

ITEM	14.048/18	OFFER TO ENTER INTO VOLUNTARY PLANNING AGREEMENT RE MOD2016/0035 – APPLICATION TO MODIFY DA2014/0098 – SHERIDAN’S HARD ROCK QUARRY, HERNANI
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Meeting	Environment, Planning & Community Committee	8 May 2018
Directorate	Environment, Planning & Community	
Reviewed by	Manager Environment, Development & Strategic Planning (David Morrison)	
Attachment	Yes	

SUMMARY

<i>Applicant</i>	Outline Planning Consultants Pty Ltd
<i>Owner</i>	Matsid Pty Ltd
<i>Address</i>	242 Faheys & Bulgins Road, Hernani NSW 2453 Lot 62 DP752807 & Lot 63 DP752807
<i>Submissions</i>	Nil to the advertising of the draft Voluntary Planning Agreement

Council has received an application to modify development application DA2014/0098 (JRPP Ref: 2014NTH006) approved by the Joint Regional Planning Panel (JRPP) - Northern on 21 August 2014. The application to modify the consent will also be determined by the JRPP which is authorised to exercise the consent authority functions of Council.

Under the modification proposal there will be no change to the approved annual extraction rate of the quarry, the intention is to allow up to 66 laden traffic movements (36 on Saturdays) above the current limit of 20 laden traffic movements to provide flexibility in fluctuations of demand for the quarry product.

The application to modify the consent was initially considered at a public meeting on 15 December 2016 by the Joint Regional Planning Panel and the matter was deferred with a request for further information. The information request included a review of an updated traffic impact assessment including a road pavement impact assessment on the haul route and an assessment of the intersection of Cornells Road with Bald Hills Road.

In response to Council the applicant has offered to enter into a Voluntary Planning Agreement (VPA) and remove the requirement to pay Section 94 contributions as required by a condition of the approved consent.

The purpose of this report is for Council to consider an offer to enter into a Voluntary Planning Agreement (VPA) to maintain the haul route. It is proposed maintenance under the VPA will be in lieu of the payment of Section 94 contributions for road maintenance required by a condition of consent. The resolution of Council will be included in the report and recommendation to the JRPP for the Panel’s consideration in determining the application.

OFFICER RECOMMENDATION

That after considering the merits of the proposal and concerns of Council’s Civil Services section, Council not agree to enter into a Voluntary Planning Agreement in the terms proposed by the applicant.

Having declared an interest in this item, Crs Kingsley and Simmons left the EP&C Committee meeting at 5.04 pm and returned at 5.07 pm.

COMMITTEE RECOMMENDATION

Ellem/Williamson

That the item be deferred to the Ordinary May Council meeting to allow the applicant to furnish Council with confirmation of a verbal offer made during his deputation.

Voting recorded as follows:

For: Williamson, Baker, Ellem, Clancy

Against: Nil

Novak/Ellem - That Cr Toms take the Chair for Items 14.048/18 and 15.075/18. Carried.

Having declared an interest in Items 14.048/18 and 15.075/18 Cr Simmons was absent from the Ordinary Council meeting from 4.13 pm until 4.18 pm. Cr Toms assumed the Chair for these Items.

COUNCIL RESOLUTION – 14.048/18

Baker/Novak

That Council :

- 1. Accept the offer of a voluntary planning agreement (VPA) in relation to MOD 2016/0035 – Sheridan's Hard Rock Quarry, Hernani, as detailed in the attachments to this report, with the following amendments :**
 - (i) the operator of the quarry to contribute to a road maintenance contribution in accordance with condition 18 of Development Consent DA2014/0098. Note: This equates to an annual road maintenance contribution of \$0.21 per cubic metre extracted (adjusted to CPI).**
 - (ii) The operator submitting a bond or guarantee in accordance with clause 7.1 of the VPA to the equivalent of 2 years maximum extraction.**
 - (iii) Requiring annual independent audit of the road condition, from a suitably qualified consultant agreed to by both parties, and paid for by the quarry operator.**
 - (iv) Defects liability period being increased to six months after the completion of the quarry operation.**
 - (v) Amendments to clauses 4.3(g) and 4.2 as detailed in this report.**
- 2. Readvertise the amended VPA in accordance with the requirements of the EP&A Act.**
- 3. Endorse the revised VPA for consideration of MOD 2016/0035 by the Joint Regional Planning Panel, subject to there being no substantive objections received to the revised VPA during re-exhibition.**

Voting recorded as follows:

For: Baker, Ellem, Clancy, Novak, Williamson, Lysaught, Toms

Against: Nil

Williamson/Lysaught - That 15.075/18 be dealt with as the next item of business. Carried.

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Provide open, accountable and transparent decision making for the community

BACKGROUND

The JRPP approved DA2014/0098 to increase the extraction rate of product from Sheridan's Hard Rock Quarry, Hernani, from 30,000m³ to 73,600m³ per annum (up to 198,000 tonnes) and increase quarry footprint from 2ha to 5.73ha in area on 10 September 2014. The consent limits the loaded quarry truck movements to 20 laden trucks per day.

It is proposed that the approval be modified from 20 loaded quarry trucks per day to allow a maximum of 66 loaded quarry trucks Monday to Friday and 36 loaded quarry trucks on Saturdays; within the approved hours of operation (7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturdays). The maximum annual extraction amount is to remain the same to that approved.

The approved quarry route is approximately 10.3km long and is along Faheys & Bulgin Road, Cornells Road and Bald Hills Road to the intersection of Bald Hills Road and Waterfall Way. Quarry traffic can then either go west towards Armidale or east to Dorrigo, Bellingen and to the Pacific Highway.

Condition 18 of the consent requires the payment of a road maintenance contribution per annum of \$0.21 per cubic metre extracted (adjusted with the Consumer Price Index). Currently the maximum contribution amount payable per annum would be approximately \$16,192.00 per annum. The quarry has an estimated life span of over 20 years.

The application was considered at a Joint Regional Planning Panel public meeting on 15 December 2016 and the matter was deferred with a request for further information. The information request included a review of an updated traffic impact assessment including a road pavement impact assessment on the haul route and an assessment of the intersection of Cornells Road with Bald Hills Road.

Included in the applicant's response to the information request dated 9 June 2017 was an offer for Sheridan's Hard Rock Quarry to maintain the quarry haul route and upgrade the haul route over the life of the quarry.

KEY ISSUES

The applicant was provided a copy of Council's Draft VPA of which the applicant has amended and provided back to Council with the inclusion of a schedule of maintenance specification.

Following discussions and meetings with the applicant amendments to the draft VPA and schedule of maintenance have been made and narrowed down to the outstanding issues which are discussed in this report. The applicant's letter with comments dated 9 February 2018 and Council staff's comments are attached to this report.

During the negotiation process the applicant was made aware that Council staff do not have delegation to agree to the draft VPA and that it would require referral to a Council meeting for the elected Councillors to make a determination.

Following consultation with Council's Operations section it has been considered that on balance the preferred option for Council in this instance is to continue with the current road maintenance situation to continue to collect Section 94 contributions for maintenance of the haul route levied under the existing consent and not support a Voluntary Planning Agreement to maintain the haul route roads.

This preference is influenced by factors such as:

- Council still has ultimate responsibility and potential liability for the road as the roads authority.
- Management of the VPA obligations and identification of issues and upgrade requirements is made difficult by its remote location.
- There are still matters outside the VPA that Council needs to consider.

- Ensuring that works are done in a timely manner.
- Receiving Section 94 contribution, whilst placing the responsibility for the maintenance with Council, also means that Council has autonomy in terms of how it schedules and meets those obligations.

More detailed reasons for this are outlined in the Issues section below.

Issue 1 – Consultation with Council’s Operations Section

On referral to Council’s Operations section the following comments have been provided in regard to the proposed draft VPA.

Council is the Road Authority and ultimately carries the responsibility for the safety of road users. The risk exposure to Council is one that should be carefully considered.

Comment

Road maintenance and decision making on road maintenance matters will still be required by Council outside of the VPA. Such an agreement places considerable trust in the quarry operator to provide road maintenance to a level of service for which Council is ultimately responsible and potentially exposes Council to a level of risk that can be otherwise avoided. The VPA could potentially fetter Council’s obligations as the Road Authority.

The draft VPA has detailed dispute resolution provisions should a dispute between the parties arise. While the intention is to settle such disputes in good faith, a dispute claim could expose Council to the possibility of protracted disputes which could otherwise be avoided resulting in legal costs and delays to road maintenance work.

Under the draft VPA there are also potential delays in providing timely maintenance as required. The timing of maintenance is reliant on a ‘written notification of damages’ it is not clear if this is Council’s or the quarry operator’s written notification. Further comments on this, should the VPA be supported, are provided below.

The quarry should pay a Section 94 contribution for all roads on the haulage route as do other quarries in Clarence Valley Council area.

Comment

Council has levied Section 94 contributions for the maintenance of quarry haul routes on development consents for quarries consistent with the methodology adopted under Section 94 plans (following the adoption of those plans). Council has also entered into maintenance agreements for sections of roads where maintenance requirements have been agreed to with the applicant. Such agreements usually apply to sections of road that require a higher level of maintenance than Council is prepared to undertake or to cover periods of potential defects. Under these agreements the requirement to pay Section 94 contributions has not been removed.

If the VPA is not agreed the condition on the consent requiring the payment of an annual Section 94 contribution will remain, similar to other quarries approved in the Clarence Local Government Area.

Concluding Comment

While Council’s Operations section is opposed to entering into a maintenance arrangement under the VPA there are also positive outcomes to enter into an agreement for the road maintenance.

- Road maintenance could potentially be better managed by the quarry operator who is able to constantly monitor the road conditions and requirement of repairs. Damages that occur to the road may require a higher level maintenance than Council can provide given the remote location of the haul route roads.

- If the annual cost of maintenance is higher than that levied by Section 94 contributions the additional cost will be borne by the quarry operator.
- Sections of the gravel roads on the haul route are not constructed to Council's design specifications and proper maintenance will ensure progressive road upgrades will meet Council's design specifications. The maintenance schedule requires that the roads be periodically maintained and improved over time.

Issue 2 – The security amount should maintenance not be undertaken

Comment

The applicant proposes a security amount of \$10,000.00 as security for failure to carry out works (clause 7 of the draft VPA).

It is considered that this figure is well under the amount required should rectification works be required over the full length of the haul route. A methodology for a security amount is provided below:

The haul route is approximately 10.3km in length:

- ~3.3km Bald Hills/Hernani Road 3.5 – 4.0m bitumen seal.
- ~7km Cornells Road and Faheys and Bulgins Road variable width of 5.5m-7m gravel road formation.

Currently under the consent the maximum total contribution amount that can be levied is approximately \$16,192.00 per annum ($73,600\text{m}^3 \times \$0.22$). Over 20 years (without CPI) the contribution amount would be approximately \$323,840.00.

In comparison, as provided by Council's Development Engineer, a reasonable estimate of potential costs of works to reinstate the road on a per metre square basis is an averaged cost of \$25/m² (quite reasonable given that the road repairs could be more than \$90/m² and there is a 3.3km section of bitumen seal). Potentially the cost of reinstating the whole of the 10.3km haul route with an average 6m width @ \$25/m², the estimated cost would be \$1,545,000.00

Based on the amount in contributions that Council could receive for maintenance of the haul route an amount of \$323,840.00 is considered to be a reasonable amount to be applied as security should the VPA be supported.

Issue 3 – Matters not agreed in the Voluntary Planning Agreement (should the VPA be agreed to)

Defects Liability Period

Comment

The applicant seeks to allow the quarry operator give notice six (6) months prior to the agreement being terminated and Council to identify any defects and to have the defects corrected during a six (6) months de facto defects period. This is not agreed by Council staff.

Council staff seek to have a reference to the defects liability period to at least that usually applied to development consents in accordance with the EP&A Act, being the remedying of any defects six (6) months from the completion of the operation of the quarry and any required works. This is preferred by Council staff as the defects period will occur after the quarry ceases to operate and after the period where the impacts of quarry traffic will cease. This is also consistent with the proposed completion provisions under in the schedule of maintenance specification; Clause 7 of the proposed maintenance schedule provides:

7. COMPLETION

Upon completion of the quarry operations, repair and restore the road to the condition in which it was upgraded to at the commencement of the quarry operations or as otherwise reasonably agreed by Council.

Clause 4.3(d) Council's obligations under this agreementComment

The applicant seeks to have in the VPA that Council will use "reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of these obligations."

This is considered to be problematic for Council to bind itself to using reasonable endeavours to ensuring that third parties do not interfere with the performance of Council's obligations. This clause should be deleted.

4.3(g) Breach of obligations

It is proposed that similar to Council's Draft VPA that the VPA include that if the developer fails to carry out maintenance work that Council may issue a 28 day notice to put right the required works and on failure to comply with the notice Council may call upon the Security referred to in Clause 7 to carryout and complete the work. The wording is proposed to be similar to that in Council's Draft VPA:

(e) Failure to carry out Work

- (i) If the Council considers that the Developer is in breach of any obligation to carry out Work, the Council may give the Developer a notice requiring:
 - (A) all work to cease immediately except in relation to the restoration of the breach; and
 - (B) the breach to be put right to the Council's satisfaction.
- (ii) The Council is not required to give the Developer a notice under this clause as a pre-condition to calling up the Security referred to in clause 7.
- (iii) A notice given under this clause is to allow the Developer a period of not less than 28 days or such further period as the Council considers reasonable to remedy the breach.
- (iv) Without limiting any other rights the Council has to enforce this Agreement, the Council may, if the Developer does not comply with a notice under this clause:
 - (A) call upon the Security referred to in clause 7; and
 - (B) carry out and complete the Work, the subject of the Developer's breach.

Issue 4 – Matters to be included in the Maintenance Schedule to the VPAComment

The matters included in the maintenance schedule are resultant from discussions between the applicant and Council staff. As requested by the applicant Council's Development Engineer has extracted relevant sections of Council's road standards to be included in the maintenance schedule.

Clause 4.2 - Repairs

It is recommended that wording of this Clause include the following underlined words:

4.2 Repairs

All repairs are to be undertaken as soon as practical however for potholes and shoulder defects repairs should be undertaken within 5 working days by the quarry operator ~~of written notification of damages~~ or other time agreed to by the parties.

For pavement surface defects, rutting, ponding, etc. the repair methodology and timing is to be discussed with Council. Surface repairs are to be undertaken with a specific traffic control plan for the section. A traffic control plan is to be submitted to Council for approval.

Culverts or other structures not included in the above are to be repaired within 30 days by the quarry operator ~~of written notification of damages~~ or other time agreed to by the parties.

Issue 5 – Re-notification of the VPA (should the VPA be agreed to)

Comment

The VPA as amended will need to be readvertised. Section 93G of the EP&A Act provides that *“planning agreement cannot be entered into, and a planning agreement cannot be amended or revoked, unless public notice has been given of the proposed agreement, amendment or revocation, and a copy of the proposed agreement, amendment or revocation has been available for inspection by the public for a period of not less than 28 days.”*

Clause 25D of the EP&A Regulation requires either contemporaneous notice of the proposed planning agreement with the relevant development application or, if that is not practicable, for notice to be published as soon as possible after the requisite notice of the development application.

The words used in the above provision indicate that the notice of the planning agreement must be given prior to entering into/amending/revoking the agreement and that the notice of the proposed agreement/amendment/revocation is given.

On this basis, it is clear that the notice must be of the agreement in its terms as proposed to be entered into and that, if notice is given of the VPA in its current form, it would need to be re-notified once the terms have been finalised between the developer and Council.

The *Draft Practice Note for Planning Agreements* relevantly provides that “Any material changes that are proposed to be made to a planning agreement after a public notice has been given should be the subject of re-notification” (p. 10). It also sets out a number of examples of what “material changes” might be.

Given that the objectives of these provisions are to ensure transparency and public participation in the process, any proposed changes to the terms of the VPA which Council intends to enter into would need to be re-notified. If the changes between the terms as originally notified and the final agreement proposed are insignificant or minor only, then re-notification would not be necessary.

OPTIONS

1. The recommended option is for Council to decline the offer of a VPA in this instance. This will be consistent with many other quarry haulage route circumstances and will mean that Council will receive annual Section 94 contributions from the operator. Council will retain maintenance responsibility for the road.
2. Council accept the offer of the VPA with the following amendments. In this instance, Council will abrogate maintenance of the road to the quarry operator for the life of the quarry subject to the terms of the VPA, although Council will still hold ultimate responsibility for the road as the roads authority.
 - a. Security deposit increased to the amount of contributions expected over the life of the quarry (approximately \$323,840).
 - b. Defects liability period being increased to six months after the completion of the quarry operation.
 - c. Amendments to clauses 4.3(g) and 4.2 as detailed in this report.

COUNCIL IMPLICATIONS

Budget/Financial

Under a VPA there will be minimal cost to Council as the road will be maintained at the expense of the quarry operator. There is the potential of additional cost should a dispute be escalated under the VPA. If the draft VPA is not accepted contributions will be received towards road maintenance.

Asset Management

Council will still undertake its routine maintenance inspections. The maintenance requirements and costs will be required by the developer under the VPA.

Policy or Regulation

Environmental Planning and Assessment Act, 1979

Environmental Planning and Assessment Regulations, 2000

Clarence Valley Local Environmental Plan 2011

Rural Zones Development Control Plan (DCP)

Roads Policy

Consultation

<i>Internal Section or Staff Member</i>	<i>Comment</i>
Engineering	Supported – no specific conditions
Operations	Not Supported – no specific conditions. Refer to comments in this report.

The draft VPA was exhibited in accordance with the Act. There were no public submissions received. Should Council support a VPA and that it be included in any development consent issued by the JRPP, the revised VPA would be required to be re-advertised.

Legal and Risk Management

Council already carries a certain level of risk in regards to public utilisation of the haul route because it is a public road and used by other road users other than the quarry operator. The quarry operator will be required to have public liability insurance for works within the road reserve.

Council is not obligated to enter into the VPA if it chooses not to. The alternative is that Section 94 contributions will apply.

Prepared by	Pat Ridgway Senior Development Planner
Attachment	1. Applicant's correspondence dated 9 June 2017 and 9 February 2018 2. Council's Draft VPA 3. Sheridan's Hard Rock Quarry Proposed Draft VPA 4. Schedule 2 Maintenance Specification



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9 June 2017

General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Council Ref: MOD2016/0035
(Modification of DA 2014/0098)

By email

Attention: Mr Patrick Ridgway, Senior Development Planner
Mr Clem Rhoden, Manager Environment, Development & Regulated Services

Dear Sir,

**FOLLOW UP ADVICE: SECTION 96 MODIFICATION 2016/0035, MAX. DAILY TRUCK NUMBERS, SHERIDAN'S
HARD ROCK QUARRY Pt. LOT 62 & 63 IN DP 752807, No.242 FAHEYS & BULGINS ROAD, HERNANI NSW**

Outline Planning Consultants Pty Ltd acts for Sheridan's Hard Rock Quarry Pty Ltd, who operate the above quarry.

At the meeting of the Northern Joint Regional planning panel held on 15 December 2016 the matter was deferred pending Council staff providing additional information (**Attachment A**) including, inter alia:

"A review of an updated traffic impact assessment by the Applicant, including:

- (a) a road pavement impact assessment of the haul route;*
- (b) assessment of the intersection of Bald Hills Road and Waterfall Way using current traffic data;*
- (c) assessment of the intersection of Cornells and Bald Hills Road;*

Details of the outcome of Council negotiation with the Applicant to ensure appropriate monitoring and compliance arrangements for quarry truck movements:"

Please find accompanying this letter a copy of a report prepared by Streetwise, traffic consultants, dated 1 June 2017 that satisfactorily addresses items (a), (b) and (c) above, as requested by the JRPP. Refer **Attachment B**.

This report builds on and is consistent with the results of earlier assessments provided in the traffic reports prepared by/ reviewed by the same authors when working for RoadNet in 2010 and 2014 on behalf of the quarry operators.

Our response to the above JRPP request was delayed pending receipt of advice from Council officers regarding observed quarry truck movements on the haul route prior to the JRPP meeting. This information was subsequently provided to Outline Planning Consultants by Clarence Valley Council in correspondence dated 31 March 2017. Refer **Attachment C**.

1.0 Monitoring of Quarry Production

Outline Planning Consultants have written to Clarence Valley Council in correspondence dated 18 April 2017 regarding a negotiated outcome to the issue of appropriate monitoring and compliance arrangements for quarry truck traffic. Refer **Attachment C**.

Patrick Ridgway, Senior Development Planner, has since responded to this correspondence in an email dated 1 June 2017, where it was indicated that Council would be happy to consider the on-board weighing method currently employed in the quarry, in order to accurately monitor quarry production.

In summary, this system utilises an on-board weighing system on front end loaders and excavators employed at the quarry. This system also ensures loading each truck to the correct capacity to optimise efficiency and to ensure quarry trucks do not leave the site overloaded. Loading trucks correctly the first time can spare the operator unnecessary truck movement and the need to either refill or remove material later. This system is typically used in quarries that do not have on-site weighbridges. The on-board computer forming a part of this weighing system allows the operator to see individual bucket readings, together with weight totals.

Operators can simply download the stored weighing data to a supplied flashdrive/USB stick which will format the data to open directly with a spreadsheet software program. This allows management to create a permanent record of the weighing data as well as use it to analyse further control operations. Accurate records can also be kept regarding the time and date of loading of all quarry haulage vehicles, an effective way of monitoring quarry truck movements generated by the quarry.

It is also relevant to note that Bellingen Shire Council, a regular customer of Sheridan's Hard Rock Quarry, accepts this weighing system for the purposes of calculating payments for quarry products purchased.

2.0 Consistency with Earlier Traffic Assessments

The Streetwise report builds on the earlier traffic investigations undertaken, comprising the following:

■ **Traffic Impact Study prepared by RoadNet dated October 2010.** Author of the report: Andy Davis. This report included a road safety audit of the haul route prepared in accordance with the Austroads Guide to Road Safety Part 6: Road Safety Audit (January 2009) and the RTA's Accident Reduction Guide Part 2: Road Safety Audits 2005, as well as safety improvements needed along the haul route and intersection analysis.

■ **Traffic and Transport Assessment prepared by RoadNet dated March 2014.** Author of the report: Steve Manton, reviewed by Craig Nethery. This report included an assessment of capacity of the intersection of the haul route and Waterway Way to accommodate quarry truck traffic- assessed as continuing to operate at a Level of Service (LOS) A. This report included a road safety audit of the haul route prepared in accordance with the Austroads Guide to Road Safety Part 6: Road Safety Audit (January 2009) and the RTA's Accident Reduction Guide Part 2: Road Safety Audits 2005.

The report also addressed the maximum carrying capacity of the haul route, as follows:

"The above table indicates that a single carriageway with one sealed traffic lane 3.7m wide and 2.5m unsealed shoulders could accommodate a design AADT (Annual Average Daily Traffic Volume) of up to 150 vehicles per day. This is similar to the arrangement provided on Hernani - Bald Hills Road, which has a seal width of approximately 4m and gravel shoulders of approximately 1.0m either side, depending on the specific location.



The table also shows that a single carriageway with a 7.2m seal width comprising 2 x 3.1m traffic lanes and 2 x 0.5m shoulders (within a total shoulder width of 1.5m each side) **could accommodate up to 500 vehicles per day**. The sealed cross-section width of 7.2m is similar to what is available on Cornells Road and Faheys & Bulgins Road which provides a minimum formation width of 7.0m and substantially more than this at certain locations; however, the latter is unsealed which would be expected to reduce the volume of traffic that the road design could potentially cater for. Given the above differences it is difficult to put a precise figure on the volume of traffic that could be potentially accommodated by the unsealed road. However, conservatively it is estimated that the unsealed section of the haulage route should be able to accommodate at least 150 vehicles per day.

Overall, therefore, it is concluded that the upgraded quarry haulage route could accommodate a design volume of **at least 150 vehicles per day**."

(excerpt from page 30 of the RoadNet report- our emphasis)

■ **Traffic Impact Assessment prepared by Streetwise dated 15 June 2016.** Author of the report: Andy Davis, reviewed by Craig Nethery. This report notes:

"Following the initial grant of consent in 2011 Faheys & Bulgins Road has been upgraded by Sheridan's Hard Rock Quarry Pty Ltd to a standard beyond that required the 2011 Council Consent (ie. DA 2010/0358 & MOD 2011/0074), comprising the following works:

- Upgrading Faheys & Bulgins road to a generally 2 lane (gravel) rural road standard, with improvements to road drainage- the Council consent requiring only an upgraded rural road to a 1-lane standard with passing bays.
- Sealing of 648m of rural road in front of the Braund residence and 530m in front of the Welsh residence, a total of 1.178km of road sealing work, to a minimum sealed width of 7m.
- Upgrading of the intersection of Bald Hills Road and the Waterfall Way. Construction works undertaken by the RMS, paid for by Sheridan's Hard Rock Quarry Pty Ltd. These road improvements have been made to improve local amenity by minimising dust and noise impacts, and provide a much safer, less hazardous road environment for all users of the haul road." (excerpt page 5 of the report)

The June 2016 Streetwise report also concludes, inter alia:

"The previous Traffic Report by RoadNet states that the existing haulage route, including Faheys & Bulgins Road, Cornells Road and Hernani – Bald Hills Road has adequate capacity to cater for at least 150 vehicles per day. Austroads guidelines indicate the existing road formation of the haul route can cater for up to 500 vehicles per day.

