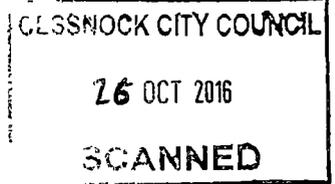
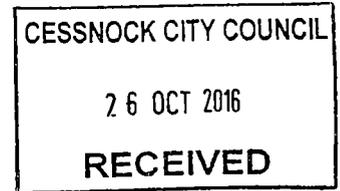


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Cessnock City Council

[Council]



Orica Australia Pty Limited (ACN 004 117 828)

C/- 1 Nicholson Street Melbourne VICTORIA 3001

[Landowner]

Planning Agreement

Section 93F of the *Environmental Planning & Assessment Act 1979 (NSW)*

Date: September 2016

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AGREEMENT

Date

Parties **Cessnock City Council**
("the Council")

Orica Australia Pty Limited (ACN 004 117 828)

C/- Level 1, 1 Nicholson St, Melbourne, Vic, 3001

("Landowner")

Background

- A.** The Landowner owns the Site which includes the Land and the Environmental Retained Land
- B.** The Landowner has sought an amendment to the LEP to rezone the Land and identify the Land under Schedule 1 Additional Permitted Uses
- C.** The Landowner has agreed to enter into a BioBanking Agreement over land that contains the biodiversity values identified in clause 5.3 and Schedule 4. An initial assessment suggests that the Environmental Retained Land contains the required biodiversity values.
- D.** The Landowner proposes to lodge Development Applications with the Council for the Proposed Development of the Land on a staged basis. Development Applications will include an assessment of the biodiversity impacts of the Proposed Development using the BioBanking Assessment Methodology. Where required under a future Development Application for the Proposed Development of the Land, biodiversity credits will be retired consistent with any timing requirements set in that application(s). It is intended that the biodiversity credits created through the BioBanking Agreement will be retired to offset the impacts of the Proposed Development on the Land. It will be the responsibility of the Landowner to retain these credits – no restrictions will be placed on the credits in the BioBanking Agreement
- G.** The Parties have therefore agreed to enter into this Agreement to formalise the arrangements

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 & Assessment Act 1979* (NSW)

Agreement means this Planning Agreement.

Application means an application for any Approval

Approval means any approvals, consents, modifications of Approvals, certificates issued under Part 4 of the Act, certificates, construction certificates, compliance certificates, 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 established under the *Threatened Species Conservation Act 1995* (NSW) or, if the *Threatened Species Conservation Act 1995* (NSW) has been repealed, an equivalent agreement that provides for the in-perpetuity protection and management of a site and the generation of biodiversity credits.

BioBanking Assessment Methodology means the BioBanking Assessment Methodology established under the *Threatened Species Conservation Act 1995* (NSW) or, if the *Threatened Species Conservation Act 1995* (NSW) has been repealed, an equivalent method that provides for the calculation of biodiversity credits

BioBank Site means land secured under a BioBanking Agreement

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in the State or a day on which the Council offices are closed

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

Development has the same meaning as in the Act

Development Application has the same meaning as in the Act

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions, being material public benefits, set out in Schedule 4.

Environmental Retained Land means that part of the Site identified as unhatched on the plan in Schedule 5

Excluded Development means any Development relating to the existing footprint of the Landowner's current operations on the Land or any necessary maintenance of the existing facility on the Land that does not require any additional offsetting under current legislation

Explanatory Note means the explanatory note required by the Regulation

Land means the land described in Schedule 3

Law means

- (a) those principles of common law and equity established by decisions of courts, and
- (b) Legislation

Legislation means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the State or other relevant Authority

LEP means Cessnock Local Environmental Plan 2011

LPI means NSW Land & Property Information or any similar department or authority that may be established from time to time

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

Passive Management Measures means those passive measures and actions that have little or no cost and include refraining from doing something, such as not removing fallen logs or bush rock

Proposed LEP means the amendment to the LEP which has the effect of rezoning the Site and including the Land in Schedule 1 Additional Permitted Uses in accordance with the proposed Cessnock Local Environmental Plan Amendment Plan attached at Schedule 6

Proposed Development means the expansion of the Landowner's existing operations on the Land for a purpose permissible under the Proposed LEP

