

HEDDON GRETA PLANNING AGREEMENT

Kurri Autos Pty Limited

and

Cessnock City Council



LAYCOCK
SOLICITORS PTY LIMITED

LAYCOCK SOLICITORS
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Parties

Kurri Autos Pty Limited ABN 780 012 77890, ACN 001 277 890 of P.O. Box 61 Kurri Kurri NSW 2327
(Developer)

Cessnock City Council ABN 60919 148928 of Administrative Building 62-78 Vincent Street, Cessnock
NSW 2325 (Council)

Background

- A The Developer is the registered proprietor of the Land.
- B The Developer proposes to carry out the Development on the Land.
- C On 6 September 2005, The Developer made the Rezoning Application to the Council for amendment of the LEP.
- D The Developer has offered to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.
- E Until the Planning Agreement operates, this Agreement constitutes the Developer's irrevocable offer to make Development Contributions in connection with the Development on the terms and conditions set out in this Agreement.

Operative provisions

1 Definitions & Interpretation

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

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

Bank Guarantee means an irrevocable and unconditional undertaking by one of the following trading banks:

- (a) Maitland Mutual Building Society
- (b) Australia and New Zealand Banking Group Limited;
- (c) Commonwealth Bank of Australia;
- (d) Macquarie Bank;
- (e) National Australia Bank Limited;
- (f) St George Bank Limited;
- (g) Westpac Banking Corporation; or
- (h) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

Bond means an insurance bond from an AAA credit rated party.

construction certificate means a construction certificate within the meaning of the Act.

Contribution Value means the amount specified in respect of a Public Facility in Column 4 of Schedule 2.

Development means the proposed staged residential subdivision and housing development of the Land following the Rezoning.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or any combination of them, to be used for, or applied towards, a Public Purpose.

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

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

Future Development Application means a Development Application for the carrying out of a Stage of the Development.

Land means Part Lot 404 of DP1127085 and Part Lot 102 of DP 1112059 whole of land described in Annexure 'A'.

LEP means the *Cessnock Local Environmental Plan 1989*.

LPMA means Land and Property Management Authority of New South Wales.

Planning Agreement means the provisions of this Agreement under which the Developer is required to make Development Contributions in connection with the carrying out of the Development, and includes any provisions that are incidental or supplementary to those provisions.

Public Facilities are those facilities described in Column 2 of Schedule 2 for which contributions are to be made by the Developer to the Council under this Agreement.

Public Purpose has the same meaning as in s93F(2) of the Act.

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

Rezoning means the publication on the NSW legislation website (under s34 of the Act) of a local environmental plan which has the effect of zoning the Land in accordance with the proposed zoning plan in Annexure 'A'.

Rezoning Application means a request made by the Developer to the Council for the Rezoning.

Stage in relation to the Development means a stage of the carrying out of the Development.

subdivision certificate means a subdivision certificate within the meaning of 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 thing 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 deed and includes the agreement recorded in this deed.
- 1.2.13 A reference to a Party to this Agreement includes a reference to the servants, agents and contractors
- 1.2.14 Any schedules, appendices, annexures and attachments form part of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and the Development.

3 Operation of this Agreement

- 3.1 This Agreement operates from the date it is entered into by the Parties. If the Rezoning does not occur within two years of the date of this Agreement, the obligations of each party to the other pursuant to this Agreement are at an end except as may relate to any antecedent breaches of the Agreement by either party.
- 3.2 The Planning Agreement operates only if Development Consent is granted for any part of the Development.
- 3.3 To avoid any doubt, the Planning Agreement does not create any obligation to provide any Development Contribution towards a Public Facility unless and until:
 - 3.3.1 Development Consent is granted to a Future Development Application that includes that part of the Development referred to in Column 3 of Schedule 2 in relation to that Public Facility; and
 - 3.3.2 a construction certificate is issued under that Development Consent.
- 3.4 Until the Planning Agreement operates this Agreement constitutes the Developer's irrevocable offer to enter into the Planning Agreement if any Development Consent is granted for the Development.

4 Further Agreements Relating to this Agreement

- 4.1 The Parties may, at any time, enter into such other agreements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 4.2 An agreement referred to in clause 4.1 is not to be inconsistent with:
 - 4.2.1 this Agreement, or
 - 4.2.2 any Development Consent for the Development, as modified from time to time, or
 - 4.2.3 any other applicable law.
- 4.3 An agreement referred to in clause 4.1 does not have effect to the extent that it contravenes clause 4.2.

5 Application of s94 and s94A of the Act to the Development

- 5.1 This Agreement excludes the application of s94 and s94A of the Act to the Development.