In conclusion, the operator is seeking to **occasionally** increase haulage truck movements to a maximum of 66 loaded movements per day to meet peak demands. The number of times the maximum truck volumes can be generated is restricted by the current annual production limit of 198,000 tonnes per annum.

Based on this assessment it is concluded that the traffic impacts of the proposed S.96 amendment are acceptable. StreetWise therefore recommends that the proposed occasional increase in haulage truck movements (to 66 loaded trucks per day) should be allowed to proceed on traffic engineering grounds." (excerpt page 8 of report)

■ **Traffic advice to Clarence Valley Council, prepared by Streetwise in October 2016.** Author of the report: Andy Davis. This report was prepared in response to a Council request for additional information regarding the current Section 96 application- refer **Attachment D**.

Council's email dated 21 October 2016 and Council's letter dated 20 October 2016 incorrectly asserted that the Section 96 application would result in a claimed:

"...increase of 43,862.78 ESA/year or **231% increase** onto the haul route" [our emphasis]



Based on this (erroneous) assumption, the quarry would be transporting $198,000 + 231\% \times 198,000$ tonnes per annum = 655,363 tonnes per annum of quarry material, based on the assumption that there would be an average of 66 quarry loads per day. In fact, this is simply not the case, as explained in a response by Outline Planning consultants and Streetwise in two separate submissions in October 2016- refer **Attachment D**.

The Streetwise response, in part, states as follows:

“Council’s assumption that the applicant plans to increase volumes by 231% is incorrect. The quarry operator is currently limited to extracting 198,000 tonnes per annum, and is not planning to increase this amount. He simply wishes to occasionally increase daily haulage movements to better service the Pacific Highway upgrade projects.

The operator is not proposing any increase in the previously approved total haulage movements per annum. The proposed changes therefore will not have any additional impacts on the upgraded Bald Hills Road.

*It should also be noted that the previously approved Traffic Impact Assessment (by RoadNet) stated that the existing haulage route, including Faheys & Bulgins Road, Cornells Road and Hernani – Bald Hills Road has adequate capacity to cater for **at least 150 vehicles per day**. **Austrroads guidelines indicate the existing road formation of the haul route can cater for up to 500 vehicles per day.**”[our emphasis]*

3.0

Construction of Passing Bays Accords with Consent

Following protracted delays by Council in the early part of 2016, a design was agreed upon for the passing bays along the haul route- a requirement of the Development Consent. Design plans were subsequently submitted in July 2016 for the provision of three passing bays along the Bald Hills – Hernani Road.[NOTE: only one(1) passing bay was required by the consent]

Despite the consent requiring **one passing bay 18 metres in length**, plus tapers, the design allowed for **three (3) passing bays with a more conservative design of 30 metres** plus taper- the rationale being that a 30 metre passing bay length suits a typical truck and dog trailer which can have a legal length of 19 metres. A 30 metre passing bay will enable the full truck to be parked off the carriageway.

Council issued a Civil Construction Certificate No. CC2016/0431 on 7 September 2016 for the road works proposed. In accordance with requirements of Council a Notice of Commencement was lodged with Council on 15 September 2016. Road work commenced on 19 September 2016.

A Completion Certificate issued by consulting engineers Geoff Slattery and Partners on 21 October 2016. It was noted in this report that despite the design allowing for a pavement 250mm thickness sub-grade issues at various locations resulted in a thicker pavement being placed, as follows:

- Passing bay 1 depth greater than 350mm.
- Passing bay 2 depth greater than 450mm.
- Passing bay 3 depth greater than 500mm.

Density tests of the pavement were carried out by AC Testing Services. Refer to accompanying **Figures 1-3**, showing the design for each of the (Council-approved) passing bays. Refer to advice to Council dated 15 September 2016 regarding surrender of the consent DA201/0358 following completion of construction of the passing bays- **Attachment E**.



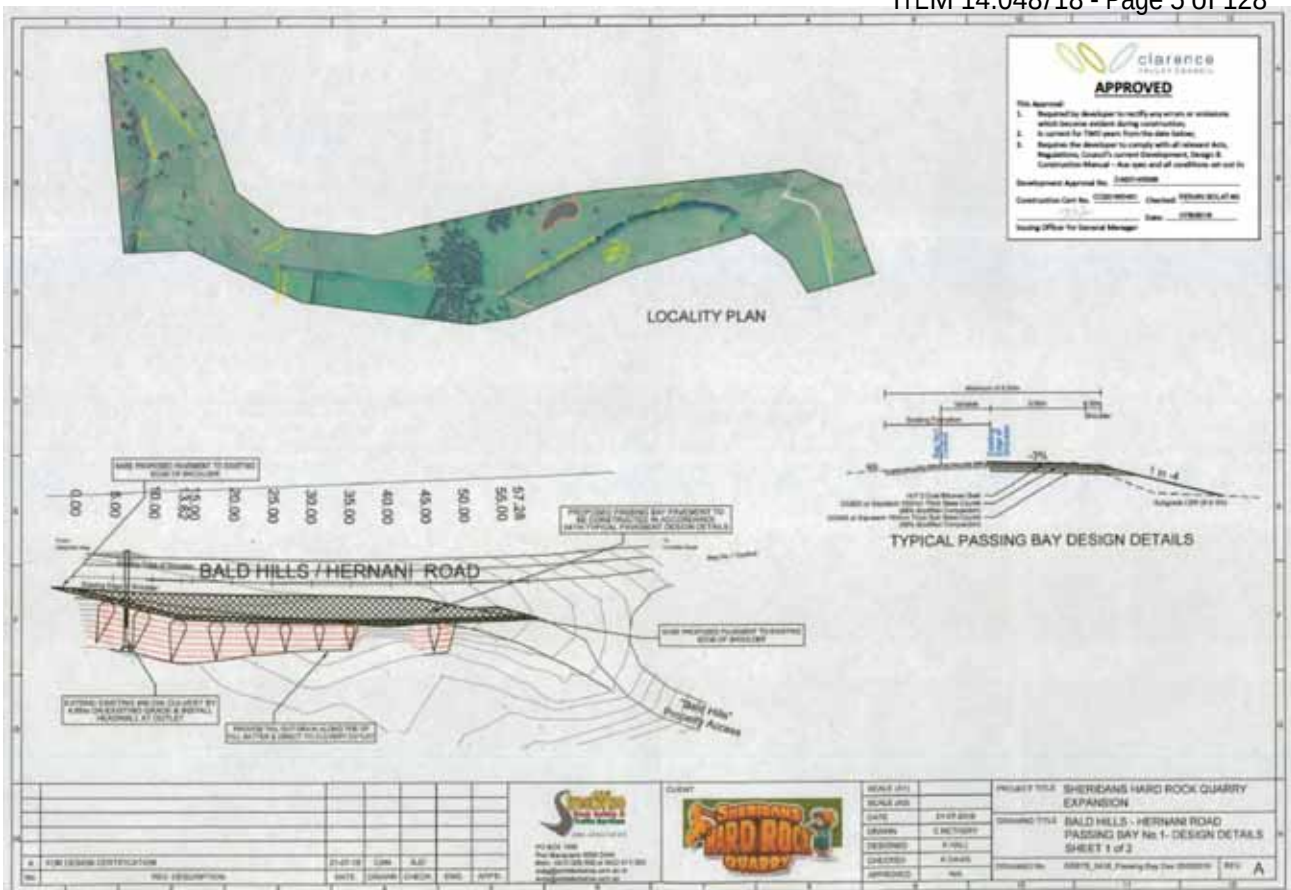


FIGURE 1: Passing Bay No. 1

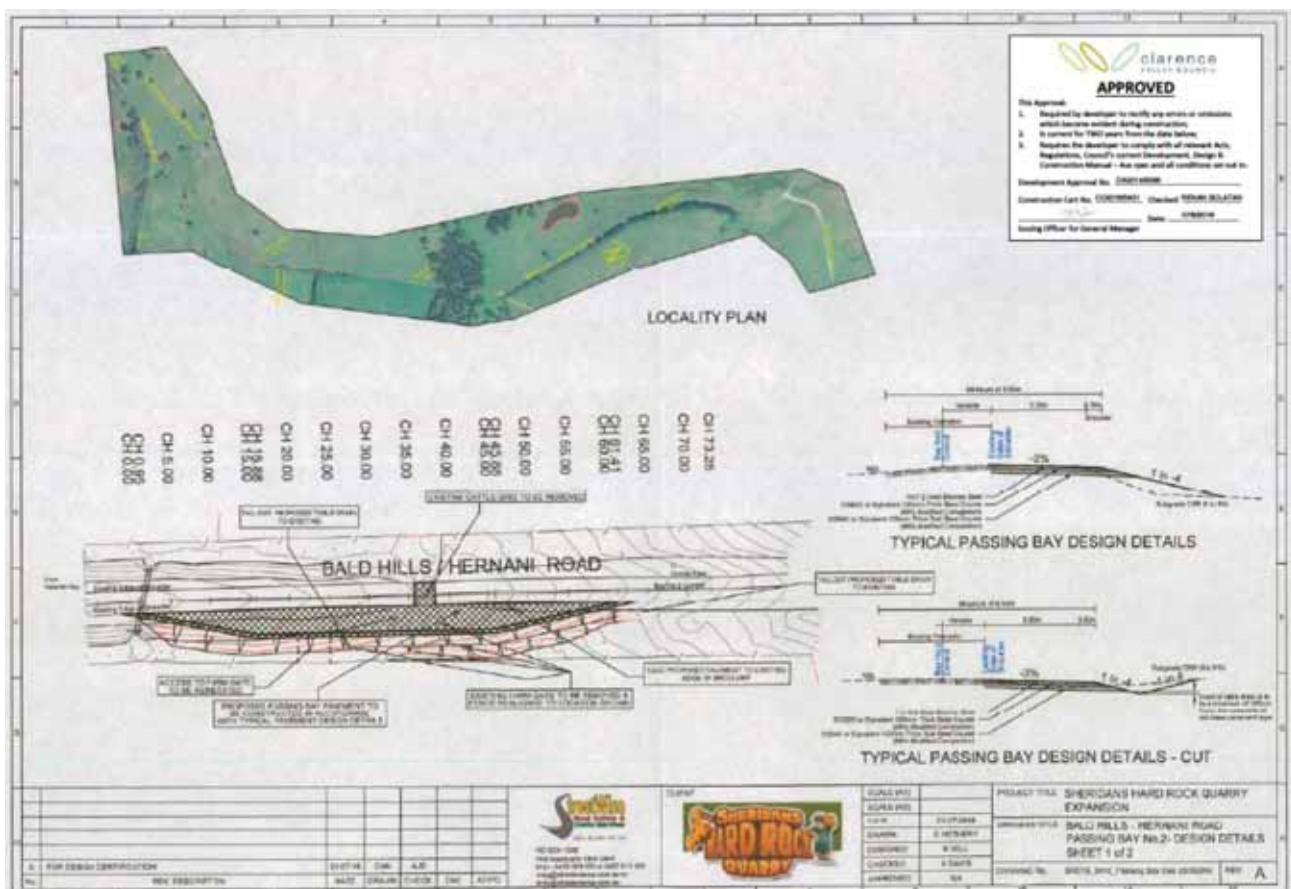


FIGURE 2: Passing Bay No. 2



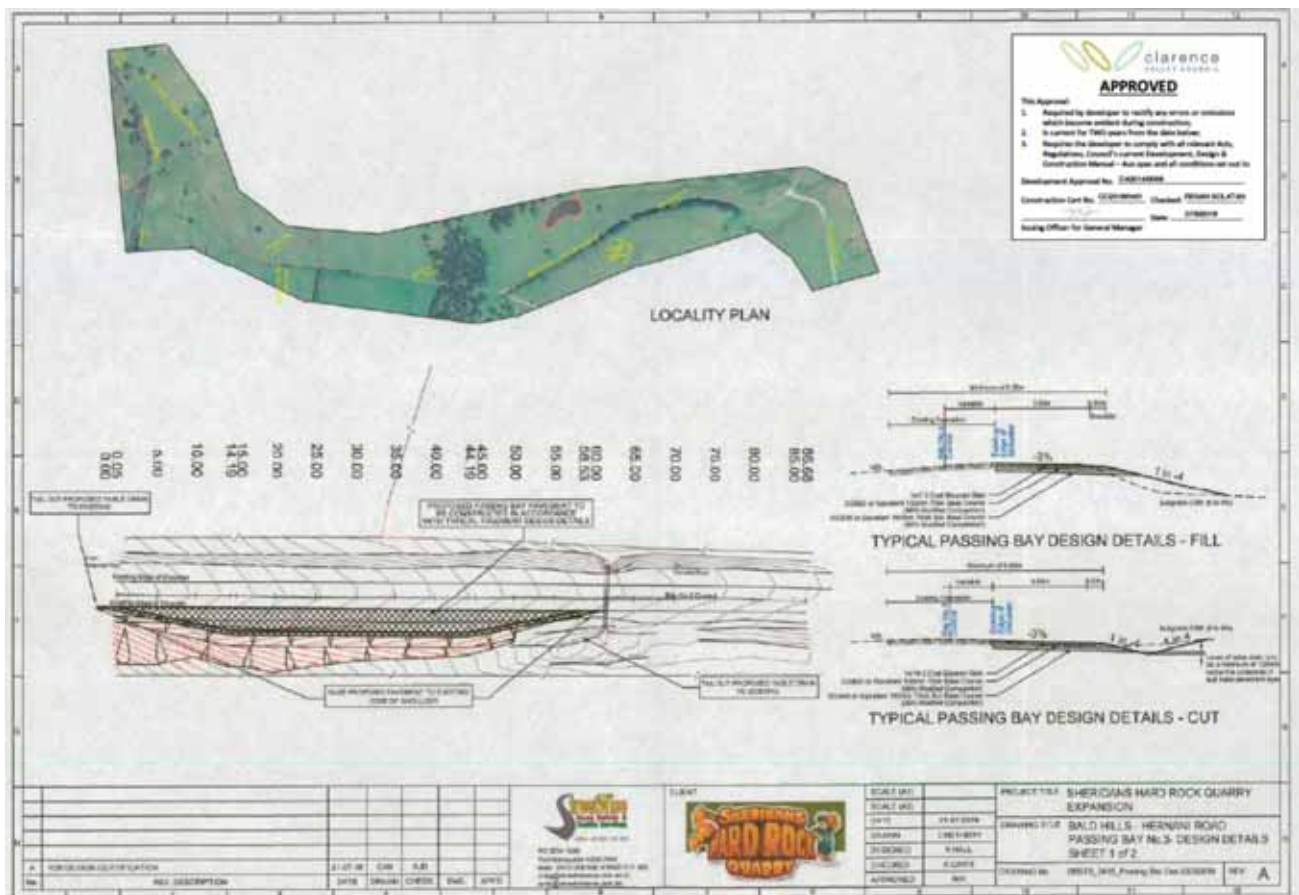


FIGURE 3: Passing Bay No. 3

4.0

Roads Information as Requested by JRPP :Summary

The accompanying advice prepared by Streetwise traffic consultants satisfactorily addresses items (a), (b) and (c) above, as requested by the JRPP.

In summary, the Streetwise traffic advice finds:

- The haul route has adequate capacity to cater for the daily traffic volumes, with no significant impacts or safety issues resulting from the proposed increase in truck movements proposed to be generated by the quarry operations.
- The haul road currently operates at an acceptable Level of Service, with minimal potential for delays. Based on the above assessment, it is concluded that the haul road has the capacity to accommodate the increased daily truck numbers proposed.
- The required upgrade of intersection of Bald Hills Road & Waterfall Way intersection was designed to accommodate truck and dog movements associated with the quarry. The design included widened lanes, better curve alignment of Waterfall Way, auxiliary turn lanes and additional signage, and was approved by the RMS. The RMS was involved at all stages of the process, from preliminary planning to final plan approval to inspection of the construction.



■ As regards the intersection of the haul route with Waterfall Way, traffic volumes on Waterfall Way at the time of the original traffic assessment was approximately 1000 vehicles per day, or around 100 vph during peak times, with annual growth estimated to be minimal (approximately 1% per annum). Due to the low volumes on this road, the intersection operates efficiently (Level of Service of A or B). According to the Austroads Guidelines warrant, the existing intersection layout has the capacity to safely and efficiently cater for the turning movements proposed as a result of the S.96 modification.

■ Traffic volumes on both Cornells Road and Bald Hills Road are low , supported more recently by tube counts conducted by Clarence Valley Council in October / November of 2015. [NOTE: The Council road counts also support the proposition that there is spare capacity on the haul route to accommodate the proposal for up to an additional 46 loaded quarry trucks per day travelling along the haul route] Sight distance at the intersection of the Cornells and Bald Hills Road appears to be good in all directions, with minimal impacts from vertical crests, horizontal curves or roadside trees etc. SIDRA analysis of an intersection is generally utilised at busy intersections to determine available gaps between vehicles, capacity and Level of Service. The traffic volumes are minimal through the Bald Hills Road/ Hernani Road intersection, and a SIDRA analysis is not required. The average gaps between vehicles would be measured in minutes i.e. there would be virtually 'free flow' which equates to a Level of Service of 'A'.

"In summary, the quarry operator is simply seeking more flexibility to service his clients, and is proposing an increase to a maximum 66 loaded trucks per day. However, the yearly total of truck movements won't change, as the operator is limited by the annual volumes he can extract from the quarry.

The quarry operator has previously upgraded the haulage road in accordance with the conditions of the development approval. With these improvements in place, the subject haul roads and intersections have the capacity to cater safely for the quarry-generated vehicles now proposed with acceptable impacts on the local road network. No additional road or intersection upgrades are required to accommodate the increased daily truck movements now proposed. No increase in wear and tear on the haul roads will result from the modification, as no increase in annual quarry production is proposed." (page 5 of Streetwise advice dated 1 June 2017)

It is also noted in the report to the JRPP the Roads and Maritime Services (RMS) has advised Clarence Valley Council in correspondence dated 21 September 2016 that it has no issues with the increased daily traffic to be generated by the change sought as it falls within the operational capacity of the Waterfall Way.

5.0 Clarification of quarry truck movements

Following lodgement of a GIPA application, in March 2017 Council provided to our firm details regarding traffic counts on local roads Hernani, including the quarry haul route for the period October- December 2015.

The Council traffic counts confirm that spare capacity available on the haul route, as sought in the Section 96 application now before Council/JRPP.

In the traffic counts more than 20 trucks per day had been counted on three occasions. Sheridan's Hard Rock Quarry has since provided details regarding truck movements on those days- all below the 20 trucks/day threshold permitted by the consent (on Thursday 12th November 2015, 15 trucks were logged leaving the quarry, on Monday 23rd November 2015 19 trucks, and on Monday 30th November 2015 16 trucks). Refer **Attachment F**.



On 14 December 2016 Council officers reported seeing quarry haul vehicles on the haul route around the same time as a school bus was noted travelling on the route. This was verbally reported to the JRPP meeting held the next day.

Council provided more detailed advice to our firm in a letter dated 31 March 2017 - refer **Attachment C**.

Sheridan's Hard Rock Quarry has since provided details regarding truck movements on that day- all below the 20 trucks/day threshold permitted by the consent. Refer **Attachment F**.

The key points arising from the advice from Sheridan's Hard Rock Quarry regarding quarry truck movements on 14 December 2016 may be summarised as follows:

- Sheridan's Hard Rock Quarry can confirm Council's advice that on 14 December 2016 seven (7) quarry trucks left the quarry site that afternoon, with a total of 18 truck loads leaving the quarry over the entire day.
- The school bus travels along the haul route for a few minutes per visit. The afternoon school bus almost always arrives at the intersection of Waterfall Way and the quarry haul route (ie. Bald Hills Road) by 4.05pm every school day, travels along Bald Hills Road travelling north east and then passes Cornells Road within approximately 2 minutes leaving Waterfall Way. After that time it is no longer travelling along the quarry haul route.
- Having regard to the above known movements of the school bus, on 14 December 2016 the last truck load from the quarry was loaded at 3:40pm so as to not run into the 15-minute window that the quarry operators need to give the school bus that travels the Bald Hills Road section of the haul road.
- On 14 December 2016 the school bus arrived 10 minutes earlier than its usual arrival time.
- Notwithstanding the arrival of the school bus on the haul route on 14 December 2016, no quarry truck was reported as encountering the school bus along Bald Hills Road. [NOTE: As stated in the quarry's Driver Code of Conduct, if a driver does happen to see the school bus, (should it run early or late) they are to stop and give way until the bus has passed. The Driver Code of Conduct also requires all truck drivers to also report any vehicle they see along the Haul Road, or any vehicle they believe will be in the vicinity of the haul route when another truck/school bus/vehicle is in the area. None were reported during the time period in question.]
- The local road system is used not only by quarry haulage vehicles, but also by heavy vehicles serving the rural hinterland eg. haulage of lime/mulch for local farms. From time to time the same heavy vehicles are contracted by Sheridan's Hard Rock Quarry to cart out quarry products from the quarry. Sheridan's Hard Rock Quarry advise that a number of people have, at times, associated these trucks with carting Sheridans quarry products, when in actual fact they have been assigned jobs that have nothing to do with their quarry operations in any way.



6.0**Offer to Maintain/Upgrade Quarry Haul Route: VPA**

Sheridan's Hard Rock Quarry offer to maintain the quarry haul route for the duration of the operating quarry. A further option is for Sheridan's Hard Rock Quarry to not only maintain the haul route, but to also progressively upgrade the quarry haul route over the life of the quarry.

Either offer is a generous one and goes well beyond what would be covered in a typical quarry consent. The above offer is made notwithstanding the fact that all roads investigations show that the haul route is currently in a satisfactory condition, capable of accommodating the traffic volumes sought.

The option to maintain and to upgrade the haul route is basically the same as that that was offered to Clarence Valley Council in March 2016- and offer that was subsequently rejected by Council offices. Refer **Attachment F**. [NOTE: does not include the numerous technical drawings accompanying this offer, detailing the works proposed by location along the haul route]

Sheridan's Hard Rock Quarry proposes to maintain and to progressively upgrade the haul road over time including but not limited to the following:

- Progressively seal of the remainder of the haul route.
- Restoration of existing road verges along Bald Hills Road.
- Sealing of an additional 1m width of road either side of Bald Hills Road.

Refer to accompanying plans prepared by traffic consultant Mr Craig Nethery of Streetwise Road Safety & Traffic Services Pty Ltd. The plans are considered to be self-explanatory and the works proposed capable of being implemented in accordance with the details provided- this level of detail considered adequate for such a minor rural road system.

Reiterating, all of the upgrading (vs maintenance) works are to be progressively undertaken by Sheridan's Hard Rock Quarry as time, funds and availability of manpower and materials allows. Moreover, it will be Sheridan's Hard Rock Quarry that will be responsible for repairing these works (within say a 2 year defects liability period) if there is any evidence of pavement failure and the like. With the exception of the three passing bays, now constructed, none of the other road works that Sheridan's Hard Rock Quarry are proposing are required as a condition of the Council Development Consent.

These are road works that Sheridan's Hard Rock Quarry is considering to undertake, in the interests of:

- Making the quarry haul route even safer, for residents as well as for the quarry operation.
- Improving overall residential amenity in terms of air quality and traffic noise.
- No upfront capital expenditure required by Clarence Valley Council. Sheridan's Hard Rock Quarry will undertake the capital works proposed.
- Less maintenance costs to Council, as the haul road is progressively sealed. [NOTE: A key feature of this proposal is that all s.94 roads contributions collected from Sheridan's Hard Rock Quarry are to be expended on road maintenance for the life of the quarry]



Clearly, Council Engineering will have oversight of the road works, to ensure that the road works are to an acceptable standard. To date, the road works undertaken have been considered to be satisfactory from Council's perspective, following inspections by Council officers. Sheridan's Hard Rock Quarry wishes that this spirit of cooperation will continue into the future in implementing the above.

The above arrangements are best expressed in the form of a **voluntary planning agreement (VPA)**, which is proposed to form one of the binding conditions of the consent, as modified. **Council and the JRPP will need to advise which one (or both) of the above options it is willing to agree to.**

What kind of voluntary planning agreement?

In this case, the voluntary planning agreement would be one made under section 93F of the *Environmental Planning & Assessment Act 1979* between the quarry operator and council, dealing with works in kind. As the name suggests, there is no compulsion on either party to enter into this form of agreement, but it has the following advantages:

- It relieves council of the need to carry out works- in this case, the maintenance and upgrading of the quarry haul route along local roads from the quarry back to the intersection of Waterfall Way.
- It allows the developer to ensure that works are done during the course of its development, rather than just pay money to council and not have any control over when the works are done.
- It allows the developer to nominate the order in which the works are to be done and how the works are to be done.
- It allows for certainty as to what the end product will be.

