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## **West & Wyndham Streets, Greta VPA**

### **Deed of Variation**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

**Cessnock City Council**

**Wyndham Ridge Estate Pty Limited**

Date:

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**Deed of Variation**  
**West & Wyndham Streets, Greta VPA**

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## **Deed of Variation to West & Wyndham Streets, Greta VPA**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

### **Parties**

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

and

**Wyndham Ridge Estate Pty Limited** ACN 613 644 456 of Level 22, MLC  
Centre, 19-29 Martin Place, Sydney NSW 2000 (**Developer**)

### **Background**

- A The Parties are Parties to the Planning Agreement, which was novated to the Developer on 30 August 2016.
- B The Planning Agreement requires the Developer to pay monetary contributions to the Council.
- C The Developer has carried out and completed the Public Facilities.
- D The Parties intend to apply the agreed value of the Public Facilities completed by the Developer in satisfaction of the monetary contributions that are required to be paid under the Planning Agreement for those Public Facilities.
- E Pursuant to clause 25 of the Planning Agreement, the Parties agree to amend the Planning Agreement to give effect to the above.

### **Operative provisions**

#### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:

**Deed** means this Deed of Variation and includes any schedules, annexures and appendices to this Deed.

**Planning Agreement** means the planning agreement, pursuant to s93F of the *Environmental Planning and Assessment Act 1979*, titled '*West & Wyndham Streets, Greta*' entered into between the Council and the Developer by way of Deed of Novation, on 30 August 2016.



- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.
- 1.3 Clauses 1.2, 18, 20-24, 26 and 27 of the Planning Agreement apply as if they form part of this Deed with any necessary changes.

## **2 Status of this Deed**

- 2.1 This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.
- 2.2 This Deed is not a planning agreement within the meaning of s93F(1) of the Act.

## **3 Commencement**

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

## **4 Warranties**

- 4.1 The Parties warrant to each other that they:
  - 4.1.1 have full capacity to enter into this Deed, and
  - 4.1.2 are able to fully comply with their obligations under this Deed.

## **5 Amendment to Planning Agreement**

- 5.1 On and from the date this Deed takes effect the Planning Agreement is amended in accordance with the marking-up shown on the copy of the Planning Agreement contained in the Schedule.

## **6 Costs**

- 6.1 The Developer is to pay to the Council the Council's reasonable costs 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.
- 6.2 This clause continues to apply after expiration or termination of this Deed.

## **7 Explanatory Note**

- 7.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

**Deed of Variation to West & Wyndham Streets, Greta VPA**  
**Cessnock City Council**  
**Wyndham Ridge Estate Pty Limited**

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- 7.2 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.



**Schedule**

(Clause 5)

**Amended Planning Agreement**

# Planning Agreement

This Agreement is dated

**PARTIES:** Hardie Greta Pty Limited (ACN 108 802 786) of Level 1, 106 King 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 2014 No.720 and took effect on 14 November 2014.

## 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 as set out in Schedule 1 of this agreement.

**Agreed Value**, in relation to a Public Facility specified in Part C or Part D of the Development Contributions Table in Schedule 2, means the amount agreed between the Parties and specified in Column 8 of that Schedule corresponding to the Public Facility.

**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 reasonable 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 234 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. 8/2014/315 for the Development.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means monetary contribution, the dedication of land free of cost or the provision of material public benefit.

**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 resubdivision 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 resubdivision 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 resubdivided.

**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 (Commonwealth)* 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 2 in Deposited Plan 1151267 and Lots 2 and 3 in Deposited Plan 1212829](#) ~~Lot 2 in Deposited Plan 808354 and Lot 2 in Deposited Plan 1151267.~~

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

**Cessnock LEP** means the Cessnock Local Environmental Plan 2011 (as amended).

**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.

**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 resubdivision 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 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 the 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 Greta.
- 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~~ Provision of Public Facilities in Satisfaction of Monetary Contribution Obligation

### 8.1 This clause applies to:

8.1.1 each the Public Facilities for which an Agreed Value is specified in Column 8 of Schedule 2, and

8.1.2 the monetary contributions required to be paid under clause 5.1 for those Public Facilities.