6 Not used.

7 Provision of Development Contributions under this Agreement

- 7.1 Subject to this Agreement, the Developer is to make a Development Contribution in respect of the Development comprising:
 - 7.1.1 dedication of the land described in Column 2 of Part A of Schedule 2;
 - 7.1.2 payment of the monetary contributions specified in Column 4 of Part B of Schedule 2 in respect of each Final Lot up to and including the 130th Final Lot in the Development;
 - 7.1.3 payment of the monetary contributions specified in Column 4 of Part C of Schedule 2 in respect of each Final Lot up to and including the 130th Final Lot in the Development; and
 - 7.1.4 payment of the monetary contributions specified in Column 4 of Part D of Schedule 2 in respect of each Final Lot in excess of the 130th Final Lot in the Development.
- 7.2 A Development Contribution referred to in clause 7.1 is to be made:
 - 7.2.1 for the Public Facility referred to in Column 2 of Schedule 2, and
 - 7.2.2 at the time specified in Column 3 of Schedule 2 in respect of the relevant Public Facility.

- 7.3 A monetary contribution as referred to in clause 7.1.2, 7.1.3 and 7.1.4 is to be indexed quarterly in accordance with the Consumer Price Index (All Groups-Sydney) as provided by the Australian Bureau of Statistics from the date of this Agreement to the date of payment.
- 7.4 Development Contributions made in accordance with this Agreement (or an agreement referred to in clause 4) are made in full and final satisfaction of all costs and expenses required to be borne by the Developer for and incidental to the provision of the Public Facility

8 Application of Development Contributions by the Council

- 8.1 Subject to this clause, the Council must apply a Development Contribution made by the Developer under this Agreement towards the Public Facility for which it is made and at the locations, in the manner and to the standards required by or under this Agreement.
- 8.2 The Council is to make each such Public Facility 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 facility created by the Development.
- 8.3 If the Council decides that a Public Facility for which a Development Contribution is made under this Agreement is no longer required, the Council must apply the Development Contribution towards the provision of other City Wide or Local Area facilities for a Public Purpose which in the Council's opinion benefit the locality of Heddon Greta and the future residents of the Heddon Greta Residential Estate Development on the Land.
- 8.4 Notwithstanding clause 7.2 of this Agreement and this Clause 8, monetary Development Contributions made by the Developer in accordance with clause 7.1 may be pooled by the Council and applied progressively towards the provision of any of the Public Facilities or any facility proposed by the Council under clause 8.3.

9 Monetary Contributions

- 9.1 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.
- 9.2 The Developer is to give the Council not less than 2 business days written notice of:
- 9.2.1 its intention to pay a monetary contribution,
 - 9.2.2 the Public Facility to which the monetary contribution relates, and
 - 9.2.3 the amount proposed to be paid.
- 9.3 The Developer is not required to pay a monetary contribution under this Agreement unless the Council, after having received the Developer's notice under clause 9.2, has given to the Developer a tax invoice for the amount of the contribution that the Developer intends to pay.
- 9.4 The Developer is not in breach of this Agreement if it fails to pay a monetary contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by the Developer.

10 Dedication of Land

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer title to the land (free from encumbrances unless otherwise agreed by Council in writing) to the Council when registered.
- 10.2 To allow for the registration of an instrument of transfer referred to in clause 10.1, the Developer is to:
- 10.2.1 produce to the LPMA the certificate of title to land to be dedicated under this Agreement or a direction allowing the certificate of title to be used for that purpose, and
 - 10.2.2 give to the Council an irrevocable undertaking to deliver to the Council the certificate of title if that certificate is released to the Developer by the LPMA.
- 10.3 The Council must accept the dedication of land specified in Part A of Schedule 2 at the same time as it is required.

11 Indemnity

- 11.1 The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Developer of obligation under this Agreement.

12 Provision of Security

- 12.1 Prior to the issuing of the first construction certificate in respect of a Stage of the Development, the Developer is to provide the Council with a Bond or a Bank Guarantee in an amount equal to the Contribution Value for the total number of Final Lots in that particular Stage;
- 12.2 For the purposes of calculating the amount of the Bond or Bank Guarantee under clause 12.1, the Contribution Values for the Development Contributions shall be indexed quarterly in accordance with the Consumer Price Index (All Groups- Sydney) as provided by the Australian Bureau of Statistics from the date of this Agreement to the date that the Bank Guarantee is provided.
- 12.3 Except as expressly permitted by this Agreement, the Council is not to call upon a Bond or Bank Guarantee provided under this clause unless the Developer is in material or substantial breach of this Agreement and has failed to rectify the breach after having been given reasonable notice (which must not be less than 30 days) in writing to do so.
- 12.4 At any time following the provision of a Bond or Bank Guarantee, the Developer may provide Council with one or more replacement Bonds or Bank Guarantees totaling the amount of all Bonds or Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bond or Bank Guarantee, the Council must release and return to the Developer, as directed, the Bonds and Bank Guarantees which it holds that have been replaced.
- 12.5 Subject to this clause, the Council may apply the proceeds of a Bond or Bank Guarantee in satisfaction of:
- 12.5.1 any obligation of the Developer under this Agreement - in which case the obligation will be taken to have been rectified, and
- 12.5.2 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.
- 12.6 When the obligation of the Developer under this Agreement to which a Bond or Bank Guarantee relates has been fulfilled, the Council must return the Bond or Bank Guarantee (or agree to the replacement of the Bond or Bank Guarantee by a Bond or Bank Guarantee for such lesser amount as is applicable in the circumstances having regard to the fulfillment of the obligation) if requested by the Developer
- 12.7 If the Council calls on a Bond or Bank Guarantee in accordance with this Agreement, the Council may, by notice in writing to the Developer, require the Developer to provide a further Bond or Bank Guarantee in an amount that, when added to any unused portion of any existing Bank Guarantee, does not exceed the amount of the Bond or Bank Guarantee the Council is entitled to hold under this clause 12.

