

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning (ABN 38 755 709 681)

Winton Partners Bellbird Pty Limited (ACN 156 002 185)

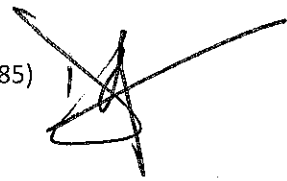
A handwritten signature in black ink, consisting of a stylized 'W' or 'V' shape with a long horizontal stroke extending to the right.

Table of contents

1.	Definitions and interpretation	5
1.1	Definitions.....	5
1.2	Interpretation	8
2.	Operation and application of this deed	9
2.1	Operation.....	9
2.2	Planning agreement under the Act.....	9
2.3	Application.....	9
3.	Application of sections 94, 94A and 94EF of the Act	9
4.	Development Contribution.....	9
4.1	Developer to provide Development Contribution.....	9
4.2	Special Infrastructure Contribution	9
4.3	Acknowledgement.....	10
5.	Interest.....	10
5.1	Interest for late payment.....	10
6.	Enforcement	10
6.1	Developer to provide Security	10
7.	Registration	10
7.1	Registration of deed	10
7.2	Evidence of registration.....	11
7.3	Release and discharge of deed	11
7.4	Developer's interest in Land	11
8.	Dispute Resolution.....	12
8.1	Not commence	12
8.2	Written notice of dispute	12
8.3	Attempt to resolve.....	12
8.4	Mediation	12
8.5	Court proceedings	12
8.6	Not use information.....	12
8.7	No prejudice	12
9.	GST.....	13
9.1	Definitions.....	13
9.2	Intention of the parties.....	13
9.3	Reimbursement	13
9.4	Consideration GST exclusive.....	13
9.5	Additional Amounts for GST	13
9.6	Non monetary consideration.....	13
9.7	Assumptions	13
9.8	No merger.....	13
10.	Assignment and transfer	14
10.1	Right to assign or novate	14
10.2	Right to transfer Land	14
10.3	Replacement Security	15
11.	Capacity.....	15

11.1	General warranties	15
11.2	Power of attorney	15
12.	Reporting requirement.....	15
13.	General Provisions	16
13.1	Entire deed	16
13.2	Variation	16
13.3	Waiver.....	16
13.4	Further assurances	16
13.5	Time for doing acts	16
13.6	Governing law and jurisdiction	16
13.7	Severance.....	16
13.8	Preservation of existing rights	16
13.9	No merger.....	17
13.10	Counterparts.....	17
13.11	Relationship of parties.....	17
13.12	Good faith	17
13.13	No fetter	17
13.14	Explanatory note.....	17
13.15	Expenses and stamp duty	17
13.16	Notices	18
Schedule 1.....	19	
Schedule 2.....	21	
Schedule 3.....	22	
Schedule 4.....	23	
Schedule 5.....	25	
Annexure A	29	
Annexure B	31	
Annexure C	53	
Annexure D	77	



This deed is dated

Parties:

Minister

Minister for Planning (ABN 38 755 709 681)
of Level 15, 52 Martin Place, Sydney, New South Wales 2000

Developer

Winton Partners Bellbird Pty Limited (ACN 156 002 185)
of Level 2, 87-95 Pitt Street, Sydney, New South Wales 2000

Introduction:

- A** The Developer owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer has lodged a Development Application with the Consent Authority in order to carry out Stage 1 of the Development on the Land.
- D** Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 6.1 of the LEP.
- E** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.
- F** The Developer has included in the Developer's Offer separate contributions that it has made to contribute towards public State and regional infrastructure including:
 - (a) the payment of a monetary contribution towards upgrades and improvements to existing facilities, car parking, flood lighting and shelter seating at Carmichael Park: \$475.41 per lot (**Carmichael Park Contribution**) in accordance with Local Planning Agreement 1; and
 - (b) the setting aside of proposed Lot 2 in DP 1214999 as shown in Annexure A (Environmental Land) for environmental conservation purposes, including the registration of a positive covenant on the title of Environmental Land requiring the implementation of and compliance with a vegetation management plan approved by the Council (valued at \$3,051.74 per lot) (**Environmental Land Contribution**) in accordance with Local Planning Agreement 2.

These obligations have been secured by the Local Planning Agreements which are separate agreements between the Developer and the Council which will be registered on the title of the Land pursuant to the provisions of those agreements.

A handwritten signature in black ink, consisting of a stylized 'W' or 'V' shape with a horizontal line across the middle, and a vertical line extending upwards from the center.

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 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:

(a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2015.

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

Carmichael Park Contribution has the meaning given to it in paragraph (a) of Recital F of this deed.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

Council means Cessnock City Council.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2016 and each anniversary of 1 July 2016.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the year in which the relevant adjustment is made.

Developer means the Developer and the Landowner, unless otherwise specified in this deed.

Developer's Offer means the Developer's irrevocable offer to enter into a planning agreement with the Minister made on behalf of the Developer by its solicitors dated 21 December 2015.

Development means the residential subdivision of the Land into approximately 350 RA Lots, which includes the Stage 1 subdivision of part of the Land into approximately 175 RA Lots and residue allotment, associated drainage reserves, earthworks and infrastructure generally in accordance with Development Application 8/2014/762/1 which has been lodged with the Council as the Consent Authority.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions to be provided by the Developer in accordance with Schedule 4.

Environmental Land Contribution has the meaning given to it in paragraph (b) of Recital F of this deed.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

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

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

Insurance Bond means an irrevocable and unconditional undertaking:

(a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and who is subject to prudential supervision by Australian Prudential Regulatory Authority.

Land means the land described in Schedule 3.

LEP means *Cessnock Local Environmental Plan 2011*.

Local Planning Agreement 1 means the Planning Agreements entered into between the Council and the Developer and annexed to this deed as Annexure B.

Local Planning Agreement 2 means the Planning Agreements entered into between the Council and the Developer and annexed to this deed as Annexure C.

Local Planning Agreements means Local Planning Agreement 1 and Local Planning Agreement 2.

Minister means the Minister for Planning and includes the Secretary and the Secretary's nominee.

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

Phase means that phase of each Stage of the Development as generally indicated on the plan comprising Annexure B.

Planning Application means:

- (c) a Development Application; or
- (d) any other application required under the Act,

which seeks approval for the subdivision of the Land.

RA Lot means a lot created for the purpose of Residential Accommodation, excluding any Residue Lot and Super Lot, on the Land to which each application for a Subdivision Certificate relates.

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

Register means the Torrens title register maintained under the Real Property Act.

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

Residential Accommodation has the same meaning as in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this deed.

Residue Lot means a lot created by the subdivision of the Land which is to be the subject of further subdivision or which is to be amalgamated with adjoining land.

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 6.1 of the LEP.

Secretary means the Secretary of the Department of Planning and Environment.

Security means a Bank Guarantee or an Insurance Bond for the amount and on the terms specified in Schedule 5.

SIC Amount means the amount of a monetary contribution calculated in accordance with a Special Infrastructure Contribution that would be payable for a stage of the subdivision authorised by the relevant Development Consent had section 94EF of the Act not been excluded by this deed.

Stage means a stage of the Development comprising Stage 1 and Stage 2

Stage 1 means the areas marked as Phases 1 to 4 on the Staging Plan and comprises the creation of approximately 175 RA Lots.

