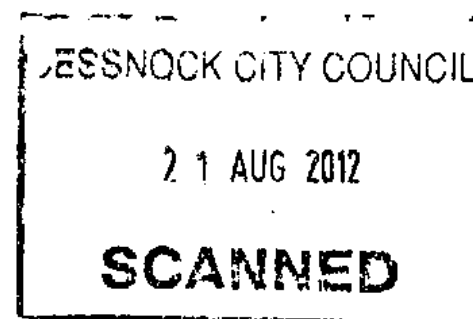
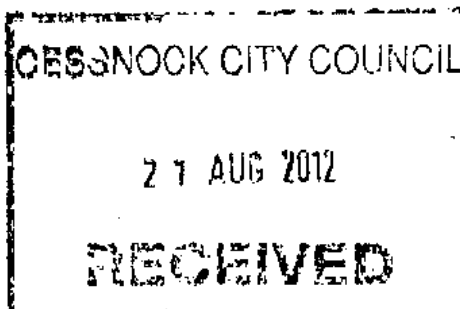


ORIGINAL TO LEGAL DOC'S.



## **Cessnock City Council**

[Council]

**Cessnock Land Management P/L (ACN 111 738 213)**

C/- Level 1, 106 King Street Sydney NSW 2000

**Vincent Street Holdings P/L (ACN 112 144 804)**

C/- 1 Hartley Drive, Thornton NSW 2322

**Hardie Oceanic P/L (ACN 070052 738)**

C/- Level 1, 106 King Street Sydney NSW 2000

[Landowner]

# **Planning Agreement**

*Environmental Planning & Assessment Act 1979*

**Date: 13 July 2012**

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**Annexure A – Proposed Rezoning Plan**

**Annexure B – Environmental Offset Land**

**Annexure C – Plan of Management for Mine Subsidence**

## **DEED**

**Date** [13 July 2012]

**Parties** **Cessnock City Council**  
("the Council")

**Cessnock Land Management P/L** (ACN 111 738 213)  
C/- Level 1, 106 King Street Sydney NSW 2000

**Vincent Street Holdings P/L** (ACN 112 144 804)  
C/- 1 Hartley Drive, Thornton NSW 2322

**Hardie Oceanic P/L** (ACN 070052 738)  
C/- Level 1, 106 King Street Sydney NSW 2000

("Landowner")

## **Background**

- A. The Landowner owns the Land which includes the Environmental Offset Land.
- B. The Landowner has sought an amendment to the LEP to rezone the Land.
- C. The Landowner intends thereafter to lodge with the Council Development Applications for the Proposed Development on a staged basis.
- D. The Landowner has identified and agreed to set aside the Environmental Offset Land.
- E. The Landowner has offered to manage the Environmental Offset Land and ensure it is protected in perpetuity.
- F. The Landowner has agreed to implement a Mine Subsidence Management Plan to address concerns about the safety of individuals entering the Land and to monitor ongoing mine subsidence impacts of any development on the Land.
- G. The Parties have therefore agreed to enter into this Agreement to formalise the arrangements.

## **Operative Provisions**

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### **1. Definitions and Interpretation**

#### **1.1 Definitions**

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

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

**Agreement** means this Deed.

**Application** means an application for any Approval.

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

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

**Bank Guarantee** means an irrevocable and unconditional undertaking by an Australian bank, and on terms, acceptable to the Council, in the Council's absolute discretion, to pay any amount up to the face value of that undertaking on demand.

**Business Day** means any day except for Saturday or Sunday or a day which is a public holiday in Sydney or a day on which the Council offices are closed.

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

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

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

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

**Development Contribution** means the contributions, being material public benefits, set out in Schedule 3.

**Environmental Offset Land** means that part of the Land identified by the hatching on the plan attached as Annexure B to this Agreement.

**Explanatory Note** means the explanatory note required by the Regulation.

**Gazettal** means the publication on the NSW legislation website under section 34(5) of the Act of the amendment to the LEP which has the effect of rezoning the Land in accordance with the Proposed Rezoning Plan attached at Annexure A.

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

**Land** means the land described in Schedule 2.

**LEP** means *Cessnock Local Environmental Plan 1989*.

**LPMA** means the Land and Property Management Authority or any similar department or authority that may be established from time to time.

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

**Plan of Subdivision** means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

**Proposed Development** means subdivision and development of the Land.

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

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

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

**Security Arrangements** means the security arrangements set out in Schedule 4.

**State** means the State of New South Wales.

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

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

## 1.2 Interpretation

In this Agreement:

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

and unless the context indicates a contrary intention:

(b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;

(e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

(h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) the Schedules and Annexures to this Agreement form part of this Agreement; and
- (l) if a party to this Agreement is made up of more than one person:
  - (i) an obligation of those persons is joint and several;
  - (ii) a right of those persons is held by each of them severally; and
  - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

---

## **2. Operation and Status of this Agreement**

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) This Agreement is entered and takes effect on its execution by all the Parties, or if the execution of the Agreement occurs prior to Gazettal, on Gazettal.

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## **3. Application of the Agreement**

This Agreement applies to the Land.

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## **4. Application of Section 94, Section 94A and Section 94EF of the Act**

The application of sections 94, 94A and section 94EF to the Proposed Development is not excluded.

---

## **5. Requirement to Provide the Development Contribution**

### **5.1 Provision of Contribution**

The Landowner undertakes to provide the Development Contribution in the manner and at the times set out in Schedule 3 to this Agreement and the Parties agree to abide by the procedures and obligations set out in Schedule 3 to this Agreement.

### **5.2 Consideration of Contribution for Proposed Development**

The Council agrees to take this Agreement into account in accordance with s79C(1)(a)(iiia) of the Act.

