

Deed

Henry Kendall Entrance Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Cessnock City Council

**Henry Kendall Limestone Creek Pty Limited
ACN 000 630 222**

Date:

Henry Kendall Entrance Planning Agreement

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Summary Sheet

Council:

Name: Cessnock City Council

Address: 62-78 Vincent Street, CESSNOCK NSW 2325

Telephone: 4993 4100

Email: contributions@cessnock.nsw.gov.au

Representative: Martin Johnson

Developer/Landowner:

Name: Henry Kendall Limestone Creek Pty Limited ACN 000 630 222

Address: 5 Amy Close, North Wyong 2259

Telephone: 4355 5111 / 0412 201 280

Email: damien.wilde@henrykendall.com.au

Representative: Damien Wilde

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Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

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

and

Henry Kendall Limestone Creek Pty Limited ABN 88 000 630 222 of 5 Amy Close, North
Wyong NSW 2259 (Developer)

Background

- A The Developer owns the Land known as 254 Wollombi Road, Bellbird Heights.
- B The Developer proposes to carry out the Development on the Land.
- C The Development Consent was granted on 25 May 2021 and subsequently amended by a modification application determined on 22 November 2022.
- D Under conditions 8 and 11 of the Development Consent, the Developer is required to complete the Intersection Works at the Developer's cost as part of the Development.
- E Council is currently undertaking the Wollombi Road Upgrade Works, which include the area of Wollombi Road that is subject to the Intersection Works.
- F Council requested the Developer to carry out additional works to the Intersection Works, as part of the Wollombi Road Upgrade Works, on behalf of, and at the cost of the Council.
- G Council subsequently informed the Developer that given the timing and progress of the Wollombi Road Upgrade Works, Council would prefer to carry out the Intersection Works, when completing the Wollombi Road Upgrade Works, and the Developer would no longer need to carry out the Intersection Works
- H The Developer and Council have come to an agreement whereby the Developer will pay the Monetary Contribution instead of completing the Intersection Works required by conditions 8 and 11 of the Development Consent, and subject to the terms of this Deed.
- I Part of the road verge at the western side of the entrance to the Land from Wollombi Road will also be dedicated to Council as part of the Development under section 9 of the *Roads Act 1993* (NSW), and the proposed dedication of that land has been considered by the parties when negotiating the contributions to be delivered under this agreement. The relevant part of the road verge to be dedicated is as shown in Appendix B.
- J The Developer proposes to lodge a modification application to give effect to the Modification, and in such a way that is consistent with this Deed.
- K The Developer will pay the Monetary Contribution instead of completing the Intersection Works, subject to the Modification being approved, and in accordance with this Deed. The Developer will register an easement in gross over the Stormwater Pipeline Land to enable the Council to complete the Intersection Works. The parties recognise the easement and the works within the easement benefit both the public and the Developer and the grant of the easement and any future dedication of the land subject to the easement has not been considered by the parties and has been excluded from negotiations for the contributions to be delivered under this agreement.

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Operative provisions Part 1 - Preliminary

1. Interpretation

1.1. In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like and includes, without limitation, a Development Consent and a Part 6 Certificate.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Background Intellectual Property means Intellectual Property that:

- a) exists at the date of this Deed or is later created but not as a result of performing this Deed, and
- b) does not belong to a third party.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- a) is by its nature confidential;
- b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- c) any Party knows or ought to know is confidential; or
- d) is information which may reasonably be considered to be of a confidential nature.

Construction Certificate has the same meaning as in the Act.

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

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

CPI means the Consumer Price Index (All-Groups Sydney) as provided by the Australian Bureau of Statistics.

Deed means this deed and includes any schedules, annexures and appendices to this deed.

Detailed Design means the final design for the Intersection Works approved by the Intersection Works Control Group, which consists of construction drawings, specifications and any other relevant plan or report.

Development means the development of the Land in accordance with the Development Consent, generally in accordance with the plan at Appendix B.

Development Consent means Development Consent DA 8/2014/628/2 granted by a consent authority on 25 May 2021 and modified on 22 November 2022, as modified from time to time.

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Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4 (3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Entire Project means the proposed development of the Land and surrounding land owned by the Developer for the purposes of a residential subdivision, of which the Development forms a part.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
 - (i) an act of God,
 - (ii) strike, lockout, other industrial disturbance or labour difficulty,
 - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
 - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine, or
 - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation;
- (b) which the affected party takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the affected party to settle a labour dispute if, in the party's opinion, that is not in its best interests); and
- (c) which the party notifies the other party of, as soon as practicable after becoming aware of the event or circumstance.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as 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.

Intellectual Property means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world that Council may use for the Intersection Works.

Intersection Works means the road and intersection works at the entrance to the Development from Wollombi Road required under conditions 8 and 11 of the Development Consent, and the associated stormwater and drainage works and, once the Modification is approved, includes those works required at the intersection to the entrance of the Land from Wollombi Road consistent with the Wollombi Road Upgrade Works, generally in accordance with the plan at Appendix C and the Parties have each obtained a quantity surveyor report detailing those works prior to negotiation of this Deed.

Land means Lot 1 DP327580, known as 254 Wollombi Road, Bellbird Heights NSW.

Modification means the proposed modification to the Development Consent, which includes the removal of the requirement on the Developer to carry out the Intersection Works and instead pay the Monetary Contribution, as consistent with the terms of this Deed

Monetary Contribution means a monetary contribution payable by the Developer in accordance with Part 2 of this Deed.