13 Enforcement

- 13.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced either Party in any court of competent jurisdiction.
- 13.2 For the avoidance of doubt, nothing in this Agreement prevents:
- 13.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
- 13.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

14 Registration of this Agreement

- 14.1 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 Rezoning including obtaining the consent of any mortgagee or other person with an estate or interest in the Land to such registration.
- 14.2 The Developer shall deliver to the Council on the date this Agreement is made, all necessary documents in registrable form to enable the Council to lodge those documents at LPMA and obtain immediate registration of the Planning Agreement on the title to the Land following the grant of Development Consent for the first Stage of the Development.
- 14.3 In the event that the documents of title for the land are not in the possession of the Developer, the Developer will deliver to the Council at the date this Agreement is made, an irrevocable undertaking in the form of a deed poll by the person having possession of the title deeds to the Land, in favour of the Council to:
- 14.3.1 in consideration of the Council's entering into this Agreement with the Developer, consent to the registration of this Agreement on the title to the Land; and
- 14.3.2 produce the title documents in relation to the Land when required by the Council and / or LPMA to enable registration of this Agreement under section 93H of the Act.

- 14.4 The Council agrees that on registration of any plan of subdivision within the Development, notation of the registration of the Planning Agreement shall be removed at the Developer's cost from the title to each Final Lot created by the plan of subdivision.

15 Restriction on inconsistent development

- 15.1 The Developer agrees that it will not, without the consent of the Council, apply for, or authorise any other person to apply for, consent or approval to carry out development on the Land in a form inconsistent with the Development.

16 Assignment and sale of land

- 16.1 The Developer may sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land (if any) or allow any interest in them 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 14, and 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.
- 16.2 Nothing in clause 16.1 prevents a transfer of Final Lot 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.

17 Review of this Agreement

- 17.1 This Agreement may be reviewed or modified in accordance with the Act and by the agreement of the Parties using their best endeavours and acting in good faith.

18 Dispute Resolution

- 18.1 Except as otherwise specifically provided by this Agreement, should a dispute arise under this Agreement or an agreement under clause 4, the Parties shall firstly meet in an attempt to resolve the dispute.
- 18.2 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a 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.
- 18.3 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.

19 Notices

- 19.1 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:
- 19.1.1 delivered or posted to that Party at its address set out in Schedule 1.
- 19.1.2 faxed to that Party at its fax number set out in Schedule 1.
- 19.1.3 emailed to that Party at its email address set out in Schedule 1.
- 19.2 If a Party gives the other Party 3 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.
- 19.3 Any notice, consent, information, application or request is to be treated as given or *made* if it is:
- 19.3.1 delivered, when it is left at the relevant address;
- 19.3.2 sent by post, 2 business days after it is posted;
- 19.3.3 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
- 19.3.4 emailed within 24 hours of the sender sending the email to the correct address provided no failed delivery notice has been received within that period.
- 19.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of 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.

20 Approvals and Consent

- 20.1 Except as otherwise set out in this Agreement or an agreement referred to in clause 4, 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.
- 20.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions

21 Costs

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

22 Entire Agreement

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

23 Further Acts

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

24 Governing Law and Jurisdiction

- 24.1 This Agreement is governed by the law of New South Wales.
- 24.2 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.

25 Joint and Individual Liability and Benefits

- 25.1 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.

26 No Fetter

- 26.1 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.

27 Representations and Warranties

- 27.1 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.

28 Severability

- 28.1 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.
- 28.2 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.

