



# 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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# 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

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#### 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;
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- (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** means the period of 6 months following termination of this Agreement.

**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.

**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.

**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 6 months after the date of the Council's notice in clause 4.3(e).

**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 over the local council road system running continuously from the west boundary of the Quarry Land along Faheys & Bulgins Road, thence along Cornells Road and Bald hills Road back to the intersection with Waterfall Way, illustrated in red on 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**

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### 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 does not exclude 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

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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

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### 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

(a) In accordance with the provisions of Condition 18 of the Development Consent DA2014/0098, as may be modified from time to time, the Developer is to pay to Council a road maintenance contribution of per annum for the use of Council's roads by extractive industry trucks based on \$0.21 per cubic metre.

### 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 2, 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 during the Term and/or Defects Liability Period 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) **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 7.1 (a).
- (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.
  - (A) Call upon the Security referred to in clause 7.1 (a); and
  - (B) Carry out and complete the Work, the subject of the Developer's breach.

(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**

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- (a) [deleted]

## **6 Dedication of land**

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- (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**

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### **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 \$30,912.00.
- (b) The Developer is to provide the Security to the Council on the Commencement Date.
- (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

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### 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.
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- (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**

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### **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

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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

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- (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

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- (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

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### 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**

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- (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**

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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**

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- (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

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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

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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

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- (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

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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**

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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**

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- (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**

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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**

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- (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**

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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**

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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**

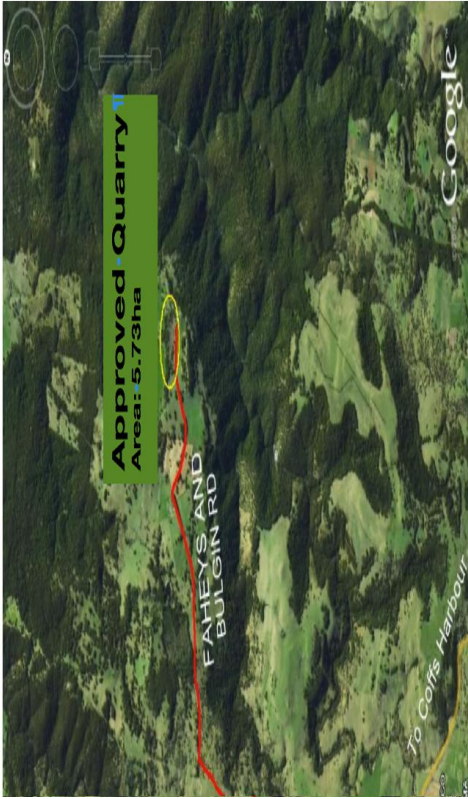
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- (a) The Annexure A contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Annexure A is not to be used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



## Schedule 1

**Quarry Haulage Route map- marked in red on accompanying diagram**  
(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, 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**

An annual independent audit of the Haulage Route is to be undertaken by a suitably qualified consultant, agreed to by both parties, and paid for the Developer.

#### **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**

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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 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 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
	Slippery Surface	as identified during routine inspection	- provide crossfall (4–6%) to minimise water penetrating pavement
			- 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			
Loose Materials	as identified during routine inspection	- provide the required road crossfalls	
		- improve the surface materials properties to better withstand scour	
		- use of a well-graded materials with binder mixed with existing loose aggregate	
Dust	As required	- 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	
Periodic Maintenance	Structural Defect	minimum two per year	- provide adequate drainage
		or before the subgrade is exposed	- clear blockages of cross drainage pipes
On-Demand			grading to restore the shape of the road and regravelling typically 100-150mm is added in the overall thickness over the entire length
			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

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

##### 4.6.2 Types of Maintenance

a) 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	-
		Shoving	as identified during routine inspection	-
	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 - Asphalt Patching
	Drainage		as identified during routine inspection	-
Vegetation		as identified during routine inspection	- mowing, slashing, litter collection, sweeping, repairs to retaining structures servicing	
Signs and road furniture		as identified during routine inspection	- cleaning, repairing, replacing and painting	
	pavement markings	as identified during routine inspection	- repainting and replacing	
Periodic Maintenance	Planned Maintenance Works		- area wide pavement treatment	
			- major drainage control	
			- maintenance chip seals	
			- seal widening	
Rehabilitation	Planned Maintenance Works			
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:<br>5 square metres   |      |
| 5. | Any pavement defect causing concentrated water flow that results in an increased risk of aquaplaning must not exceed:<br>square metres | 5    |

## **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)

#### 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

**The local council roads comprising Bald Hills Road (from Waterfall Way to Cornell's Road), Cornells Road (from Bald Hills Road to Faheys & Bulgins Road) & Faheys and Bulgins Road from Corenells Road to the property boundary of the quarry (Lot 63 DP752807), Hernani**

#### Description of the proposed Development

**Increase daily permitted truck numbers for** 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.

**The Draft Planning Agreement relates to the maintenance of the haul route over the local council road system for approximately 10.2 km from Waterfall Way intersection with Bald Hills Road to the quarry property boundary (Lot 63 DP752807) for the life of the quarry.**

- **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).

**The Applicant for MOD2016/0035 (application to modify consent DA2014/0098) has requested the public notification of the Draft Voluntary Planning Agreement. Following the exhibition of the draft agreement it will be reported to a full meeting of Council's elected Councillors for conditional acceptance of the final wording of the proposed agreement. Clarence Valley Council is the consent authority however the Northern Joint Regional Planning Panel has the function of determining the application (MOD2016/0035) to which this agreement relates.**

- **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 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 Development Consent Condition 18, requiring payment of a road maintenance contribution, would continue to apply.]
- **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.
- **to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development**
- **to have regard to the long term and cumulative effects of its decisions**
- **to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible**
- **to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights**
- **to keep the local community and the State government (and through it, the wider community) informed about its activities**

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

**In accordance with Section 93F(2) of the Act, the planning agreement has the following public purpose:**

- **the provision of (or the recoupment of the cost of providing) public amenities or public services**
- 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.