

CESSNOCK CITY COUNCIL
19 NOV 2015
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CESSNOCK CITY COUNCIL
18 NOV 2015
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Cessnock City Council


Huntlee Pty Ltd in its capacity as trustee of the
Relevant Partnership

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)



Gareth Curtis
Director
Planning and Environment



Stephen Glen
General Manager
Cessnock City Council



DANNY WILLIAM MURPHY



ALAN FRANCIS NEVILLE

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Agreement made at **Cessnock** on **18 NOVEMBER 2015**

Parties

Cessnock City Council (ABN 60 919 148 928) of 62-78 Vincent Street, Cessnock, New South Wales (**Council**)

Huntlee Pty Ltd (ABN 73 143 744 745) in its capacity as trustee of the Relevant Partnership c/- LWP Property Group of 34 Main Street, Ellenbrook, Western Australia (**Developer**)

Background

- A The Developer is or will be the owner of the Land.
 - B On 21 December 2010, the Land was rezoned by the Instrument Change which permitted development subject to Approval.
 - C Despite the repeal of Part 3A of the Act, those provisions continue to apply to the Development pursuant to the savings and transitional provisions in Schedule 6A of the Act.
 - D On 24 April 2013, the Planning Assessment Commission, as delegate of the Minister, granted Project Approval to carry out Stage 1 on the Land, subject to conditions.
 - E Conditions E3 and E4 of the Project Approval specify the local contributions payable by the Developer to the Council in accordance with section 94 of the Act.
 - F Condition E5 of the Project Approval provides that the local contributions prescribed by Conditions E3 and E4 of the Project Approval may be replaced by alternative arrangements set out in a Planning Agreement between the Developer and the Council, provided that the Director-General of the Department agrees to the alternative arrangements.
 - G The Developer now offers to enter into this Agreement with the Council and the alternative local contributions arrangements are set out in this Agreement.
-

Operative provisions

1 Planning Agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

- (b) Schedule 1 of this Agreement summarises the requirements for planning agreements under section 93F of the Act and the ways in which this Agreement addresses those requirements.

2 Application of this Agreement

This Agreement applies to the:

- (a) Land; and
- (b) Development.

3 Operation of this Agreement

- (a) Until this planning agreement commences operation, this Agreement constitutes an irrevocable offer by the Developer to enter into a Planning Agreement; and
- (b) This Agreement operates only if:
 - (i) the Director-General of the Department agrees to the terms and conditions of this Agreement in accordance with Condition E5 of the Project Approval; and
 - (ii) Council executes this Agreement.
- (c) Council must notify the Developer immediately after Council executes the Planning Agreement and promptly provide the Developer with this Agreement as executed by Council.
- (d) Provided clause 3(b)(i) is satisfied, this Agreement commences operation from the date it is signed by all parties in accordance with clause 25C(1) of the Regulation.

4 Definitions and interpretation

4.1 Definitions

In this Agreement the following definitions apply:

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

Agreement means this voluntary planning agreement including any schedules and annexures.

Approval means:

- (a) any approvals, Development Consent, modifications, certificates issued under Part 4A of the Act, complying development certificates, permits, endorsements, licenses, conditions or requirements (and any variations to them) which may be required by law for the Development or for the commencement or carrying out of works contemplated by this Agreement; and

(b) in the context of **clauses 6.6(b) and 16**, means the approval of a delegate of Council.

Authority means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

Bank Guarantee means an irrevocable and unconditional undertaking by an Australian Bank, to pay an amount on demand, on terms and with an expiry date, acceptable to the Council (acting reasonably).

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Commencement Date means the date upon which the Agreement is taken to operate under **clause 3(d)**.

Contamination has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

Construction Certificate has the same meaning as in section 4(1) of the Act.

CPI means the Consumer Price Index (Sydney - All Groups).

Dedication of Land means the areas of the Land to be dedicated to the Council as described in **Column 4 of Schedule 2** for a Public Purpose.

Defects Liability Period means the period of 12 months which commences on the date of Practical Completion of each of the Works in Kind.

Department means the NSW Department of Planning and Infrastructure or any other Authority replacing it.

Development means the development described in the Project Approval.

Development Consent means consent under Part 4 of the Act to carry out development.

Development Contributions means the local infrastructure contributions which are to be provided by the Developer in accordance with this Agreement comprising the Dedication of Land, payment of a Monetary Contribution or the carrying out of the Works in Kind specified in **Schedule 2**.

Dwellings means a room or suite of rooms occupied or used or so developed or adapted as to be capable of being occupied or used as a separate residential domicile.

Explanatory Note means the Explanatory Note attached at **Schedule 3**.

Final Certificate means a certificate issued by Council to the Developer in accordance with **clause 6.8** confirming the completion of Works in Kind in accordance with this Agreement.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Independent Quantity Surveyor means a suitably qualified and experienced quantity surveyor nominated by the Developer to carry out the quantity surveying work and who has no current or previous involvement with the Development or the Developer.

Instrument Change means the State Environmental Planning Policy (Major Development) Amendment No. 765 made by the Minister on 21 December 2010.

Land means the land described in **Schedule 4** and as depicted in the plan in **Schedule 4**.

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority presently applying or as they may apply in the future.

Local Environmental Plan has the meaning given to it in the Act.

Lot means any lot created on the Land as part of the Development by way of a Plan of Subdivision following the issue of a Subdivision Certificate.

Lot 34 means Lot 34 in DP 755211 and does not comprise part of the Land.

LPI means the Land and Property Information of New South Wales or any other Authority replacing it.

Minister means the New South Wales Minister for Planning.

Monetary Contribution means the payment of monies in amounts specified in **Column 5** of **Schedule 2** for a Public Purpose.

Novation Deed means a deed substantially in the same form as that attached at **Annexure A**.

Occupation Certificate means a certificate referred to in section 109C(1)(c) of the Act and which may be interim or final as provided for in section 109C(2) of the Act.

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

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Planning Agreement means a voluntary planning agreement under section 93F of the Act.

Practical Completion means the date on which the Works in Kind have reached practical completion in accordance with **clause 6.2**.

Project Application means the major project application MP10-0137 lodged pursuant to section 75E of the Act by or on the behalf of the Developer to the Minister for approval to carry out Stage 1.

Project Approval means the approval to the Project Application granted on 24 April 2013 by Planning Assessment Commission, as delegate of the Minister, pursuant to section 75J of the Act to carry out Stage 1, subject to conditions.

Public Purpose means any purpose that benefits the public or a section of the public specified in section 93F(2) of the Act and in **Column 2** of **Schedule 2**.

QS Certification means the certification prepared by the Independent Quantity Surveyor which identifies the costs of carrying out the relevant Works in Kind.

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

Relevant Partnership means the partnership established under the Relevant Partnership Deed of which Huntlee Pty Ltd is the trustee.

Relevant Partnership Deed means the deed which establishes the Relevant Partnership.

Security means any of:

- (a) a Bank Guarantee; or
- (b) such other security as is agreed in writing between the Parties, in favour of the Council.

Security Amount means the Security to be provided to the Council in the amount equal to 10% of the construction costs for Works in Kind specified in **Column 6** of **Schedule 2**.

Significant Rectification means rectification works in relation to any part of the Works in Kind that cost more than 25% of the cost of construction of the relevant Works in Kind or part thereof.

Subdivision has the same meaning as in section 4B of the Act.

Subdivision Certificate means both a subdivision certificate in accordance with section 109C of the Act and a strata subdivision certificate.

Stage 1 means the Subdivision of the Land for up to 1,473 residential allotments, 14 super lots and 1 allotment for up to 2,345 dwellings, a primary school and associated infrastructure including landscaping, bulk earthworks, public open space, recreation areas, roads, drainage and utility services provision.

Staging Plan means the Sub-Staging Plan shown in Figure 15 of the Preferred Project Report lodged in respect of the Project Application and referred to as the Staging Plan in condition A6 of the Project Approval, as amended from time to time. **Schedule 5** provides the Sub-Staging Plan as approved at the time of this Agreement.

Transfer Dealings means transferring or selling part of the Land to an unrelated Party.

Transfer Lands means those areas of the Land to be dedicated to the Council under this Agreement for the purpose of **Column 4** of **Schedule 2**.

