

Cessnock City Council
ABN 60 919 148 928

Bailey's Lane Pty Ltd
ACN 620 558 438

Planning Agreement

Environmental Planning and Assessment Act 1979



Contact:
Grant Christmas
Suite 132 / 117 Old Pittwater Rd
Brookvale NSW 2100

Ref: 035/2018

PARTIES:

CESSNOCK CITY COUNCIL (ABN 60 919 148 928) of 62-78 Vincent Street, Cessnock NSW 2325 (**Council**)

BAILEY'S LANE PTY LIMITED (ACN 620 558 438) of 20/19-21 Central Road, Miranda NSW 2228 (**Developer**)

INTRODUCTION:

- A** The Developer owns the Land.
- B** The Council granted the Development Consent to the Developer.
- C** The Developer seeks to modify the Development Consent by providing for the Material Public Benefit as the Development Contributions for the Development.
- D** The Developer has offered to enter into this Deed with the Council if the Development Consent is modified to provide for the Material Public Benefit.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in **Schedule 2** of this Deed or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, state or local government or semi-governmental statutory judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by an Australian Bank (which is mutually agreed by the Developer and the Council) to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Certificate of Practical Completion means a written certificate issued by the Council confirming that the Works, or part of the Works, have been completed to the Council's satisfaction.

Commencement Date means the date that this Deed comes into operation in

accordance with **clause 2.2**.

Construction Certificate has the same meaning as the Act.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician and as used by the Council to index contributions imposed under Division 7.1 of the Act.

Deed means this deed.

Development means the twenty four (24) lot subdivision of the Land including the construction of a new internal road, stormwater drainage, earthworks and vegetation removal approved by the Development Consent.

Development Consent means the development consent granted by the Council for the Development on 2 May 2018 and as may be subsequently modified in accordance with sections 4.55 or 4.56 of the Act.

Development Contributions means development contributions imposed in accordance with Division 7.1 of the Act.

Explanatory Note means the explanatory note required by the Regulation and included at **Attachment 3**.

GST means any form of goods and services tax payable under the GST Law.

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

Intersection Works means the intersection works referred to in **Item 2** of the table to **Schedule 4**.

Intersection Works Plan means the plan at **Attachment 2**.

Land means the land described in **Schedule 3**.

Material Public Benefit means the Road Works and the Intersection Works, the estimated cost of which are set out in Table 2 to Schedule 5 to this Deed.

Modification Application means the application dated 22 August 2018 lodged with the Council by the Developer to modify the Development Consent and which has been amended as detailed in **Schedule 6**.

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

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

Road Works means the road works set out in **Item 1** of the table in **Schedule 4**.

Road Works Plan means the plan at **Attachment 1**.

Subdivision Certificate has the same meaning as the Act.

Works means the Road Works and Intersection Works.

1.2 Interpretation

In this Deed, unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this agreement;
- (f) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this agreement;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this agreement;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (l) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;

- (m) **including** and **includes** are not words of limitation;
- (n) the words **at any time** mean at any time and from time to time;
- (o) a reference to a time is to that time in New South Wales;
- (p) a word that is derived from a defined word has a corresponding meaning;
- (q) the singular includes the plural and vice-versa; and
- (r) a reference to a thing includes each part of that thing.

1.3 Construction

Neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Status of the Deed

- (a) Until this Deed comes into operation, this Deed constitutes an irrevocable offer from the Developer to enter into a planning agreement.
- (b) Subject to **clause 2.1(a)**, this Deed constitutes a planning agreement within the meaning of section 7.4 of the Act.
- (c) **Schedule 1** of this Deed summarises the requirements for planning agreements under section 7.4 of the Act and the way this Deed addresses those requirements.

2.2 Operation

- (a) This Deed operates only if:
 - (i) the Development Consent is modified in accordance with the Modification Application; and
 - (ii) the Deed is entered into as required by clause 25C(1) of the Regulation.
- (b) This Deed terminates when the Developer provides all of the Material Public Benefit to the satisfaction of the Council.
- (c) Despite anything else in this **clause 2.2**, **clauses 5** and **6** commence when the Deed is signed by the parties.