The core components of the VPA are as follows;

Accurate description of works:

Typically voluntary planning agreements deal with works that the developer is to undertake. It needs to be made clear exactly the level of works to be done, as generic descriptions can lead to arguments. If any particular plans or engineering details are to be adhered to, then these need to be appropriately set out.

In this regard an accurate description of upgrading and maintenance works proposed along the local roads to and from the quarry have been identified and are illustrated in the accompanying engineering plans.

The parties carrying out the works:

The operator of Sheridan's hard Rock Quarry, graham Sheridan, is authorised to carry out all road works referred to in the VPA. In the past Graham Sheridan has undertaken maintenance and other other upgrades of the road, for which he has been remunerated by Clarence Valley Council. The VPA is predicated on a continuance of these current arrangements and authorisations to enable Graham Sheridan to carry out the proposed road works (above) over the haul route.

All Section 94 roads contributions to be used in the maintenance of the haul route:

This provision is self-explanatory.



VPAs can produce good outcomes for all parties:

A properly structured, well thought out voluntary planning agreement can produce good outcomes for all parties – both for the quarry operator, who will have more certainty and control over what road works are done and how and when they are done and for councils, which do not have to carry out the road works themselves.

7.0

The Section 96 Application

A Section 96 application is not an opportunity to re-visit the original assessment of the application.

Related to the above, the nature of a Section 96(2) application is also different to that of a development application, as set out in s.96(4) of the *Environmental Planning & Assessment Act 1979* (EP&A Act 1979), as explained by Talbot J in *Windy Dropdown v Warringah Council* (2000) NSWLEC 240 at para 28:

*“[28] Subsection (4) of s 96 is the same as the previous subs (4) of s 102. It expressly distinguishes modification of a development consent from the granting of development consent, thereby suggesting that at least in some respects **the consideration and approval of an application for modification is to take place in a different context to the consideration of an application for development consent.** Furthermore, the subject of **an application made pursuant to s 96 is the development consent, not the development itself.**”*[Our emphasis]

The determining authority (in this case, the JRPP) has an obligation to consider the modification proposed (in this case, an increase in the maximum daily quarry truck numbers using the haul route) and determine whether the proposed modification meets the Section 96 tests, and in particular, whether the development as modified is substantially the same development for which consent was originally granted. (Refer to the decision of Pepper J in *Agricultural Equity Investments Pty Ltd v Westlme Pty Ltd (No 3)* [2015] NSWLEC 75 at para [173] for a summary of the applicable legal principles governing the exercise of the power contained in s 96(2) (a) of the EP&A Act 1979.)

The determining authority is under a statutory obligation to have regard for the relevant provisions of s.79C of the *Environmental Planning & Assessment Act 1979* in terms of various matters, including the impacts arising from the modification proposed. Section 79C(1)(b) and (c) of the EP&A Act 1979 requires an engagement by the determining authority with the subject matter in any s.96 application so that likely impacts can be properly understood and assessed: *Weal v Bathurst City Council* [2000] NSWCA 88; (2000); and *Centro Properties Limited v Hurstville City Council* [2004] NSWLEC 401.

The proposed daily peak levels of quarry truck traffic is supported by:

- The noise and traffic studies accompanying the original 2014 EIS and Development Application lodged in 2014 referred to in the issued consent. This includes the Traffic and Transport Assessment prepared by RoadNet dated March 2014.
- The Traffic Impact Assessment prepared by Streetwise dated 15 June 2016.
- The traffic advice to Clarence Valley Council, prepared by Streetwise dated October 2016.
- Council's traffic counts.



The above traffic investigations conclude that the existing quarry haulage route, including Faheys & Bulgins Road, Cornells Road and Hernani – Bald Hills Road, has adequate capacity to cater for **at least 150 vehicles per day**, with Austroads guidelines indicating that the existing road formation of the haul route can cater for **up to 500 vehicles per day**. Council's report to the JRPP incorrectly assumes a capacity of **up to 150 vehicles per day**, which is a mis-statement of the findings of the above traffic reports.

This application seeks a modification to Development Consent DA2014/0098, issued by Clarence Valley Council on 10 September 2014.

The proposal satisfies the “**substantially the same**” test based on the following two evaluative exercises:

Quantitative differences:

■ The Section 96 modification is to enable the periodic increase in daily quarry truck numbers to meet occasional demands for quarry product placed during periods of peak quarry activity, allowing up to 66 loaded trucks per week day and 36 loaded trucks every Saturday.

■ The quarry operator is currently limited to extracting 198,000 tonnes per annum, and does not propose to increase this limit on production. The quarry operator simply wishes to occasionally increase daily haulage movements to better service the day-to-day peak demands associated with major infrastructure projects. This means that the no change is sought to total truck volumes to and from the quarry over any any one year- the same number of trucks will be running over the quarry haul route each year of operation, with no increase in quarry production..

■ No change to the annual equivalent standards axles (ESAs) running over the haul route will arise as a consequence of the modification sought. Nor will the amount of wear and tear on the haul route by quarry truck traffic change over any one year of quarry production as a result of the modification sought. [NOTE: The NSW Land and Environment Court has regularly used ESAs as a tool in measuring the impact of heavy/quarry truck traffic on roads - see *Benedict Industries Pty Ltd v Minister for Planning*; *Liverpool City Council v Moorebank Recyclers Pty Ltd* [2016] NSWLEC 122 (16 September 2016), *Hunter Quarries Pty Ltd v Minister for Planning* [2006] NSWLEC 637, *Collin C Donges & Assoc Pty Ltd v Baulkham Hills Shire Council* [1989] NSWLEC 39 (4 May 1989), *Capital Quarries Pty. Ltd. v. Gunning and Yass Shire Councils* (Unreported 14 August 1987) and *E.H. & P.H. Clifford Pty. Ltd. v. Scone Shire Council* ((1988) 65 LGRA 391).].

Qualitative differences:

■ The proposed increase in daily peak truck traffic will not result in any increased wear and tear on the haul route, or increased pavement damage arising from the modification, as no increase in annual quarry production is proposed.

■ The subject haul roads and intersections have the capacity to cater safely for the quarry-generated vehicles now proposed with acceptable impacts on the local road network. No additional road or intersection upgrades are required to accommodate the increased daily truck movements now proposed.

■ No change is sought in the s.96 application to the current restrictions on Saturdays on truck traffic on The Waterfall Way, east of the intersection of Waterfall Way and Maynards Plains Road, in accordance with Condition 13A of the issued Development Consent.



In our opinion, the qualitative and quantitative similarities between the development as originally approved, and the proposed modified development, support a conclusion that the latter will be substantially the same as the former.

While a consent authority will need to consider the whole of the developments being compared, a proposed modification may fail the substantially the same test if an important, material or essential feature of the originally approved development is changed in a significant way. We have not identified any important, material or essential aspect of the originally approved development that will be so changed. The modification application preserves the material elements of the originally approved development.

For the above reasons, it is considered that the proposed development is substantially the same as that which was originally approved. In our view, it is reasonable that Council/JRPP should now come to the conclusion that the essence of the development remains the same, that no adverse impacts arise and that the modification does not involve a radical transformation of the development, thus meeting the relevant tests for this Section 96 application. (See *Vacik Pty Limited v Penrith City Council*, unreported, Stein J, No. 10242 of 1991, 24 February 1992, *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468 at 475B and *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298 at 309).

Notwithstanding the above conclusion, Sheridan's Hard Rock Quarry have also offered to enter into a voluntary planning agreement to maintain and to progressively upgrade the haul route over the life of the quarry. This should take away any concerns regarding the ability of the haul route to accommodate the traffic volumes sought in the longer term.

Trusting that the above clarifies the nature of the proposal, upgrades to the haul road, likely road impacts, as well as technical details and benefits.

Should you have any queries please do not hesitate to contact the writer.

Yours sincerely



GARY PEACOCK, DIRECTOR



■ ATTACHMENT A

JRPP request for further information



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants



**Planning
Panels**

RECORD OF DEFERRAL NORTHERN JOINT REGIONAL PLANNING PANEL

DATE OF DEFERRAL	Thursday 15 December 2016
PANEL MEMBERS	Garry West (Chair), Pamela Westing, Stephen Gow, Jim Simmons and Jason Kingsley
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held at Dorrigo Public Hall on Thursday, 15 December 2016, opened at 11:15 a.m. and closed at 1:30 p.m.

MATTER DEFERRED

2016NTH022 – Clarence Valley - MOD2016/0035 – 242 Faheys & Bulgins Rd, Hernani – Modification to Extractive Industry (Sheridans Hard Rock Quarry) to increase permitted daily truck movements.

VERBAL SUBMISSIONS

- Support – Nil
- Object – Six
- On behalf of the applicant – Two

REASONS FOR DEFERRAL

The Panel resolved to defer the determination of the matter as:

- no assessment was provided for proposed amendments to Condition 1;
- further road impact assessments were required to ensure adequate road conditions and safety;
- there was a lack of adequate arrangements for monitoring of compliance;
- there was a lack of adequate consultation with Bellingen Shire Council stakeholders.

The Panel requests that Council staff provide:

- Further assessment by Council of proposed amendments to Condition 1;
- A review of an updated traffic impact assessment by the Applicants, including:
 - (a) a road pavement impact assessment on the haul route;
 - (b) assessment of the intersection of Bald Hills Road and Waterfall Way using current traffic data;
 - (c) assessment of the intersection of Cornells Road and Bald Hills Road;
- Details of the outcome of Council negotiation with the Applicant to ensure appropriate monitoring and compliance arrangements for quarry truck movements;

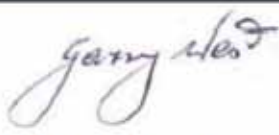


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- Evidence that the RMS and Bellingen Council have been further consulted with particular regard to the impacts of peak truck movements through Dorrigo and Bellingen.

When this information has been received, the Panel will further consider the matter.

The decision to defer the matter was 4:1 in favour; against the decision to defer was Pamela Westing

PANEL MEMBERS	
 Garry West (Chair)	 Pamela Westing
 Stephen Gow	 Jim Simmons
 Jason Kingsley	



■ ATTACHMENT B

Streetwise report dated 1 June 2017



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants



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Attention:- Gary Peacock, Managing Director

01 June 2017

**ASSESSMENT OF TRAFFIC IMPACT FOR EXTRACTIVE INDUSTRY
(SHERIDANS HARD ROCK QUARRY – DA2014/0098)
242 FAHEY’S & BULGINS ROAD, HERNANI**

Dear Gary,

The following is our response to the following request from the JRPP regarding the proposed S.96 request for additional daily truck numbers at Sheridans Hard Rock Quarry, Hernani.

a) Road Pavement Impact Assessment of the Haul Road

As requested, StreetWise undertook an inspection of the haul roads between Sheridans quarry and Waterfall Way, with details contained in our haul road condition assessment report, dated 2 May 2017. The inspection concluded that the unsealed section of the haul road (Cornells Rd & Faheys / Bulgin Rd) and the sealed section (Bald Hills / Hernani Rd between The Waterfall Way & Cornells Rd) are in generally good condition, with minimal impacts noted from the haulage of gravel from Sheridans Quarry.

In summary, the quarry operator has upgraded the haulage road in accordance with the conditions of the development approval, the subject roads and intersections have the capacity to cater safely for the quarry-generated vehicles and the impacts of the development on local road network have been managed and/or mitigated to minimise these impacts. The haul road currently operates at an acceptable Level of Service, with minimal potential for delays. Based on the above assessment, it is concluded that the haul road has the capacity to accommodate the increased daily truck numbers proposed.

The current volumes on Bald Hills/Hernani Road are less than the 150 vehicles per day, with a maximum peak hour volume of approximately 15 vph. The local road network has adequate capacity to cater for the daily traffic volumes, with no significant impacts or safety issues resulting from the proposed increase in truck movements proposed to be generated by the quarry operations.

See attachment detailing the pavement assessment of the haul road.

b) Traffic Impact Assessment for the Intersection of the Waterfall Way and Bald Hills / Hernani Road

The traffic volumes on Waterfall Way are approximately 1000 vehicles per day (vpd) or around 100 per hour at peak times. These numbers are very low, and the existing road has capacity to cater for much higher volumes (given that each lane of a major rural road can satisfactorily cater for up to 800 vehicles per hour).

RoadNet's 2010 & 2014 assessments and report indicated that *the Waterfall Way and Bald Hills / Hernani Road intersection currently operated at a level of service (LoS) of 'A' based on 1000 vpd on the Waterfall Way, and would be LoS of 'A' or 'B' due to annual traffic growth (1.5% per year) and the increase in traffic due to the operations of Sheridans Hard Rock Quarry. An LoS of 'A' or 'B' results in free flow of traffic, with adequate gaps to provide safe travel through the intersection.*

The intersection has since been upgraded as a condition of the development approval, resulting in increased safety and capacity to cater for the proposed increase in truck movements. However, the following should also be considered:

- The intersection of ***Waterfall Way and Bald Hills / Hernani Road*** was upgraded to a higher standard than required by the guidelines. Austroads Guide to Road Design (Part 4A – Unsignalised and Signalised Intersections) recommends a basic intersection was required. However, the actual RMS-approved intersection which was constructed at the location included road widening, curve re-alignment and auxiliary turn lanes.
- The Austroads guidelines at the time also stated that simple intersections catering for less than 600 vehicles per hour (up to 450 major road, 150 minor road) normally cater for traffic efficiently, and there is generally no requirement to assess the operation of the layout. Traffic counts at the time indicated approximately 1000 vpd on Waterfall Way (c.100 vph at peak times) i.e. the traffic volumes through the intersection were not high enough to require an assessment of the layout.
- The design and construction of the upgrade of the intersection of Waterfall Way and Bald Hills / Hernani Road, required as a condition of the quarry approval, was assessed, approved, and inspected by the RMS.
- The assessment of traffic speeds, sight distance, turning movements etc. was undertaken during the intersection design process, with the final layout approved by the RMS.

As shown by the statements above, the RoadNet report determined that the traffic volumes utilising the roads and intersections were low, and minimal upgrades of the roads and intersections were required to cater for the truck movements generated by Sheridans Hardrock Quarry.

It should also be noted that the required upgrade of intersection of Bald Hills Road & Waterfall Way intersection was designed to accommodate truck & dog movements. The design included widened lanes, better curve alignment of Waterfall Way, auxiliary turn lanes and additional signage, and was approved by the RMS. The RMS was involved at all stages of the process, from preliminary planning to final plan approval to inspection of the construction. As discussed previously, the volumes on both roads were minimal, and did not trigger the requirement for a SIDRA analysis.

c) Traffic Impact Assessment for the intersection of the Cornells and Bald Hills Road

The traffic volumes on both Cornells Road and Bald Hills Road are were low at the time of the original assessment and remain low based on tube counts conducted by Clarence Valley Council in October / November of 2015 where the average daily weekday volumes south of Cornells Road on Bald Hills Road was 92 vehicles per day, which includes existing truck traffic from Sheridans Hard Rock Quarry.

Traffic volumes on Waterfall Way at the time of the original traffic assessment was approximately 1000 vehicles per day, or around 100 vph during peak times, with annual growth estimated to be minimal (approximately 1% per annum). Due to the low volumes on both roads, the intersection operates efficiently (Level of Service of A or B). According to the Austroads Guidelines warrant, the existing Basic Intersection layout has the capacity to safely and efficiently cater for the turning movements proposed as a result of the S.96 modifications now proposed.

I also note the following conclusions taken from the RoadNet Traffic Impact Assessment (2014) describe the roadworks previously arranged or undertaken by the quarry operator:

- *A traffic impact assessment has been undertaken for the proposed development which concludes that the proposed quarry expansion will have no material impact on the existing operation of the approved haulage route, including the intersection with Waterfall Way. There is no change in the haulage volumes proposed under the current proposal (Maximum of 20 laden and 20 unladen trips), and the other traffic-generating components of the proposal (staff movements, visitors etc.) are virtually unchanged from the existing approved development.*
- *The quarry operator has carried out extensive upgrades to the approved quarry haulage route over and above to and in response to Council's conditions of consent for the existing quarry development. The upgrades go well beyond what was identified as being required, with the approved quarry haulage route being upgraded to a generally two lane two way rural road standard rather than an upgraded "one lane plus passing bays" standard. The changes made have included:*
 - *Grading and widening of the haulage route generally, and in particular along Cornells Road and Faheys & Bulgins Road, to provide an improved alignment with a minimum width of approximately 7.0m (i.e. suitable for two-way movement of vehicles)*
 - *Upgraded drainage works to accommodate the above widening*

- *The provision of culverts at designated locations along the haulage route*
 - *The provision of guideposts and signage along the haulage route, where required*
 - *Removal of overhanging vegetation and curve widening to improve sight lines, where required*
 - *Upgrading of the intersection of Hernani – Bald Hills Road with Waterfall Way to provide an Austroads BAR treatment for right turns and a BAL treatment to accommodate the left turns*
 - *Construction of a suitable site access to the quarry to accommodate the heavy vehicles that use it*
 - *Other changes as required by Council to achieve ‘signoff’ on the haulage road upgrade works*
- *Road sealing work to a minimum sealed width of 7m over an additional length of almost 1.2km has also been undertaken at the quarry operators own initiative and expense in front of two rural residences along the approved quarry haulage route. These additional improvements have been made to improve local amenity by minimising dust and noise impacts, and to ensure that the maximum quarry traffic levels approved by Clarence Valley Council can be readily accommodated by the local road network.*
 - *Upgrading the haulage route from a one lane route with limited passing opportunities to a generally two lane two way rural road standard has substantially reduced the risk of conflict between vehicles travelling in opposite directions and provides a much safer, less hazardous road environment for all users of the road.*
 - *Prior to the quarry development the local road system was in a poor state of repair even though it accommodated a similar volume of truck traffic associated with agricultural activities in the area. The upgraded haulage route therefore provides a much higher and safer standard of road for all motorists that use it.*
 - *The upgraded quarry haulage route could accommodate a design volume of at least 150 vehicles per day.*

Sight distance at the intersection of the Cornells and Bald Hills Road appears to be good in all directions, with minimal impacts from vertical crests, horizontal curves or roadside trees etc.

SIDRA analysis of an intersection is generally utilised at busy intersections to determine available gaps between vehicles, capacity and Level of Service. The traffic volumes are minimal through the Bald Hills Road/Hernani Road intersection, and a SIDRA analysis is not required. The average gaps between vehicles would be measured in minutes i.e. there would be virtually ‘free flow’ which equates to a Level of Service of ‘A’.

It should also be noted that Council approved the design plans for the road upgrades, then inspected the works during and after the construction. If there were any issues with sight distance, I assume they would have been raised at the time. "

In summary, the quarry operator is simply seeking more flexibility to service his clients, and is proposing an increase to a maximum 66 loaded trucks per day. However, the yearly total of truck movements won't change, as the operator is limited by the annual volumes he can extract from the quarry.

The quarry operator has previously upgraded the haulage road in accordance with the conditions of the development approval. With these improvements in place, the subject haul roads and intersections have the capacity to cater safely for the quarry-generated vehicles now proposed with acceptable impacts on the local road network. No additional road or intersection upgrades are required to accommodate the increased daily truck movements now proposed. No increase in wear and tear on the haul roads will result from the modification, as no increase in annual quarry production is proposed.



A J Davis (*Director*)
StreetWise Road Safety &Traffic Services Pty Ltd

■ ATTACHMENT C

Advice Clarence Valley Council dated 31 March 2017 & OPC response dated 18 April 2017



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants



31 March 2017

Reference: GD14/0098 MOD2016/0035 ECM: 1879136
Contact: Pat Ridgway

Gary Peacock
Outline Planning Consultants Pty Ltd
Suite 18 Pittwater Business Park
5 Vuko Place
WARRIEWOOD NSW 2102
By email: gpeacock@outline.com.au

Issues re JRPP Meeting and Deferral

Application No: MOD2016/0035 (JRPP REF: 2016NTH022)
Development Proposal: Modification of DA2014/0098 (increase permitted daily truck numbers)
Property Address: 242 Faheys & Bulgins Road HERNANI NSW 2453
Legal Description: Lot 62 DP 752807 & Lot 63 DP 752807

Gary,

Clem Rhoden has requested that I respond to the issues raised in your email dated 16 March 2017 (*your requests shown in italics*):

I note that the information request has been received some time after the deadline for the requested information following the JRPP deferral notice.

1. *As recounted at the JRPP meeting, at a site inspection on 14 December Patrick Ridgway & Renan Solatan observed trucks running at a time when school buses were in evidence. Through the JRPP chair, we requested further details regarding this incident. Where was this incident observed from ie. what precise location on the local road system was this observation made)? My client stated at the JRPP meeting that this truck traffic has come from another nearby quarry. I would be grateful if you could provided (sic) details.*

Comment

Prior to the JRPP meeting an inspection of the haul route was undertaken on the afternoon of 14 December 2016 between 2.50 pm and 4.30pm by Council Officers Patrick Ridgway and Renan Solatan. The inspection began at the intersection of Bald Hills Road and Cornell's Road, stopping on the road reserve to examine the intersection pavement.

Then along Cornell's Road through to Faheys Road and Bulgins Road and to the entrance gate of 242 Faheys Road and Bulgins Road.

Then back along Faheys Road and Bulgins Road to Bald Hills Road and to the intersection of Bald Hills Road and Waterfall Way. Roadside stops were made at some of the culverts along the route, the intersection of Bald Hills Road and Cornell's Road, the three passing bays and at the Bald Hills Road / Water fall Way intersection.

During the inspection from 2:50pm a constant stream of quarry traffic was observed along the haul route to and from Sheridan's Quarry, heading to and from Waterfall Way. Between 2.50pm and 3.50pm, 7 laden quarry truck movements and 7 unladen quarry trucks movements were counted on the haul route. No truck traffic was observed on Bald Hills Road between Cornell's Road and Armidale Road.

During the final inspection stop at the Waterfall Way / Bald Hills intersection, between 3:45 - 4:30pm, a number of quarry trucks were observed travelling to and from Waterfall Way and along Bald Hills Road. It was noted that a laden quarry truck left the haul route, turning left onto Waterfall Way at approximately 3:45pm and at approximately 3:50pm a school bus was observed turning from Waterfall Way onto Bald Hills Road. Three (3) more quarry trucks were observed leaving and entering the haul route between 3:50 - 4:05pm; two (2) laden trucks from Bald Hills Road to Waterfall Way (4.00pm and 4.05pm) and one (1) from Waterfall Way to Bald Hills Road (4.03pm).

The observations of quarry truck traffic within 15 minutes before and 15 minutes after the arrival of the school bus were reported to the JRPP panel at the meeting.

I note that during the inspection no quarry traffic was observed travelling along Bald Hills Road between Cornell's Road and Armidale Road.

[NOTES: 1. We have sought information from Council regarding the operation of its own quarry, known as Ellis' Pit, which operates nearby. To date we have not been furnished with the particulars sought.]

Comment

Access to Council's records is organised through Council's Governance Section consistent with the *Government Information (Public Access) Act 2009* (GIPAA) and are dealt with in confidence. I believe this information has now been provided.

2. Also through the GIPA process we have requested information regarding a recent traffic survey on the local road system which includes the haul route, however, we appear to have run into a brick wall on that point, with Council providing meaningless aggregated data only. (We requested details of traffic flow over each of the days that the survey ran for.) Perhaps you could approach Council engineering to provide this data. Thank you.]

Comment

Council's Development Service section is not aware of any recent traffic surveys conducted by other sections of Council.

The applicant may engage a traffic data specialist to conduct a traffic survey/count to acquire the latest data along the haul route.

2. (sic) No clarification was provided by Renan Solatan that the section of road with the claimed poor condition did not form a part of the recently constructed passing bays. Moreover, no mention was made of the fact the applicant has constructed three passing bays, when only one was required, and that each has been constructed to for a longer length than specified in the consent. In fact the passing bays are in excellent condition.

Comment

The comments in regard to the current poor condition of the road included the three passing bays. This was also observed by the Panel's inspection on the morning of 15 December 2017. The pavement of the passing bays were observed on both the 14 & 15 December 2017 it was obvious they were not in excellent condition.

It is noted that prior to the lodgement of the Civil Construction Certificate application for the passing bays, the applicant's consultant resisted to prepare a fully detailed design including a detailed survey and in-situ materials testing of these passing bays. Assessment of the Civil Construction Certificate has been limited to the information provided by the consultant.

Minimum design requirements (minimum pavement depth) have been adopted. As a result of the implementation of the minimum design requirement, poor surface conditions have been observed during the site inspections by Council staff and the joint Regional Planning Panel members after only two (2) months of quarry traffic.

3. No clarification was provided by Renan Solatan that the consent for the passing bays does not specify the requirement for guard rails.(nor are they needed)

Comment

The issuance of the Civil Construction Certificate, does not relieve the applicant from rectifying any errors or omissions which may become evident prior to or during the construction. This is clearly stipulated in the Civil Construction Certificate.

A Post Construction Road Safety Audit of these passing bays would identify any safety issues.