Works in Kind means each of the Works in Kind to be carried out by the Developer as specified in **Column 6** of **Schedule 2** for a Public Purpose.

4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment, replacement or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (m) Any schedules, annexures and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

- (a) Subject to this Agreement, the Developer is to make Development Contributions comprising:
 - (i) the carrying out and delivery of the Works in Kind;
 - (ii) the payment of the Monetary Contributions; and
 - (iii) the Dedication of Land.

- (b) In the event that prior to the Commencement Date any Subdivision Certificate has been issued for the Development, the Developer must make any Development Contributions required to be made under this Agreement for any Subdivision Certificate issued prior to the Commencement Date. The Development Contribution is to be made within 60 Business Days of this Commencement Date.
- (c) For the purposes of enabling the Developer to comply with **clause 5(b)**, the Council will provide the Developer with a notice in writing within 10 Business Days of the Commencement Date specifying the Development Contributions which must be made under this Agreement. In preparing this notice, Council must:
 - (i) take into account any Development Contributions already made by the Developer in relation to any Subdivision Certificate issued for the Development prior to the Commencement Date; and
 - (ii) ensure that the Development Contributions already made by the Developer are calculated by adding the amount of the Development Contribution made indexed in accordance with CPI since the date the Development Contribution was made.

6 Carrying out and delivery of Works in Kind

6.1 Commencement and Completion of Works in Kind

- (a) Subject to **clause 6.1(b) and (c)**, the Developer must carry out the Works in Kind specified in **Column 6 of Schedule 2** and bring the Works in Kind to Practical Completion in accordance with **clause 6.2** prior to the timing specified in **Column 7 of Schedule 2**.
- (b) In lieu of providing the Works in Kind identified as **Item No. 1, 4, 6, 7 or 14** in **Column 1 of Schedule 2** in, the Developer may pay a monetary contribution to the value amount specified in **Column 6 of Schedule 2** prior to the timing specified in **Column 7 of Schedule 2** and in accordance with **clause 7.2** but only if:
 - (A) Council has not approved the draft design submitted by the Developer under **clause 6.6(c)** within 50 Business Days of the date that the Developer first submitted the draft design to Council for the relevant Item under **clause 6.6**; and
 - (B) the Developer has provided Council with QS Certification prepared by an Independent Quantity Surveyor which confirms that the estimated costs of the relevant Works in Kind is equal to or below the value identified in **Column 6 of Schedule 2** (subject to CPI increases in accordance with **clause 6.3(e)**).
- (c) The Parties agree that:
 - (i) The Developer may make a written request to Council:

- (A) that the Developer be permitted to construct the Community Building specified as **Item 1 in Column 1 of Schedule 2** on the 1.2 hectares of land that is specified as **Item 2 in Column 1 of Schedule 2**, instead of on the 0.5 hectares of land specified as **Item 1 in Column 1 of Schedule 2**; and
 - (B) in the event that Council accepts the request made in **clause 6.1(c)(i)(A)**, that the Council also enter into an agreement with the Developer which permits the Developer to use the Community Building specified as **Item 1 in Column 1 of Schedule 2** prior to its dedication to the Council;
- (ii) On receipt of a written request under **clause 6.1(c)(i)**, within 10 Business Days the Council must provide written notice to the Developer confirming the acceptance or rejection to the request, but only if the requirements of **clause 6.6** have been met by the Developer, to the reasonable satisfaction of Council; and
 - (iii) Where the Developer constructs the Community Building on the 1.2 hectares of land specified as **Item 2 in Column 1 of Schedule 2**, then the Developer is not required to dedicate the land specified as **Item 1 in Column 1 of Schedule 2**.

6.2 Practical Completion

- (a) Works in Kind have reached Practical Completion when, in the reasonable opinion of Council:
 - (i) they are substantially complete and any incomplete work or defects remaining in the Works In Kind are of a minor nature and number, the completion or rectification of which is not practicable at the time and will not unreasonably affect occupation and use; and
 - (ii) any Approvals required for occupation have been obtained from the relevant Authorities and copies of documents evidencing the Approvals have been provided to Council; and
 - (iii) Council issues a notice of Practical Completion to the Developer in accordance with **clause 6.3(c)(i)**.
- (b) In accordance with **Column 7 of Schedule 2**, Council either:
 - (i) takes possession of the Works in Kind; or
 - (ii) any maintenance period identified in **Column 7 of Schedule 2** is initiated

at 4:00pm on the date Council issues a notice of Practical Completion in accordance with **clause 6.3(c)(i)**.

6.3 Delivery of Works in Kind

- (a) When the Developer is of the reasonable opinion that Works in Kind are near practical completion (**Practical Completion**), the Developer must

notify the Council in writing within 10 Business Days before the date when Practical Completion is expected to be reached.

- (b) The Developer and Council must agree to a program for inspection of the Works in Kind. Council must commence inspection of the Works in Kind promptly and complete the inspection within the agreed time or, if no time is agreed, within 10 Business Days of the Council receiving the notice under **clause 6.3(a)**.
- (c) The Council must, within 10 Business Days of completing its inspection of the Works in Kind, provide notice to the Developer specifying that either:
 - (i) it is of the opinion that Practical Completion has been reached for the relevant Works in Kind stating the date when Practical Completion was reached and advising the Developer in writing that security will be released in accordance with **clause 14.2**; or
 - (ii) it is of the opinion that Practical Completion has not been reached, in which case it must set out all the matters that the Council reasonably considers must be completed in order for Practical Completion to be reached.
- (d) The Developer:
 - (i) must correct any defects or finalise any incomplete work specified by the Council under **clause 6.3(c)(ii)**, within the agreed time as reasonably nominated by the Developer, or if no time is stated, within 10 Business Days after the Developer receives the notice issued under **clause 6.3(c)(ii)** from Council. Once complete, the provisions of **clauses 6.3(a) – (c)** will apply; or
 - (ii) if it does not agree with the matters set out in the Council's notice issued under **clause 6.3(c)(ii)**, must notify the Council that a dispute has arisen and **clause 13** of this Agreement will apply.
- (e) The value of the Works in Kind is to be indexed in accordance with the CPI using the base index of 105.6 (March 2014) in the manner provided at **Schedule 2** until such time as the Works in Kind reach Practical Completion.

6.4 Defects Liability Period

- (a) If the Council notifies the Developer of a defect in the Works in Kind within the Defects Liability Period, the Developer must remedy that defect to the satisfaction of the Council within a reasonable period, having regard to the nature of the defect.
- (b) Council may advise the Developer in writing that, in relation to any part of the Works in Kind that has undergone Significant Rectification within the first defects liability period, a further defects liability period of equal length to the first defects liability period may run for that part. The notification must be given at the time of acceptance of the rectified work.

- (c) Except where **clause 13** applies, if the Developer does not rectify any defect in the Works in Kind as duly notified under **clause 6.4(a)**, then the Council may, after giving the Developer not less than 20 Business Days notice in writing of its intention to do so rectify the defect in the relevant Works in Kind and after first giving the Developer not less than a further 20 Business Days notice in writing of the Council's intention to do so, make an appropriation from the Security Amount for the costs of and arising from the rectification of the relevant Works in Kind.

6.5 Standard of Works in Kind

- (a) The Developer shall carry out the Works in Kind in a good and workmanlike manner, in compliance with applicable standards (whether Australian Standards, council standards or otherwise) and legal requirements.
- (b) The Developer must obtain the relevant council standards and specifications from Council, if Council does not deliver them to the Developer.

6.6 Design of Works in Kind

- (a) The Parties acknowledge and agree that plans and specifications for the design of the Works in Kind will be prepared having regard to the following:
 - (i) the policies, procedures and standards reasonably required by Council for the Works in Kind;
 - (ii) the value of the relevant Works in Kind as identified in **Column 6 of Schedule 2** (subject to CPI increases in accordance with the CPI using the base index of 105.6 (March 2014));
 - (iii) changes in the Project Approval including matters not reasonably capable of identification on or before the date of this Agreement; and
 - (iv) matters arising out of the relevant Development Consent.
- (b) The Developer must promptly after the date of the Development Consent applicable to the relevant Works in Kind, prepare a detailed description, plans and specifications for the Works in Kind (**Draft Design**) and submit them to Council for Approval, such Approval not to be unreasonably withheld.
- (c) Council must promptly review the Draft Design and either confirm the Draft Design is acceptable or provide comments (acting reasonably and having regard to the costs associated with amendments to the Draft Design) to the Developer within 20 Business Days. The Developer must within 20 Business Days amend the Draft Design to take into account the comments made by Council and re-submit the Draft Design if required by Council.
- (d) When the Council is of the opinion that the Draft Design is satisfactory, then Council must (in its capacity as a party to this Agreement not as a

consent authority) notify the Developer that the Draft Design is acceptable and this will be the approved design.

