLANATORY NOTE

21.2 Schedule 3 contains the Explanatory Note relating to this Agreement required by Clause 25E of the Regulation.

21.3 Pursuant to Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in Schedule 3 is not to be used to assist in construing this Agreement.

22 GST

22.1 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 recipient of the supply must pay an additional amount equal to the GST on that supply.

EXECUTION PANEL

EXECUTED as an Agreement

Date:

Executed pursuant to delegated authority under section 377 of the *Local Government Act, 1993*, in accordance with the resolution of the Central Coast Council dated date.

Chief Executive Officer

Witness [BLOCK LETTERS]

WITNESS NAME

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

PROPONENT NAME

WITNESS NAME

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

SCHEDULE 1 – Requirements under s 7.4 of the Act

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 7.4(1))</p> <p>The Proponent has:</p> <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a Development Application; and/or (c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes. (b) Yes. (c) Not applicable.
<p>Description of land to which this agreement applies – (Section 7.4(3)(a))</p>	<p>Refer to definition of 'Land' in Clause 4.</p>
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</p>	<p>As set out in the definition for Planning Proposal in Clause 4.</p>
<p>Application of section 7.11 of the Act – (Section 7.4(3)(d))</p>	<p>Applies (refer to clause 3.3).</p>
<p>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</p>	<p>Applies (refer to clause 3.3).</p>
<p>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</p>	<p>Refer to clause 3.3.</p>
<p>Mechanism for Dispute resolution – (Section 7.4(3)(f))</p>	<p>See clause 10.</p>
<p>Enforcement of this agreement (Section 7.4(3)(g))</p>	<p>See clause 11.</p>
<p>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</p>	<p>See clause 19.1.</p>

SCHEDULE 2 – Contributions

Item	Column 1 Contribution	Column 2 Timing of Contribution	Column 3 Security Amount
1.	Relocation of the Sporting Clubs in accordance with clause 1 of Schedule 2.	Prior to issue of the first Construction Certificate for any part of the Development to be carried out in the area of the existing sporting fields depicted in Annexure A, unless otherwise agreed in accordance with clause 1.2 of Schedule 2.	Not applicable.
2.	Establishment of each Landscape Corridor in accordance with clause 2 of Schedule 2.	Establishment to commence prior to issue of the first Construction Certificate for any part of the Development in the area where the relevant Landscape Corridor is to be located.	Not applicable.
3.	Preparation of VMP in accordance with clause 3 of Schedule 2.	VMP to be prepared and approved by Council prior to issue of the first Construction Certificate for any part of the Development in the area where the relevant Biodiversity Corridor is to be located.	See clause 11.
4.	Establishment of each Biodiversity Corridor in accordance with clause 4 of Schedule 2.	Establishment of each Biodiversity Corridor is to commence within 30 days of commencing works pursuant to a development consent (other than for subdivision) on a portion of the Land on which the relevant Biodiversity Corridor is located. Once commenced, establishment of each Biodiversity Corridor is to be completed within two years.	See clause 11.
5.	Maintenance of each Biodiversity Corridor in accordance with clause 5 of Schedule 2.	Once Establishment is completed, each Biodiversity Corridor must be maintained	See clause 11.

		for a period of 3 years	
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1 Relocation of Sporting Clubs

- 1.1 The Proponent must use its reasonable endeavours to facilitate the relocation of the Sporting Clubs to one or more alternative locations, by the time specified in Column 2 of the Table in order to allow for the construction of seniors housing and residential accommodation proposed as part of the Development, except as otherwise provided by clause 1.2 of this Schedule 2.
- 1.2 If despite its reasonable endeavours, the Proponent is unable to relocate the Sporting Clubs (or any one of them) to an alternative field by the time specified in Column 2 of the Table, the Proponent must elect (and notify Council of its election) to either:
 - (a) reduce the size of the existing sporting fields to accommodate for the Sporting Clubs (or any one of them) that is still utilising the existing sporting fields at the time specified in Column 2 of the Table, in which event clause 1.3 of this Schedule 2 applies; or
 - (b) negotiate with Council in relation to payment of a mutually agreed fixed sum for the purpose of Council providing public amenity or public services for the Sporting Clubs (or any one of them).
- 1.3 If the parties are unable to reach agreement under clause 1.2(b) within 180 Business Days , then the fixed sum to be paid by the Proponent is to be determined in accordance with the expert determination provisions in clause 10.4.

