

# VOLUNTARY PLANNING AGREEMENT

DATED [ ] 2013

BETWEEN

GUNNEDAH QUARRY PRODUCTS PTY LTD

“Developer”

and

GUNNEDAH SHIRE COUNCIL

“Council”

## **MARYS MOUNT QUARRY EXPANSION**

s93F of the *Environmental Planning and Assessment Act 1979*

THIS AGREEMENT is made on the \_\_\_\_ day of \_\_\_\_\_ 2013

BETWEEN: GUNNEDAH QUARRY PRODUCTS PTY LTD [Insert ABN]  
of 16 Torrens Road, Gunnedah (**Developer**)

AND: GUNNEDAH SHIRE COUNCIL, [Insert ABN] of 63 Elgin  
Street, Gunnedah (**Council**)

## Background

- A. On, ##, the Developer made a Development Application (DA No. 2012/185) to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent is granted.
- C. Until consent is granted to Development Application No. 2012/185, this Agreement constitutes the Developer's offer to make Development Contributions in connection with the Development of the Land on the terms and conditions set out in this Agreement.

## Operative provisions

### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following definitions apply:

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

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of any Work or any part of a Work required to be carried out by the Developer under this Agreement.

**Defects Liability Period** means the period of 12 calendar months on and from the date on which the Council accepts the hand-over of the Work under Clause 7 of this Agreement.

**Developer** means the proponent of the Development Application, being Gunnedah Quarry Products Pty Ltd.

**Development** means expansion of the extraction of blue metal gravel from the Quarry as described in the environmental impact statement and accompanying documentation supporting Development Application No. 2012/185.

**Development Application** means a development application within the meaning of Part 4 of 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, the carrying out of a work, or the provision of any other material public benefit.

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

**GST Law** has the meaning given to that term in *A New Tax System (Goods and*

*Services Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of the GST.

**Land** means the land set out in Columns 1 and 2 of Table 1 to Schedule 1.

**Landowner** in respect of Land means the entity or person named in Column 3 of Table 1 to Schedule 1 corresponding to the Land set out in Column 1 of that Table and includes the heirs, successors, assigns, servants, agents and contractors of the Landowner.

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

**Proponent** means the Developer.

**Provision** means the Developer's provision under this Agreement.

**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** means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in s93F(2) of the Act.

**Quarry** means the quarry within Lot 161 DP755508.

**Rectification Notice** means a notice in writing issued by the Council:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

**Rectify** means rectify, remedy or correct.

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

**Work** means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Agreement.

**Year 1** means the period of one year beginning on the date the Development commences.

**Year 2** means the period of one year beginning on the day following the last day of Year 1.

**Year 3** means the period of one year beginning on the day following the last day of Year 2.

- 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 includes the agreement recorded in this Agreement.
- 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 and attachments form part of this Agreement.
- 1.2.15 A reference to 'the reasonable satisfaction of the Council' means the reasonable satisfaction of the General Manager of the Council.
- 1.2.16 A reference to a matter being 'determined by the Council' means the matter being determined by the General Manager of the Council, acting in a reasonable manner.

## 2 OPERATION OF THIS AGREEMENT

- 2.1 This Agreement:
  - 2.1.1 commences when it has been executed by all of the Parties, and
  - 2.1.2 applies to the carrying out of the Development on the Land.
- 2.2 The Proponent is not bound by the provisions of this Agreement requiring Development Contributions to be made unless:
  - 2.2.1 Development Consent has been granted to the carrying out of the Development on the Land, and
  - 2.2.2 the Development is commenced.

## 3 FURTHER AGREEMENTS RELATING TO THIS AGREEMENT

- 3.1 The Parties are to enter into such further agreements as are expressly required to be entered into by this Agreement.

3.2 The Parties may, at any time, enter into such other agreements relating to the subject matter of this Agreement as they consider to be necessary or desirable in order to give effect to this Agreement.

