

**Minister administering the National Parks and Wildlife
Act 1974**

ABN 30 841 387 271

Cessnock City Council

ABN 60 919 148 928

Hardie Greta Pty Limited

ACN 108 802 786

Biodiversity Lands Pty Limited

ACN 114 441 075

Planning Agreement

Environmental Planning and Assessment Act 1979

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Agreement made at _____ **on** _____

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 62-78 Vincent Street Cessnock NSW 2325 ("**the Council**")

Hardie Greta Pty Limited ACN 108 802 786 of Level 1, 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**")

Background

- A. Each Landowner owns that part of the Land that is nominated as being owned by it in Schedule 2 which includes the Offsite Environmental Land and the Onsite Environmental Land.
- B. Hardie Greta have sought the Instrument Change.
- C. Hardie Greta intend to lodge with the Council a Development Application(s) for the Proposed Development.
- D. Hardie Greta have offered to make the Contribution, including procuring BL to transfer the Offsite Environmental Land.
- E. The parties have therefore agreed to enter into this Agreement to make the Contribution.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this Planning Agreement.

Application means an application for any Approval.

Approval means any approvals, consents, modifications, Part 4A certificates, Part 3A approvals, State Significant Development or State Significant infrastructure approvals under the Act, certificates, Construction Certificates, compliance certificate, occupation certificates, complying development certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the Proposed Development or for the commencement or carrying out of works contemplated by this Agreement.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the Building Professionals Act 2005 (NSW).

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Claim means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity, under statute or otherwise.

Commercial Premises has the same meaning as commercial premises under the Standard Instrument.

Consent Authority means, in relation to an Application, the Authority having the power to determine that Application.

Construction Certificate means a certificate referred to in section 109C (1) (b) of the Act.

Contribution means:

- (a) Environmental Contribution; and
- (b) Offsite Environmental Land Contribution; and
- (c) Onsite Environmental Land Contribution.

Conveyancing Act means the *Conveyancing Act 1919* (NSW).

Development Application means each Application made or to be made under Part 4 of the Act, by or on behalf of, or with the consent of, the Landowner, for Development Consent to develop the whole or any part of the Land.

Development Consent means an Approval granted by a Consent Authority under Part 4 of the Act in response to a Development Application, and includes any modification of a development consent.

Environmental Contribution means a monetary contribution of \$26,000 to be provided in accordance with Schedule 3 to this Agreement.

Explanatory Note means the explanatory note required by the Regulation.

Gazettal means the publication on the NSW legislation website under section 34(5) of the Act of the making by the Minister administering the Act of the amendment to the LEP.

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instrument Change means an amendment to the LEP to rezone the Land in order to allow the Proposed Development on the Land.

Land means the land described in Schedule 2, and as shown on the plans attached as Annexure A and B.

Landowner means the owner of the Land at any given time, and where the context permits includes all of the owners of the Land.

LEP means the Cessnock Local Environmental Plan 2011.

LPI means the Land and Property Information division of the Department of Finance and Services or any similar department or Authority that may be established from time to time.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

NPW Act means the *National Parks and Wildlife Act 1974* (NSW).

Offsite Environmental Land means Lots 9, 102, 207 in DP753817 as shown edged in red on the plan attached as Annexure B.

Offsite Environmental Land Contribution means the dedication of the Offsite Environmental Land in accordance with Schedule 3 of this Agreement.

Onsite Environmental Land means that part of the Land as generally identified on the plan attached as Annexure A to this Agreement and shown as "E2 – Environmental Conservation".

Onsite Environmental Land Contribution means the registration of a Positive Covenant on the Onsite Environmental Land to manage, protect and conserve the conservation values of the Onsite Environmental Land in perpetuity.

Onsite Environmental Land Subdivision means a subdivision of the Land to create a separate lot for the Onsite Environmental Land.

Party means a party to this Agreement, including their respective successors and assigns.

Plan of Subdivision means a plan of subdivision within the meaning of section 195 of the Conveyancing Act.

Positive Covenant means a public positive covenant in favour of the Council within the meaning of section 88E of the Conveyancing Act on terms acceptable to the Council.

Proposed Development means development for the purpose of residential and ancillary development on part of the Land, including any residential subdivision and any subdivision works.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens Title register maintained under the Real Property Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Residential Accommodation has the same meaning as residential accommodation under the Standard Instrument.

Service Easements means easements for services and drainage which are noted on the Subdivision Plan or any other encumbrances as agreed with the Minister.

Standard Instrument means *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes (Freehold Development) Act 1973 (NSW).

Subdivision Certificate means a certificate issued under section 109C(1)(d) of the Act.

