



Our Ref: 03276

13 February 2018

Secretary
Department of Planning and Environment

by email

Dear Madam

**RE: Draft Hunter Region Special Infrastructure Contribution (SIC)
Anvil Creek Development site
Lot 263 and 264, DP 755211 and Lots 1-6 DP 1036942, 324 and 325 Camp
Road and 995 Lovedale Road Allandale**

We act for the owner of the above property, Greta Estates Pty Ltd and advise that having reviewed the relevant information, we wish to confirm our understanding that the subject site will not be subject to any future SIC.

The draft documentation indicates the following:

If satisfactory arrangements, such as a voluntary planning agreement, have been made for the provision of regional infrastructure for a development then no SIC will be payable for that development in most cases. However, further development that creates additional lots or dwellings on the land concerned may be subject to payment of a SIC. Figure 3 sets out the process for determining the development to which the Hunter Region SIC applies.

The subject land was the subject of a site specific rezoning (Amendment 119 to Cessnock LEP 1989) which was gazetted 5 December 2008. As part of the rezoning process agreements for the provision of state government related services were made – one with the Department of Education (in relation to school infrastructure) and the other with Roads and Maritime Services (in relation to Hunter Expressway noise mitigation and road works). This is confirmed in the letter from the Director General of the Department of Planning (Attachment 1). The letter also concludes that ‘satisfactory arrangements’ have been made for ‘designated state public infrastructure’.

Further, the rezoning also involved a Voluntary Planning Agreement with Cessnock Council which includes contributions for a range of facilities (see Attachment 2).



Subsequent to the above, on 17 February 2010, a development consent for the staged development of the site was granted. A copy of this consent (as modified on 17 July 2010) is provided at Attachment 3). This consent has been physically commenced.

Having regard to the above, we are seeking specific confirmation in writing that no future development on the subject site which is undertaken in accordance the current zoning, will be the subject of an SIC. In this regard we note that the current zoning under Cessnock LEP 2011 (Cl 7.10) is similar to Amendment 119 to LEP 1989 in that it includes a cap on the number of dwellings to 1364 and therefore will not generate any additional demands for services beyond those originally contemplated.

Your confirmation is extremely important as any potential purchaser of the site will need absolute certainty that there will be no additional contributions required other than those already made/agreed.

Please contact Brett Brown if you would like to discuss this matter.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'B. Brown', with a long horizontal flourish extending to the right.

Brett Brown, Director
Ingham Planning Pty Ltd



Planning

Facsimile

To	Bernie Mortomore General Manager Cessnock City Council	Fax	02 4993 2500/8
		Phone	02 4993 4300
From	Sam Haddad Director General Department of Planning NSW	Fax	02 9228-6211
		Phone	02 9228-6390
		Email	Fiona.Bye@planning.nsw.gov.au
Date	23 Dec 2009	Total pages (incl cover sheet)	2

SUBJECT: Satisfactory Arrangements, A119 (Anvil Creek) to Cessnock LEP 1989

Dear Mr Mortomore,

Please find attached the letter from Sam Haddad, Director General of the Department of Planning regarding satisfactory arrangements for state infrastructure in respect of the Anvil Creek new release area.

Many thanks,

A handwritten signature in black ink, appearing to be "Fiona Bye", written over a horizontal line.

Fiona Bye
Executive Assistant
Dept of Planning
23-33 Bridge Street Sydney NSW 2000
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E: Fiona.Bye@planning.nsw.gov.au



Planning

Office of the Director General

Bernie Mortomore
General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

09/04087

Attention: Rod Sandell

Dear Mr Mortomore

I refer to your letter dated 28 September 2009, concerning satisfactory arrangements for state infrastructure in relation to the Anvil Creek urban release area.

Arrangements have been made between the developer and the NSW Roads and Traffic Authority with regard to the upgrade of State roads and a contribution has been made for the provision of State education facilities.

In accordance with s66(3) of the Cessnock LEP 1989, I certify that satisfactory arrangements have been made for the provision of designated state public infrastructure for all lands within the urban release area identified in Amendment 119 to Cessnock LEP 1989.

Council may now proceed with the assessment and determination of development applications to subdivide the above land.

Should you have any further questions, I have arranged for Mr Gary Freeland, Team Leader, at the Newcastle office to assist you. He can be contacted on (02) 4904 2700.

Yours sincerely

Sam Haddad
Director General

22/12/2009



lindleytaylorlawyers

Anvil Creek Project Planning Deed

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

Greta Estates Pty Limited

Cessnock City Council

Dated 20 AUGUST 2008



Parties

Greta Estates Pty Limited (Greta) ACN 073 541 545 of 12 Woodside Avenue,
BURWOOD NSW 2134 (**Developer**)

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

Background

- A Greta is the registered proprietor of the Land.
- B The Developer proposes to carry out the Development on the Land.
- C On 29 July 2005, Greta Estates Pty Limited made the Stage 1 Development Application to the Council under Division 4B of Part 4 the Act accompanied by an application 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 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).

Agreed Additional Works means the works specified in Schedule 4.

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

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

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

Bond means an insurance bond from a AAA credit rated party

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



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 redevelopment of the former army migrant camp at Greta to be carried out in stages in accordance with the Development Consents (as modified from time to time) in respect of the Stage 1 Development Application and the Future Development Applications.

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.

First Defects Liability Period means, for each Work, **12 months**, commencing on and from the date the Council accepts the hand-over of that Work under clause 11 of this Agreement.

Future Development Applications means Development Applications for the carrying out of the Development, other than the Stage 1 Development Application.

Land means Lots 1-6 of DP 1036942, Lots 263-264 of DP 755211.

LEP means the *Cessnock Local Environmental Plan 1989*.

Map means the map of the Land in Annexure A.

Masterplan Uses means the in-principle use of the Land as specified in Schedule 5.

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 Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

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

Rectification Certificate means a compliance certificate to the effect that work the subject of a Rectification Notice has been completed in accordance with the Notice.



Rectification Notice means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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

s94 Contribution means a Development Contribution required as a condition of a Development Consent imposed pursuant to section 94 of the Act.

Second Defects Liability Period means, for each item of the Works, 12 months, commencing on and from the date on which the Council under clause 12 of this Agreement serves a notice that it is satisfied that rectification works relating to a Rectification Notice given in the First Defects Liability Period have been completed.

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

Stage 1 Development Application means DA8/2005/761/1 lodged with the Council in respect of Stage 1 of the Development, being an application for consent to superlot subdivision and Masterplan Uses of the Land.

subdivision certificate means a subdivision certificate within the meaning of the Act

Tourist Related Development means but is not limited to wineries, wine sales outlets, hotels and motels, caravan parks, holiday cabins, other tourist accommodation facilities, restaurants, registered clubs and country clubs, galleries, art and craft centres, heritage or other theme parks, tourist 'diversions', 'tourist recreation facilities' as defined in the LEP, and other development that may reasonably be considered by the Council to serve tourists but does not include any aspect of the Development Contribution to be made under this Agreement as referred to in Items A1 and C1 in column 1 of Schedule 2.

Work means building, engineering or construction work in, on, over or under land.

- 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 of the party, and the Party's successors and assigns.
- 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 Status of this Agreement

- 3.1 Until the Planning Agreement operates, this document constitutes the Developer's irrevocable offer to enter into the Planning Agreement if development consent is granted to the Stage 1 Development Application.
- 3.2 The Planning Agreement operates only if Development Consent is granted to the Stage 1 Development Application subject to a condition requiring the Planning Agreement to be entered into.
- 3.3 The Developer consents to a condition of the kind referred to in clause 3.2.
- 3.4 To avoid any doubt, the Planning Agreement does not create any obligation to provide any Development Contribution towards a Public Facility specified in Column 2 of Schedule 2 unless and until:
 - 3.4.1 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
 - 3.4.2 a construction certificate is issued under that Development Consent.
- 3.5 There is no obligation under this Agreement to provide the Agreed Additional Works.



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.
- 4.4 Without limiting clause 4.1, an agreement or arrangements referred to in that clause may make provision for any of the following under this Agreement:
 - 4.4.1 the particulars of any Public Facility required to be made available for a Public Purpose;
 - 4.4.2 the location at which a Public Facility is to be provided and the time at which and the manner in which it will be made available;
 - 4.4.3 the particulars of any Work required by this Agreement to be undertaken by the Developer;
 - 4.4.4 the time at which and the manner in which a Work is to be handed over to the Council; and
 - 4.4.5 the length of a defects liability period;
 - 4.4.6 the amount of a security for a Work.

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 Effect of Development Consents on the Development

- 6.1 The purpose of this clause is to ensure that the Developer is not required to make Development Contributions in respect of the Development that exceed the Development Contributions to be made under this Agreement, other than Development Contributions comprising the Agreed Additional Works.
- 6.2 If a Development Consent is granted to a Stage of the Development subject to a condition requiring the Developer to carry out Works for a Public Purpose other than the Agreed Additional Works, the value of the Development Contributions to be provided under this Agreement is to be reduced by the estimated value of the Work.
- 6.3 For the purpose of clause 6.2, the estimated value of the relevant Work shall be determined using the method that would be adopted by a suitably qualified quantity surveyor, and all costs associated with the provision of the completed Work including the costs of design, project management, advice from



consultants and any other fees and charges that would ordinarily incurred by a developer in the provision of that Work.

- 6.4 If clause 6.2 applies, the Parties, acting in good faith and using their best endeavours, are to agree, in accordance with clause 4, on an appropriate adjustment of the Developer's obligations under this Agreement to give effect to that clause and failing agreement, the matter shall be taken to be a dispute and clause 22 shall apply.

