

Cessnock City Council

ABN 60 919 148 928

The Trustees of the Roman Catholic Church For the Diocese of Maitland-Newcastle

ABN 62 089 182 027

Planning Agreement

Environmental Planning and Assessment Act 1979

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Agreement made at _____ **on** _____

Parties

Cessnock City Council ABN 60 919 148 928, 62-78 Vincent Street,
Cessnock NSW 2325 (“the Council”)

**The Trustees of the Roman Catholic Church for the Diocese of
Maitland-Newcastle** ABN 62 089 182 027 (“Landowner”)

Background

- A. The Landowner owns the Land which includes the Onsite Environmental Land.
- B. The Landowner has sought an amendment to the LEP to rezone the Land in order to allow the Proposed Development on the Land.
- C. The Landowner intends thereafter to lodge with the Council a Development Application(s) for the Proposed Development.
- D. The Landowner has offered to make the Development Contribution as described in Schedule 3 to this Agreement.
- E. The parties have therefore agreed to enter into this Agreement to make the Development 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 of the Act 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).

Biobanking Agreement means a biobanking agreement under the *Threatened Species Conservation Act 1995* (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.

Commencement Date means the date that this Agreement operates under clause 2(b).

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

Conservation Agreement has the same meaning as in the NPW Act.

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

Development Consent means Approval by the Consent Authority under Part 4 of the Act in response to a Development Application, including any Modification of it.

Development Contribution means the procurement or provision by the conservation measures to be negotiated by the parties in good faith in accordance with Schedule 3 of 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.

General Register of Deeds means the land registry so entitled and maintained under the *Conveyancing Act 1919* (NSW).

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).

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

Landowner means the owner of the Land from time to time, and where the context permits includes all of the owners of the Land.

LEP means Cessnock Local Environmental Plan 2011.

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

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

Onsite Environmental Land means that part of the Land identified by the hatching on the plan attached as Annexure A to this Agreement.

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

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

Property Vegetation Plan means a property vegetation plan for land under the *Native Vegetation Act 2003* (NSW), not being a plan that proposes broadscale clearing of native vegetation within the meaning of the *Native Vegetation Act 2003* (NSW).

Proposed Development means the subdivision and development of the Land for the purpose of industrial and/or residential and/or other ancillary development on part of the Land and for the purpose of conservation of the Onsite Environmental Land in accordance with this Agreement

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.

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

Strata Certificate has the same meaning as in the Strata Schemes Act.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act means 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.

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 or the Environment Minister.

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 takes effect on its execution by all parties, or if the execution of the Agreement occurs prior to Gazettal, on Gazettal ('Effective Date').
- (c) This Agreement will terminate 2 months after the date of the provision of the Development Contribution in full in accordance with clause 5 of this Agreement

3. Application of the Agreement

This Agreement applies to the Land and the Proposed Development.

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

The application of sections 94, 94A and section 94EF are excluded to the extent stated in Schedule 1 to this Agreement.

5. Requirement to provide the Development Contribution

The Landowner undertakes to provide or procure the provision of the Development 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.

6. Land ownership and Registration of this Agreement

6.1 Ownership

The Landowner represents and warrants to the Council that as at the date of this Agreement it is:

- (a) the legal and beneficial owner of that part of the Land; 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, the Landowner, within 21 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) The Landowner, at its own expense, will take all practical steps, and otherwise do anything that 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) The 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 Council with a copy of the relevant folios of the Register for the Land.

6.3 Release and discharge of this Agreement

The Council agrees to do all things reasonably required by the Landowner to release and discharge this Agreement with respect to any part of the Land upon the Landowner satisfying all of its obligations under this Agreement in respect to that part of the Land ('Satisfaction Date'). If any such part of the Land, and no other land, is at the Satisfaction Date, contained within a lot, the Council's obligations under this clause 6.3(a) shall include ensuring that the Agreement is no longer registered under section 93H of the Act on the relevant folios of any such lot.

