



DRAFT

Planning Agreement

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

Central Coast Council & Pacific Link Housing

Draft Version
Central Coast Council
July 22



Planning Agreement

Author: Central Coast Council

Central Coast Council & Pacific Link Housing

Date: July 22

Draft Version

Approved by:

Date of Approval: date

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

E ask@centralcoast.nsw.gov.au | **W** www.centralcoast.nsw.gov.au | ABN 73 149 644 003

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Planning Agreement

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Planning Agreement

SUMMARY SHEET

Council:

Name: Central Coast Council
Wyong Office: 2 Hely St / PO Box 20 Wyong NSW 2259
Telephone: 02 4350 5555
Email: ask@centralcoast.nsw.gov.au
Representative: David Farmer, Chief Executive Officer

Proponent:

Name: Pacific Link Housing Ltd
Address: Suite G02, 280 Mann Street, Gosford / PO Box 1888, Gosford NSW 2250
Telephone: 02 4324 7817
Email: info@pacificlink.org.au
Representative: Ian Lynch, Chief Executive 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

Registration:

See clause 9

Dispute Resolution:

See clause 13

DATE:

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

and

Pacific Link Housing Ltd (ABN 82 074 394 648) of Suite G02, 280 Mann Street, Gosford (PO Box 1888, Gosford NSW 2250), in the State of New South Wales (**Proponent**)

BACKGROUND

- A. The Proponent is the registered proprietor of the Land.
- B. The proponent is a tier 1 registered Community Housing Provider.
- C. The Proponent has sought the Instrument Change to zone the western portion of the Land from RE1 Public Recreation to R1 General Residential.
- D. The Proponent intends to lodge a Development Application for the Development of the future R1 portion of the Land.
- E. The Proponent is prepared to dedicate the eastern portion of the Land already zoned RE1 to Council for drainage purposes, undertake rehabilitation of the vegetation prior to dedicating the land to Council and close two adjoining public pathways for inclusion in the developable future R1 portion of the land.

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 Part 7 of the Act.

2 APPLICATION OF THIS AGREEMENT

- 2.1 This Agreement applies to the Development of the Land and the Instrument Change

3 OPERATION OF THIS AGREEMENT

- 3.1 This Agreement takes effect once executed by all parties.
- 3.2 This Agreement identifies that the Proponent will:
 - (i). dedicate to Council, at nil cost to Council, the eastern portion of the Land as shown bounded by a blue line on the Map in Schedule 2;
 - (ii) prepare a fully funded Vegetation Management Plan prior to the dedication of that portion of the Land to Council;
 - (iii) pay all costs associated with the closure of the two pathways adjoining the northern and southern boundaries of the Land, as shown in red on the map in Schedule 2, and incorporation of such land into the subject Land.
- 3.3 By complying with the obligations of this Agreement, a benefit, in the form of:
 - (i) land required for public drainage purposes coming into public ownership;

(ii) land not required for public access being disposed of and acquired by an adjoining owner.

3.4 This Agreement does **not** exclude the operation of section 7.11, section 7.12 and section 7.24 of the Act.

3.5 This Agreement does **not** apply to any obligation that the Proponent may have to pay contributions, fees or charges under section 7.11 and section 7.12 of the Act or the *Water Management Act 2000* in respect to the Development of the Land.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

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

Amending LEP means an environmental planning instrument that has the effect of amending the *Gosford Local Environmental Plan 2014*, or *Central Coast Local Environmental Plan* (whichever is in effect at the time) so the Development of the Land is permissible with consent.

Claim or Claims means all actions, complaints, suits, proceedings, claims and demands or any legal, administrative, governmental, arbitral or other proceedings or investigations (at law or in equity). Claim includes any Cross-Claim.

Consent means the consent granted to the Development Application.

Council means Central Coast Council.

Current Development Contributions Plan means Contributions Plan No 31A Drainage, Contributions Plan No 31B Roadworks, Contributions Plan No 31C Open Space and Recreation, Contributions Plan No 31D Community Facilities and Services and the Section 7.12 Contributions Plan for Central Coast Council.

Dedication Land means the eastern portion of the Land as retained zoned RE1 and shown outlined in blue on the map in Schedule 2;

Development means the development of the western portion of the Land for affordable housing in the form of medium density housing.

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

Endowment Fund means the amount specified in the VMP.

Initial Pathways Closure Fee means the fee prescribed in Council's Fees and Charges at the time of application.

Instrument Change means the taking of effect of the Amending LEP.