8.2 The Parties acknowledge and agree that the Developer has provided the Public Facilities to the satisfaction of the Council.

8.3 The amount of the Agreed Value specified for a Public Facility to which this clause applies is to be applied towards the satisfaction of the Developer's obligation under clause 5.1 to pay monetary contributions for that Public Facility, and the Developer is not required to pay monetary contributions under clause 5.1 for that Public Facility to that extent.

8.4 If the Developer's actual cost of carrying out and completing a Public Facility differs from the Agreed Value for the Public Facility then no party to this Agreement shall be entitled to claim credit or reimbursement, as the case may be, for the difference.

## ~~8.9.~~ Application of Sections 94, 94A and 94EF of the Act to the Development

~~8.19.1~~ This Agreement excludes the application of sections 94 and 94A of the Act to the Development.

~~8.29.2~~ This Agreement does not exclude the application of section 94EF of the Act to the Development.

This Agreement **excludes** the application of Section 94 and 94A of the Act to the Development.

## 9.10. Enforcement

9.410.1 In order to secure the making of each Development Contribution, the Developer has agreed to provide security in the form of a Bank Guarantee.

9.210.2 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.

9.310.3 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.

9.410.4 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 cost and expenses incurred by the Council in rectifying any default by the Developer under this Agreement.

9.510.5 Prior to calling upon the Bank Guarantee the Council must give the Developer not less than 10 Business Days prior written notice.

9.610.6 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.

9.710.7 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 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.

9.810.8 Nothing in this 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*

~~9.9~~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 the Development:

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

10.9.2 Provision of a Brank Guarantee in accordance with clause 10.

#### *Subdivision Certificate*

~~9.4~~10.1 For the purposes of section 109J(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.

~~9.2~~10.2 The Developer must only seek and obtain any Subdivision Certificate for that Stage of the Development from the Council.

~~9.3~~10.3 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.

~~9.4~~10.4 For 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 other matter to which this Agreement relates; or

10.13.2 the Council from exercising any function under the Act or nay other act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

#### **10.11. Registration of this Agreement**

~~10.4~~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.

~~10.2~~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.

~~10.3~~11.3 The Developer will at its own expense, promptly after the execution of the 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; and

11.3.2 the execution of any documents; and

11.3.3 the production of the relevant duplicate certificates of title,

be enable the registration of this agreement in accordance with clause 11.2.

40-411.4 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 Register-General as soon as reasonably practical 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 Register-General in the relevant folios of the Register for the land as soon as reasonable practicable after this Agreement is lodged for registration.

40-511.5 The Council agrees that on registration of any plan of subdivision of any part of the Land, 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.

40-611.6 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 of any dealing or plan other than a transfer.

40-711.7 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.

#### 41-12. Assignment and Sale of Land

41-112.1 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 to the sale, transfer, assignment, novation or other dealing.

41-212.2 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 outstanding obligations of the Developer under this Agreement.

~~11.3~~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.

#### ~~12.13.~~ **Review of this Agreement**

~~12.1~~13.1 This Agreement may be reviewed or modified in accordance with the Act and by the agreement of the Parties.

#### ~~13.14.~~ **Dispute Resolution**

~~13.1~~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.

~~13.2~~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.

~~13.3~~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.

#### ~~14.15.~~ **Notices**

~~14.1~~15.1 Any notice, consent, information, application, or request that must or may be given or made to a Party under this Agreement or an agreement under clause 4 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 provide no failed delivery notice has been received with 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.

**15-16. Approvals and Consent**

~~15-16.1~~ 15-16.1 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.

~~15-216.2~~ 15-216.2 A Party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

**16-17. Costs**

~~16-117.1~~ 16-117.1 The Developer will pay the Council's reasonable costs of preparing, negotiating, executing and stamping and registering this Agreement and any document related to this Agreement.

**17-18. Entire Agreement**

~~17-118.1~~ 17-118.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.

