

# Planning Agreement

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Muswellbrook Shire Council ABN 86 864 180 944

AND

AQC Dartbrook Management Pty Ltd ABN 62 007 377 577

## Planning Agreement

<b>Date</b>	14 FEBRUARY 2024
<b>Parties</b>	<p><b>MUSWELLBROOK SHIRE COUNCIL ABN 86 864 180 944</b> of Campbell's Corner, 60-82 Bridge Street, Muswellbrook, NSW 2333</p> <p style="text-align: right;">(Council)</p> <p><b>AND</b></p> <p><b>AQC DARTBROOK MANAGEMENT PTY LTD ABN 62 007 377 577</b> of 6 Stair St Kayuga 2333</p> <p style="text-align: right;">(Dartbrook)</p>
<b>Background</b>	<p>A. Dartbrook operates the Dartbrook Coal Mine, which is located north of the township of Muswellbrook in the Upper Hunter Valley in New South Wales.</p> <p>B. On 11 March 2022, Dartbrook was granted Modification 7 of Development Consent DA231-07-2000 for the Dartbrook Coal Mine.</p> <p>C. Condition 11.4(a) of the Dartbrook Extension Consent requires Dartbrook to enter into a Planning Agreement with Council in accordance with the terms of Dartbrook's offer for Contributions as set out in Schedule 2 of this Agreement.</p> <p>D. Dartbrook has offered to enter into a Planning Agreement on the terms of this Agreement to make Contributions for the purposes of satisfying Condition 11.4(a) of the Dartbrook Extension Consent.</p> <p>E. This Agreement is entered into pursuant to an arrangement under Division 7.1 of Part 7 of the Act.</p>

## Operative Provisions

### 1 Definitions

In this Agreement, unless the context indicates a contrary intention:

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

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

**Business Day** means a day on which banks are open for general banking business in NSW, excluding Saturdays, Sundays and public holidays;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Agreement;

**Contributions** means a contribution made by Dartbrook under this Agreement, pursuant to Schedule 2;

**CPI** means the All Group Consumer Price Index for Sydney as published by the Australian Bureau of Statistics;

**Dartbrook Coal Mine** means the coal mine operated by Dartbrook pursuant to the original Dartbrook Consent;

**Dartbrook Consent** means Development Consent DA231-07-2000 for the Dartbrook Coal Mine which was granted by the Minister for Urban Affairs and Planning on 28 August 2001 as modified;

**Dartbrook Extension Consent** means the Development Consent granted in response to Development Application DA231-07-2000-Mod-7;

**Development** means the development approved pursuant to the Dartbrook Extension Consent;

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

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

**Dispute** means any dispute between the parties in connection with this Agreement;

**End of Mining Operations** means when Dartbrook ceases extracting, processing and transporting coal from the Dartbrook Coal Mine and all associated mine rehabilitation has been completed;

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Land** means the land upon which the Development is situated being the land comprised in Appendix 1 of the Dartbrook Extension Consent;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Notice** means a written notice, consent, approval, direction, order, information, application, request or other communication;

**Public Road** has the same meaning as in the Roads Act.

**Quarterly Instalment** means with respect to each Contribution amount payable under this Agreement, payments to be made on each 1 March, 1 June, 1 September and 1 December each year, equal to one quarter of the total Contribution amount payable, with appropriate adjustments made for CPI.

**Roads Act** means the *Roads Act 1993 (NSW)*.

**Tax Invoice** has the same meaning as in the GST Law.

## 2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;

- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
  - (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
  - (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
  - (t) **(month)** a reference to a month is a reference to a calendar month; and
  - (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.
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### **3 Planning Agreement under the Act**

- (a) The parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
  - (b) Schedule 1 of this Agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this Agreement addresses those requirements.
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### **4 Application of this Agreement**

This Agreement applies to the Land.