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 & Assessment Regulation 2000* (NSW)

Site means the land described in Schedule 2

State means the State of New South Wales

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, and 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 joint and 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. Planning Agreement under the Act

The Parties agree that this document is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act

3. Application of this Agreement

This Agreement applies to:

- (a) the Site, and
 - (b) the Proposed Development of the Land.
-

4. Operation of this Agreement

This Agreement will commence from the later of

- (a) commencement of the Proposed LEP within the meaning of section 34(5) of the Act, and
 - (b) this Agreement being entered into in accordance with clause 25C(1) of the Regulation
-

5. Development Contribution to be made under this Agreement

5.1 Provision of Contribution

- (a) The Landowner agrees to provide the Development Contribution in accordance with the provisions of **Schedule 4**, unless otherwise agreed in writing by the parties.
- (b) If an extension of timing is requested by the Landowner, the Council acknowledges and agrees that it will not unreasonably withhold its written consent or agreement to that extension

5.2 Consideration of Contribution for Proposed Development

The Council agrees to take this Agreement into account in accordance with s79C(1)(a)(iia) of the Act in the determination of any future Application for the Proposed Development on the Land

5.3 Enter into a BioBanking Agreement

- (a) The Landowner will enter into a BioBanking Agreement in accordance with clause 4 3 of Schedule 4 of this Agreement
 - a within 12 months of the date on which this Agreement comes into operation under clause 4 of this Agreement, or
 - b. within 24 months of the date on which this Agreement comes into operation under clause 4 of this Agreement if the Council agrees in writing to such an extension because the Landowner (acting reasonably) has not entered into a BioBanking Agreement
- (b) In the event that the Landowner, acting reasonably, cannot enter into a BioBanking Agreement in accordance with the timing in clause 5 3(a) and Schedule 4, the Landowner must register a restrictive covenant in respect of the Environmental Retained Land on the terms of similar effect to clause 4 4 in Schedule 4 which will be removed from title when a BioBanking Agreement is entered into
- (c) The BioBanking Agreement, and any restrictive covenant registered under clause 5 3(b), shall relate to approximately 145ha of land that contains the following Biometric Vegetation Types (BVT) and threatened species
 - a HU806 Spotted Gum – Red Ironbark – Grey Gum Shrub – Grass Open Forest of the Lower Hunter;
 - b HU833 Smooth-barked Apple – Red Bloodwood – Brown Stringybark – Hairpin Banksia Heathy Open Forest of Coastal Lowlands;

- c HU812 Forest Red Gum Grassy Open Forest on Floodplains of the Lower Hunter,
- d *Tetratheca juncea*, and
- e *Grevillea parviflora* subsp *Parviflora*

A preliminary assessment suggests that the Environmental Retained Land may contain the required biodiversity values. This must be confirmed using the BioBanking Assessment Methodology.

5.4 Management of the Environmental Retained Land

The Landowner agrees to undertake the Passive Management Measures in respect of the Environmental Retained Land, at its cost, from the date of on which this Agreement comes into operation under clause 4 of this Agreement until the commencement of the BioBanking Agreement.

5.5 Assessment of biodiversity impact and retirement of biodiversity credits under the BioBanking Scheme

- (a) Where required under a future Development Application, the Landowner agrees to progressively retire the biodiversity credits as the Land is developed for the purpose of the Proposed Development.
- (b) The credits required to be retired under a future Development Application will be calculated by assessing the biodiversity impacts of the Technology Centre and Explosive Research and Production Facility using the BioBanking Assessment Methodology.

5.6 Excluded Development

For the avoidance of doubt, the Parties acknowledge and agree that this Agreement does not operate so as to

- (a) prevent the Landowner from lodging Applications or the Council from granting Approval in relation to any Excluded Development that does not require any offsetting, and/or
- (b) require the Landowner to enter into a BioBanking Agreement or to surrender or retire credits in respect of any Excluded Development that does not require any offsetting.

