



Voluntary Planning Agreement
Under section 7.4 of the Environmental Planning and Assessment Act, 1979
Central Coast Council & Hynken Pty Ltd

Draft/Final Version
Central Coast Council
March 22



Voluntary Planning Agreement
Author: Central Coast Council
Central Coast Council & Proponent
Date: date
Draft/Final Version
Approved by:
Date of Approval: date

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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: Hynken Pty Ltd

Address: Suite 2.11, 4 Ilya Avenue, Erina 2250 (PO Box 786, Terrigal 2260)

Telephone: 0401 070 438

Email: adam@hynken.com.au

Representative: Adam Hunter

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 (**Council**)

and

Hynken Pty Ltd (ABN 79 525 254 060) of Suite 2.11, 4 Ilya Avenue, Erina 2250 (PO Box 786, Terrigal 2260), in the State of New South Wales (**Hynken**)

BACKGROUND

- A. The Proponent is the registered proprietor of the Land.
- B. The Proponent has lodged a Development Application for the Development of the Land
- C. The Proponent is prepared to describe actions.

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 6 of Part 4 of the Act.

2 APPLICATION OF THIS AGREEMENT

- 2.1 This Agreement 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 This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.
- 3.3 This Agreement identifies that the Proponent will pay contributions in accordance with Council's Warnervale District Development Contribution Plan 2021 (WDCP 2021) and Shire Wide Infrastructure, Services and Facilities Development Contributions Plan 2020.

The Proponent will dedicate land and receive the associated credits to contributions, in accordance with WDCP 2021.

The Proponent will undertake works in accordance with WDCP 2021. The actual cost of works will be determined following the process set out in Council's Works in Kind guidelines. Where the cost of works exceeds the cost in the WDCP 2021, the Proponent is not entitled to claim a credit or reimbursement (as the case may be) for the difference, or an increase to the value. Where the actual cost of works is less than the value in the WDCP 2021, the actual cost of the works will be used. The cost of works will be applied as credits to contributions, or direct refund payment upon works completion.

- 3.4 By complying with the obligations of this Agreement, a benefit, in the form of removal of obligations under Condition 28 of DA/422/1998/C and Condition 4 of DA/771/2007/B will be applied.
- 3.5 This Agreement does **not** exclude the operation of section 7.11 and section 7.12 of the Act.
- 3.6 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 the Development Application.

Contributions means the contributions identified in Schedule 1.

Council means Central Coast Council.

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

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

Development Contributions Plan means the Warnervale District Development Contribution Plan 2021 (WDCP 2021).

Development means the development referred to under DA/422/1998/C and DA/771/2007/B.

Development Application means a development application under Part 4 of the Act seeking consent to undertake the Development on the Land, in this case DA/422/1998/C and DA/771/2007/B.

Land means Lot 54 DP 7091 also known as 259-269 Warnervale Road, Hamlyn Terrace; Lot 55 DP 658429 also known as 275-281 Warnervale Road, Hamlyn Terrace; and Lot 1303 DP 1093943 7 Dehavilland Circuit, Hamlyn Terrace.

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.

Proponent means the person or entity identified in Item 1 of Schedule 2 to this Agreement.

Proponent's Representative is the person identified in Item 2 of Schedule 2 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 2000*.

Works means the works identified in Schedule 1 of this Agreement.

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

5 PAYMENT OF MONETARY CONTRIBUTIONS

5.1 This Agreement does require the Proponent to pay monetary contribution to Council where these are not offset by the dedication of land or the undertaking of works identified in Schedule 1.

5.2 The Developer must pay to the Council the Contribution Amount for each Stage of the Development prior to the issue of the relevant Subdivision Certificate.

- 5.3 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 separate Consent to undertake the Development on the Land outside of DA/422/1998/C and DA/771/2007/B (as they may be amended).

6 PROPONENT & COUNCIL OBLIGATIONS

- 6.1 The Proponent undertakes that it will, as part of the process to seek development consent for the Development of the Land, undertake each of the following, at no cost to Council:
- (a) Dedicate the land identified within Schedule 1
 - (b) Undertake the works identified in Schedule 1
- 6.2 The Council undertakes that it will, as part of the development consent for the Development of the Land, undertake the following:
- (a) Apply a credit to the Contributions payable identified in Schedule 1; or where the dedication of land or undertaking of works exceeds the outstanding amount of contributions, will refund that amount to the Proponent, upon the dedication of land and/or completion of works. The credit amount shall be in accordance with the dedicated land credit and works credit identified within Schedule 1.

7 PROPONENT WARRANTIES AND INDEMNITIES

- 7.1 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 A 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.

- (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 Agreement, until after the conclusion of the mediation.

10.4 Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the *Commercial Arbitration Act 2010* and the General Manager of the Council 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 Proponent 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.

11 COSTS

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

- (a) Negotiation, preparation and execution of this planning agreement, to a maximum of \$2,500.00.
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$350.00, and
- (c) All costs related to registration of this planning agreement 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 Agreement for the purposes of section 7.6(1) of the Act.

12.2 On execution, the Proponent 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 Agreement on the title to the Land duly executed by the Proponent, 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
- 12.2.3 Production of the certificate of title for the Land, for the purpose of procuring the registration of this Agreement.

12.3 The Proponent is to do such other things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land once the Proponent has completed its obligations under this Agreement or this Agreement 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 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
 Fax No: (02) 4350 2098
 Email: ask@centralcoast.nsw.gov.au

(ii) Proponent: Proponent

Attention: Adam Hunter
 Address: PO Box 786, Terrigal 2260
 Email: adam@hynken.com.au

13.2 If a party gives the other party 3 working 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.

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 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.