Land means the land identified in Schedule 1 of this Agreement, being Lot 16 DP 255220 also known as 18 Macleay Avenue, Woy Woy.

Pathways Closure means the closure under the Roads Act 1993 of the two pathways adjoining the northern and southern boundaries of the Land, as shown in red on the map in Schedule 2, and incorporation into the subject Land

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.

Plan of Consolidation means a plan in registrable form to consolidate the land the subject of the Pathways Closure with the land shown in the Plan of Subdivision which is not shown as being dedicated to the Council;

Plan of Subdivision means a plan in registrable form to create the Dedication Land as a separate lot and bearing a statement of intention to dedicate that separate lot to the Council;

Planning Proposal means the document required by section 3.33 of the Act that explains the intended effect of the proposed Amending LEP and sets out the justification for making that Amending LEP, being Council reference number RZ/107/2020 and Department of Planning and Environment reference number PP-2021-5713.

Proponent means the person or entity identified in Item 1 of Schedule 3 to this Agreement.

Proponent's Representative is the person identified in Item 2 of Schedule 3 to this Agreement, appointed by the Proponent to act on behalf of the Proponent, or that person, from time to time, notified to Council in writing by the Proponent.

Regulation means the *Environmental Planning and Assessment Regulation. 2021*

Vegetation Management Plan or **VMP** means the document that details the initial actions to be undertaken by the Proponent and on-going actions for the management of the vegetation on the land to be dedicated to Council after its dedication, and which provides a detailed costing of such works and specifies the amount required to be provided by the Proponent as an Endowment Fund to fund such works.

5 PAYMENT OF MONETARY CONTRIBUTIONS

- 5.1 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 – VEGETATION MANAGEMENT, SUBDIVISION AND DEDICATION

6.1 Obligations

The Proponent undertakes that it will, as part of the process of seeking the Instrument Change to make the Development permissible on the Land, undertake each of the following, at no cost to Council:

- (a) **Within 6 months of the date of this agreement:** prepare a fully funded Vegetation Management Plan for the Dedication Land; and submit such plan to the Council for its approval. Any amendments to the VMP reasonably required by the Council must be made within one month of such a requirement and resubmitted to the Council for approval.
- (b) **Within 2 months of the date of approval of the Vegetation Management Plan:** procure the preparation of the Plan of Subdivision.

- (c) **Within 3 months of the date of approval of the Vegetation Management Plan:**
 - i. Undertake the works in the VMP required to be undertaken before the Dedication Land is dedicated to the Council;
 - ii. Make application to the Council for a subdivision certificate for an exempt subdivision under Part 2 Division 1 Subdivision 38 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, for the Plan of Subdivision.
- (d) **Within 1 month of the Council's approval of the Vegetation Management Plan:** pay the Endowment Fund to the Council.
- (e) **Within 1 month of the approval of the Subdivision Certificate:** submit for registration the Plan of Subdivision at NSW Land Registry Services and do all things necessary to effect the dedication of the Dedication Land to the Council or its transfer to the Council for nil consideration.

7. PROPONENT OBLIGATIONS – PATHWAY CLOSURE AND CONSOLIDATION

7.1 Obligations

The Proponent undertakes that it will, as part of the process of seeking the Instrument Change to make the Development permissible on the Land, undertake each of the following, at no cost to Council:

- (a) **Within 2 months of the date of this agreement:** Pay the Initial Pathways Closure Fee to the Council.
- (b) **Thereafter when required by the Council:** pay all costs associated with the application for the Pathways Closure within 28 days of being provided with a Tax Invoice by the Council for such costs
- (c) **Within 2 months of the Pathways Closure being gazetted:** procure the preparation of a draft of the Plan of Consolidation.
- (d) **Within 1 month of the registration of the Plan of Subdivision:** procure the preparation of the Plan of Consolidation.
- (e) **Within 1 month of the later of:**
 - (i) **The Instrument Change; and**
 - (ii) **The gazettal of the Pathway Closure;**

make application to Council for a subdivision certificate for the Plan of Consolidation.
- (f) **Within 1 month of the issue of a subdivision certificate for the Plan of Consolidation:** register the Plan of Consolidation at NSW Land Registry Services and do all things necessary to effect the transfer of the Pathway Land from the Council to the Proponent as part of the registration of the Consolidation Plan.

7.2 **Release from obligations**

The Proponent will be released from its outstanding obligations under this clause 7 if the Pathways Closure is not gazetted on or before the date which is three years after the date of this Agreement.