### **5.3 Failure to provide Contribution**

- (a) If, in the Council's opinion, the Landowner fails to carry out any works forming part of the Development Contribution the Council may notify the Landowner in writing of:
  - (i) the works which have not been done;

- (ii) the time period in which the Council expects the works to be completed; and
  - (iii) whether immediate action is required to address a matter of public safety or environmental harm.
- (b) If the Landowner does not complete the works identified in a notice issued by the Council under clause 5.3(a), in the time period specified in that notice, the Council may elect to carry out those works or appoint a contractor to carry out those works on the Council's behalf.
- (c) If the Council proposes to carry out work in accordance with clause 5.3(b):
  - (i) the Council must give the Landowner 20 Business Days notice, prior to commencing the work, unless the notice issued under clause 5.3(a) states that immediate action is required to address a matter of public safety or environmental harm, in which case the Council may give 24 hours notice;
  - (ii) the Landowner must allow the Council, its officers, employees, agents and contractors to enter the Land for the purpose of completing the work;
  - (iii) the costs which the Council incurs in completing the work will be a debt due and payable by the Landowner to the Council and may be recovered by the Council from the Landowner by calling on any Bank Guarantee provided in accordance with clause 7.1 and Schedule 4 of this Agreement, or as a debt due in a court of competent jurisdiction; and
  - (iv) the Landowner irrevocably appoints the Council as its attorney to exercise its rights and powers as owner of the Land including to execute all such documents and do all things on the Landowner's behalf as are necessary or desirable to enable the Council to complete the work.

---

## **6. Land Ownership and Registration of this Agreement**

### **6.1 Ownership**

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

- (a) the legal and beneficial owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this Agreement is required to be registered under clause 6.2 of this Agreement; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.2(b)(i) to assist, cooperate and otherwise to do all things necessary for the Developer to comply with its obligations under clause 6.2.



## **6.2 Registration of this Agreement**

- (a) The Landowner, within 5 Business Days of the date of this Agreement, agrees to procure the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land.
- (b) The Landowner, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - (i) the consent of each person who:
    - A. has an estate or interest in the Land registered under the Real Property Act; or
    - B. is seized or possessed of an estate or interest in the Land; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title,to enable the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land in accordance with section 93H of the Act.
- (c) The Landowner will, within 10 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 6.2(a) and clause 6.2(b), provide the Council with a copy of the relevant folios of the Register for the Land.

## **6.3 Removal of Registration**

- (a) This clause 6.3 does not apply to the Environmental Offset Land.
- (b) From time to time, the Landowner may request the Council to provide a release and discharge of this Agreement to the extent this Agreement affects any part of the Land for which a Subdivision Certificate has been issued and where the Landowner has fully satisfied its obligations under this Agreement relating to that part of the Land.
- (c) If the Council is satisfied that the Landowner has fully satisfied its obligations under this Agreement relating to that part of the Land subject to the request made under clause 6.3(a):
  - (i) the Council may provide a release and discharge of this Agreement to the extent specified in the request; and
  - (ii) the Landowner may procure the removal of the registration of this Agreement from the title of that part of the Land.

---

## **7. Security and Enforcement**

### **7.1 Security**

The Landowner has agreed to provide security to the Council for performance of the Landowner's obligations under this Agreement on the terms and conditions of the Security Arrangements.

## **7.2 Enforcement**

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

## **7.3 No prevention to enforcement**

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

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

---

## **8. Dispute resolution**

### **8.1 Not commence**

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

### **8.2 Written notice of dispute**

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

### **8.3 Attempt to resolve**

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

### **8.4 Mediation**

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

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

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

### **8.5 Court proceedings**

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

## **8.6 Not use information**

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

## **8.7 No prejudice**

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

---

## **9. Assignment and Dealing**

### **9.1 Landowner's right to sell Land**

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

- (a) it satisfies the Council acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) of complying with such of the Landowner's obligations under this Agreement as the Council acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
- (b) the Council is satisfied that rights of the Council under this Agreement are not diminished or fettered in any way;
- (c) the Transferee signs a deed in form and substance acceptable to the Council containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Landowner (including obligations which arose before the transfer or assignment); and
- (d) the Council is satisfied that it holds appropriate security to secure the Landowner's obligations under this Agreement, including, without limitation, a guarantee and indemnity in respect of the Transferee's obligations to comply with the Required Obligations (if so required by the Council);
- (e) any default by the Landowner has been remedied by the Landowner or waived by the Council; and
- (f) the Landowner and the Transferee pay the Council's reasonable costs in relation to that assignment.

---

## **10. Release and Indemnity**

- (a) The Landowner agrees that the obligation to provide the Development Contribution is at the risk of the Landowner. The Landowner releases the Council from any Claim, liability or loss arising from, and costs incurred in connection with, the Landowner's obligation to provide the Development Contribution.

- (b) The Landowner indemnifies the Council against any costs incurred in connection with the Council enforcing the Landowner's obligation to provide the Development Contributions in accordance with this Agreement, except to the extent caused or contributed to by the Council's negligent act or default under this Agreement.
- (c) The indemnity in clause 10(b) is a continuing obligation, independent of the Landowner's other obligations under this Agreement and continues after this Agreement ends.

---

## **11. Costs**

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

including in each case, without limitation, legal costs and expenses on a solicitor and own client basis.

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## **12. Effect of Schedulised Terms and Conditions**

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

---

## **13. General Provisions**

### **13.1 Entire Agreement**

- (a) This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an Authorised Officer, agent or employee of that Party, before the Agreement was executed.
- (b) Pursuant to clause 25E(7) of the Regulation, the Explanatory Note required under clause 25E of the Regulation is not to be used to assist in construing this Agreement.

### **13.2 Further Acts**

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

### **13.3 Governing Law and Jurisdiction**

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

### **13.4 Joint and individual liability and benefits**

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

### **13.5 No fetter**

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

### **13.6 Representations and warranties**

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

### **13.7 Severability**

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

### **13.8 Modification**

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

### **13.9 Waiver**

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

implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

### **13.10 Good Faith**

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

---

## **14. Notices**

### **14.1 Form**

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

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

- (i) The Council

Cessnock City Council

Address: P.O Box 152, Cessnock  
Fax: (02) 49932500  
Attention: The General Manager

- (ii) Landowner

Cessnock Land Management P/L  
Vincent Street Holdings P/L  
Hardie Oceanic P/L

Address: 1 Hartley Drive, PO Box 3042  
Thornton NSW 2322  
Fax: (02) 4966 3644  
Attention: Mr Graham Burns