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 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 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 the Landowner to comply with its obligations under clause 6 2

6.2 Registration of this Agreement

- (a) The Landowner, within 5 Business Days of the date of this Agreement or publication of the Proposed LEP in the government Gazette (whichever is the later) 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 clause 6 2(b), provide the Council with a copy of the relevant folios of the Register for the Land

6.3 Acknowledgement

Together with clause 8 of this Agreement, the Council acknowledges and agrees that the registration of this Agreement on the title of the Land provides suitable means of enforcement in the event of a breach of this Agreement by the Landowner for the purposes of section 93F(3)(g) of the Act

7. Application of sections 94, 94A and 94EF of the Act to the Development

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in **Schedule 1**

8 Maintenance and Enforcement

8.1 Maintenance

The Landowner, shall undertake the Passive Management Measures in respect of the Environmental Retained Land until the BioBanking Agreement commences

8.2 Enforcement

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

8.3 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; 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.

9 Removal of Agreement

After the Land has been developed and the credits required under the future Development Application are retired, the Council will promptly execute any form and supply any information as reasonably required by the Landowner removal of this Agreement from the title of the Site

10 Dispute resolution

10.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with this clause 10.

10.2 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

10.3 Attempt to resolve

On receipt of notice under clause 10.2, 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.

10.4 Mediation

If the Parties do not agree within 21 days of receipt of notice under clause 10.2 (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.

10.5 Court proceedings

If the dispute is not resolved within 60 days after notice is given under clause 10.2 then any Party which has complied with the provisions of this clause 10 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

10.6 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 10 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 10 for any purpose other than in an attempt to settle the dispute.

10.7 No prejudice

This clause 10 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.

11 Assignment and Dealing

11.1 Landowner's right to sell Land

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")

- (a) 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");
 - (b) the Council is satisfied that rights of the Council under this Agreement are not diminished or fettered in any way,
 - (c) the Transferee signs a deed in form and substance acceptable to the Council containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Landowner (including obligations which arose before the transfer or assignment), and
 - (d) the Council is satisfied that it holds appropriate security to secure the Landowner's obligations under this Agreement, including, without limitation, a guarantee and indemnity in respect of the Transferee's obligations to comply with the Required Obligations (if so required by the Council)
 - (e) any default by the Landowner has been remedied by the Landowner or waived by the Council, and
 - (f) the Landowner and the Transferee pay the Council's reasonable costs in relation to that assignment
-

12 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 a breach or 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 indemnity in clause 1 (b) is a continuing obligation, independent of the Landowner's other obligations under this Agreement and continues after this Agreement ends.
-

13 Costs

The Landowner agrees to

- (a) pay or reimburse the reasonable legal costs and reasonable associated costs and reasonable disbursements of Council for the preparation, negotiation and execution of this Agreement, and
 - (b) pay the costs referred to in paragraph (a) within fourteen (14) days of receipt of a tax invoice from Council.
-

14 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.

15 General Provisions

15.1 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 Authorised Officer, agent or employee of that Party, before the Agreement was executed.
- (b) Pursuant to clause 25E(7) of the Regulation, the Explanatory Note required under clause 25E of the Regulation is not to be used to assist in construing this Agreement.

15.2 Further Acts

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

15.3 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.

15.4 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.

15.5 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.

15.6 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.

15.7 Severability

- (a) 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.
- (b) 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.

15.8 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.

15.9 Waiver

- (a) 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
- (b) A waiver by a Party is only effective if it is in writing.
- (c) 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

15.10 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

16 Notices

16.1 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

(i) The Council

Address:

Fax

Attention:

(ii) Landowner

Address: C/- Level 1, 1 Nicholson St, Melbourne, Vic, 3001

Fax

Attention

16.2 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) Yes</p>
<p>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</p>	<p>The whole of the Site</p>
<p>Description of change to the environmental planning instrument to which the Planning Agreement applies- (Section 93F(3)(b))</p>	<p>Inclusion of a portion of the Land under "Schedule 1 Additional Permitted Uses" of Cessnock Local Environmental Plan 2011 and rezoning of the Land to RU2 in accordance with the Proposed LEP at Schedule 6</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement- (Section 93F(3)(c))</p>	<p>See Schedule 4</p>
<p>Applicability of section 94 of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act <i>is not excluded.</i></p>
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act <i>is not excluded</i></p>
<p>Applicability of section 94EF of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act <i>is not excluded.</i></p>
<p>Mechanism for dispute resolution- (Section 93F(3)(f))</p>	<p>See clause 10</p>
<p>Enforcement of the Planning Agreement- (Section 93F(3)(g))</p>	<p>See clauses 6 and 8.</p>
<p>Registration of the Planning Agreement - (Section 93F(3)(g))</p>	<p>Yes, the Parties agree that the Planning Agreement will be registered in accordance with clause 6</p>
<p>No obligation to grant consent or exercise functions- (Section 93F(9))</p>	<p>No obligation See clause 15 5.</p>