2.3 Application

This Deed applies to:

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

3 DEVELOPMENT CONTRIBUTIONS

- (a) The Developer will provide the Development Contributions by the provision of the Material Public Benefit in accordance with the description and timing for completion of the Works set out in **Schedule 4**.
- (b) The Works, or any part of the Works required under this Deed, will be taken to have been completed for the purpose of this Deed when a Certificate of Practical Completion has been issued for those Works.
- (c) As set out in Column 3 of **Schedule 4** the Works must be completed by the Developer prior to the issue of a Subdivision Certificate for the Development.

4 APPLICATION OF SECTION 7.11 AND SECTION 7.12 OF THE ACT

The application of sections 7.11 and 7.12 of the Act are excluded to the extent provided in **Schedule 1**.

5 SECURITY AND ENFORCEMENT

- (a) Prior to the issue of a Construction Certificate for the Works, the Developer agrees to provide the Council with a Bank Guarantee in the amount of \$315,000.00.
- (b) The Council may call on a Bank Guarantee provided under this clause if:
 - (i) the Developer is in material or substantial breach of this Deed and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days); or
 - (ii) the Developer becomes insolvent.
- (c) Within 20 Business Days of each anniversary of a Bank Guarantee provided under **clause 5(a)**, the Developer must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$

Where:

A is the amount of the replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the replacement Bank Guarantee,

provided A is greater than B.

- (d) On receipt of a Replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (e) Subject to this clause and the provisions of this Deed, the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer under this Deed to carry out the Works, and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Deed.
- (f) The Council must promptly return a Bank Guarantee provided under this clause if requested by the Developer if a Certificate of Practical Completion has been issued for the Works.
- (g) Nothing in this clause prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this Deed;
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Deed, or
 - (iii) that is not or cannot be satisfied by calling on a Bank Guarantee.

6 DISPUTE RESOLUTION

6.1 Reference to Dispute

If a dispute arises between the parties in relation to this Deed, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

6.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

6.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 14 Business Days of the Notice of Dispute) 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,
- (ii) agree that further material or expert determination in accordance with **clause 6.6** about a particular issue 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.

6.4 Further Notice if Not Settled

If the dispute is not resolved within 14 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 6.5 or by expert determination under clause 6.6.

6.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 14 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 14 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (d) Each party will bear its own professional and expert costs incurred in connection with the mediation;
- (e) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

6.6 Expert determination

If the dispute is not resolved under **clause 6.3** or **clause 6.5**, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 14 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;

- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 14 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

6.7 Litigation

If the dispute is not *finally* resolved in accordance with this **clause 6**, then either party is at liberty to litigate the dispute.

6.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under **clause 6.1**, the referral to or undertaking of a dispute resolution process under this **clause 6** does not suspend the parties' obligations under this Deed.

7 GST

7.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

7.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this Deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

7.3 Reimbursement

Any payment or reimbursement required to be made under this Deed 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.

7.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are GST Exclusive. 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 7.

7.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this Deed (**GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Council as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Council, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Council.

7.6 Non-monetary consideration

Clause 7.5 applies to non-monetary consideration.

7.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 7.5** the Developer will assume the Council, is not entitled to any input tax credit.

7.8 No merger

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

8 ASSIGNMENT

8.1 General

The agreement in this Deed is personal to each party and neither party may assign the rights or benefits of this agreement to any person except:

- (a) to a related body corporate, after obtaining the consent in writing of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this agreement; or
- (b) to any other person, with the prior consent in writing of the other party, which the other party may give, give conditionally or withhold in its absolute discretion.

8.2 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
- (i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this Deed;
 - (ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this Deed;
 - (iv) Any default under any provisions of this Deed has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (v) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

9 WARRANTIES OF CAPACITY

9.1 General warranties

Each party warrants to each other party that:

- (a) this Deed 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 Deed in the capacity of trustee of any trust.

9.2 Power of attorney

If an attorney executes this agreement on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

10 GENERAL PROVISIONS

10.1 Entire agreement

This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or

arrangements made between the parties, whether orally or in writing.

10.2 Variation

This Deed must not be varied except by a later written document executed by all parties in accordance with the provisions of the Act.

10.3 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

10.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Deed.

10.5 Time for doing acts

- (a) If:
- (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5.00pm on the specified day, it is taken to have been done on the following Business Day.