4. Patrick Ridgway erroneously asserted at the JRPP meeting that our clients had not activated the consent. This is despite the fact that Council was provided with advice from our firm in two separate letters dated 15 September 2016 & 22 September 2016 in this regard.[NOTE: Council has never responded to either correspondence cited above] Confirmation of the completion of the passing bays was provided to Council in advice dated 21 October 2016 by consultant engineers Geoff Slattery & partners.

Comment

The submission to the JRPP raised concern over confusion as to the commencement of the quarry under DA2014/0098 and non compliance with conditions of consent and in particular:

- That the 50,000 tonne limit under DA2010/0358 was exceeded (i.e. 62,920 tonnes was extracted) before 22 September 2016 i.e. before the withdrawal letter for DA2010/0358 and before DA2014/0098 was activated.
- That Condition 35 of the notice of determination (DA2014/0098) required the completion of the passing bays prior to the activation of the consent. Council was advised that the works for the passing bays was completed 21 October 2016, more than one month after DA2010/0358 was withdrawn.
- Condition #19 DA2010/0358 & Condition #18 DA2014/0098 require the annual payment of a road maintenance contribution. Council has no record of these being paid.

The information requested in Council's letter dated 6 January 2017 is now required within 21 days of the date of this letter. If the information is not received Council will report the application to the Joint Regional Planning Panel – Northern recommending refusal.

On receipt of the information Council will be able to consult further with the Roads and Maritime Services, the Bellingen Shire Council, the Bellingen and Dorrigo Community and other interested parties.

If you require further information please contact me on 6645 0288.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Pat Ridgway', with a stylized flourish extending from the end.

Pat Ridgway
Senior Development Planner



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants

Outline Planning Consultants Pty Ltd
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18 April 2017

General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Council Ref: MOD2016/0035
(Modification of DA 2014/0098)

By email

Attention: Mr Patrick Ridgway, Senior Development Planner
Mr Clem Rhoden, Manager Environment, Development & Regulated Services

Dear Sir,

**MOD 2016/0035, SHERIDAN'S HARD ROCK QUARRY Pt. LOT 62 & 63 IN DEPOSITED PLAN 752807,
No.242 FAHEYS & BULGINS ROAD, HERNANI NSW**

Outline Planning Consultants Pty Ltd acts for Sheridan's Hard Rock Quarry Pty Ltd, who operate the above quarry. Reference is made to Council's correspondence dated 6 January 2017 regarding a negotiated outcome to ensure that appropriate monitoring and compliance arrangements for quarry truck traffic. A response has been delayed pending clarification sought from Council, duly provided in Council's letter dated 31 March 2017, received last week.

Our client is more than happy to provide additional measures to ensure that there is compliance with daily truck numbers and tonnages of rock won from Sheridan's Hard Rock Quarry at Hernani.

Sheridan's Hard Rock Quarry currently does not have a weighbridge, nor is there is any critical need to provide one. This is due to the fact that currently all trucks are loaded within the quarry by front-end loaders with scales to enable accurate records of loads. This method of recording loads is well accepted practice in the industry.

This practice of recording weights by machines with scales is also recognised by the JRPP and Council, reflected in the consent granted 20 January 2015 to the hard rock quarry at Nymboida (DA2014/0024), Condition 19(l) which states:

"l) All quarry trucks existing the site shall do so via a weighbridge to be installed prior to commencement e or quarrying activities, or all trucks are to be loaded by a machine with scales to enable accurate records of loads."

At present the above records are provided to Council on an annual basis. Sheridan's Hard Rock Quarry are happy to accede to providing this data to Council every 3 months. The above condition could be included in any subsequent Section 96 approval granted by the JRPP/ Council.





**Section 96 Application MOD 2016/0035 Sheridan's Hard Rock Quarry
No.242 Faheys & Bulgins Road, Hernani, NSW**

Sheridan's Hard Rock Quarry believes that any requirement to agree to traffic counts along the haul route is an onerous one and is not supported, for the following reasons:

- The provision of truck records on a more regular (ie. 3 monthly) basis should give Council more confidence that the quarry generates truck numbers that are in accordance with the issued consent.
- None of the other approved quarries in the Clarence Valley are understood to have any similar requirement for the undertaking of traffic counts along the haul route eg. Greensills quarry, at Nyboida, and Kungula quarry.
- Council has the statutory power to police any apparent breaches of any consent and to take the appropriate enforcement action where any breach has been found.
- Related to the above, Council is considered to be the more appropriate body to undertake traffic counts, if there are any concerns about truck traffic volumes. For example, Council has also recently undertaken traffic counts of quarry truck traffic along Jacky Bulbin Road in response to concerns about quarry truck traffic travelling along the road to and from Newman's Quarry. Council has undertaken its own random traffic counts along a part of the haul route at Hernani in October 2015, with no exceedances noted.
- Sheridan's Hard Rock Quarry Pty Ltd now has in place a Driver Code of Conduct, as required by the current consent, which will ensure that driver safety along the haul route is assured.

In the context of the above it is also important to note that the traffic impacts of an increase in quarry truck traffic to the level now proposed has been previously considered in reports by RoadNet and Streetwise. The March 2014 RoadNet Traffic Report assessed the capacity of the haulage route, and found it had adequate capacity and standard of construction to cater for any future increase in haulage truck movements, finding that the haul route from the quarry to Waterfall Way had a minimum overall capacity of at least 150 vehicles per day, and a resultant spare capacity available for up to an additional 63 vehicles per day, with a capacity of up to 500 vehicles per day. The June 2016 Streetwise report similarly finds that the Austroads guidelines indicate the existing road formation of the haul route from the quarry back to the Waterfall Way can cater for up to 500 vehicles per day.

We trust that the above satisfactorily addresses the issues raised in Council's letter dated 6 January 2017.

A more detailed response to the JRPP's deferral of the s.96 application will be provided shortly, hopefully by the end of the week.

If you have any queries please do not hesitate to contact the writer.

Yours sincerely

GARY PEACOCK (BTP UNSW)
DIRECTOR



Outline Planning Consultants
Town Planners & Project Managers

■ ATTACHMENT D

Correspondence October 2016



*Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants*



20 October 2016

Reference: GD14/0098 ECM: 1787164
Contact: Patrick Ridgway

Gary Peacock
Outline Planning Consultants Pty Ltd
Suite 18 Pittwater Business Park
5 Vuko Place
WARRIEWOOD NSW 2102

Additional Information Required

Application No: MOD2016/0035
Development Proposal: Modification of DA2014/0098 (increase permitted daily truck numbers)
Property Address: 242 Faheys & Bulgins Road HERNANI NSW 2453
Legal Description: Lot 62 DP 752807 & Lot 63 DP 752807

I refer to your Application, which was received by Council on 17 August 2016.

Further to the preliminary assessment of the Application certain information necessary to make a determination is required.

There has been insufficient Road Impact Assessment conducted along the haul route. The existing development delivers 20 loaded and 20 unloaded trucks per day. A truck and dog commercial vehicle generally have a total weight of 48 tonnes with 33 tonnes payload.

The submitted TIA (Traffic Impact Assessment) utilised the data used in the previous TIA; The data was taken in 2010 and no intersection assessments have been conducted to quantify the impact of the proposal. According to the previous Traffic Impact Assessment the following parameters have been provided:-

Existing

Background Traffic	= 27 vpd (vehicles per day)
Haul Traffic	= 40 vpd
Staff Movement	= 15 vpd
<u>Miscellaneous movements</u>	<u>= 5 vpd</u>
Total	= 87 vpd

Proposed

Background Traffic	= 27 vpd
Haul Traffic	= 132 vpd
Staff Movement	= 15 vpd
<u>Miscellaneous movements</u>	<u>= 5 vpd</u>
Total	= 179 vpd

ESA (Equivalent Standard Axles) Calculation

Existing

AADT	= 87 vpd
Commercial Vehicle	= $40/87 \times 100 = 46\%$
ESA:CV ratio	= 1.3 (derived from DTMR Pavement Design
Manual) Existing ESA	= $87 \text{ vpd} \times 46\% \times 365 \text{ days/year} \times 1.3$
	= <u>18,989.49 ESA/year</u>

Proposed

AADT	= 179 vpd
Commercial Vehicle	= $132/179 \times 100 = 74\%$
ESA:CV ratio	= 1.3 (derived from DTMR Pavement Design
Manual) Existing ESA	= $179 \text{ vpd} \times 74\% \times 365 \text{ days/year} \times 1.3$
	= <u>62,852.27 ESA/year</u>

There is an increase of 43,862.78 ESA/year or 231% increase onto the haul route.

Accordingly, Council, pursuant to Clause 54 of the Environmental Planning and Assessment Regulation 2000 requests that the following information be provided within 21 days of the date of this letter:

The applicant is to amend the submitted Traffic Impact Assessment to include:

- *a road pavement impact assessment (RIA) along the haul route, and*
- *an intersection analysis of the Bald Hills Road and Waterfall Way intersection utilising the current data.*

The TIA including the RIA must generally be in accordance with RMS Guide to Traffic Generating Development and AUSTROADS Guide to Traffic Management Part 12: Traffic Impacts of Development.

Should the information not be provided within the specified period, it will be taken that the information will not be provided and Council will determine the application.

You may submit a written request to Council to extend the period to provide the information if there are good reasons why further time is required.

If you require further information please contact Pat Ridgway of Council's Environment, Development and Regulated Services section on 66450288 between 8.30 am and 11.00 am.

Yours faithfully,



Pat Ridgway
Senior Development Planner



ITEM 14.048/18 See Page 6 of 12
Address:-
StreetWise Road Safety &
Traffic Services Pty Ltd
PO BOX 1395
Port Macquarie NSW 2444

Contact:-

Craig Nethery ☎ 0412 009 558

✉ craig@streetwisersa.com.au

Andy Davis ☎ 0422 011 353

✉ andy@streetwisersa.com.au

Clarence Valley Council

Locked Bag 23

GRAFTON NSW 2460

Ref: GD14/0098 ECM: 1787164

Attention: Pat Ridgeway

Re: Sheridans Quarry – Request for additional information

I refer to your request for additional information in regard to traffic volumes and upgraded intersection at Waterfall Way.

1. Proposed haulage road volumes

Council's assumption that the applicant plans to increase volumes by 231% is incorrect. The quarry operator is currently limited to extracting 198,000 tonnes per annum, and is not planning to increase this amount. He simply wishes to occasionally increase daily haulage movements to better service the Pacific Highway upgrade projects.

The operator is not proposing any increase in the previously approved total haulage movements per annum. The proposed changes therefore will not have any additional impacts on the upgraded Bald Hills Road.

It should also be noted that the previously approved Traffic Impact Assessment (by RoadNet) stated that the existing haulage route, including Faheys & Bulgins Road, Cornells Road and Hernani – Bald Hills Road has adequate capacity to cater for at least 150 vehicles per day. Austroads guidelines indicate the existing road formation of the haul route can cater for up to 500 vehicles per day.

2. Waterfall Way intersection

The original DA conditions required an upgrade of the Bald Hills Road – Waterfall Way intersection to cater for the increase in traffic due to the quarry activities. The intersection design was approved by both Council and the RMS, and with the layout suitable for all turning movements and pavement design to RMS standards.

RoadNet's TIA discussed the relatively low traffic volumes on both Waterfall Way and Bald Hills Road, and determined a basic rural intersection (BAR) was required. As discussed above, there will be no change to the average and annual traffic volumes through the intersection, and therefore no upgrade of the intersection required. The recently upgraded intersection also has adequate capacity to cater for the occasional increase in daily movements.

Should you wish to discuss the above details or require further information, please contact myself on 0422 011 353 or andy@streetwisersa.com.au

Regards,



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants

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28 October 2016

General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Council Ref: DA 2014/0098

By email

Attention: Mr Patrick Ridgway, Senior Development Planner

Dear Sir,

COUNCIL REQUEST FOR ADDITIONAL INFORMATION, s.96 APPLICATION SHERIDAN'S HARD ROCK QUARRY, No.242 FAHEYS & BULGINS ROAD, HERNANI NSW

Outline Planning Consultants Pty Ltd acts for Sheridan's Hard Rock Quarry Pty Ltd, who operate an existing, Council-approved quarry on Lot 62 & 63 in Deposited Plan 752807, No. 242 Faheys & Bulgins Road, at Hernani, west of Dorrigo. I refer to your email dated 21 October 2016 and Council's letter dated 20 October 2016 attached, seeking further additional information.

The request for additional information appears to stem from an assessment by Council's Development Engineer that concludes that there will be a claimed "increase of 43,862.78 ESA/year or 231% increase onto the haul route" arising from the s.96 application. Based on this (erroneous) assumption, the quarry would be transporting $198,000 + 231\% \times 198,000$ tonnes per annum = 655,363 tonnes per annum of quarry material. In fact, this is simply not the case. This conclusion is based on the erroneous assumption that the quarry operation, as proposed to be modified, will be generating an average of 66 quarry loads per day. A more careful reading of the s.96 application, as submitted, will show that this is clearly not the case, as clarified in the following.

Your attention is drawn to the following salient points:

1. No change is proposed in ESAs over any one year- the total number of quarry trucks generated being limited by the limit on annual production i.e. 198,000 tonnes per annum (which will not change). The s.96 modification merely seeks to increase the peak number of quarry trucks on any one day in order to meet periodic peak demand for quarry products and to provide for more flexibility in truck numbers during these peak times. However, there is no change proposed in the number of quarry trucks (or total ESAs) travelling along the haul route in any one year. Our SEE report and the Streetwise traffic reports make this abundantly clear. Council's Development Engineer has misread or misunderstood our reports (and the proposed s.96 modification) in this regard.

2. Similarly, and as to the intersection, this was also previously assessed and found to be capable of accommodating the traffic flows proposed. [NOTE: The intersection was built to RMS specifications, to a higher standard than that required by Council] The proposed minor increase in local road volumes will not change the intersection layout required- refer also to advice by Streetwise, to be sent under separate cover.



Quarry Update: Sheridan's Hard Rock Quarry No.242 Faheys
& Bulgins Road, Hernani, NSW

3. Council's letter states that it seeks the information relying on clause 54 of the EP&A Regulation 2000, which applies to development applications lodged. Leaving that aside, and in any case, Council is no doubt aware that any request for information that may be sought under clause 54 of the EP&A Regulation is also linked to the provisions of clause 109 of the EP&A Regulation which stops time running under clause 113 of the EP&A Regulation for a nominated time while the request for additional information remains unanswered- more commonly known as "stop the clock".

Clause 109(2) allows such a request if the relevant request is made within 25 days of lodgement of any application. The s.96 application was lodged with Council on 17 August 2016, some 63 days ago. [NOTE: this period is even longer having regard for the fact that the same s.96 application was lodged on 29 June 2016 and was not withdrawn until 55 days later- again, without any comments from Council engineering about perceived increases in ESAs per annum arising from the application] As such, Council's request for additional information would appear to have been made outside of the statutory 25 days, thus falling outside of the scope of it's power under clauses 54 and 109 of the EP&A Regulation to request additional information and to activate the relevant "stop the clock" provisions.

Moreover, and related to the above, we believe that Council has had more than ample time to identify all relevant issues, and question the procedural fairness in Council now seeking additional advice and documentation at this late juncture in the DA process. In coming to this conclusion we rely on the authority contained in the recent decision of the NSW Court of appeal in *Warkworth Mining Limited v Bulga Milbrodale Progress Association Inc* [2014] NSWCA 105 at paras [35], [37], [39] and [40].

Section 79C(1)(b) and (c) of the EP&A Act 1979 requires an engagement by Council with the subject matter in the s.96 application so that likely impacts can be properly understood and assessed: *Weal v Bathurst City Council* [2000] NSWCA 88; (2000); and *Centro Properties Limited v Hurstville City Council* [2004] NSWLEC 401.

From the above, it is concluded that Council's Development Engineer has not properly understood the nature of the proposed s.96 modification. The s.96 application seeks no change to truck numbers (and ESAs) over any one year- the total number of trucks limited by the restriction on total production permitted at the quarry ie. 198,000 tonnes per annum. No increase is sought in this level of annual quarry production.

Accordingly, having regard for the above, please be advised that no further particulars will be provided (or are, in fact, required to be provided) to Council on the above traffic issue raised by Council engineering.

Now that this matter has now been clarified as set out in the above, we request that Council now assess the s.96 application as proposed without further delay.

If you have any queries please do not hesitate to contact the writer direct on telephone: 02 9262 3511.

Yours sincerely

GARY PEACOCK (BTP UNSW)
DIRECTOR



Outline Planning Consultants
Town Planners & Project Managers

■ ATTACHMENT E

Advice to Clarence Valley Council dated 15 September 2016



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants



ABN: 58 151 721 989

315 Donellans Rd Hernani 2453

PH: (02) 66576088

Fax: 66576190

Mob: 042757619

15th September 2016

The General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Council Ref: DA2014/0098

By email

Attention: Mr Patrick Ridgway, Council Town Planner

Dear Sir,

APPROVED QUARRY, LOT 62 & 63 DP 752807, No. 242 FAHEYS & BULGINS ROAD, HERNANI, NSW

As Council may be aware, construction of the three passing bays along our quarry haul route should be finished by about the end of September 2016, satisfying all Council engineering requirements associated with our development consent issued by Council in September 2014 (DA2014/0098).

An updated quarry plan of management has been completed (Condition 4) and sent to Council and the EPA in late 2014, following the grant of the DA2014/0098. In any case, we have today been advised by our town planner, Gary Peacock, that a further copy has been emailed to you today. Because of the above no updated quarry plan of management has been prepared until we formally activate the consent.

We are aware that the consent is not activated until the above is completed and that we formally advise Council that our earlier consent is formally surrendered (Condition 3 of the development consent).

On behalf of Sheridan's Hard Rock Quarry we wish to formally advise Council that, subject to the construction of the passing bays, we wish to surrender Development Consent DA201/0358.

If you have any queries in the first instance please call our town planner, Gary Peacock on 02 9262 3511.

Yours faithfully

A handwritten signature in black ink that reads 'G Sheridan'.

Graham Sheridan
Sheridan's Hard Rock Quarry

■ ATTACHMENT F

Offer to maintain/upgrade haul route March 2016, with additional details provided by consulting engineers Geoff Slattery & Associates March 2017



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants

9 March 2016



ABN: 58 151 721 989

315 Donellans Rd Hernani 2453

PH: (02) 66576088

Fax: 66576190

Mob: 042757619

The General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

By email

Attention: Mr Renan Solatan & Mr Tim Jenkins, Council Engineering

Dear Sir,

**PROPOSED ROADWORKS ON APPROVED QUARRY HAUL ROUTE: EXISTING HARD ROCK QUARRY,
LOT 62 & 63 DP 752807, No. 242 FAHEYS & BULGINS ROAD, HERNANI, NSW**

I refer to our joint inspection of the approved quarry haul with Council Engineer Mr Renan Solatan and our traffic consultant Mr Craig Nethery on 5th February 2016.

As Council is aware, Sheridan's Hard Rock Quarry quarry expansion was approved by the JRPP at its meeting held on 21 August 2014, with the Development Consent issued by Clarence Valley Council on 10th September 2014.

The roads and traffic impact assessment report, prepared by traffic consultant Mr Craig Nethery, RoadNet and dated 14th March 2014, found that the existing quarry haul route could satisfactorily accommodate the proposed quarry expansion without the necessity of any further upgrades to the quarry haul route. The RoadNet report is referred to in Condition 19 of the Development Consent.

However, and despite the recommendations made in the RoadNet report referred to above, Condition 35 of the Development Consent requires additional road works to be undertaken.

Following our on-site inspection of the haul route on 5th February 2016 it was agreed that the only outstanding works required to satisfy Condition 35 was the construction of three (3) passing bays along Bald Hills Road- no further works required as a result of the recent upgrading of the haul route by Sheridan's Hard Rock Quarry on Cornells/Faheys/Bulgin Roads, signed off at the time by Council engineer Mr Jim Spencer.

In addition to construction of the three passing bays referred to above, Sheridan's Hard Rock Quarry wishes to upgrade the quarry haul route on a progressive basis at no cost to Council, including but not limited to the following:

- Sealing of the remainder of the haul route.
- Restoration of existing road verges along Bald Hills Road.
- Sealing of an additional 1m width of road either side of Bald Hills Road.

Refer to accompanying plans prepared by traffic consultant Mr Craig Nethery of Streetwise Road Safety & Traffic Services Pty Ltd.

The plans are considered to be self-explanatory and the works proposed capable of being easily implemented in accordance with the details provided- this level of detail considered adequate for such a minor rural road system.

Reiterating, all of the works are to be progressively undertaken by Sheridan's Hard Rock Quarry as time, funds and availability of manpower and materials allows.

Moreover, it will be Sheridan's Hard Rock Quarry that will be responsible for repairing these works (within say a 2 year defects liability period) if there is any evidence of pavement failure and the like.

With the exception of the three passing bays, none of the other road works that we are proposing are required as a condition of the Council Development Consent.

These are works that Sheridan's Hard Rock Quarry wishes to undertake, in the interests of:

- Making the quarry haul route even safer, for residents as well as for the quarry operation.
- Improving overall residential amenity in terms of air quality and traffic noise.
- No upfront capital expenditure required by Clarence Valley Council. Sheridan's Hard Rock Quarry will undertake the capital works proposed.
- Less maintenance costs to Council, as the haul road is progressively sealed.

It is understood that Council Engineer Mr Tim Jenkins and Phil Davids have advised Sheridan's Hard Rock Quarry in writing that Council is amenable to the above proposal.

Clearly, Council Engineering will have oversight of the road works, to ensure that the road works are to an acceptable standard. To date, the road works undertaken have been considered to be satisfactory from Council's perspective, following inspections by Council officers. Sheridan's Hard Rock Quarry wishes that this spirit of cooperation will continue into the future in implementing the above road works program, with the minimum of unnecessary "red tape" or delays.

Provided that the above arrangements are to Council's satisfaction, the first tranche of road works ie. the three new passing bays, can proceed in a timely manner.

We await Council's confirmation of the above. Please contact me at the earliest to discuss.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'G Sheridan', written in a cursive style.

Graham Sheridan
Sheridan's Hard Rock Quarry

(Attachments)

Geoff Slattery and Partners

Engineering Consultants Pty Ltd

T/F Slattery Family Trust No. 2 ABN 65 097 037 221

192 Pacific Highway, Coffs Harbour
P.O. Box 8090, Coffs Harbour, N.S.W., 2450

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Email: g_slattery@bigpond.com

Geoff Slattery B.E. (Hons), M.I.E. (Aust)

SHERIDANS QUARRY

PUBLIC ROAD MAINTENANCE PROPOSAL

1. GENERAL

Sheridans Quarry is located off Cornells Road, Hernani.

The quarry operates as a road base and hard rock quarry under Clarence Valley Council Consent 2014/0098.

2. PUBLIC ROAD ACCESS

Access to the quarry from Waterfall Way (RMS controlled) is via:

- Bald Hills – Hernani Road (Bitumen sealed),
- Cornells Road (Gravel formation), and
- Faheys and Bulgins Road (Gravel formation).

3. EXISTING ROAD CONDITIONS

3.1 Bald Hills – Hernani Road

The road is an existing rural road constructed to a general standard of:

- 3.5 to 4.0 bitumen seal,
- Shoulders varying 1.0 to 1.5, and
- Table drains where required.

Flexible pavement for the road has a varying depth of road base but generally in the range of 150mm to 200mm.

The road has been operational in this formation for an extended period of time.

3.2 Cornells Road

The road is an existing rural road constructed to general standard of:

- 4.0 gravel pavement,
- 1.0 shoulders, and
- Table drains where required.

The gravel pavement formation on this road is not known, however in the past has been subject to various maintenance grading and pavement material addition.

4. MAINTENANCE REQUIREMENTS

Maintenance of the rural roads is recommended to be generally in accordance with RMS Specific M3 “Routine Services”.

Specific items are detailed further.

4.1 Maintenance Objectives

Pavement

- a) Rectify defects in a timely fashion so as to minimise the rate of pavement deterioration and to provide safe, consistent driving conditions,
- b) Ensure that the road remains open to traffic by providing safe conditions under the prevailing weather conditions, traffic volume, and speed zone.
- c) Protect the structural integrity of road pavements.

Drainage

- a) Maintain surface drains to ensure free and unrestricted flow of road water away from the pavement.
- b) Maintain drainage structures such as pipes and culverts to ensure the free and unrestricted flow of water,
- c) Maintain subsoil drains to ensure the free and unrestricted flow of water,
- d) Maintain stormwater devices to ensure the free flow of surface water into the drainage system and conveyance to the designated point of discharge.

4.2 Road Asset Inspections

For the full length of the haul route inspections are required to be undertaken on a regular basis plus on a response to issues.

Inspections to be:

i. Routine

Routine inspections to be undertaken of the roads on a regular monthly basis.

ii. Prolonged Weather Events

Inspections to be undertaken following periods of high rainfall or prolonged rainfall in addition to the routine inspections.

iii. Prompted Inspection

Following a complaint or advice from Council specific issues are to be inspected within 1 day of the advice.

4.3 Inspection Requirements

Inspection reporting to include:

- a) Record all defects and incidents including those reported by the public,
- b) Identify hazards, and
- c) Provide for tracking compliance with the inspection.

