



## Voluntary Planning Agreement

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

Central Coast Council & Allam Land No. 3 Pty Limited

Allam Amendments

Central Coast Council

January 23



Voluntary Planning Agreement

Author: Central Coast Council

Central Coast Council & Proponent

Date: November 22

Final Version

Approved by: Council Meeting

Date of Approval: 22 November 2022

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# Voluntary Planning Agreement

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## Voluntary Planning Agreement

### SUMMARY SHEET

**Council:**

**Name:** Central Coast Council

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

**Email:** [ask@centralcoast.nsw.gov.au](mailto:ask@centralcoast.nsw.gov.au)

**Representative:** Chief Executive Officer

**Developer:**

**Name:** Allam Land No. 3 Pty Limited

**Address:** 11-13 Brookhollow Avenue, Norwest 2153 (PO Box 7385, Baulkham Hills BC NSW 2153)

**Telephone:** 0447 287 488

**Email:** [rossh@allam.com.au](mailto:rossh@allam.com.au)

**Representative:** Ross Hyde-Smith

**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 7

**DATE:**                      **date**

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

**Allam Land No. 3 Pty Limited** (ABN 15 617 512 259) of 11-13 Brookhollow Avenue, Norwest 2153 (PO Box 7385, Baulkham Hills BC NSW 2153), in the State of New South Wales

## **BACKGROUND**

- A. The Developer is the registered proprietor of the Land.
- B. The Developer intends to develop the Land
- C. The Developer has agreed to make the Contributions provide for in this Deed towards meeting the Developer's obligations under the Development Contributions Plans, with respect to the Development.

## **OPERATIVE PROVISIONS**

### **1 PLANNING AGREEMENT UNDER THE ACT**

- 1.1 The parties agree that this Deed is a Planning Agreement within the meaning of section 7.4 of the Act.

### **2 APPLICATION OF THIS AGREEMENT**

- 2.1 This Deed applies to the Development of the Land

### **3 OPERATION OF THIS AGREEMENT**

- 3.1 This Agreement takes effect once executed by all parties.
- 3.2 By complying with the obligations of this Deed, a benefit, in the form of removal of obligations under Condition 6.2 and 6.2A of DA/363/2018/C and Condition 6.3 of DA/1375/2018 will be applied in favour of the Developer.
- 3.3 This Agreement does **not** exclude the operation of section 7.11 and section 7.12 of the Act.
- 3.4 This Agreement does **not** apply to any obligation that the Proponent may have to pay contributions, fees or charges under 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*.

**Consent** means the consent granted to under DA/363/2018/C and DA/1375/2018.

**Contributions** means the contributions with respect to the Dedication Land and the Works identified in Schedule 1.

**Council** means Central Coast Council.

**Dedicated Land** means the land identified in Schedule 1 of this Deed.

**Dedicated Land Credit** means the credit identified in Schedule 1 of this Deed.

**Developer** means the person or entity identified in Item 1 of Schedule 2 to this Deed.

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

**Development Contributions Plans** means the Warnervale District Development Contribution Plan 2021 (WDCP 2021) and the Shire Wide Infrastructure, Services and Facilities Development Contributions Plan 2020.

**Development** means the development referred to under the Consent.

**Land** means Lot 249 and 250 DP1272916 also known as 200 Hakone Road, Woongarra and 14 Wildberry Road, Woongarra; Lot 425 and 427 DP1277964 also currently known as 188-198 Hakone Road, Woongarra. Refer Annexure A.

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

**Party** means a party to this Deed, including its successors and assigns.

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

**Stage** means a stage of the Development.

**Works** means the works identified in Schedule 1 of this Deed.

**Works Credit** means the credit identified in Schedule 1 of this Deed.

## **5 PAYMENT OF MONETARY CONTRIBUTIONS**

- 5.1 This Deed requires the Proponent to pay monetary contributions to Council under the Contributions Plans where these are not offset by the Contributions under this Deed.
- 5.2 The Developer must pay to the Council the any monetary contribution for a Stage prior to the issue of the relevant subdivision certificate for that Stage.

## **6 DEDICATION OF DEDICATION LAND AND WORKS**

- 6.1 The Developer must dedicate and transfer the Dedication Land to Council at no cost to Council upon registration of the relevant subdivision plan for the relevant Stage.
- 6.2 The Developer may (at its discretion and as part of its Development of the Land) undertake the Works.
- 6.3 The Council must apply each Contribution made by the Developer under this Deed towards the contributions due under a Contributions Plan with respect to a Stage.