Stage 2 means the area shaded yellow and marked "Future Phases" on the Staging Plan and comprises the creation of approximately 175 RA Lots.

Staging Plan means the "'North Ridge', Bellbird Heights – Overall Lot Layout'" dated October 2015 which is annexed to this deed as Annexure D.

Super Lot means a lot located on the Land which, following the registration of a Plan of Subdivision, is intended for further subdivision for residential housing.

Subdivision Certificate has the same meaning as in the Act.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

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**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing 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) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and

- (s) 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 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

3. Application of sections 94, 94A and 94EF of the Act

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

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to:

- (a) provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed; and
- (b) provide the Carmichael Park Contribution and the Environmental Land Contribution in accordance with the Local Planning Agreements.

4.2 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 94EE of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
 - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed for that stage, then:
 - (i) the Developer is required to pay only the SIC Amount; and

- (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clauses 4.1 and 5 and clauses 1(a) and 2(b) of Schedule 4.
- (c) Clause 4.2(b) applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (d) In this clause 4.2, a reference to the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for that stage calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 94EF of the Act had not been excluded by this deed and the Development Consent had been granted before the SIC Determination took effect.

4.3 Acknowledgement

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. Enforcement

6.1 Developer to provide Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:

- (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title;
 - (iv) the lodgement of this deed in a registrable form at the Land and Property Information for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the Land and Property Information.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of receipt of notice of registration of this deed.

7.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

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

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

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

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation 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.

9.3 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 must 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.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.4.

9.5 Additional Amounts for GST

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

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

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

This clause does not merge on completion or termination of this deed.

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 93H of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clauses 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

11. Capacity

11.1 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.

11.2 Power of attorney

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

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

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.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties.

13.3 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.

13.4 Further assurances

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

13.5 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 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 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.

13.7 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 deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.8 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.

13.9 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, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

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

13.11 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.

13.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

13.13 No fetter

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

13.14 Explanatory note

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

13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable 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 reasonable 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 Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or

- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

- (a) 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:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (A) before 5 pm on a Business Day, on that day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 93F of the Act (clause 2.2)

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
Planning instrument and/or development application – (section 93F(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 93F(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 8
Enforcement of this deed – (section 93F(3)(g))	See clause 6 and clause 7
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3(c) of Schedule 5)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause (b) of Schedule 4)

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6455

Email: Not applicable

Developer

Contact: The Directors

Address: Level 2, 87-95 Pitt Street
SYDNEY NSW 2000

Facsimile No: (02) 8229 0422

Email: jamie.boswell@wintonpartners.com.au

Schedule 3

Land (clause 1.1)

Part Lot 1 in DP 1164334 as generally identified on the draft Plan of Subdivision of Lot 1 in DP 1164334 attached as Annexure A to this deed and identified as proposed Lot 1.

Schedule 4

Development Contributions (clause 4)

1. Development Contributions

- (a) The Developer undertakes to provide:
- (i) the Development Contribution in the manner set out in the table below; and
 - (ii) provide the Carmichael Park Contribution and the Environmental Land Contribution in accordance with the Local Planning Agreements.

Development Contribution (DC)	Value	Timing	Planning Agreement	Party to whom DC will be provided
Contribution Amount - Cash contribution towards designated State public infrastructure	\$1,500.00 for each RA Lot	Pursuant to clause 2(b) of this Schedule 4	This deed	The Minister

- (b) The Minister and Developer acknowledge and agree that the sum of the Contribution Amounts and the contributions towards State and regional infrastructure under the Local Planning Agreements form the Development Contribution under this deed.

2. Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:

$$X = N \times \$1,500.00$$

"N" means the number of RA Lots

- (b) On each CPI Adjustment Date, each Contribution Amount is to be adjusted by multiplying the Contribution Amount payable (as previously adjusted, where relevant) by an amount equal to the Current CPI divided by the Base CPI.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee each Contribution Amount calculated in accordance with clause 2 of this Schedule 4 prior to the issue of the relevant Subdivision Certificate.
- (b) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for each Subdivision Certificate.

- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act.

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Security – Stage 1

- (a) At the time the Developer signs this deed, the Developer must provide the Security to the Minister having a face value of \$20,000 (**Initial Security**) in order to secure the payment of the Development Contribution.
- (b) Prior to the issue of a Construction Certificate in respect of each and every Phase of the Development as shown in the Staging Plan, the Developer undertakes to provide additional Security to the Minister for a face value of \$20,000 (**Staged Security**) in order to secure the payment of the Development Contribution as it relates to that Phase of the Development.
- (c) The parties agree that:
 - (i) from the date of receipt of the Staged Security in respect of a Phase until the date the Developer pays the Contribution Amount for that Phase, the Minister will be entitled to retain the Staged Security for that Phase subject to clause 5 below; and
 - (ii) from the date of execution of this deed until the Developer has provided the Development Contribution in full for both Stages 1 and 2, the Minister will be entitled to retain the Initial Security subject to clause 6 below.
- (d) If a Development Consent issued by the Consent Authority for any Phase of the Development does not require a Construction Certificate, in this clause any reference to 'Construction Certificate' is taken to mean 'Subdivision Certificate' as it applies to that Phase of the Development.

3. Security – Stage 2

- (a) Within 5 business days of the lodgement of the Development Application with the Consent Authority for Stage 2 of the Development, the Developer must provide the Minister with a staging plan which indicates whether Stage 2 of the Development will be carried out in single or multiple Phases.
- (b) If Stage 2 of the Development is to be carried out in:
 - (i) multiple Phases, clauses 2, 4 and 5 of this Schedule 5 applies; or

- (ii) a single Phase, the Developer undertakes to provide additional Security to the Minister for a face value of \$20,000 (**Stage 2 Security**) prior to the issue of a Construction Certificate or Subdivision Certificate (whichever is the earlier) in respect of Stage 2 in order to secure the payment of the Development Contribution as it relates to that Stage of the Development and clauses 4 and 5 of this Schedule apply.
- (c) The parties agree that the requirement to provide the Staged Security under clause 2(b) and the Stage 2 Security under clause 3(b) of this Schedule 5 is a restriction on the issue of the relevant Construction Certificate or Subdivision Certificate within the meaning of clause 146A of the Regulation.

4. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon any Security provided in accordance with this deed where the Developer has failed to pay a Contribution Amount to which the Security relates on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon a Security; and
 - (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 4(b) of this Schedule 5;

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clauses 5 and 6 of this Schedule, the Minister is in possession of Security for a face value equivalent to the relevant Security required to be provided in accordance with clauses 2 and 3 of this deed.

5. Release of Security – Stages 1 and 2

- If:
- (a) the Developer paid the Contribution Amount for the relevant Phase or Stage and has satisfied all of its obligations under this deed secured by the Staged Security or Stage 2 Security for that Phase or Stage; and
 - (b) the whole of the monies secured by the Staged Security or Stage 2 Security have not been expended and the monies accounted for in accordance with clause 2 or clause 3 of this Schedule 5,

then the Minister will promptly return the Staged Security or Stage 2 Security as it relates to that Phase or Stage (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Staged Security or Stage 2 Security (as the case may be), to the Developer.