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 specified 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;
 - 7.1.3 payment of the monetary contributions specified in Column 4 of Part D of Schedule 2 in respect of each Final Lot; and
 - 7.1.4 the carrying out and handover of the Works listed in Part C of Column 2 of Schedule 2 as specified in Schedule 3.
- 7.2 A Development Contribution referred to in clause 7.1 is to be made:
- 7.2.1 for the Public Purpose referred to in Column 2 of Schedule 2 in respect of the relevant Public Facility, and
 - 7.2.2 at the time specified in Column 3 of Schedule 2 in respect of the relevant Public Facility except as otherwise agreed in an agreement referred to in clause 4.
- 7.3 A monetary contribution as referred to in clause 7.1.2 and 7.1.3 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 Except as provided by clause 11, 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 of and incidental to the Provision of the Public Facility to which it relates.

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 Contributions is made under this Agreement is no longer required, the Council must apply the Development Contribution towards the provision of other



Public Facilities for a Public Purpose within the locality of Greta and within a reasonable distance as agreed between the parties of the Greta multi-purpose function centre located at 1 Water Street, Greta.

- 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 listed in Part B or Part D of Schedule 2 or 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 Land Titles Office 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 Land Titles Office.
- 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, in accordance with clause 11.8, to accept the hand-over of any Work required by this Agreement to be undertaken by the Developer on the land.



11 Carrying Out & Hand-over of Work

- 11.1 A Development Contribution comprising the carrying out of a Work specified in Part C of Schedule 2, is made for the purposes of this Agreement when the Council accepts the hand-over of the Work in accordance with this clause.
- 11.2 The Developer shall at its own cost and expense make good, to the satisfaction of the Council, any loss or damage to any Work from any cause whatsoever which occurs prior to the date on which that item is handed-over to the Council.
- 11.3 A Work must not be varied by the Developer, unless the Developer obtains the Council's prior written consent to the variation.
- 11.4 The Developer may undertake variations or additions to a Work, if requested by the Council, subject to a written agreement being entered into by the Parties, which deals with the scope and cost of such variations or additions.
- 11.5 If the Developer fails to hand-over any item of Work as required by this Agreement by the time specified in Column 3 of Schedule 2 for that item or in an agreement referred to in clause 4:
 - 11.5.1 if that item of Work has yet to be commenced, the Council may call upon the bank guarantee provided under clause 16 for the estimated cost of that item of Work, or
 - 11.5.2 if that item of Work has been commenced but not completed, the Council may elect to complete that item or such part or parts as are outstanding as at the date specified in Column 3 of Schedule 2 or otherwise as agreed, or appoint a contractor to carry out these Works on the Council's behalf.
- 11.6 If clause 11.5.2 applies:
 - 11.6.1 the Developer must allow the Council, its officers, employees, agents and contractors to enter the Land for the purpose of completing the relevant Work,
 - 11.6.2 the costs which the Council incurs in completing the Work shall be a debt due and payable by the Developer to the Council, which may be recovered by the Council from the Developer:
 - (a) by calling upon the bank guarantee provided under clause 16, or
 - (b) as a debt due in a court of competent jurisdiction,
 - 11.6.3 the Developer irrevocably appoints the Council as its attorney, to:
 - (a) exercise its rights and powers as owner of any Land to be dedicated as part of the Works, including executing any documents on the Developer's behalf, and
 - (b) execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable the Council to complete the relevant Work and exercise its rights under this clause 11.6.



11.6.4 the Developer agrees to sign all documents and do all things necessary and appropriate to enable the Council to complete the Works, if the Council elects to do so.

- 11.7 Subject to this Agreement, when the Developer considers that a Work being carried out pursuant to clause 7.1.3 is complete, the Developer is to give to the Council a compliance certificate relating to the Work.
- 11.8 The Developer must provide the Council with full works-as-executed plans in respect of a Work at the time it gives a compliance certificate.
- 11.9 The Council is to accept the hand-over by the Developer of a Work that is the subject of a compliance certificate within 30 days of the date on which the Developer provides the compliance certificate to the Council.
- 11.10 On hand-over of the Work, the Council accepts ownership, possession and control of the Work.
- 11.11 The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test the Work where required in connection with the hand-over of the Work.

12 Rectification of Defects

- 12.1 During the First Defects Liability Period and the Second Defects Liability Period, the Council may give to the Developer a Rectification Notice in relation to the Works specifying:
 - 12.1.1 the Works requiring rectification,
 - 12.1.2 the action required to be undertaken by the Developer to rectify those Works, and
 - 12.1.3 the date on which those Works are to be rectified.
- 12.2 The Developer must comply with a Rectification Notice at its own cost according to the terms of the Notice.
- 12.3 When the Developer considers that rectification is complete, the Developer may give to the Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.
- 12.4 The Council may inspect the rectification works within 28 days of receiving a Rectification Certificate and:
 - 12.4.1 issue further Rectification Notices if it is not satisfied that the rectification is complete; or
 - 12.4.2 notify the Developer in writing that it is satisfied the rectification work is complete.
- 12.5 Notification from the Council in accordance with clause 12.4.2 discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- 12.6 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may:



- 12.6.1 call upon the bank guarantee provided by the Developer to the Council under this Agreement to meet its costs in rectifying the defect, and
- 12.6.2 recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the bank guarantee and the costs incurred by the Council in rectifying the defect.
- 12.7 The Developer irrevocably appoints the Council as its attorney to:
 - 12.7.1 exercise its rights and powers as owner of the Land on which the Works requiring rectification are located; and
 - 12.7.2 execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable the Council to rectify any defects in accordance with a Rectification Notice given under this Agreement.

13 Cost of Works carried out by the Council

- 13.1 The Parties acknowledge and agree that where the Council notifies the Developer of the cost incurred by the Council:
 - 13.1.1 in carrying out Works, where clause 11.6.2 of this Agreement applies, or
 - 13.1.2 in carrying out any repair work on any defects or faults affecting the Works pursuant to clause 12.6 of this Agreement,that notice shall constitute sufficient evidence as to the cost of such work, for the purpose of this Agreement, and the Developer will have no right, whether under this Agreement or otherwise, to dispute the amount, or the method used to determine that amount.
- 13.2 The cost of carrying out the Works or any defect rectification and repair works may include, but not be limited to:
 - 13.2.1 all fees and charges necessarily or reasonably incurred by the Council in order to have the relevant work carried out and completed properly and expeditiously, and
 - 13.2.2 without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement, or generally in carrying out of the Council's powers and duties under this Agreement.

14 Indemnity and Insurance

- 14.1 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 the Works and any other obligation under this Agreement.
- 14.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Works up until the relevant date of hand-over to Council:



- 14.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 14.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 14.2.3 workers compensation insurance as required by law, and
- 14.2.4 any other insurance required by law.
- 14.3 If the Developer fails to comply with clause 14.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
 - 14.3.1 by calling upon the bank guarantee provided by the Developer to the Council under this Agreement, or
 - 14.3.2 recovery as a debt due in a court of competent jurisdiction.
- 14.4 The Developer is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in clause 14.2.

15 Management and maintenance of certain facilities

- 15.1 This clause applies to the Public Facility which is Item C1 in Part C of Schedule 3.
- 15.2 For the period of 10 years after the handover of the Public Facility to which this clause applies in accordance with clause 11, the Developer is to:
 - 15.2.1 maintain that Public Facility at the Developer's cost, on such terms and conditions as are agreed in writing between the Parties; and
 - 15.2.2 manage at the Developer's cost, the administration of commemorative plaques for ex-migrants from the former migrants camp on such terms and conditions as are agreed in writing between the Parties.
- 15.3 The Parties acting in good faith and using their best endeavours agree to negotiate an agreement referred to in this clause in advance of the date of handover.
- 15.4 A failure by the Parties to reach agreement under clause 15.2.1 or 15.2.2 is taken to be a dispute for the purposes of clause 22.

16 Provision of Security

- 16.1 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 sum of:

- 16.1.1 the value of the monetary contributions payable under this Agreement for the total number of Final Lots in that particular Stage as specified in Column 4 of Part D of Schedule 2;
 - 16.1.2 the value of the monetary contributions payable under this Agreement for any Tourist Related Development in that particular Stage as specified in Column 4 of Part B of Schedule 2; and
 - 16.1.3 the contribution value of the works specified in Item C1 of Schedule 2, calculated in accordance with Column 4 of that item in Schedule 2 for the total number of Final Lots in that particular Stage.
- 16.2 For the purposes of clause 16.1, 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.
- 16.3 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.
- 16.4 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.
- 16.5 Subject to this clause, the Council may apply the proceeds of a Bond or Bank Guarantee in satisfaction of:
 - 16.5.1 any obligation of the Developer under this Agreement – in which case the obligation will be taken to have been rectified, and
 - 16.5.2 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.
- 16.6 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. In particular, upon the expiry of the Second Defects Liability or receipt of a notice from the Council in accordance with clause 12.4.2 that it is satisfied that rectification work is complete, whichever is the later, the Council is to return the Bond or Bank Guarantee to the Developer on request.
- 16.7 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 16.

17 Enforcement

- 17.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- 17.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 17.2.1 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,
 - 17.2.2 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.

18 Registration of this Agreement

- 18.1 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 grant of the Stage 1 Development Application, including obtaining the consent of any mortgagee or other person with an estate or interest in the Land to such Registration.
- 18.2 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 LPI and obtain immediate registration of this agreement on the title to the Land following the grant of the Stage 1 Development Application.
- 18.3 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:
 - 18.3.1 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
 - 18.3.2 produce the title documents in relation to the Land when required by the Council and / or LPI to enable registration of this Agreement under section 93H of the Act.
- 18.4 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.

19 Restriction on inconsistent development

- 19.1 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.



20 Assignment and sale of land

- 20.1 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 18, 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.
- 20.2 Nothing in clause 20.1 prevents a transfer of Final Lots created from the Land by registration of a plan of subdivision at LPI if at the time of transfer, the Developer has complied with the relevant terms of this Agreement.

