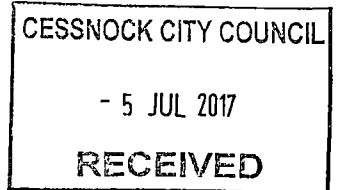


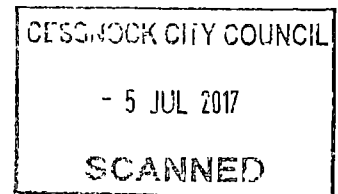
Deed



1443 Wine Country Drive Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Cessnock City Council
Peter Damien Vizzard



Date: 28 June 2017

1443 Wine Country Drive Planning Agreement

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Summary Sheet

Council:

Name Cessnock City Council
Address 62-78 Vincent Street, CESSNOCK NSW 2325
Telephone. (02) 4993 4100
Facsimile: (02) 4993 2500
Email: council@cessnock.nsw.gov.au
Representative. Martin Johnson

Developer:

Name Peter D Vizzard
Address 1443 Wine Country Drive Rothbury NSW 2335
Telephone: 0409 383 727
Email judypeter.vizzard@gmail.com
Representative Mathew Egan – HDB Town Planning and Design

Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S93F(1)	‘Planning Authority’	Council
	‘Developer’	Developer
	Development Contributions	See clause 9, Part 2 and Schedule 2
S93F(1), (2)	Public Purpose	See column 2 of Schedule 2
S93F(3)(a)	Land	See definition of ‘Land’ in clause 1 1
S93F(3)(b)(i)	Instrument Change	See definition of LEP Amendment in clause 1 1
S93F(3)(b)(ii)	Development	See definition of ‘Development’ in clause 1 1
S93F(3)(c)	Details of Developer’s Provision	See clause 9, Part 2 and Schedule 2
S93F(3)(d)	Whether s94, s94A and s94EF of the Act Apply to the Development	See clause 8
S93F(3)(e)	Whether Benefits are or are not to be Taken into Consideration in Determining a Development Contribution under s94	No See clause 8
S93F(3)(f)	Mechanism for the Resolution of Disputes under the Agreement	See Part 3
S93F(3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See clause 13 and Part 4
S93F (10)	Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S93G	Public Notice & Public Inspection of Draft	Yes

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	Agreement	
S109J(c1)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	Yes See clause 10
S109H(2)	If an occupation certificate is required in respect of the Development, does the Agreement impose requirements that are required to be complied with before such a certificate is issued?	N/A

Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Clause 25B(1)	Form & Subject-Matter	Yes
Clause 25B(2)	Secretary's Practice Note	Yes
Clause 25D	Public Notice & Public Inspection of Draft Agreement	Yes
Clause 25E	Explanatory Note	See Appendix
Clause 146A	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued?	N/A

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Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

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

and

Peter D Vizzard of 1443 Wine Country Drive Rothbury NSW 2335 (**Developer**)

Background

- A The Developer owns the Land
- B The Developer has requested the Council to adopt a Planning Proposal to facilitate the LEP Amendment so as to make permissible the carrying out of the Development on the Land.
- C The Developer has made or proposes to make a Development Application to carry out the Development on the Land.
- D The Developer offers to make Development Contributions to the Council on the terms set out in this Deed in connection with the carrying out of Development

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply.

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

Approval includes approval, consent, licence, permission or the like and includes, without limitation, a Development Consent and a Part 4A Certificate

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

(a) is by its nature confidential,

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

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

Development means the development specified or described in Item 3 of Schedule 1

Development Application has the same meaning as in the Act

Development Consent has the same meaning as in the Act

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act

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

Final Lot means

- (a) any lot created in the Development for separate occupation and disposition, or
- (b) any lot of a kind or created for a purpose that is otherwise agreed by the Parties,

not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council

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

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

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(c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance

GST has the same meaning as in the GST Law

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

Land means the land specified or described in Item 1 of Schedule 1

LEP means the *Cessnock Local Environmental Plan 2011*

LEP Amendment means an amendment to the LEP to which the Planning Proposal relates

Part 4A Certificate has the same meaning as in the Act

Party means a party to this Deed

Planning Proposal means a planning proposal within the meaning of s55 of the Act as detailed in Item 2 of Schedule 1

Regulation means the *Environmental Planning and Assessment Regulation 2000*

Subdivision Certificate has the same meaning as in the Act

1 2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

1 2 1 Headings are inserted for convenience only and do not affect the interpretation of this Deed