6.7 Failure to deliver Works in Kind

- (a) If the Developer fails to complete all or any part of the Works in Kind as required by this Agreement by the time specified in **Column 7 of Schedule 2** for that item of Works in Kind, the Council may elect to complete that item or such part or parts of that item as are outstanding as at the date specified in **Column 7 of Schedule 2** or otherwise as agreed, or appoint a contractor to carry out the relevant Works in Kind on the Council's behalf.
- (b) If **sub-clause 6.7(a)** applies:
 - (i) if required, the Developer must allow the Council, its officers, employees, agents and contractors to enter the Land for the purposes of completing the relevant Works in Kind; and
 - (ii) the provisions of **clause 14.4** apply.

6.8 Final Certificate for Works in Kind

- (a) The Developer is entitled to submit to Council a final claim to release remaining Security when:
 - (i) all Defects Liability Periods have ended and the Developer has rectified all defects and finalised all incomplete work it became aware of by instruction from Council or from its own observations during the Defects Liability Period; and
 - (ii) the Works in Kind have been completed in accordance with this Agreement.
- (b) Council must promptly assess the final claim. If Council reasonably needs additional information to do so, Council may ask the Developer for it. The Developer must promptly give Council any additional information Council requests. Council must, within 10 Business Days after receiving the final claim (or the additional information if requested) issue to the Developer a Final Certificate.
- (c) The Final Certificate must:
 - (i) identify the amount of remaining Security being released; and
 - (ii) give written reason for any difference between the amount certified and the amount claimed.

7 Payment and delivery of the Monetary Contribution

7.1 Monetary Contribution

The Developer must pay the Monetary Contributions specified in **Column 5 of Schedule 2** to the Council by the time specified in **Column 7 of Schedule 2** in accordance with **clause 7.2**.

7.2 Delivery of Monetary Contribution

- (a) The Monetary Contribution is made for the purposes of this Agreement when funds are deposited, cleared and credited by means of electronic funds transfer into a bank account nominated by the Council.
- (b) The Developer is to give the Council not less than 5 Business Days written notice of its intention to pay the relevant Monetary Contribution by reference to **Schedule 2**.
- (c) If GST is payable in accordance with **clause 27**:
 - (i) the Developer is not required to pay the Monetary Contribution under this Agreement until the Council, after having received the Developer's notice under **clause 7.2(b)**, has given to the Developer a tax invoice for the amount of the Monetary Contribution; and
 - (ii) the Developer is not in breach of this Agreement if it fails to pay the Monetary Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the Monetary Contribution.
- (d) Monetary Contribution's nominated at **Schedule 2** must be indexed at the time of payment in accordance with the CPI using the base index of 105.6 (March 2014) and paid to the Council in the manner provided in **Schedule 2**.

8 Dedication and delivery of the Dedication of Land

8.1 Dedication of Land

The Developer must provide for the Dedication of Land specified in **Column 4** of **Schedule 2** in accordance with the timing specified in **Column 7** of **Schedule 2**, and in accordance with **clause 8.2**.

8.2 Dedication process

- (a) The Developer must take all steps necessary to register at the LPI the Transfer Lands to the Council in accordance with the timing specified in **Column 7** of **Schedule 2** by:
 - (i) either delivering to the Council;
 - (A) a form of transfer in respect of the relevant portion of the Transfer Lands executed by the owner of the Land in registrable form transferring that land for \$1.00; and
 - (B) the certificates of title for the relevant part of the Transfer Lands; or
 - (C) a deposited plan which indicates that the relevant portion of the Transfer Lands is intended to be dedicated to the Council.

- (ii) lodging all necessary executed documents with the LPI and responding to any enquiries or requisitions made by the LPI; and
 - (iii) taking any other necessary action to give effect to the transfer of the title of the relevant portion of the Transfer Lands to the Council.
- (b) Prior to the dedication of land specified in **Schedule 2** as **Item No's 4, 5, 6, 7, 8, 9** and **12**, a Draft Plan of Management must be prepared by the Developer in accordance with the *Local Government Act 1993* (NSW), in consultation with Council, and provided to Council.
- (c) Prior to the dedication of any land to Council under this Agreement:
- (i) the Developer must carry out any necessary remediation works so that there is no Contamination of the Land in accordance with *State Environmental Planning Policy No 55 – Remediation of Land*; and
 - (ii) produce a report from an independent qualified site auditor under the *Contaminated Land Management Act 1997* (NSW) confirming that, with respect to Contamination, the land is suitable for the intended use as set out in **Column 2** of **Schedule 2** and will pose no unacceptable risk to human health or the environment.
- (d) No later than the timing specified in **Column 7** of **Schedule 2** of this Agreement, the Developer must ensure that land identified in **Column 4** of **Schedule 2** as "Dedication of Land" is serviced to the reasonable satisfaction of Council, in respect of water, sewer, power, telephone, kerb and gutter, footpath and sealed road to the frontage of the Land, to a standard appropriate for its intended use identified in **Column 2** of **Schedule 2**.
- (e) Subject to the requirements under this **clause 8.2**, the Council agrees that it will accept the Transfer Lands free of all encumbrances and interests other than any easements or interests required by any Authority or utility service provider currently noted on the title of Transfer Lands or required under any Development Consent.
- (f) The Developer will be responsible for the maintenance of, to the satisfaction of Council, the Transfer Lands and Works in Kind specified in **Schedule 2** as **Item No's 5, 6, 7, 8 and 9** for a minimum continuous period of 5 years after the date of Practical Completion of the relevant Works in Kind, after which time Council will be responsible for the ongoing maintenance in perpetuity.
- (g) The Developer is responsible for paying any costs associated with transferring the Transfer Lands to Council.

8A Monetary Reimbursement

The Parties acknowledge and agree that:

- (a) the maximum yield for Lot 34 is 123 Dwellings (**Lot 34 Development**);

- (b) if Council receives a monetary contribution with respect to any Lot 34 Development for the Dedication of Land and Works in Kind comprised within this Agreement, the Council will reimburse the Developer that same amount, less any administration costs (indexed in accordance with the CPI), within 20 Business Days of receipt.

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

This Agreement:

- (a) wholly excludes the application of sections 94 and 94A of the Act to the Development; and
- (b) does not exclude the application of section 94EF of the Act to the Development.

10 Ownership of Land

- (a) The Developer represents and warrants to Council that:
 - (i) on the date of this Planning Agreement, it is the legal owner of the Land, other than Lot 241 in Deposited Plan 1105591 (Lot 241) that is included within the Land;
 - (ii) in respect of Lot 241:
 - (A) Les Russell & Son Pty Limited is the current registered proprietor;
 - (B) Les Russell & Son Pty Limited and Hardie Ayrefield Pty Limited are parties to a conditional contract for sale for Lot 241 (Lot 241 Sale Contract);
 - (C) Hardie Ayrefield Pty Ltd entered into a conditional call option agreement for the sale of Lot 241 which is conditional on the completion of the Lot 241 Sale Contract whereby Hardie Ayrefield would become the registered proprietor of Lot 241; and
 - (D) pursuant to a Deed of Assignment dated 14 July 2010, Hardie Ayrefield Pty Ltd assigned its rights under the Lot 241 Sale Contract and conditional call option agreement to Huntlee Pty Ltd, whereby Huntlee will now become the registered proprietor of Lot 241.
- (b) The Developer must notify Council as soon as practically possible after it becomes the legal owner of Lot 241.
- (c) The representations and warranties in this **clause 10** are given by the Developer as at the date of this Planning Agreement.

