

REQUEST

New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

All Statutory Declarations and evidence that are lodged in support of land dealings will be treated as publicly accessible and will be disclosed to persons upon request.

STAMP DUTY

Insert Duties Assessment No. as issued by Revenue NSW Office.
Duties Assessment No.

(B) TORRENS TITLE

1/215875, 2/215875, 3/215875, 4/215875, 5/215875, 6/215875, 7/215875, 8/215875, 9/215875, 1/503655, 11/240685, 49/707586, 7/240685, 62/755266

(C) REGISTERED DEALING

Number	Torrens Title
--------	---------------

(D) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE R
	Email:	
	Reference:	

(E) APPLICANT

Central Coast Council (ABN 73 149 644 003)
--

(F) NATURE OF REQUEST

Registration of Planning Agreement pursuant to s 7.6 of the Environmental Planning and Assessment Act 1979
--

(G) TEXT OF REQUEST

THE APPLICANT HAS ENTERED INTO A PLANNING AGREEMENT PURSUANT TO SECTION 7.6 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (NSW) WITH THE REGISTERED PROPRIETOR OF THE LAND COMPRISED IN MARGINAL NOTE (B) OF THIS REQUEST.

THE APPLICANT REQUESTS THAT THE PLANNING AGREEMENT ANNEXED TO THIS REQUEST AS ANNEXURE B AND COMPRISING OF TWENTY NINE (29) PAGES, BE REGISTERED OVER THE LAND COMPRISED IN MARGINAL NOTE (B) IN ACCORDANCE WITH THE PROVISIONS OF THE PLANNING AGREEMENT.

DATE

(H) See Annexure A for execution

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS.

The _____ certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. Full name: N/A Signature: _____

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Annexure A to Request: Execution page

Parties: Central Coast Council and Doyalson Wyee RSL Club Limited


Date: 15 September 2022

Execution by Applicant Planning Authority

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

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 25 February 2021

I certify that I am an eligible witness and that an authorised officer of the applicant signed this dealing in my presence [See note* below].



Chief Executive Officer

DAVID FARMER

Name [BLOCK LETTERS]



Witness [BLOCK LETTERS]

KAREN ARGENT

Name [BLOCK LETTERS]

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation

Execution by Registered Proprietor

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: Doyalson Wyee RSL Club Limited (ABN 69 000 985 008)

Authority: Section 127 Corporations Act 2001



Signature of Director / Company Secretary

DARREN THORNTON

Name of Director / Company Secretary



Signature of Director

KEVIN BALDWIN

Name of Director



Voluntary Planning Agreement
Under section 7.4 of the Environmental Planning and Assessment Act, 1979
Central Coast Council & Doyalson Wyee RSL Club Limited

Final Version
Central Coast Council

x

Central Coast Council
Authorised Officer

x

Doyalson Wyee RSL Club Limited
Director / Company Secretary

x

Doyalson Wyee RSL Club Limited
Director



Voluntary Planning Agreement

Author: Central Coast Council

Central Coast Council & Proponent

Date:

Final Version

Approved by:

Date of Approval:

A handwritten signature in black ink, appearing to read "DAVID FARMER".

DAVID FARMER

15.9.2022

© 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

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

Opening Hours 8.30am - 5.00pm

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:

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 and to ensure the protection in perpetuity of proposed Biodiversity Corridors through conservation zoning.
- 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 4 of Schedule 2 and which are generally depicted in the plan in Annexure B. **Corridors A, B, 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 the table to clause 1 in Schedule 2.

Covenant means the restrictive covenant to be registered on the title of the Land in accordance with clause 6 of Schedule 2, substantially in the form shown in Annexure C.

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

- (a) relocation and expansion of Doyalson-Wyee RSL Club and gym;
- (b) construction of low density residential dwellings, seniors housing, medical facilities, childcare centre, service station, food outlets and hotel accommodation;

- (c) expand the recreation facilities to include an indoor recreational facility and expansion of the raw challenge course;
- (d) provision of landscaping and open space; and
- (e) provision of a signalised intersection and new internal vehicle and pedestrian access routes

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.

Hollow bearing trees means dominant or co-dominant living trees where the trunk or tree branches have visible hollows, holes or cavities.