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Next Development Application means the development application the Developer intends to lodge for the balance of the Entire Project.

Part 6 Certificate means a certificate under Part 6 of the Act.

Party means a party to this Deed.

Intersection Works Control Group means the group established under clause 12 of this Deed.

Project Supervisor means a representative of Council.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Residential Lot means a lot created as part of the Development that is not intended to be further subdivided and is to be used for residential purposes.

Security means a bank guarantee, being an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council on terms acceptable to the Council to pay an amount or amounts of money to the Council on demand issued by a financial institution approved by the Council in its absolute discretion.

Stormwater Pipeline Land means the land being developed for the proposed stormwater pit and pipeline included in the Intersection Works and shown in the plans at Appendix D, being land that will be the subject of an easement for drainage of water in accordance with this Deed.

Subdivision Certificate has the same meaning as in the Act.

Technical Data means technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code, test results, and information.

Third Party Intellectual Property means Intellectual Property that is owned by a person other than the Council or the Developer.

Wollombi Road Upgrade Works means the works Council is conducting to upgrade Wollombi Road, as informed by plans and reports obtained by Council.

- 1.2. In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any

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- statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 A reference to a person includes a natural person, company, trust, partnership, joint venture, association, body corporate, the Crown, governmental agency and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns.
- 1.2.10 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.
- 1.2.11 A word which denotes the singular also denotes the plural, and a word which denotes the plural also denotes the singular.
- 1.2.12 A reference to any gender denotes all genders.
- 1.2.13 References to the word *'include'* or *'including'* are to be construed without limitation.
- 1.2.14 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.15 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.16 A reference to *'dedicate'* or *'dedication'* in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.17 Any schedules, appendices and attachments form part of this Deed.
- 1.2.18 Notes appearing in this Deed are operative provisions of this Deed.
- 1.2.19 A requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done.
- 1.2.20 Neither this Deed or 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.
- 1.2.21 An agreement, representation, covenant, right or obligation in favour of two or more persons is for the benefit of them jointly and severally, and on the part of two or more persons binds them jointly and severally.
- 1.2.22 A reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
- 1.3. The parties agree that a reference to a condition of the Development Consent at the time this Deed commences is a reference to the corresponding condition of the Development Consent if the Development Consent is modified.

2. Status of this Deed

- 2.1. This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2. 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.

3. Commencement

- 3.1. This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 all executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2. The Parties are to insert the date when this Deed commences on the front page and on the execution page.
- 3.3. For the avoidance of doubt, the Developer's obligation to pay the Monetary Contribution under Part 2 of this Deed or Council's obligation to complete the Intersection Works under Part 3 of this Deed does not arise unless and until the Modification is approved.

4. Application of this Deed

- 4.1. This Deed applies to:
 - 4.1.1 the Land, and
 - 4.1.2 the Development.

5. Warranties

- 5.1. Each Party represents and warrants that:
 - 5.1.1 it has full legal capacity and power to:
 - (a) carry on its business,
 - (b) enter into this Deed and carry out the transactions it covers,
 - 5.1.2 it holds each authorisation necessary to:
 - (a) properly execute this document and carry out the transactions,
 - (b) make this document legal, valid, binding and admissible in evidence,
 - (c) properly carry on its business,
 - (d) comply with any conditions of those authorisations, and
 - 5.1.3 it has the full power to enter into and perform its obligations under this Deed and that, when executed, this Deed will constitute legal, valid and binding obligations according to its terms.
- 5.2. The Developer represents and warrants that:
 - 5.2.1 it owns the Land, and
 - 5.2.2 it is not entering this Deed as a trustee of any trust or settlement.

6. Power of attorney

- 6.1. Each person who executes this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so.

7. Parties' relationship

- 7.1. Nothing in this Deed:
- 7.1.1 makes the Developer, a partner, agent or legal representative of the Council, or
 - 7.1.2 creates a partnership, agency or trust.
- 7.2. The rights of the Parties do not merge once the Developer's obligation to pay the Monetary Contribution under this Deed is completed or this Deed is terminated.

8. Further agreements

- 8.1. The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

9. Application of s7.11, s7.12 and Division 7.1 Subdivision 4 of the Act to the Development

- 9.1. This Deed does not exclude the application of s7.11, s7.12 and Division 7.1 Subdivision 4 of the Act.
- 9.2. The benefits under this Deed are not to be taken into consideration in determining a Development Contribution under s7.11 of the Act to the Development provided that this clause does not apply to the benefit arising from the grant of the easement for drainage over the Stormwater Pipeline Land.

Part 2 – Contributions made under this Deed

10. Provision of the Monetary Contribution

- 10.1. The Developer is to pay the Monetary Contribution to Council in accordance with this Part 2.
- 10.2. The parties agree and acknowledge that the Monetary Contribution will be used by the Council for the delivery of the Wollombi Road Upgrade Works, which serves the public purpose of improving road condition, traffic flows and pedestrian amenity along Wollombi Road between Abbotsford St and West Avenue, particularly to address the forecasted population growth in this area.
- 10.3. For the avoidance of doubt, provided the Council completes the Intersection Works in accordance with this Deed, nothing in this Deed requires the Council to:
- 10.3.1. spend the Monetary Contribution made under this Agreement by a particular date; or
 - 10.3.2. refund to the Developer any contribution made under this Deed.