Schedule 2 - Site

The Site the subject of this Agreement is the whole of the land described in the following table

Lot	Deposited Plan
Lot 2	DP 809377

Schedule 3 – The Land



The Land is that part of the site that will be the subject of the Schedule 1 Notation in the LEP that can be developed for the purposes permitted under the Proposed LEP, namely Technology Centre and Explosive Research and Production Facility.

Schedule 4 - Development Contribution

4.1 Contribution and Timing

- (a) 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 set out at clause 4.3 of this Schedule 4, no later than the date or event described in Column 3 of that table unless otherwise agreed in writing by the parties. If an extension of timing is requested by the Landowner, the Council must not unreasonably withhold its written consent or agreement to that extension.
- (b) In the event that the Landowner, acting reasonably, cannot enter into a Biobanking Agreement (item 1 below) by the date or event described in Column 3 of the Development Contribution Table, the Landowner may register a restrictive covenant in respect of the Environmental Retained Land on the terms of similar effect to clause 4.4 in Schedule 4 below which will be removed from title once a BioBanking Agreement commences.

4.2 Public Purpose

The Landowner and the Council acknowledge that the Development Contribution is being made for the public purposes described in Column 4 of the Development Contribution Table at clause 4.3 of this Schedule 4.

4.3 Development Contribution Table

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Timing	Public Purpose
1	<p>The Landowner commits to enter into a BioBanking Agreement in relation to part of the site with the NSW Office of Environment and Heritage under the provisions of the <i>Threatened Species and Conservation Act 1995</i> (or whatever applies at the time) to secure future biodiversity offsets as the Technology Centre and Explosive Research and Production Facility develops.</p> <p>The BioBanking Agreement shall secure place approximately 145ha of land that contains the following Biometric Vegetation Types (BVT) and threatened species:</p> <ul style="list-style-type: none"> ▪ HU806 Spotted Gum – Red Ironbark – Grey Gum Shrub – Grass Open Forest of the Lower Hunter; ▪ HU833 Smooth-barked Apple – Red Bloodwood – Brown 	<ol style="list-style-type: none"> 1. Within 12 months of this Agreement becoming operational under clause 4; or 2. Within 24 months of this Agreement becoming operational under clause 4 if the Council agrees in writing to such an extension because Landowner (acting reasonably) has not entered into a BioBanking Agreement. 	<p>The conservation or enhancement of the natural environment.</p>