10.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

10.7 Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

10.8 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

10.9 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

10.10 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

10.11 No fetter

Nothing in this Deed will 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 will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

10.12 Explanatory note

The Explanatory Note must not be used to assist in construing this Deed.

10.13 Expenses and stamp duty

- (a) Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all stamp duty assessed on or in respect of this Deed and any instrument or transaction required by or necessary to give effect to this Deed.

10.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

10.15 Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered;
- (b) sent by facsimile transmission;
- (c) sent by prepaid ordinary mail within Australia; or
- (d) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.

A notice is given if:

- (e) hand delivered, on the date of delivery;
- (f) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
- (g) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (h) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

EXECUTED as a deed.

SCHEDULE 1 - REQUIREMENTS UNDER SECTION 7.4

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Deed complying with the Act:

Requirement under the Act	This Deed
<p>Planning instrument and/or development application – (section 7.4(1))</p> <p>The Developer 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>No</p> <p>Yes</p> <p>No</p>
<p>Description of land to which this Deed applies – (section 7.4(3)(a))</p>	<p>See Schedule 3</p>
<p>Description of change to the environmental planning instrument to which this Deed applies – (section 7.4(3)(b))</p>	<p>Not applicable</p>
<p>The scope, timing and manner of delivery of contributions required by this Deed – (section 7.4(3)(c))</p>	<p>See Schedule 4</p>
<p>Applicability of section 7.11 of the Act – (section 7.4(3)(d))</p>	<p>Excluded – see Schedule 5</p>
<p>Applicability of section 7.12 of the Act – (section 7.4(3)(d))</p>	<p>Excluded</p>
<p>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</p>	<p>Excluded</p>
<p>Consideration of benefits under this Deed if section 7.11 applies – (section 7.4(3)(e))</p>	<p>No</p>
<p>Mechanism for Dispute Resolution - (Section 7.4(3)(f))</p>	<p>See clause 6</p>
<p>Enforcement of this Deed – (section 7.4(g))</p>	<p>See clause 5</p>
<p>No obligation to grant consent or exercise functions – (section 7.4(9))</p>	<p>See clause 10.11</p>

SCHEDULE 2 - ADDRESS FOR SERVICE

Cessnock City Council

Contact: General Manager
Address: 62-78 Vincent Street, Cessnock NSW 2325
E-mail: council@cessnock.nsw.gov.au

Bailey's Lane Pty Limited

Contact: Darryl Punnett
Address: 20/19-21 Central Road, Miranda NSW 2228
E-mail: darryl@punnettgroup.com.au

SCHEDULE 3 – LAND

Lot and Deposited Plan

Lot 790 Deposited Plan 257363 known as 65 Baileys Lane Abermain NSW

SCHEDULE 4 – DEVELOPMENT CONTRIBUTIONS

(A) Material Public Benefit

The Developer will carry out the following as the Development Contributions:

Item	Development Contribution	Description of the Works	Timing for completion of the Works
1.	Road Works	<ul style="list-style-type: none"> (a) Alignment in accordance with the Road Works Plan. (b) Road to be reconstructed from Ch 0.0 to Ch 180. (c) Pavement thickness to be the same as Council's recent construction of Baileys Lane – that is, 100mm base course over 200mm sub-base. (d) Pavement to be reconstructed as per typical section on the Road Works Plan – that is, 1.0m (typical) of pavement at edge of pavement with 0.5m gravel shoulder and swales as required. (e) The new two coat seal is to extend over the full 6.0m width of pavement. 	The Road Works must be completed by the Developer prior to the issue of a Subdivision Certificate for the Development.
2.	Intersection Works	<ul style="list-style-type: none"> (a) Works to be carried out in accordance with the Intersection Works Plan. (b) The intersection to be reconstructed on the western side of Frame Drive only. The eastern side of the Frame Drive is deemed adequate. (c) The Intersection Works do not include the relocation of power poles at Frame Drive which are expected to be completed by the Council by 29 November 2019. (d) Pavement to be extended on the western side of Frame Drive to accommodate: <ul style="list-style-type: none"> (i) CHR turn lane 3.0m wide; and (ii) through lane 3.5m wide with 1.5m shoulder; and 	The Intersection Works must be completed by the Developer prior to the issue of a Subdivision Certificate for the Development.