11. Payment of the Monetary Contribution

- 11.1. The amount of the Monetary Contribution is \$1,713,000 (excluding GST), indexed in accordance with increases in the CPI from the date of the commencement of this Deed

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to the date of payment.

- 11.2. The Developer must pay to the Council the Monetary Contribution in accordance with this clause 11 at the earlier of the following, subject to the Intersection Works being completed:
 - 11.2.1. 30 June 2028; or
 - 11.2.2. At the time the Subdivision Certificate is issued for the 14th Residential Lot; or
 - 11.2.3. On the date that is 4 months after the Next Development Application is approved.
- 11.3. If the Intersection Works are not complete when the Monetary Contribution is due to be paid under clause 11.2, the Monetary Contribution becomes payable within 1 month of the date the Intersection Works are completed by Council.
- 11.4. The Monetary Contribution must be paid by way of:
 - 11.4.1. unendorsed bank cheque in favour of Council, or
 - 11.4.2. cash, or
 - 11.4.3. electronic funds transfer into an account specified by Council.
- 11.5. The Monetary Contribution will be taken to have been made when:
 - 11.5.1. the Council receives the full amount of the Monetary Contribution in cash, or
 - 11.5.2. the Council receives the unendorsed bank cheque, or
 - 11.5.3. cleared electronic funds have been deposited into the bank account nominated by the Council.

12. Easement in gross

- 12.1. Within 1 month of the commencement of this Deed (subject to the Modification being approved first), the Developer will, at no cost to Council, register against the title to the Land an easement in gross, being an easement for drainage of water, over the Stormwater Pipeline Land on terms consistent with Schedule 4A, Part 7 of the Conveyancing Act to facilitate the construction and maintenance of the stormwater and drainage works involved in the Intersection Works.
- 12.2. If the Modification has not been approved by the date that this Deed commences, the Developer will, at no cost to Council, register against the title to the Land an easement in gross, being an easement for drainage of water, over the Stormwater Pipeline Land on terms consistent with Schedule 4A, Part 7 of the Conveyancing Act within 1 month of the Modification being approved.
- 12.3. The requirement to register the easement in gross under clause 12.1 or 12.2 (whichever the case may be) will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the easement.
- 12.4. The parties acknowledge and agree that the registration of the easement in gross under clause 12.1 facilitates the completion of the Wollombi Road Upgrade Works, which serves the public purpose of improving road condition, traffic flows and pedestrian amenity along Wollombi Road between Abbotsford St and West Ave, particularly to address the forecasted population growth in this area.
- 12.5. The Council will repair and maintain the stormwater and drainage works within the Stormwater Pipeline Land in the future, including after the completion of the Intersection Works.

Part 3 – Intersection Works

13. Intersection Works Control Group

- 13.1. Without limiting any of the rights or obligations of the Parties under this Deed, the Parties must cooperate with each other in carrying out their obligations under this Deed. To facilitate this cooperation, the Parties have agreed to establish the Intersection Works Control Group to implement this Deed.
- 13.2. Within 1 month of the approval of the Modification or commencement of this Deed whichever is later, the Intersection Works Control Group is to be established consisting of:
 - 13.2.1. the Project Supervisor;
 - 13.2.2. 1 representative of Council who is not the Project Supervisor; and
 - 13.2.3. 1 representative of the Developer.
- 13.3. The Parties agree that the Intersection Works Control Group have the following functions:
 - 13.3.1. approve the Detailed Design of the Intersection Works in accordance with the requirements of the Wollombi Road Upgrade Works, the Development Consent, and generally in accordance with the plan at Appendix C;
 - 13.3.2. consider, coordinate and approve as reasonably required, requests for access by the Council and any relevant third parties who require access to the Land to carry out the Intersection Works;
 - 13.3.3. receive updates from the Council and any third parties on the timing and scope of the Intersection Works;
- 13.4. The Intersection Works Control Group will:
 - 13.4.1. establish a charter detailing its functions and role in the design, assessment and construction of the Intersection Works under this Deed;
 - 13.4.2. determine the qualitative standard for the design and finishes of the Intersection Works (including the stormwater and drainage works over the Stormwater Pipeline Land) and advise the parties of any relevant standards that will apply to the Intersection Works, including:
 - (a) any relevant Australian standard; and
 - (b) any relevant design standards or guidelines and any other Council requirements or policies applicable to the Intersection Works; and
 - 13.4.3. meet at such times as are agreed between the representatives of the Intersection Works Control Group.
- 13.5. If the Intersection Works Control Group does not advise the Developer of the relevant standards under clause 13.4.2 in relation to the stormwater, and drainage works, the Developer must obtain the relevant standards from the Intersection Works Control Group.
- 13.6. For the avoidance of doubt, the function of the Intersection Works Control Group is not to grant any development consent, approve any modification application, issue any certificates under the Act or to provide any other statutory or regulatory approval in connection with the Development or the Intersection Works.
- 13.7. The Developer shall prepare and submit to the Intersection Works Control Group a detailed description including the draft plans and specifications of the stormwater and drainage works required within the Land included in the Intersection Works that are required under condition 20 of the Development Consent for approval prior to applying

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for a Construction Certificate for those works. The Developer is otherwise not obligated or responsible for preparing any plans, designs and specifications or other document for the Intersection Works for consideration by the Intersection Works Control Group. All other plans, designs, specifications and other documents for the Intersection Works are the responsibility of the Council to prepare for consideration by the Intersection Works Control Group.