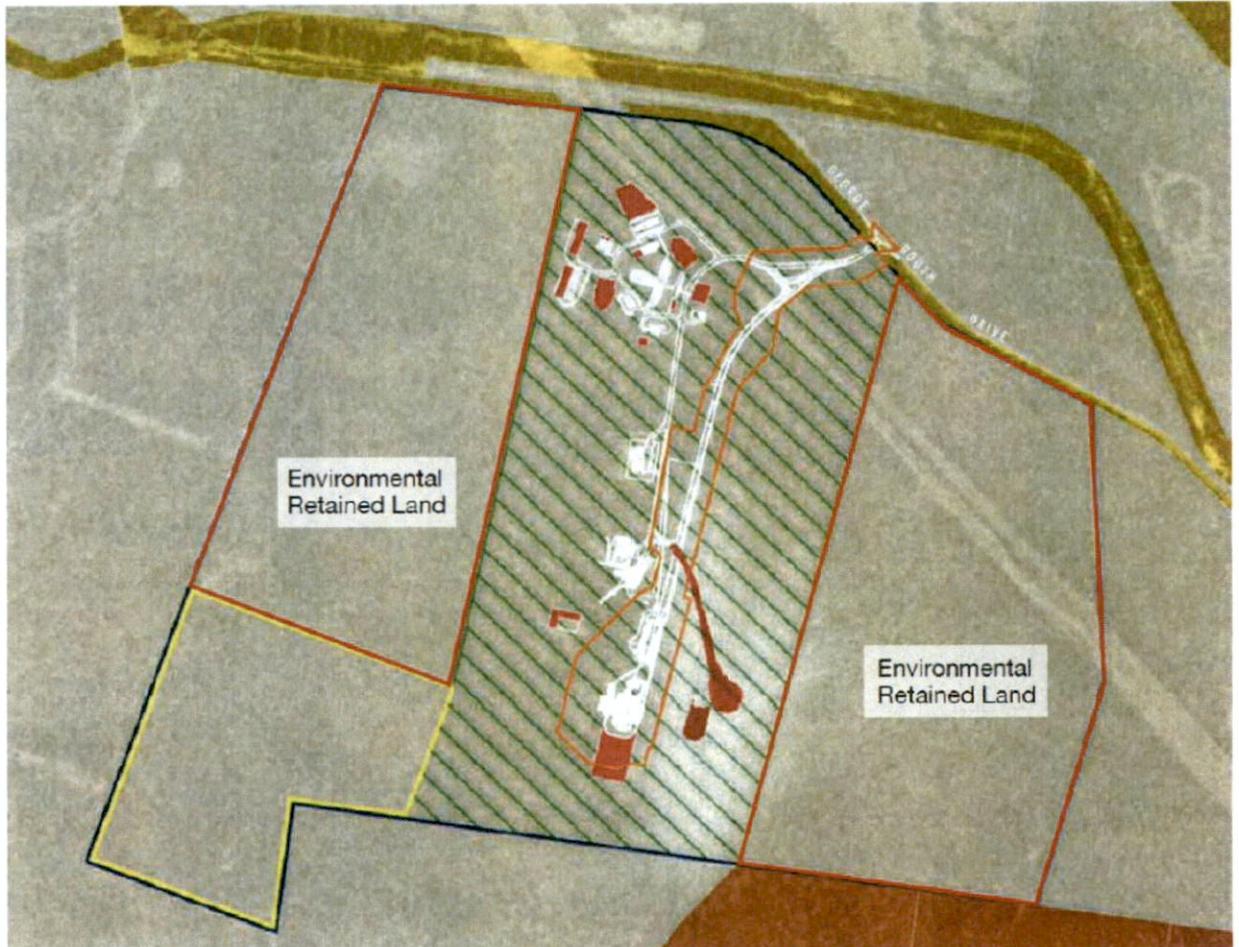
Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Timing	Public Purpose
	<p>Stringybark – Hairpin Banksia Heathy Open Forest of Coastal Lowlands;</p> <ul style="list-style-type: none"> ▪ HU812 Forest Red Gum Grassy Open Forest on Floodplains of the Lower Hunter; ▪ Tetratheca juncea; and ▪ Grevillea parviflora subsp. Parviflora <p>with the intention being that the credits generated will be used to offset for any future biodiversity impacts on the site.</p>		
2	The Landowner will undertake Passive Management Measures on the Environmental Retained Land from the date that this Agreement becoming operational under clause 4 until the BioBanking Agreement commences.	From execution of the VPA.	The conservation or enhancement of the natural environment.

4.4 Assessment and offsetting of biodiversity impacts from development and establishment of the BioBank Site

The Landowner identifies that the Proposed Development on the Land and the establishment of the BioBank Site under a BioBanking Agreement will be on the following terms