7.3 **Other obligations not affected**

For avoidance of doubt, if the Proponent is released from its outstanding obligations under cl 7.2, the Proponent's other obligations under this Agreement remain in full force and effect.

7.4 **No claims**

The Proponent must not make any Claim against the Council if:

7.4.1 the Pathways Closure is not gazetted on or before the date which is three years after the date of this Agreement; or

7.4.2 the application for the Pathways Closure is determined by way of refusal;

including without limitation in connection with:

7.4.3 any impact on the Development;

7.4.4 any impact on the ability to develop the Land for the purposes of the Development;
or

7.4.5 the dedication of the Dedication Land.

8. **COUNCIL OBLIGATIONS**

8.1 **Obligations re Instrument Change**

8.1.1 Subject to performance by the Proponent of its obligations under this agreement when required under this agreement, the Council will do all things reasonably required to procure the Instrument Change.

8.1.2 If the Proponent is in breach of any obligation under this agreement the Council may suspend all or any part of its activities in procuring the Instrument Change until such breach is remedied.

8.1.3 The Council may give to the Proponent a Notice to Perform in respect of any obligation which the Proponent has not performed, specifying a time for performance which is essential.

8.1.4 If the Proponent is in breach of any obligation under this agreement after the time specified for performance in a Notice to Perform, the Council may terminate this agreement by giving written notice of termination to the Proponent and clauses 12.2 and 12.3 will apply.

8.2 **Obligations re Pathways Closure**

The Council must:

- 8.2.1 Make an application under the Roads Act 1993 for the Pathways Closure, promptly following payment of the Initial Pathways Closure Fee by the Proponent, and use reasonable endeavours to pursue and progress that application as and when required and in accordance with the Roads Act 1993;
- 8.2.2 Keep the Proponent informed of the progress and status of the application for the Pathways Closure;
- 8.2.3 Facilitate the transfer the land the subject of the Pathways Closure to the Proponent following the gazettal of such closures by whatever means may be appropriate, for \$1;
- 8.2.4 Sign any document or plan reasonably required by the Proponent to enable the Proponent to perform its obligations under this Agreement.

8.3 **Obligations re Vegetation Management Plan**

Following the dedication of land to Council, Council must undertake the works provided for in the VMP.

9. **REGISTRATION OF THIS AGREEMENT**

9.1 **Acknowledgement**

The Proponent acknowledges that Council intends to register this Agreement on the title to the Land in accordance with section 7.6 of the Act at NSW Land Registry Services and, upon registration by the Registrar-General, this Agreement will be binding on and enforceable against the owner of any part of the Land from time to time as if each owner for the time being had entered into this Agreement and was a Proponent.

9.2 **Consents to registration**

The Proponent:

- 9.2.1 consents to the registration of this Agreement at NSW Land Registry Services on the title to the Land; and
- 9.2.2 warrants that it has obtained all consents and approvals that are required and will do all things necessary to enable the registration of this Agreement on the title to the Land.

9.3 **Proponent's obligations**

- 9.3.1 The Proponent must within 10 Business Days of a written request by Council do all things necessary to enable this Agreement to be registered by Council on the title to the Land under s 7.6 of the Act, including:
 - (a) producing any documents or letters of consent required by the Registrar-General of the NSW Land and Registry Services;

- (b) providing the production slip number when the Proponent produces the certificate of title to the Land at the NSW Land and Registry Services; and
- (c) providing Council with a cheque for registration fees payable in relation to registration of this Agreement at the NSW Land and Registry Services.

9.3.2 The Proponent must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land and Registry Services that relate to registration of this Agreement.

9.4 **Release from registration**

If Council is satisfied that the Proponent has:

- 9.4.1 paid all of its required Development Contribution to Council; and
- 9.4.2 fully complied with its other obligations under this Agreement,

Council will at the request of the Proponent, execute the relevant forms to remove the registration of this Agreement from the certificates of title for the Proponent's Land.

9.5 **Registration expenses**

The Proponent must pay Council's expenses including registration fees, legal costs and disbursements on an indemnity basis, for the registration of this Agreement and the subsequent removal of registration under this clause 9.