~~17-218.2~~ 17-218.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, office, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

**18-19. Further Acts**

~~18-119.1~~ 18-119.1 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 transaction incidental to it.

**19-20. Governing Law and Jurisdiction**

~~19-120.1~~ 19-120.1 This Agreement is governed by the law of New South Wales.

~~19-220.2~~ 19-220.2 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.

**20-21. Joint and Individual Liability and Benefits**

~~20-121.1~~ 20-121.1 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.

**21-22. No Fetter**

~~21-122.1~~ 21-122.1 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.

**22.23. Representations and Warranties**

22.123.1 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.

**23.24. Severability**

23.124.1 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.

23.224.2 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.

**24.25. Modification**

24.125.1 No Modification of this Agreement will be of any force or effect unless it is on writing and signed by the Parties to this Agreement.

**25.26. Waiver**

25.126.1 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.

25.226.2 A waiver by a Party is only effective if it is in writing.

25.326.3 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 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.

**26.27. 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 under planning agreements in accordance with the Act are not consideration for any supply made by Council.

26.127.1 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.

~~26.2~~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.

~~26.3~~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.

~~26.4~~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.

~~26.5~~27.5 \_\_\_\_\_ If there are 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 **HARDIE GRETA PTY )**  
**LIMITED (ACN 108 802 786)** pursuant to  
section 127 of the Corporations Act in the )  
presence of: )

.....  
Sole Director/Secretary

Executed by **CESSNOCK CITY COUNCIL**

**Signed by [** \_\_\_\_\_ **]**  
as authorized 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

.....  
Print name of Witness

**Schedule 1**  
**Contact for Notices**

**Developer:**

Contact Officer: Hardie Holdings, Level 1 106 King Street Sydney NSW 2000

Telephone: (02) 9233 2588

Fax: (02) 9233 6599

Email: [jamie@hardieholdings.com](mailto:jamie@hardieholdings.com)

**Council:**

Contact Officer: The General Manager

Telephone: (02) 4993 4100

Fax: (02) 4993 4200

Email: [council@cessnock.nsw.gov.au](mailto:council@cessnock.nsw.gov.au)

## Schedule 2

### Development Contributions Table

<b>Part A – Land Dedication</b>						
	<b>Location</b>	<b>Description</b>	<b>Land Value (\$/Ha)</b>	<b>AF %</b>	<b>Timing</b>	<b>Contribution Value</b>
A1		N/A				
<b>Total contribution for Land Dedication</b>						
<b>Part B – City Wide Monetary Contributions</b>						
	<b>Location</b>	<b>Description</b>	<b>Est. Capital cost</b>	<b>AF %</b>	<b>Timing</b>	<b>Contribution Value</b>
B1	Cessnock	City Library Facilities	\$12,800,000	0.97	Prior to the issuing of a subdivision certificate for each Lot in the Development	<b>\$530.60</b> per Lot up to and including the 234 <sup>th</sup> Final Lot in the Development
B2	Cessnock	Cessnock Performing Arts Centre	\$8,100,000	0.97	Prior to the issuing of a subdivision certificate for each Lot in the Development	<b>\$335.77</b> per Lot up to and including the 234 <sup>th</sup> Final Lot in the Development
B3	Kurri Kurri	District Aquatic Centre	\$10,000,000	0.97	Prior to the issuing of a subdivision certificate for each Lot in the Development	<b>\$414.53</b> per Lot up to and including the 234 <sup>th</sup> Final Lot in the Development
B4	Cessnock	District Indoor Sports Facilities	\$5,000,000	0.97	Prior to the issuing of a subdivision certificate for each Lot in the Development	<b>\$207.27</b> per Lot up to and including the 234 <sup>th</sup> Final Lot in the Development
B5	District Community Facilities	Upgrading of bushfire facilities	\$770 000	0.97	Prior to the issuing of a subdivision certificate for each Lot in the Development	<b>\$31.92</b> per Lot up to and including the 234 <sup>th</sup> Final Lot in the Development
<b>Total Cash Contribution City Wide Activities</b>						<b>\$1,520.08</b> per Lot up to and including 234 <sup>th</sup> Final Lot in the Development