1 2 2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney

1 2 3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day

1 2 4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars

1 2 5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST

1 2 6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision

1 2 7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced

1 2 8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed

1 2 9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency

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- 1 2 10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning
- 1.2 11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders
- 1.2.12 References to the word '*include*' or '*including*' are to be construed without limitation
- 1 2 13 A reference to this Deed includes the agreement recorded in this Deed
- 1 2 14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns
- 1 2 15 A reference to '*dedicate*' or '*dedication*' in relation to land is a reference to dedicate or dedication free of cost
- 1 2 16 Any schedules, appendices and attachments form part of this Deed
- 1 2 17 Notes appearing in this Deed are operative provisions of this Deed

2 Status of this Deed

- 2 1 This Deed is a planning agreement within the meaning of s93F(1) of the Act

3 Commencement

- 3 1 This Deed commences and has force and effect on and from the date when the Parties have
 - 3 1 1 all executed the same copy of this Deed, or
 - 3 1 2 each executed separate counterparts of this Deed and exchanged the counterparts
- 3 2 The Parties are to insert the date when this Deed commences on the front page and on the execution page

4 Application of this Deed

- 4 1 This Deed applies to the LEP Amendment, Land and to the Development

5 Warranties

- 5 1 The Parties warrant to each other that they
 - 5 1 1 have full capacity to enter into this Deed, and
 - 5 1 2 are able to fully comply with their obligations under this Deed

6 Further agreements

- 6 1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed

7 Surrender of right of appeal, etc.

- 7 1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed

8 Application of s94, s94A and s94EF of the Act to the Development

- 8 1 This Deed excludes the application of s94, s94A and s94EF of the Act to the Development to the extent provided for in Items 4, 5 and 6 in Schedule 1 respectively
- 8 2 The benefits under this Deed are to be taken into consideration in determining a Development Contribution under s94 of the Act to the Development to the extent provided for in Item 7 in Schedule 1

9 Provision of Development Contributions

- 9 1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council
- 9 2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed
- 9 3 Despite clause 9 2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified

Part 2 – Provisions relating to monetary contributions

10 Payment of monetary Development Contributions

- 10 1 The Developer is to pay to the Council monetary Development Contributions specified in Part A of Schedule 2 in the manner and at the time or times specified in that Part
- 10 2 The amount of a monetary Development Contribution is to be indexed from the date of this Deed in accordance with the index specified in Item 9 of Schedule 1
- 10 3 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council

Part 3 – Dispute Resolution

11 Dispute resolution – expert determination

- 11 1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if
 - 11 1 1 the Parties to the Dispute agree that it can be so determined, or
 - 11 1 2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body
- 11 2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute
- 11 3 If a notice is given under clause 11 2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute
- 11 4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination
- 11.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert
- 11 6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination
- 11 7 The Parties are to share equally the costs of the President, the expert, and the expert determination

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12 Dispute Resolution - mediation

- 12.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 11 applies
- 12.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 12.5 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
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation
- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation

Part 4 - Enforcement

13 Security for performance of obligations

- 13.1 The Parties acknowledge and agree that pursuant to s109J(c1) of the Act, a Subdivision Certificate must not be issued in respect of the Development unless the requirements of this Deed that, by its terms, are required to be complied before the Subdivision Certificate is issued, have been complied with

14 Breach of obligations

- 14.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer
 - 14.1.1 specifying the nature and extent of the breach,
 - 14.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

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- 14 1 3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances
- 14 2 Any costs incurred by the Council in remedying a breach in accordance with clause 14 2 may be recovered by the Council as a debt due in a court of competent jurisdiction
- 14 3 For the purpose of clause 14.2, the Council's costs of remedying a breach the subject of a notice given under clause 14 1 include, but are not limited to
 - 14 3 1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 14 3 2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 14.3 3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach
- 14.4 Nothing in this clause 14 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

15 Enforcement in a court of competent jurisdiction

- 15 1 Subject only to clauses 11 and 12, the Parties may enforce this Deed in any court of competent jurisdiction
- 15 2 For the avoidance of doubt, nothing in this Deed prevents
 - 15 2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 15 2 2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates

Part 5 – Registration & Restriction on Dealings

16 Registration of this Deed

- 16 1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act
- 16 2 On commencement of this Deed, the Developer is to deliver to the Council in registrable form
 - 16 2 1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer and any other person required by the Registrar-General to execute such instrument, and
 - 16 2 2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 16 3 The Developer at its cost is to

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- 16 3 1 do such other things as are reasonably necessary to enable registration of this Deed to occur, and
- 16 3 2 provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information of such registration
- 16 4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land
 - 16 4 1 in so far as the part of the Land concerned is a Final Lot,
 - 16 4 2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason

17 Restriction on dealings

- 17 1 The Developer is not to
 - 17 1 1 sell or transfer the Land, other than a Final Lot, or
 - 17 1 2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
to any person unless
 - 17 1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 17 1 4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 17 1 5 the Developer is not in breach of this Deed, and
 - 17 1 6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld
- 17 2 Subject to clause 17 3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 17 1
- 17 3 Clause 17 1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale

Part 6 – Other Provisions

18 Risk

- 18 1 The Developer performs this Deed at its own risk and its own cost

19 Confidentiality

- 19 1 The terms of this Deed are not confidential and this Deed may be treated as a public document and exhibited or reported without restriction by any Party.
- 19 2 The Parties acknowledge that
- 19 2 1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed, and
- 19 2 2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Deed
- 19 3 Subject to clause 19 4 and 19 5, each Party agrees
- 19.3 1 not to disclose any Confidential Information received before or after the commencement of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information, and
- 19 3 2 to take all reasonable steps to ensure all Confidential Information received before or after the commencement of this Deed is kept confidential and protected against unauthorised use and access
- 19 4 A Party may disclose Confidential Information in the following circumstances
- 19 4 1 in order to comply with the Law, or
- 19 4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential
- 19 5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause

20 Annual report by Developer

- 20 1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed
- 20 2 The report referred is to be in such a form and to address such matters as required by the Council from time to time

21 Review of Deed

- 21 1 The Parties agree to review this Deed periodically as specified in Item 17 of Schedule 1, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed
- 21 2 For the purposes of clause 21 1, the relevant changes include (but are not limited to)

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- 21.2.1 any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development,
- 21.2.2 the lapsing of the Development Consent to the Development pursuant to s95 of the Act,
- 21.2.3 a Party becoming unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this Deed
- 21.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 21.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed
- 21.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into
- 21.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 21.1 (but not 21.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed

22 Notices

- 22.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways
 - 22.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 22.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 22.1.3 emailed to that Party at its email address set out in the Summary Sheet
- 22.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 22.3 Any notice, consent, information, application or request is to be treated as given or made if it is
 - 22.3.1 delivered, when it is left at the relevant address,
 - 22.3.2 sent by post, 2 business days after it is posted,
 - 22.3.3 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
 - 22.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent
- 22.4 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 that is not a business day, or if on a business day, after 5pm on that day in the place of

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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

23 Approvals and Consent

- 23 1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 23 2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions

24 Costs

- 24.1 The Developer is to pay to the Council the Council's costs specified in Item 16 of Schedule 1 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment
- 24 2 The Developer is also to pay to the Council the Council's reasonable costs of implementing, monitoring and enforcing this Deed within 7 days of a written demand by the Council for such payment

25 Entire Deed

- 25 1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with
- 25 2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law

26 Further Acts

- 26 1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it

27 Notations on section 149(2) Planning Certificates

- 27 1 The Developer acknowledges that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Deed on any certificate issued under section 149(2) of the Act relating to the Land, and is not to raise an objection, make any claim or demand or bring any action in that regard

28 Governing Law and Jurisdiction

- 28 1 This Deed is governed by the law of New South Wales
- 28 2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 28 3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

29 Joint and Individual Liability and Benefits

- 29 1 Except as otherwise set out in this Deed.
 - 29 1 1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 29 1 2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually

30 No Fetter

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

31 Illegality

- 31 1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

32 Severability

- 32 1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 32 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 Deed, but the rest of this Deed is not affected

33 Amendment

- 33 1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation

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34 Waiver

- 34 1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 34 2 A waiver by a Party is only effective if it
- 34 2 1 is in writing,
- 34 2 2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 34 2 3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 34 2 4 is signed and dated by the Party giving the waiver
- 34 3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given
- 34 4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion
- 34 5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given

35 GST

- 35 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
- 35 2 Subject to clause 35 4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration
- 35 3 Clause 35 2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive

1443 Wine Country Drive Planning Agreement

Cessnock City Council

Peter Damien Vizzard

- 35 4 No additional amount shall be payable by the Council under clause 35 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
- 35 5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed 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.
- 35 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,
- 35 5 2 that any amounts payable by the Parties in accordance with clause 35 2 (as limited by clause 35.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount
- 35 6 No payment of any amount pursuant to this clause 35, 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.
- 35 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
- 35 8 This clause continues to apply after expiration or termination of this Deed

36 Explanatory Note

- 36 1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation
- 36 2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed
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Cessnock City Council
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Schedule 1

(Clause 1 1)