6. Release of Security – Initial Security

If:

- (a) the Developer paid the Development Contribution in full and has satisfied all of its obligations under this deed; and
- (b) the whole of the monies secured by the Initial Security has not been expended and the monies accounted for in accordance with clause 2 of Schedule 5,

then the Minister will promptly return the Initial Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Initial Security (as the case may be), to the Developer.

Execution page

Executed as a deed

Signed , sealed and delivered for and on
behalf of the **Minister for Planning ABN 38
755 709 681**, in the presence of:

.....
Signature of witness

.....
Signature of the Minister for Planning or
delegate

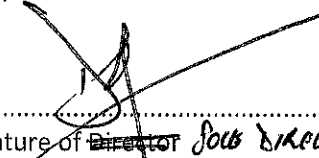
.....
Name of witness in full

.....
Name of Minister for Planning or delegate

.....
Address of witness

**Executed by Winton Partners Bellbird Pty
Limited (ACN 156 002 185)** in accordance
with section 127 of the Corporations Act
2001:

.....
Signature of ~~Director~~

 **Sole Director/Secretary**

.....
Signature of Director/Secretary

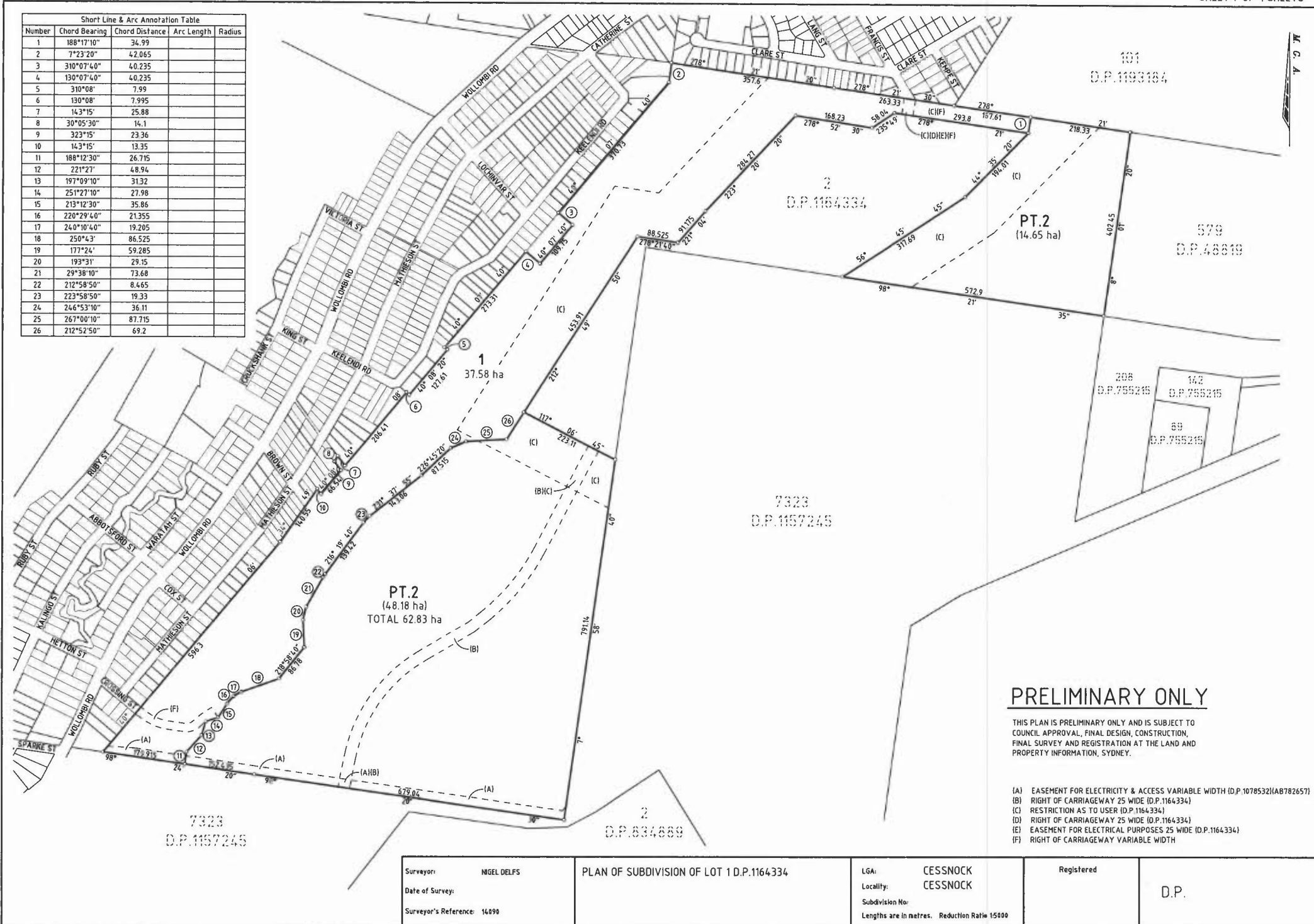
.....
Name of Director in full

 **DANIEL HARGRAVES**

.....
Name of Director/Secretary in full

Annexure A - Proposed Plan of Subdivision of Lot 1 in DP 1164334

Short Line & Arc Annotation Table				
Number	Chord Bearing	Chord Distance	Arc Length	Radius
1	188°17'10"	34.99		
2	7°23'20"	42.065		
3	310°07'40"	40.235		
4	130°07'40"	40.235		
5	310°08'	7.99		
6	130°08'	7.995		
7	143°15'	25.88		
8	30°05'30"	14.1		
9	323°15'	23.36		
10	143°15'	13.35		
11	188°12'30"	26.715		
12	221°27'	48.94		
13	197°09'10"	31.32		
14	251°27'10"	27.98		
15	213°12'30"	35.86		
16	220°29'40"	21.355		
17	240°10'40"	19.205		
18	250°43'	86.525		
19	177°24'	59.285		
20	193°31'	29.15		
21	29°38'10"	73.68		
22	212°58'50"	8.465		
23	223°58'50"	19.33		
24	246°53'10"	36.11		
25	267°00'10"	87.715		
26	212°52'50"	69.2		



PRELIMINARY ONLY

THIS PLAN IS PRELIMINARY ONLY AND IS SUBJECT TO COUNCIL APPROVAL, FINAL DESIGN, CONSTRUCTION, FINAL SURVEY AND REGISTRATION AT THE LAND AND PROPERTY INFORMATION, SYDNEY.

- (A) EASEMENT FOR ELECTRICITY & ACCESS VARIABLE WIDTH (D.P.1078532)(A8702657)
 (B) RIGHT OF CARRIAGEWAY 25 WIDE (D.P.1164334)
 (C) RESTRICTION AS TO USER (D.P.1164334)
 (D) RIGHT OF CARRIAGEWAY 25 WIDE (D.P.1164334)
 (E) EASEMENT FOR ELECTRICAL PURPOSES 25 WIDE (D.P.1164334)
 (F) RIGHT OF CARRIAGEWAY VARIABLE WIDTH

Surveyor: NGEL DELFS

Date of Survey:

Surveyor's Reference: 16090

PLAN OF SUBDIVISION OF LOT 1 D.P.1164334

LGA: CESSNOCK

Locality: CESSNOCK

Subdivision No:

Lengths are in metres. Reduction Ratio 1:5000

Registered

D.P.