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 C, D, E and G** 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-2021-4334 to amend the LEP to allow the following:

- (a) amend the zoning of 49-65 Wentworth Avenue and 80 – 90 Pacific Highway from RE2 Private Recreation to R2 Low Density Residential;
- (b) amend the zoning of portion of 100-110 Pacific Highway from RU6 Transition to R2 Low Density Residential and the remaining portion of 100-120 to RE2 Private Recreation;
- (c) amend the LEP to apply a minimum lot size requirement of 450m² to the R2 Low Density Residential zone;
- (d) amend Schedule 1 (additional permitted uses), clause 1 (and associated mapping) to remove the current provisions applying to the Doyalson Wyee RSL Club site;
- (e) insert a new clause within Schedule 1 to allow:
 - a. on land zoned R2 Low Density Residential the uses of health service facility, registered club and recreation facility (indoor); and
 - b. on land zoned RE2 Private Recreation (excluding 120 Pacific Highway, Doyalson) the uses of centre based child care facility, health service facility, hotel and motel accommodation, seniors housing, service station and serviced apartments.

as described in the Gateway Determination Report dated 25 August 2021 and as subsequently amended to include an amendment to the zoning of parts of 120 Pacific Highway to comprise the Biodiversity Corridors from RU6 Transition to C3 Environmental Management and C2 Environmental Conservation and parts of 90-100 Pacific Highway from RE2 Private Recreation or RU6 Transition to C2 Environmental Conservation.

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(s) 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 2.2 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 Within 60 Business Days of 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 to referred 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.

22 GST

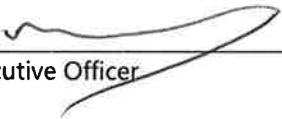
22.1 If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

EXECUTION PANEL

EXECUTED as an Agreement

Date: 15 September 2022

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 25 February 2021



Chief Executive Officer

DAVID FARMER

Name [BLOCK LETTERS]



Witness [BLOCK LETTERS]

KAREN ARGENT

Name [BLOCK LETTERS]

Executed in accordance with section 127 of the *Corporations Act 2001* by **Doyalsen Wyee RSL Limited**:



Director Signature

KEVIN BALDWIN

Print Name



Director/Secretary Signature

DARREN THORNTON

Print Name

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>

x



Central Coast Council
Authorised Officer

x



Doyalson Wyee RSL Club Limited
Director / Company Secretary

x



Doyalson Wyee RSL Club Limited
Director

SCHEDULE 2 – Contributions

1 Obligation to make each Development Contribution

1.1 The Proponent must make each Development Contribution:

- a) in the manner specified in Column 1 of the Table to Schedule 2;
- b) at the time specified in Column 2 of Table to Schedule 2; and otherwise in accordance with the terms of this Agreement.

1.2 The Proponent must provide the security amount specified in Column 3 of the Table Schedule 2,

Table to Schedule 2

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 2.2 of Schedule 2.	Not applicable.
2.	Preparation of one or more Landscape Plans in accordance with clause 3 of Schedule 2.	A Landscape Plan must be: (a) prepared for the relevant Landscape Corridor and submitted at the time of lodgement for any Development Application (other than a Development Application that seeks to authorise englobo subdivision and services for englobo lots, site consolidation, site preparation works and/or subdivision) made in respect of land which incorporates or is immediately adjoining that Landscape Corridor; and (b) assessed by, and if satisfactory approved by, Council in conjunction with that Development Application.	Not applicable.

x



Central Coast Council
Authorised Officer

x



Doyalson Wyee RSL Club Limited
Director / Company Secretary

x



Doyalson Wyee RSL Club Limited
Director

Item	Column 1 Contribution	Column 2 Timing of Contribution	Column 3 Security Amount
3.	Preparation of one or more VMPs in accordance with clause 4 of Schedule 2.	<p>A VMP must be:</p> <p>(a) prepared for the relevant Biodiversity Corridor and submitted at the lodgement of any Development Application (other than a Development Application that seeks to authorise englobo subdivision and services for englobo lots, site consolidation, site preparation works and/or subdivision) on land which incorporates or is immediately adjoining a Biodiversity Corridor; and</p> <p>(b) assessed by, and if satisfactory approved by, Council in conjunction with that Development Application.</p> <p>This timing may be adjusted in accordance with clause 5.3 of Schedule 2.</p>	See clause 11.
4.	Implementation of VMPs in accordance with clause 5 of Schedule 2.	Implementation of an approved VMP must commence at the time development under the relevant Development Consent commences (in accordance with the terms of the approved VMP) and must continue for a period of no less than 10 years.	See clause 11.
5.	Registration of restrictive covenant over each Landscape Corridor in accordance with clause 6 of Schedule 2.	The Covenant is to be registered on the relevant titles pertaining to each Landscape Corridor prior to the issue of the final occupation certificate for the relevant phase of Development.	Not applicable.

