

PLANNING AGREEMENT for SHERATON ROAD CONCRETE WORKS

Land to which the Agreement applies:

Lot 2101 DP 1227782 – 19L Sheraton Road, Dubbo

Lot 211 DP 1220433 - 20L Sheraton Road, Dubbo

Dubbo Regional Council (ABN 53 539 070 928) (Council)

Regional Hardrock Pty Ltd (ABN 81 123 808 613) (Developer)



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Parties to this Agreement

Developer	Name	Regional Hardrock Pty Ltd
	Address	20L Sheraton Rd, Dubbo NSW 2830
	ABN	81 123 808 613
	Contact Name	[REDACTED]
	Contact email	[REDACTED]
Council	Name	Dubbo Regional Council
	Address	PO Box 81, Dubbo NSW 2830
	ABN	53 539 070 928
	Contact Name	[REDACTED]
	Contact email	[REDACTED]

Background

1. On 8 February 2021, Council approved Development Application D20-542 for concrete works at 19L and 20L Sheraton Road Dubbo. The application granted consent for the production of up to 150 tonnes per day/30,000 tonnes per annum of concrete. To satisfy the demand the development would have on the Council's road network, urban roads infrastructure contributions were levied in accordance with Council's Section 94 Contributions Plan – Roads, Traffic Management and Car Parking.
2. On 21 January 2025, Council approved Development Application D22-528 to increase the maximum production rate of the existing concrete works to 50,000 tonnes per annum.
3. The Developer has made an offer in connection with Development Application D22-528 to enter into this Agreement.
4. The Council agrees to be the custodian of the Monetary Contributions paid by the Developer and to distribute and expend the Monetary Contributions in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions and Interpretation

1.1 In this Agreement the following definitions apply:

- 1.1.1 **Act** means the Environmental Planning and Assessment Act 1979 as amended from time to time.
- 1.1.2 **Agreement** means this Agreement and includes any schedules, annexures and appendices.
- 1.1.3 **Consumer Price Index** means the Consumer Price Index (Sydney All Groups) as published by the Australian Bureau of Statistics.
- 1.1.4 **Contributions Table** means the table in

- 1.1.5 Schedule 1 – Development Contribution.
- 1.1.6 **Contribution Year** means every 12 month period from 1 July.
- 1.1.7 **Costs** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
- 1.1.8 **Development** means the development authorised by the Development Consent.
- 1.1.9 **Development Application** means the development application D22-528 approved by Council, as modified from time to time.
- 1.1.10 **Development Consent** means the development consent granted by Council pursuant to the Development Application, as modified from time to time.
- 1.1.11 **Dispute** means a dispute or difference between the Parties under or in relation to this Agreement.
- 1.1.12 **Event of Default** means a breach of this Agreement.
- 1.1.13 **Land** means Lot 2101 DP 1227782 and Lot 211 DP 1220433, 19L and 20L Sheraton Road, Dubbo.

Monetary Contribution means the amount payable by the Developer to the Council in accordance with

- 1.1.14 Schedule 1 – Development Contribution.
- 1.1.15 **Party** means a party to this Agreement, including their employees, agents, contractors, successors and assigns.
- 1.1.16 **Rectify** means rectify, remedy or correct.
- 1.1.17 **Regulation** means the Environmental Planning and Assessment Regulation 2021 as amended from time to time.
- 1.1.18 **Value** means the \$ amount agreed between the Parties as the value of a Monetary Contribution made under this Agreement, as shown in the Contributions Table or as otherwise agreed between the Parties.

1.2 Interpretation

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 a \$ value relating to a Monetary Contribution is a reference to the value exclusive of GST.
- 1.2.6 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.
- 1.2.7 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 Any schedules, appendices and attachments form part of this Agreement.

2 Planning agreement under the Act

- 2.1 This Agreement is a planning agreement within the meaning of the Act, governed by Subdivision 2 of Part 7 of the Act.

3 Application of this Agreement

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

4 Date upon which this Agreement takes effect

- 4.1 This Agreement takes effect when signed by both Parties and from the date in Schedule 2 – Execution.
- 4.2 The Party who last signed this Agreement is to insert the date when this Agreement commences in space provided in Schedule 2 – Execution.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 Have full capacity to enter into this Agreement, and
 - 5.1.2 Are able to fully comply with their obligations under this Agreement.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

7 Surrender of right of appeal

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Agreement, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Agreement.

Part 2 - Provision of the Monetary Contributions

8 Provision and Application of Monetary Contribution under this Agreement

- 8.1 The Developer is required to make the Monetary Contributions described in the Contributions Table.
- 8.2 The Council will apply the Monetary Contribution made by the Developer towards the public purpose identified in Column 3 of the Contributions Table.
- 8.3 Council will under no circumstances refund any Monetary Contribution made under this Agreement.