Subdivision Plan means the plan for the Onsite Environmental Land Subdivision contained in any Application submitted to the relevant Authority.

Super Lot means a lot that forms part of the Land which, following the registration of a Plan of Subdivision or Strata Plan, is intended for further subdivision (including strata and community title subdivision):

- (a) for Residential Accommodation, or
- (b) to be used for Commercial Premises.

Taxes means taxes, levies, imposts, charges and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Minister.

Transfer means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Offsite Environmental Land to the Minister or his or her nominee.

Urban Lot means a lot that forms part of the Land to be created by the registration of a:

- (a) Plan of Subdivision and is intended to be developed for Residential Accommodation; or
- (b) Strata Plan and has been or is being developed for Residential Accommodation,

but excluding any Super Lots.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **"person"** includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (k) the Schedules and Annexures to this Agreement form part of this Agreement; and
- (l) if a Party to this Agreement is made up of more than one person:
 - (i) an obligation of those persons is several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any references to that Party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

2. Operation and status of this Agreement

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) This Agreement is entered into and takes effect on its execution by all the Parties.
- (c) This Agreement will terminate 1 month after the later of the date of the:
 - (i) Minister notifying the Landowner and the Council that the Environmental Contribution has been provided and the transfer has been registered under clause 5.2(a) ; or
 - (ii) Council notifying the Landowner under clause 3.2(e)(i) of Schedule 3 that it is satisfied with the registration of the Positive Covenant on the Onsite Environmental Land.

in accordance with clause 6 of this Agreement.

3. Application of the Agreement

This Agreement applies to the Land, the Instrument Change and the Proposed Development.

4. Application of section 94, section 94A and section 94EF of the Act

- (a) The application of sections 94, 94A and section 94EF are not excluded to the extent stated in Schedule 1 to this Agreement.
- (b) Any benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 94(6) of the Act.

5. Requirement to provide the Contribution

5.1 Provision of the Contribution

- (a) The Landowner undertakes to provide or procure the provision of the Contribution in the manner and at the times as set out in Schedule 3 to this Agreement and the Parties agree to abide by the procedures and obligations as set out in Schedule 3 to this Agreement.
- (b) The Landowner covenants and agrees that to the extent a Contribution of the Landowner is stated or implied as having a particular purpose or use:
 - (i) the Minister has no obligation to use or spend a Contribution for a particular purpose or use; and
 - (ii) the Minister does not warrant or represent that any specified or unspecified work is to be provided; and
 - (iii) the Minister is not required to repay to the Landowner any monetary contribution or part thereof; and
 - (iv) Neither the Minister nor the Council has any obligation to monitor or follow-up the use of a Contribution.

5.2 Notice confirming compliance

- (a) The Minister will promptly on:
 - (i) receipt of the Environmental Contribution, and
 - (ii) registration of the Transfer in relation to the Offsite Environmental Land

issue a notice to the Landowner and the Council confirming that the Contribution has been properly made by the Landowner and accepted by the Minister.
- (b) The Onsite Environmental Land Contribution will be taken to be delivered or provided when the Council issues a notice confirming the Positive Covenant

is satisfactory in accordance with clause 3.2(e)(i) of Schedule 3 to the Landowner.

6. Land ownership and Registration of this Agreement

6.1 Ownership

Each Landowner separately represents and warrants to the Minister and the Council that as at the date of this Agreement:

- (a) it is the legal and beneficial owner of that part of the Land which is nominated as being owned by it in Schedule 2; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this Agreement is required to be registered under clause 6.2 of this Agreement; and
- (c) legally and beneficially entitled to obtain all consents and Approvals and to compel any person referred to in or contemplated by clause 6.2(b)(i) to assist, cooperate and otherwise to do all things necessary for it to comply with its obligations under clause 6.2.

6.2 Registration of this Agreement

- (a) As contemplated by section 93H of the Act, each Landowner, within 10 Business Days of the date of this Agreement, agrees to procure the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land.
- (b) Each Landowner, at its own expense, will take all practical steps, and otherwise do anything that the Minister and the Council reasonably requires, to procure:
 - (i) the consent of each person who:
 - A. has an estate or interest in the Land registered under the Real Property Act; or
 - B. is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land in accordance with section 93H of the Act.
- (c) Each Landowner will, within 10 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 6.2(a) and (b) above, provide the Minister and the Council with a copy of the relevant folios of the Register for the Land.