29 Modification

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

30 Waiver

- 30.1 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 breach of obligation by, another Party.
- 30.2 A waiver by a Party is only effective if it is in writing.
- 30.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

31 GST Provisions

Note: Under *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2008 (No.1)*:

- (a) Development Contributions made under Division 6 of Part 4 of the Act to finance the provision of public infrastructure and services are not consideration for any supply made by Council; and
- (b) Dedication of roads, buildings or other infrastructure is not consideration for any supply made by Council.
- 31.1 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.
- 31.2 Subject to clause 31.4, 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.
- 31.3 Clause 31.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 31.4 No additional Consideration shall be payable by the Council under clause 31.2 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.
- 31.5 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:
- 31.5.1 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;
- 31.5.2 that any amounts payable by the Parties in accordance with clause 31.2 (as limited by clause 31.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 31.6 No payment of any amount pursuant to this clause 31, 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.
- 31.7 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.
- 31.8 This clause continues to apply after expiration or termination of this Agreement.

Heddon Greta Planning Agreement

Kurri Autos Pty Limited

Cessnock City Council

32 Explanatory Note Relating to this Agreement

- 32.1 Annexure 'B' contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 32.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in Annexure 'B' is not to be used to assist in construing this Planning Agreement

Heddon Greta Planning Agreement

Kurri Autos Pty Limited

Cessnock City Council

Schedule 1

(Clause 19)

Contact for Notices

Developer: Kurri Autos Pty Limited

Contact Officer: Geoff Hawke, CoePlan Consultants Pty Ltd

Telephone: (02) 4963 3738

Fax: (02) 4963 7434

Email: geoff@coeplan.com

Council: Cessnock City Council

Contact Officer: The General Manager

Telephone: (02) 4993 4100

Fax: (02) 4993 4200

Email: council@cessnock.nsw.gov.au

Schedule 2

(Clause 7)

The Development Contributions

Table

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Timing	Contribution Value
Part A - Land dedication			
A1	Local Park / Children's Playground – located off Madeline Street having a minimum area of 5,000m ² , as shown in green on the Master Concept Plan at Annexure A	Prior to the release of the construction certificate for the 50th Final Lot in the Development.	\$ Land value
Total Contribution for Land dedication			\$ Land value
Part B – City Wide Monetary Contributions			
B1	City Library Facilities	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$696.50 per Final Lot up to and including the 130 th Final Lot in the Development
B2	Kurri Kurri District Aquatic Centre	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$461.50 per Final Lot up to and including the 130 th Final Lot in the Development
B3	District Dry Facility-Kurri Kurri District Aquatic Centre	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$461.50 per Final Lot up to and including the 130 th Final Lot in the Development
B4	Cessnock Performing Arts Centre	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$577.05 per Final Lot up to and including the 130 th Final Lot in the Development
Total Cash Contribution City Wide Activities			\$2,196.55 per Final Lot up to and including the 130th Final Lot in the Development
Part C – Local Area Monetary Contributions			
Item	Public Purpose	Timing	Contribution Value
C1	Reconstruction of Young Street (400m) including pavement rehabilitation and Kerb & Gutter	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$3,572.70 per Final Lot up to and including the 130 th Final Lot in the Development

C2	Young Street – Construct pedestrian / cycle pathway (0.9km)	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$615.40 per Final Lot up to and including the 130 th Final Lot in the Development
C3	Contribution towards completion of pedestrian pathway in Main Road from Trenchard Street to Earp Street	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$615.40 per Final Lot up to and including the 130 th Final Lot in the Development
C4	Contribution towards external Bus Stops	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$384.50 per Final Lot up to and including the 130 th Final Lot in the Development
C5	Provision of Local Park / Playground Equipment / Access – Heddon Greta	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$961.60 per Final Lot up to and including the 130 th Final Lot in the Development
Total Cash/ Access Contribution Local Area Activities			\$6,149.60 per Final Lot up to and including the 130 th Final Lot in the Development
Total Cash Contributions Part B & Part C			\$8,346.15 per Final Lot up to and including the 130 th Final Lot in the Development
Part D – Monetary Contributions for Final Lots in excess of the 130th Final Lot in the Development			
Item	Public Purpose	Timing	Contribution Value
D1	Any of the facilities listed in Part A, B or C above or any other facility for a Public Purpose which in the Council's opinion benefits the locality of Heddon Greta and the residents of the Heddon Greta Residential Estate Development	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$8,500.00 per Final Lot in excess of the 130 th Final Lot in the Development

TOTAL CONTRIBUTION VALUE	\$ Land value Plus \$8,346.15 per Final Lot up to and including the 130th Final Lot in the Development and \$8,500 per lot in excess or the 130th Final Lot (if any)
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Heddon Greta Planning Agreement

Kurri Autos Pty Limited

Cessnock City Council

ANNEXURE 'A'

Master Concept Plan

Heddon Greta Rezoning Proposal

Being

Part Lot 404 of DP1127085 and Part Lot 102 of DP 1112059

Off Main Road, Young & Bowden Streets, Errol Crescent, Madeline and

Ashley Close and Forbes Crescent at Heddon Greta

Heddon Greta Planning Agreement

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Cessnock City Council

ANNEXURE 'A'