9 Payment of the Monetary Contribution under this Agreement

- 9.1 The Developer must pay the Monetary Contribution by the time identified in Column 4 of the Contributions Table.
- 9.2 The Developer is required to give Council written notice by:
 - 9.2.1 14 January each year of the amount of product transported from the Land for the period 1 July to 31 December of the preceding year; and
 - 9.2.2 14 July each year of the amount of product transported from the Land for the period 1 January to 30 June of that calendar year.
- 9.3 To permit Council to verify the amount of product transported from the Land, the Developer's notice specified in Clause 9.2 is to include weighbridge receipts, daily logbooks or other records accepted by Council.
- 9.4 The Developer is not required to pay a Monetary Contribution under this Agreement unless Council, after having received the notice under Clause 9.2, has given to the Developer a tax invoice.
- 9.5 The Developer is not in breach of this Agreement if it fails to pay a Monetary Contribution at the time required by reason only of the Council's failure to give the Developer a tax invoice.
- 9.6 A Monetary Contribution is made for the purpose of this Agreement when Council receives the full amount payable by cash, endorsed bank cheque or deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council. Council will not accept any other forms of payment.

10 Application of Section 7.11, 7.12 and 7.24 of the Act to the Development

- 10.1 This Agreement excludes the application of Section 7.11 and Section 7.12 to the extent that those contributions relate to the Development Application.
- 10.2 This Agreement does not exclude the application of Section 7.24 to the Development.

11 Indexation of Monetary Contribution

- 11.1 Monetary Contributions in Part 1 of the Contributions Table will be indexed annually in accordance with the Consumer Price Index (Sydney All Groups) as published by the Australian Bureau of Statistics in accordance with the following formula:

$$MC = \frac{\$0.10 \times A}{B}$$

B

Where:

MC is the amount payable per tonne at the time of payment;

A is the Index number for the quarter ending 31 March of the preceding Contribution Year;

B is the Index number for the quarter ending 31 March 2025.

- 11.2 Monetary Contributions in Part 2 of the Contributions Table will be indexed in accordance with the Consumer Price Index (Sydney All Groups) as published by the Australian Bureau of Statistics in accordance with the following formula:

$$MC = \frac{\$124,000 \times A}{B}$$

B

Where:

MC is the amount payable at the time of payment;

A is the most recent Index number published as published by the Australian Bureau of Statistics at the time of payment;

B is the Index number for the quarter ending 31 March 2025.

Part 3 - Registration and Restrictions

12 Registration

- 12.1 The Developer must:
 - 12.1.1 prior to commencing the Development, do all things reasonably necessary to obtain the consent of the registration of this Agreement over the title to the Land pursuant to Section 7.6 of the Act from all persons who have an interest in the Land; and
 - 12.1.2 register this Agreement on the title of the Land.
- 12.2 The Developer must provide evidence to Council that this Agreement is registered on the title of the Land within 14 days of such registration.
- 12.3 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title of the land once the Developer has completed its obligations under this Agreement, or the Agreement is terminated or otherwise comes to an end for any other reason.

13 Restriction on Dealings

- 13.1 This Clause does not apply in relation to any sale or transfer of the Land if this Agreement is registered on the title to the Land at the time of the sale.
- 13.2 The Developer must not:
 - 13.2.1 sell or transfer the land;
 - 13.2.2 assign their rights or obligations under this Agreement; or
 - 13.2.3 novate this Agreement,to any person unless
 - 13.2.4 the Developer has, at no cost to Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Agreement are to be assigned or novated, of a deed in favour of Council on terms reasonably satisfactory to the Council, and
 - 13.2.5 the Developer is not in breach of this Agreement.
- 13.3 Subject to Clause 13.1, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Agreement unless and until it has complied with its obligations under Clause 13.2.

Part 4 - Review and Monitoring

14 Review of Agreement

- 14.1 If either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement the Party may request a review of the whole or any part of this Agreement.
- 14.2 For the purposes of Clause 14.1, 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 Authority to restrict or prohibit any aspect of the Development.
- 14.3 If a review is requested in accordance with Clause 14.1, the Parties are to use all reasonable endeavours, in good faith, to agree on and implement appropriate amendments to this Agreement.
- 14.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 14.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in Clause 14.1 (but not 14.4) is not a Dispute for the purposes of this Agreement and is not a breach of this Agreement.
- 14.6 If the Parties agree to amend this Agreement under this Clause, any such amendment must be in writing and signed by the Parties, and exhibited in accordance with the Act and Regulation.

15 Monitoring and Reporting

- 15.1 The Developer acknowledges that the Council will continuously monitor compliance with the Developer's obligations under this Agreement.

16 Amendment

- 16.1 No amendment of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement in accordance with Section 203 of the Regulation.

Part 5 - Dispute Resolution

17 Entire Agreement

- 17.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 17.2 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.

18 Notice of Dispute

- 18.1 If a Party claims that a dispute has arisen under this agreement (Claimant), it must give written notice to the other Party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). If a notice is given, the Parties are to meet within 21 days of the notice in an attempt to resolve the Dispute.
- 18.2 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 18.3 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 18.4 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 18.5 The Parties are to share equally the costs of the President, the expert, and the expert determination.
- 18.6 The contents of the note issued under Clause 18.1 are deemed to be confidential.