11 Registration of this Agreement

11.1 Registration

- (a) The Developer agrees it will procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.
- (b) The Developer at its own expense will, promptly after this Agreement comes into operation (and in respect of Lot 241, promptly after completion of the purchase of Lot 241 by the Developer), take all practical steps necessary, and otherwise do anything that 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 1900* (NSW); 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 certificates of title,to enable the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.
- (c) The Developer, at its own expense, will take all practical steps necessary, and otherwise do anything that Council reasonably requires:
 - (i) to procure the lodgement of this Agreement with the Registrar General as soon as reasonably practicable after the Commencement Date but in any event, no later than 90 Business Days after that date (and in respect of Lot 241, promptly after completion of the purchase of Lot 241 by the Developer); and
 - (ii) to procure the registration of this Agreement by the Registrar General in the relevant folios of the register for the Land (or in the General Register of Deeds if this Agreement relates to land not under the *Real Property Act 1900* (NSW)) as soon as reasonably practicable after this Agreement is lodged for registration.

11.2 Caveat

- (a) The Developer acknowledges and agrees that:
 - (i) when this Agreement is executed, Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in each relevant parcel of the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently Council has sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;

- (ii) it will not object to Council lodging a caveat in the relevant folios of the register held by the LPI for the Land nor will it seek to remove any caveat lodged by Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within 20 Business Days after this Agreement has been registered in accordance with **clause 11.1(c)** and must not lodge any other caveats on the titles to any of the Land, providing the withdrawal of a caveat will only apply in respect of such parts of the Land in respect of which registration of this Agreement has been procured.

11.3 Removal from Register

- (a) On the release and discharge of this Agreement in accordance with **clause 18**, Council is to do all things reasonably necessary, including the execution of any documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Land.
- (b) The Developer will bear the cost of removing the notation of this Agreement from the relevant folios of the register held by the LPI pertaining to the Land.

12 Review of this Agreement

- (a) The Parties, acting in good faith and using their best endeavours, agree to review this Agreement every 5 years from the Commencement Date or other period agreed between the parties, and otherwise if either Party is of the opinion that any change of circumstance has occurred that materially affects the operation of this Agreement, including if the performance of this Agreement has been frustrated by an event outside the control of the Parties.
- (b) The objective of any review will be:
 - (i) to consider, if necessary, alternative methods of satisfying the obligations of the Parties under this Agreement;
 - (ii) to ensure, if possible, that the Parties are no worse off under any revised arrangement than they would have been under this Agreement as originally executed; and
 - (iii) to ensure that appropriate infrastructure is provided for the Development.
- (c) A failure by a Party to participate in a review under **clause 12(a)** is taken to be a dispute for the purposes of **clause 13**.
- (d) A Party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a Party in or as a consequence of a review.

- (e) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

13 Dispute Resolution

13.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then the Parties must resolve that dispute in accordance with this clause. Any referral or undertaking of the dispute resolution process as set out in this **clause 13** does not suspend any other obligations of the Parties' under this Agreement.

13.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other Parties in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

13.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 13.2**) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting; or
 - (ii) agree that further material, expert determination in accordance with **clause 13.5** or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

13.4 No party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 13.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 13.3(b)(i) to (iii)**; and
- (c) any of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 13.3**,

then, that Party may, by 15 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The

termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

13.5 Expert Determination

- (a) If a dispute arises between Parties to this Agreement, and the Parties are unable to otherwise resolve the dispute in accordance with **clauses 13.1 to 13.3**, either Party may refer the dispute to expert determination in Sydney, New South Wales administered by the Australian Commercial Dispute Centre (**ACDC**).
- (b) A Party to this Agreement intending on referring a dispute to expert determination must notify all other Parties to this Agreement in writing of its intention to do so at least 10 Business Days prior to referring the dispute to expert determination. The notice under this **clause 13.5(b)** is to demonstrate that all reasonable actions necessary in accordance with this Agreement have been undertaken by the Party referring the dispute.
- (c) The expert determination will be conducted in accordance with the ACDC Rules for Expert Determination (**Rules**) in force at the date of this Agreement. The Rules set out the procedures to be adopted, the process of selection of the expert and the costs involved, including the Parties' respective responsibilities for the payment of the expert's costs and other costs of the expert determination.
- (d) The expert determination will be final and binding on the Parties unless either Party commences proceedings within 20 Business Days of receiving the expert determination.
- (e) This **clause 13.5** survives termination of this Agreement.
- (f) At any time, a Party may, without inconsistency with this **clause 13.5**, seek urgent interlocutory relief in respect of a dispute subject of this **clause 13.5**, from any Court having jurisdiction.

14 Security and Enforcement

14.1 Developer to provide Security

- (a) Section 93F(3)(g) of the Act requires the enforcement of a Planning Agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer. The Parties acknowledge and agree that this **clause 14**, **clause 6.4** and **clause 11** satisfy this obligation.
- (b) Prior to the issue of any Construction Certificate for the whole or any part of the Works in Kind, the Developer will provide to Council the relevant Security Amount in connection with the relevant Works in Kind (to which the Construction Certificate relates) as Security for the due, prompt and proper observance and performance by the Developer and the obligations under this document.
- (c) For the purposes of section 109F(1)(a) of the Act and clause 146A of the Regulation, a Construction Certificate for any part of the Works in Kind

must not be issued until the requirement to provide the Security Amount under **clause 14.1(b)** has been satisfied.

14.2 Release of Security to the Developer on Practical Completion

Subject to **clause 6.2**:

- (a) In respect of each Security provided to the Council under **clause 14.1**, when Council issues the notice of Practical Completion under **clause 6.3(c)(i)** for the relevant part of the Works in Kind, the Developer is entitled to the release of 50% of the Security Amount then held for that part of the Works in Kind.
- (b) If the Security is cash retention, Council must, within 10 Business Days of issuing the notice of Practical Completion, release to the Developer 50% of the value of the Security then held at the same time the notice of Practical Completion is held.
- (c) If the Security is unconditional Bank Guarantees, the Developer must, within 10 Business Days of receiving the notice of Practical Completion, arrange for substitute Bank Guarantees or other form of Security to be provided to the Council to the value of 50% of the Security Amount then held for that part of the Works In Kind.

14.3 Release of Security to the Developer on Final Certificate

- (a) When Council issues a Final Certificate to the Developer in accordance with **clause 6.8**, Council must release to the Developer any remaining Security, less any amount owing under the Final Certificate.

14.4 Call on Security

- (a) The Security provided in **clause 14.1** is given to secure compliance by the Developer with its obligations to pay any costs of achieving Practical Completion or complete any incomplete work or defects remaining in the Works in Kind if the Developer fails to complete the Works in Kind in accordance with this Agreement and **Column 7 of Schedule 2 (Rectification Costs)**.
- (b) Council must only exercise its rights under the Security in accordance with this **clause 14.4**.
- (c) Council must not request a payment (**Security Payment**) under the Security from the provider of it, unless:
 - (i) the Council has first given 10 Business Days written notice (**Claim Notice**) to the Developer of its intention to do so stating the basis and extent of its entitlement;
 - (ii) the Claim Notice specifies the Rectification Costs to which that Security Payment relates and the amount and calculation of the Security Payment;
 - (iii) the amount of the requested Security Payment does not exceed the amount of the Rectification Costs, as the case requires; and

- (iv) Council has given proper consideration to the Developer's response to the Claim Notice provided in accordance with **clause 14.4(d)**.
- (d) If Council issues a Claim Notice under **clause 14.4(c)**, the Developer must respond to the Claim Notice within 10 Business Days. If Council nonetheless intends to exercise its rights under the Security in accordance with this **clause 14.4** Council must provide a further 5 Business Days notice of such intention.

14.5 Compulsory Acquisition

- (a) If the Developer does not procure the transfer of all or part of the Transfer Lands in accordance with **clause 8**, the Developer agrees that the Council may compulsorily acquire all or part of the Transfer Lands in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.
- (b) The Parties acknowledge and agree that:
 - (i) **clause 14.5(a)** is an agreement between the Developer and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition are agreed.

14.6 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in a court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates, subject to compliance with **clause 13**;
 - (ii) the Council from exercising any function under the Act or any other Act or law; and
 - (iii) Council from taking any enforcement action for any matter that is not or is unable to be satisfied by calling on the Security Amount.

