

CESSNOCK CITY COUNCIL

30 AUG 2016

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Cessnock City Council

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Hardie Greta Pty Ltd

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Wyndham Ridge Estate Pty Ltd

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# Novation Deed for Planning Agreement

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## Date

# Parties

**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 (**Original Developer**)

**Wyndham Ridge Estate Pty Ltd** ACN 613 644 456 of MLC Centre, Level 22, 19-29 Martin Place, Sydney NSW 2000 (**New Developer**)

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## Background

- A The Council and the Original Developer are parties to the Planning Agreement
  - B The Planning Agreement relates to the whole of the Land
  - C The Original Developer has entered into the Contract for the sale of the whole of the Land to the New Developer. As a result, the Original Developer wishes to novate all of its rights and obligations under the Planning Agreement to the New Developer
  - D This document has been prepared in satisfaction of clause 12.2(c) of the Planning Agreement
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## Agreed terms

### 1 Interpretation

#### 1.1 Definitions

In this document these terms have the following meanings.

<b>Contract</b>	The contract for sale of the Land between the Original Developer and the New Developer dated 1 August 2016
<b>Effective Date</b>	The date of completion of the Contract
<b>Land</b>	Means the land comprising, as at the date of the Contract and the date of this document, folio identifiers 2/1212829, 2/1151267 and 3/1212829

**Planning Agreement**                      The planning agreement dated 6 August 2014 between the Council and the Original Developer, registered on title to the Land as dealing AJ960077

## **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 on and from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Planning Agreement,
- (b) the New Developer will be bound by the Planning Agreement, including obligations which have arisen before the Effective Date, 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 the Original Developer, and

- (c) the Council and the Original Developer release each other in relation to their respective obligations under the Planning Agreement and all claims that the parties may have or have had against each other under or in respect of the Planning Agreement except in relation to any breaches by the Original Developer prior to the Effective Date.

## **2.2 References in Planning Agreement**

On and from the Effective Date, all references to the Original Developer in the Planning Agreement are to be construed as references to the New Developer

## **2.3 Replacement Security**

- (a) Despite any other provision of this document, this clause applies on and from the date this document is entered into by all the parties
- (b) On the date this document is entered into by all the parties, the Council is to return to the Original Developer any Bank Guarantee previously provided under the Planning Agreement by the Original Developer provided that a replacement Bank Guarantee in the amount of \$20,000.00 on terms acceptable to the Council that secures the following obligations is provided to the Council by the New Developer
  - (i) the obligations of the Original Developer under the Planning Agreement from the date of this document up to the date immediately before the Effective Date, and
  - (ii) the obligations of the New Developer under the Planning Agreement on and from the Effective Date

## **2.4 .Address for notices**

The Council must address all notices and communications to be given or made by it 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 the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs 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) The Original Developer will pay the Council's reasonable costs of preparing, negotiating, executing, stamping and 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

## **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

## Council

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

Melanie Parker

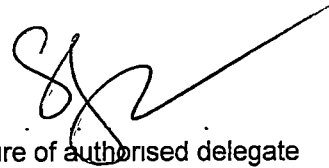
Signature of Witness

MELANIE PARKER

Name of Witness (print)

PO BOX 152, CESSNOCK 2325

Address of Witness (print)

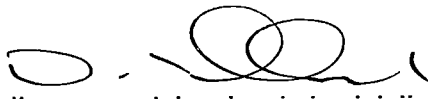


Signature of authorised delegate

... **Stephen Glen** ...  
Name of authorised delegate (print)  
**General Manager**  
**Cessnock City Council**

## Original Developer

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



Sole Secretary/Director

Duncan John Hardie

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

**New Developer**

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



.. Sole Secretary/Director ...

.. *Wassim Arnaout* ..  
Name of sole Secretary/Director (print)