21 Review of this Agreement

- 21.1 The Parties, acting in good faith and using their best endeavours, agree to review this Agreement and any agreement under clause 4 every 3 years, and otherwise if either party is of the opinion that any change of circumstance has occurred that materially affects the operation of this Agreement or an agreement under clause 4.
- 21.2 For the purposes of clause 21.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 21.3 A failure by a Party to agree to participate in a review under clause 21.1 is taken to be a dispute for the purposes of clause 22.
- 21.4 Clause 22 does not apply to a dispute arising in or as a consequence of a review in respect of a request by one Party that the other take any action in relation to this Agreement.
- 21.5 A Party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a Party in or as a consequence of a review.

22 Dispute Resolution

- 22.1 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.
- 22.2 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.
- 22.3 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.



- 22.4 Clauses 22.1 – 22.3 do not apply to a dispute relating to a matter in respect of which the Council may give or has given the Developer a notice under clause 12.1.

23 Notices

- 23.1 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:
- 23.1.1 delivered or posted to that Party at its address set out in the Schedule.
 - 23.1.2 faxed to that Party at its fax number set out in the Schedule.
 - 23.1.3 emailed to that Party at its email address set out in the Schedule.
- 23.2 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.
- 23.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 23.3.1 delivered, when it is left at the relevant address;
 - 23.3.2 sent by post, 2 business days after it is posted;
 - 23.3.3 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
 - 23.3.4 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.
- 23.4 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.

24 Approvals and Consent

- 24.1 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.
- 24.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

25 Costs

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

26 Entire Agreement

- 26.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 26.2 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.

27 Further Acts

- 27.1 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.

28 Governing Law and Jurisdiction

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

29 Joint and Individual Liability and Benefits

- 29.1 Except as otherwise set out in this 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.

30 No Fetter

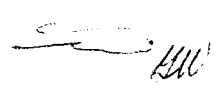
- 30.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

31 Representations and Warranties

- 31.1 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.

32 Severability

- 32.1 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.





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

33 Modification

- 33.1 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.

34 Waiver

- 34.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 34.2 A waiver by a Party is only effective if it is in writing.
- 34.3 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.

35 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 are not consideration for any supply made by Council.
- 35.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 35.2 Subject to clause 35.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the



Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

- 35.3 Clause 35.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 35.4 No additional Consideration shall be payable by the Council under clause 35.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 35.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this 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:
 - 35.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - 35.5.2 that any amounts payable by the Parties in accordance with clause 35.2 (as limited by clause 35.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 35.6 No payment of any amount pursuant to this clause 35, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 35.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 35.8 This clause continues to apply after expiration or termination of this Agreement.

36 Explanatory Note Relating to this Agreement

- 36.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 36.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.



Schedule 1

(Clause 23)

Contact for Notices

Developer:

Contact Officer: Brett Brown, Ingham Planning Pty Ltd
Telephone: (02) 9416 9111
Fax: (02) 9416 9799
Email: brett@inghamplanning.com.au

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	Heritage Park –within precinct S of an area of 6.5ha	Prior to the release of the construction certificate for the 871st Final Lot in the Development.	\$land value
Total Contribution for Land dedication			\$land value
Part B – Contributions for Tourist Related Development			
B1	(a) Tourist information and signage (b) Vineyards district roads and bridges	Prior to the release of any construction certificate which includes Tourist Related Development	\$1309 per standard room containing 1.5 persons for any tourist accommodation included in the construction certificate referred to in column 3 \$872 per person to be accommodated in any non-standard tourist accommodation including backpacker hostels included in the construction certificate referred to in column 3 \$338 per square metre of any wine sales area included in the construction

Anvil Creek Project Planning Deed

Greta Estates Pty Limited

Cessnock City Council



			<p>certificate referred to in column 3</p> <p>\$338 per square metre of any restaurant or café included in the construction certificate referred to in column 3</p> <p>\$116 per square metre of any gallery or other tourist sales or display included in the construction certificate referred to in column 3</p>
Total Contribution for Tourist Related Development			\$ An amount calculated in accordance with this Part B of Schedule 2
Part C – Works			
C1	Construction of Heritage Park as specified in Schedule 3	Prior to the release of the construction certificate for the 871 st Final Lot in the Development	\$3,765.79 per Final Lot up to the 871 st Final Lot
Total Contribution for works			\$3,280,000
Part D - Monetary Contributions			
D1	Greta Multi-Purpose Centre	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$205.28 per Final Lot up to and including the 1364 th Final Lot in the Development
D2	Car Parking Facilities/Streetscape Improvements -Kurri Kurri/Cessnock	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$122.43 per Final Lot up to and including the 1364 th Final Lot in the Development
D3	Car Parking Facilities/Streetscape Improvements -	Prior to the issuing of a subdivision certificate for each	\$244.13 per Final Lot up to and including the 1364 th Final Lot in

Anvil Creek Project Planning Deed

Greta Estates Pty Limited

Cessnock City Council



	Greta	Final Lot in the Development	the Development
D4	Cessnock Indoor Sports Facility/Basketball Stadium	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$214.44 per Final Lot up to and including the 1364 th Final Lot in the Development
D5	Cessnock Performing Arts Centre	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$428.88 per Final Lot up to and including the 1364 th Final Lot in the Development
D6	City Library Facilities	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$571.85 per Final Lot up to and including the 1364 th Final Lot in the Development
D7	Kurri Kurri District Aquatic Centre	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$192.08 per Final Lot up to and including the 1364 th Final Lot in the Development
D8	Cycle/pedestrian path between Branxton and Greta	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$366.57 per Final Lot up to and including the 1364 th Final Lot in the Development
D9	Path (concrete) from the western access of the Land to the town of Greta and railway station	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$146.63 per Final Lot up to and including the 1364 th Final Lot in the Development
D10	Upgrade car parking at Greta Railway Station to act as rail/bus/car interchange	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$238.63 per Final Lot up to and including the 1364 th Final Lot in the Development
D11	Provision of pedestrian refuges external to site	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$109.97 per Final Lot up to and including the 1364 th Final Lot in the Development
D12	Replacement and	Prior to the issuing of	\$1,466.28 per Final

Anvil Creek Project Planning Deed

Greta Estates Pty Limited

Cessnock City Council



	realignment of rail overbridge and bridge over Anvil Creek and approaches	a subdivision certificate for each Final Lot in the Development	Lot up to and including the 1364 th Final Lot in the Development
D13	Reconstruction of Mansfield Street	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$750 per Final Lot up to and including the 1364 th Final Lot in the Development
D14	Construction of shoulders for Lovedale Road	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$348.24 per Final Lot up to and including the 1364 th Final Lot in the Development
D15	Reconstruction of Camp Road	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$1,121.70 per Final Lot up to and including the 1364 th Final Lot in the Development
D16	Construction of oval, training area, amenities block and car park on the Land	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$733.14 per Final Lot up to and including the 1364 th Final Lot in the Development
D17	District Dry Facilities – Kurri Kurri Aquatic Centre	Prior to the issuing of a subdivision certificate for each Final Lot in the Development	\$181.09 per Final Lot up to and including the 1364 th Final Lot in the Development
D18	Acquisition and embellishment of local open space.	Prior to the issuing of a subdivision certificate for each Final Lot in excess of the 1364 th Final Lot in the Development (if any)	\$9,850.00 per Final Lot in excess of the 1364 th in the Development
Total Cash Contribution			\$7,441.34 per Final Lot up to and including the 1364th Final Lot in the Development AND \$9,850.00 per Final



	Lot in excess of the 1364th Final Lot (if any) AND An amount calculated in accordance Part B of this Schedule for Tourist Related Development
Total Contribution Value	Stand value plus \$13,429,988 plus An amount calculated in accordance Part B of this Schedule for Tourist Related Development plus \$9,850.00 per Final Lot in excess of the 1364th Final Lot (if any)



Schedule 3

(Clause 7)

Specification of Works

Table

Column 1	Column 2
Item No. per Part C - Works in Schedule 2	Specification
C1 – Construction of Heritage Park as specified in Schedule 3	<p>Generally as shown on the concept plan for and survey of precinct S in Annexure B and including:</p> <ul style="list-style-type: none">• an amphitheatre accommodating around 600 people, constructed of earth mounding and finished with turf and to include paths retaining walls etc.;• construction of an access road (5.0m in width) complete with swale drains from Camp Road and incorporating a new intersection with Camp Road (refer drawing No. 45077-M24 ex Hughes Trueman consulting engineers) complete with required guard rails;• construction of gravel surface carpark to accommodate up to 150 vehicles with appropriate drainage, lighting and signage;• general stormwater drainage works on the site as needed;• provision of necessary infrastructure including electrical services, water and sewerage services;• provision of pathways/timber boardwalks around the site;• 6 picnic settings;• 6 shelters including park benches;• 6 electric powered BBQ's;



	<ul style="list-style-type: none">• a children's playground as follows:<ul style="list-style-type: none">• The playground to be designed manufactured and installed in accordance with the Australian Standards for children's playgrounds.• The playground to provide facilities for the zero to teen age group including disabled access.• Specific attention to be paid to the four types of play being: creative, physical, social and cognitive play. This may be addressed through specialised planting, landscaping, play spaces and structures that are designed to engage users in sensory exploration and promote in them a sense of curiosity, intellectual and physical engagement.• The playground to be sited under existing established vegetation where possible. Alternate shade provision may be achieved through the planting of advanced stock deciduous trees that would provide shade in summer and sunlight in winter. Tree canopies are preferred over built structures that may need to be used as a last resort.• The playground should be in close proximity to some of the proposed picnic settings and toilets and pathways linking the playground to adjoining facilities (including toilets, picnic setting, car park) to be installed.• A form of seating to be provided within the playground to provide supervision points.• Different play types and age groups to be sufficiently separated with designed landscape treatments such as mounding etc.• Water sensitive design to be used where feasible to provide irrigation for landscaping and demonstrate best practice. <p>Minimum essential pieces of play equipment to include:</p> <ul style="list-style-type: none">• A large play centre with incorporated slide and climbing apparatus• A set of swings• A separate climbing apparatus• Two double or duo spring rockers (that is, for two or more
--	--



