

## **Cessnock City Council**

ABN 60 919 148 928

## **Winton Partners Bellbird Pty Limited**

ABN 24 156 002 185

# **Planning Agreement**

*Environmental Planning and Assessment Act 1979*

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Agreement made at Cessnock on 19/11/2014

**Parties** Cessnock City Council ABN 60 919 148 928 of 62-78 Vincent Street, Cessnock NSW 2325 ("the Council")

Winton Partners Bellbird Pty Limited ABN 24 156 002 185 of Level 2, 95 Pitt Street, Sydney NSW 2000 ("the Landowner")

## Background

- A. The Landowner owns the Land.
- B. The Landowner has sought the Instrument Change.
- C. Subject to the Instrument Change, as proposed by the Landowner, the Landowner intends to lodge with the Council a Development Application(s) for the Proposed Development, which includes the Environmental Land Subdivision.
- D. As part of the Development Application for the Environmental Land Subdivision, the Landowner has offered to make the Environmental Land Contribution as described in Schedule 3 to this Agreement.
- E. The Parties have therefore agreed to enter into this Agreement for the provision of the Environmental Land Contribution.

## Operative provisions

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### 1. Definitions and Interpretation

#### 1.1 Definitions

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

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

**Agreement** means this Planning Agreement.

**Application** means an application for any Approval.

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

**Approved VMP** has the meaning given to it in clause 2.1(c) of Schedule 3 to this Agreement.

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

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

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

**Commencement Date** means the date from which this Agreement starts to operate under clause 2(b).

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

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

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

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

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

**Environmental Land** means that part of the Land which is currently zoned "RU2 Rural Landscape" which the Landowner proposes be rezoned as "E2 Environmental Conservation" as part of the Instrument Change, as generally identified on the plan attached as Annexure A to this Agreement and shown as "E2 Zone".

**Environmental Land Contribution** means the registration of a Positive Covenant on the Environmental Land to manage, protect and conserve the conservation values on the Environmental Land in perpetuity through the implementation of the Approved VMP.

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

**Explanatory Note** means the explanatory note required by the Regulation.

**GST** has the meaning it has in the GST Act.

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

**Instrument Change** means an amendment to the LEP to rezone the Land in order to allow the Proposed Development on the Land, protect areas of high conservation value on the Land and offset biodiversity impacts of the Proposed Development.

**Land** means the land described in Schedule 2, and as shown in red outline on the plans attached as Annexure A to this Agreement.

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

**LEP** means the *Cessnock Local Environmental Plan 2011*.

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

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

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

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

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

**Proposed Development** means residential development (including Residential Accommodation) and ancillary development on part of the Land and includes the Environmental Land Subdivision, any residential subdivision and any subdivision works.

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

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

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

**Residential Accommodation** has the same meaning as that term under the LEP.

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

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

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

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

**Taxes** means taxes, levies, imposts, charges and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them.

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

- (a) Plan of Subdivision and is intended to be developed for Residential Accommodation; or

- (b) Strata Plan and has been or is being developed for Residential Accommodation,

and includes any Super Lots.

## 1.2 Interpretation

In this Agreement:

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

and unless the context indicates a contrary intention:

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

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## **2. Operation and status of this Agreement**

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) This Agreement is entered into and takes effect on its execution by all the Parties.
- (c) This Agreement will terminate one month after the date the Council notifies the Landowner under clause 2.2(d)(i) of Schedule 3 that it is satisfied with the registration of Positive Covenant on the Environmental Land in accordance with clause 5 of this Agreement.

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## **3. Application of the Agreement**

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

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

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

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## **5. Requirement to provide the Environmental Land Contribution**

### **5.1 Provision of the Environmental Land Contribution**

- (a) The Landowner undertakes to provide or procure the provision of the Environmental Land Contribution in the manner and at the times as set out in Schedule 3 to this Agreement and the Parties agree to abide by the procedures and obligations as set out in Schedule 3 to this Agreement.
- (b) The Landowner covenants and agrees that to the extent the Environmental Land Contribution of the Landowner is stated or implied as having a particular purpose or use, the Council:
  - (i) does not warrant or represent that any specified or unspecified work is to be provided;
  - (ii) is not required to repay to the Landowner any monetary contribution or part thereof; and
  - (iii) has no obligation to monitor or follow-up the use of the Environmental Land Contribution.

### **5.2 Notice confirming compliance**

The Environmental Land Contribution will be taken to be delivered or provided when the Council issues a notice confirming the Positive Covenant is satisfactory in accordance with clause 2.2(d)(i) of Schedule 3.