6.3 Release and discharge of this Agreement

- (a) The Minister and the Council agree to do all things reasonably required by the Landowner to release and discharge this Agreement, such that it is no longer registered on the relevant folios under section 93H of the Act:
 - (i) in relation to all lots, upon the Landowner satisfying all of its obligations under this Agreement, or
 - (ii) in relation to the Onsite Environmental Land, at the same time as the registration of the Positive Covenant under clause 3.1 of Schedule 3, or
 - (iii) in relation to the Offsite Environmental Land, at the same time as the Transfer is registered.
- (b) If through error or other reason this Agreement is registered on the title to any Urban Lot or the Offsite Environmental Land or the Onsite Environmental Land (once it is transferred under Schedule 3), each Party must do such things as are reasonably necessary, as requested by the other, to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to that lot, provided the Positive Covenant has been registered in accordance with clause 3.2(b) of Schedule 3.

6.4 Caveat

- (a) Each Landowner acknowledges and agrees that:
 - (i) the Minister is deemed to have acquired, and the Landowner is deemed to have granted, an equitable estate and interest in the Offsite Environmental Land for the purposes of section 74F(1) of the Real Property Act and consequently the Minister has a sufficient interest in the Offsite Environmental Land in respect of which to lodge with the LPI a caveat notifying that interest;
 - (ii) it will not object to the Minister lodging a caveat in the relevant folio of the Register for the Offsite Environmental Land nor will it seek to remove any caveat lodged by the Minister;
 - (iii) it will indemnify and keep indemnified Minister against all Claims made against the Minister including, without limitation, Claims made by the Landowner or any other person who has an estate or interest in any part of the Offsite Environmental Land registered under the Real Property Act, by virtue of or in connection to the Minister lodging a caveat in the relevant folio of the Register for the Offsite Environmental Land.
- (b) Each Landowner acknowledges and agrees that:
 - (i) the Council is deemed to have acquired, and the Landowner is deemed to have granted, an equitable estate and interest in the Onsite Environmental Land for the purposes of section 74F of the Real Property Act and consequently the Council has a sufficient interest in the Environmental Land in respect of which to lodge with the LPI a caveat notifying that interest;

- (ii) until such time as the registration of this Agreement occurs in accordance with clause 6.2, it will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Council;
 - (iii) it will indemnify and keep indemnified Council against all Claims made against the Council including, without limitation, Claims made by the Landowner or any other person who has an estate or interest in any part of the Onsite Environmental Land registered under the Real Property Act, by virtue of or in connection to the Council lodging a caveat in the relevant folio of the Register for the Land.
- (c) Following the registration of this Agreement in the relevant folio of the Register for the Land and provision of the required notice to Council under Clause 6.2(c), the Council must promptly, and within 5 Business Days of any request by the Landowner, execute any form and supply such other information as is required by the Landowner to enable the removal of any caveat from the title to the Land lodged by Council pursuant to this clause 6.4.

7. Security and enforcement

7.1 Security

In consideration of the Minister and the Council entering into this Agreement, the Landowner has agreed to provide security to the Minister and the Council for performance of the Landowner's obligations under this Agreement by

- (a) the registration of this Agreement under clause 6.2 of this Agreement; and
- (b) agreeing to clause 4.2 of Schedule 3; and
- (c) by agreeing to clauses 6.4 and 7.4.

7.2 Enforcement

This Agreement may be enforced by any Party in any court of competent jurisdiction.

7.3 No prevention to enforcement

For the avoidance of doubt, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) the Minister or Council from exercising any function under any legislation, including the Act, or any other legislation or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

7.4 Construction Certificate

The Landowner agrees and the Council acknowledges that it is a requirement of this Agreement that no Construction Certificate may be issued for any part of the Proposed Development until the Contribution has been made and the Parties agree that this

requirement is a restriction on the issue of the relevant Construction Certificate within the meaning of section 109F of the Act and clause 146A of the Regulation.

8. Dispute resolution

8.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A Party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other Party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

8.4 Mediation

If the Parties do not agree within 21 days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Program. The Parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 days after notice is given under clause 8.2 then any Party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

9. GST

9.1 Interpretation

In this clause 9:

- (a) except where the context suggests otherwise, terms used in this clause 9 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9; and
- (c) a reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.

9.2 Intention of the Parties

- (a) Without limiting the operation of this clause 9, the Parties intend that:
 - (i) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this Agreement;
 - (ii) no tax invoices will be exchanged between the Parties; and
 - (iii) no additional amounts will be payable on account of GST.
- (b) If it is subsequently determined that GST is payable by any Party in respect of any supply made pursuant to this Agreement, the Landowner must pay the GST, or pay to the Minister or the Council an amount equal to the Minister's or the Council's liability for GST in respect of the relevant supply within 10 Business Days after the Minister or the Council has provided a tax invoice to the Landowner with respect to the supply to the Minister or the Council.
- (c) The Landowner indemnifies the Minister and the Council against any Claims against, or costs, losses or damages suffered or incurred by the Minister or the Council, arising out of, or in any way in connection with, the Minister's or the Council's liability for GST in respect of any supply made pursuant to this Agreement.