- 6.4 Where any Contributions made by the Developer under this Deed exceeds the outstanding amount of any contributions under a Contributions Plan, Council must refund the monetary amount of that Contribution to the Developer
- 6.5 Where the Developer:
- (a) is required to dedicate any of the Dedication Land; and
  - (b) has not completed any works or maintenance or condition of any Consent granted prior to its dedication,
- then the Council must grant a licence over the relevant Dedication Land (**Licensed Land**) in accordance with the terms set out in clause 6.6.
- 6.6 The Council grants to the Developer a licence over the Licensed Land in accordance with the following terms:
- (a) the licence is at no cost to the Developer;
  - (b) the permitted use is the performance of such works or maintenance on the Licensed Land which are to be performed by the Developer in accordance with the conditions of any Consent any other consents, or under this Deed;
  - (c) the Developer is to occupy the Licensed Land at its own risk;
  - (d) the Developer must effect policies of insurance reasonably requested by Council, including public liability insurance of not less than \$20 million and workers' compensation insurance with respect to the Licensed Land;
  - (e) the Developer indemnifies Council against any claim made in respect of personal injury or death or damage to property arising from the Developer's use and occupation of the Licensed Land; and
  - (f) the Developer must, at its own cost and expense, maintain and keep in good and clean condition the Licensed Land until it has completed all works that it must perform on the Licensed Land.

## **7 DEVELOPER WARRANTIES AND INDEMNITIES**

- 7.1 The Developer warrants to Council that it is the registered owner of the Land.
- 7.2 The parties warrant to each other that they:
- (a) are able to fully comply with its obligations under this Deed;
  - (b) have full capacity to enter into this Deed; and
  - (c) have no legal impediment to it entering into this Deed, or performing its obligations under this Deed.

## **8 REVIEW OF THIS DEED**

- 8.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Deed 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 DEED**

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

## 10 DISPUTE RESOLUTION

- 10.1 If a dispute arises out of or relates to this Deed (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Deed 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 Developer or their successors or assigns, relating to the Dispute unless the Parties have complied with this clause, except where a Party seeks urgent interlocutory relief.
- 10.2 A Party claiming that a Dispute has arisen under or in relation to this Deed is to give written notice to the other Parties, specifying the nature of the Dispute.
- (a) 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 written notice of the Dispute.
  - (b) 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.
  - (c) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
  - (d) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
  - (e) If any procedural aspects are not specified sufficiently in the rules under this clause 10, 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.
  - (f) A legal representative acting for either of the Parties may participate in the mediation.
- 10.3 From the time when a notice of Dispute is served, neither party shall take action to terminate this Deed, until after the conclusion of the mediation.
- 10.4 Should mediation fail to resolve the Dispute then the Dispute shall be determined by arbitration pursuant to the *Commercial Arbitration Act 2010* and a Party shall request the President for the time being of the Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 10.5 Despite clause 10.1, either Council or the Developer may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Deed.

## 11 COSTS

- 11.1 The Developer agrees to pay or reimburse the costs of Council in connection with the:
- (a) Negotiation, preparation and execution of this Deed, to a maximum of \$2,500.00.
  - (b) Advertising and exhibiting this Deed in accordance with the Act, to a maximum of \$350.00, and
  - (c) All costs related to registration of this Deed where required, within 7 working days after receipt of a tax invoice from Council.



## 12 REGISTRATION OF THIS AGREEMENT

- 12.1 The Parties agree to register this Deed for the purposes of section 7.6(1) of the Act.
- 12.2 On execution of this Deed, the Developer is to provide Council with each of the following, at no cost to Council:
- 12.2.1 An instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the Deed, and
  - 12.2.2 The written and irrevocable consent of each person to referred in section 7.6(1) of the Act to that registration; and
- 12.3 The Parties must do such other things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land with respect to a Stage once the Developer has completed its obligations under this Deed with respect to a Stage or this Deed is terminated or otherwise comes to an end for any other reason.