10. **CAVEATABLE INTEREST**

10.1 **Lodgement of caveat**

- 10.1.1 The Proponent acknowledges and agrees that the rights under this Agreement give Council a caveatable interest in the Land.
- 10.1.2 Council may at any time after the date of this Agreement, lodge a caveat on the relevant folios of the Register held by the NSW Land Registry Services pertaining to the Land.
- 10.1.3 A caveat lodged by Council in accordance with this clause 10 must not prevent or prohibit the lodgement of any instrument dealing or matter required for the registration of any mortgage, subdivision plan, easement, covenant, right of way, deposited plan or strata plan relating to the Development. The Proponent must not lodge a lapsing notice or take any action to obtain or seek a withdrawal or removal of the caveat, unless:
 - (a) Council has confirmed in writing to the Proponent that its obligations under this Agreement have been satisfied; or
 - (b) this Agreement has otherwise come to an end.

10.2 **Withdrawal of caveat**

If Council lodges a caveat in accordance with this clause 10, Council must do all things reasonably required to remove the registration of that caveat from the title to the Land once this Agreement has been registered on the title to Land in accordance with clause 9.

11. NOTATION ON PLANNING CERTIFICATE

The Proponent agrees that Council may, in its absolute discretion, make a notation on any planning certificate under section 10.7(5) of the Act relating to the Land.

12. TERMINATION

- 12.1 A Party can terminate this Agreement by written notice to the other Party if any of the following events occur:
- 12.1.1 the Planning Proposal is declared to be invalid by a Court of competent jurisdiction;
 - 12.1.2 the Minister determines that the Planning Proposal should not proceed;
 - 12.1.3 The proponent withdraws the planning proposal;
 - 12.1.4 the Planning Proposal lapses; or
 - 12.1.5 this Agreement is declared to be unlawful by a Court of competent jurisdiction.
- 12.2 The termination of this Agreement is without prejudice to the accrued rights of Council at the time of such termination.
- 12.3 If this Agreement is terminated, then:
- 12.3.1 the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - 12.3.2 the parties must take all steps reasonably necessary to minimise any loss that each party may suffer as a result of the termination of this document;
 - 12.3.3 Council will, at the cost of the Proponent, do all things reasonably required to remove this Agreement from the title to the Land.
-

13. DISPUTE RESOLUTION

- 13.1 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 a Party relating to the Dispute unless the Parties have complied with this clause, except where a Party seeks urgent interlocutory relief.
- 13.2 The Party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other Parties to the Dispute, specifying the nature of the Dispute (**Dispute Notice**).
- 13.3 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 working days of the receipt of the Dispute Notice.
- 13.4 The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

- 13.5 The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
- 13.6 The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
- 13.7 If any procedural aspects are not specified sufficiently in the rules under Clause 13.2, 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.
- 13.8 A legal representative acting for either of the Parties may participate in the mediation.
- 13.9 From the time when a Dispute Notice is served, neither Party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 13.10 Should mediation fail to resolve any dispute then either party may commence court proceedings in respect of the dispute.
- 13.11 Despite clauses 13.1, 13.2, 13.3 and 13.4, either Party may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

14. NOTICES

- 14.1 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:
- 14.1.1 delivered or posted to that party at its address set out below; or
 - 14.1.2 faxed or emailed to that Party at its email address set out below.
- Council** Central Coast Council
Attention: The Chief Executive Officer
Address: 2 Hely Street, Wyong, NSW 2250
Email: ask@centralcoast.nsw.gov.au
- Proponent** Pacific Link Housing Ltd
Attention: Ian Lynch, Chief Executive Officer
Address: PO Box 1888, Gosford NSW 2250
Email: info@pacificlink.org.au
- 14.2 If a Party gives the other Party three 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 the other Party if it is delivered, posted or faxed to that address or fax number as notified.
- 14.3 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, five Business Days after it is posted; and

- (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.

14.4 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 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.

15. ASSIGNMENT AND DEALINGS

15.1 The Proponent agrees that it will not deal with, transfer, mortgage or otherwise encumber any interest in the Land, or assign or novate any rights or obligations under this Agreement, to a third party (**Third Party**) unless:

- 15.1.1 Council has given its prior written consent to the proposed assignment or dealing;
- 15.1.2 the Third Party has, at no cost to Council, entered into an agreement with the Proponent and Council in which the Third Party agrees to be bound by the Agreement as if they were a party to the original Agreement; and
- 15.1.3 the Proponent is not in breach of the Agreement.

15.2 The Proponent agrees that it will not lodge any caveat or other instrument upon the title of the Land which may prohibit or hinder registration of this Agreement.

16. LEGAL COSTS

16.1 The Proponent agrees to pay or reimburse the costs of the Council, as follows:

- 16.1.1 negotiation, preparation and execution of this Agreement, agreed in the sum of \$5,000.00 and
- 16.1.2 all costs associated with the registration of this Agreement in accordance with clause 9;

within 14 Business Days after receipt of a tax invoice from the Council.