Item	Column 1 Contribution	Column 2 Timing of Contribution	Column 3 Security Amount
6.	Construction of traffic control signals and intersection upgrade in accordance with clause 7 of Schedule 2.	<p>Signalised intersection to be constructed as part of the first Development Application for traffic generating development (which excludes a Development Application to authorise englobo subdivision and services for englobo lots, site consolidation, site preparation works and/or subdivision).</p> <p>Signal installation and intersection upgrade works to be completed prior to the issue of the first occupation certificate for traffic generating development on the Land.</p>	Not applicable.

2 Relocation of Sporting Clubs

- 2.1 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 2.2 of this Schedule 2.
- 2.2 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 2.3 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).
- 2.3 If the parties are unable to reach agreement under clause 2.2(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.

3 Establishment of Landscape Corridors

- 3.1 The Proponent must prepare one or more Landscape Plans for the following Landscape Corridors generally in accordance with the plan in Annexure B, the following descriptions, and the requirements set out in clauses 3.2 to 3.6:
- (a) An irregular shaped landscaped corridor (**Corridor C**) spanning east-west along the southern border of Lot 62 DP755266 (with minimum width of 16.3m) and connects with Biodiversity corridor B to the north;
 - (b) a 20m wide linear landscaped corridor (**Corridor D**) along the alignment of the Gas Pipeline;
 - (c) an irregular shaped east-west landscaped corridor (**Corridor E**) with a minimum width of 16m, retention of existing tree canopy, including the trees within the Central Park area; and
 - (d) a triangular shaped landscaped corridor (**Corridor G**) with a maximum width of 51m located on the northern portion of Lot 7 DP 240685 adjacent to Corridor F.
- 3.2 A Landscape Plan must depict the locations of the road crossings as shown in indicative locations in the plan in Annexure B where relevant to the subject matter of the plan.
- 3.3 The Landscape Plan for Corridor E must identify a minimum of 31 hollow bearing trees (including their tree protection zones) and the requisite measures for retaining the hollow bearing trees. The parties acknowledge that Council may also impose a condition on any development consent relating to the land on which Corridor E is located to restrict the removal of hollow bearing trees.
- 3.4 Landscape Corridors C, D, E and G are to be managed in accordance with the requirements of 'Managed Land' in Planning for Bushfire Protection 2019.

3.5 Landscape Corridors C, D E and G are to comply with requirements for an Inner Protection Area as described in Planning for Bushfire Protection 2019. An Inner Protection Area will require retention and establishment of native canopy trees only in order to avoid a bushfire hazard.

3.6 The Landscape Plan for Corridor D shall provide for shallow soil planting. Due to the presence of the Jemena pipeline, deep soil planting cannot be implemented.

4 Preparation of Vegetation Management Plans

4.1 The Proponent must prepare one or more VMPs for each of the Biodiversity Corridors, each of 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'; and
- (c) provides for an implementation period of no less than 10 years.

5 Implementation of Vegetation Management Plans for Biodiversity Corridors

5.1 The Proponent must establish Biodiversity Corridors generally in accordance with the plan in Annexure B, the following description, and the requirements of clause 5.6:

- (a) a biodiversity corridor (**Corridor A**) of minimum 40m width along the northern boundary;
- (b) a biodiversity corridor (**Corridor B**) with a maximum width of 57m spanning north-south connecting Corridors A and C;
- (c) a north-south biodiversity corridor (**Corridor F**) along the eastern boundary, ranging between a minimum width of 41m at the southern portion of Lot 11 DP 240685 and a maximum width of 49m 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) 41m to 43m for Lot 11 DP 240685 (**Corridor F – South**);
 - (ii) 43m to 46m for Lot 49 DP 707586 (**Corridor F – Central**); and
 - (iii) 46m to 49m for Lot 7 DP 240685 (**Corridor F – North**).