9.3 Reimbursement

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 No merger

This clause will not merge on completion or termination of this Agreement.

10. Assignment and Dealing

10.1 Landowner's right to sell Land

- (a) The Landowner must not sell, transfer or dispose of the whole or any part of the Land unless, before it sells, transfers or disposes of any such part of the Land to another person ("**Transferee**"):
 - (i) it satisfies the Minister and the Council acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed Transferee) of complying with such of the Landowner's obligations under this Agreement as the Minister and the Council acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
 - (ii) the rights of the Minister and the Council under this Agreement are not diminished or fettered in any way;
 - (iii) the Transferee signs an acknowledgement in form and substance acceptable to the Minister and the Council by which the Transferee acknowledges that under section 93H(3) of the Act the Transferee is, upon and following Transfer of the Land, bound by this Agreement; and
 - (iv) the Minister and the Council is satisfied that it holds appropriate security to secure the Landowner 's obligations under this Agreement; and
 - (v) any default by the Landowner has been remedied by the Landowner or waived by the Minister and the Council; and
 - (vi) the Landowner and the Transferee pay the Minister's and the Council's reasonable costs in relation to the Transfer.

11. Release and indemnity

- (a) The Landowner agrees that the obligation to provide the Contribution is at the risk of the Landowner. The Landowner releases the Minister and the Council from any Claim, liability or loss arising from, and costs incurred in connection with, the Landowner's obligation to provide the Contribution.
- (b) The Landowner indemnifies the Minister and the Council against any costs incurred in connection with the Minister or the Council enforcing the Landowner's obligation to provide the Contributions in accordance with this Agreement, except to the extent caused or contributed to by the Minister's or the Council's negligent act or default under this Agreement.
- (c) The release and indemnity in clause 11(a) and 11(b) ends once the Minister and the Council have confirmed, in writing, that the Landowner has fulfilled all of its obligations under this Agreement (in accordance with clause 5.2) or the Agreement terminates under clause 2(c) whichever is the earlier.

12. Costs

- (a) The Landowner agrees to pay the reasonable costs incurred by the Minister and the Council in relation to the negotiation, preparation, execution, advertising, stamping and registration of this Agreement, including, without limitation, legal costs and expenses on a solicitor and own client basis, and including, without limitation, any in-house legal costs and expenses.
- (b) The Landowner agrees to pay or reimburse the Minister and the Council on demand for:
 - (i) costs of the Minister and the Council in connection with any exercise or non-exercise of rights (including, without limitation, in connection with the actual or contemplated enforcement or preservation of any rights under this Agreement) waiver, variation, release or discharge in connection with this Agreement; and
 - (ii) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Agreement or a payment or receipt or any transaction contemplated by this Agreement,

including in each case, without limitation, legal costs and expenses on a solicitor and own client basis, and including, without limitation, any in-house legal costs and expenses, however all such costs must be reasonable in the circumstances.

13. Effect of Schedulised terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules to this Agreement as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

14. General provisions

14.1 Exercise of Minister's Powers

The Landowner acknowledges that the Minister may authorise any officer of the Office of Environment and Heritage to exercise any of the Minister's functions under the Agreement on the Minister's behalf.

14.2 Entire Agreement

- (a) 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, anything said or done by another Party, or by an officer, agent or employee of that Party, before the Agreement was executed.
- (b) The Explanatory Note must not be used to assist in construing this Agreement.

14.3 Counterparts

This Agreement may be executed by counterparts of the respective Parties, which together will constitute one agreement.

14.4 Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

14.5 Governing Law and Jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive 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.

14.6 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

14.7 No fetter

Nothing in this Agreement is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation and nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14.8 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

14.9 Severability

- (i) If any part of 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.
- (ii) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

14.10 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties as a deed.

14.11 Waiver

- (i) 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 a breach of obligation by, another Party.
- (ii) A waiver by a Party is only effective if it is in writing.

- (iii) 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.

14.12 Good Faith

Each Party must act in good faith towards all other Parties and use its best endeavours to comply with the spirit and intention of this Agreement.

14.13 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture, agency, trust or to give rise to any fiduciary duties between the Parties.