		<p>(iii) 1:2 batters to retaining walls to the same standard that the Council has used on the intersection – that is, large concrete blocks).</p> <p>(e) Any drainage pipes will be extended as required.</p> <p>(f) Pavement thickness to be as per the Council plan DWG 22 - 18381 C120C120 – that is, 550mm.</p>	
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SCHEDULE 5 – COMPARISON OF SECTION 7.11 CONTRIBUTIONS TO PUBLIC BENEFITS

Table 1 – The following identifies the section 7.11 monetary contributions that would be payable for the Development as at 7 May 2018 (and which would be indexed in accordance with the CPI at the time of payment):

Contribution type	Amount payable
District Open Space	\$31,015.50
District Community Facilities (Halls)	\$18,996.62
District Community Facilities (Libraries)	\$5,071.96
District Community Facilities (Bushfire)	\$1,414.04
District Roads – Rural Areas	\$23,638.25
Local Roads – Abermain	\$121,449.20
Local Drainage – Abermain	\$24,652.55
Studies (Plan Preparation)	\$1,782.96
Studies (Flood Study) – Abermain South	\$4,241.89
Plan Administration	\$6,762.46
Total	\$239,025.43

Table 2 – The following material public benefits are to be carried out by the Developer pursuant to this Planning Agreement:

Work	Value (+ GST)
Road Works: re-construction of part of Baileys Lane as shown in the Plan at Attachment 1 of this Deed.	\$90,000.00
Intersection Works: upgrade of Frame Drive intersection as shown in the Plan at Attachment 2 of this Deed.	\$225,000.00
Consultants fees: survey, design and supervision of the Road Works and Intersection Works.	\$25,245.00
	TOTAL = \$340,245.00 + GST

SCHEDULE 6 – MODIFICATION APPLICATION

Condition of Development Consent	Modification to condition						
2	<p>2. Approved Plans and Documents</p> <p>Development must be carried out strictly in accordance with DA No. 8/2017/718 and the following plans and supplementary documentation, except where amended by the conditions of this consent.</p> <table border="1" data-bbox="560 584 1369 949"> <thead> <tr> <th data-bbox="560 584 911 622">Plan Reference</th> <th data-bbox="919 584 1155 622">Drawn By</th> <th data-bbox="1163 584 1369 622">Dated</th> </tr> </thead> <tbody> <tr> <td data-bbox="560 629 911 949">Plan of Proposed Subdivision of Lot 790 DP 257363 Instruction Number: 16/176 File ID: 123976 Sheet: 1 Rev No: G</td> <td data-bbox="919 629 1155 949">PCB (Pulver Cooper & Blackley)</td> <td data-bbox="1163 629 1369 949">08/03/2018</td> </tr> </tbody> </table> <p>In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.</p> <p><u>A Planning Agreement exists between Cessnock City Council and Bailey's Lane Pty Limited dated [date to be inserted]. All relevant provisions of the Planning Agreement must be complied with to the satisfaction of Council.</u></p>	Plan Reference	Drawn By	Dated	Plan of Proposed Subdivision of Lot 790 DP 257363 Instruction Number: 16/176 File ID: 123976 Sheet: 1 Rev No: G	PCB (Pulver Cooper & Blackley)	08/03/2018
Plan Reference	Drawn By	Dated					
Plan of Proposed Subdivision of Lot 790 DP 257363 Instruction Number: 16/176 File ID: 123976 Sheet: 1 Rev No: G	PCB (Pulver Cooper & Blackley)	08/03/2018					
6	<u>Deleted.</u>						
8	<p>8. Road Works Required</p> <p>The applicant must bear the cost of construction of the following works:</p> <p>a) Road and Stormwater Drainage works in Church Street, Frame Drive and Baileys Lane in accordance with the approved plans.</p> <p>b) All works within the Council road reserve as identified by the structural engineering design plans.</p> <p>Development Consent does not give approval to undertake any works on Council property. An application must be made to Council for a S138 Roads Act Approval to construct these works. Detailed engineering drawings (plans, sections and elevation views) and specifications of the works required by this Condition must accompany the application form.</p>						