### **14.2 Receipt**

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

**Schedule 1 - Requirements under section 93F of the Act**

<b>SUBJECT and SUB-SECTION OF THE ACT</b>	<b>THE PLANNING AGREEMENT</b>
<p><b>Planning instrument and/or Development Application - (Section 93F(1))</b></p> <p>The Landowner has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Yes</p>
<p><b>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</b></p>	<p>The whole of the Land</p>
<p><b>Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b))</b></p>	<p>Rezoning of the Land to B7 and E2 in accordance with the Proposed Rezoning Plan at Annexure A.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))</b></p>	<p>See Schedule 3</p>
<p><b>Applicability of section 94 of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94 of the Act <i>is not</i> excluded.</p>
<p><b>Applicability of section 94A of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94A of the Act <i>is not</i> excluded.</p>
<p><b>Applicability of section 94EF of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94EF of the Act <i>is not</i> excluded.</p>
<p><b>Mechanism for dispute resolution - (Section 93F(3)(f))</b></p>	<p>See clause 8.</p>
<p><b>Enforcement of the Planning Agreement - (Section 93F(3)(g))</b></p>	<p>See clause 5.3 and clause 7.</p>
<p><b>Registration of the Planning Agreement - (Section 93F(3)(g))</b></p>	<p>Yes, the Parties agree that the Planning Agreement will be registered in accordance with clause 6.2.</p>
<p><b>No obligation to grant consent or exercise functions - (Section 93F(9))</b></p>	<p>No obligation. See clause 13.5.</p>

## Schedule 2 - Land

The whole of the land described in the following table:

<b>Lot</b>	<b>Deposited Plan</b>
Lot 251	DP 606348
Lot 1	DP 1036300
Lot 23	DP 845986
Lot 22	DP 845986



## Schedule 3 – Development Contribution

### 1. Development Contribution

#### 1.1 Contribution and Timing

The Landowner undertakes to provide or procure the provision of the Development Contribution as set out and provided for in Column 2 of the Development Contribution Table set out at clause 1.3 of this Schedule 3, no later than the date or event described in Column 3 of that table.

#### 1.2 Public Purpose

The Landowner and the Council acknowledge that the Development Contributions are being made for the public purposes described in Column 4 of the Development Contribution Table at clause 1.3 of this Schedule 3.

#### 1.3 Development Contribution Table

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Timing	Public Purpose
1	<p><b>Environmental Offset Land Contribution</b></p> <p>The Landowner must manage and protect the Environmental Offset Land in accordance with clause 2 of this Schedule 3</p>	<p>Fencing of the Environmental Offset Land in accordance with clause 2.1(c) of this Schedule 3 is to be completed within 120 days of Gazettal.</p> <p>All other obligations to manage and protect the Environmental Offset Land in accordance with a Vegetation Management Plan will commence on the date of any Development Consent for the subdivision or development of that part of the Land to be zoned B7 Business Park.</p>	<p>The conservation or enhancement of the natural environment</p>

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Timing	Public Purpose
2	<p><b>Mine Subsidence Management</b></p> <p>The Landowner must implement the Plan of Management for Mine Subsidence at Annexure C to this Agreement.</p>	<p>Any fencing requirements under section 5.1 of the Plan of Management for Mine Subsidence must be completed within 120 days of Gazettal.</p> <p>Immediate fencing required if a significant event occurs under section 5.3 of the Plan of Management for Mine Subsidence must be carried out as required from Gazettal.</p> <p>All other obligations under the Plan of Management for Mine Subsidence will commence on the date of any Development Consent for the subdivision or development of that part of the Land to be zoned B7 Business Park.</p>	Public safety and monitoring of planning impacts of proposed development

## 2. Development Contribution Details

### 2.1 Item 1: Management of Environmental Offset Land

- (a) The area proposed for Environmental Offset Land is to be managed and protected in perpetuity by the Landowner.
- (b) Ongoing management of the Environmental Offset Land will be guided by a Vegetation Management Plan (VMP), which must be prepared to the satisfaction of the Consent Authority prior to any Development Application being granted for subdivision or development of the Land. The VMP should include, but not be limited to, details of revegetation, restoration and weed control including the riparian corridors.
- (c) The Environmental Offset Land is to be fenced by the Landowner to prevent public access, rubbish dumping and use by recreational vehicles. The fencing must allow for the continued movement of fauna, such as

macropods, to the south of the Land. The fencing of the Environmental Offset Land must be maintained by the Landowner in perpetuity. (Note: Item 2 also contains requirements in relation to fencing).

- (d) All asset protection zones and stormwater retention basins for the Proposed Development are to be located outside the Environmental Offset Land.

## **2.2 Item 2: Management of Mine Subsidence**

- (a) The Landowner is to implement in perpetuity the Plan of Management for Mine Subsidence produced by GCA Engineering Solutions, and attached at Annexure C.
- (b) The Plan of Management for Mine Subsidence addresses responsibilities, access restrictions, long term monitoring and procedures to make the site safe in the event of subsidence.

## **3. Environmental Offset**

### **3.1 Consideration of Environmental Offset**

- (a) The Parties acknowledge and agree that some of the Land is to be rezoned to allow for urban development and:
  - (i) any subsequent development of the Land by the Landholders or by other entities may result in a loss of biodiversity on the Land, and
  - (ii) the intent of setting aside the Environmental Offset Land is to compensate for that negative impact and loss of biodiversity.
- (b) The Parties further acknowledge and agree that this Agreement should be taken into account when determining any Development Application for the Proposed Development in accordance with section 79C(1)(a)(iia) of the Act.
- (c) The Parties acknowledge that consideration of this Agreement in accordance with clause 3.1(b) of this Schedule 3 may result in conditions of Development Consent that refer to this Agreement and require compliance with the provisions of the Vegetation Management Plan and / or the Mine Subsidence Management Plan prior to issue of a Subdivision Certificate for any part of the Proposed Development.

## **Schedule 4 – Security Arrangements**

### **1. Bank Guarantee**

#### **1.1 Provision of Bank Guarantee**

- (a) On the execution of this Agreement, the Landowner must provide to the Council one or more Bank Guarantees having an aggregate face value of an amount equivalent to \$105,000.00.
- (b) The Landowner and the Council acknowledge and agree that the Bank Guarantees required to be provided by the Landowner under clause 1.1 (a) of this Schedule 4 secures the Landowner's obligations to carry out any works forming part of the Development Contribution.