## 13 NOTICES

- 13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed 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) 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](mailto:ask@centralcoast.nsw.gov.au)

(ii) **Proponent: Proponent**  
Attention: Ross Hyde-Smith  
Address: PO Box 7385, Baulkham Hills BC NSW 2153  
Email: [rossh@allam.com.au](mailto:rossh@allam.com.au)

- 13.2 If a Party gives the other Party 3 working days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email address.
- 13.3 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 working days after it is posted.
  - (c) If it is sent by email, and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours after the email is sent.

- 13.4 If any notice, consent, information, application or request is delivered, or sent 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.

#### **14 ENTIRE AGREEMENT**

- 14.1 This Deed 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 Deed was executed, except as permitted by law.

#### **15 FURTHER ACTS**

- 15.1 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 Deed and all transactions incidental to it.

#### **16 GOVERNING LAW AND JURISDICTION**

- 16.1 This Deed 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 Deed have first been satisfied.

#### **17 NO FETTER**

- 17.1 Nothing in this Deed 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.

#### **18 SEVERABILITY**

- 18.1 If a clause or part of a clause in this Deed 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 Deed, but the rest of the Deed is not affected.

#### **19 WAIVER**

- 19.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, 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.

#### **20 EXPLANATORY NOTE**

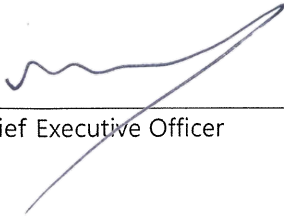
- 20.1 The Appendix contains the Explanatory Note relating to this Deed required by Clause 25E of the Regulation.
- 20.2 Pursuant to Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Deed.

## 21 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

David Farmer



Witness [BLOCK LETTERS]

**Lidia Catalano**

Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

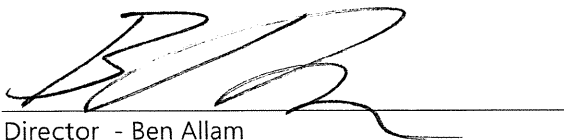
Witness [BLOCK LETTERS]

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

**EXECUTED** by Allam Land No.3 Pty Ltd

ACN 617 512 259 in accordance with Section 127 of the Corporations Act 2001



Director - Ben Allam



Secretary – Fred Maruca

## SCHEDULE 1

### Contributions

- A contribution of \$31,976.28 applies under the Warnervale District Contribution Plan 2021 to each new allotment (as of September 2021 and subject to indexation).
- A contribution of \$1,111.98 applies under the Shire wide Infrastructure, Services and Facilities Development Contributions Plan to each new allotment (as of April 2020 and subject to indexation).

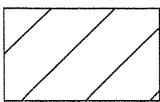
### Dedicated Land and Dedicated Land Credit

Land	Summary	Ref	Rate in WDCP (subject to indexation)	Area	Credit
250/1272916	WTC Ridge Park East	WTCOS1	\$1,000,000/ha	1.0340ha	\$1,034,000
425/1277964	WTC Ridge Park East	WTCOS1	\$1,000,000/ha	1.3493ha	\$1,349,300
Part 249/1272916 & Part 427/1277964	Road widening – Hakone Rd	R6a&b	\$48/m2	194m2	\$9,302.40

### Works and Works Credit

Works	Summary	Ref	Rate in WDCP (Subject to indexation )	Area	Credit subject to WIKA*
427/1277964	Hakone Road Culvert	WTC-1	-	-	\$530,000.00
427/1277964	Basin (Lot 59)	Basin N1A	-	-	\$1,004,396.00
427/1277964	Hakone Road adjacent open space	R6a	\$4,309/m	124m	\$534,316.00
249/1272916	Basin (Lot 58)	Basin N1B	-	-	\$629,074.79
249/1272916	Hakone Road adjacent open space	R6a	\$4,309/m	124m	\$534,316.00
249/1272916	Hakone Road adjacent open space	R6b	\$556/m	114m	\$63,384.00
427/1277964	R57 Cycleways opposite park and drainage	R57	\$199.13/m	416.6m	\$82,957.56
249/1272916	R57 Cycleways opposite park and drainage	R57	\$199.13/m	180m	\$35,843.40

\*The Developer may undertake works in accordance with WDCP 2021. The actual cost of works will be determined in accordance with Council's Works in Kind guidelines.