	<p>children)</p> <ul style="list-style-type: none">• Two vertical spinners• At least two of the essential elements must be targeted towards the 0 – 4 age bracket• Rubber wet pour safety surface. The surface is to consist of three main colours and consist of a combination of recycled rubber wet pour and EPDM (Ethylene propylene Diene Monomer) is to be utilised in high wear areas (eg under swings, ends of slides.). The surface must also be designed, manufactured and installed to conform to Australian Standards for playground safety surfacing. A minimum 1.2 metre pathway should be installed around the safety surface. <ul style="list-style-type: none">• installation of interpretive signage relating to the indigenous and non-indigenous heritage of the site including the installation of flagpole and stand;• a multi-function building providing a total covered area of 200sqm including:<ul style="list-style-type: none">- kitchen/coolroom facilities of 15 sq.m. in area;- a space that could operate as a small food and drink kiosk;- male toilet facilities including 2 urinals and 6 Toilet suites;- female toilet facilities including 8 Toilet suites;- a toilet for people with disabilities/baby change room;- community meeting space to be furnished by the Council;- capacity for connection of projection and audio facilities to enable the use of the amphitheatre as an outdoor cinema. <p>The building is to be designed to include operable/openable walls so as to facilitate its use as an indoor/outdoor space. The minimum area to be able to be fully enclosed shall accommodate up to 100 people.</p>
--	--

Anvil Creek Project Planning Deed
Greta Estates Pty Limited
Cessnock City Council



	The building shall be finished to the same or better standard than the Council owned Greta multi purpose function centre located at 1 Water Street, Greta.
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Schedule 4

(Clause 1.1 and 6)

Agreed Additional Works

- Bus/Car Interchange – Greta as required by the proposed golf club/hotel in the Development comprising:
 - a porte cochere (minimum 20m in length) for set-down and pick-up for buses, with the bus pick-up and set down area marked in a parallel manner to the porte cochere and to include any 'public' bus that may service the site;
 - seating for bus/coach patrons extending the length and under the porte cochere for protection against the weather;
 - provision of facilities to display public bus service schedules and any private coach / mini bus regular and temporary schedules;
 - coach parking for two coaches in designated bays in close proximity to the porte cochere;
 - parking for three mini-buses also within designated bays in close proximity to the porte cochere; and
 - parking for two taxi cabs within designated bays in close proximity to the porte cochere.

Each of the bays will be appropriately line marked or delineated and will be within an easy walking distance of vehicular car parking (all in accordance with Cessnock City Council's Parking DCP and to Council requirements) associated with the golf clubhouse and hotel facilities.

- Bus stops and J Posts
- Bus shelters internal
- Pedestrian Refuges internal
- Local Area Traffic Management Scheme
- Construction of intersection/connection of link to Camp Road

Anvil Creek Project Planning Deed
Greta Estates Pty Limited
Cessnock City Council



- Construction of intersection/connection to Lovedale Road

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Schedule 5

(Clause 1.1)

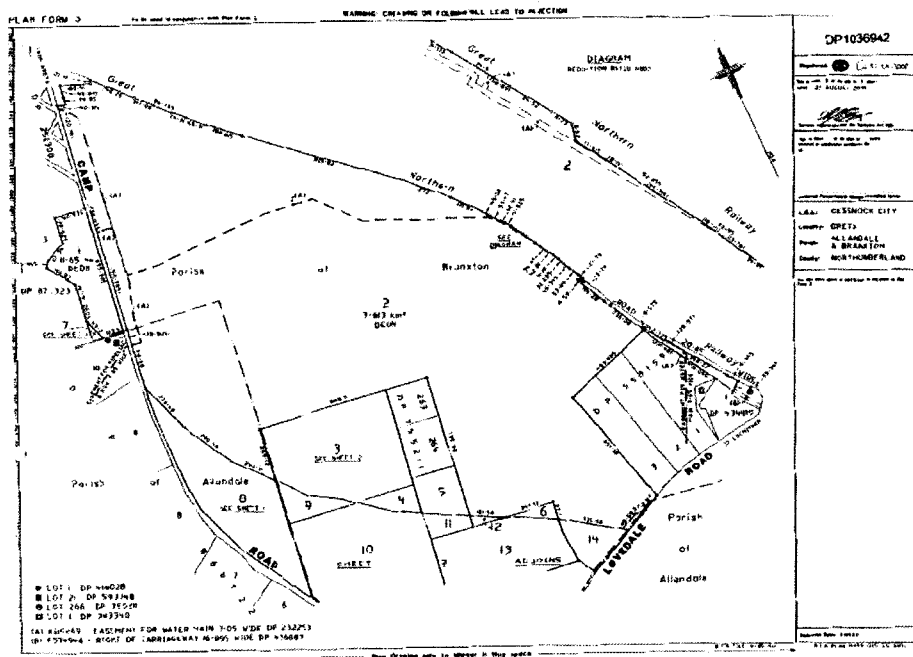
Masterplan Uses

- an 18 hole international standard golf course designed by Graham Marsh, comprising an area of around 110 ha;
- a golf clubhouse/hotel building comprising 3300sqm of floor area (if developed over 1 level) including up to 150 hotel rooms;
- up to 85 detached and attached tourist accommodation buildings;
- permanent residential development of up to 1364 dwellings comprised of 276 detached houses; 217 villas, 515 townhouses and 356 duplex apartments;
- a 'Gateway' retail area adjacent to the new freeway interchange aimed at servicing tourists and promoting tourism in the region and providing up to 7,550sqm of floor space and 1,200sqm of outdoor eating area (if developed over 1 level) ;
- an education precinct providing up to 15,700sqm of floor space (if developed over 1 level) and associated sporting fields and facilities;
- a commercial vineyard of around 20 ha;
- a village centre with up to 2,100sqm of floor space (if developed over 1 level) including a mix of uses to serve residents and visitors to the site. Uses envisaged include a general store, café and community centre with catering facility to service the use of the adjacent oval for sporting and community events;
- an extensive network of public and private open space (around 160ha) with a further 110 ha of golf course. The open space incorporates remnants of the former Army and Migrant camp, substantial areas of existing vegetation and bushfire asset protection zones;
- infrastructure including a road, pedestrian and cycle network, noise barriers, stormwater management and essential services.



Annexure A

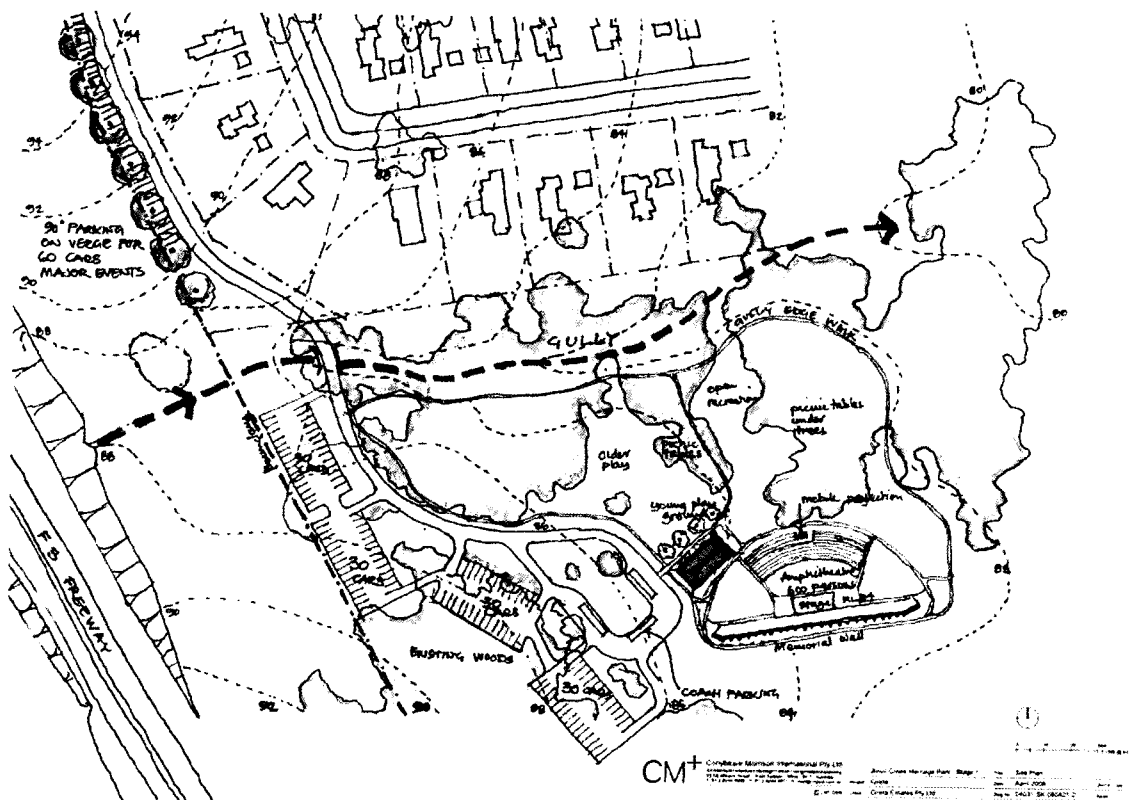
Map (cl1.1)