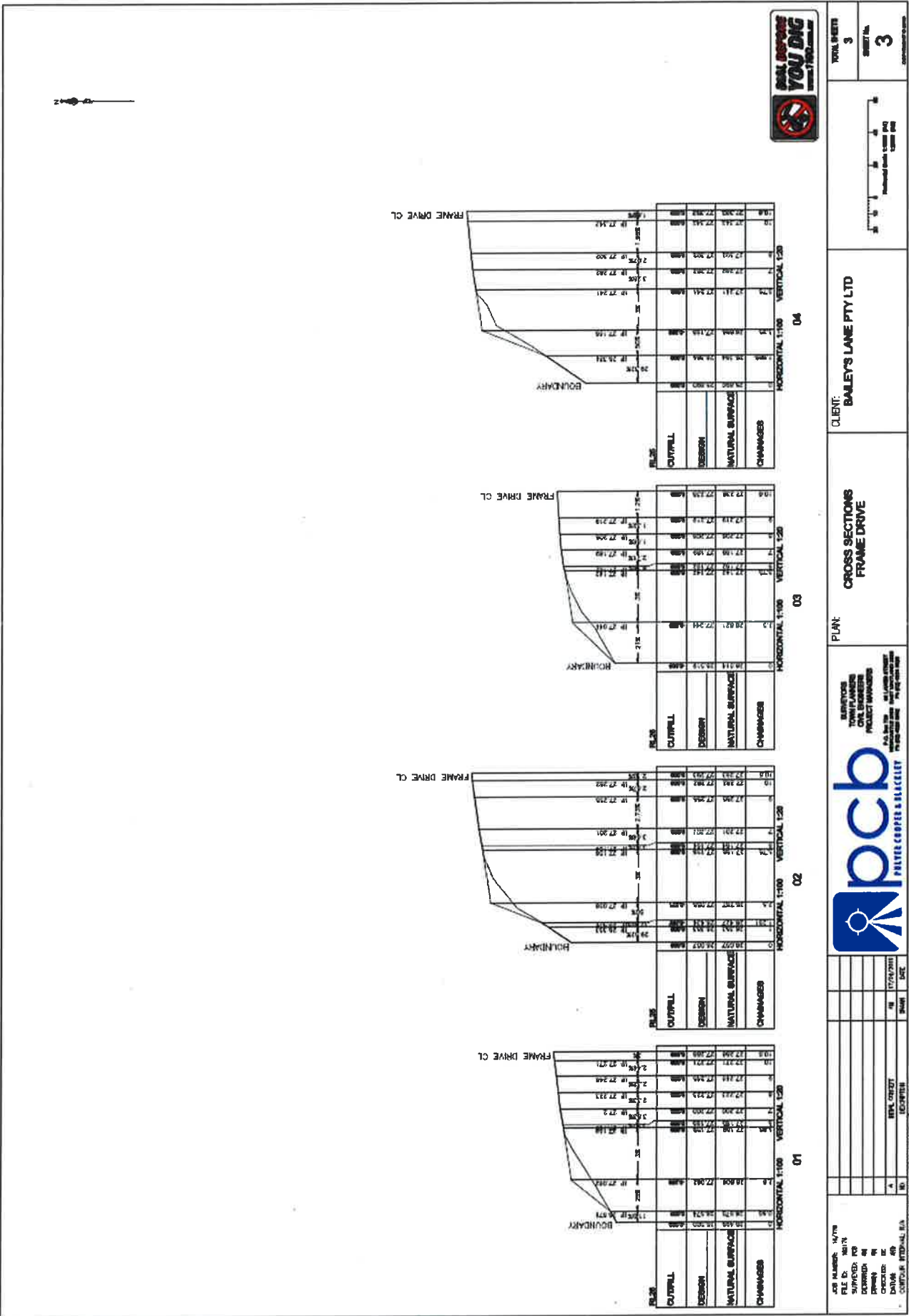
	<p>The Roadworks Approval request/application must be submitted to, and approved by, Council prior to the issue of a CC.</p> <p>These works must be constructed in accordance with the conditions of the Roadworks Permit and be completed prior to the issue of a <u>CC Subdivision Certificate</u>.</p> <p>Note: The cost of adjustment or relocation of any public utility service shall be borne by the owner/applicant <u>with the exception of the relocation of the power poles in Frame Drive</u>. Where the finished levels of the new works will result in changes to the existing surface levels, the cost of all necessary adjustments or transitions beyond the above scope of works shall be borne by the owner/applicant.</p>
11	<p>11. Road – Road Widening Requirement-Frame Drive</p> <p>The registered proprietor of the land shall construct the following in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to, and approved by, Council prior to issue of a <u>CC for the civil works Section 138 approval and be generally in accordance with the plans prepared by Pulver Cooper & Blackley being "Intersection Concept Frame Drive Baileys Lane" Job Number 16/176 Rev A dated 17/04/19 Sheets 1 to 3 (inclusive) and the following matters.</u></p> <ul style="list-style-type: none"> a) Construct a Channelised right turn treatment (CHR) on Frame Drive b) Construct a Basic Left Turn (BAL) on Frame Drive c) Place two (2) coat hot bitumen seal on new works d) Construct drainage works as necessary.
12	<p>12. Road Bond – Frame Drive</p> <p>The applicant shall lodge payment of fees and contributions as follows:-</p> <p>Based on a road length for the intersection works, bond amounts will be levied on accurate dimensions contained within the engineering plans.</p> <ul style="list-style-type: none"> a) Road fees - engineering plan checking and supervision b) A performance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (transferable). c) A road maintenance bond of a minimum of \$1000 or