3.3 An agreement referred to in clause 3.1 or 3.2 is not to be inconsistent with this Agreement. In particular such an agreement may not alter the kind of Public Facility to be provided under this Agreement.

3.4 Without limiting clause 3.1 or 3.2, an agreement or arrangement referred to in those clauses may make provision for:

3.4.1 the particulars of any Public Facility required by this Agreement to be made available for a Public Purpose,

3.4.2 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,

3.4.3 the particulars of any work required by this Agreement to be undertaken by the Developer, and

3.4.4 the time at which and the manner in which a Work is to be handed over to the Council.

## 4 APPLICATION OF s94 and s94A and s94EF OF THE ACT TO THE DEVELOPMENT

4.1 This Agreement excludes the application of s94A of the Act to the Development.

4.2 This Agreement excludes the application of s94 of the Act to the Development, in respect of unsealed rural roads, contingent upon and in respect of each section of the staged sealing of Barker Road and Marys Mount Road.

4.3 This Agreement does not exclude the application of s94EF of the Act to the Development.

## 5 PROVISION OF DEVELOPMENT CONTRIBUTIONS UNDER THIS

## AGREEMENT

- 5.1 The Proponent is to make Development Contributions as provided by this Agreement.
- 5.2 Except as otherwise provided by this Agreement, a Development Contribution made under this Agreement is made in full and final satisfaction of all costs and expenses to be borne by the Proponent of and incidental to the Provision of the Public Facility to which it relates.

## 6 APPLICATION OF DEVELOPMENT CONTRIBUTIONS BY THE COUNCIL

- 6.1 The Council must apply a Development Contribution made under this Agreement towards the Public Purpose for which it is made and at the locations, in the manner and to the standards required by or under this Agreement.
- 6.2 The monetary Development Contribution made under this Agreement shall be applied to the maintenance and upgrade of the nominated haul route being Barker Road, Marys Mount Road and the route shown as '*Nominated Sealed Haul Route*' on the plan in Schedule 2.

## 7 UPGRADING OF LOCAL ROADS

- 7.1 The Proponent is to undertake the staged upgrading works to those sections of Barker Road, Marys Mount Road, Goolhi Road, Quia Road and Kamilaroi Highway shown in red on the plan at Schedule 2 of this Agreement and as detailed in clause 7.2.
- 7.2 The upgrading works are to be undertaken and completed on a staged basis during Year 1, Year 2 and Year 3, as follows:
  - 7.2.1 Year 1 – upgrade and seal 100m either side of the three residences marked as '*House*' on the plan in Schedule 2 along Barker Road and Marys Mount Road and upgrade the intersection of Marys Mount Road with Goolhi Road including sealing 200m of Mary Mount Road from that intersection.



- 7.2.2 Year 1 – widen the seal of the bends to the north of the railway crossing of Goolhi Road at Emerald Hill to a width of 7m for a minimum of 150m (final length subject to survey and design).
  - 7.2.3 Year 1 – upgrade the intersection of Kamilaroi Highway with Goolhi Road.
  - 7.2.4 Year 1 – upgrade the intersection of Goolhi Road with Quia Road.
  - 7.2.5 Year 2 – seal 3.74km of Marys Mount Road
  - 7.2.6 Year 3 – seal 2.25km of Barkers Road
- 7.3 The cost of the upgrading works referenced in clause 7.2 is estimated to be \$2.7 million based on 2013 commercial rates.
- 7.4 Without limiting any other provision of this Agreement, any Work that is required to be carried out by the Proponent under this Agreement is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant approval and any other applicable law, and to the satisfaction of the Council.
- 7.5 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Agreement that:
  - 7.5.1 all necessary measures are taken to protect people and property,
  - 7.5.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 7.5.3 nuisances and unreasonable noise and disturbances are prevented.
- 7.6 Without limiting clause 7.5, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant authority.
- 7.7 Work required to be carried out by the Developer under this Agreement is completed and Council accepts the hand-over of the Work for the purposes of this Agreement when the Council, acting reasonably, gives a written notice to the Developer to that effect.