15 Notices

15.1 Delivery

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.
- (b) Faxed to that Party at its fax number set out below.

- (c) E-mailed to that Party at its e-mail address set out below.

Cessnock City Council

Attention: General Manager
Address: Cessnock City Council
PO Box 152
Cessnock NSW 2325
Phone Number: +61 (02) 4993 4100
Fax Number: +61 (02) 4993 2500
E-mail Address: council@cessnock.nsw.gov.au

Developer

Attention: Danny Murphy
Address: 34 Main Street
Ellenbrook WA 6069
Phone Number: (08) 9297 9900
Fax Number: (08) 9296 9100
E-mail Address: dmurphy@lwpproperty.com.au

15.2 Change of Details

If a Party gives the other Parties 10 Business Days notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, electronically sent, posted or faxed to the latest address, email address or fax number.

15.3 Giving of Notice

Subject to **clause 15.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address; or
- (b) if it is sent by registered post, two Business Days after it is posted; or
- (c) if it is sent by facsimile, as soon as the sender or receives from the sender's fax machine a report of an error free transmission to the correct fax number; or.
- (d) if it is sent by e-mail, as soon as the e-mail has been sent to the correct e-mail address and the recipient has received the e-mail without error.

15.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that 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.

16 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an Approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

17 Assignment and Novation

17.1 Assignment

- (a) The Developer must not assign, encumber or deal with any right, obligation or interest under this Agreement without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.
- (b) Consent is reasonably withheld if:
 - (i) the proposed assignee, or person is not solvent and reputable and the assignment or encumbrance will materially adversely affect the obligations of the Developer (as the case may be) and the rights of the Council; or
 - (ii) sufficient financial information about the proposed assignee, or person is not provided to Council so as to enable a reasonable assessment of the matters contained in **clause 17.1(b)(i)**.

17.2 Transfer Dealings

- (a) The Developer must not have any Transfer Dealings with that part of the Land that has the Agreement registered on title under **clause 11** unless the proposed purchaser or other party (the "Incoming Party") enters into the Novation Deed.
- (b) Other than as set out in the Novation Deed once executed by the Council, the Developer and the Incoming Party, the Developer is released, from the date of the Novation Deed, from the obligations contained in this Agreement to the extent that they:
 - (i) are novated to the Incoming Party, and
 - (ii) remain to be performed.

18 Release and discharge

- (a) Subject to **clause 18(b)** and **18(c)**, the Developer may request Council to provide a release and discharge of the obligations under this Agreement

to the extent that this Agreement affects any part of the Land in respect of which

- (i) the Development has been completed; or
 - (ii) the Developer proposes to sell to a third party; or
 - (iii) Land is to be dedicated to another Authority.
- (b) Subject to **clause 18(c)**, Council must provide a release and discharge of the obligations under this Agreement in accordance with any request made under **clause 18(a)** within 15 Business Days where the Developer has clearly demonstrated and satisfied its obligations under this Agreement in respect of that part of the Land and the Developer is not otherwise in default of its obligations under this Agreement; or
- (c) Where the Developer has not satisfied its obligations or is in default of any of its obligations under this Agreement in respect of that part of the Land, the Council must provide a release and discharge of the obligations under this Agreement in accordance with any request made under **clause 18(a)** within 15 Business Days provided that Council is satisfied, acting reasonably, that adequate Security (including any residual Security provided under this Agreement) is provided by the Developer to secure the outstanding obligations or risks arising from default.

19 Costs

The Developer agrees to bear all costs, including Council's costs, associated with reviewing, preparing, negotiating, amending, executing and stamping this Agreement and any document related to this Agreement.

20 Entire Agreement

- (a) This Agreement contains everything to which the Parties have agreed in relation to the matters those documents deal with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

21 Capacity of Parties

21.1 General

Each Party warrants to each other Party that:

- (a) this Agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and

- (b) unless otherwise stated, it has not entered into this Agreement in the capacity of trustee of any trust.

21.2 Relevant Partnership

At the date of this Agreement, the Developer in its capacity as trustee of the Relevant Partnership represents and warrants that:

- (a) it has the power and is authorised to enter into this Agreement in its capacity as trustee of the Relevant Partnership;
- (b) it is not in breach of the Relevant Partnership Deed; and
- (c) it has the power under the Relevant Partnership Deed to execute and perform its obligations under this Agreement and all necessary action has been taken to authorise the execution and performance of this Agreement under the Relevant Partnership Deed.

22 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.

23 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.

24 No fetter

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

25 Severability

If a clause or part of a clause 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. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

26 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 or exercise of a right of, or 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, right or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation, right or breach or as an implied waiver of that obligation, right or breach in relation to any other occasion.
- (d) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

27 GST

27.1 Construction

In this **clause 27**, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

27.2 Intention of the Parties

Without limiting the operation of this **clause 27**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 27.4** below) on account of GST.

27.3 Consideration GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

27.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 27.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 27.4(b)**, **27.4(c)** and **27.4(e)** (as appropriate).

- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 27.4(c) and 27.4(e)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,**(Non-taxable non monetary consideration),**

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the Non-taxable non-monetary consideration.
- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 27.4(a)** and subject to **clause 27.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding **clause 27.4(d)** if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.
- (f) The recipient will pay the GST Amount referred to in this **clause 27.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

27.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 27.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

27.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 27.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

27.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 27.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

27.8 Reimbursements

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **clause 27.4** in respect of that reimbursement.

27.9 No Merger

This **clause 27** does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

28 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Council and the Developer.

29 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

30 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

31 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

Schedule 1

Section 93F Requirement

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	See clause 4.1
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	See clause 4.1
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See Schedule 2
Applicability of Section 94 of the Act - (Section 93F(3)(d))	Section 94 is wholly excluded as it applies to the Land and the Development.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	Section 94A is wholly excluded as it applies to the Land and the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	Section 94EF is not excluded as it applies to the Land and the Development.
Applicability of Section 93F(3)(e) of the Act	Not Applicable.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 13
Enforcement of this Agreement - (Section 93F(3)(g))	See clauses 14, 11 and 6.4
Registration of this Agreement (Section 93H)	Clause 11
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 16 and 24.

Schedule 2

1 Development Contributions

The Developer undertakes to make the following Development Contributions in the manner set out in the table below:

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works in Kind Contribution	Column 7 Timing
1 (Note: see clause 6.1(c))	Community Building	Dedication of Land and Works in Kind	0.5 hectares		500m ² Community Building at the value of \$1,250,000	<p>Practical Completion must be reached for Works in Kind prior to the issue of a Subdivision Certificate for that part of the Land comprising land on which the 1,000th Dwelling is to be developed in Stage 1.</p> <p>The relevant part of the Land, embellishments and Works in Kind are to be dedicated to Council as proposed operational land within 20 Business Days following Practical Completion or such other time period as is agreed in writing between the Parties.</p>

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works in Kind Contribution	Column 7 Timing
2 (Note: see clause 6.1(c))	Community Hub – Library (2,000m ²) / Youth Centre (1,000m ²) / Neighbourhood Centre (500m ²)	Dedication of Land and Monetary Contribution	1.2 hectares	\$2,326.23 per Dwelling totalling \$5,455,000		Land to be dedicated to Council as proposed operational land prior to the issue of a Subdivision Certificate for the Land comprising land on which the 1,600 th Dwelling is to be developed in Stage 1. Monetary Contribution to be paid to Council on a per Dwelling basis in accordance with the Staging Plan and prior to the issue of the first Subdivision Certificate for each individual stage of the Staging Plan.
3	Branxton Cemetery Columbarium Wall	Monetary Contribution		\$16,000		Prior to the issue of a Subdivision Certificate for the Land comprising land on which the first Dwelling is to be developed within sub-stage 2 of the Staging Plan.