Annexure B – Local Planning Agreement 1 (Carmichael Park)

Planning Agreement

This Agreement is dated

PARTIES: Winton Partners Bellbird Pty Limited (ABN 24 156 002 185) of Level 2, 95 Pitt Street, Sydney NSW 2000 ("**Developer**")

AND: Cessnock City Council (ABN 60 919 148 928) of Administrative Building, 62-78 Vincent Street, Cessnock NSW 2325 ("**Council**")

BACKGROUND:

- A. The Developer is the owner of the Land.
- B. The Developer has made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- C. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facility if the Development Consent was granted.
- D. The Instrument Change was published in the NSW government gazette number 2015 No.277 and took effect on 5 June 2015.

OPERATIVE PROVISIONS:

1. Definitions and Interpretations

- 1.1 The following definitions apply to this Agreement unless the context or subject matter otherwise indicates or requires:

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

Address means a Party's address set out in Schedule 1 of this Agreement.

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;

- (d) National Australia Bank Limited;
- (e) St George Bank Limited;
- (f) Westpac Banking Corporation; or
- (g) other financial institution approved by 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.

Cessnock LEP means the Cessnock Local Environmental Plan 2011.

Construction Certificate has the same meaning as in the Act.

Contribution Value means the amount specified in respect of a Public Facility in column 7 of Schedule 2.

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

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means the proposed development of the Land as a residential subdivision comprising approximately 305 individual residential lots to be carried out in Stages in accordance with any development consent granted for the Development (as modified from time to time).

Development Application means Development Application No.8/2014/762/1 for the Development.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of material public benefit made under and in accordance with this Agreement.

Fax Number means a party's facsimile number set out in Schedule 1 of this Agreement.

Final Lot means a lot (strata or otherwise) to be created on the subdivision or re subdivision of the Land for the purpose of separate occupation and disposition as a dwelling not being:

- (a) a lot created by subdivision or resubdivision of the Land that is to be dedicated or otherwise transferred to the Council; or
- (b) a lot created by subdivision or re-subdivision of the Land which is identified in any Development Consent for the relevant Stage of the Development as a lot that will be further subdivided or re-subdivided.

GST has the same meaning as in the GST Law.

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

Instrument Change means the notification or publication on the relevant NSW government website (under section 34 of the Act) of the Cessnock LEP which has the effect of zoning the Land in accordance with the proposed zoning plan set out in annexure A to the Agreement.

Instrument Change Application means a request or application made by the Developer to the Council or any other relevant Authority in respect of the Instrument Change.

Land means land comprised in Lot 1 in Deposited Plan 1164334

LPI means the Land and Property Information NSW or any similar department established from time to time.

Notified means the commencement of the Instrument Change in accordance with section 34(5) of the Act.

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

Public Facility means those facilities described in column 3 of Schedule 2 to this Agreement or determined by the Council in accordance with clause 6.3.

Register means the Torrens Title register maintained under the *Real Property Act 1900* (NSW).

Regulation means the *Environmental Planning and Assessment Regulation, 2000*.

Stage means, in relation to the Development, a stage in the carrying out of the Development created upon the subdivision or re-subdivision of all or part of the Land.

Subdivision Certificate has the same meaning as in the Act.

1.2 In the interpretation of this Agreement, 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 Agreement.

1.2.2 A reference in this Agreement 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 Agreement is not a business day, the act, matter or things must be done on the next business day.

1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

- 1.2.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.6 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 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.
- 1.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.12 A reference to this Agreement means this Agreement and includes the agreement recorded in this document.
- 1.2.13 A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- 1.2.14 Any schedule, appendices, annexures and attachments form part of this Agreement.

2. Planning Agreement under the Act

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

3. Application of this Agreement

This Agreement applies to:

- (a) the Land;
- (b) the Development; and
- (c) the Instrument Change.

4. Operation of this Agreement

This Agreement will commence from the date that is the later of:

4.1.1 the date this Agreement is signed by the last of the Parties; and

4.1.2 the date the Instrument Change is Notified.

5. Application of Development Contribution

5.1 Subject to this Agreement, the Developer is to make the Development Contribution in respect of the Development comprising payment of the monetary contributions specified in column 7 of Schedule 2 (designated "Contribution Value").

5.2 The Development Contribution referred to in clause 5.1 is to be made:

5.2.1 for the Public Facilities referred to in the column 3 of Schedule 2 (designated "Description"); and

5.2.2 at the time or times specified in the column 6 of Schedule 2 (designated "Timing").

5.3 A monetary contribution as referred to in clause 5.1 is to be indexed quarterly in accordance with the CPI from the date of this Agreement to the date of payment.

5.4 Any Development Contribution made in accordance with this Agreement will be made in full and final satisfaction of all costs and expenses required to be borne by the Developer or incidental to the provision of the Public Facilities to which the relevant Development Contribution relates.

6. Application of Development Contributions by the Council

6.1 Subject to this clause, the Council must apply a Development Contribution made by the Developer under this Agreement towards the Public Facilities for which it is made and at the locations, in the manner and to the standards required by or under this Agreement.

6.2 The Council is to make such Public Facilities available for the public purpose relating to that facility and in the manner that, in the Council's opinion, best meets the demand for the Public Facility created by the Development.

6.3 If the Council decides that a Public Facility for which a Development Contribution is made under this Agreement is no longer required, the Council must apply the Development Contribution toward the provision of other Public Facilities for a public purpose within the locality of Bellbird Heights.

6.4 Notwithstanding clause 5.2 of this Agreement and this clause 6, monetary contributions forming part of the Development Contributions made by the Developer may be pooled by the Council and applied progressively towards the provision of any of the Public Facilities listed in Schedule 2 or proposed by the Council under clause 6.3.

7. Monetary Contributions

- 7.1 A monetary contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council.
- 7.2 The Developer is to give the Council not less than two business days' written notice of:
- 7.2.1 its intention to pay a monetary contribution,
 - 7.2.2 the Public Facility to which the monetary contribution relates, and
 - 7.2.3 the amount proposed to be paid, including any indexation of the monetary contribution in accordance with this Agreement.
- 7.3 The Council may, but is not required to, issue a written notice to the Developer confirming the amount that must be paid including any indexation in accordance with this Agreement.

8 NOT USED

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

- 9.1 This Agreement excludes the application of sections 94 and 94A of the Act to the Development.
- 9.2 This Agreement does not exclude the application of section 94EF of the Act to the Development.

10. Enforcement

- 10.1 In order to secure the making of each Development Contribution, the Developer has agreed to provide security in the form of a Bank Guarantee.
- 10.2 Prior to the stage 1 construction certificate being issued, the Developer will provide security to the Council in the form of the Bank Guarantee for a face value equivalent to \$20,000.00
- 10.3 From the date of execution of this Agreement until the date that the Developer has provided all the Development Contributions in full for a stage, the Council will be entitled to retain the Bank Guarantee.
- 10.4 The Council may call upon the Bank Guarantee where:
- 10.4.1 the Developer has failed to make a Development Contribution on or before the relevant date for provision of the relevant Development Contributions under this Agreement; or
 - 10.4.2 the Developer has failed to ensure that at all times the value of the security held by the Council is for a face value equivalent to \$20,000.00.

and retain and apply such monies towards the costs and expenses incurred by the Council in rectifying any default by the Developer under this Agreement.