Master Concept Plan

Heddon Greta Rezoning Proposal

Being

Part Lot 404 of DP1127085 and Part Lot 102 of DP 1112059

Off Main Road, Young & Bowden Streets, Errol Crescent, Madeline and

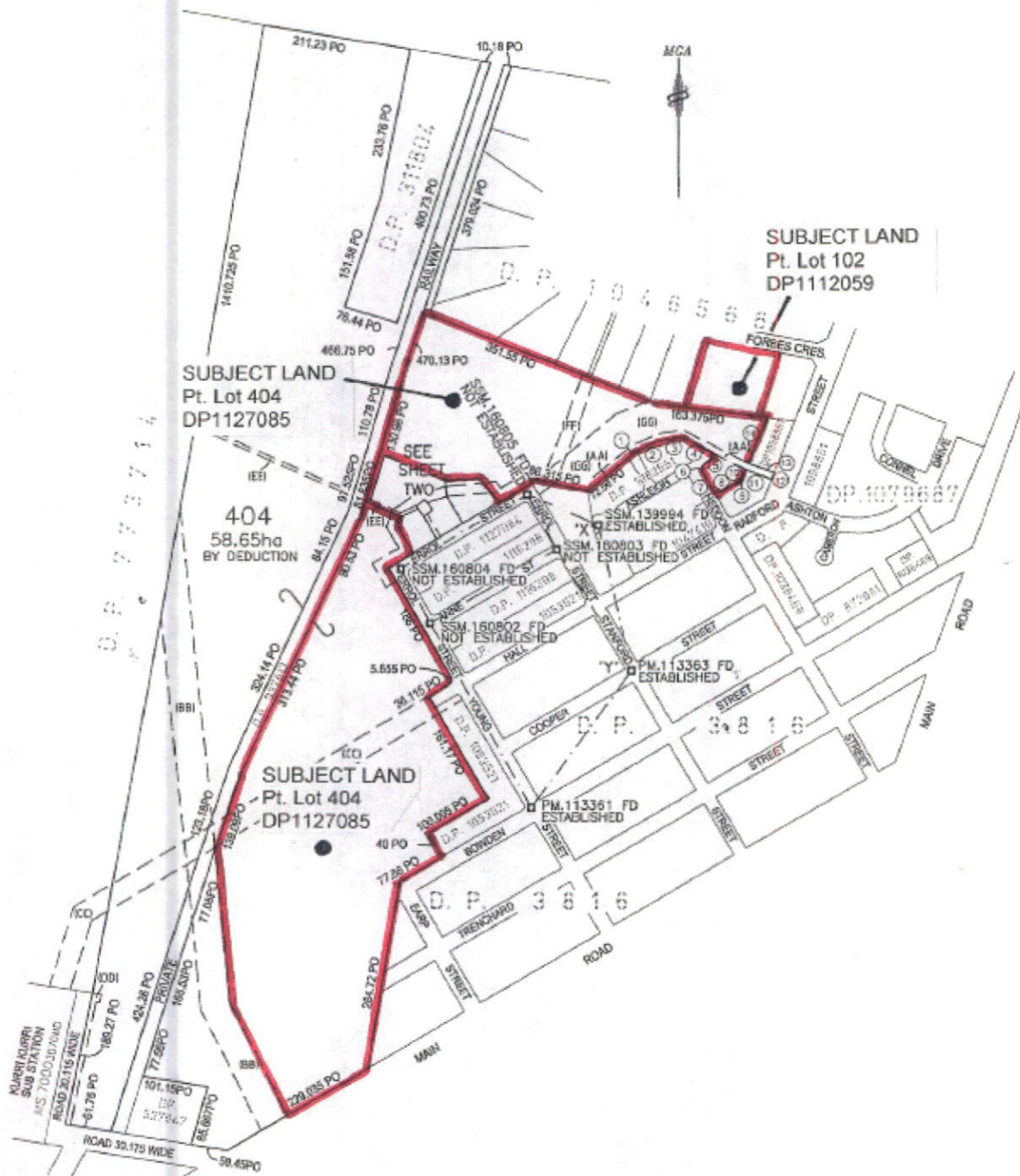
Ashley Close and Forbes Crescent at Heddon Greta