<b>Part C – Local Area Monetary Contributions - Traffic and Drainage</b>							
	<b>Location</b>	<b>Description</b>	<b>Est. Capital cost</b>	<b>AF %</b>	<b>Timing</b>	<b>Contribution Value</b>	<b>Agreed Value</b>
C1	West Street - Reconstruction from High Street to Branxton Street	Widen & reconstruct road with kerb and drainage	\$ <del>396</del> 187,000	50	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$ <del>846.15</del> 399.57 per Lot up to and including the 234th Final Lot in the Development	\$198187,000
C2	Bus Bay - Water Street to entry driveway	Construct 1 indented bus stop with all-weather shelter	\$30,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$128.21 per Lot up to and including the 234th Final Lot in the Development	=
C3	Bus Bays within proposed subdivision	2 bus shelters	\$44,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$188.03 per Lot up to and including the 234th Final Lot in the Development	=
C4	West Street - Shared off road footpath / Cycleway	Cycle Path - Bike Plan Strategy West Street from High Street to Branxton Street	\$50,000	50	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$106.84 per Lot up to and including the 234th Final Lot in the Development	=
C5	West Street - Shared off road footpath / Cycleway	Cycle Path - Bike Plan Strategy West Street from Branxton Street to entry driveway (800m)	\$200,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$854.70 per Lot up to and including the 234th Final Lot in the Development	\$200,000
C6	West Street	Drainage Line 1	\$960,000	50	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$2051.28 per Lot up to and including the 234th Final Lot in the Development	\$96480,000
C7	West Street	Drainage Line 2	\$84,000	50	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$179.49 per Lot up to and including the 234th Final Lot in the Development	\$842,000
<b>Total Cash Contribution Local Area Monetary Activities - Traffic and Drainage</b>						<b>\$4,354.703,908.12 per Lot up to and including 234th Final Lot in the Development</b>	



Part D – Local Area Monetary Contributions – Recreation							
	Location	Description	Est. Capital cost	AF %	Timing	Contribution Value	Agreed Value
D1	Greta	Greta Multi-Purpose Centre	\$55,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$235.04 per Lot up to and including the 234th Final Lot in the Development	=
D2	Greta	Passive Open Space Embellishment Cycle / Footpath works, picnic shelters, lighting	\$60,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$256.41 per Lot up to and including the 234th Final Lot in the Development	\$60,000
D3	Greta Central Oval	Formalisation of western playing fields, Field Improvements	\$120,000	25	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$128.21 per Lot up to and including the 234th Final Lot in the Development	=
D4	Hunter River Reserve	Fencing and installation of pathways and seating	\$35,000	25	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$37.39 per Lot up to and including the 234th Final Lot in the Development	=
D5	Victoria Park	Local playground and park embellishments	\$120,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$512.82 per Lot up to and including the 234th Final Lot in the Development	=
D6	Greta Skate Park	Up-grade and expand Skate Park	\$130,000	25	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$138.89 per Lot up to and including the 234th Final Lot in the Development	=
D7	Miller Park	Formalisation of car parking and expansion to cricket amenities,	\$120,000	10	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$51.28 per Lot up to and including the 234th Final Lot in the Development	=
D8	Miller Park	Upgrade and expand netball facilities	\$300,000	10	Prior to the issuing of a subdivision certificate for each Lot in the Development	\$128.20 per Lot up to and including the 234th Final Lot in the Development	=
<b>Total Cash Contribution Local Area Monetary Activities – Recreation</b>						<b>\$1,488.25 per Lot up to and including the 234th Final Lot in the Development</b>	