Record all defects. Isolated defects are to be individually recorded. Where a large number of defects exist in close proximity, it is acceptable to record those defects as a group rather than individually. In all cases, the location reference is to be suitably detailed to enable defects to be easily located. Maintain a Maintenance Defects Register (MDR) of defects that do not need immediate action.

4.4 Defect Definitions

i. Potholes

- 1. The plan dimension of a pothole or delamination must not exceed: 400mm
- 2. The depth of a pothole or delamination must not exceed: 50mm

ii. Pavement Edge

- | | |
|--|-------|
| 1. An edge break must not encroach into the travelled way by more than: | 150mm |
| 2. The depth of an edge drop-off within 0.5 metres of the travelled way must not exceed: | 60mm |

iii. Pavement Surface and Patching

- | | |
|--|-----------------|
| 1. The height/depth of an abrupt discontinuity (< 20 square metres) must not exceed: | 50mm |
| 2. The height/depth of bump or depression (< 20 square metres) must not exceed: | 60mm |
| 3. The height/depth of a shove or isolated rutting (< 20 square metres) must not exceed: | 70mm |
| 4. The area of pavement affected by water ponding must not exceed: | 5 square metres |
| 5. Any pavement defect causing concentrated water flow that results in an increased risk of aquaplaning must not exceed: | 5 square metres |

4.5 Repairs

All repairs are to be undertaken as soon as practical however for potholes and shoulder defects repairs should be undertaken within 5 working days.

For pavement surface defects, rutting, ponding, etc. the repair methodology and timing is to be discussed with Council. Surface repairs are to be undertaken with a specific traffic control plan for the section.

5. RECORDS

Records are to be kept of all inspections to include as a minimum:

- Date,
- Type of inspection (routine, weather event, or complaint),
- Findings,
- Photographs as appropriate, and
- Action if required.

Records are to be kept of all repairs to include as a minimum:

- Date,
- Inspections report reference,
- Type of repair,
- Photographs as appropriate, and
- Traffic control implemented.

All records are to be collated on a six month basis and copies provided to Council for their use and filing.

■ ATTACHMENT G

Further details provided by Sheridan's Hard Rock Quarry dated June 2017



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants



ABN: 58 151 721 989

315 Donellans Rd Hernani 2453

PH: (02) 66576088

Mob: 0418 895 266

Email: Adrian.shortt@hotmail.com

5/6/2017

To: Garry Peacock

RE: Sheridans Hard Rock Quarry Truck Movements

Dear Garry

As requested, please find supporting information regarding Sheridans truck movements for 14th of December 2016.

Sheridans carted material to 7 customers this day, with a total number of 18 loads logged leaving the quarry.

The last load was loaded at 3:40pm so as to not run into the 15-minute window I need to give the School Bus that travels the Bald Hills Road section of our Haul Road, typically at 4:05pm Daily.

As stated in our Driver Code of Conduct, if a driver does happen to see the school bus, (should it run early or late) they are to stop and give way until the bus has passed. This is a very unusual occurrence as the Bus only takes about 2 minutes maximum to travel the short distance of Bald hills Rd that is part of our Haul Road.

Drivers are also required to report their access and egress on Bald Hills Rd, Cornells Rd and when entering the Quarry gate (via UHF Radio). They also report any vehicle they see along the Haul Road, or any vehicle they believe will be in the vicinity of the Haul when another truck is in the area.

I must note that I was driving one of the trucks that was observed entering the haul road, as stated in Pat Ridgeway's letter. At no time did I hear over the UHF Radio that this vehicle was traversing the Cornells section of the haul road nor at any time did I hear any driver notify of a School bus in the area. I can only assume that no truck passed the School Bus within the 2-minute period it took to travel the Bald Hills section of the Haul Road. I also find it strange that the bus was allegedly travelling Bald Hills Rd at 3:50 pm (a whole 15 mins early).

I can advise that there were a number of Truck & Dogs also in the area on those days and throughout the month of December that were unrelated to Sheridans haulage operations. These trucks (operated by others) usually cart a variety of materials such as Agricultural Lime from Attunga and Mulch Material from Coffs Harbour's Biomas Facility, to land holders along the Bald Hills Rd, Cornells Rd and throughout the Hernani district. There was also the usual number of Cattle Trucks and General Haulage Trucks that frequent the road regularly.

Periodically we sub-contract a number of these trucks to cart Sheridans quarry materials. A number of people have at times, associated these trucks with carting Sheridans products, when in actual fact they have been assigned jobs that have nothing to do with our operations in any way.

We Did not keep easily accessible records for deliveries in 2015 (times and delivery locations) as we were still in the developmental stages of our current record keeping. I can however advise that on Thursday 12th November 2015, we logged 15 trucks leaving the Quarry.

On Monday 23rd November 2015, I logged 19 trucks out and on Monday 30th November 2015, 16 trucks carted material out the gate. Once again, I recall a number of other trucks hauling Agricultural products around the area, as they do every year over the warmer months with increased frequency.

Yours Sincerely



Adrian Shortt

Product Sales & Distribution

Sheridans Hard Rock Quarry Pty Ltd

Ph 0418 895 266

A	B	C	D	E
Date	Customer	Destination	Time Loaded	Truck ID
14/12/16	RMS	Platform Rd	7:32am	Blue Dog
14/12/16	RMS	Platform Rd	7:37am	BDE 003
14/12/16	RMS	Platform Rd	7:43am	Robo's
14/12/16	Livil Logic	Harden St	7:59am	Inglis
14/12/16	Cancelled	Tipped Off	8:10am	BSO 1KI
14/12/16	RMS	Platform Rd	8:16am	BSO 1KL
14/12/16	ADC	Bullock Crk	8:29am	Crampo
14/12/16	SRS	Macksville OC3	10:16am	Simon M
14/12/16	RMS	Platform Rd	10:42am	Blue Dog
14/12/16	Hamos	Uralla	10:50am	BDE 003
14/12/16	RMS	Platform Rd	11.03am	Robo's
14/12/16	Hillier	Ebor	3:03pm	Inglis
14/12/16	Boral Asphalt	Coffs	3:09pm	Crampo
14/12/16	Harry	Dorigo	3:14pm	Simon M
14/12/16	Boral Asphalt	Coffs	3:21pm	Blue Dog
14/12/16	Boral Asphalt	Coffs	3:29pm	BDE 003
14/12/16	Civil Logic	Harden St	3:34pm	BS 01 KL
14/12/16	Boral Asphalt	Coffs	3:40pm	BU 47 VK



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9 February 2018

General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Council Ref: MOD2016/0035
(Modification of DA 2014/0098)

By email

Attention: Patrick Ridgway, Senior Development Planner

Dear Sir,

FOLLOW UP TO MEETING RE: DRAFT VOLUNTARY PLANNING AGREEMENT COUNCIL & SHERIDAN'S HARD ROCK QUARRY, FAHEYS & BULGINS ROAD, HERNANI, NSW

This letter follows our meeting held with senior Council planners and engineers with our client, Mr Graham Sheridan, at Council's Grafton offices on 29 January 2018, to discuss various provisions of our draft Voluntary Planning Agreement (VPA). The meeting was a timely one, given that the VPA exhibition period has recently finished. We believe that the meeting was a positive and most constructive one, and thank Council officers for their inputs. The above meeting has enabled the parties the opportunity to discuss and to 'fine-tune' various provisions of the VPA prior to any final VPA document then being tabled before local councillors for determination.

Outline Planning Consultants Pty Ltd act on the instructions of our clients, Sheridan's Hard Rock Quarry Pty Ltd. The following sets out the points discussed and agreed actions or positions adopted at the meeting regarding various clauses of the draft VPA. The following also includes follow up advice as per the undertakings given at that meeting by both parties. In this regard we would be most grateful for Council's promised follow up advice on a number of points, identified below.

Defects Liability Period:

Council officers seek to have reference to a defects liability period in the VPA, to ensure that there is an opportunity for any defects to be remedied, once the quarrying has ceased.

Council officers agreed to consider an alternative clause, used in another similar VPA (Bago Quarry) applying to a quarry owned by clients of Outline Planning Consultants.

This provision allows the quarry operator to give notice 6 months prior to the agreement being terminated, thus enabling Council to identify any defects and to enforce the carrying out of any works (called 'Pre-Termination Work') to correct defects during the remaining life of the VPA. **This then becomes the de facto defects liability period.**

In fact, these provisions are already contained in our existing draft VPA under clause 4.3(e) and (f).

This alternate provision is considered to be more to Council's (the ratepayers) advantage, rather than be exposed to the potential legal and other problems associated with enforcing the rectification of defects after the expiry of the voluntary planning agreement.

Relating to this issue, the further amendments required relate to the insertion of a suitable definition into the draft VPA- something that Council officers previously identified.

The definition of 'Rectification Notice', applicable to any Council notice of defect issued during the Pre-Termination Period, is proposed to be redrafted to be more explicit in its intentions, as follows:

"Rectification Notice means a notice in writing from Council that identifies a defect in any Work that requires rectification of the defect by the Developer, such notice to:

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

Clause 4.3(d):

As explained at our meeting, we are keen to ensure that this is an agreement that is based on Council acting reasonably and using its best endeavours to ensure that the agreement is implemented.

In particular, the agreement is predicated on the ability of our client to be able to carry out the maintenance work under the *Roads Act 1993*- hence the wording proposed in clause 4.3(d). If the client cannot carry out the maintenance of the road under the *Roads Act* then there is no operable agreement. For these reasons, we are insistent that this clause remain in the agreement.

At the meeting Council officers indicated that they understood our intentions in this regard, and were happy to consider modified legal wording that achieves the same outcome. We look forward to receipt of this modified wording.

Clause 4.3(f)(iv):

As per our verbal advice at the meeting, we agree to Council's suggestion.

Clause 4.3(g):

As per our verbal advice at the meeting, we agree to Council's suggestion to retaining a requirement for a security and a clause to this effect being inserted into the VPA.

Clause 4.3(h)(i):

As per our verbal advice at the meeting, we agree to Council's suggestion to insert reference to both the landowner and the developer into this sub clause:

"The Developer and the landowner are to permit the Council... etc etc."

Clause 4.3(k):

As per our verbal advice at the meeting, we agree to Council's suggestion to delete this subclause.

Clauses 5 & 6:

At our meeting Council officers agreed to retain these clauses.

Clause 7:

At our meeting we explained that the security sought was for maintenance purposes only, not for any capital expenditure.

Council officers undertook to come back to us with a revised security amount together with the logic behind such a figure.

Clause 8.1(b)(i):

At our meeting we agreed that there should not be any ambiguities in the agreement, however, this clause is unambiguous in its intentions, restating the legal entitlement for the client to take this matter to the Land & Environment Court if deemed necessary. To exclude this provision from the agreement would be to deny our client the legal right to do so.

[NOTE: This was a standard clause included in the Bago quarry VPA, accepted by the relevant local council and the JRPP].

At our meeting Council planner Patrick Ridgway undertook to seek further advice from Council's legal representative on this subclause.

Clause 10:

As per our verbal advice at the meeting, we agreed to Council's suggestion to have the VPA registered.

Clause 11:

As per our verbal advice at the meeting, we agreed to Council's suggestion to have a biannual review.

Road Maintenance, Requirements and Commitments:

All parties agreed that any road maintenance standards set down in the VPA should be specific, and not open to multiple interpretation or ambiguity.

As per verbal advice at the meeting, we believe that our Maintenance Schedule contains explicit road maintenance standards and requirements that probably are more stringent than the standards that Council seeks to include- our standards being RMs standards. These tougher road standards considered to be more to Council's (and the ratepayers) advantage, rather than to the vaguer requirement suggested by Council.

We also expressed concern with the proposal by Council to insert a clause that required the Developer to "...repair and restore the road to the condition in which it was upgraded to at the commencement of the quarry operations approved under MOD2016/0035 or as otherwise agreed with Council." In practice, the adoption of the VPA will result in the condition of the haul route being progressively improved over that now existing. This clause, if adopted, could result in whole sections of improved road being torn up to achieve what will be- in effect to achieve a road being to a lower standard. We are sure that this is not Council's intended outcome. As such, this clause should be deleted.

Our existing draft VPA contains adequate provisions to give expression to the Maintenance Schedule and we do not see the need for any other provisions being added in this regard. For instance, the wording suggested by Council does not provide any certainty that Our client will be able to carry out the maintenance works under the *Roads Act* as set out in the VPA- a fundamental pre-condition to the ability of the VPA to be implemented.



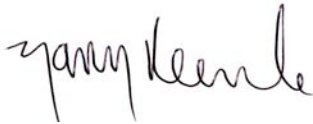
Council officers undertook to come back to us on the above.

Trusting that the above clarifies the matter.

We look forward to Council's advice on the above at the earliest, so that we can agree on a final VPA prior to it going before the elected councillors for adoption.

Should you have any queries please do not hesitate to contact the writer.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gary Peacock', written in a cursive style.

GARY PEACOCK, DIRECTOR



Comments to proposed draft VPA and maintenance specification schedule.

The following comments are made in regard to the proposed draft Voluntary Planning Agreement (VPA) lodged under MOD2016/0035 (to modify DA2014/0098). The terms template VPA refers to Council's draft template and draft VPA to the draft VPA provided by Outline Planning Consultants.

As previously advised by Council, while Council staff are not opposed to supporting a VPA for maintenance of the haul roads, the necessity to enter into a VPA is questioned. Council staff are prepared to enter into a maintenance agreement in similar terms to that that other maintenance agreements have been entered into with other quarry operators/owners. It is noted that Council staff have delegation to enter into the maintenance agreement and it can be enforced through the imposition of a condition of consent. Council staff do not have delegation to enter into a maintenance agreement under a VPA.

Draft Voluntary Planning Agreement

Definition of defects liability period has been deleted.

The template VPA has a defects liability period of 12 months from practical completion of work. The removal of this presents a risk to Council as it differs to the usual period required and there is no recourse to have any damages rectified by Council on the practical completion of work. This is not agreed the definition should be included in the a draft VPA.

Clause 4: the draft VPA has omitted monetary contributions on the basis that Sheridan's will carry out maintenance work on the haulage route for the life of the approved quarry at its cost during the term.

It is agreed that the Contribution for payment of a road maintenance contribution be removed from the consent in lieu of the maintenance agreement under the draft VPA.

With the removal of the road maintenance contribution the onus will be on the Applicant to maintain the public road to an acceptable level of service. In this regard Council as the Road Authority must ensure that all works are completed to Council's satisfaction. See further comments under 4.3(g).

Clause 4.3(d): this clause provides that Council will use "reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of these obligations." It is problematic for Council to bind itself to using reasonable endeavours to ensuring that third parties do not interfere with the performance of Council's obligations. This clause needs renegotiating or removal.

Clause 4.3(f)(iv): It is desirable from Council's perspective to include that Council could recover its costs, including legal costs (this also applies to other provisions in the contract relating to the recovery of costs by Council). This needs further negotiation.

Clause 4.3(g): the draft VPA has removed the provisions relating to 'failure to carry out work' (clause 4.3(e) of the template VPA). Importantly the provision for Council to be able call up the security (referred to in Clause 7 of the draft agreement) is removed. The notice period of 28 days should remain as well as the ability for Council to carry out and complete the work and recover costs incurred by Council for completing any works. This is not agreed and needs further negotiation.

Clause 4.3(h)(i): this clause should provide for the landowner to provide its consent given that the developer and the landowner are not one and the same. This needs amending.

Clause 4.3(k): this clause is in terms more favourable to the landowner/developer as it removes the requirement for the developer to bear Council's costs in relation to variation of the work and provides a requirement that Council not unreasonably delay or withhold its approval of a variation to the maintenance specification under the agreement. This is not agreed and needs further negotiation.

Clauses 5 & 6: These relate to the compulsory acquisition of land and the dedication of land respectively. These have been omitted in the draft VPA.

Clause 7: The security provided to Council for the roads used on the haul route at clause 7.1(a) is \$10,000.00.

The bond/security amount in the VPA will need to reflect the cost recovery of reinstating the roads used for the haul route should the applicant/developer be required to walk away from the consent/agreement.

The amount proposed for security for 10.2km of road is not sufficient to cover the cost for Council to reinstate the road, should it be required to do so. Perhaps a quote could be obtained from an independent quantity surveyor to do a cost recovery analysis?

Clause 8.1(b)(i): once the indemnity provisions have been finalised, further consideration will need to be given to this subclause to ensure that express provisions of the contract do not contradict one another or that no patent ambiguity is created by conflicting terms.

Clause 10: this provides that the draft VPA, if executed by the parties as drafted, would not be registered. If registered, the VPA would "run with the land" and bind subsequent landowners. This is not agreed, the agreement should be registered.

Clause 11: the draft VPA includes a biannual review period. This timeframe is considered appropriate.

The Schedules: the draft VPA includes a Quarry Haulage Map and a Maintenance Schedule.

Comments are provided below under the heading 'road maintenance'.

I note that Council's VPA template is based on the template included in NSW Planning & Environment's Draft Practice Note on Planning Agreements. Clause 23 of the template VPA and the draft VPA is the "no fetter" provision. It is suggest that this clause be more specific. For example:

- a. Nothing in this Deed is to be construed as requiring an Authority (including the Council) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:
 - i. Nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory direction or duty; and
 - ii. Nothing in this Agreement imposes any obligation on an Authority to:
 - 1. Grant any Development Consent; or
 - 2. Exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

Road Maintenance

The following 'maintenance requirements and commitments' and 'the works and specified roads' are to be included in the draft VPA and/or Maintenance Specification Schedule.

Maintenance of the haul route 'generally in accordance with RMS Specific M3 "Routine Services"' is not agreed. The maintenance standard is to be in accordance with the document "Unsealed roads manual – Guidelines to good practice" by ARRB Group and Council's NRDC Guidelines for the sealed sections of road.

Faheys and Bulgins Road is to be included in the roads to be maintained.

Maintenance requirements and commitments

Council shall:

- Permit the Applicant to use the haul roads subject to the terms in the schedule to this agreement.
- Permit the Applicant to undertake road maintenance activities in accordance with a Roads Act approval. A Roads Act approval will be issued by Council as the Road Authority on the haul roads and reviewed on an annual basis.
- Inspect the work as part of its normal inspection program to determine a severity index for any failures. Failures that exceed the acceptable risk level for the haul roads must be reported to and repaired by the Applicant.
- Notify the Applicant when work is required to enable the Applicant to arrange for the work to be undertaken having regard to the safety of the public. In the case of public safety Council may carry out rectification works at full cost to the Applicant to the extent necessary to make works safe without notice.

The Applicant shall:

- Agrees, at its own cost, to maintain the works required to satisfy the Notice of Determination issued under DA2014/0098 (as modified). The works are to be completed to the satisfaction of Council.
- Carry out routine inspections of the haul roads on a regular monthly basis.
- Inspect the haul roads following periods of high rainfall or prolonged rainfall in addition to the routine inspections.
- Inspect the haul roads following a complaint or advice from Council within 1 day of the advice.
- Carry out maintenance works on the haul roads for the life of the quarry in lieu of the payment of Section 94 contributions for road maintenance as specified in this schedule.
- Only haul materials as approved under Development Consent DA2014/0098 (as modified).
- Conduct the quarry operation so as to minimise interference with other traffic on the haul road and in accordance with the truck driver code of practice for Sheridans Hard Rock Quarry.
- Notify Council 5 working days prior to any work being undertaken by the Applicant that will require temporary closure of the road or an interruption to traffic.
- Ensure that the roads are maintained to a standard (the 'specified standard') specified in:
 - Any Road Act Approval issued over the specified haul roads.
 - The document "Unsealed roads manual – Guidelines to good practice" by ARRB Group (for unsealed sections)
 - NRDC standards (for sealed sections)
- Repair culverts, road guide posts or other structures damaged as a result of the haulage from Sheridans Quarry as soon as practical unless written advice to the contrary is issued by Council.

- Upon completion of quarry operations, repair and restore the road to the condition in which it was upgraded to at the commencement of the quarry operations approved under MOD2016/0035 or as otherwise agreed with Council.
- For the term of the agreement must provide to Council annually:
 - a. A current public liability insurance certificate for \$10 million.
 - b. A Safety Management Plan including:
 - Work Place Risk Analysis
 - Safe Method Statements
 - c. A Traffic Management Plan

The works and Specified Roads

Maintenance will be over of the public roads of the haul route known as:

- 1. Part of Bald Hills Road from the intersection with Waterfall Way to Cornells Road**
 - Rural road constructed to 3.5m to 4.0m bitumen seal,
 - Shoulders varying 1.0m to 1.5m,
 - Table drains where required,
 - The flexible pavement of the road has a varying depth of road base but generally in the range of 150mm to 200mm
- 2. Part of Cornells Road from the intersection of Bald Hills Road to Faheys Bulgins Road**
 - Rural road constructed to 6.0 gravel pavement with sealed sections fronting residential properties,
 - 1.0m shoulders,
 - Table drains and culverts where required,
 - The gravel pavement formation on this road is unknown. Future maintenance works are to be in accordance with the document “Unsealed roads manual – Guidelines to good practice” by ARRB Group.
- 3. Part of Faheys and Bulgins Road from Cornells Road to the property entrance of Lot 62 DP752807.**
 - Rural road constructed to 5.5m to 7.0m wide gravel pavement
 - Shoulders 1m
 - Table drains and culverts where required
 - The gravel pavement formation on this road is unknown. Future maintenance works are to be in accordance with the document “Unsealed roads manual – Guidelines to good practice” by ARRB Group.
- 4. Road signage and Vegetation Management along the haul route.**



PLANNING AGREEMENT

between

Clarence Valley Council
ABN 85 864 095 684
(Council)

and

[Insert name of Party 2]
ABN ### ### ###
(Developer)

and

[Insert name of Party 3]
ABN ### ### ###
(Landowner)

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SUMMARY

Council:

Name: **Clarence Valley Council**
 Address: 2 Prince Street
 GRAFTON NSW 2460
 Telephone: +61 2 6643 0200
 Facsimile: +61 2 6642 7647
 Email: council@clarence.nsw.gov.au
 Representative: *[Insert details]*

Developer:

Name: *[Insert name]*
 Address: *[Insert details]*
 Telephone: *[Insert details]*
 Facsimile: *[Insert details]*
 Email: *[Insert details]*
 Representative: *[Insert details]*

Landowner:

Name: *[Insert name]*
 Address: *[Insert details]*
 Telephone: *[Insert details]*
 Facsimile: *[Insert details]*
 Email: *[Insert details]*
 Representative: *[Insert details]*

Guidance note: insert all of the applicable details of the Developer and Landowner above. Delete this guidance note once drafted.

Land:

See definition in clause 1.1.

Development:

See definition in clause 1.1.

Development Contribution:

See Schedule 1.

Application of section 94, section 94A and section 94EF of the Act:

See clause 2.

Date

This **Agreement** is made on *[Insert details]*

20*[Insert details]*

Parties

Clarence Valley Council ABN 85 864 095 684 of 2 Prince Street, Grafton NSW 2460 (**Council**)

[Insert name of Party 2] ABN ### ### ## of *[Insert details]* (**Developer**)

[Insert name of Party 3] ABN ### ### ## of *[Insert details]* (**Landowner**)

Guidance note: insert the names of the other Parties to this Agreement above and on the front title page. Delete this guidance note once drafted.

Background

A *[Insert]*.

Guidance note: provide a detailed and specific background to the Development and this Agreement. Delete this guidance note once drafted.

B The Developer is the owner of the Land.

Guidance note: if the Developer is not the owner of the Land, the landowner should also be a party to this Agreement (see above) and the Background should reflect this position. Delete this guidance note once drafted.

C The Developer has lodged a Development Application with the Council relating to the Development.

Guidance note: this, and some other provisions of this Agreement, would need to be amended if this Agreement was to be entered into in connection with a change to an Environmental Planning Instrument, for example, as referenced in section 93F(3)(b)(i) of the Act. Delete this guidance note once drafted.

D The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Agreed Terms

1 Interpretation

1.1 Definitions

In this Agreement:

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

Agreement means this planning agreement between the Parties and includes any schedules, annexures and appendices to this planning agreement.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited;
- (f) Westpac Banking Corporation; or
- (g) another financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.

Business Day means a day on which the banks are open for business in Sydney, New South Wales other than a Saturday, Sunday or bank or public holiday.

Defects Liability Period means 12 months from practical completion of Work undertaken under this Agreement.

Development means *[Insert]*.

Guidance note: provide a detailed and specific description of the development to which this Agreement relates. The description may refer to a particular development application which could be included in an Annexure to this Agreement as applicable. Delete this guidance note once drafted.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit or any combination of them, to be used for, or applied towards a Public Purpose.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

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

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

Land means *[Insert]*

Guidance note: provide a detailed description of the Land to which this Agreement relates. This may be done by reference to a certificate of title, lot and deposited plan details and/or by the inclusion of a Map or other appropriate means. The description of the Land may also be included as an Annexure to this Agreement where a Map is used. In this case, 'Map' should be a definition. Delete this guidance note once drafted.

Map means the Map attached to this Agreement at Schedule *[Insert]*.