	<p>5% of the contract construction costs, whichever is greater (refundable). It will be necessary for the applicant to submit evidence of the contract price of all construction works in order for Council to assess accurate bond amounts. If no contract price is submitted, Council will estimate the value of construction works.</p> <p>The fees and bonds shall be payable prior to the issue of a CC for the Civil Works and/or release of the Subdivision Certificate and Section 138 approval and shall be in accordance with Council's adopted fees and charges current at the time of payment.</p> <p>The bond may be used to meet any costs referred to above, and on application being made to the Council by the person who provided the bond, any balance remaining is to be refunded to, or at the direction of, that person. If no application is made to the Council for a refund of any balance remaining of the bond within 6 years of the date of issue of the SC for the development, the Council may pay the balance to the Chief Commissioner of State Revenue under the Unclaimed Money Act 1995.</p>
13	<p>13. Road Construction Church Street and Baileys Lane (<u>Lot Frontage</u>)</p> <p>The registered proprietors of the land shall construct the following for the full frontage of the Lot on Church Street and Baileys Lane for a distance of approximately 550m in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to, and approved by, Council prior to the release of the S138 Roads Act Approval.</p> <ul style="list-style-type: none"> a) Construct kerb and gutter b) Construct and gravel road shoulders c) Place two (2) coat hot bitumen seal on road shoulders d) Topdress and turf footpath e) Construct drainage works.
14	<p>14. Road Bond – Church Street <u>and Baileys Lane (Lot Frontage)</u></p> <p>The applicant shall lodge payment of fees and contributions as follows:-</p>

	<p>Based on a road length of approximately 400 550 metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.</p> <p>a) Road fees - engineering plan checking and supervision of \$46,600 <u>13,262.00 based on 550 metres of kerb and gutter construction.</u></p> <p>b) A performance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (transferable).</p> <p>c) A road maintenance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (refundable).</p> <p>It will be necessary for the applicant to submit evidence of the contract price of all construction works in order for Council to assess accurate bond amounts. If no contract price is submitted, Council will estimate the value of construction works.</p> <p>The fees and bonds shall be payable prior to the issue of a CC for the Civil Works and/or release of the Subdivision Certificate <u>Section 138 approval</u> and shall be in accordance with Council's adopted fees and charges current at the time of payment.</p> <p>The bond may be used to meet any costs referred to above, and on application being made to the Council by the person who provided the bond, any balance remaining is to be refunded to, or at the direction of, that person. If no application is made to the Council for a refund of any balance remaining of the bond within 6 years of the date of issue of the SC for the development, the Council may pay the balance to the Chief Commissioner of State Revenue under the Unclaimed Money Act 1995.</p>
18	<p>18. Road Upgrade – Baileys Lane</p> <p>The registered proprietors of the land shall construct Baileys Lane for a distance of approximately 520m <u>190m (which excludes the current unsealed sections of Baileys Lane)</u> in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to, and approved by, Council prior to the release of the S138 Roads Act Approval.</p> <p>(a) Construct a 6m sealed pavement with gravel shoulders for the length of Baileys lane from the intersection of Frame drive to Church Street, excluding existing unsealed sections <u>generally in accordance with the plans prepared by Pulver Cooper & Blackley being "Bailey's Lane Concept" Job Number</u></p>