2 Establishment of Landscape Corridors

- 2.1 The Proponent must establish landscaped corridors generally in accordance with the plan in Annexure B and the following description:
 - (a) a 20m wide linear landscaped corridor (**Corridor D**) along the alignment of the Gas Pipeline; and
 - (b) an east-west landscaped corridor (**Corridor E**) with a minimum width of 20m, and retention of existing tree canopy.

3 Preparation and implementation of Vegetation Management Plan

3.1 The Proponent must prepare a VMP for the Biodiversity Corridors which:

- (a) provides for the re-establishment of native vegetation and incorporates the following matters:
 - (i) description of the proposed vegetation community;
 - (ii) description of the proposed works;
 - (iii) identification of VMP management zones;
 - (iv) description of works, management and maintenance activities to be carried out in the zones, including targets for density of native vegetation and weed cover;
 - (v) details of implementation, monitoring and reporting requirements; and
 - (vi) an estimate of the costs of carrying out the works and actions required to be carried out or performed in each stage.
- (b) is generally in accordance with the matters set out in pages 36 to 39 of 'Central Coast Council Flora and Fauna Guidelines 2019';
- (c) provides for:
 - (i) a period of two years from the commencement of vegetation management activities to establish each Biodiversity Corridor; and
 - (ii) a three year maintenance period for each Biodiversity Corridor once established.

3.2 The VMP must be provided to and approved by Council prior to issue of the first Construction Certificate for any part of the Development in the area where the Biodiversity Corridors are to be located.

4 Establishment of Biodiversity Corridors

4.1 The Proponent must establish Biodiversity Corridors generally in accordance with the plan in Annexure B and the following description:

- (a) a minimum 40m wide biodiversity corridor (**Corridor A**) along the northern boundary;
- (b) a biodiversity corridor (**Corridor B**) with a minimum width ranging between 47m to 80m spanning north-south connecting Corridors A and C;
- (c) a minimum 62m wide biodiversity corridor (**Corridor C**) spanning east-west along the southern border of Lot 62 DP755266; and
- (d) a north-south biodiversity corridor (**Corridor F**) along the eastern boundary, ranging between a minimum width of 58m at the southern portion of Lot 11 DP 240685 and a minimum width of 120m at the northern portion of Lot 7 DP 240685. The minimum widths applicable to each lot (from south to north of each lot) are:
 - (i) 58m to 60m for Lot 11 DP 240685;
 - (ii) 18m to 63m for Lot 49 DP 707586; and
 - (iii) 65m to 120m for Lot 7 DP 240685.
- (e) The second order stream associated with Corridor B must comply with the requirements of the *Water Management Act 2000*.

4.2 Despite clause 4.1, the parties acknowledge that the Proponent will continue to investigate alternative locations for the Biodiversity Corridors outside of the Land

4.3 If the Proponent identifies suitable alternative location(s) for the corridors, the Proponent may request, and Council must, negotiate in good faith to accept the establishment of the corridors at the alternative locations on adjoining nearby land.

5 Maintenance of Biodiversity Corridors

5.1 The Proponent must maintain Biodiversity Corridors generally in accordance with the plan in Annexure B and the description outlined at clause 4.1 of Schedule 2.

5.2 In accordance with clause 3.1(c)(ii), the Proponent must maintain each Biodiversity Corridor for a period of three years the date of completing the establishment phase .

SCHEDULE 3 – Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

EXPLANATORY NOTE

Voluntary Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act, 1979*

Parties

Central Coast Council (ABN 73 149 644 003) of Council Chambers, Hely Street, Wyong, and 49 Mann Street Gosford, in the State of New South Wales (**Council**)

and

Doyalson Wyee RSL Club Limited (ACN 000 985 008) of 80 Pacific Highway, Doyalson in the State of New South Wales (**Proponent**)

Description of the Land to which the Planning Agreement Applies

Lots 1-9 DP 215875 also known as 49-65 Wentworth Avenue, Doyalson, Lot 1 DP 503655, Lot 11 DP 240685, Lot 49 DP 707586, Lot 7 DP 240685 and Lot 62 755266 also known as 80-110 Pacific Highway, Doyalson.