- 10.5 Prior to calling upon the Bank Guarantee the Council must give the Developer not less than 10

Business Days prior written notice.

10.6 If:

10.6.1 the Council calls upon the Bank Guarantee; and

10.6.2 applies all or part of such monies towards the costs and expenses incurred by the Council in rectifying any default by the Developer under this Agreement; and

10.6.3 has notified the Developer of the call upon the Bank Guarantee in accordance with clause 10.5.

then the Developer must provide to the Council a replacement Bank Guarantee to ensure that at all times until the date that the Developer has provided all Development Contributions in full, the Council is in possession of the Bank Guarantee for a face value equivalent to \$20,000.00

10.7 If:

10.7.1 the Developer has satisfied all of its obligations under this Agreement secured by the Bank Guarantee; and

10.7.2 the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with this clause 10.

then the Council will promptly (and by later than 10 business days) return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

10.8 Nothing in clause 10 prevents or restricts the Council from taking any enforcement action in relation to:

10.8.1 any obligation of the Developer under this Agreement; or

10.8.2 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 Agreement,

that is not or cannot be satisfied by calling on a Bank Guarantee.

Construction Certificate

10.9 For the purposes of section 109F(1) of the Act and clause 146A of the Regulation, the following requirements under this Agreement must be satisfied prior to the issue of any Construction Certificate for any part of the Development:

10.9.1 Registration of this Agreement in accordance with clause 11 of this Agreement; and

10.9.2 Provision of a Bank Guarantee in accordance with this clause 10.

Subdivision Certificate

- 10.10 For the purposes of section 109J(1)(c1) of the Act, the requirement under and in accordance with this Agreement to provide Development Contributions for a Stage of the Development must be satisfied prior to the issue of any Subdivision Certificate for that Stage of the Development.
- 10.11 The Developer must only seek and obtain any Subdivision Certificate for that Stage of the Development from the Council.
- 10.12 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- 10.13 For the avoidance of doubt, nothing in this Agreement prevents:
 - 10.13.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
 - 10.13.2 the Council from exercising any function under the Act or any other act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11. Registration of this Agreement

- 11.1 The Developer represents and warrants to the Council that on the date of this Agreement it is the registered proprietor of the Land.
- 11.2 The Developer agrees to procure registration of this Agreement on the relevant folios of the Register pertaining to the Land as soon as practicable following the commencement of this Agreement in accordance with clause 4. .
- 11.3 The Developer will at its own expense, promptly after the execution of this Agreement, take all practical steps and otherwise do anything that the Council reasonably requires to procure:
 - 11.3.1 the consent of each person who has an estate or interest in the Land registered under the *NSW Real Property Act 1900* or each person who is seized or possessed of an estate or interest in the Land;
 - 11.3.2 the execution of any documents; and
 - 11.3.3 the production of the relevant duplicate certificates of title,to enable the registration of this agreement in accordance with clause 11.2.
- 11.4 The Developer at its own expense will take all practical steps and otherwise do anything that the Council requires:
 - 11.4.1 to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement is executed but in any event, no later than 40 business days after that date;

- 11.4.2 to procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration.
- 11.5 The Council agrees that on payment of the required Development Contribution for any part of the Land, Council will promptly provide its release and discharge of this agreement from that part of the land concurrently with the release of the Subdivision Certificate for the stage, all notation of the registration of this Agreement shall be removed at the Developer's cost from the title to each Final Lot created by the plan of subdivision.
- 11.6 The Developer acknowledges and agrees that:
- 11.6.1 when this Agreement is executed by the Developer, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* and consequently the Council will have a sufficient interest in the Land in respect of which to lodge with the LPI a caveat notifying that interest
- 11.6.2 it will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration for any dealing or plan other than a transfer.
- 11.7 The Council must, at the Developer's cost, register at the LPI a withdrawal of any caveat in respect of the Land within 5 business days after the Developer complies with clause 11.2 and must not lodge any other caveats on the titles to any of the Land, providing the withdrawal of the caveat will only apply in respect of such parts of the Land in respect of which registration of this Agreement is procured.
- 11.8 If the Developer requests a release and discharge of this Agreement from the title to any part of the Land as part of or following any subdivision, the Council must promptly provide that release and discharge within 10 Business Days regardless of whether the Developer's obligations under this Agreement in respect of that part of the Land have been satisfied. However, the Council may require the Developer to provide an alternative form of security as is reasonably necessary to secure any outstanding obligations under this Agreement in respect of that part of the Land over which the release and discharge is given.

12. Assignment and Sale of Land

- 12.1 Subject to clause 12.2, the Developer must not sell, transfer, assign or novate, or similarly deal with its right, title or interest in the Land or any part of the Land, or allow any interest in the Land to arise or be varied without first obtaining the Council's consent (acting reasonably) to the sale, transfer, assignment, novation or other dealing.
- 12.2 The Developer may sell, transfer, assign or novate, or similarly deal with its right, title or interest in the Land, or any part of the Land, or allow any interest in the Land to arise or be varied, in each case, without Council's consent only if this Agreement is registered on the relevant folios of the Register pertaining to the Land in accordance with clause 11, and::
- (a) prior to any such sale, transfer, assignment or novation the Developer has given

Council no less than 14 days' notice in writing of the proposed Dealing; and

- (b) any default by the Developer under any provisions of this Agreement has been remedied by the Developer or waived by the Council on such conditions as the Council may determine, acting reasonably; and
- (c) the Developer delivers to the Council a novation deed 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 Agreement, unless no obligations under this agreement are to be noted.

12.3 Nothing in clause 12.1 or clause 12.2 prevents a transfer of Final Lots created from the Land by registration of a plan of subdivision at LPI if at the time of transfer, the Developer has complied with the relevant terms of this Agreement.

13. Review of this Agreement

13.1 This Agreement may be reviewed or modified in accordance with the Act and by the agreement of the Parties.

14. Dispute Resolution

14.1 Except as otherwise specifically provided by this Agreement, should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.

14.2 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is dispute, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.

14.3 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary 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.

15. Notices

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

15.1.1 delivered or posted to that Party at its Address set out in Schedule 1.

15.1.2 faxed to that Party at its Fax Number set out in Schedule 1.

15.1.3 emailed to that Party at its email address set out in Schedule 1.

15.2 If a Party gives the other Party not less than three business days' notice of a change of its Address, Fax Number or email address, any notice, consent, information, application or request

is only given or made by that other Party if it is delivered, posted or faxed to the latest Address, Fax Number or email address.

15.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

15.3.1 delivered, when it is left at the relevant Address;

15.3.2 sent by post, two business days after it is posted;

15.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct Fax Number, or

15.3.4 emailed, on the next business day after the email is sent to the correct email address provided no failed delivery notice has been received within that period.

15.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day this is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

16. Approvals and Consent

16.1 Except as otherwise set out in this Agreement as required by law, and subject to any statutory obligations, a Party may give or withhold an Approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

16.2 A Party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

17. Costs

17.1 The Developer will pay the Council's reasonable costs of preparing, negotiating, executing, stamping and registering this Agreement and any document related to this Agreement.

18. Entire Agreement

18.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.