#### **1.2 Reduction or replacement of Bank Guarantee**

The Council agrees that the face value of any Bank Guarantee provided by the Landowner will reduce in amount, or be replaced by Bank Guarantees with face values of reduced amounts, as determined by the Council, acting reasonably, having regard to the actions taken by the Landowner from time to time to comply with its obligations under this Agreement.

#### **1.3 Expiry of Bank Guarantees**

If any Bank Guarantee provided by the Landowner is expressed as expiring on a certain date, the Landowner must provide Cessnock City Council with a replacement Bank Guarantee 20 Business Days prior to the expiry of that Bank Guarantee.

#### **1.4 Claim on Bank Guarantees**

- (a) The Parties agree that if the Council undertakes to carry out any works in accordance with clause 5.3(b) of this Agreement:
  - (i) pursuant to clause 5.3(c)(iii) of this Agreement, the Council may make claims under any Bank Guarantee required to be provided under clause 1.1 (a) of this Schedule 4, at any time and from time to time; and
  - (ii) the Council agrees not to make any claim under any Bank Guarantee without providing at least 20 Business Days prior written notice to the Landowner of its intention to do so.
- (b) If the Council makes a claim on a Bank Guarantee in accordance with clause 1.4 (a) of this Schedule 4, the Council may, by notice in writing to the Landowner, require the Landowner to provide a further Bank Guarantee in an amount that, when added to any unused portion of any existing Bank Guarantee the Council is entitled to hold under this Schedule 4.

#### **1.5 Review of Bank Guarantees**

On each anniversary of this Agreement, the Council may review the outstanding obligations under this Agreement, and if, acting reasonably, it is of the opinion that the Bank Guarantees required by clause 1.1(a) of this Schedule 4 are not sufficient to secure the performance of this agreement by the Landowner then the Council can, by notice in writing that includes the Council's estimate of the cost of performing the outstanding obligations, require the Landowner to increase the amount of any Bank

Guarantee to the amount required to secure performance of this Agreement, provided the total amount of all existing Bank Guarantees will not exceed:

- (a) The cost of performing obligations under this Agreement that were required to be, but have not been, complied with as at the date of the review; plus
- (b) The cost, as estimated by the Council, of performing obligations under this Agreement for two years from the date of the review.

**1.6 Obligations under this Agreement not affected**

The provision of any Bank Guarantee as required under clause 1.1 (a) of this Schedule 4 does not:

- (a) relieve the Landowner from any of the obligations to be complied with under any other provision of this Agreement; or
- (b) limit the right of the Council to recover from the Landowner in full all costs incurred by the Council in carrying out work under clause 5.3(b) of this Agreement, including without limitation, interest on any such amounts or damages or other losses incurred by the Council.

**Executed as a Deed**

**Executed** for and on behalf of Cessnock City Council by its authorised delegate the General Manager, Ms Lea Rosser, in accordance with a resolution of the Council made on 21 March 2012, in the presence of:



Signature of Witness

MELANIE LOUISE PARKER

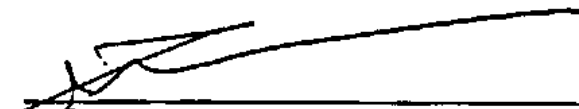
Name of Witness in full

**Executed** by Cessnock Land Management P/L (ACN 111 738 213) in accordance with s127 of the Corporations Act 2001

Director

Name (printed):

**Executed** by Vincent Street Holdings P/L (ACN 112 144 804) in accordance with s127 of the Corporations Act 2001



Director

GRAHAM ROBERT BURGESS

Name (printed):

**Executed** by Hardie Oceanic P/L (ACN 070052 738) in accordance with s127 of the Corporations Act 2001



Director

NATASHA DIANE HARDIE

Name (printed):



Authorised officer

GENERAL MANAGER

Position of authorised officer



Director / Secretary

DUNCAN JOHN HARDIE

Name (printed):



Director / Secretary

DUNCAN JOHN HARDIE

Name (printed):