- (d) The second order stream associated with Corridor B must comply with the requirements of the *Water Management Act 2000*.
- 5.2 A separate VMP may be prepared and submitted in respect of Corridor F – South, Corridor F – Central and Corridor – North as described in clause 5.1(c) of Schedule 2.
- 5.3 If the Proponent intends to undertake Development in a staged manner on land immediately adjoining a Biodiversity Corridor, the parties are to negotiate in relation to the timing requirements for preparing a VMP.
- 5.4 Despite clause 5.1, the parties acknowledge that the Proponent will continue to investigate alternative locations to which it may relocate one or more of the Biodiversity Corridors outside of the Land.
- 5.5 If the Proponent identifies suitable alternative location(s) for one or more Biodiversity Corridor, 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.
- 5.6 A Biodiversity Corridor must retain existing native vegetation and rehabilitate all vegetation strata (groundcover, mid and canopy) where absent.

6 Registration of Restrictive Covenant

- 6.1 The Proponent consents to the registration of the Covenant on each relevant title of the Land.
- 6.2 The Parties agree that:
- (a) the Covenant is to be registered on each relevant title of the Land in the form as shown in Annexure C, subject to any amendments agreed to by Council, acting reasonably, to ensure the Instrument is in registrable form; and
 - (b) the Covenant shall affect only that part of each relevant title comprising the Landscape Corridor.
- 6.3 Council must execute and deliver the Covenant to the Proponent as soon as reasonably practicable.
- 6.4 The Proponent must register the Covenant prior to the issue of the final Occupation Certificate for the Development.
- 6.5 If requested by the Proponent, Council must do all things reasonably necessary to enable registration of the Covenant including responding to any requisitions raised by Land Registry Services NSW.

7 Traffic control signals and intersection upgrade

- 7.1 The Proponent must construct, at its own cost, traffic control signals and an intersection upgrade at 100 Pacific Highway (Lot 49 DP 707586) which the parties intend will be generally in accordance with the indicative strategic intersection design in Annexure D, as that indicative plan may be amended following further detailed design.
- 7.2 The works required under this clause 7 must be completed prior to the first occupation certificate for traffic generating development on the Land.

7.3 The parties acknowledge that any such traffic control signals and intersection upgrade works will require other authorisations including without limitation:

- (a) consents or approvals which may be required under the Act; and
- (b) a Works Authorisation Deed to be entered into with Transport for New South Wales.