- 13.8. Within 14 days of receiving the information from the Developer under clause 12.7, the Intersection Works Control Group may:
 - 13.8.1. approve, vary, or direct a variation to the information to ensure compliance with the relevant standards under clause 13.4.2 ; and
 - 13.8.2. the Developer must comply with any direction given by the Intersection Works Control Group under clause 13.8.1 unless it would cause a breach of the Development Consent or not comply with any Approval for the Development.
- 13.9. The Developer must apply for a Construction Certificate for the stormwater and drainage works within 14 days after the Intersection Works Control Group approves the detailed design for those works and must take all reasonable steps to obtain a Construction Certificate for those works in a timely manner.
- 13.10. The Council shall prepare and submit to the Intersection Works Control Group a detailed description including the plans and specifications for the Intersection Works for approval within 14 days of the Intersection Works Control Group approving the information provided by the Developer under clause 13.7.
- 13.11. The Intersection Works Control Group will promptly (and in any event within 28 days of Council submitting the information under clause 13.10) notify the Parties about whether or not the design drawings and description of the Intersection Works is satisfactory. If the design or description is not satisfactory, then the Intersection Works Control Group will identify the further information, or modifications (as the case may be) that are required. The Council must promptly amend the proposed design to take into account the comments made by the Intersection Works Control Group.
- 13.12. If the Intersection Works Control Group cannot resolve a matter, either party may refer the matter to dispute resolution under Part 4 of this agreement.
- 13.13. The Project Supervisor will oversee the Detailed Design and advise the Intersection Works Control Group when it considers that the Intersection Works are complete.
- 13.14. The Intersection Works Control Group will notify the Parties when it considers the Intersection Works are complete.
- 13.15. The Parties expressly agree and acknowledge that any failure to identify a defect, error and omission in the Detailed Design will not be construed as or amount to an acceptance by either party of that defect, error or omission.

14. Completion of the Intersection Works

- 14.1. The Council shall carry out the Intersection Works by itself or by a contractor in accordance with the plans and Detailed Design agreed for those works under clause 13.3.1 and in accordance with any relevant approval

;

- 14.2. The Parties agree and acknowledge that:
- 14.2.1. the stormwater and drainage works included in the Intersection Works cannot be commenced until the Developer has obtained a Construction Certificate for those works and the easement in gross has been registered in accordance with clause 12 of this Deed; and
 - 14.2.2. the Developer must, at its cost, obtain all relevant approvals, certificates and consents for the stormwater and drainage works that form part of the Intersection Works, whether from the Council or any other relevant government agency.
- 14.3. The Council will use its best endeavours to complete the Intersection Works as modified by the Modification by 31 December 2025, or other date as determined by the Intersection Works Control Group (“**the Works Completion Date**”), subject to the following:
- 14.3.1. the Developer obtains all Construction Certificates required for the stormwater and drainage works included in the Intersection Works by 31 December 2024; and
 - 14.3.2. the easement in gross is registered in accordance with clause 12 of this Deed.
- 14.4. If the Council does not complete the Intersection Works by the Works Completion Date then the parties are to meet within 28 days of the Works Completion Date and provided the Council gives evidence that meets the reasonable expectation of the Developer, that the Council has used its best endeavours to complete the Intersection Works by the Works Completion Date, then the parties will review this Deed in accordance with clause 26 to implement a new Works Completion Date.
- 14.5. For the avoidance of doubt, the Council is not taken to have breached this Deed if the Intersection Works are not completed by the Works Completion Date provided the Council has used its best endeavours to complete the Intersection Works by this date.
- 14.6. The parties agree and acknowledge that access to the Land during the Intersection Works by the Council and third parties contracted by Council is to be coordinated by the Intersection Works Control Group. Access to the Land for the Developer will be maintained at all times provided that if access is required to be restricted or altered during the construction of the Intersection Works, the Council will notify and provide detail of the restriction or alteration to access to the Developer for approval in advance which may not be unreasonably withheld.
- 14.7. The Council will notify the Developer that the Intersection Works are complete within 5 days of the completion of the Intersection Works.

Part 4 – Dispute Resolution

15 Reference to dispute

- 15.1 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 Part 4 of this Deed, except where a party seeks urgent interlocutory relief.
- 15.2 Part 4 of this Deed does not affect the Developer’s ability to commence and/or conduct any Class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) and, in doing so, rely on this Deed as a matter for consideration under section

4.15(1)(a)(iiia) of the Act.

- 15.3 Subject to any interlocutory order obtained under clause 15.1, the referral to or undertaking of a dispute resolution process under Part 4 of this Deed does not suspend the parties' obligations under this Deed.

16 Dispute Resolution – mediation

- 16.1 This clause applies to any Dispute arising in connection with this Deed.
- 16.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 16.3 If a notice is given under clause 16.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 16.4 If the Dispute is not resolved within a further 14 days, the Parties are to mediate the Dispute
- 16.5 The mediator will be agreed between the Parties or, failing agreement, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator after 28 days have passed since receiving the notice under clause 16.2.
- 16.6 The mediator appointed pursuant to this clause 16 must:
- 16.6.1 have reasonable qualifications and practical experience in the area of the dispute, and
 - 16.6.2 have no interest or duty which conflicts or may conflict with his or her function as a mediator with he or she being required to fully disclose any such interest or duty before his or her appointment.
- 16.7 The parties agree to be bound by any mediation settlement.
- 16.8 If the Dispute is not resolved by mediation within a further twenty-eight (28) days after a request for a mediator to be appointed, or such longer period as may be agreed by the Parties to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 16.9 Each Party is to bear its own professional costs and expert costs incurred in connection with the mediation.
- 16.10 The Parties are to share equally the costs of the mediator, and any mediation venue, 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.