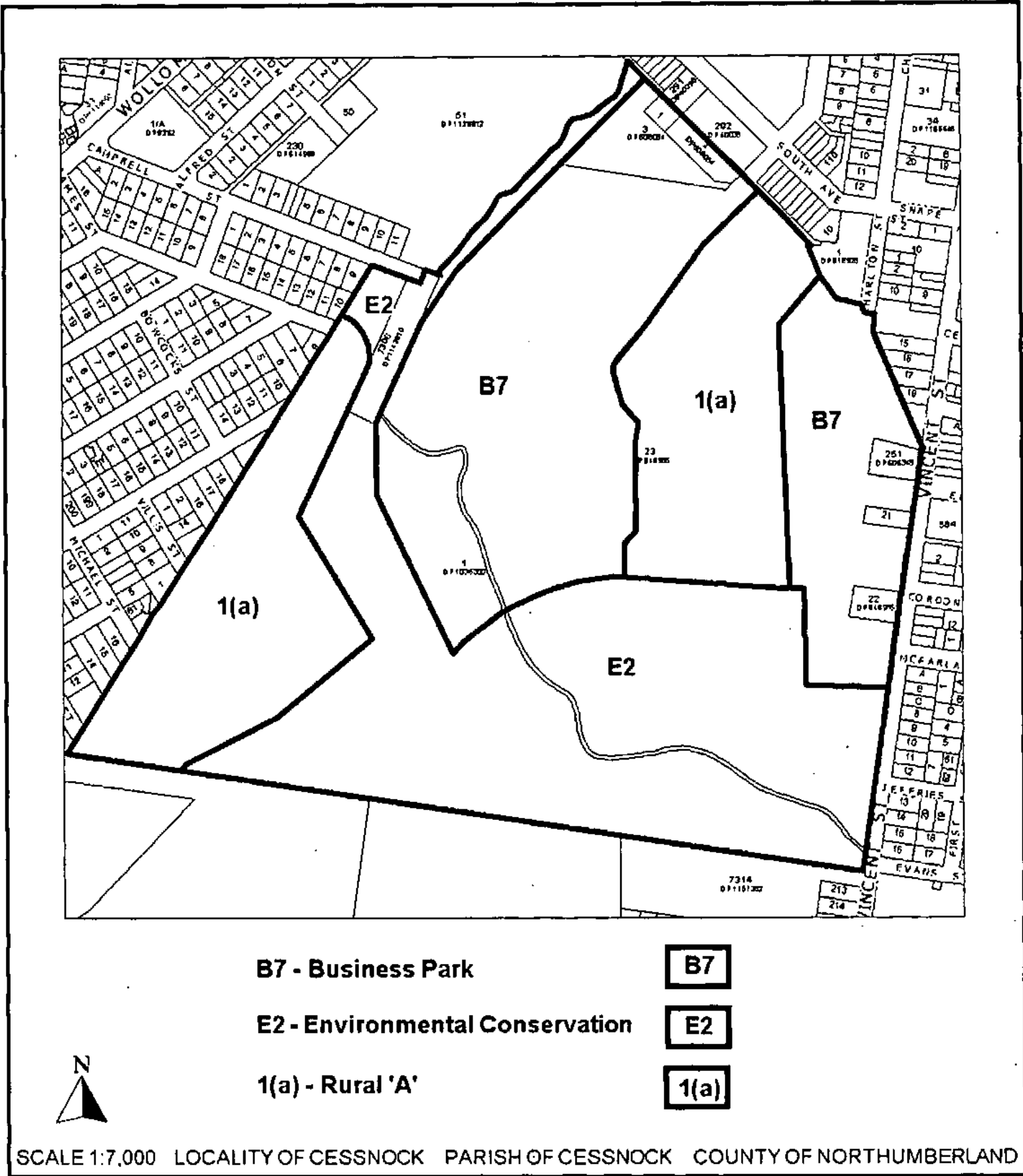


Director / Secretary

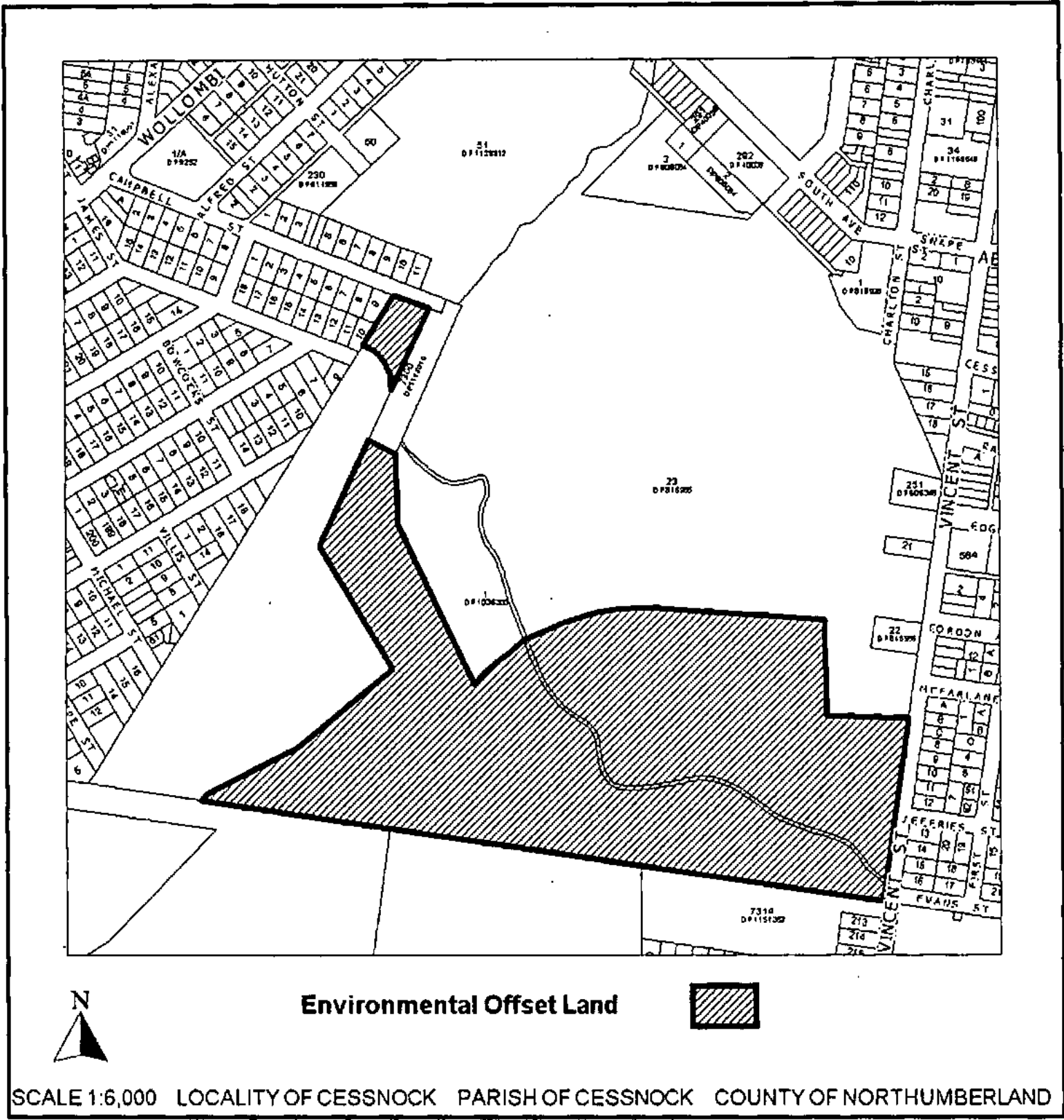
DUNCAN JOHN HARDIE

Name (printed):

# Annexure A Proposed Rezoning of the Land



# Annexure B – Environmental Offset Land





## **Annexure C - Plan of Management for Mine Subsidence**

**Cessnock Civic, Vincent  
Street, Cessnock**

**Plan of Management for Mine  
Subsidence**

Vincent Street Holdings Pty Ltd

**FINAL**

Revision: 5

Version Date: 22 September 2011



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Revision	Description	Author		Review		Approved	
1	Draft Issue to Client	IH	12.1.11	AS	14.1.11	IH	14.1.11
2	Draft Issue for MSB Consultation	IH	14.1.11	AS	14.1.11	IH	14.1.11
3	Final Issue	AS	16.06.11	AS	16.06.11	IH	16.06.11
4	Updated Figure 3	AS	12.09.11	AS	12.09.11	IH	12.09.11
5	For updated zone plan	AS	22.09.11	AS	22.09.11	IH	22.09.11

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## Appendices

Appendix A	Flow chart for site geotechnical monitoring
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## List of Acronyms

CCC	Cessnock City Council
GCA	GCA Engineering Solutions
MSB	NSW Government Mine Subsidence Board.

