



Voluntary Planning Agreement

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

Central Coast Council & Proponent

Draft Version

Central Coast Council

October 22



Voluntary Planning Agreement

Author: Central Coast Council

Central Coast Council & Proponent

Date: October 22

Draft

Approved by:

Date of Approval: date

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

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

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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

Representative: Chief Executive Officer

Proponent:

See Item 1 of Schedule 2 to this Agreement

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 12

Dispute Resolution:

See clause 10

DATE:

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

Proponent Parform Pty Limited ACN 101 310 534, Pinti Pty Limited ACN 057 127 876 and Saltnepper Pty Limited ACN 068 479 569, John Moussa, Mark Bazil Moussa and Oxford Steel Pty Limited ACN 624 622 77, c/- Matthew Wales (Wales & Associates) PO Box 150, Ettalong Beach NSW 2257 (**Proponent**)

BACKGROUND

- A. The Proponent is the registered proprietor of the Land.
- B. The Proponent has sought the Instrument Change
- C. The Proponent intends to lodge a Development Application for the Development of the Land
- D. 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 and the Instrument Change

3 OPERATION OF THIS AGREEMENT

- 3.1 This Agreement takes effect once executed by all parties.
- 3.2 This Agreement identifies that the Proponent will pay to the Council a monetary contribution of \$250,000 AUD (no GST payable) for the purposes of funding public domain improvement works in the vicinity of the Land.
- 3.3 By complying with the obligations of this Agreement, a benefit, in the form of monetary contribution of \$250,000 AUD (no GST payable) will be paid by the Proponent to Council the for the purposes of funding public domain improvement works in the vicinity of the Land.
- 3.4 This Agreement does **not** exclude the operation of section 7.11 and section 7.12 of the Act.
- 3.5 This Agreement does **not** apply to any obligation that the Proponent may have to pay contributions, fees or charges under section 7.11 and section 7.12 of the Act or the *Water Management Act 2000* in respect to the Development of the Land.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

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

Amending LEP means an environmental planning instrument that has the effect of amending the *Central Coast Local Environmental Plan 2022* so the Development of the Land is permissible with consent.

Consent means the consent granted to the Development Application.

Council means Central Coast Council.

Current Development Contributions Plan means the applicable plan and the Section 7.11 Contributions Plan for Central Coast Council.

Development means the development to occur on the Land under the Planning Proposal to permit the amendment to Central Coast Local Environmental Plan 2022 in relation to 43 – 46 The Esplanade, Ettalong Beach NSW 2257 to:

- a) rezone the land from B2 – Local Centre under the Central Coast Local Environmental Plan 2022 to B2 – Local Centre with increased maximum building height and maximum floor space ratio controls;
- b) permit an increase to maximum Building Height for Proposed Retail/Residential Development from the existing maximum height control of L2 = 11.5m to P1 = 17m under the Central Coast Local Environmental Plan 2022; and
- c) permit an increase to maximum Floor Space Ratio for Proposed Retail/Residential Development from the existing maximum floor space ratio from the existing N = 1 to 1 to T1 = 1.75 to 1 under the Central Coast Local Environmental Plan 2022,

as generally detailed in Planning Proposal made to the Department of Planning, Industry and Environment department reference number PP-2021-6386 (Gateway Determination dated 23 December 2021).

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

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

Land means the land identified in Schedule 1 of this Agreement, being Lots 117 – 122 (inclusive) in Deposited Plan 10650 also known as 43 – 46 The Esplanade, Ettalong Beach NSW 2257.

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 document required by section 3.33 of the Act that explains the intended effect of the proposed Amending LEP and sets out the justification for making that Amending LEP, being Council reference number PP 106/2019 and Department of Planning and Environment department reference number PP-2021-6386.

Proponent means the persons and entities 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*.

5 PAYMENT OF MONETARY CONTRIBUTIONS

- 5.1 This Agreement does require the Proponent to pay 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 undertakes that it will, as part of the process to seek development consent for the Development of the Land, undertake at no cost to Council to pay to the Council a monetary contribution of \$250,000 AUD (no GST payable) for the purposes of funding public domain improvement works in the vicinity of the Land as generally detailed in a letter of offer from the Proponent's Representative to Council dated on or around 30 June 2022.
- 6.2 The Proponent agrees to pay to the Council a monetary contribution of \$250,000 AUD (no GST payable) prior to the Council issuing a Construction Certificate in relation to the Development.
- 6.3 The Proponent is not required to make the monetary contribution of \$250,000 AUD (no GST payable) to Council until a development consent for the Development to the Proponent's satisfaction is issued by Council.

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: Parform Pty Limited, Pinti Pty Limited and Saltpepper Pty Limited, John Moussa, Mark Bazil Moussa and Oxford Steel Pty Limited
Address: c/- Matthew Wales (Wales & Associates) PO Box 150, Ettalong Beach NSW 2257
Email: matthew@walesassociates.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. 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]

[Click here to enter text.](#)

Name [BLOCK LETTERS]

Witness Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

PARFORM PTY LTD ACN 101 310 534

[Click here to enter text.](#)

Name [BLOCK LETTERS]

Witness Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

PINTI PTY LIMITED ACN 057 127 876

[Click here to enter text.](#)

Name [BLOCK LETTERS]

Witness Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

SALTNPEPPER PTY LIMITED ACN 068 479 569

[Click here to enter text.](#)

Name [BLOCK LETTERS]

Witness Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

JOHN MOUSSA

[Click here to enter text.](#)

Name [BLOCK LETTERS]

Witness Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

MARK BAZIL MOUSSA

[Click here to enter text.](#)

Name [BLOCK LETTERS]

Witness Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

OXFORD STEEL PTY LIMITED ACN 624 622 779

[Click here to enter text.](#)

Name [BLOCK LETTERS]

Witness Name [BLOCK LETTERS]

SCHEDULE 1 - The Land being Lots 117 – 122 (inclusive) in Deposited Plan 10650 also known as 43 – 46 The Esplanade, Ettalong Beach NSW 2257.