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### **5 Operation of this Agreement**

- (a) This Agreement commences on and from the date it is executed.
  - (b) On and from the date of termination of this Agreement in accordance with clause 9, this Agreement will cease to have effect and the Council will immediately return to Dartbrook any title documentation or other security it holds under this Agreement.
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### **6 Application of s 7.11, s 7.12 and s 7.24 of the Act**

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
  - (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
  - (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
  - (d) This Agreement does not prevent the parties from entering into other planning agreements within the meaning of Section 7.4 of the Act in relation to the Development.
  - (e) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under sections 7.11, 7.12 or 7.24 of the Act.
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### **7 Contributions to be made under this Agreement**

#### **7.1 Contributions**

- (a) Dartbrook must make Contributions to Council in accordance with Schedule 2 of this Agreement and any other relevant provision of this Agreement to the satisfaction of

Council.

- (b) Council will apply each Contribution made by Dartbrook under this Agreement:
  - (i) for the benefit of the public; and
  - (ii) otherwise in accordance with this Agreement.
- (c) Council, upon written request, will on an annual basis provide Dartbrook Mine a report on how the contributions have been invested.

## **7.2 Monetary Contributions**

- (a) The parties agree that all monetary Contributions are to commence on 11 March 2022 and will be paid annually by way of Quarterly Installments.
- (b) Monetary Contributions paid in accordance with Schedule 2 must be paid by electronic transfer into a bank account, the details of which are to be provided by Council to Dartbrook.
- (c) A monetary Contribution is made for the purposes of this Agreement when Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by deposit by means of electronic funds transfer of cleared funds into the bank account nominated by Council.

## **7.3 Apprentices**

As stated in Schedule 2, Dartbrook will use its best endeavours to engage, at a minimum, 2 apprentices, at any one time, sourced from residents within the Muswellbrook Shire local government area from the date of this Agreement until the End of Mining Operations.

## **7.4 Adjustment for CPI**

The amount of the Contributions in column 3 of the table in Schedule 2 are subject to adjustment for changes in CPI as follows:

$$DCP = \frac{DC \times A}{B}$$

where:

- DCP = the actual Contribution payment amount payable at the time the particular payment is made;
- DC = the particular Contribution payment amount required to be paid as per column 3 of the table in Schedule 2;
- A = the most recent CPI published by the Australian Bureau of Statistics prior to the date the payment is due to be made; and
- B = the most recent CPI published by the Australian Bureau of Statistics prior to the date of this Agreement.

If after the formula in clause 7.4 is applied the Contribution amount will be less than the particular Contribution payment amount required to be paid as per column 3 of the table in Schedule 2, the Contribution will not be adjusted.

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# **8 Registration of this Agreement**

## **8.1 Dartbrook interest**

Dartbrook represents and warrants to Council that as at the date of this Agreement it has obtained the consent of each person who has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW) to enable registration of this Agreement pursuant to clause 8.2.

## **8.2 Registration of this Agreement**

- (a) Dartbrook agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) on the relevant titles to the Land in accordance with section 7.6 of the

Act.

- (b) Dartbrook, at its own expense, will within 3 months after the date of this Agreement, take all practical steps, and otherwise do anything that Council reasonably requires to procure the registration of this Agreement on the titles to the Land under the *Real Property Act 1900* (NSW).
- (c) Dartbrook acknowledges and agrees that Council may lodge and maintain a caveat against the title to the Land reflecting its rights under this Agreement provided that any caveat lodged by Council will be removed contemporaneously with registration of this Agreement against the title to the Land.

### **8.3 Removal of Agreement**

When requested to do so after termination of this Agreement, Council will, at Dartbrook's expense, promptly execute such documents and take such steps as may reasonably be required to remove notification of registration of this Agreement from the title to the Land.

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## **9 Termination**

- (a) This Agreement terminates on:
  - (i) the date on which a Court of competent jurisdiction declares that either the Dartbrook Consent or the Dartbrook Extension Consent (if applicable) is invalid;
  - (ii) the date of End of Mining Operations; or
  - (iii) at such time it is mutually agreed between the parties in writing.