## Definitions

'Plan' means this Plan of Management for Mine Subsidence, Cessnock Civic, Cessnock.

'Site' means the area of land within the Cessnock Civic Development described in Section 2.1 of this Plan.

# 1. Introduction

## 1.1 Overview

This report has been produced following a request from the NSW Mine Subsidence Board (MSB) in a letter to Cessnock City Council (CCC) dated 25 November 2010 for the applicant (Vincent Street Holdings Pty Ltd) to develop and maintain a long term Management Plan to deal with risks associated with mine subsidence in areas of the Cessnock Civic Development site which are not yet approved by the MSB for development. The location of the Cessnock Civic Development is shown on Figure 1.

GCA Engineering Solutions (GCA) was subsequently engaged by Vincent Street Holdings Pty Ltd to prepare a Plan of Management for Mine Subsidence (the Plan). The Plan establishes the risk management approach for residual land (the Site) within the Cessnock Civic Development that has not yet been confirmed by the MSB as being suitable for development. This plan applies only to the residual land within the Cessnock Civic Development, with extents described in Section 2.

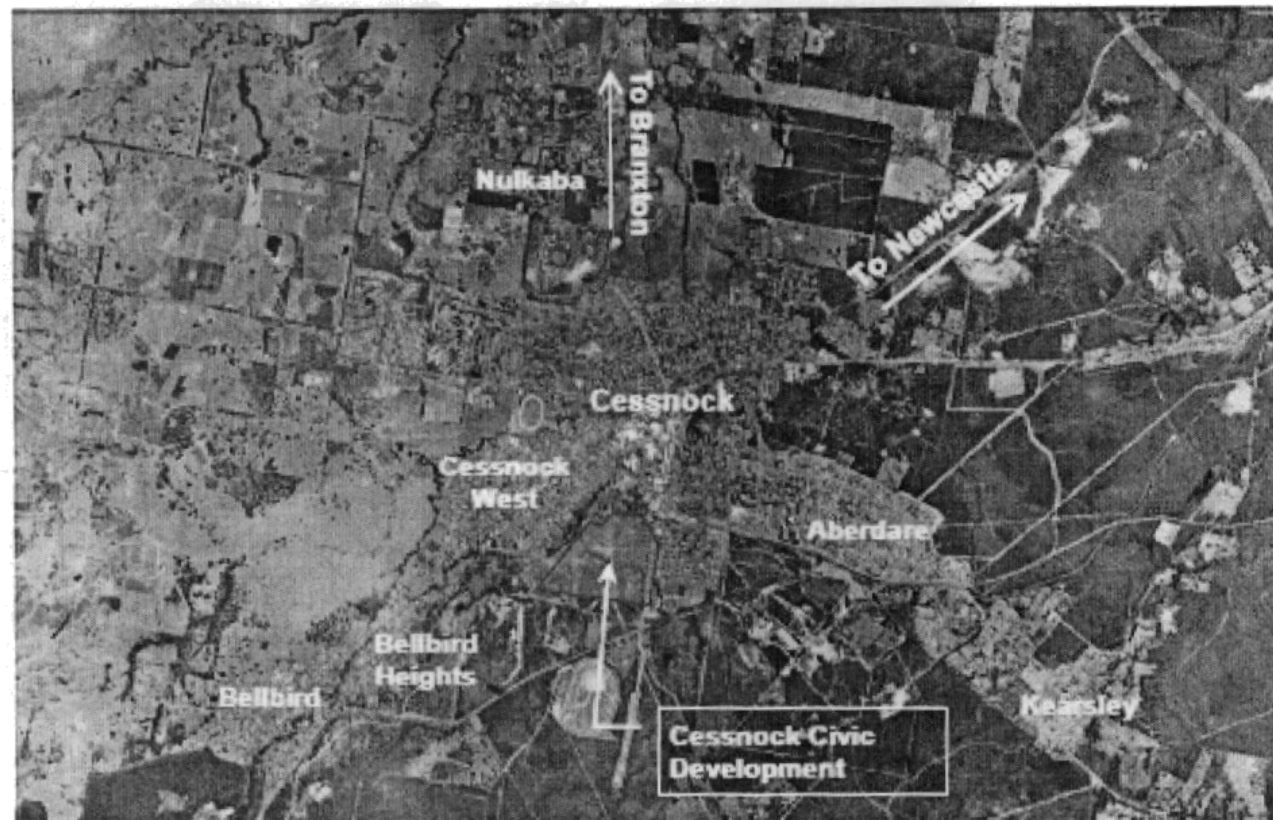


Figure 1 Locality plan  
(Image obtained from Google Maps)

## 1.2 Intention

The intent of the Plan is to provide a set of guidelines that cover:

- the land area to which the Plan applies (the Site)
- who is responsible
- access restrictions
- long term monitoring
- procedures to make the site safe in the event of subsidence.

## 1.3 Objectives

The objectives of the Plan are to ensure:

- that access to the Site by the public is restricted
- that all operations on site are conducted safely
- that long term monitoring of the Site surface conditions is routinely completed.