18.2 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 Agreement was executed, except as permitted by law.

19. Further Acts

19.1 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 Agreement and all transactions incidental to it.

20. Governing Law and Jurisdiction

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

21. Joint and Individual Liability and Benefits

- 21.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

22. No Fetter

- 22.1 Nothing in this Agreement 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.

23. Representations and Warranties

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

24. Severability

- 24.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 24.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

25. Modification

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

26. Waiver

- 26.1 The fact that a Party fails to do, or delays in doing, something that the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by another Party.
- 26.2 A waiver by a Party is only effective if it is in writing.
- 26.3 A written 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 or as an implied waiver of that obligation or breach in relation to any other occasion.

27. GST

Note: Under *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2011*, development contributions required to be paid or made under planning agreements in accordance with the Act are not consideration for any supply made.

27.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

27.2 Subject to clause 27.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

27.3 Clause 27.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

27.4 No additional Consideration shall be payable by the Council under clause 27.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

27.5 If there are Taxable Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

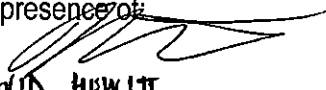
27.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

27.5.2 that any amounts payable by the Parties in accordance with clause 27.2 (as limited by clause 27.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

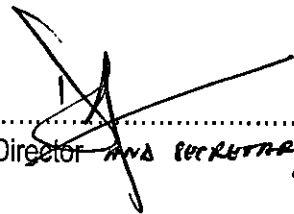
- 27.6 No payment of any amount pursuant to this clause 27, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 27.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 27.8 This clause continues to apply after expiration or termination of this Agreement.

EXECUTION

Executed by **WINTON PARTNERS
BELLBIRD PTY LIMITED**
(ABN 24 156 002 185) pursuant to
section 127 of the Corporations Act in
the presence of:


DAVID HEWITT

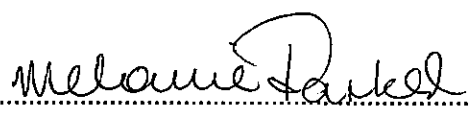
80 HEULEN CT, BRONTE

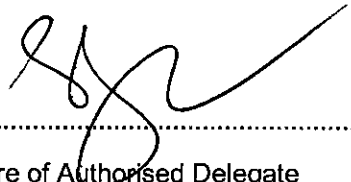

.....
Sd Director AND SECRETARY

.....
Director/Secretary

Executed by **CESSNOCK CITY COUNCIL**

Signed by)
as authorised delegate for **Cessnock City**)
Council ACN 60 919 148 928 in)
accordance with a resolution of the)
Council dated in the
presence of:


.....
Signature of Witness


.....
Signature of Authorised Delegate

.....
MELANIE PARKER
.....
Print name of Witness

Schedule 1

Contact for Notices

Developer:

Contact Officer: Winton Partners Bellbird Pty Limited, Level 2, 95 Pitt Street, Sydney NSW 2000

Telephone: (02) 9233 4902

Fax: (02) 8229 0422

Email: dan.hargraves@wintonpartners.com.au

Council:

Contact Officer: The General Manager

Telephone: (02) 4993 4100

Fax: (02) 4993 4200

Email: council@cessnock.nsw.gov.au

Schedule 2
Development Contributions Table

Part A – Land Dedication						
	Location	Description	Land Value (\$/Ha)	AF %	Timing	Contribution Value
A1		Provide open space – 0.5ha	\$500,000 Land Value		Prior to the issuing of a subdivision certificate for each Lot in the Development	\$250,000
Total contribution for Land Dedication						\$819.67 per Lot up to and including the 305th lot in the Development
Part B – City Wide Monetary Contributions						
	Location	Description	Est. Capital cost	AF %	Timing	Contribution Value
B1	Cessnock	City Library Facilities	\$12,800,000	1.27	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$532.98 per Lot up to and including the 305th Lot in the Development
B2	Cessnock	Cessnock Performing Arts Centre	\$8,100,000	1.27	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$337.28 per Lot up to and including the 305th Lot in the Development
B3	Kurri Kurri	District Aquatic Centre	\$10,000,000	1.27	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$416.39 per Lot up to and including the 305th Lot in the Development
B4	Cessnock	District Indoor Sports Facilities	\$5,000,000	1.27	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$208.20 per Lot up to and including the 305th Lot in the Development
B5	District Community Facilities	Upgrading of bushfire facilities	\$770 000	1.27	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$32.06 per Lot up to and including the 305th Lot in the Development

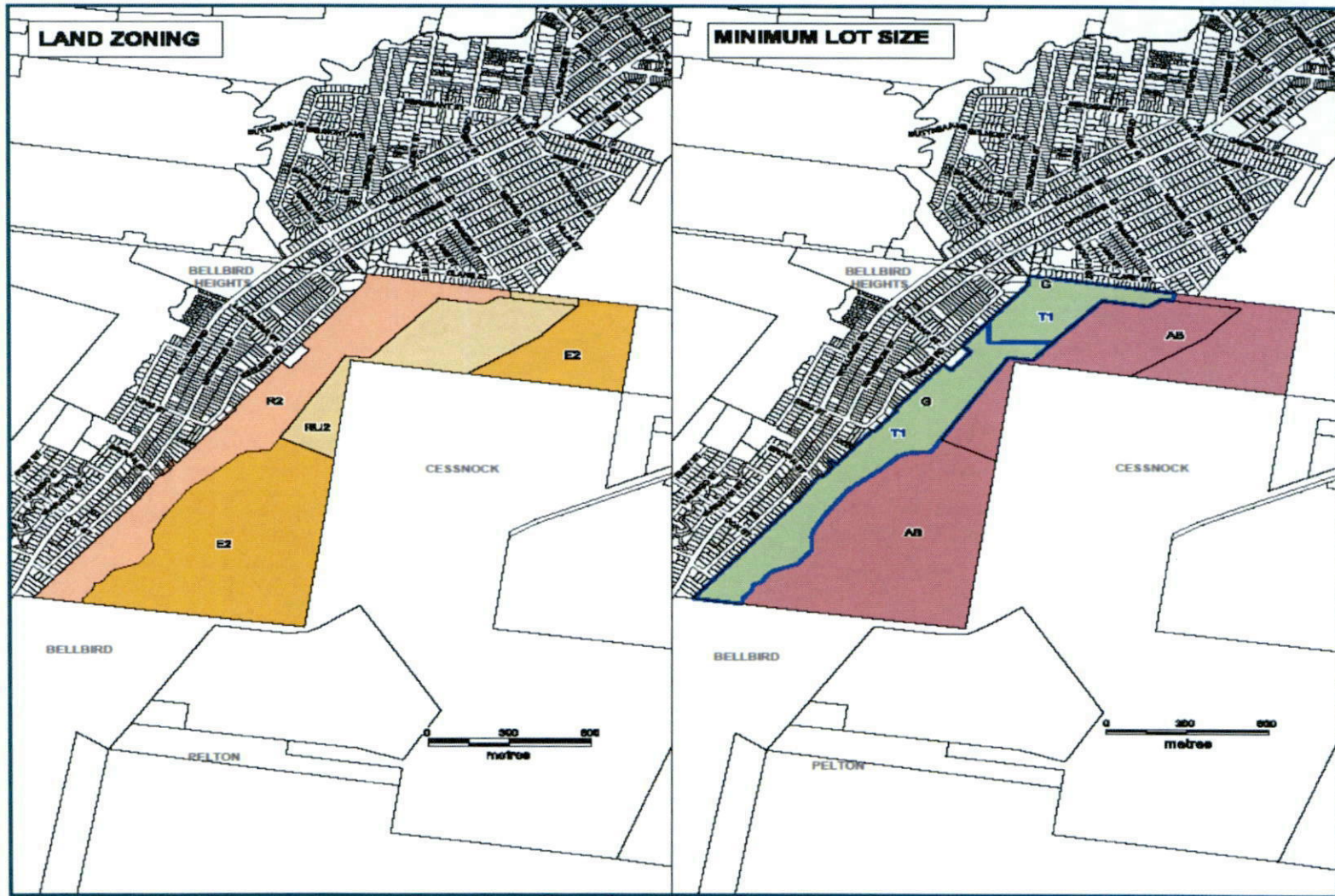
Total Cash Contribution City Wide Activities						\$1,526.91 per Lot up to and including 305th lot in the Development
Part C – Local Area Monetary Contributions - Traffic and Drainage						
	Location	Description	Est. Capital cost	AF %	Timing	Contribution Value
C1	Wollombi Road / Hickey Street / Francis Street intersection	Traffic Signals	\$760,400	7	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$174.52 per Lot up to and including the 305th Lot in the Development
C2	Footpaths for Crossing / Brown / Francis Street	Construct footpath in Crossing, Brown and Francis Street	\$252,000	65	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$537.05 per Lot up to and including the 305th Lot in the Development
C3	Bus Bays - within proposed subdivision	Construct 10 indented bus stops with all weather shelters	\$300,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$983.61 per Lot up to and including the 305th Lot in the Development
C4	Cycleways	Cycle Path - Release Area to Cessnock CBD	\$790,000	15	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$388.52 per Lot up to and including the 305th Lot in the Development
C5	Crossing Street	Drainage Line 1 - Upgrading of drainage in line with roadwork involving design piped system, surcharge pits, culvert/pipe crossings, WSUD aspects, drainage easements, Detention/wetland areas.	\$240,000	65%	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$511.48 per Lot up to and including the 305th Lot in the Development
C6	Brown Street	Drainage Line 2 - Upgrading of drainage in line with roadwork involving design piped system, surcharge pits, culvert/pipe crossings, WSUD aspects, drainage easements, Detention/wetland areas.	\$180,000	65%	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$383.61 per Lot up to and including the 305th Lot in the Development