Subject Land Comprising of

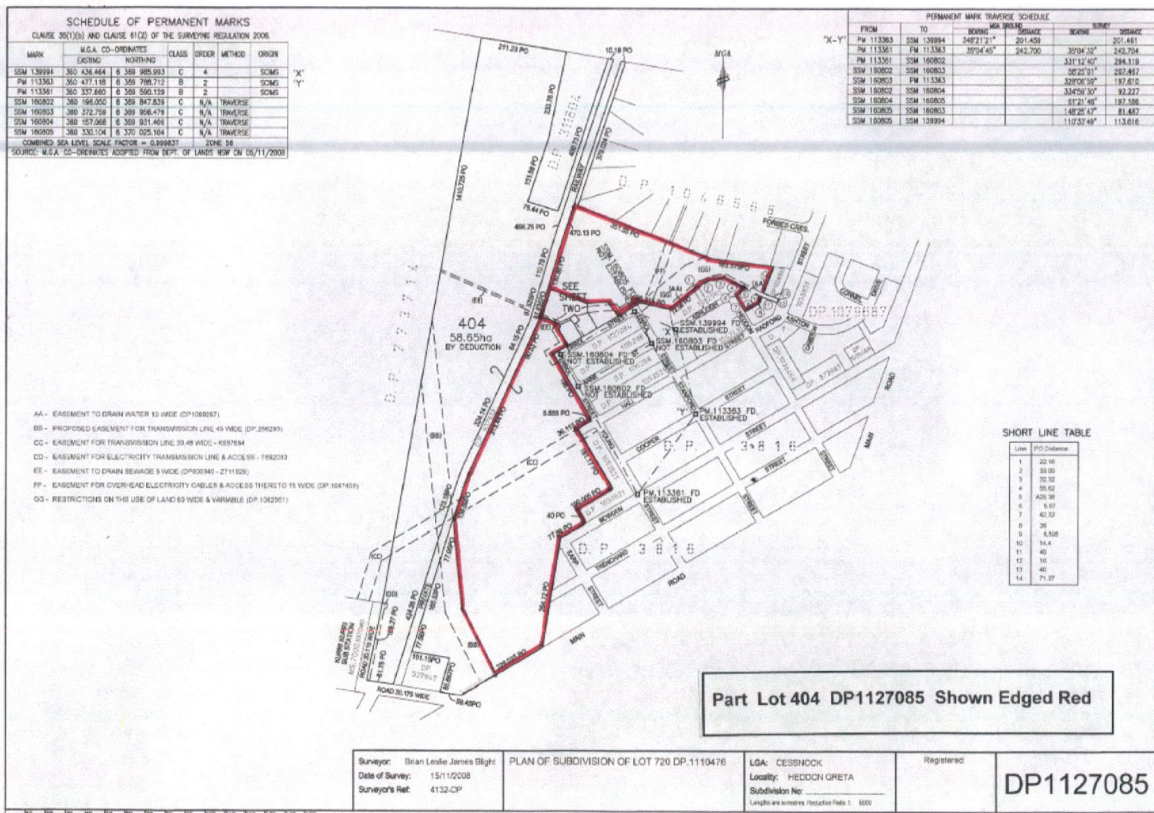
Part Lot 404 of DP1127085 and Part Lot 102 of DP 1112059

Off Main Road, Young & Bowden Streets, Errol Crescent, Madeline and Ashley Close and Forbes Crescent

Heddon Greta



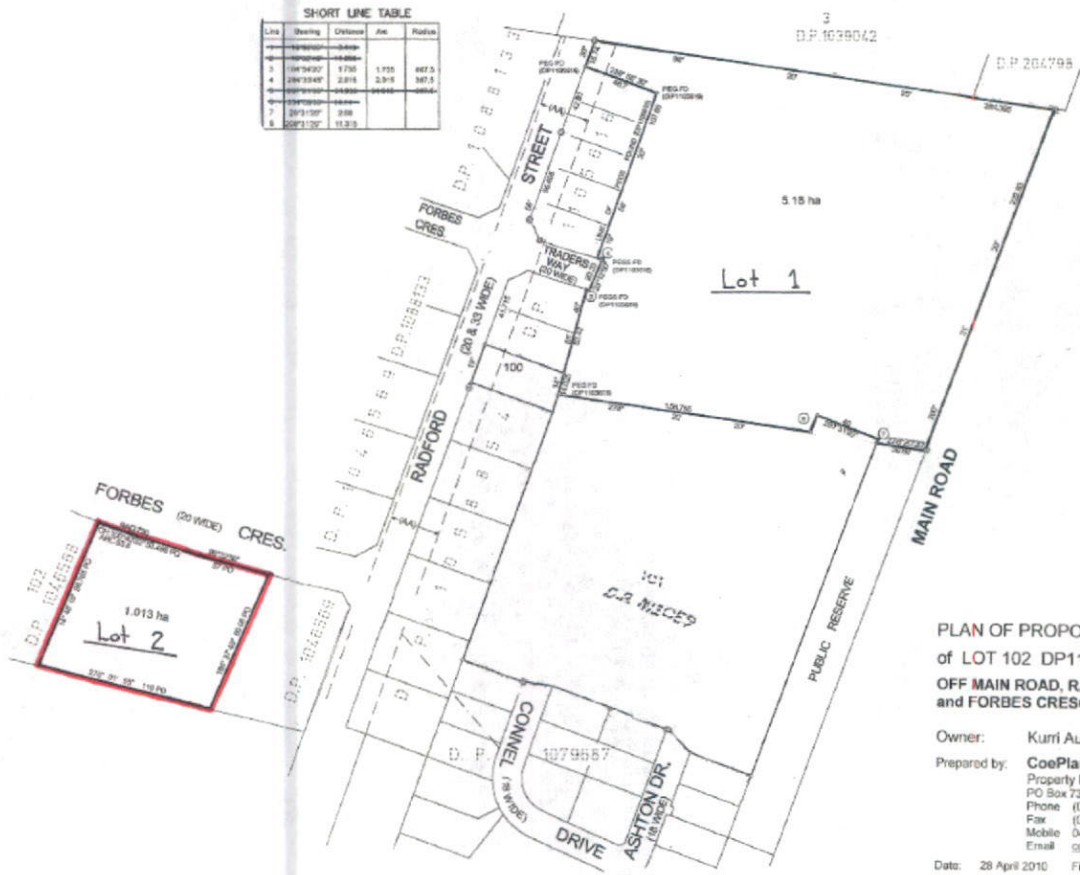
Part Lot 404 DP 1127085 Off Main Road, Young Street, Madeline and Ashleigh Streets