## 8 MONETARY CONTRIBUTIONS PAYABLE BY THE PROPONENT

8.1 Subject to this Agreement, the Proponent is to make Monetary Development Contributions to the Council as follows:

8.1.1 \$0.40/tonne of material extracted from the Quarry, as loaded into trucks and transported from the Land along a public road (from the date of commencement of extractive operations);

8.1.2 paid to Council on a quarterly basis in accordance with clause 8.2;

8.1.3 all records of material hauled from the Quarry to be made available to Council upon request for reconciling of contribution amounts paid; and

8.1.4 the contribution amount per tonne referred to in clause 8.1.1 to be adjusted on an annual basis in line with movements in the Transport Group CPI published by the Australian Bureau of Statistics.

8.2 A monetary Development Contribution is made for the purposes of this Agreement as and when the Council receives the amount of each contribution due under Clause 8.1 in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

## 9 RECTIFICATION OF DEFECTS

9.1 The Proponent must at its own cost, comply with any Rectification Notice given to it by the Council in respect of the Works identified in Clause 7, during the Defects Liability Period, to the reasonable satisfaction of the Council.

## 10 REGISTRATION OF THIS AGREEMENT

10.1 The Parties agree to register this Agreement for the purposes of s93H(1) of the Act.

- 10.2 On execution, the Developer is to deliver to the Council in registrable form:
- 10.2.1 an instrument requesting registration of this Agreement on the title to the Land duly executed by the Developer, and
  - 10.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 10.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Agreement to occur.
- 10.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land once the Developer has completed its obligations under this Agreement to the reasonable satisfaction of the Council or this Agreement is terminated or otherwise comes to an end for any other reason.

## 11 RESTRICTION ON DEALINGS

- 11.1 The Developer is not to:
- 11.1.1 sell or transfer the Land, or
  - 11.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement,
- to any person unless:
- 11.1.3 the Developer has, at no cost to the 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 the Council on terms reasonably satisfactory to the Council, and
  - 11.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Agreement, and
  - 11.1.5 the Developer is not in breach of this Agreement, and
  - 11.1.6 the Council otherwise consents to the transfer, assignment or novation,

such consent not to be unreasonably withheld.

- 11.2 Clause 11.1 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.

## 12 ENFORCEMENT

- 12.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice to the Developer:
- 12.1.1 specifying the nature and extent of the breach,
  - 12.1.2 requiring the Developer to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or
    - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
  - 12.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 12.2 The Developer is to cease carrying out the Development and is not to cause, suffer or permit the carrying out of the Development unless and until the breach is rectified or compensation is paid to the satisfaction of the Council.
- 12.3 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 12.4 For the avoidance of doubt, nothing in this Agreement prevents:
- 12.4.1 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, or
  - 12.4.2 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.

## 13 RELEASE

- 13.1 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.

## 14 INDEMNITY

- 14.1 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.

## 15 INSURANCE

- 15.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
- 15.1.1 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,
  - 15.1.2 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,
  - 15.1.3 workers compensation insurance as required by law, and
  - 15.1.4 any other insurance required by law.
- 15.2 If the Developer fails to comply with clause 15.1, 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 recovery as a debt due in a court of competent jurisdiction.

- 15.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 15.1.

## 16 REVIEW OF THIS AGREEMENT

- 16.1 The Parties, acting in good faith and using their best endeavours, agree to review this Agreement if either party is of the opinion that any change of circumstances has occurred that materially affects the operation of this Agreement.
- 16.2 For the purposes of clause 16.1, 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.
- 16.3 A failure by a Party to agree to participate in, or to take action requested by the other Party as a consequence of a review of this Agreement is not a dispute for the purposes of clauses 17.