7. Security and enforcement

7.1 Security

In consideration of the Council entering into this Agreement, the Landowner has agreed to provide security to 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 the provisions of Schedule 3.

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 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.

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 Rules of the Law Society of NSW. 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 clause9; 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 the Landowner in respect of any supply made pursuant to this Agreement, the Landowner must pay to the Council an amount equal to the Council's liability for GST in respect of the relevant supply to the Council within 10 Business Days after the Council has provided a tax invoice to the Landowner with respect to the supply to the Council.
- (c) The Landowner indemnifies the Council against any claims against, or costs, losses or damages suffered or incurred by the Principal, arising out of, or in any way in connection with, 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 Additional amount of GST payable

Subject to clause 9.7, if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this Agreement:

- (a) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply ("**GST Amount**"), and:
 - (i) where that GST Amount is payable by the Council, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Council (or the representative member of any GST group of which the is a member) is entitled in relation to the Council's acquisition of that supply and is payable within 5 Business Days after the Council, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 9.5(a).

9.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 9.5 and clause 9.7), varies from the additional amount paid by the Recipient under clause 9.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9.6(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 9.5.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

9.7 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 9.5 applies is a taxable supply made by the Recipient (the "**Recipient Supply**"), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 9.5 shall:
 - (i) if the Supplier is the Council, be reduced by the amount of the input tax credit (if any) to which the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) is entitled in relation to the Council's acquisition of the Recipient Supply; and
 - (ii) in any other case, be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9.5 (or the time at which such GST Amount would have been payable in accordance with clause 9.5 but for the operation of clause 9.7(a)).

9.8 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 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 Council acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
 - (ii) the rights of 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 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 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 Council; and
 - (vi) the Landowner and the Transferee pay the Council's reasonable costs in relation to the transfer.

11. Release and indemnity

- (a) The Landowner agrees that the obligation to provide the Development Contribution is at the risk of the Landowner. The Landowner releases the Council from any Claim, liability or loss arising from, and costs incurred in connection with, the Landowner's obligation to provide the Development Contribution.
- (b) The Landowner indemnifies the Council against any costs incurred in connection with the Council enforcing the Landowner's obligation to provide the Development Contributions in accordance with this Agreement, except to the extent caused or contributed to by 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 Council has confirmed, in writing, that the Landowner has fulfilled all of its obligations under this Agreement (such confirmation not to be unreasonably withheld or refused) or the agreement terminates under clause 2(c) whichever is the earlier.

12. Costs

- (a) Each party shall pay its own costs incurred 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 Council on demand for:
 - (i) costs of the Council in connection with any breach by the Landowner under the terms of 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 Scheduled 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 Entire Agreement

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.

14.2 Counterparts

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

14.3 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.

14.4 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.

14.5 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.

14.6 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.

14.7 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.

14.8 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.

14.9 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.

14.10 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.

14.11 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.

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 Council

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

Landowner

Address: 841 Hunter Street, Newcastle West NSW 2302
Telephone: (02) 4979 1100
Fax: (02) 4979 1111
Attention: Mr Boyd McCallum

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) Receipt - next Business Day

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> <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes (b) Yes (c) No
<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 14.5.

Schedule 2 – Land

The whole of the land in Certificate of Title Folio Identifier 1131/1057179

Schedule 3 – Development Contribution

1. Development Contribution

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

Column 1	Column 2	Column 3	Column 4
Item	Contribution	Timing	Public purpose
1	<p>Development Contribution The Landowner must provide the Development Contribution to the Council.</p>	In accordance with the requirements of this Schedule 3	To achieve appropriate conservation outcomes for the Development