13.4 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.

14 ENTIRE AGREEMENT

14.1 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.

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 Agreement and all transactions incidental to it.

16 GOVERNING LAW AND JURISDICTION

16.1 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 8 of this Agreement have first been satisfied.

17 NO FETTER

17.1 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.

18 SEVERABILITY

18.1 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.

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 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.

20 EXPLANATORY NOTE

20.1 The Appendix contains the Explanatory Note relating to this Agreement 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 Agreement.

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

Witness [BLOCK LETTERS]

DAVID FARMER

WITNESS NAME

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

BILL HUNTER

WITNESS NAME

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

SCHEDULE 1

Contributions

- A contribution of \$29,500.65 applies to each new allotment (as of September 2021 and subject to indexation).
- A contribution of \$1,111.98 applies to each new allotment (as of April 2020 and subject to indexation).

Dedicated Land and Dedicated Land Credit

Land	Summary	Ref	Rate	Area	Credit
54/7091	Road widening – Warnervale Rd	R49-8	\$62.98/m ²	247m ²	\$15,555.05
54/7091	Road widening – Louisiana Rd	R49-9	\$44/m ²	319.43m ²	\$14,054.92
54/7091	Drainage & s/w quality land	dC9	\$91,176/ha	1.7ha	\$156,191
55/658429	Small park	S11-2	\$200,000/ha	0.2ha	\$40,307
55/658429	Road widening – Warnervale Rd	R49-8	\$62.98/m ²	171m ²	\$10,768.88
55/658429	Drainage & s/w quality land	dC8	\$96,448/ha	0.88ha	\$85,653

Works and Works Credit

Works	Summary	Ref	Rate	Area	Credit*
54/7091	Road widening – Warnervale Rd	R49-8	\$100/m ²	366m ²	\$36,600.00
54/7091	Shared pathway Warnervale Rd (difference between footpath and cycleway)	R49-30	\$85.84/m	122m	\$10,472.48
54/7091	Off road cycleway Full width (2.5) between Louisiana Rd & Lotus Tce	R49-30	\$212.31/m	40m	\$8,492.40
54/7091	Warnervale/Louisiana Rd intersection	I-49-14			\$340,178
54/7091	Channel works	dC9	\$5,706/m	126m	\$794,415
55/658429	Road widening – Warnervale Rd	R49-8	\$100/m ²	256.5m ²	\$25,650.00
55/658429	Shared pathway Warnervale Rd (difference between footpath and cycleway)	R49-30	\$85.84/m	85.5m	\$7,339.32
55/658429	Off road cycleway Full width (2.5) between Louisiana Rd & De Havilland Cct and Peony Close to De Havilland Cct	R49-30	\$212.31/m	190m	\$40,338.90
55/658429	Channel works	Channel C1	\$3,577/m	130m	\$513,709

*The Proponent will undertake works in accordance with WDCP 2021. The actual cost of works will be determined in accordance with Council's Works in Kind guidelines. Where the cost of works exceeds the cost in the WDCP 2021, the Proponent is not entitled to claim a credit or reimbursement (as the case may be) for the difference, or an increase to the value. Where the actual cost of works is less than the value in the WDCP 2021, the actual cost of the works will be used.

SCHEDULE 2

ITEM	DEFINED TERM	PARTICULARS
1	Proponent	Hynken Pty Ltd ABN: 79 525 254 060 ACN: 002 438 100 Suite 2.11, 4 Ilya Avenue, Erina 2250 (PO Box 786, Terrigal 2260)
2	Proponent's Representative	Adam Hunter Suite 2.11, 4 Ilya Avenue, Erina 2250 (PO Box 786, Terrigal 2260)

APPENDIX

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

EXPLANATORY NOTE

Voluntary Planning Agreement

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

An 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 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

Hynken Pty Ltd (ABN 79 525 254 060) of Suite 2.11, 4 Ilya Avenue, Erina 2250 (PO Box 786, Terrigal 2260), in the State of New South Wales (**Proponent**)

Description of the Land to which the Planning Agreement Applies

Lot 54 DP 7091 also known as 259-269 Warnervale Road, Hamlyn Terrace; Lot 55 DP 658429 also known as 275-281 Warnervale Road, Hamlyn Terrace; and Lot 1303 DP 1093943 7 Dehavilland Circuit, Hamlyn Terrace.

Description of Proposed Development

Development means the development referred to under DA/422/1998/C and DA/771/2007/B.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of the Agreement

The objective of the Agreement is to facilitate the dedication of land and undertaking of works in accordance with the Warnervale District Development Contribution Plan 2021 (WDCP 2021) to be used for a public purpose.

Nature of the Planning Agreement

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

Effect of the Agreement

The Agreement:

- relates to the carrying out by the Proponent of the Development on the Land,
- does not exclude the application of section 7.11, section 7.12 or section 7.24 to the Development,
- requires the Proponent to 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, will refund that amount to the Proponent, 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 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

The 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 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 Agreement Promotes the Public Interest

The 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 Agreement Conforms with Council’s Capital Works Program

The works proposed under this agreement are not scheduled within Council’s Capital Works Program as they are not to be delivered by Central Coast Council. If approved the works will be delivered by the developer during the construction of the residential subdivision

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

Yes (see Clause 5.2)