Guidance note: where a Map is used to define the Land, and incorporated as a Schedule to this Agreement, the above definition and Schedule reference should be included. Delete this guidance note once drafted.

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

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purpose stated in section 93F(2) of the Act.

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

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Security means a Bank Guarantee, or an insurance bond or other form of security to the satisfaction of the Council.

Summary means the summary which forms part of this Agreement.

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

1.2 Construction

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the other;
 - (ii) the singular includes the plural and vice versa;
 - (iii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
 - (iv) time is a reference to local time in Sydney, New South Wales;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) 'include' or 'including' are to be taken to mean without limitation;
 - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
 - (viii) a \$ value relating to a Development Contribution is a reference to the value exclusive of GST;
 - (ix) a person includes an individual, a firm, a body corporate, a trust, a joint venture, an unincorporated association, partnership and a government or statutory body, authority or agency;
 - (x) a party includes the party's legal personal representatives (including executors), administrators, servants, agents, successors, permitted assigns and substitutes (including by way of novation);
 - (xi) any statute, ordinance, legislation, code or other law includes subordinate legislation (including regulations) and other instruments under it and includes consolidations, amendments, re-enactments, modifications or replacements of any of them;
 - (xii) any agreement, deed or document is a reference to that agreement, deed or document as amended, novated, supplemented or replaced; and
 - (xiii) a recital, clause, part, schedule, annexure or attachment is a reference to a recital, clause, part, schedule, annexure or attachment of or to this

Agreement and references to this Agreement include any recital, clause, part, schedule, annexure or attachment.

- (b) if a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (c) all amounts under this Agreement are payable in Australian dollars;
- (d) a clause of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision of this Agreement;
- (e) all schedules, appendices, annexures and attachments form part of this Agreement;
- (f) a guidance note is not an operative term of this Agreement; and
- (g) if the day for doing an act, matter or thing under this Agreement is not a Business Day, the act, matter or thing is to be done instead on the next Business Day.

1.3 Headings

Headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation.

2 Planning agreement

2.1 Under the Act

This Agreement is a planning agreement within the meaning of Subdivision 2 of Division 6 of Part 4 of the Act and makes possible the provision of the Development Contribution for the Public Purpose.

2.2 Application of this Agreement

This Agreement applies to the Land and to the Development.

2.3 Application of section 94, section 94A and section 94EF of the Act

This Agreement *[excludes/does not exclude]* the application of section 94 of the Act to the Development.

Guidance note: this Agreement may partially exclude the application of section 94 of the Act. Delete whichever is appropriate above. Delete this guidance note once drafted.

Guidance note: If the application of section 94 of the Act is to be partially excluded from the Agreement only, particulars of the exclusion must be provided.

If the Agreement does not completely exclude the application of section 94 then, in accordance with section 93F(3)(e) of the Act, a further clause must be included to specify whether any benefits under this Agreement should be taken into consideration when determining a contribution under section 94 of the Act in relation to the Development. Delete this guidance note once drafted.

This Agreement *[excludes/does not exclude]* the application of section 94A of the Act to the Development.

Guidance note: this Agreement may partially exclude the application of section 94A of the Act. Delete whichever is appropriate above. Delete this guidance note once drafted.

If section 94 or 94A are to be excluded by this Agreement, the Council cannot impose a condition of development consent in respect of that development under either of those sections (except in respect of the application of any part of those sections that is not excluded by this Agreement).

This Agreement *[excludes/does not exclude]* the application of section 94EF of the Act to the Development.

Guidance note: this Agreement may partially exclude the application of section 94EF of the Act. Delete whichever is appropriate above. Delete this guidance note once drafted.

This Agreement must not exclude the application of s94EF without the approval of the Minister or a development corporation designated by the Minister to give such approval – see s93F(5A) of the Act.

2.4 Further agreements

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

2.5 Commencement

This Agreement commences on the day on which it is executed by the Parties.

3 Surrender of appeal rights

The Developer is not to commence or maintain or cause to be commenced or maintained, any court proceedings challenging the validity of a Development Consent relating to the Development or an approval under section 96 of the Act to modify a Development Consent relating to the Development to the extent that the consent or approval relates to the existence of this Agreement.

4 Development contributions

4.1 Provision of development contribution

- (a) The Developer is to make Development Contributions to the Council in accordance with Schedule 1 of this Agreement and otherwise to the satisfaction of the Council.
- (b) The Council is to apply each Development Contribution made by the Developer towards the Public Purpose for which it is made or in accordance with clause (c).
- (c) The Council may apply a Development Contribution toward a public purpose other than the Public Purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose.

4.2 Monetary development contribution

- (a) A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the total amount of the contribution in

cash, by bank cheque or by electronic funds transfer of cleared funds into a bank account nominated by the Council.

- (b) The Developer is to give the Council not less than two Business Days written notice of its intention to pay a monetary Development Contribution.
- (c) The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 4.2(b), has given the Developer a tax invoice for the amount of the Development Contribution.
- (d) The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice.
- (e) The Parties agree that if the Developer does not pay a monetary Development Contribution on or before the due date for payment, that monetary Development Contribution:
 - (i) is to be a debt due and payable by the Developer to the Council on demand;
 - (ii) may be recovered in a court of competent jurisdiction in New South Wales;
 - (iii) is to incur interest from the due date for payment until the amount is paid in full;
 - (iv) interest is calculated for this clause at a rate which is the aggregate of 4% per annum and the cash rate quoted by the Reserve Bank of Australia; and
 - (v) interest accrues and is charged from day to day and is calculated on the basis of days elapsed and a 365 day year.

4.3 Work

(a) Carrying out of Work

Any Work that is required to be carried out by the Developer is to be carried out:

- (i) in accordance with any specification of the Council, any relevant development consent and any other applicable law;
- (ii) in a proper and workmanlike manner;
- (iii) with due expedition and without delay; and
- (iv) otherwise to the satisfaction of the Council.
- (b) If the Council requires the Developer to modify the design or specifications which relate to a Work, for approval by the Council, the Developer is to pay the costs associated with the preparation and approval of the modifications to the design or specifications.
- (c) **Completion of Work**
 - (i) A Development Contribution comprising the carrying out of Work is made when the Council accepts the completion of the Work in accordance with this clause.

- (ii) When the Developer reasonably considers that Work is complete, the Developer is to give to the Council a notice in writing to that effect.
- (iii) The Council is taken to have accepted the completion of Work:
 - (A) where the Council has not given the Developer a Rectification Notice under clause 4.3(d) at the expiration of the Defects Liability Period; or
 - (B) where the Council has given the Developer a Rectification Notice, on the date which the Council notifies the Developer in writing that the defect has been rectified to the Council's satisfaction.
- (iv) On completion of the Work, the Council accepts responsibility for the Work subject to anything to the contrary in this Agreement.

(d) **Rectification of Work**

- (i) During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- (ii) The Developer is to comply with a Rectification Notice at its cost according to the terms of the Rectification Notice and to the satisfaction of the Council.
- (iii) If the Developer breaches the Rectification Notice, the Council may rectify the defect described in the Rectification Notice and may recover its costs as a debt due in a court of competent jurisdiction in New South Wales.

(e) **Failure to carry out Work**

- (i) If the Council considers that the Developer is in breach of any obligation to carry out Work, the Council may give the Developer a notice requiring:
 - (A) all work to cease immediately except in relation to the restoration of the breach; and
 - (B) the breach to be put right to the Council's satisfaction.
- (ii) The Council is not required to give the Developer a notice under this clause as a pre-condition to calling up the Security referred to in clause 7.
- (iii) A notice given under this clause is to allow the Developer a period of not less than 28 days or such further period as the Council considers reasonable to remedy the breach.
- (iv) Without limiting any other rights the Council has to enforce this Agreement, the Council may, if the Developer does not comply with a notice under this clause:
 - (A) call upon the Security referred to in clause 7; and
 - (B) carry out and complete the Work, the subject of the Developer's breach.
- (v) If clause 4.3(e)(iv)(B) applies:

- (A) the Developer must allow the Council its officers, employees, agents and contractors to enter the Land for the purposes of completing the relevant work; and
- (B) the costs which the Council incurs in completing the work shall be a debt due and payable by the Developer to the Council within 28 days of the production of valid tax invoice and may be recovered as a debt in a court of competent jurisdiction in New South Wales.
- (vi) Clause 9 of this Agreement does not prevent a notice being given under clause 4.3(e)(i) and clause 9 does not apply to a notice in the situation relating to the giving of that notice, and any process commenced under clause 9 ceases to apply when such a notice is given.

(f) **Access to the Land**

- (i) The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.

Guidance note: if the Developer is not the owner of the Land the subject of this Agreement, then this clause should be amended accordingly.

- (ii) The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work that is required to be carried out on such land or to perform any other obligation imposed on the Developer by this Agreement.

Guidance note: this clause does not prevail over the need for the Developer to obtain separate approval from the Council, or another relevant authority, under any other law which may apply to the entry or occupation of (or Work on) any land owned or controlled by the Council, eg. approval under the *Roads Act 1993* (NSW).

(g) **Safety of people and protection of property**

- (i) The Developer is to comply with the law including, but not limited to, the *Work Health and Safety Act 2011* (NSW).
- (ii) The Developer is to ensure as far as reasonably practicable in relation to the carrying out of any Work that:
 - (A) all necessary measures are taken to protect people and property; and
 - (B) unnecessary interference with the passage of people and vehicles is avoided; and
 - (C) nuisances and unreasonable noise, emissions, odours and disturbances are prevented.

(h) Damage and repairs to work

The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work is completed.

(i) Variation of work

- (i) Work is not to be varied by the Developer, unless:
 - (A) the Parties agree in writing to the variation; and
 - (B) any consent or approval required under the Act or any other law is first obtained; and
 - (C) the Developer bears all of the Council's costs of, and incidental to, agreeing to and approving the variation.
- (ii) A variation may relate to any matter in relation to the Work that is dealt with by this Agreement.

(j) Indemnity and insurance

- (i) The Developer indemnifies the Council, its employees, officers, agents, contractors, workers and any volunteers of the Council against all losses, damages, costs, (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may arise directly or indirectly from the carrying out of any Work and the performance by the Developer of any other obligation under this Agreement.
- (ii) 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 until the Work is completed in accordance with this Agreement:
 - (A) 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;
 - (B) public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (C) workers compensation insurance as required by law; and
 - (D) any other insurance required by law.
- (iii) If the Developer fails to comply with this clause, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
 - (A) by calling upon the Security provided by the Developer to the Council; or
 - (B) recovery as a debt in a court of competent jurisdiction.

- (iv) The Developer is not to commence any Work unless it has first provided to the Council satisfactory evidence of the insurances specified in this clause.

5 Compulsory acquisition of land required for work

- (a) This clause applies if, by *[insert date]*, the Developer is not the owner of all of the Land on which the Work will be carried out.
- (b) By no later than *[insert date]*, the Developer is to notify the Council in writing that it is not the owner of all of the Land on which the Work referred to in Schedule 1 is to be carried out.
- (c) Written notification by the Developer under this clause is to be accompanied by Security separate to the Security referred to in clause 7 in the amount of *[\$[insert amount]]*.
- (d) As soon as practicable after receipt of the written notification and the Security, the Council is to consider whether it should acquire the land not owned by the Developer on which the Work will be carried out.
- (e) Within 14 days of receipt of a written notification from the Council, the Developer is to pay to the Council:
 - (i) the Council's costs, as specified in the notice, of and incidental to any acquisition of land not owned by the Developer on which the Work is to be carried out; and
 - (ii) the amount of any compensation paid by the Council in relation to the acquisition.
- (f) The Developer is not to question the amounts specified in a notice referred to in this clause.
- (g) The Council may call on the Security if the Developer is in breach of this clause.
- (h) The Council is to return the Security to the Developer if the Developer complies with the written notice from the Council for payment in clause 5(e).
- (i) The Council may recover in any court of competent jurisdiction, the difference between its costs of and incidental to the acquisition together with the amount of any compensation paid by the Council in relation to that acquisition and the amount of Security.

6 Dedication of land

- (a) A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when the Council is given an instrument in registrable form under the *Real Property Act 1900* to transfer the title to the land to the Council.
- (b) For these purposes:
 - (i) the Developer is to give the Council an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated;

- (ii) the Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer;
 - (iii) the Developer is to lodge the instrument of transfer for registration at Land and Property Information within 7 days of receiving it executed from the Council; and
 - (iv) the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer.
- (c) If the Developer is to dedicate land to the Council on which the Developer is also required to carry out Work under this Agreement, the Developer is to give to the Council the instrument of transfer of the land not later than 7 days after the Work is completed in accordance with this Agreement.

Guidance note: if portion only of a piece of land is to be dedicated to the Council, rather than a whole allotment, further steps may need to be undertaken and additional or alternative clauses incorporated into this Agreement. For example, such clauses may relate to subdivision and the preparation of plans capable of registration at Land and Property Information in accordance with the *Conveyancing Act 1919* (NSW).

7 Security

7.1 Provision

- (a) Upon the execution of this Agreement by all of the Parties, the Developer is to provide the Council with Security in the amount of \$[insert amount].
- (b) The Parties agree that sufficient Security has been provided and that suitable enforcement of this Agreement, for the purposes of section 93F(3)(g) of the Act, does not require the provision of further Security.
- (c) Security may be in the form of any of:
 - (i) a Bank Guarantee;
 - (ii) an insurance bond; or
 - (iii) such other security as agreed in writing between the Parties.
- (d) The amount of the Security is to be indexed quarterly in accordance with the Consumer Price Index (All Groups – Sydney) as provided by the Australian Bureau of Statistics and the Developer must ensure that the Security at all times equals the indexed amount.

7.2 Release and return

- (a) The Council may but is not obliged to progressively release and return the Security to the Developer as and when the Developer performs its obligations to the satisfaction of the Council but may only do so if:
 - (i) the Council considers that the remaining amount of the Security is adequate having regard to the Developer's remaining obligations; and
 - (ii) the Developer is not in breach of this Agreement at the time the Security is returned.

- (b) The Council is to return the Security or any remaining part of it to the Developer within 28 days of the completion by the Developer of all of its obligations to the satisfaction of the Council.
- (c) At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security required to be provided under this clause.
- (d) On receipt of replacement Security, the Council is to release and return to the Developer, the Security which has been replaced.

7.3 **Call up**

- (a) The Council may call up the Security if it considers that the Developer has breached this Agreement. This applies in addition to any rights of enforcement and dispute resolution in clauses 8 and 9.
- (b) If the Council calls up the Security, it may use the amount so paid in satisfaction of any costs incurred by it in remedying the Developer's breach being:
 - (i) the reasonable costs of the Council's servants, agents and contractors;
 - (ii) all fees and charges necessary or reasonably incurred in order to have the Work carried out, completed or rectified;
 - (iii) all legal costs and expenses reasonably incurred.
- (c) If the Council calls up the Security it may, by notice in writing, require the Developer to provide as further Security, an amount that, when added to any unused portion of the existing Security, does not exceed the amount of the Security initially provided under this Agreement.

8 Enforcement

8.1 **Enforcement**

- (a) Without limiting any other remedy available, the Parties may enforce this Agreement in any court of competent jurisdiction in New South Wales.
- (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;
 - (ii) the Council from exercising any function under the Act or any other law relating to the enforcement of any aspect of this Agreement.

9 Dispute resolution

9.1 **In accordance with this clause**

- (a) Any dispute between the parties relating to this Agreement is to be dealt with in accordance with clause 9 of this Agreement.

9.2 **Claim notice**

- (a) If a Party claims that a dispute exists under this Agreement (**Claimant**), that Party is to give written notice to the other Party, or Parties, (**Respondent**) setting out the matters in dispute and nominating a person as its representative to negotiate the dispute on the Claimant's behalf (**Claim Notice**).

9.3 **Response to claim notice**

- (a) Within seven days of receipt of the Claim Notice, the Respondent is to notify the Claimant of its representative to negotiate the dispute on the Respondent's behalf.

9.4 **Negotiation of dispute**

- (a) The nominated representatives of each of the Parties are to:
 - (i) meet to negotiate the dispute in good faith within seven days after service by the Respondent of notice of its representative on the Claimant; and
 - (ii) use all reasonable endeavours in an attempt to settle or resolve the dispute with 14 days after the nominated representatives have met.
- (b) If the dispute is not resolved within 14 days after the nominated representatives have met, any Party may give written notice to the other Party calling for a determination of the dispute by:
 - (i) if the Parties agree that the dispute relates to a technical matter only which requires technical expertise to resolve, technical expert determination in accordance with clause 9.5; or
 - (ii) mediation in accordance with clause 9.6 (**Dispute Notice**).

9.5 **Technical expert determination**

- (a) If a party gives a Dispute Notice calling for the dispute to be resolved by technical expert determination:
 - (i) the dispute is to be determined by an independent technical expert in the appropriate field:
 - (A) agreed upon and jointly appointed by the Parties; or
 - (B) in the event that no agreement is reached or appointment made within 14 days, appointed on application of a Party by the then current Chair of the Institute of Arbitrators and Mediators Australia (NSW Chapter);
 - (ii) the independent technical expert is to be appointed in writing and their terms of appointment must not be inconsistent with this clause;
 - (iii) the determination of the dispute by the independent technical expert will be made as an expert and not as a arbitrator and will be in writing and contain the reasons for the determination;
 - (iv) the independent technical expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rule of natural justice;

- (v) the Parties will each bear their own costs in connection with the independent technical expert process and determination, together with an equal share of the expert's fees and costs; and
- (vi) any determination made by an independent technical expert under this clause is final and binding upon the Parties except:
 - (A) in the case of fraud or misfeasance by the expert;
 - (B) where the determination of the expert is greater than *[Insert \$ amount]*; or
 - (C) where the determination is in respect of or relates to termination or purported termination of this Agreement by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence legal proceedings after the expert has given their decision.

9.6 Mediation

- (a) If a Party gives a Dispute Notice to the other Party calling for the dispute to be mediated:
 - (i) the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales; and
 - (ii) the Parties are to request that the President of the Law Society of New South Wales, or the President's nominee, select a mediator.

9.7 Legal proceedings

If any dispute is not resolved by mediation in accordance with clause 9.6 or by technical expert determination in accordance with clause 9.5, 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.

9.8 No merger

This clause 9 does not merge on completion or termination of this Agreement.

10 Registration of this Agreement

The Parties agree to *[register this Agreement subject to obtaining the agreement of the persons specified in section 93H of the Act] [not to register this agreement for the purposes of section 93H of the Act]*.

Guidance note: delete that part of the above sentence which does not apply to this Agreement. Include the other part. Delete this guidance note once drafted.

11 Review of this Agreement

- (a) The Developer is to provide a report to the Council not later than each annual anniversary of this Agreement detailing the performance of its obligations under this Agreement.

Guidance note: this requirement is recommended. However, the requirement to report may be deleted from this clause. Delete this guidance note once drafted.

- (b) The Parties agree to use all reasonable endeavours to review this Agreement every *[insert time period, commonly in years]*, and otherwise if either party is of the opinion that any change of circumstance has occurred, which materially affects the operation of this Agreement.
- (c) To address any matter arising from a review under this clause, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- (d) A failure by a Party to participate in or take action requested by the other Party as a consequence of a review is not a dispute for the purposes of clause 9 and is not a breach of this Agreement.

12 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this clause is of no effect.
- (c) The Developer may not transfer, assign or dispose of its obligations under this Agreement to a transferee unless:
 - (i) the transferee delivers to the Council a deed signed by the transferee under which it agrees to comply with all the obligations of the Developer under this Agreement as if it were joined as a party to this Agreement in the place of the Developer (including obligations which arose before the transfer, assignment or disposition);
 - (ii) any default by the Developer under any provision of this Agreement has been remedied by the Developer or waived by the Council on such conditions as the Council may determine; and
 - (iii) the Council consents to the transfer, assignment or disposition.

13 GST

13.1 Definitions

- (a) In this clause:
 - (i) capitalised words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - (ii) unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

13.2 GST

- (a) Subject to clause 13.2(c) 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.

- (b) Clause 13.2(a) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- (c) No additional amount shall be payable by the Council under clause 13.2(a) 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.
- (d) If there are Supplies for Consideration which are not amounts of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:
 - (i) 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; and

Guidance note: the Parties could require an independent and suitably qualified valuer or quantity surveyor (as applicable) to independently determine the GST inclusive market value. Delete this guidance note once drafted.

- (ii) that any amounts payable by the Parties in accordance with this clause to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- (e) Within seven days of a Supply being made under this Agreement, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Law.
- (f) No payment of any amount pursuant to this clause 13, 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 of Adjustment Note as the case may be to the recipient.
- (g) 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.
- (h) This clause 13 continues to apply after expiration or termination of this Agreement.

14 Notices

- (a) Any notice, consent, information, application, request or communication relating to this Agreement is given or made only if it is in writing and sent in one of the following ways:
 - (i) personally delivered at the Party's address in the Summary;
 - (ii) posted to the Party at its address in the Summary;
 - (iii) faxed to that Party at its fax number in the Summary; or
 - (iv) emailed to the email address in the Summary.
 - (b) Any notice, consent, information, application, request or communication is given if it is:
-

- (i) delivered, when it is left at the relevant address;
 - (ii) sent by post, two Business Days after it is posted;
 - (iii) sent by fax when the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
 - (iv) emailed when it has left the sender's server and there is no failure notification to the sender.
- (c) A Party must give the other Party three Business Days notice of a change of its address, fax number or email.
 - (d) If a Party gives the other Party notice of a change of address, fax number or email, any notice, consent, information, application, request or communication relating to this Agreement is given or made only if it is made in accordance with clause 14(a) and delivered, posted or faxed to the newest address, fax number or email.

15 Approvals and consent

Except as otherwise set out in this Agreement, a Party may give or withhold an approval or consent in that Party's absolute discretion and subject to any conditions determined by the Party and a Party is not obliged to give its reasons.

16 Costs

- (a) The Developer is to pay to the Council a contribution of \$500.00 towards the Council's costs of preparing a template planning agreement upon which this Agreement is based within 7 days of a written request by the Council for such payment.
- (b) The Developer is also to pay, the Council's reasonable costs of preparing, negotiating, executing, stamping and entering into this Agreement within 7 days of a written request by the Council for such payment.
- (c) The Developer is to pay to the Council the Council's costs of monitoring, reviewing and enforcing this Agreement within 7 days of a written request by the Council for such payment.

17 Entire agreement

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) No Party can rely on an earlier document or anything said or done by another Party, or by a director, officer, agents or employee of that Party, before this Agreement was executed, except as permitted by law.

18 Further acts

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.

19 Notations on section 149(2) planning certificates

The Parties agree that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land.

Guidance note: this clause may be deleted if it is not applicable. Delete this guidance note once drafted.

20 Governing law and jurisdiction

- (a) This Agreement is governed by the law of New South Wales.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) The Parties are not to object to the exercise of jurisdiction by the courts of New South Wales.

21 Change of Law

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.

22 Joint and individual liability and benefits

Except as otherwise set out in this Agreement:

- (a) any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually; and
- (b) any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23 No fetter

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

24 Representations and warranties

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.

25 Severability

- (a) 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.
- (b) 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 to be affected.

26 Modification

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.

27 Waiver

- (a) A Party does not waive a right or remedy under this Agreement if it:
 - (i) fails to exercise the right or remedy;
 - (ii) only partially exercises the right or remedy; or
 - (iii) delays in exercising the right or remedy.
- (b) A Party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
 - (i) further exercise the right or remedy; or
 - (ii) exercise another right or remedy.
- (c) A waiver is effective only if in writing and signed by the Party to be bound and to the extent that is expressly stated in writing.

28 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.

29 Counterparts

This Agreement may consist of a number of counterparts and, if so, then the counterparts taken together constitute this Agreement.

30 Explanatory note relating to this agreement

- (a) The Annexure A contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.

- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Annexure A is not to be used to assist in construing this Agreement.

Schedule 1

Development Contributions (Clause 4)

Column 1 Contribution Item	Column 2 Public Purpose	Column 3 Nature, Value and Manner of the Contribution	Column 4 Specific Timing of the Contribution
Monetary Contributions			
Dedication of Land			
Carrying out of Work			
Other material public benefits			

Guidance note: the contents of Schedule 1 will necessarily be determined by the exact nature of the Development Contribution the subject of this Agreement. Delete this guidance note once drafted.

Execution

Executed as an agreement on *[Insert details]*

20*[Insert details]*

Executed by the **Clarence Valley Council** ABN 85 864 095 684 by its duly appointed officer in the presence of:

Witness

General Manager

Name/Position of Witness
(BLOCK LETTERS)

Name of General Manger
(BLOCK LETTERS)

EXECUTED by *[Insert name of Developer]*
ABN ### ### in accordance with
section 127 of the *Corporations Act 2001*
(Cth):

*Director/*Company Secretary

Director

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

Name of Director
(BLOCK LETTERS)

EXECUTED by *[Insert name of Landowner]*
ABN ### ### in accordance with
section 127 of the *Corporations Act 2001*
(Cth):

*Director/*Company Secretary

Director

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

Name of Director
(BLOCK LETTERS)

Annexure A

(Clause 30)

Explanatory Note (Clause 25E of the Regulation)

Guidance note: the explanatory note is to be prepared jointly with the other Parties proposing to enter into the planning agreement, see: clause 25E(3) of the Regulation. Delete this guidance note once drafted.