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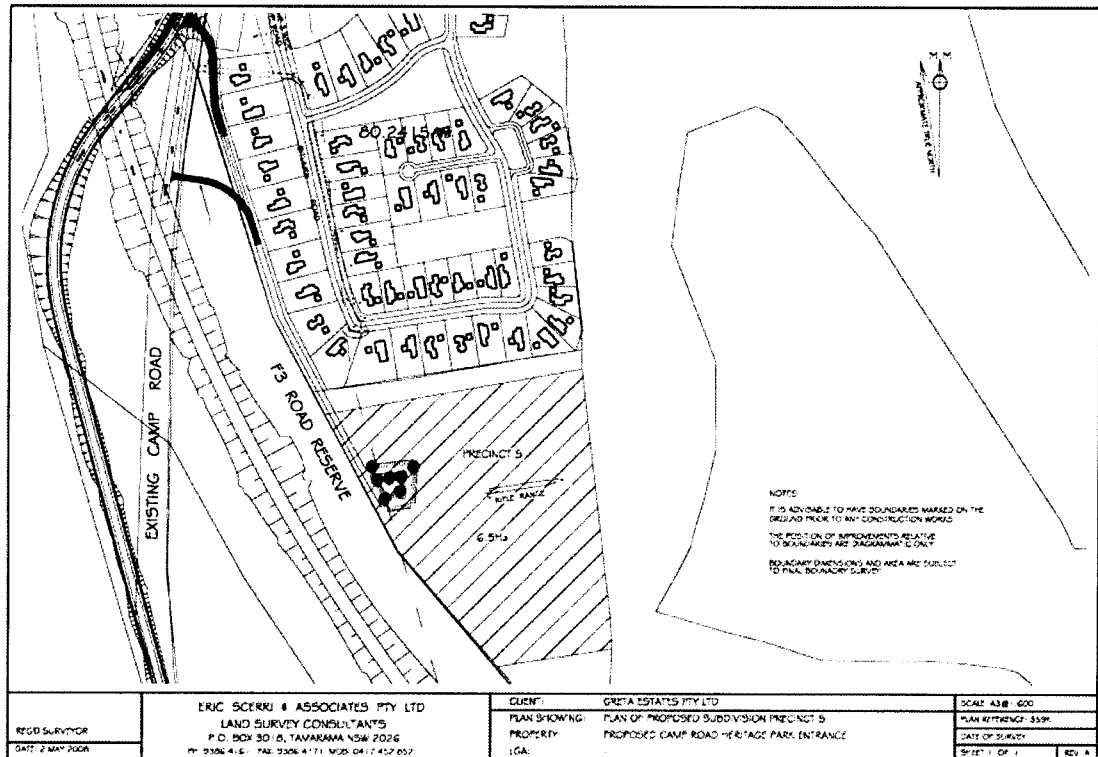


Annexure B
Heritage Park - (Sch. 3)

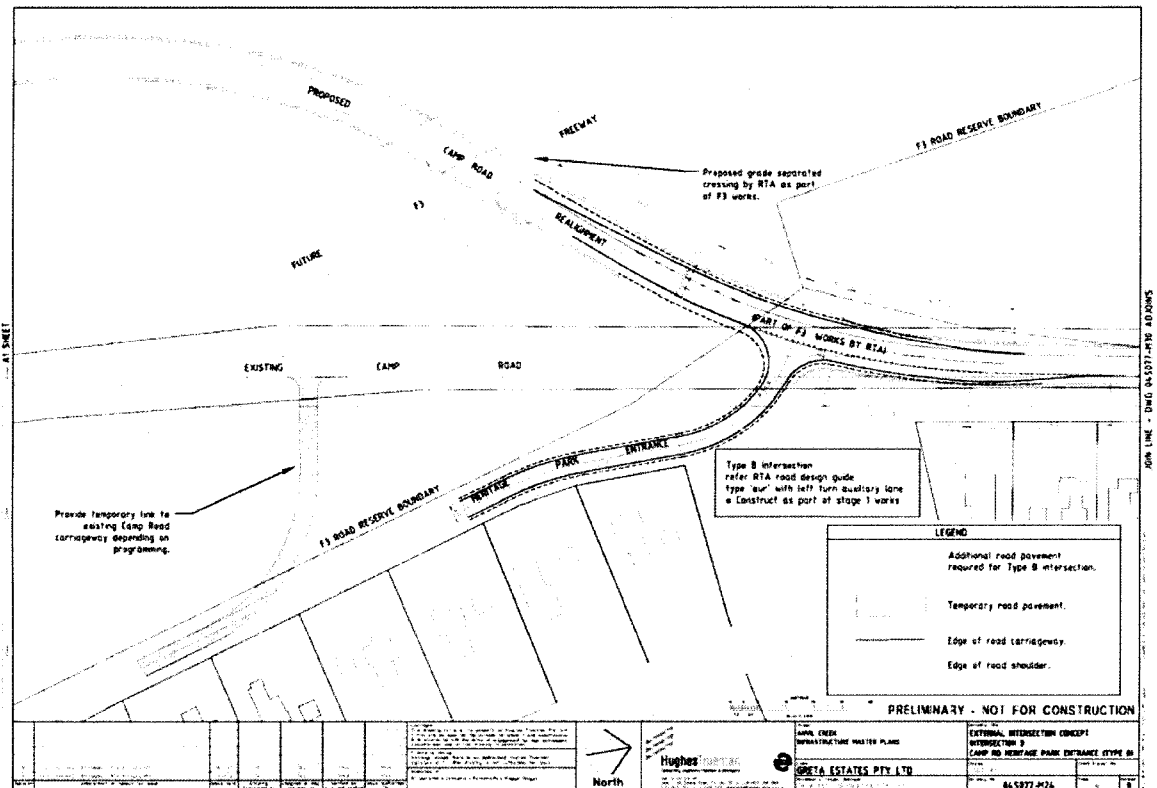


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Greta Estates Pty Limited
Cessnock City Council



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Anvil Creek Project Planning Deed
Greta Estates Pty Limited
Cessnock City Council

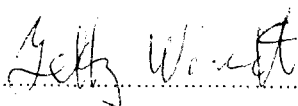


EXECUTED AS A DEED

Dated: 20 AUGUST 2008

Signed on behalf of Greta Estates Pty Ltd:

In accordance with s127 of the Corporations Act 2001


.....

Director

Name of officer:

TERRY WINDSOR


.....

Director/Company Secretary

Name of officer:

TERRY WINDSOR

WITNESS



ROBERT GELLERT Solicitor

9 Bronte Road, Bondi Junction

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 _____ in the presence of:

General Manager

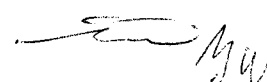
Mayor

THE COMMON SEAL of the CESSNOCK CITY COUNCIL was hereto affixed this 29th day of August 2008 in pursuance of a resolution of the Council passed on the 20th day of August 2008


.....
Mayor


.....
General Manager





Ingham Planning
Suite 19 303 Pacific Highway
LINDFIELD NSW 2070

Contact: Mr R J Sandell
Our Ref: DA 8/2005/761/2
Your Ref:

Dear Sir/Madam

**NOTICE OF DETERMINATION OF MODIFIED DEVELOPMENT APPLICATION
Environmental Planning and Assessment Act, 1979**

Pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 (as amended) notice is hereby given of the determination by Cessnock City Council of **Modified Development Application Number 8/2005/761/2**, for development on the subject land as described below. The application has been determined in accordance with the attached schedule.

DETAILS RELATING TO ORIGINAL CONSENT

Development Application No.	8/2005/761/1
Description of Development:	17/02/2010
Description of Modification:	Modification to amend NSW Rural Fire Service General Term of Approval and Condition 10
Property description:	Lot 263 & 264, DP 755211, LOTS 1 to 6 DP: 1036942 324 & 325 Camp Road ALLANDALE, 995 Lovedale Road ALLANDALE
Applicant:	Ingham Planning
Original date from which consent operates:	17/02/2010
Date of Determination of Modified Consent:	16/07/2010

If you are dissatisfied with this decision, Section 96(6) of the Environmental Planning and Assessment Act 1979 (as amended) gives you the right of appeal to the Land and Environment Court unless, the development is State significant development that has been determined following a public enquiry under Section 119 of the Act, or the development consent was granted by the Court.

Yours faithfully,

R J SANDELL
SENIOR PLANNING ASSESSMENT OFFICER

16 July 2010

Kme/tt

**AMENDMENTS TO CONDITIONS OF CONSENT
DEVELOPMENT APPLICATION NO. 8/2005/761/2**

Condition No. 1

Compliance with conditions of original Development Application No. 8/2005/761/1 dated 17/02/2010 except as modified below.

Condition No. "10

Subdivision

Construction works associated with subdivision of land in accordance with a development consent shall not be commenced until:-

- (a) detailed plans including design calculations have been endorsed with a construction certificate by:-*
 - (i) the consent authority;*
 - (ii) an accredited certifier, and*
- (b) the person having the benefit of the development consent:-*
 - (i) has appointed a principal certifying authority, and*
 - (ii) has notified Council of the appointment, and*
- (c) the person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence construction works.*

Reason

To ensure compliance with the provisions of the Environmental Planning and Assessment Act 1979 (as amended).

Amendment to Consent:

Construction works associated with subdivision of land in accordance with a development consent shall not be commenced until:-

- (a) detailed plans including design calculations have been endorsed with a construction certificate by:-
 - (i) the consent authority; or
 - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:-
 - (i) has appointed a principal certifying authority, and
 - (ii) has notified Council of the appointment, and
- (c) the person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence construction works.

Reason

To ensure compliance with the provisions of the Environmental Planning and Assessment Act 1979 (as amended).

Integrated Approvals NSW Rural Fire Service

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.

1. *Access to all lots shall comply with section 4.1.3 of 'Planning for a Bush Fire Protection 2006'.*

Amendment to Consent

Access

Any further development application for the carrying out of the other stages of the concept proposal the subject of this consent (other than the Stage 1 subdivision and associated works subject of this consent) must be accompanied by details demonstrating the provision of access in accordance with section 4.1.3 '*Planning for Bushfire Protection 2006*'



Ingham Planning
Suite 19 303 Pacific Highway
LINDFIELD NSW 2070

Contact: Mr R J Sandell
Our Ref: DA 8/2005/761/1
Your Ref: -

Dear Sir/Madam

**NOTICE OF DETERMINATION OF APPLICATION
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)**

Pursuant to Section 81(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) notice is hereby given of the determination by Cessnock City Council of Development Application Number 8/2005/761/1, for development on the subject land as described below.