x



Central Coast Council
Authorised Officer

x



Doyalson Wyee RSL Club Limited
Director / Company Secretary

x

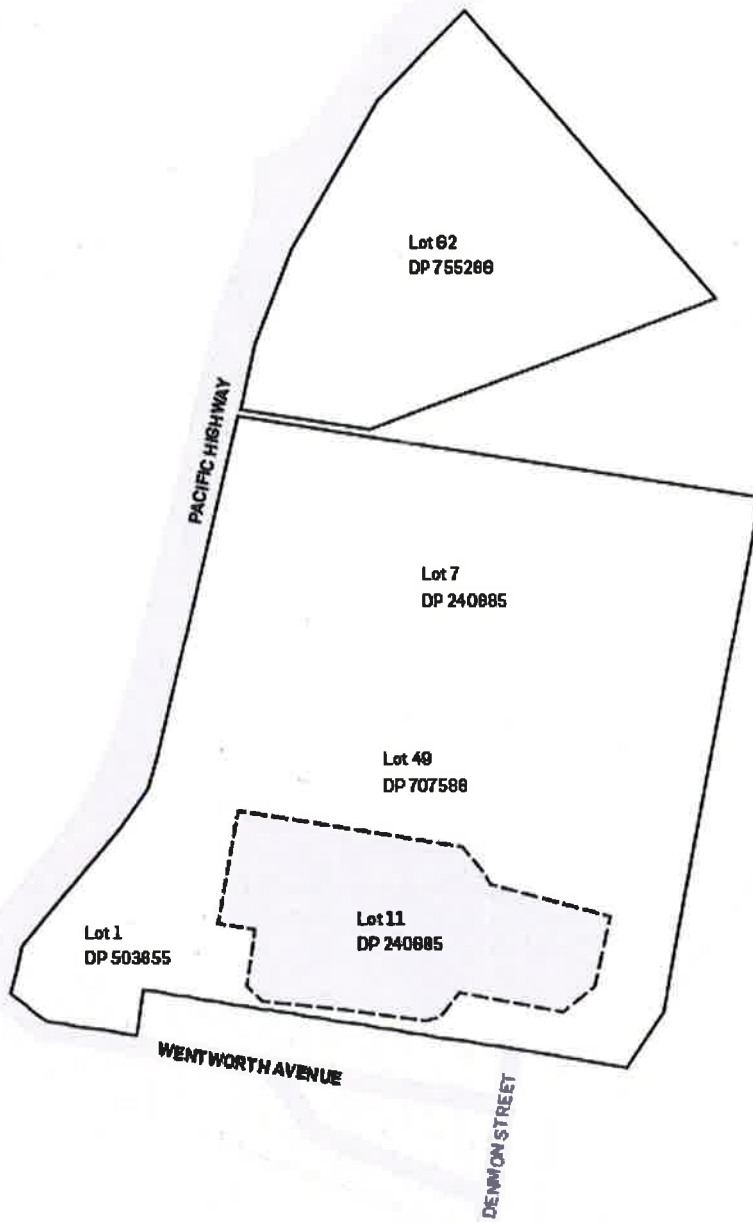


Doyalson Wyee RSL Club Limited
Director

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

x

Central Coast Council
Authorised Officer

x

Doyalson Wyee RSL Club Limited
Director / Company Secretary




x

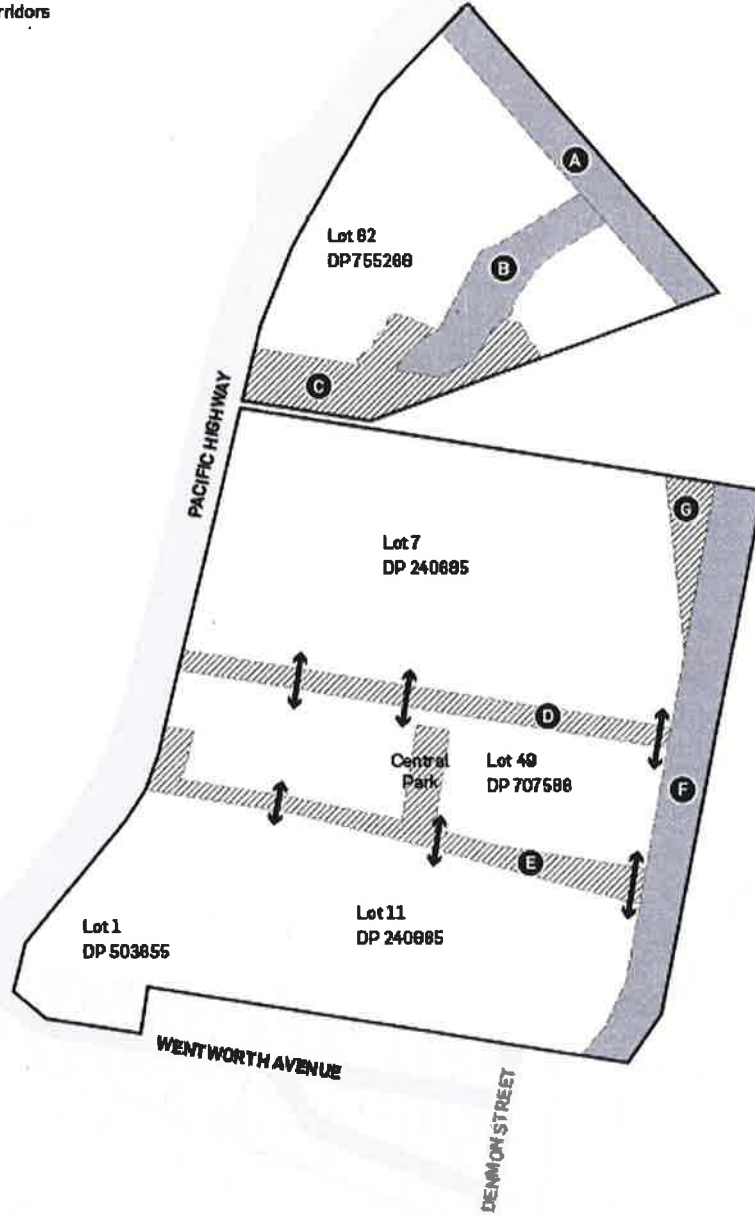
Doyalson Wyee RSL Club Limited
Director

Annexure B – Biodiversity Corridor Plan

LEGEND

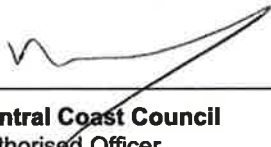
CROSSINGS OVER CORRIDORS

-  Indicative Location of Road Crossings
-  Biodiversity Corridors
-  Landscape Corridors