## **2. Land to which the Plan applies (the Site)**

### **2.1 The Site**

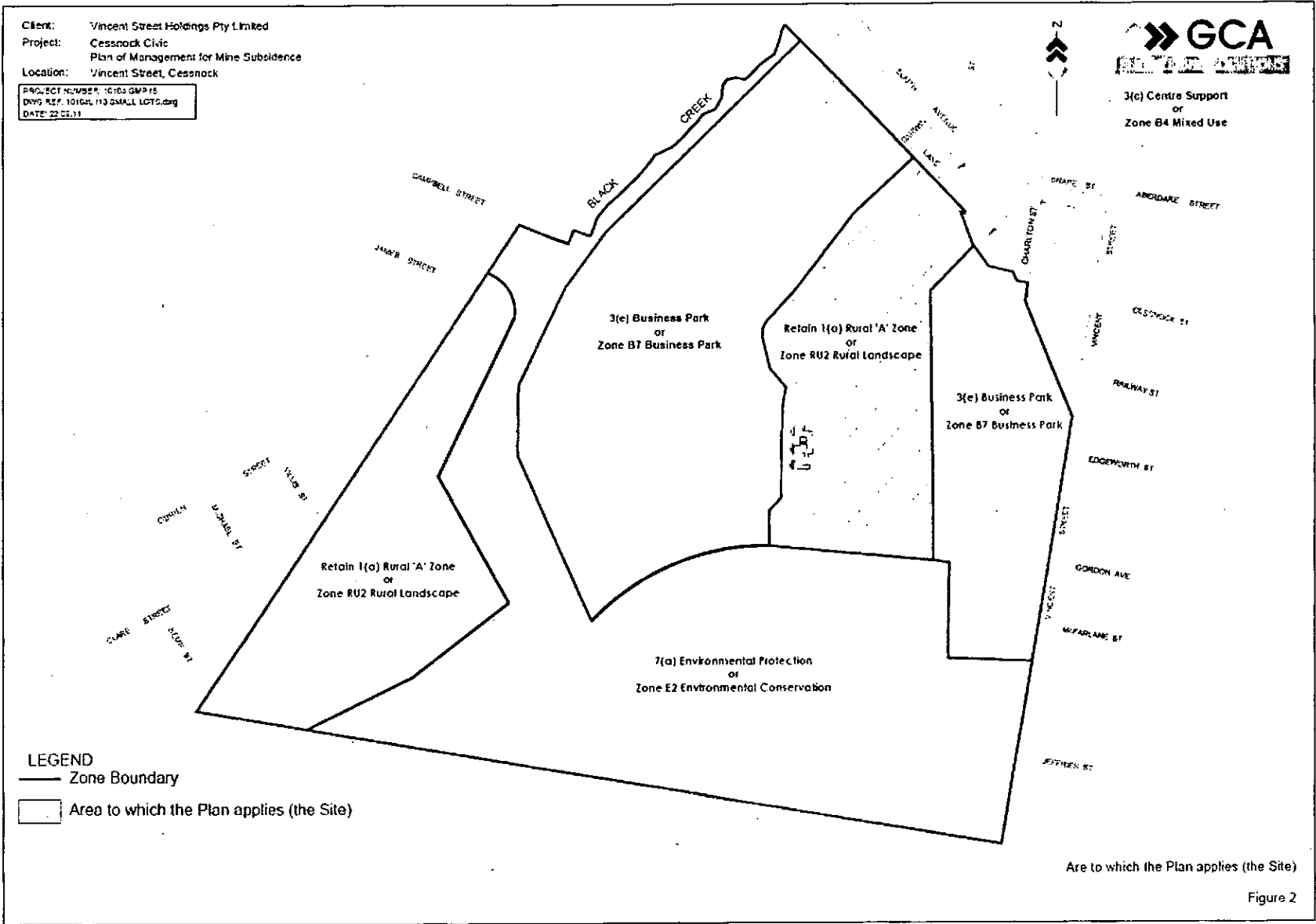
The areas forming the Site and to which the Plan applies comprise:

- part of the area which will be retained as Rural 'A' Zone or Zone RU2 Rural Landscape (Draft LEP 2009)
- the area noted as 7(a) Environmental Protection or Zone E2 Environmental Conservation (Draft LEP 2009).

The above areas are identified on Figure 2, over page.

### **2.2 Responsibilities**

It is the land owner's responsibility to ensure that the Site is maintained in accordance with the conditions specified in the Plan, and the underlying principle that every reasonable and practical step that is available should be taken to remove risk to the public.





### 3. Policy statement

This section describes the policies that will directly relate to the Site.

The following current policies apply to the Site:

- No development shall be undertaken as documented in the conclusions of the Parsons Brinckerhoff (PB) "Cessnock Civic Centre, Zone A Mine Subsidence Investigation – Interpretive Report" (January 2010).
- Long term ongoing monitoring will be undertaken. This is described further in Sections 4 and 5 of this Plan.
- Repair of any surface subsidence event shall be undertaken to a standard to ensure public safety.

## **4. Plan of management**

Management actions for the site can be generally described in terms of the three main areas outlined below.

### **4.1 Restriction of public access**

It is the responsibility of the land owner to ensure access to the Site by the public is restricted. A man proof fence shall be constructed around the site perimeter to prevent access by the public. Details of the fence locations are provided in Section 5.1.

### **4.2 Site operations**

All operations on the Site shall be conducted in safe manner. The location of access points and safety measures is documented in Section 5.2.

### **4.3 Long Term monitoring**

The surface conditions of the Site shall be routinely inspected. Details of the reporting procedure as well as actions in the event of a subsidence event are documented in Section 5.3.

## 5. Management actions

### 5.1 Fencing

A man proof fence shall be constructed around the perimeter of the site to prevent public access. The location of the fence shall be as follows (also refer Figure 3):

- The southern fence boundary shall run along the entire length of the Environmental Protection Zone southern property boundary
- The eastern fence boundary shall run along the eastern side of the Environmental Protection Zone and then around the western perimeter of the Business Park
- The northern fence boundary will run on the southern boundary of the Mixed Use sites with a gated access located at Darwin Street. The fence will then continue around the southern perimeter of the council site and terminate at Black Creek
- The western fence boundary will begin at Black Creek and run south along the western property boundary in line with the existing fences from the residential development.

Additional fencing (referred to as 'deferred fence' on Figure 3) will be provided as the staged development occurs within the B3 Business Park zoned land. Following erection of the 'deferred fencing', fencing between these zones and existing development to the west (for residential) and north (for business park) will be removed.

### 5.2 Site Access

There will be three locked gated access points to the overall Cessnock Civic Development that will be used to access the Site. These are located:

- off Vincent Street accessing the Environmental Protection Zone
- off the extension of Darwin Street accessing the Business Park
- off Michael Street accessing the land to be retained as 1(a) Rural 'A'.

The existing gravel tracks shall be regularly maintained and vehicle access shall be limited to the existing tracks only. Access to all other areas of the Site shall be on foot.

The location of the access points are shown on Figure 3.