	<p><u>16/176 Rev A dated 15/04/19 Sheets 1 and 2 (inclusive).</u></p> <p>(b) Place two (2) coat hot bitumen seal on road shoulders.</p> <p>(c) Construct drainage works as necessary.</p>
19	<p>19. Road Bond – Baileys Lane</p> <p>The applicant shall lodge payment of fees and contributions as follows:-</p> <p>Based on a road length of approximately 520 <u>190</u> metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.</p> <p>a) Road fees - engineering plan checking and supervision of \$21,400 <u>\$8,402</u>.</p> <p>b) A performance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (transferable).</p> <p>c) A road maintenance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (refundable).</p> <p>It will be necessary for the applicant to submit evidence of the contract price of all construction works in order for Council to assess accurate bond amounts. If no contract price is submitted, Council will estimate the value of construction works.</p> <p>The fees and bonds shall be payable prior to the issue of a CC for the Civil Works and/or release of the Subdivision Certificate <u>Section 138 Approval</u> and shall be in accordance with Council's adopted fees and charges current at the time of payment.</p> <p>The bond may be used to meet any costs referred to above, and on application being made to the Council by the person who provided the bond, any balance remaining is to be refunded to, or at the direction of, that person. If no application is made to the Council for a refund of any balance remaining of the bond within 6 years of the date of issue of the SC for the development, the Council may pay the balance to the Chief Commissioner of State Revenue under the Unclaimed Money Act 1995.</p>
20	<p>20. Street Lighting Design – <u>New Internal Road</u></p> <p>Prior to the issue of a CC, submit to Council for approval plans and specifications for a proposed lighting design prepared by a Level 3 Ausgrid Accredited Service Provider which complies with the following design brief:</p> <p>Street lighting design standards:</p> <ul style="list-style-type: none"> • Ausgrid's <i>NS119 Street Lighting Design and Construction</i>, and • <i>AS/NZS 60598.2.3 Particular requirements – Luminaires for road and street lighting</i>;

	<p>Street lighting design requirements:</p> <ul style="list-style-type: none"> • Unpainted galvanised light poles and associated fittings; • Minimum of 20 year design life for all lighting components and structures, and • Best practice energy efficient LED luminaires to meet Council's participation in the IPART Energy Saving Scheme for Public Lighting. <p>Street lighting level standards for minor collector and local roads (residential):</p> <ul style="list-style-type: none"> • <i>AS/NZ 1158 Lighting for roads and public spaces</i>, and • <i>AS/NZ 1158 Part 3.1: Pedestrian area (Category P) lighting – Performance and design requirements</i>. <p>Street lighting level standards for arterial and major roads (Traffic Route Lighting):</p> <ul style="list-style-type: none"> • <i>AS/NZ 1158 Lighting for roads and public spaces</i>, and <i>AS/NZ 1158 Part 1.1: Vehicular traffic (Category V) lighting – Performance and design requirements</i>.
50	<p>50. Street Lighting Installation</p> <p>Prior to issue of a subdivision certificate, install and commission street lighting to all roads and pathways <u>on the subject property</u> in accordance the approved plans and specifications. Coordinate and stage the installation of street lights with construction of roads.</p>



TOTAL SHEETS 3
SHEET No. 3



CLIENT: BAILEY'S LANE PTY LTD

PLAN: CROSS SECTIONS
FRAME DRIVE


POCOPOLYMER COPPER & SLICELITE
 SUBSIDIARIES
 TOWN PLANNERS
 CIVIL ENGINEERS
 PROJECT MANAGERS
 ALL WORKS COVERED BY THE PROFESSIONAL LIABILITY INSURANCE POLICY

JOB NUMBER: 14770	DATE: 17/04/2011
FILE ID: 14770	DRAWN BY: [Name]
SUPPLIED: POC	CHECKED BY: [Name]
DESIGNED BY: [Name]	DATE: 17/04/2011
PROJECT NO: [Number]	SCALE: 1:1
CLIENT: BAILEY'S LANE PTY LTD	PROJECT: CROSS SECTIONS
DATE: 17/04/2011	BY: [Name]

Attachment 3 – Explanatory Note

Explanatory Note

Exhibition of draft Voluntary Planning Agreement

Lot 790 Deposited Plan 257363 known as 65 Baileys Lane Abermain NSW

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the provision of road and intersection works in relation to the proposed development of land at Lot 790 Deposited Plan 257363 known as 65 Baileys Lane Abermain NSW.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Baileys Lane Pty Ltd (**the Developer**) made an offer to Cessnock City Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with an application to modify a development consent relating to the subject land.