2. Development Contribution Details

- (a) Within 1 month of the Effective Date and before the granting of consent to the first Development Application, the Parties must negotiate in good faith and agree on an overall plan of reasonable conservation measures to be made by the Landowner pursuant to this Agreement in respect of the Landowner's development of the Land;
- (b) Such conservation measures may include any one or more of the conservation measures described in section 126L of the Threatened Species Conservation Act 1995 (NSW), any conservation measure allowed by any legislation that amends, repeals or replaces the Threatened Species Conservation Act 1995 or any part of it, and/or any other conservation measure agreed on by the Parties in writing.
- (c) In the event that the Parties do not reach agreement on the conservation measures to be made by the Landowner pursuant to sub-clause 2(a) of this Schedule 3, the Parties will attempt to resolve such dispute in accordance with clause 8 of this Agreement;
- (d) The Parties agree that they shall adopt the following general principles in negotiating and agreeing on the conservation measures to be made by the Landowner pursuant to this Agreement:
 - (i) The conservation measures to be made by the Landowner pursuant to this agreement shall be fair and reasonable having regard to the Landowner's development of the Land, the benefit to the public in the Landowner providing such conservation measures, and all other relevant circumstances;
 - (ii) The Parties acknowledge and agree that Land (including land identified as Onsite Environmental Land) that is not developed by the Landowner may be utilised for the purpose of the calculation of the Development Contribution, potentially including but not limited to utilising such land for the purpose of off-site offsets, the inclusion of on-site offsets in the Onsite Environmental Land

and/or the payment into a form of a biodiversity offset fund, provided that the Parties may agree that part of the Onsite Environmental Land is to be utilised for residential purposes (provided that the number of residential dwellings does not exceed 4);

- (iii) The Parties acknowledge and agree that the Landowner does not intend to develop all of the Land at one time and that instead such development is intended to occur in a number of stages over time. The Parties agree that the conservation measures to be made by the Landowner in respect of the Land shall not be required to be made until a Development Application (excluding any Development Application for subdivision for a subdivision or the use of Land for the purpose only of dedicating public open space, public roads, public utility undertakings, or any other public purpose, and excluding any Development Application for a subdivision that would create a lot larger than the minimum size permitted on the land immediately before Gazettal) is made in respect of the Land that is in relation to either the use of land or the erection of a building;
- (iv) In the event that it is reasonable and suitable in the circumstances for the Landowner to make, procure or provide more than one conservation measure in respect of the development of either all of the Land or a Parcel, it shall be at the Landowner's absolute discretion as to which one or more of such conservation measures shall be made, procured or provided by the Landowner, with preference to be given to conservation measures that are close to the Land;
- (v) If the Landowner agrees to adopt a Biobanking Agreement or the acquisition or retirement of biobanking credits for the purpose of the Development Contribution or part thereof, the Parties agree that the Landowner's obligations in respect of the development of either all of the Land or a Parcel shall not exceed the obligations of a landowner that would be applicable pursuant to the Biobanking Assessment Methodology adopted for the purpose of the Biobanking Credit Calculator by the Office of Environment & Heritage, NSW Government, or any amending or replacement methodology;
- (vi) The Parties further acknowledge that the use of the Biobanking Calculator Tool in March 2014 indicates the development could generate a requirement for up to 6367 biobanking credits based on the assumed clearing of 100% of vegetation within the IN2 zoned land and the Parties agree that the result of this calculation will inform the quantum and form of the Development Contribution to be negotiated between the parties.
- (vii) The Parties acknowledge that it is assumed that no vegetation clearing will be required within the E2 or E4 zoned land, but should any clearing in this zone be required, the parties agree that an appropriate offset will be negotiated to compensate for that clearing.

Executed as a deed


Signed for and on behalf of Cessnock City Council ABN 60 919 148 928 by , who hereby declares that he/she has been duly authorised to do so, in the presence of:



Signature of witness

MELANIE PARKER

Print Name

 27/11/16

Signature of authorised representative

Stephen Glen
General Manager
Cessnock City Council

Print Name

Signed by The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle ABN 32 089 182 027 in accordance with section 127 of the Corporations Act:



Signature of Director

Sean Scanlon, Vice Chancellor Administration
Diocese of Maitland-Newcastle

Name of Director

Signature of Director/Secretary

Name of Director/Secretary

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