16.2 The Proponent must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it.

17. 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.

18. FURTHER ACTS

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

19. 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 provided that the dispute resolution provisions in clause 13 of this Agreement have first been satisfied.

20. LEGISLATION

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

21. JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

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

22. 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 or compelling the Council to give a consent to a development application applying to the Land.

23. REPRESENTATIONS AND WARRANTIES

23.1 The Proponent warrants and represents to Council that:

- 23.1.1 it is the registered proprietor of the Land;
- 23.1.2 it is legally entitled to obtain all consents and approvals that are required by this Agreement and do all things necessary to give effect to this Agreement;
- 23.1.3 it has full legal capacity to own its property and to carry on its business and enter into this Agreement and carry out the obligations contemplated by this Agreement;
- 23.1.4 it is the intention of the Proponent to expeditiously commence and complete the Development, if Development Consent is granted; and

- 23.1.5 it holds each Authorisation that is necessary or desirable to:
- (a) enable it to properly execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
 - (c) enable it to properly carry on its business,
 - (d) and it is complying with any conditions to which any of these Authorisations is subject; and

23.2 it is not aware of any matter which may materially affect the Proponent's ability to perform its obligations under this Agreement;

23.3 neither its execution of this Agreement, nor the carrying out by it of the transactions that it contemplates, does or will:

23.3.1 contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property;

23.3.2 contravene any Authorisation.

24. GENERAL INTERPRETATION

In this Agreement:

24.1 a reference to:

24.1.1 this or other document includes the document as varied or replaced regardless of any change in the identity of the Parties;

24.1.2 a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;

24.1.3 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;

24.1.4 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

24.1.5 a person includes the legal personal representatives, successors and permitted assigns of that person;

24.1.6 the singular includes the plural and vice versa;

24.1.7 a gender includes the other genders; and

24.1.8 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

- 24.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 24.3 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 24.4 where the expression including or includes is used it means 'including but not limited to' or 'including without limitation'.
-

25. 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.

26. 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 or any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

27. GST

27.1 Definitions

In this clause:

- 27.1.1 words and expressions that are not defined in this Agreement, but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- 27.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

27.2 GST exclusive

Except as otherwise provided in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

27.3 Division 81 and 82 of GST Law

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this Agreement:

- 27.3.1 no additional amount will be payable by a Party on account of GST; and
- 27.3.2 no tax invoices will be exchanged between the Parties.

27.4 **Increase in consideration**

Subject to clause 27.3, if GST is payable in respect of any supply made by a supplier under this Agreement (GST Amount), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 27.5, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

27.5 **Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 27.3.

27.6 **Reimbursements**

If this Agreement requires a Party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another Party, the amount which the first Party must pay, reimburse or contribute is the sum of:

- 27.6.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other Party is entitled; and
- 27.6.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

27.7 **Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Agreement:

- 27.7.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and
- 27.7.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

28. EXPLANATORY NOTE

- 28.1 Appendix 1 contains the Explanatory Note relating to this Agreement required by clause 205 of the Regulation.
- 28.2 Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note in Appendix 1 is not to be used to assist in construing this Agreement.

29. AMENDMENT OF THIS AGREEMENT

- 29.1 Any modification or variation to of this Agreement will be of no force or effect unless it is in writing and signed by the Parties to this Agreement, in accordance with section 7.5 of the Act.

EXECUTION PANEL

EXECUTED as a Voluntary Planning Agreement

Date: 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]

DAVID FARMER

WITNESS NAME

CENTRAL COAST COUNCIL

Name [BLOCK LETTERS]

Director

Director / Secretary

NAME

NAME

PACIFIC LINK HOUSING LTD

PACIFIC LINK HOUSING LTD

30. SCHEDULE 1 – Land Subject to the Planning Agreement



31. SCHEDULE 2 – Land to be Dedicated to Council and Acquired by the Proponent



Blue Outline – Land within bounded area to be dedicated to Council for drainage purposes

Red Lines – Public Pathways to be closed and incorporated into the subject land

32. SCHEDULE 3 – Proponent’s Details

ITEM	DEFINED TERM	PARTICULARS
1	Proponent	Pacific Link Housing Ltd ABN: 82 074 394 648 Suite G02, 280 Mann Street, Gosford (PO Box 1888, Gosford NSW 2250)
2	Proponent’s Representative	Ian Lynch Suite G02, 280 Mann Street (PO Box 1888, Gosford NSW 2250)

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APPENDIX

Environmental Planning and Assessment Regulation 2021

(Clause 205)

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, 2 Hely Street, Wyong, in the State of New South Wales (**Council**)

and

Pacific Link Housing Limited (ABN 82 074 394 648;) of Suite G02, 280 Mann Street, Gosford (PO Box 1888 Gosford NSW 2250), in the State of New South Wales (**Proponent**)

Description of the Land to which the Planning Agreement Applies

Lot 16 DP 255220 also known as 18 Macleay Avenue, Woy Woy.