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works in Kind Contribution	Column 7 Timing
4	Local Sports Fields (2)	Dedication of Land and Works in Kind	6.60 hectares		In accordance with Condition C9 of the Project Approval and clause 6.3 of this Agreement at the value of \$3,444,600	<p>Works in Kind are to be completed prior to the issue of a Subdivision Certificate for the Land comprising land on which the 800th Dwelling (for the first field) and 1,600th Dwelling (for the second field) is to be developed within Stage 1.</p> <p>The relevant part of the Land, embellishments and Works in Kind are to be dedicated to Council within 20 Business Days following Practical Completion or such other time period as is agreed in writing between the Parties. Council will be responsible for the ongoing maintenance in perpetuity once dedicated.</p>
5	Core Riparian Zones	Dedication of Land and Works in Kind	11.74 hectares		In accordance with Condition C9 and E3 of the Project Approval and clause 6.3 of this Agreement at the value of \$2,253,800	<p>Works in Kind are to be staged in accordance with the Staging Plan.</p> <p>The relevant part of the Land, embellishments and Works in Kind are to be dedicated to Council within 20 Business Days following Practical Completion or such other time period as is agreed in writing between the Parties. The Developer will be responsible for maintenance for 5 years after the date of Practical Completion, after which time Council will be responsible for the ongoing maintenance in perpetuity.</p>

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works in Kind Contribution	Column 7 Timing
6	District Parks (2)	Dedication of Land and Works in Kind	8.28 hectares		In accordance with Condition C9 and E3 of the Project Approval and clause 6.3 of this Agreement at the value of \$5,179,125	<p>Works in Kind are to be completed prior to the issue of a Subdivision Certificate for Land comprising land on which the 800th Dwelling (for the first park) and 1,600th Dwelling (for the second park) is to be developed within Stage 1.</p> <p>The relevant part of the Land, embellishments and Works in Kind are to be dedicated to Council within 20 Business Days following Practical Completion or such other time period as is agreed in writing between the Parties. The Developer will be responsible for maintenance for 5 years after the date of Practical Completion, after which time Council will be responsible for the ongoing maintenance in perpetuity.</p>

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works in-Kind Contribution	Column 7 Timing
7	Local Parks (8)	Dedication of Land and Works in Kind	4.67 hectares		In accordance with Condition C9 and E3 of the Project Approval and clause 6.3 of this Agreement at the value of \$3,482,900	<p>Works in Kind are to be staged in accordance with the Staging Plan.</p> <p>The relevant part of the Land, embellishments and Works in Kind are to be dedicated to Council within 20 Business Days following Practical Completion or such other time period as is agreed in writing between the Parties. The Developer will be responsible for maintenance for 5 years after the date of Practical Completion, after which time Council will be responsible for the ongoing maintenance in perpetuity.</p>

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works in Kind Contribution	Column 7 Timing
8	Town Centre Urban Squares (3)	Dedication of Land and Works in Kind	0.99 hectares		In accordance with clause 6.3 of this Agreement at the value of \$1,336,500	Works in Kind are to be staged in accordance with the Staging Plan. The relevant part of the Land, embellishments and Works in Kind are to be dedicated to Council within 20 Business Days following Practical Completion or such other time period as is agreed in writing between the Parties. The Developer will be responsible for maintenance for 5 years after the date of Practical Completion, after which time Council will be responsible for the ongoing maintenance in perpetuity.
9	General Public Open Space	Dedication of Land and Works in Kind	37.37 hectares		In accordance with Condition C9 and E3 of the Project Approval and clause 6.3 of this Agreement at the value of \$8,182,718	Works in Kind are to be staged in accordance with Staging Plan. The relevant part of the Land, embellishments and Works in Kind are to be dedicated to Council within 20 Business Days following Practical Completion or such other time period as is agreed in writing between the Parties. The Developer will be responsible for maintenance for 5 years after the date of Practical Completion, after which time Council will be responsible for the ongoing maintenance in perpetuity.

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works in Kind Contribution	Column 7 Timing
10	Public Open Space Maintenance	Works in Kind			<p>In accordance with Condition C9 and E3 of the Project Approval and clause 6.3 of this Agreement at the value of \$3,100,000</p> <p>A Plan of Management for Item No's 4, 5, 6, 7, 8, 9 and 12 within this Schedule 2 is to be prepared in consultation with Council and in accordance with the <i>Local Government Act 1993 (NSW)</i>.</p>	Developer to maintain land and embellishments to be dedicated to Council and identified as Item No's 5,6,7,8 and 9 within this table for a minimum continuous period of 5 years for each Item commencing on the date of Practical Completion for that Item.
11	Contribution to Regional Recreational Facilities	Monetary Contribution		\$426.44 per Dwelling totalling a maximum of \$1,000,000		Monetary Contribution to be paid to Council on a per Dwelling basis in accordance with the Staging Plan at Schedule 5 and prior to the issue of the first Subdivision Certificate for each individual stage of the Staging Plan.

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works-in-Kind Contribution	Column 7 Timing
12	Regional Sports Field	Dedication of Land	10 to 11.5 hectares	\$970.40 per Dwelling totalling \$2,275,588		Land to be dedicated to Council prior to the issue of a Subdivision Certificate for the Land comprising land on which the 3,000 th Lot is to be developed within the area subject of the Instrument Change . Monetary Contribution to be paid to Council on a per Dwelling basis in accordance with the Staging Plan at Schedule 5 and prior to the issue of the first Subdivision Certificate for each individual stage of the Staging Plan.
13	Upgrade to Streets within North Rothbury by Council	Monetary Contribution		\$800,000		Prior to the issue of a Subdivision Certificate for the Land comprising land on which the first Dwelling is to be developed within sub-stage 12 of the Staging Plan.

Column 1 Item No.	Column 2 Public Purpose	Column 3 Type of Contribution	Column 4 Dedication of Land to Council	Column 5 Monetary Contribution	Column 6 Works in Kind Contribution	Column 7 Timing
14	Childcare / Government Pre-Schools (1)	Dedication of Land and Works in Kind	0.1 hectares		In accordance with clause 6.3 of this Agreement, Childcare Centre catering for up to 80 children at the value of \$1,200,000	<p>Practical Completion has been reached for Works in Kind prior to the issue of Subdivision Certificate for the Land comprising land on which the 800th Dwelling is to be developed within Stage 1.</p> <p>The relevant part of the Land, embellishments and Works in Kind are to be dedicated to Council as proposed operational land within 20 Business Days following Practical Completion or such other time period as is agreed in writing between the Parties.</p>

2 Land Dedication

The land to be dedicated to Council identified in Column 4 of the Table above in this **Schedule 2** is illustrated in Figure 1 below and as identified in the following table:

Item No.	Current Land Title
1	Part of Lot 43 on DP755211 (Note: see clause 6.1(c))
2	Part of Lot 241 on DP1105591

4	Part of Lot 37 on DP755211 (1st) Part of Lot 21 on DP1050597 (2nd)
5	Various (refer Figure 1 – mapped as “Core Riparian Corridor”)
6	Part of Lot 221 on DP1064738 (1st) Part of Lot 241 on DP1105591 (1 st) Part of Lot 287 on DP1209109 (1 st) Part of Lot 43 on DP755211 (2nd) Part of Lot 7 on DP729973 (2 nd) Part of Lot 11 on DP729973 (2 nd)
7	Various (refer Figure 1) – mapped as “Local Park Area”
8	Part of Lot 200 on DP828488 (1st) Part of Lot 200 on DP828488 (2nd) Part of Lot 230 on DP879198 (3rd)
9	Various (refer Figure 1 – mapped as “General Public Urban Space”)
12	Part of Lot 11 on DP1137569
14	Part of Lot 230 on DP879198



Figure 1: Land to be Dedicated to Council

Schedule 3

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Planning Agreement

The Planning Agreement and Explanatory Note have been prepared pursuant to section 93F of the *Environmental Planning and Assessment Act 1979* (NSW) and clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

1 Parties

Cessnock City Council (**Council**) and Huntlee Pty Ltd in its capacity as trustee of the Relevant Partnership (**Developer**).

2 Description of Subject Land

The Planning Agreement applies to the following land:

Lot	Deposited Plan
200 (part)	828486
201	828486
230 (part)	879198
231	879198
33	755211
36	755211
37	755211
38	755211
39	755211
43	755211
241 (part)	1105591
2	729973

3	729973
4	729973
6	729973
7	729973
9	729973
10	729973
11	729973
12 (part)	729973
21 (part)	1050597
221 (part)	1064738
10	1105639
287	1209109

3 Background

The Developer is or will be the owner of the Land. In December 2010, the Land was rezoned in order to facilitate its development. The Minister for Planning and Infrastructure subsequently granted to the Developer Project Approval for stage 1 of the development of the Land on 24 April 2013 (**Stage 1**).