17 Arbitration Excluded

- 17.1 The arbitration of any Dispute between the Parties arising under, or in connection with, this Deed is expressly excluded.

Part 5 – Enforcement and Security

18 Security

Not used.

19 Replacement Security

Not used.

20 Breach of obligations

- 20.1 If a Party reasonably considers that the other Party is in breach of any obligation under this Deed, it may give a written notice to the other Party:
- 20.1.1 specifying the nature and extent of the breach,
 - 20.1.2 requiring the other Party to:
 - a) rectify the breach if it reasonably considers it is capable of rectification, or
 - b) pay compensation to the reasonable satisfaction of the Party giving the notice in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification, and
 - 20.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 20.2 If the Developer fails to comply with a notice referred to in clause 20.1, the Council may, without further notice to the Developer, call-up the Security provided under this Deed and apply it to remedy the breach.
- 20.3 Any costs incurred by the Party giving the notice in remedying a breach in accordance with clause 20.1 may be recovered by the Party giving the notice by either or a combination of the following means:
- 20.3.1 by calling-up and applying the Security provided under this Deed, or
 - 20.3.2 as a debt due in a court of competent jurisdiction.
- 20.4 For the purpose of clause 20.3, the costs of the Party giving the notice in remedying a breach the subject of a notice given under clause 20.1 include, but are not limited to:
- 20.4.1 the costs of the Party's servants, agents and contractors reasonably incurred for that purpose,
 - 20.4.2 all fees and charges necessarily or reasonably incurred by the Party in remedying the breach, and
 - 20.4.3 all legal costs and expenses reasonably incurred by the Party, by reason of the breach.
- 20.5 Nothing in this clause 20 prevents the Party giving the notice from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the other Party, including but not limited to seeking relief in an appropriate court.

21 Enforcement in a court of competent jurisdiction

- 21.1 Subject only to Part 4 of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 21.2 For the avoidance of doubt, subject to Part 4 of this Deed, nothing in this Deed

prevents:

- 21.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 21.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

22 Restriction on the issue of certificates

- 22.1 In accordance with section 6.15 of the Act, a Subdivision Certificate for the 14th Residential Lot in the Development must not be issued unless the Monetary Contribution has been paid in accordance with this Deed, subject to the Intersection Works being completed.

Part 6 – Registration & Restriction on Dealings

23 Registration of this Deed

- 23.1 The Developer agrees to procure registration of this Deed under the *Real Property Act 1900* (NSW) for the purposes of s7.6(1) of the Act.
- 23.2 On the date this Deed commences, the Developer is to deliver to the Council in registrable form:
 - 23.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land and any other person required by the Registrar-General to execute such instrument, and
 - 23.2.2 the written irrevocable consent of each person required to register this Deed with NSW Land Registry Services.
- 23.3 The Developer at its cost is to:
 - 23.3.1 do all things as are reasonably necessary to procure registration of this Deed with the Registrar-General as soon as reasonably practicable after the commencement of this Deed and, in any event, no later than 14 days after that date, and
 - 23.3.2 provide the Council with evidence of registration within 7 days of being notified by the NSW Land Registry Services of such registration.
- 23.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land (and any part of it) if:
 - 23.4.1 the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council, or
 - 23.4.2 this Deed is terminated or otherwise comes to an end for any other reason and the Developer is not otherwise in a material unremedied default of any of the obligations under this Deed.

24 Restriction on dealings

- 24.1 The Developer is not to:
 - 24.1.1 sell or transfer the Land, or
 - 24.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

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to any person unless:

- 24.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part of the Land is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, acting reasonably, or
 - 24.1.4 this Deed is registered in accordance with clause 23, and
 - 24.1.5 the person to whom the Land or part of the Land is to be sold has confirmed in writing to Council that it is aware of its obligations under this Deed, and
 - 24.1.6 the Developer is not in ongoing material breach of this Deed, and
 - 24.1.7 the Council otherwise consents to the transfer, assignment or novation, with such consent not to be unreasonably withheld.
- 24.2 For the avoidance of doubt, the Developer will not be taken to be in breach of this Deed under clause 24.1.6 if it breaches an obligation under this Deed and subsequently satisfies that obligation otherwise in accordance with this Deed and to the satisfaction of Council, acting reasonably.
- 24.3 The Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 24.1.

25 Indemnity

- 25.1 Each party indemnifies the other party from and against all Claims that may be sustained, suffered, recovered or made against the other party arising in connection with the performance of the indemnifying party's obligations under this Deed except if, and to the extent that, the Claim arises because of the other party's negligence, fraud or wilful misconduct or default.
- 25.2 The indemnity under this clause covers:
- 25.2.1 any loss, destruction or damage to any real or personal property because of the Intersection Works,
 - 25.2.2 death or injury to any person, and/or
 - 25.2.3 a breach or alleged breach of any duty of confidentiality.
- 25.3 The Developer agrees and acknowledges that Council is not liable for any Claim against or Damage incurred by the Developer because of any defect in the design of the stormwater and drainage works included in the Intersection Works.

Part 7 – Other Provisions

26 Review of this Deed

- 26.1 This Deed may be reviewed or modified by agreement between the Parties using their best endeavours and acting in good faith.
- 26.2 No modification or review of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.
- 26.3 A Party is not in breach of this Deed if it does not agree to an amendment to this Deed requested by another Party in, or as a consequence of, a review of this Deed.