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## **10 Review of this Agreement**

- (a) This Agreement may be reviewed or modified by agreement of the parties provided that no review will be undertaken within the 3 years following the date of this Agreement.
- (b) No review or modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) 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.

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## **11 Dispute Resolution**

### **11.1 General**

This clause applies to any Dispute arising in connection with this Agreement.

### **11.2 Notice of Dispute**

The party wishing to commence the dispute resolution process must give written notice (Notice of Dispute) to the other party of:

- (a) the nature of the Dispute;
- (b) the alleged basis of the Dispute; and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

### **11.3 Representatives of parties to meet**

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified Dispute.
- (b) The parties may, without limitation:

- (i) resolve the Dispute during the course of that meeting,
- (ii) agree that further material or expert determination in accordance with clause 11.6 about a particular issue or consideration is needed to effectively resolve the Dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
- (iii) agree that the parties are unlikely to resolve the Dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant Dispute.

#### **11.4 Further Notice if not settled**

If the Dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the Dispute (Determination Notice) by mediation under clause 11.5 or by expert determination under clause 11.6.

#### **11.5 Mediation**

If a party gives a Determination Notice calling for the Dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 11.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the Dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a Dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
  - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### **11.6 Expert determination**

If the Dispute is not resolved under clause 11.3 or clause 11.5, or the parties otherwise agree that the Dispute may be resolved by expert determination, the parties may refer the Dispute to an expert, in which event:



- (a) the Dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by the parties; and
  - (ii) in the event that no agreement is reached, or no appointment is made within 10 Business Days of the agreement, to refer the Dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the Dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties unless:
  - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and intends to commence litigation; or
  - (ii) the determination is in respect of, or relates to, termination or purported termination of this Agreement by a party, in which event the expert is deemed to be giving a non-binding appraisal.

#### **11.7 No suspension of contractual obligations**

Subject to any interlocutory order, the referral to or undertaking of a Dispute resolution process under this clause 11 does not suspend the parties' obligations under this Agreement.

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## **12 Enforcement**

### **12.1 Default**

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (Default Notice) giving all particulars of the matters in respect of which it considers the default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 30 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may, if the Default Notice relates to a Dispute, refer the Dispute to dispute resolution under clause 11 of this Agreement.

### **12.2 General enforcement**

- (a) Without limiting any other remedies available to the parties, this Agreement may be enforced by a party in any Court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
  - (i) 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; or

- (ii) the Council from exercising any function under the Act or any other Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

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## **13 Assignment**

- (a) Dartbrook must not assign or deal with any right under this Agreement without the prior written consent of Council and any proposed assignment or dealing must not take effect until this Agreement has been registered against the title to the Land.
- (b) Council may withhold its consent to any proposed assignment by Dartbrook unless it is satisfied on reasonable grounds that the proposed assignee has sufficient financial and technical resources to enable it to comply with Dartbrook's obligations under this Agreement.
- (c) Any change of ownership or control (as defined in section 50AA of the *Corporations Act 2001* (Cth)) of a party (excluding Council) shall be deemed to be an assignment of this Agreement for the purposes of this clause.
- (d) Any purported dealing in breach of this clause is of no effect.

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## **14 Approvals and consents**

Except as otherwise set out in this Agreement, and subject to any Law, 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 that party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

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## **15 Council's position**

### **15.1 Agreement does not fetter Discretion**

This Agreement is not intended to operate to fetter, in any manner the:

- (a) power of Council to make any Law; or
- (b) exercise by Council of any statutory power or discretion

(all referred to in this Agreement as a "Discretion").

### **15.2 Severance of provisions**

- (a) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 15 is substantially satisfied; and
  - (ii) in the event that clause 15.2(a)(i) cannot be achieved without giving rise to a fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect.