## 17 DISPUTE RESOLUTION

- 17.1 A dispute is taken to arise if one Party gives another Party a notice in writing specifying the particulars of the dispute.
- 17.2 Should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.
- 17.3 If a notice is given under clause 17.1, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 17.4 If the dispute is not resolved within a further 28 days, the Parties must mediate

the dispute in accordance with the Mediation Rules of the Law Society of New South Wales as set out in Schedule 3 or such amended or other Rules that are current at the time the dispute is mediated, and must request the President of the Law Society, or the President's nominee, to select a mediator.

- 17.5 If the dispute is not resolved by mediation within 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 the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

## 18 AUTHORISATION

- 18.1 The Landowner agrees that the Proponent and the Council may enter into this Agreement and consents to the same.
- 18.2 The Landowner is to do all such acts and sign all such documents as may be reasonably necessary to permit the Proponent and the Council to give full effect to this Agreement provided that the Proponent shall be liable to reimburse the Landowner its reasonable costs of any legal services it requires to assist it to comply with this sub-clause 18.2 and this Agreement.

## 19 NOTICES

- 19.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that Party at its address set out in Table 2 in Schedule 1.
  - (b) faxed to that Party at its fax number set out in Table 2 in Schedule 1.
  - (c) emailed to that Party at its email address set out in Table 2 in Schedule 1.
- 19.2 If a Party gives the other Party 3 business days notice of a change of its

address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.

19.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

- (a) delivered, when it is left at the relevant address,
- (b) sent by registered post, 2 business days after it is posted,
- (c) 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,
- (d) 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.

19.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## 20 APPROVALS AND CONSENT

20.1 Except as otherwise set out in this Agreement, 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. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 21 COSTS

21.1 The Proponent agrees to bear the Council's reasonable costs of any legal services it requires to assist it to enter into this Agreement.

## 22 ENTIRE AGREEMENT



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

## 23 FURTHER ACTS

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

## 24 GOVERNING LAW AND JURISDICTION

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

## 25 JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

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

## 26 NO FETTER

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

## 27 REPRESENTATIONS AND WARRANTY

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

## 28 SEVERABILITY

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

## 29 MODIFICATION

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

## 30 WAIVER

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

## 31 GST

- 31.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes and Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 31.2 Subject to clause 31.4, if GST is payable on a Taxable Supply made under, by reference to, or in connection with this Agreement, the Party providing the Consideration of that Taxable Supply must also pay the GST Amount as additional Consideration.
- 31.3 Clause 31.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 31.4 No additional amount shall be payable by the Council under clause 31.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 31.5 If there are Suppliers for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 31.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those

## Supplies

31.5.2 that any amounts payable by the Parties in accordance with clause 31.2 (as limited by clause 31.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

31.6 No payment of any amount pursuant to this clause 31, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

31.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense and other liability.

31.8 This clause continues to apply after expiration or termination of this Agreement.

## 32 EXPLANATORY NOTE RELATING TO THIS AGREEMENT

32.1 The Appendix contains the Explanatory Note relating to this Agreement required by Clause 25E of the Regulation.

27.2 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.

## 33 EXISTING DA's

33.1 Contingent upon the grant of Development Consent to DA 2012/185 and the commencement of this Agreement, the proponent is to surrender Development Consent No. 507167 (including any modifications made thereto).

## Schedule 1

Table 1  
The Land & the respective Landowners (Clause 1.1)

Column 1	Column 2	Column 3
Land	Title Reference	Landowner
Lot 161 DP 755508	Folio identifier 161/755508	Max and Marlene Swain
Lot 2 DP 865898	Folio identifier 2/865898	Peter and Judith Lee

Table 2  
Parties to the Agreement (Clause 19.1)