Description of Proposed Development

Development means the:

- (a) relocation of the existing Doyalson Wyee RSL Club from its current location to 110 Pacific Highway and incorporation of Club space, function centres, cafes and restaurants within relocated Club;
- (b) construction of a 102 room hotel and 72 villa style tourist accommodation at the rear of the Club;
- (c) construction of a health and wellness precinct comprising fitness centre, swimming pool and allied health facilities;
- (d) construction of indoor and outdoor recreational space including, but not limited to, the (existing) Raw Challenge outdoor course, go-kart, paintball and indoor recreational warehouse and arrival centre;
- (e) construction of a neighbourhood centre comprising childcare centre, medical centre, service station and fast food outlets;
- (f) construction of seniors living accommodation in southeast portion of the site including 220 dwellings with private open space, car parking and communal facilities;
- (g) construction of residential accommodation comprising 141 dwellings with access to communal open space, car parking, health facilities, childcare and food outlets;
- (h) creation of new internal vehicle and pedestrian access routes to connect the RSL Club, recreational uses, neighbourhood service centre and residential areas; and
- (i) provision of landscaping and open space,

to be permitted after the Instrument Change.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of the Agreement

The objective of the Agreement is to promote the orderly and economic use and development of the land and to protect the environment.

Nature of the Planning Agreement

The Agreement is a planning agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979* (Act). It is an agreement between the Council and the Proponent. The Agreement is a voluntary agreement under which provisions are made by the Proponent for the conservation or enhancement of the natural environment section 7.4(2)(f).

Effect of the Agreement

The Agreement:

- relates to the Instrument Change (Planning Proposal),
- relates to the carrying out by the Proponent of the Development on the Land,
- does not exclude the application of section 7.11, section 7.12 or section 7.24 to the Development,
- requires the Proponent to provide each Contribution on the terms set out in Schedule 2, at no cost to Council,
- is to be registered on the title to the Land,
- provides dispute resolution methods for a dispute under the Agreement, being mediation and expert determination, and
- provides that the Agreement is governed by the law of New South Wales.

Assessment of the Merits of the Agreement

Planning Purposes Served by the Agreement

The Agreement:

- enables the conservation or enhancement of the natural environment.
- Provides for the relocation of local Sporting Clubs.

How the Agreement Promotes the Public Interest

The Agreement promotes the public interest by assisting with the relocation of the Sporting Clubs and providing improved public infrastructure.

Councils – How the Agreement Promotes the Council's Charter

The Planning Agreement promotes the Council's charter under section 8A of the *Local Government Act 1993* by working with others to secure appropriate services for the local community.

Whether the Agreement Conforms with Council's Capital Works Program

Not Applicable – the draft Planning Agreement does not propose to deliver infrastructure on behalf of Council.

Whether the Agreement specifies that certain requirements be complied with before issuing a Construction Certificate, Subdivision Certificate or Occupation Certificate

Yes.

The Agreement specifies that the Proponent must use its reasonable endeavours to facilitate the relocation of the Sporting Fields to one or more alternative locations prior to issue of the first Construction Certificate for any part of the Development in the area of the existing sporting fields depicted in Annexure B, subject to clause 1.2 of Schedule 2.

Annexure A – Sporting Field Location Plan

LEGEND

 Location of Existing Sporting Field



DOYALSON WYEE RSL CLUB
SPORTING FIELD LOCATION PLAN

DATE: 01.06.2021
JOB NO: P0020860
DWG NO: -
REV: A

Annexure B – Biodiversity Corridor Plan

LEGEND

CROSSINGS OVER CORRIDORS

↔ Indicative Location of Road Crossings



DOYALSON WYEE RSL CLUB
BIODIVERSITY CORRIDOR PLAN

DATE: 24.03.2020
JOB NO: P0020860
DWG NO: -
REV: A