Description of subject land

The land to which the Planning Agreement applies is Lot 790 Deposited Plan 257363 known as 65 Baileys Lane Abermain NSW (**the Land**).

Description of the Development to which the Planning Agreement applies

The Developer has proposed the following development in Development Application No. 8/2018/718/2:

- Subdivision of the Land into 24 lots, and
- The construction of a new internal road, stormwater drainage, earthworks and vegetation clearing on the Land, and

Development consent was granted to Development Application No.8/2018/718/2 on 2 May 2018 (**the Development Consent**). The Developer has proposed a modification to the Development Consent whereby the Developer constructs certain road and intersection works in lieu of the payment of monetary contributions.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement requires the Developer to construct the following road works prior to the issue of a Suidivision Certificate for the development approved by the Development Consent:

- the upgrading of a portion of Baileys Lane, and
- the upgrading of the intersection between Baileys Lane and Frame Drive

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

In accordance with section 1.3 of the Act, the Planning Agreement promotes the objects of the Act and specifically achieves the objectives stated in section 1.3 because it:

- promotes the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (s1.3(a)); and
- promotes the orderly and economic use and development of the Land (s1.3(c)),

through requiring the provision of community infrastructure improvements in the vicinity of the proposed Development.

The Planning Agreement promotes the public interest as it will result in the delivery of a number of public benefits including the enhancement of road infrastructure near the Land, contributing towards meeting the present and future social and economic needs of the local community.

The Planning Purposes served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement will require the provision of transport infrastructure. The Planning Agreement will provide for the improvement of road infrastructure by requiring the undertaking of road works in the vicinity of the development, thereby contributing to the current and future needs of the local community.

The Planning Agreement provides a reasonable means for achieving the abovementioned public purposes on the basis that the Planning Agreement:

- stipulates the timing for the completion of the works; and
- restricts the progression of the development approved by the Development Consent unless the obligations are met.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter

The Planning Agreement is consistent with the following guiding principles set out in Chapter 3 of the *Local Government Act 1993*:

- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers,
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community,
- Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements,
- Councils should work with others to secure appropriate services for local community needs,
- Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.

The Planning Agreement promotes the above principles by ensuring the provision of road infrastructure to meet the needs of the local community.

Whether the Planning Agreement Conforms with the Council's Capital Works Program

Council's Management Plan incorporates capital work projects aimed at providing and improving community infrastructure. In this respect, the provision of the road works for the purpose of providing community infrastructure conforms to that intent.

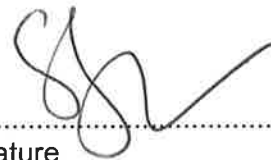
Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement requires the completion of the road works prior to the issue of a Subdivision Certificate for the development approved by the Development Consent.

EXECUTED as a deed:

SIGNED for and on behalf of)
CESSNOCK CITY COUNCIL by its)
authorised delegate in accordance with the)
Council's resolution dated 15 May 2019 in)
presence of:)

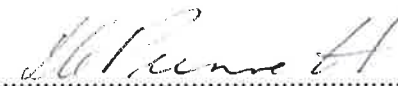

.....
Signature of witness


.....
Signature
General Manager, as authorised delegate

GARETH CURTIS
.....
Name of witness

STEPHEN GUEN
.....
Name of signatory

EXECUTED by **BAILEY'S LANE PTY**)
LIMITED (ACN 620 558 438) in accordance)
with section 127 of the Corporations Act:)


.....
Signature of Director


.....
Signature of Director/Secretary

TREVOR CHARLES PUNNETT
.....
Name of Director

DAREY BRUCE PUNNETT
.....
Name of Director/Secretary