The application has been determined pursuant to section 80(1) and 80(4)(a) of the Environmental Planning & Assessment Act 1979 (as amended) by :-

GRANTING OF CONSENT SUBJECT TO CONDITIONS

as specified in **SCHEDULE 1** and **SCHEDULE 2** of this Notice.

Date of Determination:	17/02/2010
Date from which Consent Operates:	17/02/2010
Date from which Consent Lapses:	17/02/2015
Description of Development:	<p>The proposed development is a staged development application within the meaning of section 83B(1) of the <i>Environmental Planning & Assessment Act 1979</i>, which seeks approval of:</p> <p>(a) a concept proposal for development of the subject site comprising the following elements:</p> <ul style="list-style-type: none">* An 18 hole international standard golf course; comprising an area of around 110 ha;* A golf clubhouse/hotel building comprising 3300sqm of floor area (if developed over 1 level) including up to 150 hotel rooms;

- * up to 85 detached and attached tourist accommodation buildings;
- * permanent residential development of up to 1364 dwellings comprised of 276 detached houses; 217 villas; 515 townhouses and 356 duplex apartments;
- * A 'gateway' retail area adjacent to the new freeway interchange aimed at servicing tourists and promoting tourism in the region and providing up to 7,550sqm of floor space and 1,200sqm of outdoor eating area (if developed over 1 level);
- * an education precinct providing up to 15,700sqm of floor space (if developed over 1 level)
- * a commercial vineyard of around 20 ha;
- * A village centre with up to 2,100sqm of floor space (if developed over 1 level) including a mix of uses to serve residents and visitors to the site.
- * an extensive network of public and private open space (around 160ha) with a further 110ha of golf course. The open space incorporates remnants of the former Army and Migrant Camp, substantial areas of existing vegetation and bushfire asset protection zones. It also includes a 'Heritage Park' of 6.5ha to be dedicated to Council for public use as required by the VPA that has been agreed by the applicant and Council;
- * infrastructure including a road, pedestrian and cycle network, noise barriers, stormwater management and essential services and

(b) Stage 1 of the above concept proposal comprising subdivision of the Land into eleven (11) lots and the rehabilitation of the existing main road entry from Camp Road.

Property Description:

Lots 263 & 264 DP 755211, Lots 1 to 6 DP: 1036942

324 - 325 Camp Road ALLANDALE

995 Lovedale Road ALLANDALE

Zoning:

Rural 1(a), Residential 2(a), General Business 3(a) and Environmental Protection (Conservation) Zone 7(b)

Applicant:

Ingham Planning

Owner:

Greta Estates Pty Limited

Your attention is directed to the provisions of Section 95 of the Environmental Planning and Assessment Act 1979 (as amended). Should the development not be substantially commenced within five years of the date of determination of this approval, the approval will lapse and a further application will be required.

Should you consider any conditions of consent unreasonable or inappropriate you may apply to have them reviewed. Council provides an internal review process to consider objections to conditions of development approval. An application pursuant to Section 96 of the Environmental Planning & Assessment Act 1979 (as amended) must be made accompanied by the prescribed fee in accordance with Council's current fees and charges. Applicants who are not satisfied with the results of an internal review may seek to have their conditions of consent reviewed by Council's **Planning Review Committee**.

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 (as amended) gives you the right of appeal to the Land and Environment Court within twelve (12) months from the date of determination.

SCHEDULE 1

APPROVED CONCEPT PROPOSAL CONDITIONS

General

1. The proposed staged development is to be carried out in accordance with the details set out on the application form and the following documents:-

The Statement of Environmental Effects for the Masterplan DA (Volumes 1 & 2) for 'Anvil Creek' prepared by Ingham Planning Pty Ltd dated May 2009 and comprising:-

- i) The Soil Assessment conducted by Sustainable Soils Management dated July 2000 and supplementary letter dated 18 February 2009.
- ii) The Heritage Assessment and Statement of Heritage Impact prepared by Conybeare Morrison International dated July 2005 and supplementary correspondence dated 13 May 2009 and 20 October 2009.
- iii) The Ecological Impact Assessment prepared by Travers Bushfire and Ecology dated May 2009.
- iv) The Voluntary Planning Agreement between Council and the Greta Estates Pty Ltd signed on 20 August 2008,
- v) The Transport Study by Masson Wilson Twiney dated July 2005 and supplementary letter dated 29 April 2009 from Halcrow MWT dated 29 April 2009.
- vi) The Bushfire Protection Assessment by Travers Bushfire and Ecology dated May 2009.
- vii) The Infrastructure Assessment and Masterplanning Report prepared by Hughes Trueman dated July 2005.
- viii) The Environmental Site Assessment and Report prepared by HLA Envirosiences Pty Ltd dated 7 July 2005 and supplementary letter dated 3 February 2009.

- ix) The Social Impact Assessment by GML Social Research dated April 2009.
- x) The Economic Impact Assessment and Report prepared by Hunter Valley Research Foundation dated June 2005 and supplementary letter dated 15 January 2009.
- xi) The Indigenous Heritage Assessment and Report by Archaeological and Heritage Management Solutions Pty Ltd dated July 2005, the supplementary advice provided by Alan Williams – Senior Archaeologist and additional Section 87 #2565 Excavation Report undertaken by Archaeological and Heritage Management Solutions Pty Ltd dated September 2009.
- xii) The Acoustic Assessment and Report by Wilkinson Murray Pty Ltd dated April 2005 and supplementary letter dated 11 May 2009.
- xiii) The Traffic Noise Assessment and Report by Wilkinson Murray Pty Ltd dated June 2005.
- xiv) Subdivision of the land into 11 lots generally as indicated the Plan of Subdivision prepared by Eric Scerri & Associates "Issue B" dated 15.5.09
- xv) Reconstruction of the main existing entry road from Camp Road generally as indicated in the "Anvil Creek Main Entrance Road Rehabilitation Development Application Design Report" dated 27.06.05.
- xvi) Masterplan Report prepared by Conybeare Morrison International Pty Ltd dated May 2009 and
- xvii) The Landscape Masterplan Report prepared by Context Landscape Design dated May 2009,
- xviii) Letter from Ingham Planning Pty Limited to Cessnock City Council dated 21 January 2010,
- xix) and any other information submitted with the application or as modified by the conditions of this consent.

Note: Section 83D(2) of the Environmental Planning & Assessment Act 1979 provides that while any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent. This provision does not prevent this development consent from being modified (see section 83D(3) of the Act). You are advised that any proposal to modify the terms or conditions of this consent, whilst still maintaining substantially the same development to that approved, will require the submission of a formal application under Section 96 of the Environmental Planning and Assessment Act 1979 for Council's consideration. If amendments to the design result in the development not remaining substantially the same as that approved by this consent, a new development Application will have to be submitted to Council.

Reason

To confirm and clarify the terms of Council's approval.

2. This consent does not authorise the carrying out of development other than the Stage 1 subdivision and associated works referred to in condition 6. Further development consent is required for the carrying out of the other stages of the concept proposal the subject of this consent.

Reason

To confirm and clarify the terms of Council's approval.

3. A Voluntary Planning Agreement in the terms of the offer contained in the Voluntary Planning Agreement executed between Greta Estates Pty Ltd and Cessnock City Council on 20 August 2008, is to be entered into between the Council and the registered proprietor of the subject site.

Reason

To confirm and clarify the terms of Council's approval.

4. Any further development application for the carrying out of the other stages of the concept proposal the subject of this consent (other than the Stage 1 subdivision and associated works the subject of this consent) must be accompanied by the following:

- (a) A Demolition Plan for the site which details the extent of demolition and removal of structures and items considered to be of heritage significance. The demolition plan is to provide a photographic record of those items to be demolished/removed and a copy of the record retained in the local Cessnock library.

Reason

To ensure a record is kept of all items of historic significance found on the site.

- (b) A revised acoustic assessment report and vibration logging survey for residential development impacted by noise and vibration from the proposed Maitland to Minimbah Third Track and the extension to the Hunter Expressway, together with a visual impact assessment report regarding any recommended acoustic barriers. The revised acoustic assessment must indicate what measures will be taken to ensure that the following LAeq levels are not exceeded:
 - in any bedroom in the building: 35dB(A) at any time between 10pm and 7am; and
 - anywhere else in the building (other than a garage, kitchen, bathroom or hallway): 40dB(A) at any time.for residential development impacted by noise and vibration from these projects.

Reason

To ensure that any residential development proposed for the site will maintain adequate amenity and living standards for its occupants.

- (c) The submission of an overall Design Code for the site to guide future development and to ensure an integrated approach to the design of buildings and landscaping and ensure the rural character of the locality is maintained. The Design Code will outline the built form/design controls and a materials palette for future development and provide details of the proposed treatment of 'public' or common areas within the development while having regard to the sustainability principles detailed in the Sustainability Plan contained in the Masterplan. A further more detailed Design Code is required for each stage and must be generally consistent with the overall Design Code.

Reason

To ensure an integrated design approach to the development of the site and to encourage the retention of the rural character of the locality.

- (d) A Phase 2 Environmental Site Assessment (ESA) for the site in accordance with NSW DECCW guidelines for contaminated lands and Council Development Control Plan 2006 – Contaminated Lands. The Phase 2 ESA will include an additional site inspection to confirm the findings of the Phase 1 ESA, the identified potential areas of environmental concern and provide recommendations for any remediation works. If remediation works are required a Remedial Action Plan will be developed to meet the requirements of the NSW DECCW under the Contaminated Land Management Act 1997 and Council's Development Control Plan 2006.