15. Notices

15.1 Form

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 below; or
- (b) faxed to that Party at its fax number set out below:

The Minister

Address: PO Box 488G Newcastle NSW 2300
Telephone: (02) 4908 6800
Fax: (02) 4908 6810
Attention: Regional Manager, Hunter Central Coast

The Council

Address: 62-78 Vincent Street Cessnock NSW 2325
Telephone: (02) 4993 4100
Fax: (02) 4993 2500
Attention: The General Manager

Landowner

Hardie Greta Pty Limited

Address: Level 1, 106 King Street Sydney NSW 2000
Telephone: (02) 9233 2588
Fax: (02) 9233 6599
Attention: Mr Jamie Boswell

Biodiversity Land Pty Limited

Address: Level 1, 106 King Street Sydney NSW 2000
Telephone: (02) 9233 2588
Fax: (02) 9233 6599
Attention: Mr Jamie Boswell

15.2 Receipt

- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted; or
 - (iii) 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.

- (b) 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 after 5pm on any Business 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.

Schedule 1 - Requirements under section 93F of the Act

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p>Planning instrument and/or Development Application - (Section 93F(1))</p> <p>The Landowner has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</p>	<p>The whole of the Land.</p>
<p>Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b))</p>	<p>Rezoning of the Land to allow for the Proposed Development.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))</p>	<p>See the Schedule 3</p>
<p>Applicability of section 94 of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act is not excluded.</p>
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act is not excluded.</p>
<p>Applicability of section 94EF of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act is not excluded.</p>
<p>Mechanism for dispute resolution - (Section 93F(3)(f))</p>	<p>See clause 8.</p>
<p>Enforcement of the Planning Agreement - (Section 93F(3)(g))</p>	<p>See clause 7.</p>
<p>Registration of the Planning Agreement - (Section 93F(3)(g))</p> <p>The Parties agree that the Planning Agreement will be registered in accordance with clause 6.2.</p>	<p>Yes</p>

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
No obligation to grant consent or exercise functions - (Section 93F(9))	No obligation. See clause 14.7.

Schedule 2 - Land

The whole of the land described in the following table:

Lot	Deposited Plan	Folio Identifier	Landowner
2	808354	2/808354	Hardie Greta Pty Limited
2	1151267	2/1151267	Hardie Greta Pty Limited
9	753817	9/753817	Biodiversity Land Pty Limited
102	753817	102/753817	Biodiversity Land Pty Limited
207	753817	207/753817	Biodiversity Land Pty Limited

Schedule 3 – Contribution

1. Contribution

The Landowner undertakes to provide or procure the provision of the Contribution as set out and provided for in Column 2 of the Contribution Table below no later than the date or event described in Column 3 of the Contribution Table.

Column 1	Column 2	Column 3	Column 4
Item	Contribution	Timing	Public purpose
1	<p>Environmental Contribution</p> <p>The Landowner must make the Environmental Contribution in accordance with the requirements of clause 2 of this Schedule 3</p>	<p>Within 30 Business Days of the Gazettal and prior to any Construction Certificate being issued for the Development, subject to indexation in accordance with clause 2 of this Schedule 3</p>	<p>To be applied by the Minister towards (but not limited to) costs associated with the reservation of the Offsite Environmental Land under the NPW Act</p>
2	<p>Onsite Environmental Land Contribution</p> <p>The Landowner must register the Positive Covenant on the Onsite Environmental Land.</p>	<p>In accordance with the requirements of clause 3 of this Schedule 3, and in any event, prior to the issue of a Construction Certificate for any part of the Proposed Development</p>	<p>To achieve appropriate conservation outcomes for the Development</p>
3	<p>Offsite Environmental Land Contribution</p> <p>The Landowner must transfer the Offsite Environmental Land to the Minister or his or her nominee</p>	<p>In accordance with the requirements of clause 4 of this Schedule 3, and in any event, prior to the issue of a Construction Certificate for any part of the Proposed Development</p>	<p>To achieve appropriate conservation outcomes for the Development</p>

2. Environmental Contribution

- (a) The Environmental Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transferred by the Landowner into a bank account nominated by the Minister under this clause.
- (b) The amount of the Environmental Contribution (**Contribution Amount**) must be indexed in accordance with the formula set out below:

$$ICR = BC \times \frac{CP2}{CP1}$$

where:

ICR is the indexed Contribution Amount.

BC is the base contribution rate as at the date of execution of this Agreement.

CP2 is the most recent quarterly value of the Consumer Price Index – Sydney -All Groups as at the date the Environmental Contribution is to be paid under this Agreement.

CP1 is the quarterly value of the Consumer Price Index - Sydney – All Groups as at the date of execution of this Agreement.