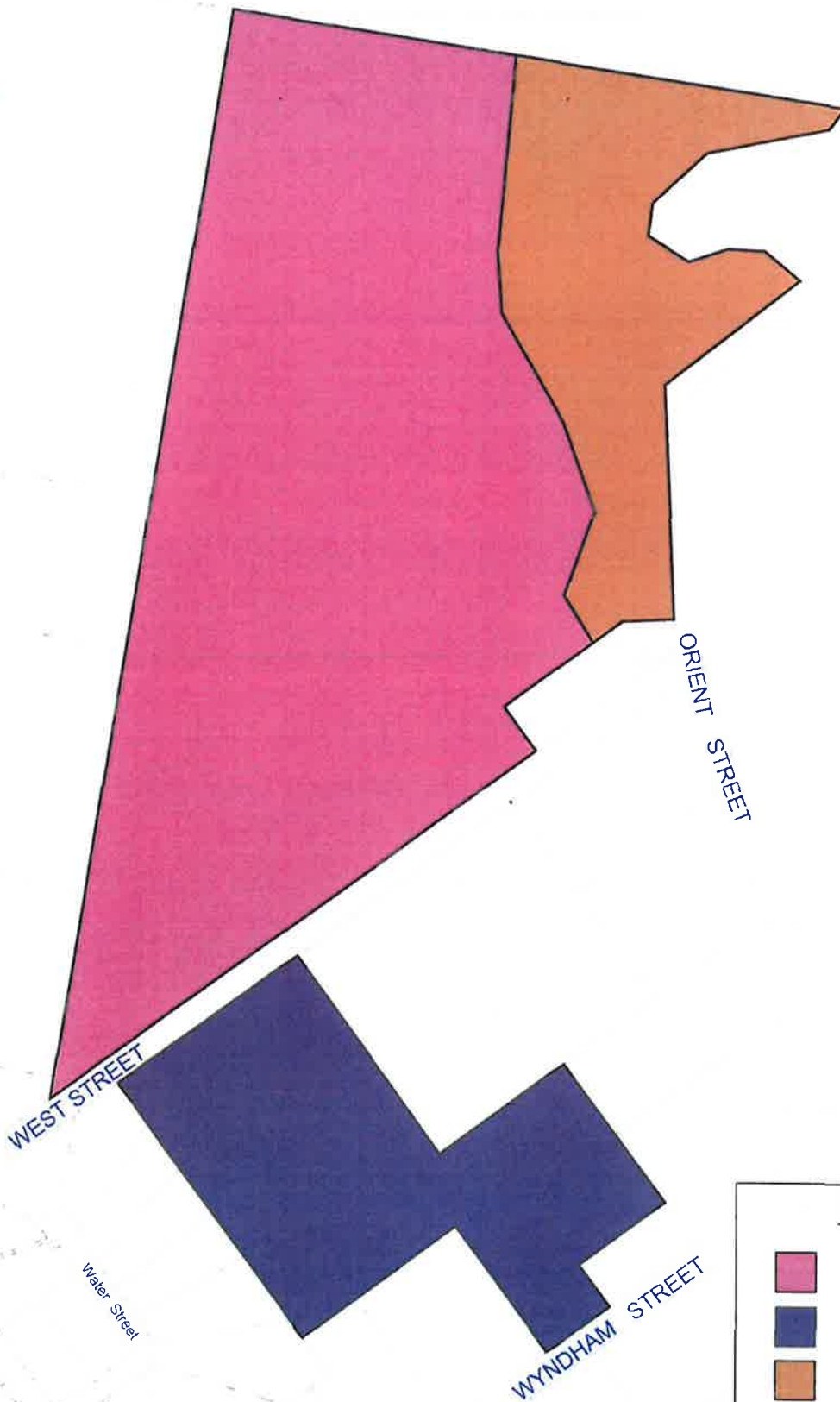
<b>Part E – Local Area Monetary Contributions – Community Facilities</b>						
	<b>Location</b>	<b>Description</b>	<b>Est. Capital cost</b>	<b>AF %</b>	<b>Timing</b>	<b>Contribution Value</b>
E1	Greta	Early Childhood Services – 10 Places	\$155,000	100	Prior to the issuing of a subdivision certificate for each Lot in the Development	<b>\$662.39</b> per Lot up to and including the 234th <del>F</del> Final Lot in the Development
<b>Part E – Local Area Monetary Contributions - Community Facilities</b>						<b>\$662.39</b> per Lot up to and including the 234th <del>F</del> Final Lot in the Development
<b>Total Contribution Value</b>						<b>\$8,025.42</b> per Lot up to and including the 234th <del>F</del> Final Lot in the Development  and <b>\$8025.42</b> per lot in excess of the 234 <sup>th</sup> <del>F</del> Final Lot (if any)