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## **16 Notices**

### **16.1 Notices**

- (a) Any Notice that must or may be given or made to a party to this Agreement is only given or made if it is in writing and sent in one or more of the following ways:
  - (i) delivered or posted to that party at its address set out below;

- (ii) faxed to that party at its fax number set out below; or
- (iii) emailed to that party at its email address set out below

**Council**

Attention	The General Manager
Address	PO Box 122, Muswellbrook, NSW, 2333
Email	council@muswellbrook.nsw.gov.au; and gm@muswellbrook.nsw.gov.au

**Dartbrook**

Attention	Jeff Beatty
Address	Dartbrook Mine 6 Stair Street Kayuga NSW 2333
Email	jeff.beatty@tetraresources.com.au

- (b) If a party gives the other party 3 Business Days notice of a change of its address, number or email, any Notice is only given or made by that party if it is delivered, posted or emailed to the latest address or email.
- (c) Any Notice is to be treated as given or made at the following time if it is:
  - (i) delivered, when it is left at the relevant address;
  - (ii) sent by post, 5 Business Days after it is posted.
- (d) If any Notice 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.

**16.2 Notices sent by email**

- (a) A party may serve a Notice by email if the Notice:
  - (i) includes a signature block specifying:
    - a. the name of the person sending the Notice; and
    - b. the sender's position within the relevant party;
  - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
  - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement; and
  - (iv) is sent to the email address specified in clause 16.1(a) or the email address last notified by the intended recipient to the sender.
- (b) The recipient of a Notice served under this clause 16.2 must:
  - (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice.
- (c) Failure to comply with clause 16.2 does not invalidate service of a Notice under this clause.

### **16.3 Receipt of Notices sent by email**

- (a) A Notice sent under clause 16.2 is taken to be given or made:
  - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
  - (ii) when the Notice enters an information system controlled by the recipient; or
  - (iii) when the Notice is first opened or read by the recipient, whichever occurs first.
- (b) If under clause 16.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 5pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

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## **17 Interest to accrue**

### **17.1 Interest**

- (a) Dartbrook agrees to pay interest on any amount under this Agreement which is not paid on the due date for payment. Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (b) Dartbrook agrees to pay interest under this clause on demand from Council.

### **17.2 Rate of interest**

The rate of interest applying to each daily balance is the maximum rate permitted to accrue on unpaid rates by Section 566(3) of the *Local Government Act 1993* (NSW).

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## **18 General**

### **18.1. Relationship of the Parties**

- (a) Nothing in this Agreement constitutes a partnership between the parties, nor does it constitute one party to be the agent of the other.
- (b) A party cannot in any way or for any purpose bind another party or contract in the name of another party.

### **18.2. Entire Agreement**

This Agreement constitutes the entire agreement of the parties in relation to its subject matter and supersedes all prior agreements, understandings and negotiations between the parties. Subject to any contrary requirement of any Law, no other covenants or provisions are implied or arise between the parties by way of collateral or other agreement. The existence of any such implication or collateral or other agreement is expressly negative to the extent permitted by Law.

### **18.3. Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of or seeks to rely on this Agreement or any part of it.

### **18.4. Confidentiality**

The parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

**18.5. Governing Law and Jurisdiction**

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales Courts and Courts competent to hear appeals from those Courts.

**18.6. Counterparts**

This Agreement may be executed in any number of counterparts and all such counterparts taken together will constitute the same instrument. A party can execute this Agreement by signing any counterpart. Counterparts can be exchanged electronically by way of email.

**18.7. Costs**

- (a) Dartbrook must pay to Council the Council's reasonable costs (exclusive of GST) and disbursements in connection with the negotiation, preparation, execution, registration and release and discharge of this Agreement and any other document relating to this Agreement, and for all advertising and associated costs, within 7 days of a written demand by Council for such payment.
- (b) Dartbrook must also pay to Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by Council for such payment.

**18.8. Further assurances**

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.