### 5.3 Monitoring of the Site

The surface conditions of the Site shall be inspected every 6 months. Following each inspection a brief report shall be presented by the land owner to CCC within two weeks noting the condition of the Site and any changes that may have occurred.

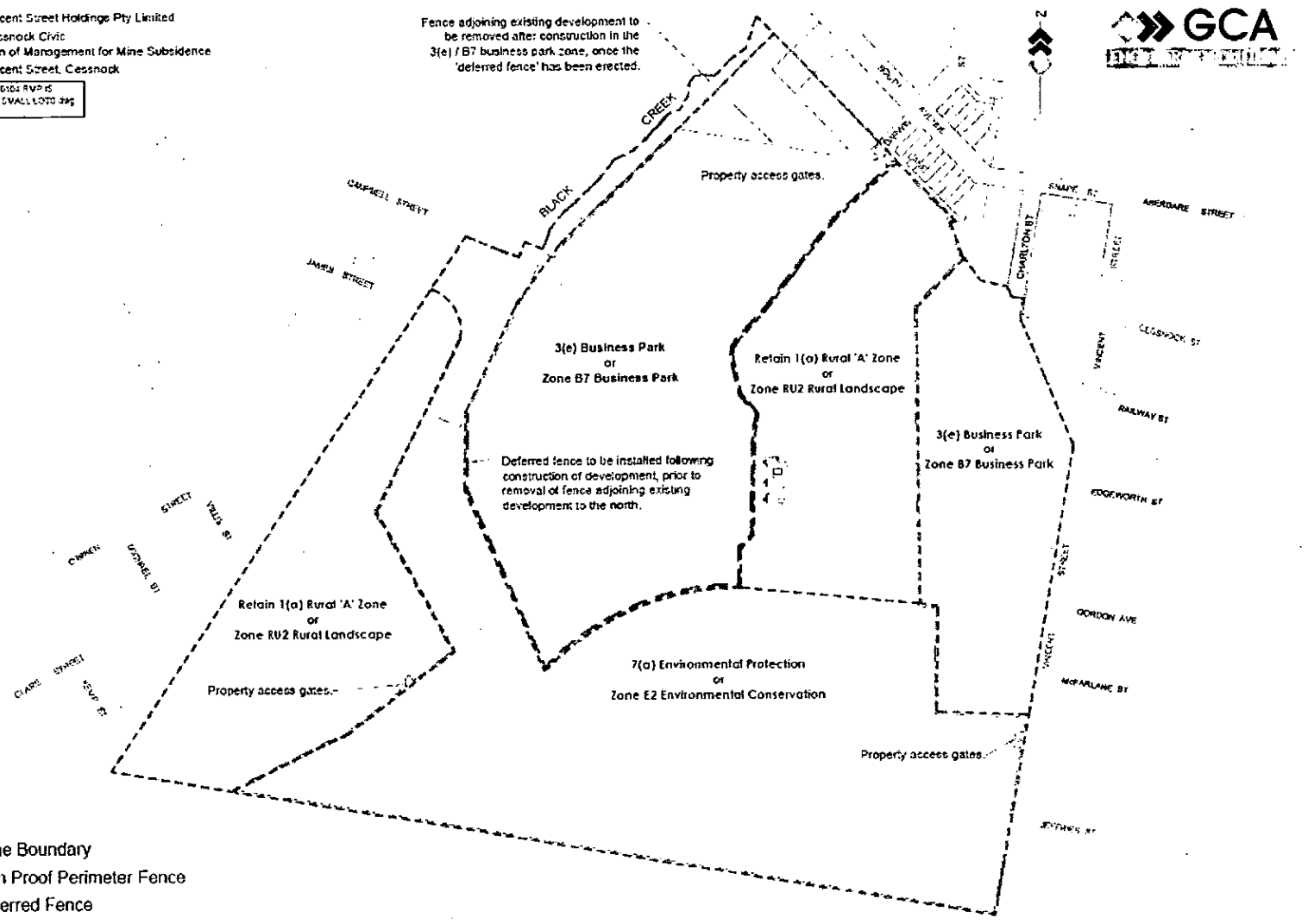
Appendix A includes a flow chart of the ongoing monitoring process that will be followed. It is noted that if minor surface subsidence is evident then the process is to notify a geotechnical engineer who will inspect the area to determine if further safety measures need to be undertaken.

If a significant event occurs and there is obvious risk to public safety then the location will be immediately fenced to prevent access and the Site subsequently inspected by a geotechnical engineer to assess future actions and remediation. In addition the MSB and CCC shall be formally notified. After the affected area has been remediated, the fence will be removed, and the area shall be allowed to regenerate with native vegetation.

Client: Vincent Street Holdings Pty Limited  
 Project: Cessnock Civic  
 Plan of Management for Mine Subsidence  
 Location: Vincent Street, Cessnock

PROJECT NUMBER: 10101 RVP 15  
 DWG REF: 10101\_113 SMALL LOTS 395  
 DATE: 22.09.11

Fence adjoining existing development to be removed after construction in the 3(e) / B7 business park zone, once the 'deferred fence' has been erected.



- Legend**
- Zone Boundary
  - Man Proof Perimeter Fence
  - Deferred Fence

Fence layout and site access locations

Figure 3

#### **5.4 Monitoring of Black Creek**

In addition to the regular monitoring events Black Creek should be inspected after major rainfall events to ensure that no surface subsidence has occurred.

#### **5.5 Further investigation permitted**

Reference is made to the report by PB titled "Cessnock Civic Centre, Vincent Street Cessnock Mine Hazard Risk Assessment, April 2009" which concludes that the area noted within the Site as Rural Zone on Figure 2 has the potential for future development subject to the results of future detailed geotechnical investigation.

## 6. References

The following documents were referenced in preparing the Plan:

- "Cessnock Civic Centre, Vincent Street Cessnock Mine Hazard Risk Assessment, April 2009" by Parsons Brinckerhoff
- "Cessnock Civic Centre, Zone A Mine Subsidence Investigation – Interpretive Report, Jan 2010" by Parsons Brinckerhoff
- Letter from the Mine Subsidence Board to Cessnock City Council dated 25 November 2010

## Appendix A

### Flowchart for site geotechnical monitoring

## Flowchart for Geotechnical Monitoring Program – Cessnock Civic