Item 1	Land	Lot 11 DP 1105639
Item 2	Planning Proposal	A planning proposal to rezone the Land from RU2 Rural Landscape (minimum lot size 40 hectares) to R5 Large Lot Residential (minimum lot size 2000m ²) under the LEP
Item 3	Development	The subdivision of the Land into residential lots pursuant to a Development Consent that could only be granted as a result of the LEP Amendment
Item 4	Application of S94	The application of section 94 of the Act is excluded but only in respect of the first 8 Final Lots
Item 5	Application of S94A	The application of section 94A of the Act is excluded but only in respect of the first 8 Final Lots
Item 6	Application of S94EF	Section 94EF of the Act is not excluded
Item 7	Whether the Benefits under this Deed are to Taken in Consideration in determining a Development Contribution under s94	No
Item 8	Indexation of Contribution Values	N/A
Item 9	Indexation of Monetary Development Contributions	Positive movements in the <i>Consumer Price Index (All Groups - Sydney)</i> published by the Australian Bureau of Statistics
Item 10	Access to Council owned or controlled land	N/A
Item 11	Defects Liability Period	N/A
Item 12	Security	N/A
Item 13	Obligations to which Security Relates	N/A
Item 14	Timing of Security	N/A
Item 15	Indexation of Security	N/A
Item 16	Costs	\$3,000 00

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Cessnock City Council
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Item 17	Review of Deed	Every 5 years
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Schedule 2

(Clause 9)

Development Contributions

Table

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
Monetary Development Contributions			
1	Community building	\$549 71 per Final Lot for the first 7 Final Lots	Development Contributions for a Final Lot to be paid prior to the issuing of the Subdivision Certificate that creates that Final Lot
2	Community hub – library/ youth centre/ neighbourhood centre	\$2,398 92 per Final Lot for the first 7 Final Lots	Development Contributions for a Final Lot to be paid prior to the issuing of the Subdivision Certificate that creates that Final Lot
3	District sports fields	\$1,514 82 per Final Lot for the first 7 Final Lots	Development Contributions for a Final Lot to be paid prior to the issuing of the Subdivision Certificate that creates that Final Lot
4	District parks	\$2,277 60 per Final Lot for the first 7 Final Lots	Development Contributions for a Final Lot to be paid prior to the issuing of the Subdivision Certificate that creates that Final Lot
5	Local parks	\$1,531 66 per Final Lot for the first 7 Final Lots	Development Contributions for a Final Lot to be paid prior to the issuing of the Subdivision Certificate that creates that Final Lot
6	Regional recreational facilities	\$439 77 per Final Lot for the first 7 Final Lots	Development Contributions for a Final Lot to be paid prior to the issuing of the Subdivision Certificate that creates that Final Lot
7	Regional sports fields	\$1,000 73 per Final Lot for the first 7 Final Lots	Development Contributions for a Final Lot to be paid prior to the issuing of the Subdivision Certificate that creates that Final Lot

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8	Childcare/ government pre-schools	\$527 72 per Final Lot for the first 7 Final Lots	Development Contributions for a Final Lot to be paid prior to the issuing of the Subdivision Certificate that creates that Final Lot
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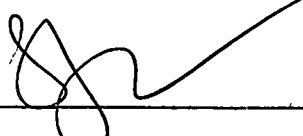
**1443 Wine Country Drive Planning Agreement
Cessnock City Council
Peter Damien Vizzard**

Execution

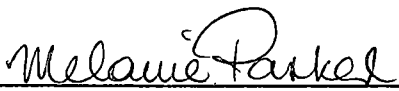
Executed as a Deed

Dated: 28/6/17

Executed on behalf of the Council



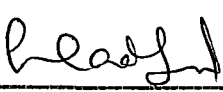
General Manager



Witness

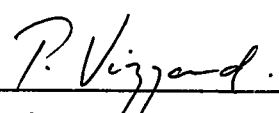


Council Officer



Witness

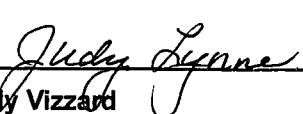
Executed by the Developer




Peter Vizzard



Witness



Judy Vizzard



Witness

Appendix

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

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

Peter D Vizzard of 1443 Wine Country Drive Rothbury NSW 2335 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

Lot 11 DP 1105639 known as 1443 Wine Country Drive, Rothbury

Description of Proposed Development and Instrument Change

The subdivision of the Land into Final Lots pursuant to a Development Consent that could only be granted as a result of a rezoning of the Land from RU2 Rural Landscape (minimum lot size 40 hectares) to R5 Large Lot Residential (minimum lot size 2000m²) under the LEP

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

1443 Wine Country Drive Planning Agreement
Cessnock City Council
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Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide suitable funding for various public facilities to meet the demand generated by Development on the Land

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council and the Developer. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Developer,
- excludes the application of s94 and s94A of the Act to the Development but only in relation to the first 8 Final Lots in the Development,
- does not exclude the application of s94EF of the Act to the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development,
- provides funding for the provision and co-ordination of community services and facilities

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii)(v) and (c) of the Act

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

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

The Draft Planning Agreement promotes the principles for local government by:

- keeping the local and wider community informed about its activities,
- enabling the Council to secure funding for appropriate services for local community needs

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program

Yes

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

Yes