
Minister administering the National Parks and
Wildlife Act 1974

Cessnock City Council

Hardie Greta Pty Ltd

Biodiversity Lands Pty Ltd

Wyndham Ridge Estate Pty Ltd

Novation Deed for Planning Agreement

Contents

1	Interpretation	2
1.1	Definitions	2
1.2	Construction	2
2	Novation	3
2.1	Planning Agreement	3
2.2	References in Planning Agreement	3
2.3	Address for notices	3
3	Affirmation of the Planning Agreement	3
4	Indemnities	4
5	Warranties and representations	4
5.1	Warranties	4
5.2	Survival of warranties	4
6	GST	5
6.1	Construction	5
6.2	Consideration GST exclusive	5
6.3	Payment of GST	5
6.4	Timing of GST payment	5
6.5	Tax invoice	5
6.6	Adjustment event	6
6.7	Reimbursements	6
6.8	No merger	6
7	Expenses and stamp duty	6
8	Further acts	6
9	Amendment	7
10	Governing law and jurisdiction	7
11	Severance	7
12	Counterparts	7
13	Effect of execution	7
	Execution	8

Date

Parties

Minister administering the National Parks and Wildlife Act 1974 ABN 30 841 387
271 of Level 32, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
(**Minister**)

Cessnock City Council ABN 60 919 148 928 of Administrative Building, 62-78 Vincent Street, Cessnock NSW 2325 (**Council**)

Hardie Greta Pty Ltd ACN 108 802 786 of Level 2, 106 King Street, Sydney NSW 2000
(**Hardie Greta**)

Biodiversity Lands Pty Limited ACN 114 441 075 of Level 1, 106 King Street, Sydney NSW 2000 (**BL**)

Wyndham Ridge Estate Pty Ltd ACN 613 644 456 of MLC Centre, Level 22, 19-29 Martin Place, Sydney, New South Wales (**New Developer**)

Background

- A The Minister, the Council, Hardie Greta and BL are parties to the Planning Agreement.
 - B The Planning Agreement relates to the whole of the Land.
 - C Hardie Greta has entered into the Hardie Greta Contract for the sale of the Hardie Greta Land to the New Developer. As a result, Hardie Greta wishes to novate all of its rights and obligations under the Planning Agreement to the New Developer.
 - D BL has entered into the BL Contract for the sale of the BL Land to the New Developer. As a result, BL wishes to novate all of its rights and obligations under the Planning Agreement to the New Developer.
 - E This document has been prepared in satisfaction of clause 10.1(a)(iii) of the Planning Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document these terms have the following meanings:

BL Contract	The contract for sale of the BL Land between BL as transferor and the New Developer as transferee dated 1 August 2016.
BL Land	The land comprising, as at the date of the BL Contract and the date of this document, folio identifiers 9/753817, 102/753817 and 207/753817.
Effective Date	Completion of the Hardie Greta Contract and the BL Land Contract.
Hardie Greta Contract	The contract for sale of the Hardie Greta Land between Hardie Greta as transferor and the New Developer as transferee dated 1 August 2016.
Hardie Greta Land	The land comprising, as at the date of the Hardie Greta Contract and the date of this document, folio identifiers 2/1212829, 2/1151267 and 3/1212829.
Land	The Hardie Greta Land and the BL Land.
Planning Agreement	The planning agreement between the Minister, the Council, Hardie Greta and BL, registered on title to the Land as dealing AJ90135.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) capitalised terms which are not expressly defined in this document have the meaning given in the Planning Agreement;
- (b) headings do not affect the interpretation of this document;
- (c) words in the singular include the plural and vice versa;
- (d) any gender includes the other genders;
- (e) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (f) 'includes' means includes without limitation;
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

- (h) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

2 Novation

2.1 Planning Agreement

With effect from the Effective Date:

- (a) the New Developer is substituted for both Hardie Greta and BL as a party to the Planning Agreement;
- (b) the New Developer will be bound by the Planning Agreement, and will be entitled to the benefit of the Planning Agreement, as if the New Developer was a party to the Planning Agreement instead of Hardie Greta and BL; and
- (c) Hardie Greta and BL are released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Planning Agreement.

2.2 References in Planning Agreement

All references to Hardie Greta and/or BL in the Planning Agreement are to be construed as references to the New Developer.

2.3 Address for notices

The Minister and the Council must address all notices and communications to be given or made by them to the New Developer under the Planning Agreement to the following address:

New Developer:

Address: MLC Centre
Level 22
19-29 Martin Place
Sydney NSW 2000

Telephone: (02) 9251 6498

Contact Person: Wassim Arnaout

Email: sam@iriscapital.com.au

3 Affirmation of the Planning Agreement

The Planning Agreement will be read and construed subject to this document, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the novation and consequential variation contained in this document, the Planning Agreement will continue in full force and effect.

4 Indemnities

The New Developer indemnifies Hardie Greta and BL on demand against all liabilities, claims, damages and loss which Hardie Greta and BL suffer or incur in relation to the Planning Agreement, including those which arise or relate to acts or omissions occurring on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

Each party represents and warrants that, at the time of execution and as at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this document and the novation of the Planning Agreement.

6 GST

6.1 Construction

In this **clause 6**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

6.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

6.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

6.4 Timing of GST payment

The amount referred to in **clause 6.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

6.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 6.3**.

6.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 6.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

6.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 6.7** does not limit the application of **clause 6.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 6.7(a)**.

6.8 No merger

This **clause 6** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

7 Expenses and stamp duty

- (a) Hardie Greta, BL and the New Developer will pay the Minister's and the Council's reasonable costs of preparing, negotiating, executing, registering this document.
- (b) Subject to **clause 7(a)**, the parties must pay their own legal costs and expenses in connection with the negotiation, preparation, execution and carrying into effect of this document.
- (c) The New Developer must pay all stamp duty arising directly or indirectly from this document.

8 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this document.
- (b) This document binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

9 Amendment

This document may only be varied or replaced by a document executed by the parties.

10 Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

11 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12 Counterparts

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

13 Effect of execution

This document is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this document.

Execution

Executed as a deed.

Minister

Signed by the Minister administering)
the *National Parks and Wildlife Act*)
1974:)

.....
Signature of Witness

.....
Name of Witness (print)

.....
Address of Witness (print)

.....
Signature of authorised delegate

.....
Name of authorised delegate (print)

Council

Signed by)
an authorised delegate for **Cessnock**)
City Council ACN 60 919 148 928 in)
the presence of:

.....
Signature of Witness

.....
Name of Witness (print)

.....
Address of Witness (print)

.....
Signature of authorised delegate

.....
Name of authorised delegate (print)

Hardie Greta

Executed by Hardie Greta Pty Ltd)
ACN 108 802 786:)



.....
Sole Secretary/Director
Duncan John Hardie
Director

.....
Name of sole Secretary/Director (print)

BL

Executed by Biodiversity Lands Pty)
Limited ACN 114 441 075 under s 127)
of the *Corporations Act 2001*:

.....
Company Secretary

.....
Name of Company Secretary (print)



.....
Director
Duncan John Hardie
Director

.....
Name of Director (print)

New Developer

Executed by Wyndham Ridge Estate)
Pty Limited ACN 613 644 456:)



.....
Sole Secretary/Director


.....
Name of sole Secretary/Director (print)