Reason

To ensure that any existing contamination present on the site is removed and the subject land remediated to an appropriate standard and so as not to represent an environmental hazard or danger to the public safety.

5. Prior to granting development consent for the carrying out of the other stages of the concept proposal the subject of this consent, the consent authority must be satisfied that the issues the subject of condition 4 above have been adequately addressed for the particular stage concerned. This may result in some circumstances in adjustments to the noise mitigation measures and/or lot layout and yield approved by this consent.

Reason

To confirm and clarify the terms of Council's approval.

CONDITIONS FOR STAGE 1 OF THE APPROVED CONCEPT PROPOSAL

6. This development consent authorises the carrying out of Stage 1 of the approved concept proposal, being the:
 - (a) subdivision of the land into 11 lots as indicated on the Plan of Subdivision prepared by Eric Scerri & Associates "Issue B" dated 15.5.09 as contained at Appendix P of the Statement of Environmental Effects dated May 2009 prepared by Ingham Planning Pty Limited; and
 - (b) rehabilitation of the main existing entry road from Camp Road as indicated in the "Anvil Creek Main Entrance Road Rehabilitation Development Application Design Report" dated 27.06.05 as contained at Appendix O of the Statement of Environmental Effects dated May 2009 prepared by Ingham Planning Pty Limited.

Reason

To confirm and clarify the terms of Council's approval.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

General

7. A Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval from the Department of Water and Energy until a copy of the approval has been provided to Council.

Reason

To ensure that satisfactory arrangements have been made with the Department of Water and Energy.

Access, Car Parking and Loading Arrangements

8. The registered proprietor of the land shall re-construct the existing access road in accordance with Council's DCP and 'Engineering Requirements for Development' to serve the subdivision. In this regard the existing access road pavement is to be rehabilitated generally in accordance with the "Anvil Creek Main Entrance Road Rehabilitation Design Report" dated 27.6.05 at Appendix O of the Statement of Environmental Effects. The existing road pavement is to be upgraded from Chainage 160.974 to Chainage 911.75 as shown on the "Anvil Creek Rehabilitation of entrance road off Camp Road" plans, Draw No.'s 05S610-DA001 to -DA007, Revision A prepared by Hughes Trueman, Consulting Engineers, Planners and Managers for a width of 5m by tyning 150mm of the existing pavement, mixing with DGB20, reprofiling of the surface and laying a single coat seal.

Full details, including a pavement design report from a suitably qualified and experienced Geotechnical Engineer shall be submitted to and approved by Council or an Accredited Certifier prior to release of the Construction Certificate for the civil works.

Reason

To provide appropriate means of access to the development.

Stormwater Drainage and Flooding

9. The two (2) existing watercourse culvert crossings are to be appropriately cleaned and the inlets and outlets rehabilitated in accordance with Council's 'Engineering Requirements for Development'. Flood warning signage, depth indicators and reflective guideposts in accordance with AS 1743 are to be provided in the vicinity of the culverts.

Full details shall be submitted to and approved by Council or an Accredited Certifier prior to release of the Construction Certificate for the civil works.

Reason

To ensure that on site stormwater runoff is properly collected and conveyed and to ensure public safety for road users.

Subdivision

10. Construction works associated with subdivision of land in accordance with a development consent shall not be commenced until:-
- (a) detailed plans including design calculations have been endorsed with a construction certificate by:-
 - (i) the consent authority;
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:-
 - (i) has appointed a principal certifying authority, and
 - (ii) has notified Council of the appointment, and
 - (c) the person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence construction works.

Reason

To ensure compliance with the provisions of the Environmental Planning and Assessment Act 1979 (as amended).

DURING CONSTRUCTION

General

11. The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

Reason

To ensure that any required alterations to utility infrastructure are undertaken to acceptable standards at the developer's cost.

Site Works

12. The control of erosion and the prevention of silt discharge into drainage systems and waterways will be necessary in accordance with Council's "Engineering Requirements for Development", and Landcom's Soils and Construction Manual - April 2004. Erosion control measures are to be implemented prior to the commencement of any earthworks and shall be maintained until satisfactory completion and restoration of site earthworks, including revegetation of all exposed areas.

Reason

To ensure protection of the environment by minimising water pollution, erosion and sedimentation.

13. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring onto adjacent private or public property. The finished ground is to be graded to prevent ponding of water and to ensue the free flow of water away from existing buildings and adjoining properties.

Reason

To reduce the risk of environmental and building damage.

Scheduling Of Inspections

14. If Council is to be appointed as the Accredited Certifier for the internal civil works, then the applicant is to advise Council at least 48 hours prior to commencement of any construction works on site or associated with the site, together with the approved contractor's name and address.

Reason

To enable orderly scheduling of inspections

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

General

15. Prior to the issue of a subdivision certificate, an Ecological Site Management Plan (Plan) for the site is submitted to Council for approval. The Plan should be based on the conclusions and recommendations contained in the Ecological Impact Assessment undertaken by the Travers Bushfire and Ecology report dated May 2009 and contain an ecological site management strategy to ensure an integrated approach to the restoration of vegetation and fauna habitat over the term of the development of the site. Upon the creation of the allotments comprising Stage 1, the Applicant is to cause the Plan to be registered on the title to each allotment. The Plan, once approved by Council, must be registered on the title to all lots created by the subdivision pursuant to the relevant provisions of the *Conveyancing Act 1919* (that is section 88B and/or section 88E depending on the final format of the approved Plan). The instrument (or instruments as the case may be) must require the land to be managed in accordance with the Plan.

Reason

To ensure there is no net loss of flora and fauna habitat for the site in the medium to long term.

16. Prior to the issue of a subdivision certificate, and pursuant to sections 104A and 80A(1)(b) of the *Environmental Planning & Assessment Act 1979*, the Developer is to surrender the development consent granted by Council on 14/12/1994 to Development Application No. 118/694/296, being an application for a "Proposed Vineyard and Tourist Related Facility" on Lot 1 DP 628939 Camp Road, Greta. The surrender is to be in the form of a notice given to Council in accordance with clause 97(3) of the *Environmental Planning & Assessment Regulation 2000*..

Reason

To confirm and clarify the terms of Council's approval.

17. Rights of carriageway, easements for access and easements for services shall be created over the access corridors through Lot 1 serving Lots 2, 3, 5, 6, 7, 8 & 9. The appropriate notation being placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act* being submitted to Council setting out the terms of easements as required by this consent. Council, in addition to the owner of the land benefited by the easement, is to be a party whose consent is needed to release or vary easements.

Reason

To ensure that adequate vehicular access and servicing rights are secured in respect of the proposed development.

18. Rights of carriageway, easements for access and easements for services shall be created over the access corridors through Lot 11 serving Lot 10. The appropriate notation being placed on the plan of subdivision and an instrument under Section 88B of the Conveyancing Act being submitted to Council setting out the terms of easements as required by this consent. Council, in addition to the owner of the land benefited by the easement, is to be a party whose consent is needed to release or vary easements.

Reason

To ensure that adequate vehicular access and servicing rights are secured in respect of the proposed development.

19. The Section 88B Instrument will be submitted to Council with all relevant signatures and company seals (where applicable) prior to endorsement of the linen plan of subdivision and release of the subdivision certificate. Alternatively, Council will accept, at the discretion of the Development Services Manager, a copy of the Section 88B Instrument with an accompanying letter from the acting Solicitor or Surveyor giving an undertaking that the Section 88B Instrument will be signed and submitted as presented to Council, unaltered, to the Land and Property Information Officer for registration with the linen plan of subdivision.

Reason

To ensure the Section 88B Instrument is submitted to the Lands Titles Office in the same form as it is submitted to Council.

20. The applicant shall submit to Council evidence that the requirements of Energy Supplier, the Hunter Water Corporation and telecommunications authorities have been met in regard to the provision of services provided by those authorities to the subdivision. Such evidence shall be submitted to and approved by Council prior to endorsement of the final plan of survey and release of the Subdivision Certificate.

Reason

To ensure that adequate services are provided to each new lot created.

21. Evidence shall be submitted to Council that the registered proprietors of the land on whose behalf the application was made have complied with the requirements of Section 50 of the Hunter Water Board (Corporatisation) Act 1991. Such evidence shall be submitted Council prior to the release of the final plan of survey for the subdivision and the Subdivision Certificate.

Reason

To ensure compliance with the Hunter Water Corporation requirements for the supply of water and sewerage to the new lots created.

Fees, Development Contributions, Monetary Bonds, Dedication of Land

22. A final plan of survey, prepared by a Registered Surveyor, and seven (7) copies for endorsement by Council are to be submitted with the application for a Subdivision Certificate.

Reason

To enable the linen plan to be legally made.

POST OCCUPATION OPERATIONAL REQUIREMENTS

Access, Car Parking and Loading Arrangements

24. All access crossings and driveways shall be maintained in good order for the life of the development.

Reason

To ensure that a safe adequate all-weather access is available to the development.

ADVICE

1. Payment of the subdivision endorsement fee is to be received prior to release of the final plan of survey. Currently, this endorsement fee is \$120.00 per lot. This fee is adjusted annually and the fee to be paid will be the applicable fee at the time of lodgement of the final plan of survey for endorsement and Subdivision Certificate application.

Reason

To ensure that the developer meets all costs associated with the release of the final plan of subdivision.

2. Confirmation from the Department of the Environment, Water, Heritage and the Arts prior to the submission of any Development Application for the establishment of buildings on the site that the proposed development is unlikely to have any significant impact on matters of National Environmental Significance.

Reason

To ensure that the proposed development complies with the provisions of the Environment Protection and Biodiversity Conservation Act 1999.

3. If Council is to be nominated as the Accredited Certifier for the civil works, then the applicant is advised that an engineering plan checking and site supervision fee of \$1,940.00 is payable prior to release of the Construction Certificate for the works.