Agreement

Under Subdivision 2, Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**)

Parties

Clarence Valley Council ABN 85 864 095 684 of 2 Prince Street, Grafton NSW 2460 (**Council**)

[Insert name of Party 2] ABN ### ### ### of ### ### ### (**Developer**)

[Insert name of Party 3] ABN ### ### ### of ### ### ### (**Landowner**)

Description of the Land to which the Agreement applies

[To be completed]

Description of the proposed Development

[To be completed]

Summary of objectives, nature and effect of the Agreement [clause 25E(a)]

- **Objectives:**

[To be completed]

- **Nature:**

[To be completed]

- **Effect:**

[To be completed]

Assessment of the merits of the Agreement [clause 25E(b)]

- **Assessment of the merits:**

[To be completed]

- **How the Agreement promotes the 'Public Interest' and one or more of the objects of the Act:**

[To be completed]

- **How the Agreement promotes elements of the Council's Charter under section 8 of the *Local Government Act 1993* (NSW):**

[To be completed]

- **The planning purposes served by the Agreement, and how the purpose or purposes are reasonably achieved:**

[To be completed]

- **Whether the Agreement conforms with the Council's Capital Works Program (if any):**

[To be completed]

- **Whether certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is to be issued (if any):**

[To be completed]

Guidance note: a copy of the Explanatory Note must be exhibited with the copy of the proposed Agreement when it is made available for inspection by the public in accordance with the Act. Delete this guidance note once drafted (see: clause 25E(5) of the Regulation).



SHERIDAN'S HARD ROCK QUARRY PLANNING AGREEMENT

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

between

Clarence Valley Council
ABN 85 864 095 684
(**Council**)

and

Sheridan's Hard Rock Quarry Pty Ltd
ABN 58 151 721 989
(**Developer**)

and

Matsid Pty Ltd
ABN 43 040 578 44258
(**Landowner**)

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Schedule 1

Haulage Route Map (clause 4)

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SHERIDAN'S HARD ROCK QUARRY PLANNING AGREEMENT

Summary Sheet

Council:

Name: **Clarence Valley Council**
 Address: 2 Prince Street
 GRAFTON NSW 2460
 Telephone: +61 2 6643 0200
 Facsimile: +61 2 6642 7647
 Email: council@clarence.nsw.gov.au
 Representative: *[Insert details]*

Developer:

Name: Sheridan's Hard Rock Quarry Pty Ltd
 Address: 315 Donellans Road
 HERNANI NSW 2453
 Telephone: 02 66 57 6088
 Facsimile: -
 Email: shrquarry@bigpond.com
 Representative: Graham Sheridan (mobile: 0427 576 198)

Landowner:

Name: Matsid Pty Ltd
 Address: 315 Donellans Road
 HERNANI NSW 2453
 Telephone: 02 66 57 6088
 Facsimile: -
 Email: shrquarry@bigpond.com
 Representative: Graham Sheridan (mobile: 0427 576 198)

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contribution:

See Schedule 1.

Application of section 94, section 94A and section 94EF of the Act:

See clause 2.

Date

This **Agreement** is made on *[Insert details]*

20*[Insert details]*

Parties

Clarence Valley Council ABN 85 864 095 684 of 2 Prince Street, Grafton NSW 2460 (**Council**)

Sheridan's Hard Rock Quarry Pty Ltd ABN 58 151 721 989 of 315 Donellans Road, Hernani NSW 2453 (**Developer**)

Matsid Pty Ltd ABN 43 040 578 44258 of 315 Donellans Road, Hernani NSW 2453 (**Landowner**)

Background

- A The Landowner owns the Quarry land on which the Developer operates a quarry pursuant to an existing Development Consent DA 2014/0098 granted on 21 August 2014.
- B The Developer has subsequently lodged a Section 96(2) application MOD2016/0035 seeking to modify DA 2014/0098 to allow a maximum of 66 loaded trucks per day to use the haul route Monday to Friday and 36 loaded trucks on Saturdays.
- C The Developer has offered to make the Development Contributions in connection with the carrying out of the Development in accordance with this Agreement, namely, to maintain the quarry haul route over the local road system from the quarry entry back to Waterfall Way for the duration of the life of the quarry.
- D The parties have agreed to enter into this Agreement for that purpose.

Agreed Terms**1 Interpretation**

1.1 Definitions

In this Agreement:

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

Approval includes approval under Section 96 of the *Environmental Planning and Assessment Act 1979* (NSW), consent, licence, permission or the like.

Agreement means this planning agreement between the Parties and includes any schedules, annexures and appendices to this planning agreement.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
 - (b) Commonwealth Bank of Australia;
 - (c) Macquarie Bank;
 - (d) National Australia Bank Limited;
-

- (e) St George Bank Limited;
- (f) Westpac Banking Corporation; or
- (g) another financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.

Business Day means a day on which the banks are open for business in Sydney, New South Wales other than a Saturday, Sunday or bank or public holiday.

Commencement date means the date the Approval is granted.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work.

Defects Liability Period [deleted].

Development means *development the subject of the* Section 96(2) application MOD2016/0035.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit or any combination of them, to be used for, or applied towards a Public Purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Agreement for the purposes of s93F(3)(g) of the Act. In the case of this Planning Agreement it specifically means the maintaining of the Quarry Haul Route by the Developer for the life of the quarry.

Defect means anything the adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work.

Dispute means a dispute or difference between the parties under or in relation to this Agreement.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

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

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

Haulage Route Map means the Map attached to this Agreement at Schedule 1.

Land means the Quarry Land and the Quarry Haulage Route.

Maintenance Specification means the specifications in Schedule 2.

Maintenance Work means work to maintain the quarry Haulage Route as described in the Maintenance Specification, to be carried out by the Developer over the life of the quarry operation.

Maintenance Completion Date means the date that is the later of:

- (a) 6 months after the date of the Council's notice in clause???

(b) the date of Council's notice in clause ???

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

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purpose stated in section 93F(2) of the Act.

Quarry means the extractive industry operating on the Quarry Land pursuant to a Development Consent, as may be modified from time to time.

Quarry Land means Lot 62 and 63 in Deposited Plan 752807, Faheys & Bulgins Road, Hernani.

Quarry Haulage Route means the haulage route as described in the Haulage Route Map in Schedule 1 of this Agreement.

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

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Section 96 Application has the same meaning as in the Act.

Section 96 approval has the same meaning as in the Act.

Security means a Bank Guarantee, or an insurance bond or other form of security to the satisfaction of the Council.

Summary means the summary that forms part of this Agreement.

Term means the period beginning on the Commencement date and ending on the maintenance Completion Date, upon notification by the Developer of cessation of quarrying the Quarry Land.

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

1.2 Construction

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the other;
 - (ii) the singular includes the plural and vice versa;
 - (iii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
 - (iv) time is a reference to local time in Sydney, New South Wales;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) 'include' or 'including' are to be taken to mean without limitation;
 - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;

- (viii) a \$ value relating to a Development Contribution is a reference to the value exclusive of GST;
 - (ix) a person includes an individual, a firm, a body corporate, a trust, a joint venture, an unincorporated association, partnership and a government or statutory body, authority or agency;
 - (x) a party includes the party's legal personal representatives (including executors), administrators, servants, agents, successors, permitted assigns and substitutes (including by way of novation);
 - (xi) any statute, ordinance, legislation, code or other law includes subordinate legislation (including regulations) and other instruments under it and includes consolidations, amendments, re-enactments, modifications or replacements of any of them;
 - (xii) any agreement, deed or document is a reference to that agreement, deed or document as amended, novated, supplemented or replaced; and
 - (xiii) a recital, clause, part, schedule, annexure or attachment is a reference to a recital, clause, part, schedule, annexure or attachment of or to this Agreement and references to this Agreement include any recital, clause, part, schedule, annexure or attachment.
- (b) if a word or phrase is defined its other grammatical forms have a corresponding meaning;
 - (c) all amounts under this Agreement are payable in Australian dollars;
 - (d) a clause of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision of this Agreement;
 - (e) all schedules, appendices, annexures and attachments form part of this Agreement;
 - (f) a guidance note is not an operative term of this Agreement; and
 - (g) if the day for doing an act, matter or thing under this Agreement is not a Business Day, the act, matter or thing is to be done instead on the next Business Day.

1.3 Headings

Headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation.

2 Planning agreement

2.1 Under the Act

This Agreement is a planning agreement within the meaning of s93F(1) of the Act and makes possible the provision of the Development Contribution for the Public Purpose.

2.2 Application of this Agreement

This Agreement applies to the Land and to the Development.

2.3 **Application of section 94, section 94A and section 94EF of the Act**

This Agreement *excludes* the application of section 94 of the Act to the Development.

Guidance note: No other contributions to be paid as the Developer will be maintaining the entire length of the quarry haul route back to Waterfall Way

This Agreement *excludes* the application of section 94A of the Act to the Development.

Guidance note: No other contributions to be paid as the Developer will be maintaining the entire length of the quarry haul route back to Waterfall Way

This Agreement *excludes* the application of section 94EF of the Act to the Development.

Guidance note: No other contributions to be paid as the Developer will be maintaining the entire length of the quarry haul route back to Waterfall Way

2.4 **Further agreements**

The Parties may, at any time, enter into agreements relating to the subject matter of this Agreement that they consider necessary or desirable or not inconsistent with this Agreement for the purposes of implementing this Agreement.

2.5 **Commencement**

This Agreement commences on the day on all Parties have executed this Agreement. The Party who executes this Agreement last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

3 **Surrender of appeal rights**

The Developer is not to commence or maintain or 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 Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

4 **Development contributions**

4.1 **Provision of development contribution**

(a) The Developer is to carry out the Maintenance Work on the Haulage Route for the life of the approved quarry at its cost during the Term in accordance with this Deed.

4.2 **Monetary development contribution**

Guidance note: Deleted, as no other contributions to be paid as the Developer will be maintaining the entire length of the quarry haul route back to Waterfall Way

4.3 **Work**

(a) **Carrying out of Work**

Any Work that is required to be carried out by the Developer is to be carried out in accordance with the Maintenance Specification in Schedule??, any

relevant development consent, any relevant Approval and any other applicable law, in a proper and workmanlike manner and in accordance with the Agreement.

- (b) The Council authorises the Developer to enter, occupy or use land owned or controlled by the Council for the purposes of performing its obligations under this Agreement.

(c) **Completion of Work**

Guidance note: Not applicable. The Agreement relates to ongoing maintenance work over the length of the haul route.

(d) **Council's obligations under this Agreement**

- (i) The Council is not to unreasonably delay, hinder or otherwise interfere with the performance of the Developer of its obligations under this Agreement, and to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of these obligations.

(e) **Completion of Maintenance Work**

- (i) The Developer may give the Council written notice of its intention to terminate this Agreement ('Termination Notice').
- (ii) Within 6 months of receipt of the Termination Notice the Council must give written notice to the Developer that it has received the Termination notice and is satisfied that no further extractive industry is or will be carried out on the Quarry Land.
- (iii) Before the Council gives the Developer a notice referred to in sub clause (ii) it may give the Developer a written notice to complete, Rectify or repair any specified part of the Maintenance Work to the reasonable satisfaction of the Council.
- (iv) The Developer, at its own cost, is to promptly comply with a direction referred to in sub clause (iii).
- (v) When the Maintenance Work on any Council owned or controlled land is completed for the purposes of this Agreement, the Developer, without delay, is to remove any equipment from land and make good any damage to the land as a result of that removal, and to leave the land in a neat and tidy state, clean and free of rubbish.

(f) **Rectification of Defects**

- (i) During the Term, the Council may give to the Developer a Rectification Notice if the Work has not been carried out in accordance with the Maintenance Schedule.
- (ii) The Developer is to comply with a Rectification Notice at its cost according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.

- (iii) The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under subclause (1).
- (iv) If the Developer breaches the Rectification Notice, the Council may rectify the defect described in the Rectification Notice and may recover its costs as a debt due in a court of competent jurisdiction in New South Wales.

(g) **Breach of obligations**

- (i) If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give written notice to the Developer specifying the nature and extent of the breach, and requiring the Developer to:
 - (A) Rectify the breach if it reasonably considers it to be 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
- (ii) Specifying the period in which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances

(h) **Access to the Land**

- (i) The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.
- (ii) The Council authorises the Developer to enter, occupy or use land owned or controlled by the Council for the purposes of performing its obligations under this Agreement.

(i) **Safety of people and protection of property**

- (i) The Developer is to comply with the law including, but not limited to, the *Work Health and Safety Act 2011* (NSW).
- (ii) The Developer is to ensure as far as reasonably practicable in relation to the carrying out of any Work that:
 - (A) all necessary measures are taken to protect people and property; and
 - (B) unnecessary interference with the passage of people and vehicles is avoided; and
 - (C) nuisances and unreasonable noise, emissions, odours and disturbances are prevented.

(j) Damage and repairs to work

The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to Maintenance Work from any cause whatsoever which occurs prior to the date on which the Maintenance Work is completed.

(k) Variation to the Maintenance Specification

- (i) The Parties, acting reasonably, may agree in writing to vary the maintenance Specification without the necessity for an amendment to this Agreement.
- (ii) Without limiting sub clause (i) above, the Developer may make a written request to the Council to approve a variation to the Maintenance Specification relating to the carrying out of the Maintenance Work. A variation may relate to any matter in relation to the Work that is dealt with by this Agreement
- (iii) The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under sub clause (ii).
 - (A) [deleted]
- (iv) [deleted].

(l) Indemnity and insurance

- (i) The Developer performs this Agreement at its own risk and its own cost.
- (ii) The Developer releases from the Council from any claim it may have against Council 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.
- (iii) The Developer indemnifies the Council, its employees, officers, agents, contractors, workers and any volunteers of the Council against all losses, damages, costs, (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may arise directly or indirectly from the carrying out of any Work and the performance by the Developer of any other obligation under this Agreement except if, and to the extent that, the claim arises because of the Council's negligence or default.
- (iv) 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 until the Work is completed in accordance with this Agreement:
 - (A) 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;
 - (B) public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (C) workers compensation insurance as required by law; and

- (D) any other insurance required by law.
- (v) If the Developer fails to comply with this clause, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
 - (A) by calling upon the Security provided by the Developer to the Council; or
 - (B) recovery as a debt in a court of competent jurisdiction.
- (vi) The Developer is not to commence any Work unless it has first provided to the Council satisfactory evidence of the insurances specified in this clause.
- (vii) The Developer is to provide to the Council satisfactory written evidence of all the insurances specified in sub clause (iv) on request from the Council from time to time.

5 Compulsory acquisition of land required for work

- (a) [deleted]

6 Dedication of land

- (a) [deleted]

Guidance note: if portion only of a piece of land is to be dedicated to the Council, rather than a whole allotment, further steps may need to be undertaken and additional or alternative clauses incorporated into this Agreement. For example, such clauses may relate to subdivision and the preparation of plans capable of registration at Land and Property Information in accordance with the *Conveyancing Act 1919* (NSW).

7 Security

7.1 Provision

- (a) Upon the execution of this Agreement by all of the Parties, the Developer is to provide the Council with Security in the amount of \$10,000[insert amount].
- (b) The Parties agree that sufficient Security has been provided and that suitable enforcement of this Agreement, for the purposes of section 93F(3)(g) of the Act, does not require the provision of further Security.
- (c) Security may be in the form of any of:
 - (i) a Bank Guarantee;
 - (ii) an insurance bond; or
 - (iii) such other security as agreed in writing between the Parties.
- (d) The amount of the Security is to be indexed quarterly in accordance with the Consumer Price Index (All Groups – Sydney) as provided by the Australian

Bureau of Statistics and the Developer must ensure that the Security at all times equals the indexed amount.

7.2 Release and return

- (a) The Council may but is not obliged to progressively release and return the Security to the Developer as and when the Developer performs its obligations to the satisfaction of the Council but may only do so if:
 - (i) the Council considers that the remaining amount of the Security is adequate having regard to the Developer's remaining obligations; and
 - (ii) the Developer is not in breach of this Agreement at the time the Security is returned.
- (b) The Council is to return the Security or any remaining part of it to the Developer within 28 days of the completion by the Developer of all of its obligations to the satisfaction of the Council.
- (c) At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security required to be provided under this clause.
- (d) On receipt of replacement Security, the Council is to release and return to the Developer, the Security which has been replaced.

7.3 Call up

- (a) The Council may call up the Security if it considers that the Developer has breached this Agreement. This applies in addition to any rights of enforcement and dispute resolution in clauses 8 and 9.
- (b) If the Council calls up the Security, it may use the amount so paid in satisfaction of any costs incurred by it in remedying the Developer's breach being:
 - (i) the reasonable costs of the Council's servants, agents and contractors;
 - (ii) all fees and charges necessary or reasonably incurred in order to have the Work carried out, completed or rectified;
 - (iii) all legal costs and expenses reasonably incurred.
- (c) If the Council calls up the Security it may, by notice in writing, require the Developer to provide as further Security, an amount that, when added to any unused portion of the existing Security, does not exceed the amount of the Security initially provided under this Agreement.

8 Enforcement

8.1 Enforcement

- (a) Without limiting any other remedy available, the Parties may enforce this Agreement in any court of competent jurisdiction in New South Wales.
 - (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;
-

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

9 Dispute resolution

9.1 In accordance with this clause

- (a) Any dispute between the parties relating to this Agreement is to be dealt with in accordance with clause 9 of this Agreement.

9.2 Claim notice

- (a) If a Party claims that a dispute exists under this Agreement (**Claimant**), that Party is to give written notice to the other Party, or Parties, (**Respondent**) setting out the matters in dispute and nominating a person as its representative to negotiate the dispute on the Claimant's behalf (**Claim Notice**).

9.3 Response to claim notice

- (a) Within seven days of receipt of the Claim Notice, the Respondent is to notify the Claimant of its representative to negotiate the dispute on the Respondent's behalf.

9.4 Negotiation of dispute

- (a) The nominated representatives of each of the Parties are to:
 - (i) meet to negotiate the dispute in good faith within seven days after service by the Respondent of notice of its representative on the Claimant; and
 - (ii) use all reasonable endeavours in an attempt to settle or resolve the dispute with 14 days after the nominated representatives have met.
- (b) If the dispute is not resolved within 14 days after the nominated representatives have met, any Party may give written notice to the other Party calling for a determination of the dispute by:
 - (i) if the Parties agree that the dispute relates to a technical matter only which requires technical expertise to resolve, technical expert determination in accordance with clause 9.5; or
 - (ii) mediation in accordance with clause 9.6 (**Dispute Notice**).

9.5 Technical expert determination

- (a) If a party gives a Dispute Notice calling for the dispute to be resolved by technical expert determination:
 - (i) the dispute is to be determined by an independent technical expert in the appropriate field:
 - (A) agreed upon and jointly appointed by the Parties; or
 - (B) in the event that no agreement is reached or appointment made within 14 days, appointed on application of a Party by the then current Chair of the Institute of Arbitrators and Mediators Australia (NSW Chapter);

- (ii) the independent technical expert is to be appointed in writing and their terms of appointment must not be inconsistent with this clause;
- (iii) the determination of the dispute by the independent technical expert will be made as an expert and not as a arbitrator and will be in writing and contain the reasons for the determination;
- (iv) the independent technical expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rule of natural justice;
- (v) the Parties will each bear their own costs in connection with the independent technical expert process and determination, together with an equal share of the expert's fees and costs; and
- (vi) any determination made by an independent technical expert under this clause is final and binding upon the Parties except:
 - (A) in the case of fraud or misfeasance by the expert;
 - (B) where the determination of the expert is greater than *[Insert \$ amount]*; or
 - (C) where the determination is in respect of or relates to termination or purported termination of this Agreement by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence legal proceedings after the expert has given their decision.

9.6 Mediation

- (a) If a Party gives a Dispute Notice to the other Party calling for the dispute to be mediated:
 - (i) the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales; and
 - (ii) the Parties are to request that the President of the Law Society of New South Wales, or the President's nominee, select a mediator.

9.7 Legal proceedings

If any dispute is not resolved by mediation in accordance with clause 9.6 or by technical expert determination in accordance with clause 9.5, 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.

9.8 No merger

This clause 9 does not merge on completion or termination of this Agreement.

10 Registration of this Agreement

The Parties agree to *[not to register this agreement for the purposes of section 93H of the Act]*.

Guidance note: delete that part of the above sentence which does not apply to this Agreement. Include the other part. Delete this guidance note once drafted.

11 Review of this Agreement

- (a) The Developer is to provide a report to the Council not later than each annual anniversary of this Agreement detailing the performance of its obligations under this Agreement.

Guidance note: this requirement is recommended. However, the requirement to report may be deleted from this clause. Delete this guidance note once drafted.

- (b) The Parties agree to use all reasonable endeavours to review this Agreement every 2 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, which materially affects the operation of this Agreement.
- (c) To address any matter arising from a review under this clause, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- (d) A failure by a Party to participate in or take action requested by the other Party as a consequence of a review is not a dispute for the purposes of clause 9 and is not a breach of this Agreement.

12 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this clause is of no effect.
- (c) The Developer may not transfer, assign or dispose of its obligations under this Agreement to a transferee unless:
 - (i) the transferee delivers to the Council a deed signed by the transferee under which it agrees to comply with all the obligations of the Developer under this Agreement as if it were joined as a party to this Agreement in the place of the Developer (including obligations which arose before the transfer, assignment or disposition);
 - (ii) any default by the Developer under any provision of this Agreement has been remedied by the Developer or waived by the Council on such conditions as the Council may determine; and
 - (iii) the Council consents to the transfer, assignment or disposition.

13 GST

13.1 Definitions

- (a) In this clause:
 - (i) capitalised words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and

- (ii) unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

13.2 GST

- (a) Subject to clause 13.2(c) 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.
- (b) Clause 13.2(a) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- (c) No additional amount shall be payable by the Council under clause 13.2(a) 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.
- (d) If there are Supplies for Consideration which are not amounts of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:
 - (i) 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; and

Guidance note: the Parties could require an independent and suitably qualified valuer or quantity surveyor (as applicable) to independently determine the GST inclusive market value. Delete this guidance note once drafted.

- (ii) that any amounts payable by the Parties in accordance with this clause to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- (e) Within seven days of a Supply being made under this Agreement, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Law.
- (f) No payment of any amount pursuant to this clause 13, 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 of Adjustment Note as the case may be to the recipient.
- (g) 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.
- (h) This clause 13 continues to apply after expiration or termination of this Agreement.

14 Notices

- (a) Any notice, consent, information, application, request or communication relating to this Agreement is given or made only if it is in writing and sent in one of the following ways:
 - (i) personally delivered at the Party's address in the Summary;
 - (ii) posted to the Party at its address in the Summary;
 - (iii) faxed to that Party at its fax number in the Summary; or
 - (iv) emailed to the email address in the Summary.
- (b) Any notice, consent, information, application, request or communication is given if it is:
 - (i) delivered, when it is left at the relevant address;
 - (ii) sent by post, two Business Days after it is posted;
 - (iii) sent by fax when the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
 - (iv) emailed when it has left the sender's server and there is no failure notification to the sender.
- (c) A Party must give the other Party three Business Days notice of a change of its address, fax number or email.
- (d) If a Party gives the other Party notice of a change of address, fax number or email, any notice, consent, information, application, request or communication relating to this Agreement is given or made only if it is made in accordance with clause 14(a) and delivered, posted or faxed to the newest address, fax number or email.

15 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent in that Party's absolute discretion and subject to any conditions determined by the Party and a Party is not obliged to give its reasons.

16 Costs

- (a) The Developer is to pay to the Council a contribution of \$500.00 towards the Council's costs of preparing a template planning agreement upon which this Agreement is based within 7 days of a written request by the Council for such payment.
 - (b) The Developer is also to pay, the Council's reasonable costs of preparing, negotiating, executing, stamping and entering into this Agreement within 7 days of a written request by the Council for such payment.
 - (c) The Developer is to pay to the Council the Council's costs of monitoring, reviewing and enforcing this Agreement within 7 days of a written request by the Council for such payment.
-

17 Entire agreement

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) No Party can rely on an earlier document or anything said or done by another Party, or by a director, officer, agents or employee of that Party, before this Agreement was executed, except as permitted by law.

18 Further acts

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.

19 Notations on section 149(2) planning certificates

The Parties agree that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land.

Guidance note: this clause may be deleted if it is not applicable. Delete this guidance note once drafted.

20 Governing law and jurisdiction

- (a) This Agreement is governed by the law of New South Wales.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) The Parties are not to object to the exercise of jurisdiction by the courts of New South Wales.

21 Change of Law

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.

22 Joint and individual liability and benefits

Except as otherwise set out in this Agreement:

- (a) any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually; and
- (b) any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23 No fetter

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

24 Representations and warranties

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.

25 Severability

- (a) 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.
- (b) 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 to be affected.

26 Modification

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.