**ANNEXURE A**




Hardie Greta Rezoning

Proposed zone plan and minimum lot size plan

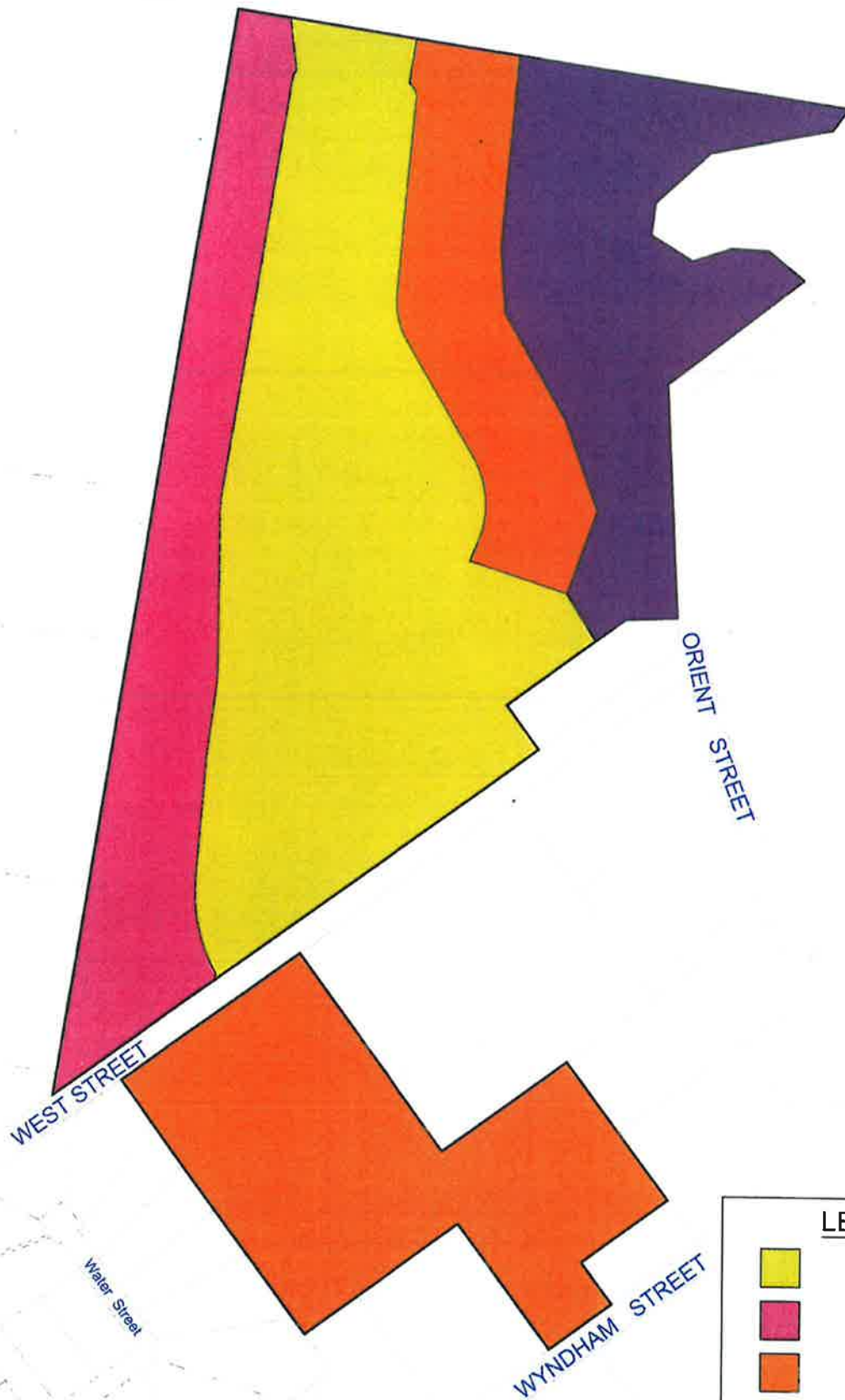
# WEST STREET GRETA, ZONE PLAN







## LEGEND

- |   |    |
|---|----|
|  | R2 |
|  | R5 |
|  | E2 |

# WEST STREET GRETA, LOT SIZE PLAN



## LEGEND

	600m <sup>2</sup>
	1,200m <sup>2</sup>
	2,000m <sup>2</sup>
	40HA



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**Execution**

**Executed as a Deed**

**Dated:** 22 MAY 2018

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**Executed on behalf of the Council**

**General Manager**  
**Stephen Glen**  
**General Manager**  
**Cessnock City Council**

**Witness**

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**Executed on behalf of the Developer** in accordance with s127(1) of the  
Corporations Act (Cth) 2001

**Name/Position**

**Name/Position**



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## **Appendix**

(Clause 7)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Deed of Variation to West & Wyndham Streets, Greta VPA**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

#### **Parties**

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

**Wyndham Ridge Estate Pty Limited** ACN 613 644 456 of Level 22, MLC Centre, 19-29 Martin Place, Sydney NSW 2000 (**Developer**)

#### **Description of the Land to which the Draft Deed of Variation Applies**

The Planning Agreement as amended by this draft Deed of Variation applies to the land comprised in Lot 2 in Deposited Plan 1151267 and Lots 2 and 3 in Deposited Plan 1212829.

#### **Description of Proposed Development**

The Planning Agreement amended by this draft Deed of Variation applies to the same development to which the Planning Agreement applied before its amendment, being development of the Land as a residential subdivision comprising approximately 234 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).



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## **Summary of Objectives, Nature and Effect of the Draft Deed of Variation**

### **Objectives of Draft Deed of Variation**

The objective of the Draft Deed is to amend the Planning Agreement.

### **Nature of Draft Deed of Variation**

The Draft Deed is a deed of variation of the Planning Agreement under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*.