Part Lot 102 DP 1112059
Forbes Crescent

SHORT LINE TABLE

Line	Bearing	Distance	Area	Radius
1	104° 49' 27"	17.35	1.735	467.5
2	124° 13' 47"	2.81	2.81	367.5
3	104° 49' 27"	17.35	1.735	467.5
4	104° 49' 27"	17.35	1.735	467.5
5	104° 49' 27"	17.35	1.735	467.5
6	104° 49' 27"	17.35	1.735	467.5
7	104° 49' 27"	17.35	1.735	467.5
8	104° 49' 27"	17.35	1.735	467.5



PLAN OF PROPOSED 2 LOT SUBDIVISION
of LOT 102 DP1112059
OFF MAIN ROAD, RADFORD STREET & TRADERS WAY
and FORBES CRESCENT at HEDDON GRETA

Owner: Kurri Autos Pty Limited
Prepared by: **CoePlan Consultants** Pty Ltd
Property Development Consultants
PO Box 73 NEWCASTLE NSW 2300
Phone (02) 4963 3738
Fax (02) 49637434
Mobile 0425 265 610
Email coeplan@coeplan.com
Date: 28 April 2010 File Ref 1620-106/501

Proposed Zoning Plan



SCALE 1:12,000

LOCALITY OF HEDDON GRETA

PARISH OF HEDDON

COUNTY OF NORTHUMBERLAND

E2 - Environmental Conservation

R2 - Low Density Residential

R5 - Large Lot Residential

RE1 - Public Recreation

E2

R2

R5

RE1

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

**Proposed Inclusion in
Draft Cessnock Local Environmental Plan 2010
Heddon Greta Precinct**

DRAWN BY:
PLANNING OFFICER:
COUNCIL FILE NO.
DEPT. FILE NO.
CERT. PLAN NO.
CERTIFICATE ISSUED
UNDER SEC. 65 E.P.A. ACT DATED: 1979
GOVT. GAZETTE OF

DATE:

STATEMENT OF RELATIONSHIP WITH OTHER PLANS:

PROPOSED INCLUSION DRAFT CESSNOCK L.E.P. 2010

CERTIFIED IN ACCORDANCE
WITH THE ENVIRONMENTAL
PLANNING & ASSESSMENT ACT
1979, AND REGULATIONS.

PREPARED BY CESSNOCK CITY COUNCIL

GENERAL MANAGER DATE

Heddon Greta Planning Agreement

Kurri Autos Pty Limited

Cessnock City Council

ANNEXURE 'B'

Explanatory Note Relating to this Agreement

Heddon Greta Rezoning Proposal

Explanatory Note

Heddon Greta Planning Agreement

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

Parties

Kurri Autos Pty Limited ABN 780 012 77890, ACN 001 277 890
of P.O. Box 61 Kurri Kurri NSW 2327 (**Developer**)

Cessnock City Council ABN 60 919 148928
of Administrative Building 62-78 Vincent Street, Cessnock NSW 2325 (**Council**)

Description of Subject Land

Part Lot 404 of DP1127085 and Part Lot 102 of DP 1112059

(58.65 hectares) (1.013 hectares)

Description of the Development to which the Planning Agreement relates

The staged residential subdivision and housing development of the Land being land to the east of the former South Maitland Railway reservation at Heddon Greta and adjoining the western fringe of the existing Heddon Greta Village area.