27 Confidentiality

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- 27.1 The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.
- 27.2 The Parties acknowledge that:
- 27.2.1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and
- 27.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed.
- 27.3 Subject to clauses 27.5 and 27.6, each Party agrees:
- 27.3.1 to not publicly announce or disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and
- 27.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access,
- 27.3.3 to promptly notify the other Parties if it becomes aware that the law might require the information to be disclosed,
- 27.3.4 to ensure that only authorised persons have access to the information and that it is stored safely and securely.
- 27.4 The Parties must immediately notify each other if they become aware of a breach of confidentiality of Confidential Information relating to this Deed.
- 27.5 A Party may disclose Confidential Information in the following circumstances:
- 27.5.1 in order to comply with the Law, or
- 27.5.2 in order to comply with the Listing Rules of the Australian Securities Exchange Limited,
- 27.5.3 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential, or
- 27.5.4 as required under this Deed.
- 27.6 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

28 Ownership of Intellectual Property

- 28.1 Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.
- 28.2 The Developer grants to the Council a royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence for all Background Intellectual Property it owns, including the right to sub-licence it provided the Developer is able to do so, to the extent necessary, for the purpose of completing the Intersection Works.
- 28.3 The Developer is to use its best endeavours to assist the Council to obtain a licence on the same terms from each subcontractor originally engaged in relation to the Intersection Works, and the Developer acknowledges and agrees that Council may engage any such subcontractor to complete the Intersection Works.

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- 28.4 The Developer is to use its best endeavours to assist the Council to obtain a licence to use all Third Party Intellectual Property on the best commercial terms reasonably available.
- 28.5 The Developer warrants that it has the authority to grant the licence in clause 28.2.
- 28.6 The Developer does not give any warranty as to the quality, accuracy or suitability of any Background Intellectual Property created by a third party or Third Party Intellectual Property and the Council releases the Developer from any Costs, Claims or damages that arises from use or reliance by the Council on any Background Intellectual Property created by a third party or Third Party Intellectual Property.
- 28.7 The Developer agrees and acknowledges that:
- 28.7.1 the Council may enter into a contractual relationship with the owner of any Third Party Intellectual Property concerning its reliance on the Third Party Intellectual Property for the Intersection Works; and
- 28.7.2 the Developer will not oppose the Council entering into a contractual relationship with the owner of any Third Party Intellectual Property for that purpose.

29 Technical Data

- 29.1 The Developer is to give the Council any Technical Data in its possession that the Council considers reasonably necessary to complete the Wollombi Road Upgrade Works or Intersection Works.
- 29.2 The Council may provide Technical Data to any person for a purpose relating to the Wollombi Road Upgrade Works or Intersection Works.
- 29.3 The Developer does not give any warranty as to the quality, accuracy or suitability of any Technical Data created by a third party that is provided by the Developer and the Council releases the Developer from any Costs, Claims or damages that arises from use or reliance by the Council on any Technical Data created by a Third Party that is provided by the Developer.
- 29.4 The Developer agrees and acknowledges that:
- 29.4.1 the Council may enter into a contractual relationship with the owner or creator of any Technical Data concerning its reliance on the Technical Data for the Intersection Works; and
- 29.4.2 the Developer will not oppose the Council entering into a contractual relationship with a third party that creates any Technical Data for the Intersection Works.

30 Moral rights

- 30.1 The Developer is not to enforce any moral rights against the Council relating to the Wollombi Road Upgrade Works.
- 30.2 The Developer is to use its best endeavours to ensure that no other person enforces any moral rights against the Council relating to the Wollombi Road Upgrade Works.

31 Force Majeure

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- 31.1 If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:
- 29.1.1 full details of the event,
 - 29.1.2 an estimate of its duration,
 - 29.1.3 the obligations under this Deed it affects and how much it will affect them,
 - 29.1.4 the steps either taken or planned to manage its effects.
- 31.2 A Party's obligations under this Deed are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.
- 31.3 A party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.

32 Notices

- 32.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 32.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 32.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 32.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 32.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 32.3.1 delivered, when it is left at the relevant address,
 - 32.3.2 sent by post, 2 business days after it is posted, or
 - 32.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 32.4 If any notice, consent, information, application or request is made on a day that is not a business day, or after 5pm on a business day, it is to be treated as having been given or made at the beginning of the next business day.

33 Approvals and Consent

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

34 Costs

- 34.1 Each party will pay their own costs in relation to this planning agreement.

35 Entire Deed

- 35.1 This Deed contains everything to which the Parties have agreed in relation to the

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matters it deals with.

- 35.2 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 Deed was executed, except as permitted by law.

36 Further Acts

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

37 Notations on section 10.7(5) Planning Certificates

- 37.1 The Developer acknowledges that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard.
- 37.2 The Council agrees to remove any such notation within 28 days of payment of the Monetary Contribution.

38 Governing Law and Jurisdiction

- 38.1 This Deed is governed by the law of New South Wales.
- 38.2 The Parties submit to the non-exclusive jurisdiction of the courts and courts of appeal of New South Wales.
- 38.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

39 No Fetter

- 39.1 Nothing in this Deed shall be construed as requiring 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 (all referred to in this Deed as a “Discretion”).
- 39.2 If, contrary to the operation of this clause 39, any provisions of this Deed are held by a court of competent jurisdiction to constitute a fetter or any discretion, the Parties agree:
- 39.2.1 they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- 39.2.2 in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Deed has full force and effect, and
- 39.2.3 to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Deed that is to be held to be a fetter to the extent that is possible having regard to the relevant court judgment.