3. Onsite Environmental Land Contribution

3.1 Vegetation Management Plan

- a) Hardie Greta must prepare and submit to the Council and the Minister (or his/her nominee) a draft vegetation management plan (**Draft VMP**) within 6 months of the date that this Agreement takes effect under clause 2(b) of the Agreement. The Draft VMP must include (but is not limited to):
 - (i) an identification of vegetation management works that are to be completed each year in relation to the management of the Onsite Environmental Land; and
 - (ii) any methodologies to be used to identify the types of vegetation management works that are likely to be required and how those works will be implemented.
- b) The Minister must provide written comments in response to the Draft VMP to Hardie Greta within 15 Business Days of receipt of the Draft VMP.
- c) Hardie Greta and the Council must:
 - (i) ensure that the Minister's comments (acting reasonably) received in accordance with clause 3.1(b) are incorporated into the Draft VMP; and
 - (ii) use reasonable endeavours to agree on the terms of the Draft VMP within 2 months of the date that the Draft VMP is submitted by Hardie Greta to the Council and the Minister.
- d) The Council must notify Hardie Greta in writing that the draft vegetation management plan has been approved (**Approved VMP**).

3.2 Registration of Positive Covenant

- a) Hardie Greta will lodge a Development Application for the Onsite Environmental Land Subdivision. The Development Application must include a proposal to register the Positive Covenant requiring implementation of and compliance with the Approved VMP on the Onsite Environmental Land.
- b) Within 1 month of obtaining any relevant Subdivision Certificate for the Onsite Environmental Land, Hardie Greta must simultaneously lodge for registration at the LPI under section 195G of the Conveyancing Act the:
 - (i) relevant Subdivision Plan; and

- (ii) a Positive Covenant requiring implementation of and compliance with the Approved VMP for the Environmental Land.
- c) Hardie Greta must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the registration of the Positive Covenant.
- d) Within 5 Business Days of the date of notification that the relevant Subdivision Plan and Positive Covenant have been registered, Hardie Greta must notify all Parties and provide a copy of the relevant folio(s) of the Register and a copy of the registered dealing.
- e) Within 5 Business Days of receiving the notice, the Council will either:
 - (i) issue a notice to the Landowner confirming that the registered Positive Covenant satisfies the requirements of this Agreement, or
 - (ii) issue a notice to the Landowner requiring any amendment or correction of the registered Positive Covenant,
- f) If Council issues a notice under clause 3.2(e)(ii) of this Schedule 3, the Landowner must make the amendment or correction specified and notify the Council again under clause 3.2(d).

4. Offsite Environmental Land Contribution

4.1 Transfer of land to the Minister

- (a) BL must within 20 Business Days of Gazettal serve a Transfer on the Minister or her/his nominee (**Transferee**) with the relevant certificates of title and in circumstances where:
 - (i) the Offsite Environmental Land is free from any encumbrances other than the Service Easements; or
 - (ii) relevant discharges in registrable form are also served on the Transferee at the same time in relation to any encumbrances other than the Service Easements.
- (b) BL must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Offsite Environmental Land.
- (c) The Minister agrees to consider, as soon as practicable after the registration of the Transfer, how conservation of the Offsite Environmental Land is most appropriately achieved, whether by reservation as national park, as reserve of another category under NPW Act, or by a combination of these or otherwise.
- (d) BL will pay all rates and taxes owing in respect of the Offsite Environmental Land up to and including the date of Transfer of the Offsite Environmental Land after which the Transferee will be liable.
- (e) BL must, from the date that this Agreement is signed by all the Parties not undertake any action or activity, prior to the Transfer being registered that will have a detrimental effect on the conservation or Aboriginal heritage values of the Offsite Environmental Land except where BL is:

- (i) directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service),
- (ii) maintaining existing access and existing tracks, or
- (iii) otherwise required by law to undertake such an action or activity.

4.2 Compulsory acquisition

- (a) If BL does not transfer the Offsite Environmental Land that it owns to the Transferee as required by clause 4.1(a) of this Schedule 3, BL consents to the Transferee compulsorily acquiring the Offsite Environmental Land, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) BL and the Minister agree that:
 - (i) this clause 4.2 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 4.2 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) BL indemnifies and agrees to keep indemnified the Transferee against all claims made against the Transferee that result in the Transferee being required to pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* to any person, other than BL as a result of the acquisition by the Transferee of the Offsite Environmental Land under this clause 4.2.
- (d) BL must pay the Minister, promptly on demand, an amount equivalent to all reasonable costs incurred by the Minister acquiring the Offsite Environmental Land as contemplated by this clause 4.2.