Future Development Application

A staged development application within the meaning of s83B of the *Environmental Planning & Assessment Act 1979* will be prepared and lodged with Council. The development application will set out a concept proposal for the development of the Land. Detailed proposals for separate parts of the development are to be the subject of Future Development Applications. The proposed development will include:

- A 130 residential lot subdivision and open space lands with residue parcel;
- a network of public open space incorporating substantial areas of existing vegetation and bushfire asset protection zones; and
- infrastructure including a road, pedestrian and cycle network, stormwater management and essential services.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to require public benefits including land dedication, embellishment works, and monetary contributions to be provided in conjunction with the carrying out of the Development to meet the facilities needed by the additional population generated by the Development and also additional public facilities.

The Planning Agreement also makes provision for:

- (a) further agreements necessary or desirable to give effect to the agreement (c14);
- (b) the exclusion of the application of s94 and s94A to the Development (having regard to the contributions proposed under the agreement (c15);

- (c) the indexation of the contributions in (cl7.3);
- (d) Council to apply the Developer's contributions under the agreement in a manner that best meets the demand by the Development. The Council may pool contributions and progressively apply those funds towards the provision of the Public Facilities mentioned in the Agreement. If the Council decides that a Public Facility is no longer appropriate, Council must apply monetary Development Contributions towards the provision of other City Wide or Local Area facilities for a purpose benefiting the locality of Heddon Greta and the resident of the Heddon Greta Estate Development (cl8);
- (e) provision by the Developer of a bond or bank guarantee in respect of the Development Contributions to be made under the Agreement (cl12);
- (f) the agreement be registered on title (cl14);
- (g) restriction on development inconsistent with the Development on the Land without the consent of the Council (cl15);
- (h) notification to the Council of the sale of the Land by the Developer (cl16);
- (i) provision for review of the Agreement by the agreement of the parties (cl17);
- (j) dispute resolution (cl18);
- (k) the Developer to pay the Council's reasonable costs (cl21).

Assessment of the Merits of the Planning Agreement

The Planning Purposes Served by the Planning Agreement and whether it provides for a reasonable means of achieving that purpose

The proposed agreement provides a mechanism to ensure that facilities needed by the additional population generated by the Development and other facilities required for all residents are provided and/or funded. The agreement is a reasonable means for achieving that purpose providing as it does flexibility, security and certainty at concept stage.

How the Planning Agreement Promotes the Public Interest & One or More of the Objects of the Environmental Planning and Assessment Act 1979

The agreement will promote the public interest by ensuring that facilities needed by the additional population generated by the development and other facilities required for all residents are able to be provided and/or funded.

The planning agreement will promote the objects of the *Environmental Planning and Assessment Act, 1979* through:

- facilitation of the orderly and efficient use of the land;
- dedication of land for a public purpose; and
- contributions for the provision of community facilities and infrastructure.

How the Planning Agreement Promotes One Or More Elements of the Council's Charter

The planning agreement promotes the following elements of the Council's Charter under s8(1) of the *Local Government Act 1993*:

The planning agreement, being a mechanism to deliver the provision of infrastructure and community facilities, promotes the following points as stated in Council's Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;

Heddon Greta Planning Agreement

Kurri Autos Pty Limited

Cessnock City Council

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible; and
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants.

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

The agreement provides for the payment of contributions and the dedication of land to Council by the developer.

The contributions to be paid 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.

Should the developer default on any obligations under the agreement the Council may call on the Bank Guarantee.

The Council is responsible for the completion of the Capital Works Program provided for in the agreement.

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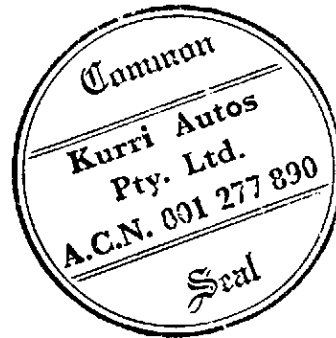
Heddon Greta Planning Agreement
Kurri Autos Pty Limited
Cessnock City Council

EXECUTED AS A DEED

Dated:

Signed on behalf of Kurri Autos Pty Ltd

In accordance with s127 of the Corporations Act 2001



A. Adams
.....
Director

Name of Officer: ANNE L. ADAMS

J. Adams
.....
Director / Company Secretary

Name of Officer: JAMIE ADAMS

Witness *G. Hawke*
.....

Geoff Hawke
.....
.....

Signed on behalf of the Council:



The Seal of the Council was affixed in accordance with a resolution passed at a duly convened meeting held on 3 NOVEMBER 2010 in the presence of:

J. Power
.....
General Manager

A. Avey
.....
Mayor

Heddon Greta Planning Agreement

Kurri Autos Pty Limited

and

Cessnock City Council

Dated: *3 November* **2010**

**Laycock Solicitors Pty Limited
Level 1, 31-33 Watt Street
Newcastle NSW 2300
Tel: 02 4926 1733
Fax: 02 4929 6548**