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## SCHEDULE 2

ITEM	DEFINED TERM	PARTICULARS
1	Developer	<b>Allam Development No. 1 Pty Limited</b> ABN: 15 617 512 259 <b>11-13 Brookhollow Avenue, Norwest 2153</b> (PO Box 7385, Baulkham Hills BC NSW 2153)
2	Proponent's Representative	Ross Hyde-Smith <b>11-13 Brookhollow Avenue, Norwest 2153</b> (PO Box 7385, Baulkham Hills BC NSW 2153)

## APPENDIX

*Environmental Planning and Assessment Regulation 2000*

*(Clause 25E)*

### EXPLANATORY NOTE

#### Voluntary Planning Agreement

The Deed will be a voluntary agreement (Planning Agreement) under section 7.4 of the Environmental Planning and Assessment Act 1979 (the Act).

A Planning Agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the Planning Agreement provides for works, land dedication and monetary contributions.

#### Parties

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

and

**Allam Land No. 3 Pty Limited** (ABN 15 617 512 259) of 11-13 Brookhollow Avenue, Norwest 2153 (PO Box 7385, Baulkham Hills BC NSW 2153), in the State of New South Wales (**Developer**)

#### Description of the Land to which the Planning Agreement Applies

Lot 249 and 250 DP1272916 also known as 200 Hakone Road, Woongarra and 14 Wildberry Road, Woongarra; Lot 425 and 427 DP1277964 also currently known as 188-198 Hakone Road, Woongarra. Refer Annexure A.

#### Description of Proposed Development

**Development** means the development referred to under DA/363/2018/C and DA/1375/2018.

#### Summary of Objectives, Nature and Effect of the Planning Agreement

##### Objectives of the Agreement

The objective of the Planning Agreement is to facilitate the dedication of land and undertaking of works in accordance with the Warnervale District Development Contribution Plan 2021 (WDCP 2021) and the Shire Wide Infrastructure, Services and Facilities Development Contributions Plan 2020 to be used for a public purpose.

##### Nature of the Planning Agreement

The Planning 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 Developer. The Agreement is a voluntary agreement under which provisions are made by the Developer for the conservation or enhancement of the natural environment section 7.4(2)(f).

## **Effect of the Agreement**

The Planning Agreement:

- relates to the carrying out by the Developer of the Development on the Land,
- does not exclude the application of section 7.11, section 7.12 or section 7.24 to the Development,
- requires the Developer to pay contributions in accordance with the Warnervale District Development Contribution Plan 2021 (WDCP 2021) and Shire Wide Infrastructure, Services and Facilities Development Contributions Plan 2020; and to offset these through the dedication of land and undertaking of works in accordance with the WDCP 2021
- requires the Council to apply a credit to the Contributions payable; or where the dedication of land or undertaking of works exceeds the outstanding amount of contributions, to refund that amount to the Developer, upon the dedication of land and/or completion of works.
- is to be registered on the title to the Land,
- provides dispute resolution methods for a dispute under the Planning Agreement, being mediation and arbitration, and
- provides that the Planning Agreement is governed by the law of New South Wales.

## **Assessment of the Merits of the Agreement**

### **Planning Purposes Served by the Agreement**

The Planning Agreement:

- promotes the social welfare of the community,
- promotes and co-ordinates the orderly and economic use and development of the Land to which the Planning Agreement applies,
- allows for the delivery and co-ordination of open space, road and drainage facilities,
- provides land for public purposes in connection with the Development, specifically drainage management, roads and local parks,
- provides and co-ordinates community services and facilities in connection with the Development.

### **How the Planning Agreement Promotes the Public Interest**

The Planning Agreement promotes the public interest by facilitating the dedication of land to be used for a public purpose and to facilitate the construction of works to be used for a public purpose.

### **The Council's Guiding Principles**

Section 8 of the Local Government Act 1993 refers to the guiding principles for Councils as set out in section 8A, 8B and 8C of that Act (previously known as the Councils Charter).

The Agreement promotes the following principles:



- Councils should provide strong and effective representation, leadership, planning and decision-making
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way
- Councils should work with others to secure appropriate services for local community needs.
- Councils should act fairly, ethically and without bias in the interests of the local community.

**Whether the Planning Agreement Conforms with Council's Capital Works Program**

The works proposed in the Planning Agreement will be undertaken by the Developer and not Council and therefore does not impact on Council's Capital Works Program.

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

Yes (see Clause 5.2)