**18.9. Representation and warranties**

The parties represent and warrant that they have the power and authority 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.

**18.10. Severability**

Subject to clause 15, this Agreement must, so far as possible, be interpreted or construed so as not to be invalid, illegal or unenforceable in any respect but if any provision on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.

**18.11. Waiver**

- (a) A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) 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. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other

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

## Schedule 1

### Summary of requirements (Section 7.4)

Subject and subsection of the Act	Planning Agreement
<b>Planning instrument and/or Development Application</b> Section 7.4(1)	The Dartbrook Extension Consent approved on 11 March 2022
<b>Description of the land to which the planning Agreement applies</b> Section 7.4(3)(a)	See the definition of Land in clause 1.
<b>The scope, timing and manner of delivery of contribution required by the Planning Agreement</b> Section 7.4(3)(b)	See clause 7.
<b>Applicability of section 7.11 of the Act</b> Section 7.4(3)(d)	Not excluded. See clause 6.
<b>Applicability of section 7.12 of the Act</b> Section 7.4(3)(d)	Not excluded. See clause 6.
<b>Applicability of section 7.24 of the Act</b> Section 7.4(3)(d)	Not excluded. See clause 6.
<b>Mechanism for dispute resolution</b> Section 7.4(3)(f)	See clause 11.
<b>Enforcement of the Planning Agreement</b> Section 7.4(3)(g)	See clause 12.
<b>Registration of the Planning Agreement</b> Section 7.4(3)(g)	To be registered against the Land. See clause 8.
<b>No obligation to grant consent or exercise functions</b> Section 7.4(9)	See clauses 14 and 15.

## Schedule 2 Contributions

Description of Contribution Column 1	Purpose of Contribution Column 2	Initial Contribution Column 3	Funding Timeframe Column 4
Dartbrook community contribution	Funding for the provision of public infrastructure and services within the Muswellbrook Shire local government area.	\$450,000 per year plus CPI calculated in accordance with clause 7.4.	Dartbrook must pay an annual financial contribution of \$450,000, plus CPI, paid in Quarterly Instalments commencing 11 March 2022.
Contribution of funding toward an environmental officer	Funding toward an environmental officer, who will be responsible for environmental matters associated with development in the Muswellbrook Shire local government area.	\$20,000 per year plus CPI calculated in accordance with clause 7.4..	Dartbrook must pay an annual financial contribution of \$20,000, plus CPI, paid in Quarterly Instalments commencing 11 March 2022.
Training of apprentices	To assist in building a skilled labour force in the Muswellbrook Shire local government area.	Use best endeavours to engage 2 apprentices, at any one time, sourced from residents within the Muswellbrook Shire local government area.	
Contribution to road maintenance relevant to the Dartbrook Extension Consent's traffic contribution.	Funding towards road maintenance relevant to the Dartbrook Extension Consent's traffic contribution.	\$10,000 per year plus CPI calculated in accordance with clause 7.4.	Dartbrook must pay an annual financial contribution of \$10,000, plus CPI, paid in Quarterly Instalments commencing on the date of this Agreement.



**EXECUTED AS AN AGREEMENT:**

**EXECUTED by Muswellbrook Shire Council** )  
**ABN 86 864 180 944** by its authorised delegate )  
pursuant to Section 377 of the *Local* )  
*Government Act 1993 (NSW)*, in the presence  
of:

  
Signature of Witness

KATIE HAMM  
Name of Witness (Print)

  
Authorised Delegate

DARRYL J. J. J. J. J.  
Name of Authorised Delegate

**EXECUTED by AQC Dartbrook Management** )  
**Pty Ltd ABN 62 007 377 577** in accordance with )  
Section 127 of the *Corporations Act 2001 (Cth)*: )

  
Signature of Director

Ayten Saridas  
Name of Director (Print)

  
Signature of Director/Secretary

Craig McPherson - Secretary  
Name of Director/Secretary (Print)