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## **6. Land ownership and Registration of this Agreement**

### **6.1 Ownership**

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

- (a) it is the legal and beneficial owner of the Land; or
- (b) legally and beneficially entitled to obtain all consents and approvals and to procure any person referred to in or contemplated by clause 6.2(b)(i) to assist, cooperate and otherwise to do all things necessary for it to comply with its obligations under clause 6.2.

### **6.2 Registration of this Agreement**

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

### **6.3 Release and discharge of this Agreement**

- (a) The Council agrees to do all things reasonably required by the Landowner to release and discharge this Agreement, such that it is no longer registered on the relevant folio of the Land, at the same time as registration of the Positive Covenant occurs under clause 2.2(a) of Schedule 3.
- (b) Without limiting clause 6.3(a), where the Landowner is otherwise released from its obligations under this Agreement pursuant to clause 8.1, the Council will do all things reasonably required by the Landowner to release and discharge this Agreement, such that it is no longer registered on the relevant folio of the Land.

- (c) If through error or other reason this Agreement is registered on the title to any Urban Lot or the Environmental Land, each Party must do such things as are reasonably necessary, as requested by the other, to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the relevant folio of that land, provided the Positive Covenant has been registered in accordance with clause 2.2(a) of Schedule 3.

#### **6.4 Caveat**

- (a) The Landowner acknowledges and agrees that:
  - (i) the Council is deemed to have acquired, and the Landowner is deemed to have granted, an equitable estate and interest in the Environmental Land for the purposes of section 74F(1) of the Real Property Act and consequently the Council has a sufficient interest in the Environmental Land in respect of which to lodge with the LPI a caveat notifying that interest;
  - (ii) until such time as the registration of this Agreement occurs in accordance with clause 6.2, it will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Council;
  - (iii) it will indemnify and keep indemnified Council against all Claims made against the Council including, without limitation, Claims made by the Landowner or any other person who has an estate or interest in any part of the Environmental Land registered under the Real Property Act, by virtue of or in connection to the Council lodging a caveat in the relevant folio of the Register for the Land.
- (b) Following the registration of this Agreement in the relevant folio of the Register for the Land and provision of the required notice to Council under clause 6.2(c), the Council must promptly, and within 5 Business Days of any request by the Landowner, execute any form and supply such other information as is required by the Landowner to enable the removal of any caveat from the title to the Land lodged by Council pursuant to this clause 6.4.

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### **7. Security and enforcement**

#### **7.1 Security**

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

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

#### **7.2 Enforcement**

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

### **7.3 No prevention to enforcement**

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

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

### **7.4 Construction Certificate**

The Landowner agrees and the Council acknowledges that, in accordance with section 109F of the Act and clause 146A of the Regulation, it is a requirement of this Agreement that no Construction Certificate may be issued for any part of the Proposed Development prior to the provision of the Environmental Land Contribution.

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## **8. Release and Discharge**

### **8.1 Release from obligations**

The Landowner will be released from its obligations under this Agreement if:

- (a) the Developer has fulfilled its obligations under the Agreement; or
- (b) the Agreement is terminated;

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## **9. Dispute resolution**

### **9.1 Not commence**

A Party must not commence any court proceedings relating to a dispute unless it complies with this clause 9.

### **9.2 Written notice of dispute**

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

### **9.3 Attempt to resolve**

On receipt of notice under clause 9.2, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

### **9.4 Mediation**

If the Parties do not agree within 21 days of receipt of notice under clause 9.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or

- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Program.

## **9.5 Court proceedings**

If the dispute is not resolved within 60 days after notice is given under clause 9.2 then any Party which has complied with the provisions of this clause 9 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

## **9.6 Not use information**

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 9 is to attempt to settle the dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under this clause 9 for any purpose other than in an attempt to settle the dispute.

## **9.7 No prejudice**

This clause 9 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

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# **10. GST**

## **10.1 Interpretation**

In this clause 10:

- (a) except where the context suggests otherwise, terms used in this clause 10 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 10; and
- (c) a reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.

## **10.2 Intention of the Parties**

- (a) Without limiting the operation of this clause 10, the Parties intend that:
  - (i) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this Agreement;
  - (ii) no tax invoices will be exchanged between the Parties; and
  - (iii) no additional amounts will be payable on account of GST.
- (b) If it is subsequently determined that GST is payable by any Party in respect of any supply made pursuant to this Agreement, the Landowner must pay

the GST, or pay to the Council an amount equal to the Council's liability for GST in respect of the relevant supply within 10 Business Days after the Council has provided a tax invoice to the Landowner with respect to the supply to the Council.