Column 1	Column 2	Column 3	Column 4
Party	Address	Fax No.	Email Address
Gunnedah Quarry Products Pty Ltd	PO Box 259 Gunnedah NSW 2380	(02) 6742 2208	brendon@mackexc.com.au
Gunnedah Shire Council	PO Box 63 Gunnedah NSW 2380	(02) 6740 2119	council@infogunnedah.com.au

Schedule 2  
(Clauses 7 and 8)

Quarry Haulage Roads

## SCHEDULE 3 (Clause 12.4)

### Law Society of NSW – Mediation Rules

#### Functions of the Mediator

1. The mediator will assist the parties to explore options for and, if possible, to achieve the expeditious resolution of their dispute (“the Dispute”) by agreement between them.
2. The mediator will not make decisions for a party or impose a solution on the parties.
3. The mediator will not, unless the parties agree in writing to the contrary, obtain from any independent person advice or an opinion as to any aspect of the Dispute and then only from such person or persons and upon such terms as are agreed by the parties.

#### Conflicts of Interest

4. The mediator must disclose to the parties to the best of the mediator’s knowledge any prior dealings the mediator has had with either of them and any interest the mediator has in the Dispute.
5. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator’s capacity to act impartially the mediator will immediately inform the parties of those circumstances. The parties will then confer and if agreed continue with the mediation before the mediator.

#### Co-operation of the Mediation

6. The parties must co-operate with the mediator and each other during the mediation to achieve a mutually satisfying outcome to their dispute.
7. Each party must use its best endeavours to comply with reasonable requests

made by the mediator to promote the efficient and expeditious resolution of the Dispute.

### Authority and Representation

8. If a party is a natural person, the party must attend the mediation conference. If a party is not a natural person it must be represented at the mediation conference by a person with full authority to make agreements binding on it settling the dispute.
9. Each part may also appoint one or more other persons including legally qualified persons to assist and advise the party in the mediation and to perform such roles in the mediation as the party requires.

### Conduct of Mediation

10. Subject to Rule 21, the mediation, including all preliminary steps, will be conducted in such a manner as the mediator considers appropriate having due regard to the nature and circumstances of the Dispute, the agreed goal of an efficient and expeditious resolution of the Dispute and the view of each party as to the conduct of the mediation.
11. The mediation conference shall be held within fourteen (14) days of the selection of the mediator or within such other period as the parties may agree.
12. Without limiting the mediator's powers under Rule 10 the mediator may give directions as to:
  - 12.1 Preliminary conferences prior to the mediation conference.
  - 12.2 The exchange of experts' reports, the meeting of experts and the subsequent preparation of a joint experts' report with a view to identifying areas of agreement, narrowing the area of disagreement and clarifying briefly the reasons for disagreement.
  - 12.3 The exchange of brief written outlines of the issues involved.
  - 12.4 Service on the mediator prior to the mediation conference of any such reports and outlines.



## Communication between the Mediator and a Party

13. The mediator may meet as frequently as the mediator deems appropriate with the parties together or with a party alone and in the latter case the mediator need not disclose the meeting to the other party.
14. The mediator may communicate with any party orally and/or in writing.
15. Subject to Rule 16, any document relied upon by a party and provided to the mediator must immediately be served by the party on the other party.
16. Information, whether oral or written, disclosed to the mediator by a party in the absence of the other party may not be disclosed by the mediator to the other party unless the disclosing party permits the mediator to do so.

## Confidential Information

17. A party may provide objective facts, whether or not confidential, by direct evidence in any proceedings in respect of the Dispute. Subject to that, all confidential information disclosed during the mediation, including the preliminary steps:
  - 17.1 may not be disclosed except to a party or a representative of that party participating in the mediation or if compelled by law to do so; and
  - 17.2 may not be used for a purpose other than the mediation.

## Privilege

18. Subject to Rule 25, the following will be privileged and will not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings in respect of the Dispute:
  - 18.1 Any settlement proposal, whether made by a party or the mediator.
  - 18.2 The willingness of a party to consider any such proposal.