Description of Proposed Development

Development means the development of the western portion of the Land for affordable housing in the form of medium density housing.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of the Agreement

The objective of the Agreement is to identify the material public benefit for rezoning part of the Land.

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 Planning Agreement

The Planning Agreement:

- relates to the Instrument Change,
- 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 of *Environmental Planning and Assessment Act 1979* to the Development,

- requires the Proponent to dedicate part of the Land as a material public benefit,
- requires the Proponent to prepare and implement a Vegetation Management Plan for the land to be dedicated prior to such dedication occurring,
- requires Council to undertake the closure of two pathways, at the Proponent's cost,
- requires the Proponent to consolidate the two pathways into the Land,
- is to be registered on the title to the Land,
- provides dispute resolution methods for a dispute under the Agreement, being mediation and arbitration, 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

In accordance with S.7.4(2) of the Act, the Planning Agreement has the following public purposes:

- the provision of public amenities or public services,
- the provision of affordable housing,
- the conservation and enhancement of the natural environment.

The Agreement provides the best means of achieving the above public purposes through the dedication of land for the provision of public drainage purposes and the retention of the vegetation within this area.

How the Agreement Promotes the Public Interest

The Agreement promotes the public interest by:

- ensuring the dedication of land required for public drainage requirements is in public ownership and ensuring the vegetation within the land to be dedicated is in a well-maintained state; and
- ensuring unused pathways serving no public benefit are incorporated into the Land to assist in the provision of affordable housing.

How the Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by:

- promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources;
- facilitate ecological sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;
- facilitating the orderly and economic use and development of the land;

- promote the delivery and maintenance of affordable housing;
- protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.

The Planning Agreement provides Council with land for drainage purposes which will benefit the local community and works to conserve the existing endangered ecological community within the land to be dedicated to Council. The closure of unused public pathways will ensure a more orderly development of the subject land for affordable housing purposes.

How the Agreement Promotes the Council's Charter

The Agreement promotes the elements of the Council's Charter by:

- enabling the provision of adequate, equitable and appropriate services and facilities for the community;
- enabling the proper management, development and enhancement of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- enabling it as the custodian and trustee of public assets to effectively plan for, account for and manage the assets for which it is responsible;
- keeping the local community and the State government (and through it the wider community) informed of its activities.

The Planning Agreement provides Council with land to enable appropriate drainage purposes to be provided to the community and for the management of the natural environment within this dedicated land. The closure of unused pathways for inclusion into the subject land is the responsible management of an unused and unnecessary asset.

Whether the Agreement Conforms with Council's Capital Works Program

Yes. Council's Operational Plan identifies the following objectives relevant to the Planning Agreement:

- Focus area – Cherished and Protected Natural Beauty
F2 Promote greening and ensure the well-being of communities through the protection of local bushland, urban trees, tree canopies and expansion of the Coastal Open Space System (COSS)
- Focus area – Delivering Essential Infrastructure
H1 Solve road and drainage problem areas and partner with the State Government to improve road conditions across the region
- Focus area – Balanced and Sustainable Development
I3 Ensure land use planning and development is sustainable and environmentally sound and considers the importance of local habitat, green corridors, energy efficiency and stormwater management

14 Provide a range of housing options to meet the diverse and changing needs of the community and there is adequate affordable housing

Council's Delivery Program identifies the following objective relevant to the Planning Agreement:

- Expansion and upgrade of the drainage network across the Central Coast to reduce flooding, improve stormwater management, and maintain accessibility around the Central Coast

The Planning Agreement is consistent with Council's current Operational Plan and Delivery Program as it includes protection of local bushland and dedication of land for drainage purposes and the closure of pathways will enhance the provision adequate affordable housing.

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 prior to issuing a Subdivision Certificate, the land to be dedicated to Council for drainage purposes requires approval of a Vegetation Management Plan, and the closure of the two pathways is to commence within 2 months of the approval of this Agreement.

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