### **Effect of the Draft Deed of Variation**

The Draft Deed amends the Planning Agreement with respect to applying the agreed value of public facilities carried out and completed by the Developer in satisfaction of the monetary contributions required to be paid under the Planning Agreement for those public facilities.

## **Assessment of the Merits of the Draft Deed of Variation**

### **The Planning Purposes Served by the Draft Deed of Variation**

The Draft Deed:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the Planning Agreement applies; and
- provides and co-ordinates community services and facilities in connection with the Development.

### **How the Draft Deed of Variation Promotes the Public Interest**

The Draft Deed does not change the value of the Development Contributions to be provided under the Planning Agreement for the public benefit.

The Draft Deed promotes the public interest by promoting the objects of the Act set out in sections 5(a)(ii)-(v) and 5(c).

### **For Planning Authorities:**

#### ***Development Corporations - How the Draft Deed of Variation Promotes its Statutory Responsibilities***

N/A

#### ***Other Public Authorities – How the Draft Deed of Variation Promotes the Objects (if any) of the Act under which it is Constituted***





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N/A

***Councils – How the Draft Deed of Variation Promotes the Principles for Local Government (Previously the Council’s Charter under s8 of the Local Government Act 1993)***

The Draft Planning Agreement promotes the principles of local government by being a mechanism through which the Council can work with the Developer to secure appropriate services for local community needs, act fairly, ethically and without bias in the interests of the local community, and can actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

***All Planning Authorities – Whether the Draft Deed of Variation Conforms with the Authority’s Capital Works Program***

The Planning Agreement provides for the provision of Development Contributions, including the dedication of land to Council, by the Developer.

The Development Contributions to be made by the Developer, as set out in Schedule 2 of the Planning Agreement, are based on a work program for each of the respective services and facilities.

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

The Planning Agreement as amended by this Draft Deed contains requirements that must be complied with before subdivision certificates may be issued.