18.3 Any admission or concession or other statement or document made by a party.

18.4 Any statement or document made by the mediator.

### Subsequent Proceedings

19. The mediator will not accept appointment as an arbitrator in or act as an advocate in or provide advice to a party to any arbitral or judicial proceeding relating to the Dispute.

20. Neither party will take action to cause the mediator to breach Rule 19.

### Termination

21. A party may terminate the mediation immediately by giving written notice to each other party and to the mediator at any time during or after the mediation conference.

22. The mediator may immediately terminate the engagement as mediator by giving written notice to the parties of that termination, if, after consultation with the parties, the mediator forms the view that the mediator will be unable to assist the parties to achieve resolution of the Dispute. The mediation will not be terminated in that event unless a party gives notice to that effect to each other party. The parties must appoint another mediator, where the mediation is not terminated.

23. The mediation will be terminated automatically upon execution of a settlement agreement in respect of the Dispute.

### Settlement

24. If settlement is reached at the mediation conference, the terms of the settlement must be written down and signed by the parties and the mediator before any of the participants leave the mediation conference.

## Enforcement

25. In the event that part or all of the Dispute is settled either party will be at liberty:

- 25.1 To enforce the terms of the settlement by judicial proceedings.
- 25.2 In such proceedings to adduce evidence of and incidental to the settlement agreement including from the mediator and any other person engaged in the mediation.

## Exclusion of Liability and Indemnity

- 26. The mediator will not be liable to a party except in the case of fraud by the mediator for any act or omission by the mediator in the performance or purported performance of the mediator's obligations in the mediation.
- 27. The parties shall jointly and severally indemnify the mediator against all claims, except in the case of fraud by the mediator, arising out of or in any way referable to any act or omission by the mediator in the performance or purported performance of the mediator's obligations in the mediation

## Costs

- 28. The parties will share equally and will be jointly and severally liable to the mediator for the mediator's fees for the mediation. The mediator may, at any time and from time to time, require each party to deposit with the mediator such sum as the mediator considers appropriate to meet the mediator's anticipated fees and disbursements. The mediator may decline to embark upon or continue the mediation until all such deposits are made.
- 29. If the mediation does not result in an agreement to resolve the Dispute, the costs of the mediation will be costs in the cause.

## SCHEDULE 4

### Method of Calculation for Contribution Amount

The annual construction rate for gravel roads (construction and maintenance) has been taken from Council's current 'Contribution and Development Services Plan'. The amount as at May 2013 is \$4,324 per kilometre.

Contingent upon the grant of consent to DA 2012/185, the quarry will if operating at permissible extraction rates, contribute 95.7% of the commercial vehicle traffic on the gravel roads in the area (being Barker Road and Marys Mount Road).

Applying this per kilometre rate to the existing gravel roads over a 3 year period (being the period of the proposed road upgrade works) at a 95.7% loading and at a reducing sliding scale relative to the works completed at the end of each year, results in an amount of \$62,453.60.

Council's 2013 annual maintenance rate for sealed roads is \$1.56 per square metre.

Contingent upon the grant of consent to DA 2012/185, the quarry will, if operating at permissible extraction rates, contribute between 9.9% and 52.4% of the commercial vehicle traffic on the sealed roads.

Applying this per square metre rate to the existing and proposed sealed roads over a 37 year period (being the proposed operational life of the quarry per DA 2012/185) at the above loading, and at an increasing sliding scale relative to the works completed at the end of each year, results in an amount of \$8,022,635.23.

The total contribution over the 37 year operational period is thus \$8,085,088.83.

The following construction cost estimates have been provided by Mackellar Excavations and are based on 2013 commercial rates:

- Goolhi Road intersection – \$75,000.00
- Quia Road intersection - \$125,000.00
- Emerald Hill widening – \$150,000.00
- Kamilaroi Highway intersection – \$200,000.00
- Mary's Mount Road and Barker Road – \$2.15 million (assumes adding a 200mm layer of gravel to the existing gravel pavement).