Reason

To meet costs associated with the approval of engineering plans and inspection of construction works.

**SCHEDULE 2 – GENERAL TERMS OF APPROVAL FOR STAGE 1 AND THE
APPROVED CONCEPT PROPOSAL**

Integrated Approvals

Department of Water and Energy

Plans, Standards and Guidelines

1. These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA 8/2005/761/1 and provided by Council to the NSW Office of Water within the correspondence dated 25 June 2009.

Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.

2. Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.
3. The application for a controlled activity approval must include the following documentation:
 - (i) Vegetation Management Plan
 - (ii) Detailed plans of all proposed works on waterfront land.
 - (iii) Works Schedule
 - (iv) Erosion and Sediment Control Plan
 - (v) Soil and Water Management Plan
4. All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water guidelines located at:
www.dwe.nsw.gov.au/water_trade/rights_controlled.shtml
 - (i) Vegetation Management Plans
 - (ii) Laying pipes and cables in watercourses
 - (iii) Riparian Corridors
 - (iv) In-stream works
 - (v) Outlet structures
 - (vi) Watercourse crossings
5. The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.

Rehabilitation and Maintenance

6. The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.
7. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan approved by the NSW Office of Water.

Report Requirements

8. The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.

Security Deposits

9. The consent holder may be required to provide a security deposit (bank guarantee or cash bond) – equal to the sum of the cost of complying with the obligations under any approval – to the NSW Office of Water as and when required.

Access-Ways

10. The consent holder must design and construct all ramps, stairs access ways, cycle paths, pedestrian paths or other non-vehicular form of access way so that they do not result in erosion, obstruction of flow, destabilisation, or damage to the bed or banks of the river or waterfront land, other than in accordance with a plan approved by the NSW Office of Water.
11. The consent holder must not locate ramps, stairs, access ways, cycle paths, pedestrian paths or any other non-vehicular form of access way in a riparian corridor other than in accordance with a plan approved by the NSW Office of Water.

Bridge, Causeway, Culverts, and Crossings

12. The consent holder must ensure that the construction of any bridge, causeway, culvert or crossing does not result in erosion, obstruction of flow, destabilisation or damage to the bed or banks of the river or waterfront land, other than in accordance with a plan approved by the NSW Office of Water.
13. The consent holder must ensure that any bridge, causeway, culvert or crossing does not obstruct water flow and direction, is the same width as the river or sufficiently wide to maintain water circulation, with no significant water level difference between either side of the structure other than in accordance with a plan approved by the NSW Office of Water.

Culvert

14. The consent holder must ensure that no materials or cleared vegetation that may obstruct flow, wash into the water body or cause damage to river banks are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.

Drainage and Stormwater

15. The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the Department of Water & Energy; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.
16. The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.

Erosion Control

17. The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.

Excavation

18. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
19. The consent holder must ensure that any excavation does not result in (i) diversion of any river (ii) bed or bank instability or (iii) damage to native vegetation within the area where a controlled activity has been authorised, other than in accordance with a plan approved by the NSW Office of Water.

Maintaining River

20. The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any uncontrolled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the NSW Office of Water.
21. N/A

River Bed and Bank Protection

22. N/A
23. The consent holder must establish riparian corridors in accordance with a plan approved by the NSW Office of Water

Plans, Standards and Guidelines

24. The consent holder must prepare a Vegetation Management Plan (VMP) covering the proposed riparian corridors in accordance with guidelines for controlled activity approvals and to the satisfaction of the NSW Office of Water.
25. N/A
26. N/A
27. The consent holder must not disturb the rehabilitation activities required by the Vegetation Management Plan (VMP).

NSW Rural Fire Service

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.

1. Access to all lots shall comply with section 4.1.3 of 'Planning for a Bush Fire Protection 2006'.

Department of Environment and Climate Change

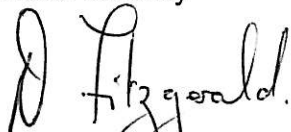
The following General Terms of Approval are provided in accordance with section 91A (2) of the *Environmental Planning & Assessment Act 1979* and section 70 (1)(a) of the *Environmental Planning and Assessment Regulation 2000*.

1. The applicant must continue to consult with all Aboriginal interest groups and involve these groups, wherever possible, in the project and in the ongoing management of the Aboriginal cultural heritage values.
2. Where works will impact on, or are likely to impact on, Aboriginal objects, the applicant will consult with all Aboriginal interest groups to discuss the Aboriginal Heritage Impact Permit (AHIP) application and the proponent will do this in accordance with DECCW requirements.
3. The application will then apply for an AHIP in accordance with the *National Parks & Wildlife Act 1974 (NPW Act)*, and adhere to the conditions of the AHIP prior to disturbing, damaging or destroying Aboriginal objects that occur on the land which is subject to the development application.

4. An application for an AHIMS Care & Control Permit must be lodged with any AHIP application. As for the AHIP application, the proponent must provide evidence of the support by the registered Aboriginal stakeholder groups for the care and control application.
5. The applicant is to develop measures to ensure the conservation of Aboriginal sites #37-6-1667, #37-6-1669 and #37-6-1672 during and after proposed development. These measures should be developed in consultation with the local Aboriginal interest groups.
6. If human remains are located during the project, all works must halt in the immediate area to prevent any further impacts to the find or finds. The NSW Police Coroner, the Aboriginal community and DECCW are to be notified. If the remains are found to be Aboriginal origin and the police deem it not associated with criminal activities, DECCW should be contact and notified of the situation. Works are not to resume in the designated area until approval in writing is provided by DECCW to the proponent. In event that a criminal investigation ensues works are not to resume in the designated area until approval in writing from the NSW Police and other relevant government agencies.
7. If Aboriginal cultural objects are uncovered due to the development activities, all works must halt in the immediate area to prevent any further impacts to the find or finds. A suitably qualified archaeologist and Aboriginal interest groups must be contacted to determine the significance of the find(s). The site is to be recorded formally and registered in the DECCW AHIMS database with management recommendations detailed in the site card. It is recommended that the Aboriginal community representatives are consulted in developing and implementing management strategies for all sites, with all information required for informed consent being given to the representatives for this purpose. The proponent will need to liaise with DECCW to discuss whether the site is included in the AHIP, and apply for a variation if required.
8. An Aboriginal Cultural Education Program must be developed for the induction of personnel and contractors involved in the construction activities on site. The program should be developed in collaboration with the Aboriginal community.

If you have any further enquiries regarding this approval, please contact Council's City Planning Department on (02) 4993 4100.

Yours faithfully



D N FITZGERALD
DIRECTOR CITY PLANNING

17 February 2010

kme

Ingham Planning
Suite 19 303 Pacific Highway
LINDFIELD NSW 2070

Contact: Mr R J Sandell
Our Ref: DA 8/2005/761/2
Your Ref:

Dear Sir/Madam

**NOTICE OF DETERMINATION OF MODIFIED DEVELOPMENT APPLICATION
Environmental Planning and Assessment Act, 1979**

Pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 (as amended) notice is hereby given of the determination by Cessnock City Council of **Modified Development Application Number 8/2005/761/2**, for development on the subject land as described below. The application has been determined in accordance with the attached schedule.

DETAILS RELATING TO ORIGINAL CONSENT

Development Application No.	8/2005/761/1
Description of Development:	17/02/2010
Description of Modification:	Modification to amend NSW Rural Fire Service General Term of Approval and Condition 10
Property description:	Lot 263 & 264, DP 755211, LOTS 1 to 6 DP: 1036942 324 & 325 Camp Road ALLANDALE, 995 Lovedale Road ALLANDALE
Applicant:	Ingham Planning
Original date from which consent operates:	17/02/2010
Date of Determination of Modified Consent:	16/07/2010

If you are dissatisfied with this decision, Section 96(6) of the Environmental Planning and Assessment Act 1979 (as amended) gives you the right of appeal to the Land and Environment Court unless, the development is State significant development that has been determined following a public enquiry under Section 119 of the Act, or the development consent was granted by the Court.

Yours faithfully,

R J SANDELL
SENIOR PLANNING ASSESSMENT OFFICER

16 July 2010

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**AMENDMENTS TO CONDITIONS OF CONSENT
DEVELOPMENT APPLICATION NO. 8/2005/761/2**

Condition No. 1

Compliance with conditions of original Development Application No. 8/2005/761/1 dated 17/02/2010 except as modified below.

Condition No. "10

Subdivision

Construction works associated with subdivision of land in accordance with a development consent shall not be commenced until:-

- (a) detailed plans including design calculations have been endorsed with a construction certificate by:-*
 - (i) the consent authority;*
 - (ii) an accredited certifier, and*
- (b) the person having the benefit of the development consent:-*
 - (i) has appointed a principal certifying authority, and*
 - (ii) has notified Council of the appointment, and*
- (c) the person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence construction works.*

Reason

To ensure compliance with the provisions of the Environmental Planning and Assessment Act 1979 (as amended).

Amendment to Consent:

Construction works associated with subdivision of land in accordance with a development consent shall not be commenced until:-

- (a) detailed plans including design calculations have been endorsed with a construction certificate by:-
 - (i) the consent authority; or
 - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:-
 - (i) has appointed a principal certifying authority, and
 - (ii) has notified Council of the appointment, and
- (c) the person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence construction works.

Reason

To ensure compliance with the provisions of the Environmental Planning and Assessment Act 1979 (as amended).

Integrated Approvals NSW Rural Fire Service

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.

1. *Access to all lots shall comply with section 4.1.3 of 'Planning for a Bush Fire Protection 2006'.*

Amendment to Consent

Access

Any further development application for the carrying out of the other stages of the concept proposal the subject of this consent (other than the Stage 1 subdivision and associated works subject of this consent) must be accompanied by details demonstrating the provision of access in accordance with section 4.1.3 '*Planning for Bushfire Protection 2006*'