- (c) The Landowner indemnifies the Council against any Claims against, or costs, losses or damages suffered or incurred by the Council, arising out of, or in any way in connection with, the Council's liability for GST in respect of any supply made pursuant to this Agreement.

### **10.3 Reimbursement**

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

### **10.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 10.

### **10.5 No merger**

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

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## **11. Assignment and Dealing**

The Landowner must not sell, transfer or dispose of the whole or any part of the Land unless, before it sells, transfers or disposes of any such part of the Land to another person ("Transferee"):

- (a) it satisfies the Council acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed Transferee) of complying with such of the Landowner's obligations under this Agreement as the Council acting reasonably shall nominate must be adopted by the Transferee ;
- (b) the rights of the Council under this Agreement are not diminished or fettered in any way;
- (c) the Transferee signs an acknowledgement in form and substance acceptable to the Council by which the Transferee acknowledges that under section 93H(3) of the Act the Transferee is, upon and following transfer of the Land, bound by this Agreement;
- (d) the Council is satisfied that it holds appropriate security to secure the Landowner's obligations under this Agreement;
- (e) any default by the Landowner has been remedied by the Landowner or waived by the Council; and

- (f) the Landowner and the Transferee pay the Council's reasonable costs in relation to the transfer.

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## **12. Release and indemnity**

- (a) The Landowner agrees that the obligation to provide the Environmental Land Contribution is at the risk of the Landowner. The Landowner releases the Council from any Claim, liability or loss arising from, and costs incurred in connection with, the Landowner's obligation to provide the Environmental Land Contribution.
- (b) The Landowner indemnifies the Council against any costs incurred in connection with the Council enforcing the Landowner's obligation to provide the Environmental Land Contribution in accordance with this Agreement, except to the extent caused or contributed to by the Council's negligent act or default under this Agreement.
- (c) The release and indemnity in clause 12(a) and 12(b) ends once the Landowner has been released from its obligations under this Agreement in accordance with clause 8.1.

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## **13. Costs**

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

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## **14. Effect of Scheduled terms and conditions**

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

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## **15. General provisions**

### **15.1 Entire Agreement**

- (a) This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an officer, agent or employee of that Party, before the Agreement was executed.
- (b) The Explanatory Note must not be used to assist in construing this Agreement.

### **15.2 Counterparts**

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

### **15.3 Further Acts**

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

### **15.4 Governing Law and Jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

### **15.5 Joint and individual liability and benefits**

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

### **15.6 No fetter**

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

### **15.7 Representations and warranties**

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

### **15.8 Severability**

- (a) If any part of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

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

#### **15.9 Modification**

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

#### **15.10 Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **15.11 Good Faith**

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

#### **15.12 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.

#### **15.13 Relationship of Parties**

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



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## **16. Notices**

### **16.1 Form**

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below.

#### **The Council**

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

#### **Landowner**

##### **Winton Partners Bellbird Pty Limited**

Address: Level 2, 95 Pitt Sydney NSW 2000  
Telephone: (02) 9233 4902  
Fax: (02) 8229 0422  
Attention: Mr Daniel Hargraves

### **16.2 Receipt**

- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
  - (i) if it is delivered, when it is left at the relevant address;
  - (ii) if it is sent by post, 2 Business Days after it is posted; or
  - (iii) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- (b) If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day or after 5pm on any Business Day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

## Schedule 1 - Requirements under section 93F of the Act

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p><b>Planning instrument and/or Development Application - (Section 93F(1))</b></p> <p>The Landowner has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p><b>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</b></p>	<p>The whole of the Land.</p>
<p><b>Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b))</b></p>	<p>Rezoning of the Land to allow for the Proposed Development.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))</b></p>	<p>See the Schedule 3</p>
<p><b>Applicability of section 94 of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94 of the Act is not excluded and the Environmental Land Contribution is not to be taken into account under s94(6) of the Act for the purpose of the Proposed Development in accordance with Schedule 3, clause 2.3(a).</p>
<p><b>Applicability of section 94A of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94A of the Act is not excluded.</p>
<p><b>Applicability of section 94EF of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94EF of the Act is not excluded.</p>
<p><b>Mechanism for dispute resolution - (Section 93F(3)(f))</b></p>	<p>See clause 9.</p>
<p><b>Enforcement of the Planning Agreement - (Section 93F(3)(g))</b></p>	<p>See clause 7.</p>
<p><b>Registration of the Planning Agreement - (Section 93F(3)(g))</b></p>	<p>The Planning Agreement will be registered in accordance with clause 6.2.</p>
<p><b>No obligation to grant consent or exercise functions - (Section 93F(9))</b></p>	<p>No obligation. See clause 15.6.</p>