40 Illegality

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- 40.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

41 Severability

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

42 Amendment

- 42.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

43 Waiver

- 43.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 43.2 A waiver by a Party is only effective if it:
- 43.2.1 is in writing,
 - 43.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 43.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver, and
 - 43.2.4 is signed and dated by the Party giving the waiver.
- 43.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 43.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach of this Deed, or as an implied waiver of that obligation or breach in relation to any other occasion.
- 43.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

44 Counterparts

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

45 GST

- 45.1 Words and expressions which are not defined in this Deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

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- 45.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are exclusive of GST.
- 45.3 If GST is imposed on any supply made under or in accordance with this Deed, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.
- 45.4 This clause continues to apply after expiration or termination of this Deed.

46 Explanatory Note

- 46.1 Appendix A contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 46.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1 – Section 7.4(1) of the Act

(Clause 2.1)

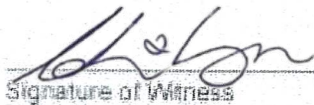
Subject and subsection of the Act	Planning Agreement
Description of the land to which the planning agreement applies – section 7.4(3)(a)	See definition of “Land” in clause 1.1.
<p>Development Application – section 7.4(1)</p> <p>The Developer has:</p> <ul style="list-style-type: none"> • Sought a change to an environmental planning instrument? • Made, or proposes to make, a Development Application? • Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies? 	<ul style="list-style-type: none"> • No • Yes • No
Description of the proposed change to the environmental planning instrument or development – section 7.4(3)(b)	See definitions of “Development” and “Development Consent” in clause 1.1.
The scope, timing and manner of delivery of the contributions required by the Planning Agreement – section 7.4(3)(c)	See Part 2.
Application of S7.11 – section 7.4(3)(d)	See clause 9.1.
Application of S7.12 – section 7.4(3)(d)	See clause 9.1.
Application of Division 7.1, Subdivision 4 – section 7.4(3)(d)	See clause 9.1.
Whether the Benefits under this Deed are to be taken into consideration in determining a Development Contribution under s7.11 – section 7.4(3)(e)	See clause 9.2.
Mechanism for dispute resolution – section 7.4(3)(f)	See Part 4.
Enforcement of the Planning Agreement – section 7.4(3)(g)	See Part 5.
Registration of the Planning Agreement – section 7.4(3)(g) and section 7.6	See clause 23.
No obligation to grant consent or exercise functions – section 7.4(9)	See clause 39.

Execution

Executed as a Deed

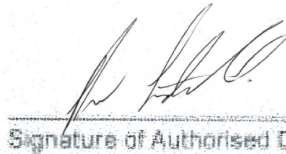
Dated: 3 September 2024

Executed for and on behalf of Cessnock City Council (ABN 60 919 148 928) by its authorised delegate in accordance with a resolution of the Council dated 19 June 2024:


Signature of Witness

Mrs Cherie Lorenzen

Name of Witness (print)

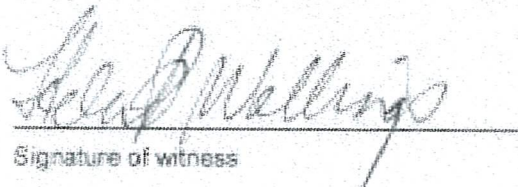

Signature of Authorised Delegate

Mr Kenneth Liddell, General Manager

Name and position of Authorised Delegate (print)

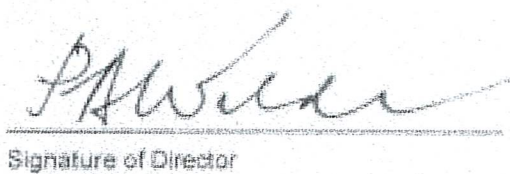
(in accordance with section 377 of the Local Government Act 1993)

Executed by Henry Kendall Limestone Creek Pty Ltd (ACN 000 630 222) in accordance with section 127 of the Corporations Act 2001 (Cth):


Signature of witness

HELEN B. WELLINGS

Name of witness (print)


Signature of Director

PATRICK A WILDE

Name of Director (print)

1505/61 MACQUARIE ST., SYDNEY
Address of witness

Appendix A – Explanatory Note

Explanatory Note

(Section 205 of the *Environmental Planning and Assessment Regulation 2021*)

Exhibition of the draft Voluntary Planning Agreement

Purpose of the Explanatory Note

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**”).

Section 205 of the *Environmental Planning and Assessment Regulation 2021* (“**the EPA Regulation**”) requires that an Explanatory Note must be prepared to accompany a planning agreement.

The Explanatory Note must address the requirements of section 205(1)(a)-(b) of the EPA Regulation. This Explanatory Note has been prepared to address these requirements.

The Planning Agreement

Parties

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

Henry Kendall Limestone Creek Pty Limited ABN 88 000 630 222 of 5 Amy Close, North Wyong 2259 (**Developer**)

Description of the Land

This planning agreement applies to Lot 1 DP 327580, known as 254 Wollombi Road, Bellbird North (“**the Land**”).

Description of Proposed Development

The Planning Agreement relates to the proposed development of the Land, which includes subdivision of land into 30 lots and 1 residue lot. The development of the Land is proposed to be part of a larger residential subdivision development, which will require additional development consent(s).