Precinct Plan showing general areas of improvement work to the public domain (within dotted lines)

SCHEDULE 2

ITEM	DEFINED TERM	PARTICULARS
1	Proponent	<p>Name: Parform Pty Limited ACN 101 310 534 Address: PO Box 150, Ettalong Beach NSW 2257 Telephone: 0415 634 232 Email: matthew@walesassociates.com.au Representative: Matthew Wales (Wales & Associates)</p> <p>and</p> <p>Name: Pinti Pty Limited ACN 057 127 876 and Saltnepper Pty Limited ACN 068 479 569 Address: PO Box 150, Ettalong Beach NSW 2257 Telephone: 0415 634 232 Email: matthew@walesassociates.com.au Representative: Matthew Wales (Wales & Associates)</p> <p>and</p> <p>Name: John Moussa and Mark Bazil Moussa Address: PO Box 150, Ettalong Beach NSW 2257 Telephone: 0415 634 232 Email: matthew@walesassociates.com.au Representative: Matthew Wales (Wales & Associates)</p> <p>and</p> <p>Name: Oxford Steel Pty Limited ACN 624 622 779 Address: PO Box 150, Ettalong Beach NSW 2257 Telephone: 0415 634 232 Email: matthew@walesassociates.com.au Representative: Matthew Wales (Wales & Associates)</p>
2	Proponent's Representative	<p>Name Matthew Wales (Wales & Associates), PO Box 150, Ettalong Beach NSW 2257 Tel: 0415 634 232</p>

APPENDIX

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

EXPLANATORY NOTE

Voluntary Planning Agreement

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

Parties

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

and

Proponent Parform Pty Limited ACN 101 310 534, Pinti Pty Limited ACN 057 127 876 and Saltnepper Pty Limited ACN 068 479 569, John Moussa, Mark Bazil Moussa and Oxford Steel Pty Limited ACN 624 622 77, c/- Matthew Wales (Wales & Associates) PO Box 150, Ettalong Beach NSW 2257, in the State of New South Wales (**Proponent**)

Description of the Land to which the Planning Agreement Applies

Lots 117 – 122 (inclusive) in Deposited Plan 10650 also known as 43 – 46 The Esplanade, Ettalong Beach NSW 2257.

Description of Proposed Development

Development means the development to occur on the Land under the Planning Proposal to permit the amendment to Central Coast Local Environmental Plan 2022 in relation to 43 – 46 The Esplanade, Ettalong Beach NSW 2257

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of the Agreement

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

Nature of the Planning Agreement

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

Effect of the Agreement

The Agreement:

- relates to the Instrument Change,

- relates to the carrying out by the Proponent of the Development on the Land,
- does/does not exclude the application of section 7.11, section 7.12 or section 7.24 to the Development,
- requires the Proponent to obligations
- is to be registered on the title to the Land,
- provides dispute resolution methods for a dispute under the Agreement, being mediation and arbitration, and
- provides that the Agreement is governed by the law of New South Wales.

Assessment of the Merits of the Agreement

Planning Purposes Served by the Agreement

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

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,

The Agreement provides the best means of achieving the above public purposes through a monetary contribution.

How the Agreement Promotes the Public Interest

The Agreement promotes the public interest by facilitating public domain improvements in the vicinity of the site.

How the Agreement Promotes the Objects of the Act

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

The Planning Agreement provides Council with a monetary contribution to enable appropriate public domain improvements in the Ettalong Beach area, for the local community.

Councils – How the Agreement Promotes the Council's Charter

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

- enabling the provision of adequate, equitable and appropriate services and facilities for the community;
- enabling the proper management, development and enhancement of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- enabling it as the custodian and trustee of public assets to effectively plan for, account for and manage the assets for which it is responsible;

- keeping the local community and the State government (and through it the wider community) informed of its activities.

The Planning Agreement provides Council with a monetary contribution to enable appropriate public domain improvements in the Ettalong Beach area, for the local community.

Whether the Agreement Conforms with Council's Capital Works Program

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

- Focus Area - Creativity, connection and local identity
B4 Activate spaces and places to complement activity around town centres, foreshores, lakes and green spaces for families, community and visitors
- Focus area – Balanced and Sustainable Development
I2 Ensure all new developments are well planned with good access to public transport, green space and community facilities and support active transport
I3 Ensure land use planning and development is sustainable and environmentally sound and considers the importance of local habitat, green corridors, energy efficiency and stormwater management

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

- Provide a range of coordinated projects, programs, services and place-making activities to increase activation, improve the visitor experience and support the development of social enterprises and businesses in the Central Coast Major Town Centres.

The Planning Agreement is consistent with Council's current Operational Plan and Delivery Program as it seeks to increase activation and support businesses in the Ettalong Beach Centre.

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

Yes. The Agreement specifies that the monetary contribution is made prior to issuing a Construction Certificate.