The Project Approval for Stage 1 permitted, subject to conditions, the subdivision of the Land for 1,473 residential allotments, 14 super lots and 1 allotment for a primary school and associated infrastructure including landscaping, bulk earthworks, public open space, recreation areas, roads, drainage and utility services.

Conditions E3 and E4 of the Project Approval for Stage 1 set out the local development contributions payable by the Developer to Council.

Pursuant to condition E5 of the Project Approval for Stage 1, the Developer seeks to enter into alternative development contribution arrangements which are set out in the terms of the Planning Agreement. These alternative development contributions must be agreed by the Director-General of Planning and Infrastructure (now Planning and Environment).

4 Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement relates to the provision of local infrastructure works and the dedication of land necessary to facilitate the urban development of the Huntlee Stage 1 precinct (**the Land**). Specifically, the Developer is to provide to Council three categories

of development contribution in connection with Huntlee Stage 1. These contributions are set out in Schedule 2 of the Planning Agreement and include the following:

- (a) the carrying out and delivery of Works in Kind:
 - (i) construction of a 500m² Community Building;
 - (ii) development of 2 local sporting fields;
 - (iii) establishment and maintenance of core riparian zones;
 - (iv) establishment and embellishment of 2 district parks;
 - (v) establishment and embellishment of 8 local parks;
 - (vi) development of 3 town centre urban squares;
 - (vii) establishment and embellishment of general public open spaces;
 - (viii) development of Plans of Management for public open space including maintenance; and
 - (ix) development of a childcare centre catering for up to 80 children.

(together, **Works in Kind**)
- (b) the payment of Monetary Contributions:
 - (i) \$5,455,000 towards a Community Hub-Library and Neighbourhood Centre;
 - (ii) \$16,000 for the Branxton Cemetery Columbarium Wall;
 - (iii) \$3,275,588 towards regional recreational facilities; and
 - (iv) \$800,000 towards the upgrade of streets within North Rothbury.

(together, **Monetary Contributions**)
- (c) the dedication of land, the title details of which are set out in Part 2 of Schedule 2:
 - (i) 0.5 hectares for a Community Building;
 - (ii) 1.2 hectares for a Community Hub-Library and Neighbourhood Centre;
 - (iii) 6.6 hectares for local sports fields;
 - (iv) 11.74 hectares for core riparian zones;
 - (v) 8.28 hectares for 2 district parks;
 - (vi) 4.67 hectares for local parks;
 - (vii) 0.99 hectares for 3 town centre urban squares;
 - (viii) 37.37 hectares for general public open space;
 - (ix) 10 – 11.5 hectares for a regional sports field; and
 - (x) 0.1 hectares for a childcare / government pre-school.

(together, **Dedication of Land**)

5 Assessment of the Merits of the Planning Agreement, including the impact on the public or any relevant section of the public

The Planning Agreement provides the mechanism for the delivery of the suite of development contributions outlined above and associated with the development of the Land for up to 1,473 residential allotments, 14 super lots and 1 allotment for a primary school and associated infrastructure including landscaping, bulk earthworks, public open space, recreation areas, roads, drainage and utility services provision.

With the vast majority of the Land under the control and/or ownership of the Developer, the provision of infrastructure through a Planning Agreement rather than a Section 94 Contributions Plan will provide and allow for a more streamlined and effective delivery of infrastructure to service the future community of the Land. This ultimately promotes the orderly development of the precinct having infrastructure delivered concurrently with urban development.

The Monetary Contributions and Dedication of Land (including the maintenance of specified land) must be provided by the Developer in accordance with the timing set out in Schedule 2, which promotes the orderly, efficient and economic development of the Land.

With regard to the Works in Kind, the Planning Agreement includes a regime whereby Council must be satisfied with the design for each Works in Kind item and, if the Developer fails to complete any item of the Works in Kind, Council may elect to complete that item instead and Council can call on the security provided under the Planning Agreement.

The provision of the Works in Kind, Monetary Contributions and Dedication of Land, through the tailored mechanisms of the Planning Agreement, will result in the establishment of essential community and environmental infrastructure to benefit the local public.

6 Other Matters

6.1 How the Planning Agreement promotes public interest and one or more of the objects of the Act

The Planning Agreement promotes the public interest through the provision of community facilities and open space and by adhering to the following objects of the Act. To encourage:

- (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- (b) the promotion and co-ordination of the orderly and economic use and development of land;
- (c) the protection, provision and co-ordination of communication and utility services;
- (d) the provision of land for public purposes;

- (e) the provision and co-ordination of community services and facilities; and
- (f) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.

6.2 How the Planning Agreement promotes one or more of the elements of Council's charter under Section 8 of the Local Government Act 1993

The Planning Agreement promotes the following elements of Council's charter:

- (a) to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- (b) to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- (c) to have regard to the long term and cumulative effects of its decisions;
- (d) to engage in long-term strategic planning on behalf of the local community;
- (e) to keep the local community and the State government (and through it, the wider community) informed about its activities; and
- (f) to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected.

6.3 The planning purpose/s served by the Planning Agreement

The Planning Agreement provides for the long term, staged and co-ordinated development of the Land. This planning purpose is facilitated by the provision of community building infrastructure, public recreation space, environmental conservation and monetary contributions to Council.

6.4 Whether the Planning Agreement conforms with Council's capital works program

There are no works provided under the Planning Agreement that relate to Council's current Capital Works Program. The Planning Agreement has no effect to the Capital Works Program and is therefore conformant.

6.5 Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Each of the Works in Kind, Monetary Contributions and Dedication of Land is required to be provided to Council in accordance with the timing set out in Schedule 2.

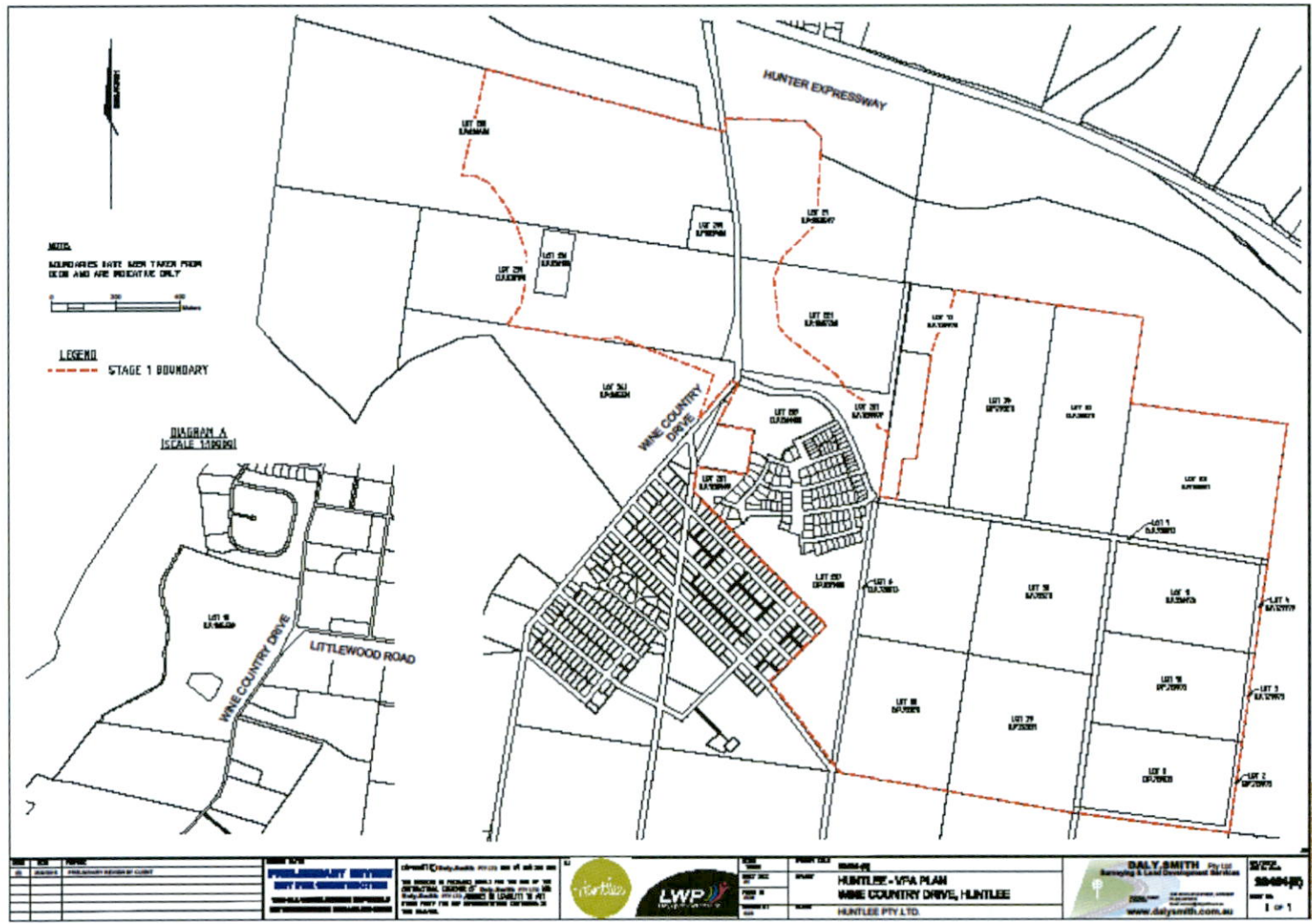
Schedule 2 generally provides for development contributions to be provided either prior to the issue of a subdivision certificate and/or within a specified period of time following practical completion of the required works.