Objectives of the Planning Agreement

The objective of the Planning Agreement is to allow the Developer to provide a monetary contribution to Council in lieu of constructing an entrance into the development in accordance with conditions 8 and 11 of the development consent for DA 8/2014/628/2 dated 25 May 2021 and modified on 22 November 2022 (“**the Development Consent**”). Instead, Council will construct the entrance to the Development as part of Stage 1 of Council’s upgrade to Wollombi Road, including the associated stormwater and drainage works (“**the Intersection Works**”). The Developer will register an easement over the relevant part of the Land to allow the Council to complete the stormwater and drainage works included in the Intersection Works.

Nature of the Planning Agreement

The Planning Agreement is a voluntary agreement under which a monetary contribution in the amount of \$1,713,000 (“**the Monetary Contribution**”) is to be made to Council by the Developer in lieu of constructing the entrance into the development. The Developer will also register at the

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Developer's expense the required easement over the relevant part of the Land to allow the Council to complete the stormwater and drainage works included in the Intersection Works.

The Development Consent is required to be modified to provide that the Developer will be required to comply with this Deed instead of completing the works required under conditions 8 and 11 of the Development Consent. The parties' obligations under the Planning Agreement do not take effect unless and until the Development Consent is modified to this effect.

The easement required under the Planning Agreement must be registered by the Developer within 1 month of the commencement of the Planning Agreement (subject to the modification application being first approved). If the modification application is not approved by the time the Planning Agreement commences, the easement must be registered within 1 month of the modification application being approved. The Monetary Contribution will be payable to Council on the earlier of the following, subject to the Intersection Works being completed by this time:

- on 30 June 2028, or
- on the issue of a Subdivision Certificate for the 14th residential lot in the Development, or
- on the date that is 4 months after the development application for the next stage of the larger residential subdivision is approved.

If the Intersection Works are not completed when the payment of the Monetary Contribution is due, the payment will be due within 1 month of the Intersection Works being completed.

The Monetary Contribution will be indexed in accordance with increases in the consumer price index from the date the Planning Agreement is executed by all parties, to the date of payment.

Effect of the Planning Agreement

Council is completing works to upgrade Wollombi Road, which include the area of the road that is the subject of conditions 8 and 11 of the Development Consent. The upgrade works being completed by Council are different to those required to be completed by the Developer under the Development Consent.

In general terms, the Planning Agreement allows the Developer to pay the Monetary Contribution instead of completing the works required by conditions 8 and 11 of the Development Consent, so that Council is not required to demolish works undertaken by the Developer to complete the works to upgrade Wollombi Road.

The Planning Agreement provides for the enforcement of the Planning Agreement by a suitable means if there is a breach by the Developer. A subdivision certificate for the 14th residential lot in the Development cannot lawfully be issued if the Monetary Contribution has not been paid (provided the Intersection Works have been completed by this time).

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement – or any draft planning agreement – that a developer has entered into or offered to enter into (respectively).

A planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement promotes the objects of the Act and the public interest

The Planning Agreement promotes the following objectives of the Act:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies (section 1.3(c)),
- to promote good design and amenity of the built environment (section 1.3(g)), and
- to provide increased opportunity for community participation in environmental planning and assessment of the Development (section 1.3(j)).

Henry Kendall Entrance Planning Agreement

Cessnock City Council

Henry Kendall Limestone Creek Pty Limited

The Planning Agreement promotes the public interest by allowing the Developer to make a monetary contribution towards works that are required to upgrade Wollombi Road (a public road), and associated works. The Planning Agreement prevents unnecessary works being undertaken on Wollombi Road under conditions 8 and 11 of the Development Consent, and allows Council to complete the upgrade to this road (which includes the Intersection Works) in accordance with reports and plans it has obtained.

The payment made by the Developer towards the upgrade works being completed by Council will have a positive impact on the public and will provide for the social and economic welfare of the community particularly by improving traffic flows and pedestrian amenity in an area that is expected to undergo significant population growth.

The Monetary Contribution and registration of an easement in gross under the Planning Agreement are additional to any normal contribution that will ordinarily need to be made in relation to the development.

Any proposed contribution under the Planning Agreement is consistent with the Council's strategic plans land policy documents.

The Planning Purposes Served by the Planning Agreement

The Planning Agreement facilitates the implementation of Council's strategic plans and will contribute to the works being completed by Council to upgrade Wollombi Road in the locality of the Development.

The Monetary Contribution and registered easement required by the Planning Agreement will facilitate works that improve public amenity.

Councils – How the Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993

The Planning Agreement promotes the principles for local government by:

- keeping the local and wider community informed about its activities,
- providing strong and effective representation, leadership, planning and decision-making,
- carrying out functions in a way that provides the best possible value for residents and ratepayers,
- working with others to secure appropriate services for local community needs, and
- acting fairly, ethically and without bias in the interests of the local community.

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

Yes. The Planning Agreement will enable Council to carry out the planned upgrade works to Wollombi Road and improve the intersection to the Development in an orderly manner.

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 that the Monetary Contribution be paid before the issue of a subdivision certificate for the 14th residential lot in the Development (provided the Intersection Works are completed by this time).

Status of the Explanatory Note

This Explanatory Note has been prepared jointly between the parties.

The parties have agreed that this Explanatory Note is not to be used to assist in construing the Planning Agreement.