DOYALSON WYEE RSL CLUB BIODIVERSITY CORRIDOR PLAN

DATE: 04.04.2022
 JOB NO: P0020860
 DWG NO: -
 REV: A

x 
 Central Coast Council
 Authorised Officer

x 
 Doyalson Wyee RSL Club Limited
 Director / Company Secretary

x 
 Doyalson Wyee RSL Club Limited
 Director

Annexure C – Covenant

Excepting buildings and improvements erected or constructed for purposes consistent or in connection with the use of the burdened land for passive recreation and public utilities, no other buildings shall be erected on the burdened land without the prior consent of Central Coast Council.

x



Central Coast Council
Authorised Officer

x



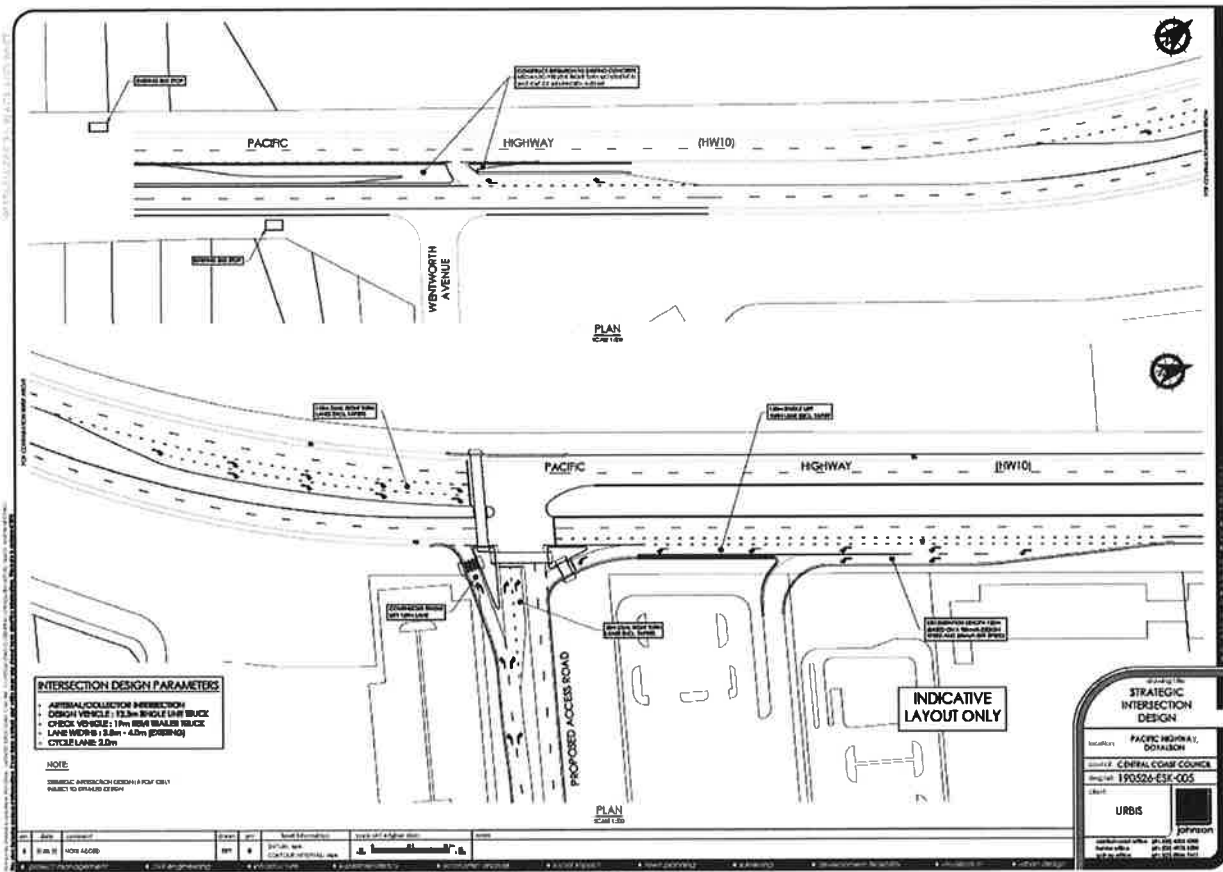
Doyalson Wyee RSL Club Limited
Director / Company Secretary

x



Doyalson Wyee RSL Club Limited
Director

Annexure D – Indicative Strategic Intersection Design



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 Director / Company Secretary

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 Director