C7	Keelendi Road (South)	Drainage Line 3 - Upgrading of drainage in line with roadwork involving design piped system, surcharge pits, culvert/pipe crossings, WSUD aspects, drainage easements, Detention/wetland areas.	\$150,000	65%	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$319.67 per Lot up to and including the 305th Lot in the Development
C8	Francis Street	Drainage Line 6 - Upgrading of drainage in line with roadwork involving design piped system, surcharge pits, culvert/pipe crossings, WSUD aspects, drainage easements, Detention/wetland areas.	\$300,000	65%	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$639.34 per Lot up to and including the 305th Lot in the Development
Total Cash Contribution Local Area Monetary Activities - Traffic and Drainage						\$3,937.80 per Lot up to and including 305th lot in the Development
Part D – Local Area Monetary Contributions – Recreation						
	Location	Description	Est. Capital cost	AF %	Timing	Contribution Value
D1	Bellbird	Local playground and infrastructure embellishments	\$150,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$491.80 per Lot up to and including the 305th Lot in the Development
D2	Carmichael Park	Upgrades and improvements to existing facilities, car park, flood lighting and shelter seating	\$145,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$475.41 per Lot up to and including the 305th Lot in the Development
D3	Mount View	Contributions to Mt View Sportsground to provide for upgrades and expansion of district sportsground and district skate park facilities	\$431,312.50	1.27	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$17.96 per Lot up to and including the 305th Lot in the Development
Total Cash Contribution Local Area Monetary Activities – Recreation						\$985.17 per Lot up to and including the 305th Lot in the Development

Part E – Local Area Monetary Contributions – Community Facilities						
	Location	Description	Est. Capital cost	AF %	Timing	Contribution Value
E1	Bellbird	Multi-Purpose Community Neighbourhood Centre	\$1,518,750	8.6	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$428.24 per Lot up to and including the 305th Lot in the Development
Part E – Local Area Monetary Contributions - Community Facilities						\$428.24 per Lot up to and including the 305th Lot in the Development
Total Contribution Value						\$7,697.79 and \$7,697.79 per lot in excess of the 305th final lot (if any)

ANNEXURE A

Proposed zone plan and minimum lot size plan



Annexure C – Local Planning Agreement 2 (Environmental Land Contribution)

Cessnock City Council

ABN 60 919 148 928

Winton Partners Bellbird Pty Limited

ABN 24 156 002 185

Planning Agreement

Environmental Planning and Assessment Act 1979

Table of contents

1.	Definitions and Interpretation	1
1.1	Definitions	1
2.	Operation and status of this Agreement	5
3.	Application of the Agreement	5
4.	Application of section 94, section 94A and section 94EF of the Act.....	5
5.	Requirement to provide the Environmental Land Contribution	5
5.1	Provision of the Environmental Land Contribution	5
5.2	Notice confirming compliance.....	5
6.	Land ownership and Registration of this Agreement	6
6.1	Ownership	6
6.2	Registration of this Agreement	6
6.3	Release and discharge of this Agreement	6
6.4	Caveat.....	7
7.	Security and enforcement.....	7
7.1	Security	7
7.2	Enforcement.....	7
7.3	No prevention to enforcement	8
7.4	Construction Certificate	8
8.	Release and Discharge.....	8
8.1	Release from obligations	8
9.	Dispute resolution	8
9.1	Not commence	8
9.2	Written notice of dispute	8
9.3	Attempt to resolve	8
9.4	Mediation.....	8
9.5	Court proceedings	9
9.6	Not use information	9
9.7	No prejudice	9
10.	GST	9
10.1	Interpretation	9
10.2	Intention of the Parties.....	9
10.3	Reimbursement.....	10
10.4	Consideration GST exclusive	10
10.5	No merger	10
11.	Assignment and Dealing	10
12.	Release and indemnity	11
13.	Costs	11
14.	Effect of Scheduled terms and conditions.....	11
15.	General provisions	12
15.1	Entire Agreement	12
15.2	Counterparts	12
15.3	Further Acts.....	12
15.4	Governing Law and Jurisdiction.....	12
15.5	Joint and individual liability and benefits	12

15.6	No fetter	12
15.7	Representations and warranties	12
15.8	Severability.....	12
15.9	Modification	13
15.10	Waiver.....	13
15.11	Good Faith	13
15.12	Rights Cumulative	13
15.13	Relationship of Parties.....	13
16.	Notices	14
16.1	Form.....	14
16.2	Receipt.....	14
	Schedule 1 - Requirements under section 93F of the Act	15
	Schedule 2 - Land.....	16
	Schedule 3 – Environmental Land Contribution	17
	Annexure A – Land and Environmental Land	20

Agreement made at Cessnock on 19/11/2014

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

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

Background

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

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

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

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

Agreement means this Planning Agreement.