19 Mediation

- 19.1 This Clause applies to any Dispute arising in connection with this Agreement other than a Dispute to which Clause 17 applies.
- 19.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 19.3 If a notice is given under Clause 19.1, the Parties are to meet within 21 days of the notice in an attempt to resolve the Dispute.
- 19.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

- 19.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 19.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 19.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 - Warranties and Indemnities

20 Release

- 20.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

21 Indemnity

- 21.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Part 7 - Other Provisions

22 Confidentiality

- 22.1 This Agreement is a public document and its terms are not confidential.
- 22.2 The Parties acknowledge that:
 - 22.2.1 Confidential Information may have been supplied to some or all of the Parties in negotiations leading up to the making of this Agreement; and
 - 22.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
- 22.3 Subject to Clauses 22.1 and 22.2, each Party agrees:
 - 22.3.1 not to disclose any Confidential Information received before or after the making of this Agreement to any person without the prior written consent of the Party who supplied the Confidential Information; or
 - 22.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the making of this Agreement is kept confidential and protected against unauthorised use and access.
- 22.4 A Party may disclose Confidential Information in the following circumstances:
 - 22.4.1 in order to comply with the law, or the requirements of any Authority; or
 - 22.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the Confidential Information confidential.
- 22.5 The obligations of confidentiality under this Clause do not extend to information which is public knowledge other than as a result of a breach of this Clause.

23 Notices

- 23.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 23.1.1 delivered or posted to that Party at its address, or
 - 23.1.2 emailed to that Party at its email address.
- 23.2 For the purposes of this Clause a Party's address and email address are as noted under 'Parties to this Agreement'.

- 23.3 If a Party gives the other Party 7 days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 23.4 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 23.4.1 delivered, when it is left at the relevant address,
 - 23.4.2 sent by post, 2 business days after it is posted, or
 - 23.4.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 23.5 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 Costs

- 24.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping and registering this Agreement, and any document related to this Agreement within 21 days of a written demand by the Council for such payment.
- 24.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 21 days of a written demand by the Council for such payment.

25 Further Acts

- 25.1 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.

26 Governing Law and Jurisdiction

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

27 Joint and Individual Liability and Benefits

- 27.1 Except as otherwise set out in this Agreement:
- 27.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually; and
 - 27.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

28 No Fetter

- 28.1 The Parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.
- 28.2 This Agreement is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:
- 28.2.1 the power of Council to make any law; or
 - 28.2.2 the exercise by Council of any statutory power, discretion or duty.
- 28.3 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.

29 Illegality

- 29.1 If this Agreement or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

30 Severability

- 30.1 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.
- 30.2 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.

31 Waiver

- 31.1 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.
- 31.2 A waiver by a Party is only effective if it:
- 31.2.1 is in writing,

- 31.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 31.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 31.2.4 is signed and dated by the Party giving the waiver.
- 31.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 31.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 31.5 For the purposes of this Agreement, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

32 GST

- 32.1 In this Clause:
 - 32.1.1 Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
 - 32.1.2 GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
 - 32.1.3 GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
 - 32.1.4 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.
 - 32.1.5 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.
- 32.2 Subject to Clause 32.3, 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.

- 32.3 No additional amount shall be payable by the Council under Clause 32.2 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.
- 32.4 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:
- 32.4.1 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;
- 32.4.2 that any amounts payable by the Parties in accordance with Clause 32.2 (as limited by Clause 32.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 32.5 No payment of any amount pursuant to this Clause, 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.
- 32.6 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.
- 32.7 This Clause continues to apply after expiration or termination of this Agreement.

Schedule 1 – Development Contributions

Part	Value	Public Purpose	Timing
Part 1	\$0.10 per tonne of product transported from the Land in excess of 30,000 tonnes per annum	Maintenance of Sheraton Road	By 31 January each year for product transported from the Land from 1 July to 31 December of the preceding year By 31 July each year for product transported from the Land from 1 January to 30 June of that Calendar year
Part 2	\$124,000 plus indexation	Upgrading Sheraton Road to a haulage standard	Within 30 days of commencement of this Agreement

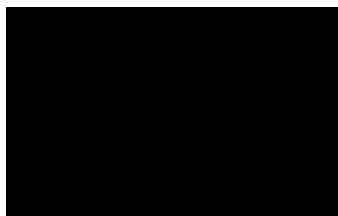
Schedule 2 – Execution

Executed as an Agreement

Dated:

Executed by **Dubbo Regional Council** by its Attorney

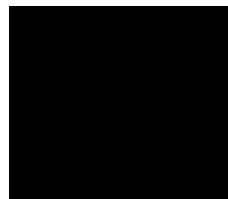
Pursuant to [REDACTED] pursuant to a resolution of Council dated 22 July 2025



Signature of Chief Executive Officer

Murray Wood

Name of Chief Executive Officer

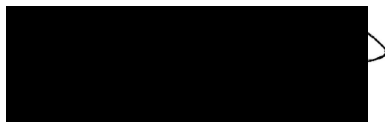


Signature of Witness

[REDACTED]

Name of Witness

Executed by/on behalf of **Regional Hardrock Pty Ltd** by its authorised representative.



Signature of

[REDACTED]

Name of Director



Signature of

[REDACTED]

Name of Director