Executed as a deed

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

Signature of Witness

Minister administering the *National*
Parks and Wildlife Act 1974

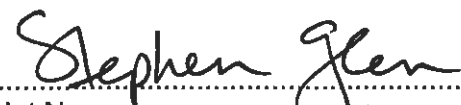
Name of Witness in full

Signed for and on behalf of Cessnock City)
Council by , who hereby declares that)
he/she has been duly authorised to do so,)
in the presence of:


.....
Signature of witness


.....
Signature of authorised representative

Gareth Curtis
Director
.....
Print Name Planning and Environment


.....
Print Name General Manager

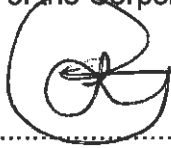
Signed by Hardie Greta Pty Limited ACN)
108 802 786 in accordance with)
section 127 of the Corporations Act:)


.....
Signature of Sole Director/Secretary

Executed under
Power of Attorney
Registration number
Book 4653 No 622

LAUREN BARBARA NELSON
.....
Name of Sole Director/Secretary

Signed by Biodiversity Land Pty Limited)
ACN 114 441 075 in accordance with)
section 127 of the Corporations Act:)



Executed under
Power of Attorney

..... Registration number
Signature of Sole Director/Secretary Book No 622

S. Potter

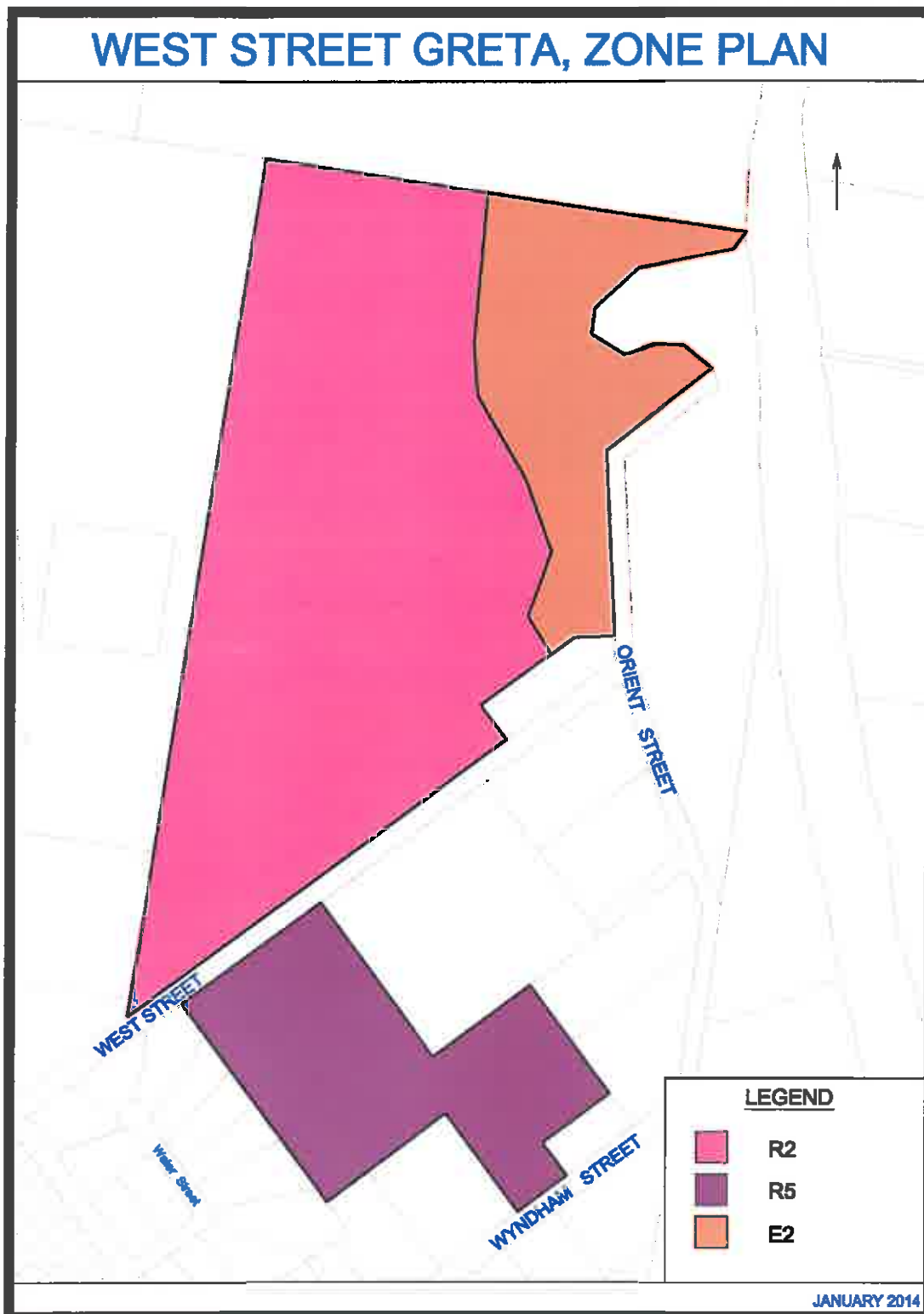
Secretary

LAUREN BARBARA NELSON
.....
Name of Sole Director/Secretary

Sarah Elizabeth Potter

Secretary

Annexure A – Onsite Environmental Land



Annexure B – Offsite Environmental Land



Cadastral Records Enquiry Report

Ref : surv:epin-deflan

Requested Parcel : Lot 102 DP 753817

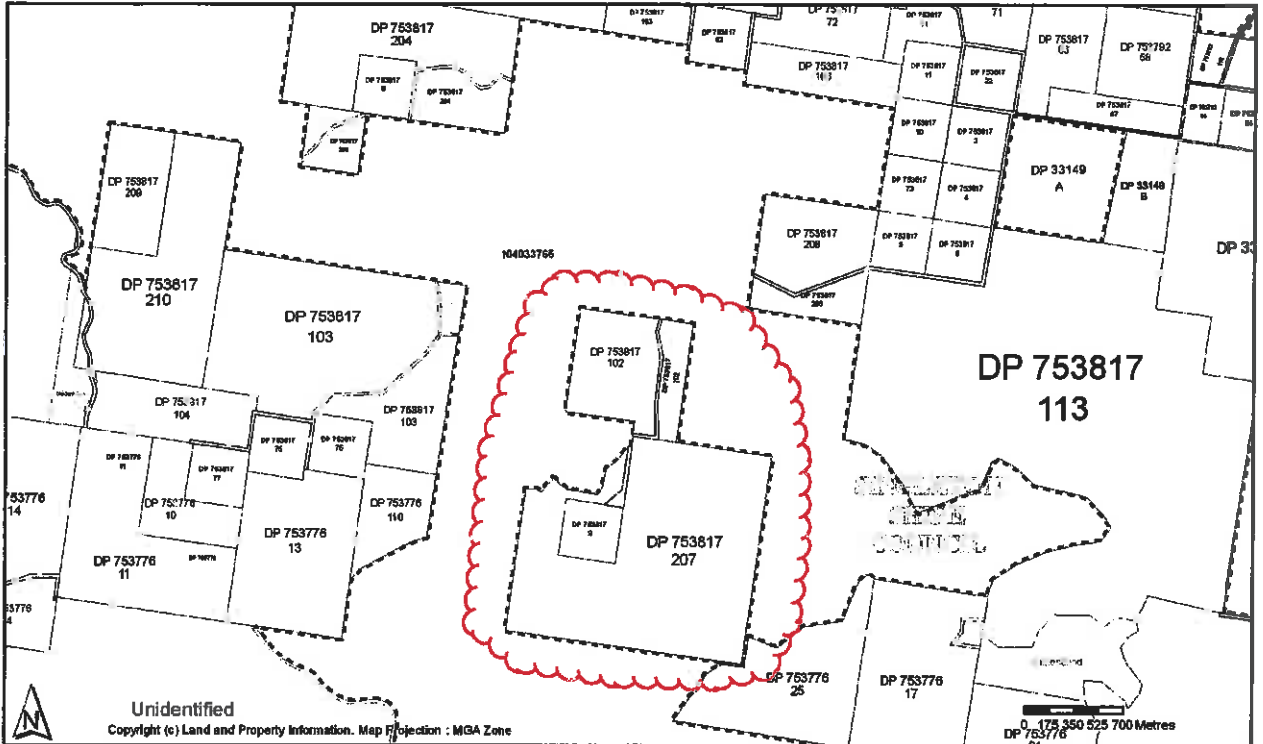
Identified Parcel : Lot 102 DP 753817

Locality : JERRYS PLAINS

LGA : SINGLETON

Parish : WAMBO

County : HUNTER



Report Generated 12:38:00 PM, 23 May, 2014
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This information is provided as a searching aid only. While every endeavour is made to ensure the current cadastral pattern is accurately reflected, the Registrar General cannot guarantee the information provided. For all ACTIVITY PRIOR to SEPT 2002 you must refer to the RGs Charting and Reference Maps.

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