## Schedule 2 - Land

The whole of the land described in the following table:

Lot	Deposited Plan	Folio Identifier	Landowner
1	1164334	1/1164334	Winton Partners Bellbird Pty Limited

## Schedule 3 – Environmental Land Contribution

### 1. Environmental Land Contribution

The Landowner undertakes to provide or procure the provision of the Environmental Land Contribution as set out and provided for in Column 2 of the Table below no later than the date or event described in Column 3 of the Table for the public purpose specified in Column 4.

Column 1	Column 2	Column 3	Column 4
Item	Contribution	Timing	Public purpose
1	<p><b>Environmental Land Contribution</b></p> <p>The Landowner must register the Positive Covenant on the Environmental Land.</p>	<p>In accordance with the requirements of clause 2 of this Schedule 3, and in any event, prior to the issue of a Construction Certificate for any part of the Proposed Development.</p>	<p>To achieve appropriate conservation outcomes for the Proposed Development.</p>

### 2. Environmental Land Contribution

#### 2.1 Vegetation Management Plan (VMP)

- a) The Landowner will lodge a Development Application for the Environmental Land Subdivision. The Development Application must include a proposal to register a Positive Covenant requiring implementation of and compliance with a proposed draft VMP ("**Draft VMP**") for the Environmental Land.
- b) The Draft VMP must include (but is not limited to):
  - (i) an identification of vegetation management works that are to be completed each year in relation to the management of the Environmental Land; and
  - (ii) any methodologies to be used to identify the types of vegetation management works that are likely to be required and how those works will be implemented.
- c) If Development Consent is granted for the Environmental Land Subdivision, the terms of the Draft VMP must be approved by the Council as a condition of the Development Consent. In approving the Draft VMP, the Council may, acting reasonably, require the Landowner to amend the Draft VMP to Council's satisfaction.

#### 2.2 Registration of Positive Covenant

- a) Within 1 month of obtaining any relevant Subdivision Certificate for the Environmental Land, the Landowner must simultaneously lodge for registration at LPI under section 195G of the Conveyancing Act the:

- (i) relevant Subdivision Plan; and
  - (ii) a Positive Covenant implementation of and compliance with the Approved VMP for the Environmental Land.
- b) The Landowner must immediately comply with, or procure compliance with, any requisitions raised by the Register-General in relation to the registration of the Subdivision Plan and/or the Positive Covenant.
- c) Within 5 Business Days of the date of notification that the relevant Subdivision Plan and Positive Covenant have been registered, the Landowner must notify the Council and provide a copy of the relevant folio(s) of the Register and a copy of the registered dealing(s).
- d) Within 5 Business Days of receiving the notice, the Council will either:
- (i) issue a notice to the Landowner confirming that the registered Positive Covenant satisfies the requirements of this Agreement; or
  - (ii) issue a notice to the Landowner requiring any amendment or correction of the registered Positive Covenant.
- e) If Council issues a notice under clause 2.2(d)(ii) of this Schedule 3, the Landowner must make the amendment or correction specified and notify the Council again under clause 2.2(c).

### **2.3 Consideration of Environmental Land**

- a) The Parties acknowledge and agree that:
- (i) some of the Land is proposed to be rezoned to allow for the Proposed Development;
  - (ii) the intent of rezoning the Environmental Land and effecting the Environmental Land Subdivision is to:
    - A. protect areas of high conservation value on the Land for the public benefit; and
    - B. offset detrimental biodiversity impacts which may result from the residential and other ancillary development components of the Proposed Development; and
- b) The Parties further acknowledge and agree that this Agreement should be taken into account when determining any Development Application for the Proposed Development in accordance with section 79C(1)(a)(iia) of the Act, including the extent that biodiversity impacts associated with the Proposed Development are required to be offset or mitigated.

**Executed as a deed**

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

*Melanie Parker*  
.....  
Signature of witness

*[Signature]*  
.....  
Signature of authorised representative

*MELANIE PARKER*  
.....  
Print Name

*Stephen Glen*  
.....  
Print Name

**Signed by Winton Partners Bellbird Pty )  
Limited ACN 156 002 185 in accordance )  
with section 127 of the Corporations Act: )**

*[Signature]*  
.....  
Signature of Director/Secretary

*DANIEL HARGREAVES*  
.....  
Name of Director/Secretary

Annexure A – Land and Environmental Land