Schedule 4

Land

Lot	Deposited Plan	Registered Proprietor
200 (part) (refer overview map below)	828486	Huntlee Pty Ltd
201	828486	Huntlee Pty Ltd
230 (part) (refer overview map below)	879198	Huntlee Pty Ltd
231	879198	Huntlee Pty Ltd
33	755211	Huntlee Pty Ltd
36	755211	Huntlee Pty Ltd
37	755211	Huntlee Pty Ltd
38	755211	Huntlee Pty Ltd
39	755211	Huntlee Pty Ltd
43	755211	Huntlee Pty Ltd
241 (part) (refer overview map below)	1105591	Les Russell & Son Pty Ltd
2	729973	Huntlee Pty Ltd
3	729973	Huntlee Pty Ltd
4	729973	Huntlee Pty Ltd
6	729973	Huntlee Pty Ltd
7	729973	Huntlee Pty Ltd
9	729973	Huntlee Pty Ltd
10	729973	Huntlee Pty Ltd
11	729973	Huntlee Pty Ltd
12 (part) (refer overview map below)	729973	Huntlee Pty Ltd

21 (part) (refer overview map below)	1050597	Huntlee Pty Ltd
221 (part) (refer overview map below)	1064738	Huntlee Pty Ltd
10	1105639	Huntlee Pty Ltd
Lot 287	1209109	Huntlee Pty Ltd



Overview Map of Land proposed for development (outlined with red dashed line):

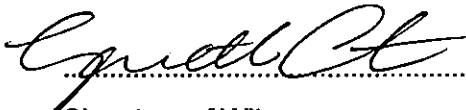
Schedule 5

Staging Plan

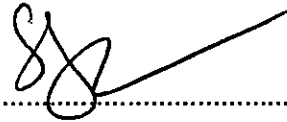


Executed as an Agreement

Signed for and on behalf of Cessnock)
City Council in accordance with a)
resolution of Council dated [date] by its)
authorised delegate in the presence of:)

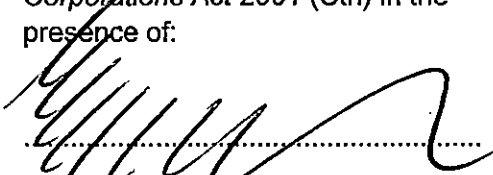


Signature of Witness
Gareth Curtis
Director
Planning and Environment
Print name of Witness



Signature of Authorised Delegate
Stephen Glen
General Manager
Cessnock City Council
Print name of Authorised Delegate

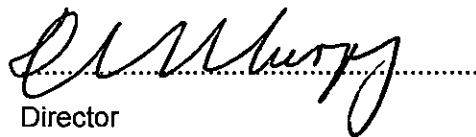
Executed by Huntlee Pty Ltd (ABN 73)
143 744 745) in its capacity as trustee)
of the Relevant Partnership in)
accordance with section 127 of the)
Corporations Act 2001 (Cth) in the)
presence of:



Company Secretary/Director

ALAN FRANCIS NEVILLE

Name of Company Secretary/Director
(print)



Director

DANNY WILLIAM MURPHY

Name of Director (print)

Annexure A

Novation Deed


Cessnock City Council


Huntlee Pty Ltd in its capacity as trustee of the
Relevant Partnership

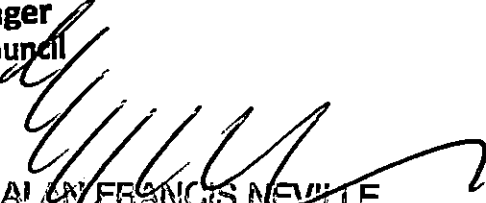
[Insert name of New Developer]

Deed of Novation for Planning Agreement


Gareth Curtis
Director
Planning and Environment


Stephen Glen
General Manager
Cessnock City Council


DANNY WILLIAM MURPHY


ALAN FRANCIS NEVILLE

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10	Governing law	4
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Date

Parties

Cessnock City Council (ABN 60 919 148 928) of 62-78 Vincent Street, Cessnock, New South Wales (**Council**)

Huntlee Pty Ltd (ABN 73 143 744 745) in its capacity as trustee of the Relevant Partnership c/- LWP Property Group of 34 Main Street, Ellenbrook, Western Australia (**Original Developer**)

[Insert Name] (ABN/ACN) **[Insert ABN/ACN]** of **[Insert Address]** (**New Developer**)

Background

- A The Council and the Original Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole/part of the Land.
 - C The Original Developer proposes to transfer the whole / part of the Land to the New Developer and wishes to novate all of its rights and obligations under the Original Agreement to the New Developer.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Effective Date means **[Insert Date]**.

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the planning agreement dated **[Insert Date]** and made between the Council and the Original Developer.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;

- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

1.3 Headings

Headings do not affect the interpretation of this document.

2 Novation

2.1 Original Agreement

With effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be subject to the rights and obligations contained in the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) other than in respect of:
 - (i) **[Insert any responsibilities that the Original Developer is not discharged from],**

the Original Developer is released and discharged from all obligations and liabilities to the extent they are novated to the New Developer and remain to be performed, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

2.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

2.3 Address for notices

The Council must address all notices and communications to be given or made by it to the New Developer/Land Owner under the Original Agreement to the following address:

New Developer:

Address: [Insert]

Fax: [Insert]

Contact Person: [Insert]

Email: [Insert]

3 Affirmation of the Original Agreement

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

4 Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

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

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

(iv) any obligation of it to any other person.

5.2 Survival of warranties

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

6 GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

7 Stamp duty and costs

The New Developer will pay all stamp duty arising directly or indirectly from this deed.

8 Further acts

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

9 Amendment

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

10 Governing law

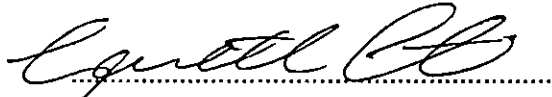
This deed is governed by the law in force in the place specified in the New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of that place.

11 Counterparts

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

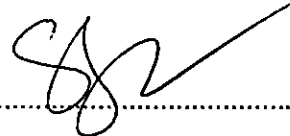
Executed as a deed

Signed for and on behalf of Cessnock City Council in accordance with a resolution of Council dated [date] by its authorised delegate in the presence of:



Signature of Witness
Gareth Curtis
Director
.....Planning and Environment.....

Print name of Witness



Signature of Authorised Delegate
Stephen Glen
General Manager
.....Cessnock City Council.....

Print name of Authorised Delegate

Executed by Huntlee Pty Ltd (ABN 73 143 744 745) in its capacity as trustee of the Relevant Partnership in accordance with section 127 of the Corporations Act 2001 (Cth) in the presence of:

.....
Company Secretary/Director

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

.....
Director

.....
Name of Director (print)



DANNY WILLIAM MURPHY



ALAN FRANCIS NEVILLE