27 Waiver

- (a) A Party does not waive a right or remedy under this Agreement if it:
 - (i) fails to exercise the right or remedy;
 - (ii) only partially exercises the right or remedy; or
 - (iii) delays in exercising the right or remedy.
- (b) A Party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
 - (i) further exercise the right or remedy; or
 - (ii) exercise another right or remedy.
- (c) A waiver is effective only if in writing and signed by the Party to be bound and to the extent that is expressly stated in writing.

28 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.

29 Counterparts

This Agreement may consist of a number of counterparts and, if so, then the counterparts taken together constitute this Agreement.

30 Explanatory note relating to this agreement

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

Schedule 1

Quarry Haulage Route map (Clause 4)

Schedule 2

Maintenance Specification

(clause 4)

1. GENERAL

Sheridans Quarry is located off Cornells Road, Hernani.

The quarry operates as a road base and hard rock quarry under Clarence Valley Council Consent 2014/0098.

2. PUBLIC ROAD ACCESS

Access to the quarry from Waterfall Way (RMS controlled) is via:

- Bald Hills – Hernani Road (Bitumen sealed),
- Cornells Road (Gravel formation), and
- Faheys and Bulgins Road (Gravel formation).

3. EXISTING ROAD CONDITIONS

3.1 Bald Hills – Hernani Road

The road is an existing rural road constructed to a general standard of:

- 3.5 to 4.0 bitumen seal,
- Shoulders varying 1.0 to 1.5, and
- Table drains where required.

Flexible pavement for the road has a varying depth of road base but generally in the range of 150mm to 200mm.

The road has been operational in this formation for an extended period of time.

3.2 Cornells Road

The road is an existing rural road constructed to general standard of:

- 4.0 gravel pavement,
- 1.0 shoulders, and
- Table drains where required.

The gravel pavement formation on this road is not known, however in the past has been subject to various maintenance grading and pavement material addition.

4. MAINTENANCE REQUIREMENTS

Maintenance of the rural roads is recommended to be generally in accordance with RMS Specific M3 “Routine Services”. Specific items are detailed herunder.

4.1 Maintenance Objectives

Pavement

- a) Rectify defects in a timely fashion so as to minimise the rate of pavement deterioration and to provide safe, consistent driving conditions,
- b) Ensure that the road remains open to traffic by providing safe conditions under the prevailing weather conditions, traffic volume, and speed zone.
- c) Protect the structural integrity of road pavements.

Drainage

- a) Maintain surface drains to ensure free and unrestricted flow of road water away from the pavement.
- b) Maintain drainage structures such as pipes and culverts to ensure the free and unrestricted flow of water,
- c) Maintain subsoil drains to ensure the free and unrestricted flow of water,
- d) Maintain stormwater devices to ensure the free flow of surface water into the drainage system and conveyance to the designated point of discharge.

4.2 Road Asset Inspections

For the full length of the haul route inspections are required to be undertaken on a regular basis plus on a response to issues.

Inspections to be:

i. Routine

Routine inspections to be undertaken of the roads on a regular monthly basis.

ii. Prolonged Weather Events

Inspections to be undertaken following periods of high rainfall or prolonged rainfall in addition to the routine inspections.

iii. Prompted Inspection

Following a complaint or advice from Council specific issues are to be inspected within 1 day of the advice.

4.3 Inspection Requirements

Inspection reporting to include:

- a) Record all defects and incidents including those reported by the public,
- b) Identify hazards, and
- c) Provide for tracking compliance with the inspection.

Record all defects. Isolated defects are to be individually recorded. Where a large number of defects exist in close proximity, it is acceptable to record those defects as a group rather than individually. In all cases, the location reference is to be suitably detailed to enable defects to be easily located. Maintain a Maintenance Defects Register (MDR) of defects that do not need immediate action. Failures that exceed the acceptable risk level for the road must be reported to and repaired by the Developer.

4.4 Defect Definitions

i. Potholes

1. The plan dimension of a pothole or delamination must not exceed:
400mm
2. The depth of a pothole or delamination must not exceed:
50mm

ii. Pavement Edge

1. An edge break must not encroach into the travelled way by more than: 150mm
2. The depth of an edge drop-off within 0.5 metres of the travelled way must not exceed: 60mm

iii. Pavement Surface and Patching

1. The height/depth of an abrupt discontinuity (< 20 square metres) must not exceed: 50mm
2. The height/depth of bump or depression (< 20 square metres) must not exceed: 60mm
3. The height/depth of a shove or isolated rutting (< 20 square metres) must not exceed: 70mm
4. The area of pavement affected by water ponding must not exceed: 5 square metres
5. Any pavement defect causing concentrated water 5 square

flow that results in an increased risk of aquaplaning metres
must not exceed:

4.5 Repairs

All repairs are to be undertaken as soon as practical however for potholes and shoulder defects repairs should be undertaken within 5 working days of written notification of damages or other time agreed to by the parties.

For pavement surface defects, rutting, ponding, etc. the repair methodology and timing is to be discussed with Council. Surface repairs are to be undertaken with a specific traffic control plan for the section.

Culverts or other structures not included in the above are to be repaired within 30 days of written notification of damages or other time agreed to by the parties.

4.6 Clean up Following any Spills

The Developer is to notify the Council immediately in the event of any spills and environmental contamination problems on the haul roads or any adjacent lands as a result of the use of the haul road, and the Applicant shall be solely responsible for the cost of all work to be carried out to correct such problems caused by the operation.

4.7 Temporary Road Closures

The Developer is to notify the Council if any work being done will require temporary closure of the road or an interruption to motor vehicle traffic on the Quarry Haul Route. Council will not unreasonably deny any such request.

5. RECORDS

Records are to be kept of all inspections to include as a minimum:

- Date,
- Type of inspection (routine, weather event, or complaint),
- Findings,
- Photographs as appropriate, and
- Action if required.

Records are to be kept of all repairs to include as a minimum:

- Date,
- Inspections report reference,
- Type of repair,
- Photographs as appropriate, and
- Traffic control implemented.

All records are to be collated on a six month basis and copies provided to Council for their use and filing.

6. DRIVER CODE OF CONDUCT

The Developer shall conduct the quarry operation so as to minimise interference with other traffic on the haul road and in accordance with Developer's adopted quarry truck Driver Code of Conduct.

7. COMPLETION

Upon completion of the quarry operations, repair and restore the road to the condition in which it was upgraded to at the commencement of the quarry operations or as otherwise reasonably agreed by Council.

Execution

Executed as an agreement on *[Insert details]*

20*[Insert details]*

Executed by the **Clarence Valley Council** ABN 85 864 095 684 by its duly appointed officer in the presence of:

Witness

General Manager

Name/Position of Witness
(BLOCK LETTERS)

Name of General Manger
(BLOCK LETTERS)

EXECUTED by **Sheridan's Hard Rock Quarry Pty Ltd** ABN 58 151 721 989 in accordance with section 127 of the *Corporations Act 2001* (Cth):

*Director/*Company Secretary

Director

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

Name of Director
(BLOCK LETTERS)

EXECUTED by **Matsid Pty Ltd** ABN 43 040 578 44258 in accordance with section 127 of the *Corporations Act 2001* (Cth):

*Director/*Company Secretary

Director

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

Name of Director
(BLOCK LETTERS)

Annexure A

(Clause 30)

Explanatory Note (Clause 25E of the Regulation)

Guidance note: the explanatory note is to be prepared jointly with the other Parties proposing to enter into the planning agreement, see: clause 25E(3) of the Regulation. Delete this guidance note once drafted.

Agreement

Under Subdivision 2, Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**)

Parties

Clarence Valley Council ABN 85 864 095 684 of 2 Prince Street, Grafton NSW 2460 (**Council**)

Sheridan's Hard Rock Quarry Pty Ltd ABN 58 151 721 989 of 315 Donellans Road **HERNANI NSW 2453** (**Developer**)

Matsid Pty Ltd ABN 43 040 578 44258 of 315 Donellans Road **HERNANI NSW 2453** (**Landowner**)

Description of the Land to which the Agreement applies

Lot 62 and 63 in Deposited Plan 752807, Faheys & Bulgins Road, Hernani

The Quarry Haulage Route

Description of the proposed Development

The excavation and transport of quarried product material from the Land in accordance with Section 96(2) application MOD2016/0035, being a modification of DA 2014/0098.

Summary of objectives, nature and effect of the Agreement [clause 25E(a)]

- **Objectives:**

The objective of the Draft Planning Agreement is to secure the provision of maintenance works for the purposes of maintaining the approved quarry haulage route.

- **Nature:**

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (**Act**). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

- **Effect:**

- The Draft Planning Agreement:
- relates to the carrying out of the proposed development pursuant to any modification of development consent DA 2014/0098,
- imposes obligations on the Developer to carry out maintenance work on the Quarry Haulage Route only if approval is granted to MOD2016/0035,

- requires the Developer to provide security for the work,
- provides a flexible agreement that meets the needs of both parties that can be altered with the approval of both parties to suit a variety of situations,
- excludes the application of s94, s94A or s94E of the Act to the proposed development,
- imposes restrictions on the Developer and Landowner from transferring the Land or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and 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.

Assessment of the merits of the Agreement [clause 25E(b)]

- **Assessment of the merits:**

The Agreement puts the onus on the Developer (ie. the quarry operator) for the ongoing maintenance of the Quarry Haulage Route over the life of the approved quarry. The benefits of the offer to maintain the quarry haul route include, but are not limited to, the following:

- Maintains the condition of the quarry haul route, ensuring safety of travel for all users.
- Maintaining overall residential amenity in terms of air quality and traffic noise.
- No maintenance costs to Council. [NOTE: If the VPA is agreed to, it is proposed that the consent condition requiring payment of road maintenance contributions would be deleted.]
- **How the Agreement promotes the 'Public Interest' and one or more of the objects of the Act:**
- The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii) and (v) and s5(c).
- **How the Agreement promotes elements of the Council's Charter under section 8 of the Local Government Act 1993 (NSW):**
- The Draft Planning Agreement promotes the elements of the Council's charter by providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.
- **The planning purposes served by the Agreement, and how the purpose or purposes are reasonably achieved:**
- The Draft Planning Agreement:
- promotes and co-ordinates the orderly and economic use and development of the Land to which the Agreement applies,
- encourages the provision and co-ordination of community services and facilities.
- **Whether the Agreement conforms with the Council's Capital Works Program (if any):**
- The Draft Planning Agreement does not conform with the Capital Works

Program set out in the Council's current Operational Plan.

- **Whether certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is to be issued (if any):**
- The Draft Planning Agreement does not specify any requirements that must be provided before the issuing of a construction certificate, occupation certificate or subdivision certificate.

Guidance note: a copy of the Explanatory Note must be exhibited with the copy of the proposed Agreement when it is made available for inspection by the public in accordance with the Act. Delete this guidance note once drafted (see: clause 25E(5) of the Regulation).

Schedule 2

Maintenance Specification

(clause 4)

1. GENERAL

Sheridans Quarry is located off Cornells Road, Hernani.

The quarry operates as a road base and hard rock quarry under Clarence Valley Council Consent 2014/0098.

2. PUBLIC ROAD ACCESS

Access to the quarry from Waterfall Way (RMS controlled) is via:

- Bald Hills – Hernani Road (Bitumen sealed),
- Cornells Road (Gravel formation), and
- Faheys and Bulgins Road (Gravel formation).

3. EXISTING ROAD CONDITIONS

3.1 Bald Hills – Hernani Road

The road is an existing rural road constructed to a general standard of:

- 3.5 to 4.0 bitumen seal,
- Shoulders varying 1.0 to 1.5, and
- Table drains where required.

Flexible pavement for the road has a varying depth of road base but generally in the range of 150mm to 200mm.

The road has been operational in this formation for an extended period of time.

3.2 Cornells Road, Faheys, Bulgins

The road is an existing rural road constructed to general standard of:

- 4.0 gravel pavement,
- 1.0 shoulders, and
- Table drains where required.

The gravel pavement formation on this road is not known, however in the past has been subject to various maintenance grading and pavement material addition.

4. MAINTENANCE REQUIREMENTS

4.1 Asset Inspections

4.1.1 Road Asset Inspections

For the full length of the haul route inspections are required to be undertaken on a regular basis plus on a response to issues.

Inspections to be:

i. Routine

Routine inspections to be undertaken of the roads on a regular monthly basis.

ii. Prolonged Weather Events

Inspections to be undertaken following periods of high rainfall or prolonged rainfall in addition to the routine inspections.

iii. On demand Inspection

Following a complaint or advice from Council specific issues are to be inspected within 1 day of the advice.

iv. Periodic Inspection

Routine inspections to be undertaken of the roads on a regular annual basis with the purpose of assessing upgrading works for the following annual period.

4.1.2 Inspection Requirements

Inspection reporting to include:

- a) Record all defects and incidents including those reported by the public,
- b) Identify hazards, and
- c) Provide for tracking compliance with the inspection.

Record all defects. Isolated defects are to be individually recorded. Where a large number of defects exist in close proximity, it is acceptable to record those defects as a group rather than individually. In all cases, the location reference is to be suitably detailed to enable defects to be easily located. Maintain a Maintenance Defects Register (MDR) of defects that do not need immediate action. Failures that exceed the acceptable risk level for the road must be reported to and repaired by the Developer.

4.2 Repairs

All repairs are to be undertaken as soon as practical however for potholes and shoulder defects repairs should be undertaken within 5 working days of written notification of damages or other time agreed to by the parties.

For pavement surface defects, rutting, ponding, etc. the repair methodology and timing is to be discussed with Council. Surface repairs are to be undertaken with a specific traffic control plan for the section.

Culverts or other structures not included in the above are to be repaired within 30 days of written notification of damages or other time agreed to by the parties.

4.3 Clean up Following any Spills

The Developer is to notify the Council immediately in the event of any spills and environmental contamination problems on the haul roads or any adjacent lands as a result of the use of the haul road, and the Applicant shall be solely responsible for the cost of all work to be carried out to correct such problems caused by the operation.

4.4 Temporary Road Closures

The Developer is to notify the Council if any work being done will require temporary closure of the road or an interruption to motor vehicle traffic on the Quarry Haul Route. Council will not unreasonably deny any such request.

4.5 Gravel Roads

4.5.1 Main Objectives of Maintaining Gravel Surfaces

- a) Provide a good riding surface
- b) Carry heavy traffic loads
- c) Meet acceptable Level of Service (LOS)
- d) Minimise safety hazards to vehicular traffic
- e) Provide a free draining surface to the formation

4.5.2 Types of Maintenance

- a) Routine Maintenance - activities are primarily about maintaining the riding surface to an acceptable condition (i.e. repairing potholes, corrugations, ravelling etc.) and the drainage system to preserve the pavement. These activities require constant monitoring and regular scheduling of works based on road condition.
- b) Periodic Maintenance - activities relate to bringing the asset, over time, to the desired road standards, such as pavement depth (i.e. re-gravelling), width, adequate curve radius and sight distance.
- c) On-Demand Maintenance – activities carried out following periods of high rainfall or prolonged rainfall in addition to routine maintenance or significant defects occurs.

4.5.3 Types of Maintenance Works

- a) Routine maintenance comprises light grading to smooth out road surfaces and restore crossfall, clearing blocked drains and culverts, the restoration of signs and roadside furniture.
- b) Periodic maintenance comprises re-gravelling of pavements, re-compacting pavements, structural repairs, strengthening, reshaping of cross-sections and restoring drainage systems.

4.5.4 Defects and Causes

- a) Surface Defects are caused by to a variety of factors including traffic, climatic conditions, inappropriate maintenance, poor availability of suitable material, inappropriate grading, poor compaction or any combination of these factors.
- b) Structural Defects are caused through over-stressing the pavement and/or subgrade causing failure of the pavement.

4.5.5 Surface Defects

- a) Corrugations are formed through material displacement as a result of tyre action coupled with the mass and speed of the vehicle.
- b) Potholes are formed on roads with flat grades and crossfall. Crossfall generally have 4% to 6% grade to easily drain the surface water.
- c) Rutting are longitudinal deformations in wheel paths, caused by the passage of vehicles.
- d) Slippery Surface – Slipperiness of the surface of an unpaved road is a significant safety problem. In wet weather, slipperiness is caused by excessive fines or plastic material in the wearing surface and lack of adequate crossfall to shed water off the pavement.
- e) Surface Scour is the loss of surface material caused by the flow of water along and/or over the road. Scouring is caused through poor drainage allowing concentration of running water on the pavement, lack of compaction of road surface, excessive crossfalls, and longitudinal grade s and the build-up of debris on shoulders preventing surface water from flowing off the pavement.
- f) Loose Materials is caused through the lack or loss of binder to hold the surface aggregate in place.
- g) Dust is cause by the loss of excessive fines from surface layer and high travel speed.

4.5.6 Structural Defects are generally characterised by large area settlements and heaving.

- a) Settlement in road embankments is a slow process and may require attention over a number of years. Consolidation is the cause of settlement and is the result of moisture being forced out of underlying material in embankments.
- b) Heaving of the pavement is caused through movement of material under load and results from a weak spot further softened by water and/or low quality material.
- c) Intrusion of subgrades into the pavement is another structural defect aggravated by lack of drainage. Defects in the drainage system should be corrected before, or in conjunction with, correction of pavement and structural defects.

4.5.7 Maintenance Scheduling

Type of Maintenance	Defect	Trigger or Frequency	Maintenance Measures
Routine Maintenance	Corrugation	depth must not exceed 50mm	- improved road alignment
			- better compaction of pavement materials
			- use of a cohesive wearing course to better bind surface materials
			- sealing of high stress areas
	Potholes	depth must not exceed 50mm	- increase crossfalls to 4%–6%
			- better compaction of pavement materials
			- use of a cohesive wearing course to better bind surface materials
	Rutting	as identified during routine inspection	- improved material properties to increase strength
			- necessary compaction to provide required density
			- stabilisation of basecourse
			- provide crossfall (4–6%) to minimise water penetrating pavement
	Slippery Surface	as identified during routine inspection	- placement of clean well-graded gravel on the road surface to provide more grip
			- providing adequate crossfalls of (4%-6%)
	Surface Scour	as identified during routine inspection	- compaction of the road pavement
			- provide adequate table drainages on high side to divert water away from the road
Periodic Maintenance	Loose Materials	as identified during routine inspection	- provide the required road crossfalls
			- improve the surface materials properties to better withstand scour
	Dust	As required	- use of a well-graded materials with binder mixed with existing loose aggregate
			- well compacted pavement with the required moisture content
			- grading off the road loose material until resources are available to recompact the surface layer
	Drainage	As required	- regular maintenance of the road pavement using water cart and roller
			- providing a well-bound wearing course
			- provide adequate drainage
	Structural Defect	minimum two per year or before the subgrade is exposed	- clear blockages of cross drainage pipes
			- grading to restore the shape of the road and - and - regravelling typically 100-150mm is added in the overall thickness over the entire length
On-Demand			activities carried out following periods of high rainfall or prolonged rainfall in addition to routine maintenance or significant defects occurs

4.6 Sealed Roads

4.6.1 Main Objectives of Maintaining Sealed Roads

- to ensure the safety of traffic and road users
- to sustain the serviceability and appearance of the road

4.6.2 Types of Maintenance

- Routine Maintenance includes activities which address minor defects on the carriageway and structures, off-carriageway works including grass cutting, drain clearing and the like, and essential activities to remove obstacles from the road and ensure a base level of road safety.
 - the bituminous surface– pothole patching, crack filling/sealing, sweeping, surface correction and minor sealing
 - the pavement– excavating and replacing, scarifying and reshaping
 - surface drains– cleaning, replacing and scour checks
 - culverts, pipes, pits, subsoil drains, flood-ways – cleaning, repairing
 - vegetation/roadside– mowing, slashing, litter collection, sweeping, repairs to retaining structures and servicing
 - signs and road furniture– cleaning, repairing, replacing and painting
 - pavement markings– repainting and replacing

- b) Periodic Maintenance - includes works that are intended to reduce future deterioration by timely surface interventions to limit the need for expensive rehabilitation, and to ensure minimum skid resistance and general safety levels do not fall below minimum accepted levels.
- area wide pavement treatment
 - major drainage control
 - maintenance chip seals
 - seal widening
- c) Rehabilitation includes works that targets roads whose ride quality has deteriorated significantly, or which display inadequate structural capacity for current or future traffic loading. These works are planned with lead time generally greater than a month and often planned as part of an annual, three or five year program.
- d) On-Demand Maintenance – activities carried out following periods of high rainfall or prolonged rainfall in addition to routine maintenance

4.6.3 Defects

- a) Cracking Surface
- b) Deformation - rutting, shoving, depressions and corrugations
- c) Edge defects
- d) Shoulders
- e) Potholes
- f) Drainage
- g) Vegetation

4.6.4 Maintenance Scheduling

Type of Maintenance	Defect	Trigger or Frequency	Maintenance Measures
Routine Maintenance	Cracking	Cracking in excess of 15% in combination with rutting surface	- reconstruct pavement sections
		Cracks up to 20mm wide and 15mm depth	- cleaned out with compressed air and then may be filled with an unmodified binder such as cut back bitumen or bitumen emulsion having a viscosity low enough to enable it to be poured or worked into the cracks
	Deformation	Corrugation <50mm	-
		Rutting <20mm	-
		as identified during routine inspection	- Fill the depressions with hot mix asphalt. If it remains unstable it will be necessary to remove the unsound material and replace it with a stable hot mix asphalt
	Edge Defect	as identified during routine inspection	- Hot mix asphalt is placed and compacted to conform to the level of the adjacent seal.
	Shoulder	as identified during routine inspection	-
		-	-
	Potholes	depth must not exceed 50mm	- squaring of the hole, vertical trimming of edges and removal of loose material prior to reinstatement
	Drainage	as identified during routine inspection	- Asphalt Patching
	Vegetation	as identified during routine inspection	-
	Signs and road furniture	as identified during routine inspection	- mowing, slashing, litter collection, sweeping, repairs to retaining structures servicing
Periodic Maintenance	pavement markings	as identified during routine inspection	- cleaning, repairing, replacing and painting
	Planned Maintenance Works		- repainting and replacing
			- area wide pavement treatment
			- major drainage control
Rehabilitation	Planned Maintenance Works		- maintenance chip seals
			- seal widening
On-Demand	As needed		- activities carried out following periods of high rainfall or prolonged rainfall in addition to routine maintenance or significant defects occurs

Ref: NRDC, ARRB Gravel Road, ARRB Sealed Road, RMS Routine Maintenance, Austroads

4.7 Defect Definitions

i. Potholes

- | | | |
|----|--|-------|
| 1. | The plan dimension of a pothole or delamination must not exceed: | 400mm |
| 2. | The depth of a pothole or delamination must not exceed: | 50mm |

ii. Pavement Edge

- | | | |
|----|---|-------|
| 1. | An edge break must not encroach into the travelled way by more than: | 150mm |
| 2. | The depth of an edge drop-off within 0.5 metres of the travelled way must not exceed: | 60mm |

iii. Pavement Surface and Patching

- | | | |
|----|---|-----------------|
| 1. | The height/depth of an abrupt discontinuity (< 20 square metres) must not exceed: | 50mm |
| 2. | The height/depth of bump or depression (< 20 square metres) must not exceed: | 60mm |
| 3. | The height/depth of a shove or isolated rutting (< 20 square metres) must not exceed: | 70mm |
| 4. | The area of pavement affected by water ponding must not exceed: | 5 square metres |
| 5. | Any pavement defect causing concentrated water flow that results in an increased risk of aquaplaning must not exceed: | 5 square metres |

5. RECORDS

Records are to be kept of all inspections to include as a minimum:

- Date,
- Type of inspection (routine, weather event, or complaint),
- Findings,
- Photographs as appropriate, and
- Action if required.

Records are to be kept of all repairs to include as a minimum:

- Date,
- Inspections report reference,
- Type of repair,
- Photographs as appropriate, and
- Traffic control implemented.

All records are to be collated on a six month basis and copies provided to Council for their use and filing.

6. DRIVER CODE OF CONDUCT

The Developer shall conduct the quarry operation so as to minimise interference with other traffic on the haul road and in accordance with Developer's adopted quarry truck Driver Code of Conduct.

7. COMPLETION

Upon completion of the quarry operations, repair and restore the road to the condition in which it was upgraded to at the commencement of the quarry operations or as otherwise reasonably agreed by Council.

Execution

Executed as an agreement on *[Insert details]*

20*[Insert details]*

Executed by the **Clarence Valley Council** ABN 85 864 095 684 by its duly appointed officer in the presence of:

Witness

General Manager

Name/Position of Witness
(BLOCK LETTERS)

Name of General Manger
(BLOCK LETTERS)

EXECUTED by **Sheridan's Hard Rock Quarry Pty Ltd** ABN 58 151 721 989 in accordance with section 127 of the *Corporations Act 2001* (Cth):

*Director/*Company Secretary

Director

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

Name of Director
(BLOCK LETTERS)

EXECUTED by **Matsid Pty Ltd** ABN 43 040 578 44258 in accordance with section 127 of the *Corporations Act 2001* (Cth):

*Director/*Company Secretary

Director

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

Name of Director
(BLOCK LETTERS)