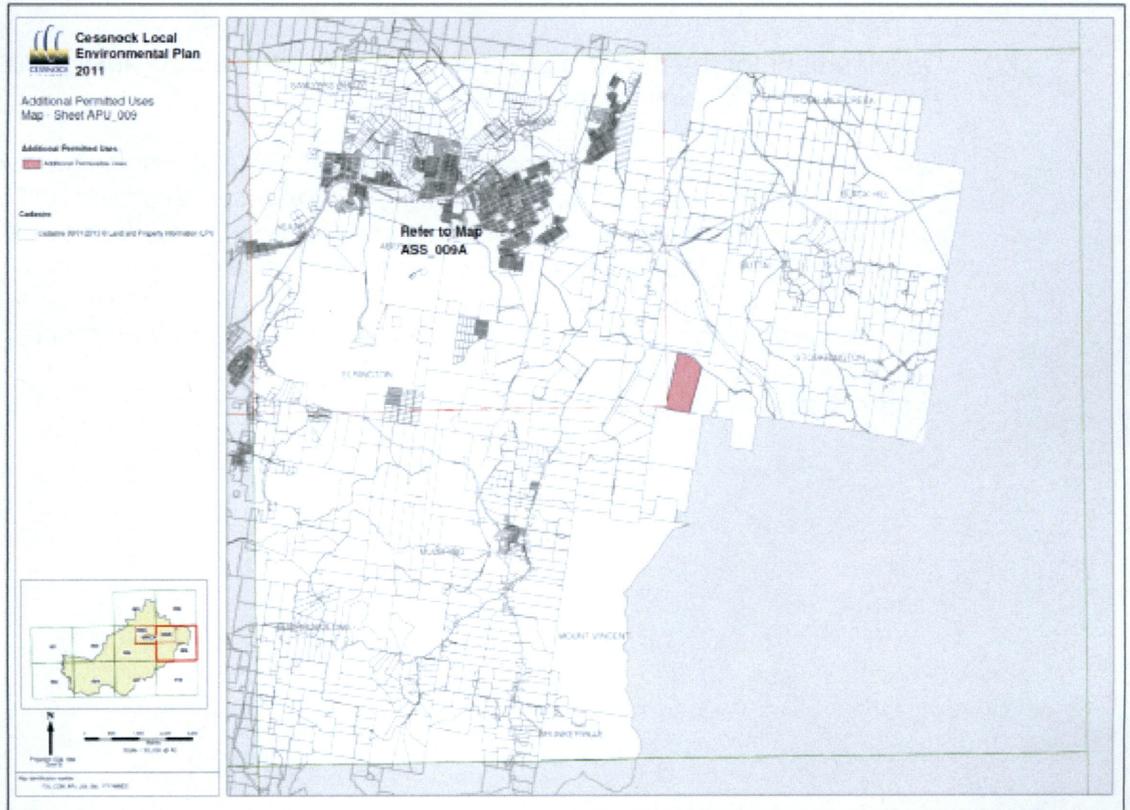
- (a) A Development Application is not to be lodged for the Proposed Development on the Land, excepting any Excluded Development, until such time as a BioBanking Agreement has been signed that meets the requirements in 4.3 of Schedule 4.
- (b) Future Development Applications for the Proposed Development on the Land, excepting any Excluded Development, will require the full biodiversity impacts of the Proposed Development to be assessed under the BioBanking Assessment Methodology. Each future Development Application for the Proposed Development on the Land, excepting any Excluded Development, must demonstrate that appropriate biodiversity credits have been retired for that development.

Schedule 5 – Environmental Retained Land



Schedule 6 – Proposed LEP

Draft LEP Maps



Draft Schedule 1 Notation

Use of certain land at George Booth Drive, Richmond Vale

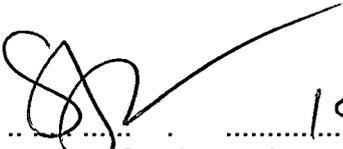
- (1) This clause applies to land being part of Lot 2 DP 809377 at 1151 George Booth Drive, Richmond Vale and identified on the Additional Permitted Uses Map.
- (2) Development for the purpose of a *Technology Centre and Explosive Research and Production Facility*, involving:
 - (a) *the construction and use of offices, laboratories and workshops for the purposes of research into, and development of, explosives, precursors and associated manufacturing processes, methods of application of explosives, related advanced engineering processes and blasting physics, and*
 - (b) *the production, storage and testing of explosives and their precursors*is permitted with development consent.

Executed as an agreement

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


.....
Signature of witness

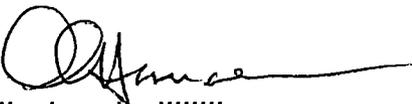
MELANIE PARKER
.....
Print Name


..... 19/10/16 ..
Signature of authorised representative
Stephen Glen
General Manager
Cessnock City Council
.....
Print Name

Signed by Orica Australia Pty Limited)
(ACN 004 117 828) in accordance with)
section 127 of the Corporations Act)


.....
Signature of Director

EILEEN DUNLOP-KANT
.....
Name of Director


.....
Signature of Director/Secretary

Christopher Andrew Hansen
.....
Name of Director/Secretary