Application means an application for any Approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explanatory Note means the explanatory note required by the Regulation.

GST has the meaning it has in the GST Act.

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

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

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

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

LEP means the *Cessnock Local Environmental Plan 2011*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and includes any Super Lots.

1.2 Interpretation

In this Agreement:

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

and unless the context indicates a contrary intention:

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

2. Operation and status of this Agreement

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

3. Application of the Agreement

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

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

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

5. Requirement to provide the Environmental Land Contribution

5.1 Provision of the Environmental Land Contribution

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

5.2 Notice confirming compliance

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

6. Land ownership and Registration of this Agreement

6.1 Ownership

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

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

6.2 Registration of this Agreement

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

6.3 Release and discharge of this Agreement

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

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

6.4 Caveat

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

7. Security and enforcement

7.1 Security

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

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

7.2 Enforcement

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

7.3 No prevention to enforcement

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

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

7.4 Construction Certificate

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

8. Release and Discharge

8.1 Release from obligations

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

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

9. Dispute resolution

9.1 Not commence

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

9.2 Written notice of dispute

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

9.3 Attempt to resolve

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

9.4 Mediation

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

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

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

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

9.5 Court proceedings

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

9.6 Not use information

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

9.7 No prejudice

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

10. GST

10.1 Interpretation

In this clause 10:

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

10.2 Intention of the Parties

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

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

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

10.3 Reimbursement

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

10.4 Consideration GST exclusive

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

10.5 No merger

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

11. Assignment and Dealing

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

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

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

12. Release and indemnity

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

13. Costs

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

14. Effect of Scheduled terms and conditions

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

15. General provisions

15.1 Entire Agreement

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

15.2 Counterparts

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

15.3 Further Acts

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

15.4 Governing Law and Jurisdiction

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

15.5 Joint and individual liability and benefits

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

15.6 No fetter

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

15.7 Representations and warranties

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

15.8 Severability

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

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

15.9 Modification

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

15.10 Waiver

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

15.11 Good Faith

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

15.12 Rights Cumulative

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

15.13 Relationship of Parties

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

16. Notices

16.1 Form

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

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

The Council

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

Landowner

Winton Partners Bellbird Pty Limited

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

16.2 Receipt

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

Schedule 1 - Requirements under section 93F of the Act

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

Schedule 2 - Land

The whole of the land described in the following table:

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

Schedule 3 – Environmental Land Contribution

1. Environmental Land Contribution

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

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

2. Environmental Land Contribution

2.1 Vegetation Management Plan (VMP)

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

2.2 Registration of Positive Covenant

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

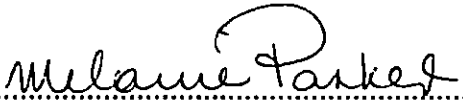
- (i) relevant Subdivision Plan; and
 - (ii) a Positive Covenant implementation of and compliance with the Approved VMP for the Environmental Land.
- b) The Landowner must immediately comply with, or procure compliance with, any requisitions raised by the Register-General in relation to the registration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

2.3 Consideration of Environmental Land

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

Executed as a deed

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

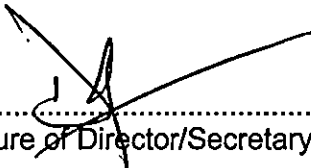

.....
Signature of witness

MELANIE PARKER
.....
Print Name


.....
Signature of authorised representative

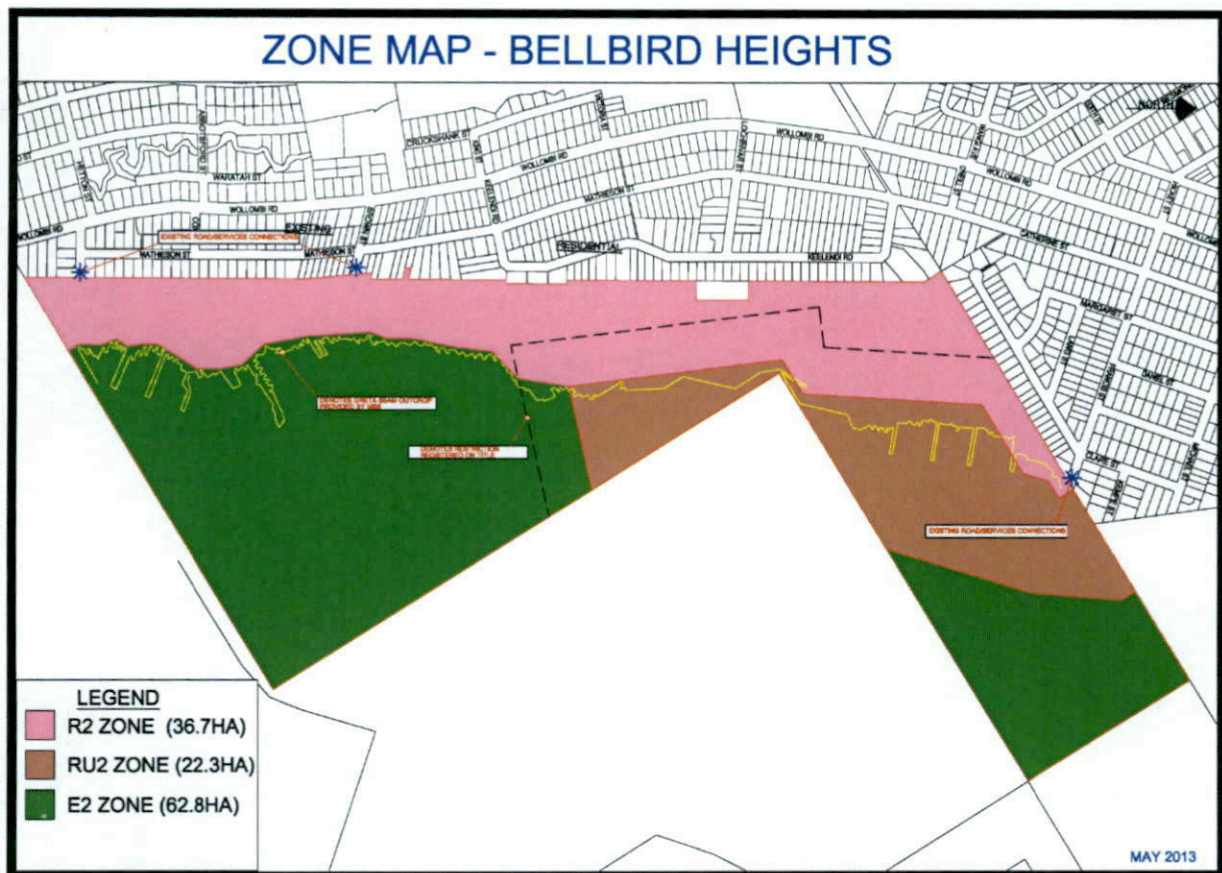
Stephen Glen
.....
Print Name

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


.....
Signature of Director/Secretary

DANIEL HARGRAVE
.....
Name of Director/Secretary

Annexure A – Land and Environmental Land



Annexure D – 'North Ridge', Bellbird Heights – Overall Lot Layout Plan

'NORTH RIDGE', BELLBIRD HEIGHTS - OVERALL LOT LAYOUT

OCTOBER 2015