An off-set for the Mary's Mount Road and Barker Road construction has been made against the calculated contribution, being \$8,085,088.83 minus \$2,150,000.00 which equals \$5,935,088.83.

In recognition of the substantial upgrading works to Barker Road and Marys Mount Road to be undertaken by the proponent, Council has agreed to a contribution rate of \$0.40/tonne, to be adjusted on an annual basis in line with the Transport Group CPI.

The VPA offer is to undertake the following works over a 3 year period:

- construct the upgrade works to Barker Road and Mary's Mount Road
- construct the upgrade works to Goolhi Road at Emerald Hill
- upgrade the Goolhi Road/Mary's Mount Road, Goolhi Road/Quia Road and Kamilaroi Highway/Goolhi Road intersections;

and to pay a contribution to Council of \$0.40/tonne of material hauled from the site. The contribution payments will be made to Council on a quarterly basis. The contribution will be adjusted on an annual basis in line with the Transport Group CPI.

Appendix  
(Clause 32)

*Environmental Planning and Assessment Regulation 2000*  
(Clause 25E)

Explanatory Note

**Draft Voluntary Planning Agreement (VPA)**

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

**Parties**

**Gunnedah Shire Council (Council)**

**Gunnedah Quarry Products Pty Ltd** of PO Box 259 Gunnedah (**Developer**)

1. Description of Subject Land

The land described in Column 1 in the Table to Schedule 1 (**Land**).

2. Description of Development

Expansion of existing blue metal gravel quarry/pit as described in the environmental impact statement and accompanying documentation supporting Development Application No. 2012/185 (**Development**).

3. Summary of Objectives, Nature and Effect of the Draft VPA

The purpose of this agreement is to secure the upgrading and maintenance contribution, at the developer's cost, of public road infrastructure (being haulage roads servicing the quarry comprising Barker Road, Marys Mount Road, Goolhi Road, Quia Road and Kamilaroi Highway as shown red on the Map in Schedule 2), resulting from demands brought about by the proposed development of the Land.

The Draft VPA is a planning agreement under s93F of the Act.

The Draft VPA is a voluntary agreement under which Development Contributions are to be made by the Developer for public purposes (as defined in s93F(2) of the Act).

The Draft VPA:

- relates to the Land and the Development and public roads the subject of the Development Contributions,
- requires the upgrading of public roads and payment of monetary contributions for maintenance of roads comprising Barker Road, Marys Mount Road, Goolhi Road, Quia Road and Kamilaroi Highway as shown red on the Map in Schedule 2,
- imposes restrictions on dealings with the Land and rights under this Agreement,
- is to be registered on the title to the Land,
- provides a dispute resolution method for a dispute under the agreement, being mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

#### 4. Assessment of the Merits of the Draft VPA

##### 4.1 The Planning Purposes Served by the Draft VPA

To ensure that public infrastructure (particularly public roads) is upgraded to a standard necessary to service the proposed development and to ensure that contributions are paid towards the maintenance of the public roads.

##### 4.2 How the Draft VPA Promotes the Public Interest

Provides for local development in a manner that ensures the costs associated with infrastructure delivery and maintenance (particularly public roads) are borne by those parties that benefit from or impart an additional loading/demand on same.

##### 4.3 Councils – How the Draft VPA promotes the elements of the Council's Charter

The Draft VPA promotes the elements of the Council's Charter by:

Requiring provision of, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

Keeping the local community and the State government (and through it, the wider community) informed about its activities.

4.4 All Planning Authorities – Whether the Draft VPA conforms with the Authority's Capital Works Program

The Draft VPA does not affect nor conflict with Council's Capital Works Program.

4.5 All Planning Authorities – Whether the Draft VPA specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Draft VPA does not specify any requirements that must be complied with before a Part 4A certificate is issued.

**Signed and Dated by All Parties**