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**LAKE MACQUARIE  
CITY COUNCIL**

# **Teralba Quarry Extension Deed of Planning Agreement**

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

Rhondda Road, Teralba NSW

**The Council of the City of Lake Macquarie (Council)**

**Metromix Pty Limited (Developer)**

**Date:** 6 February 2017



**Developer**



**Council**

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**Teralba Quarry  
Deed of Planning Agreement  
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 Developer

  
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## Teralba Quarry Planning Agreement

### Summary Sheet

#### Council:

**Name:** Council of the City of Lake Macquarie  
**ABN:** 81 065 027 868

##### Notice Details

**Address:** 126-138 Main Road, Speers Point NSW 2284  
**Telephone:** (02) 4921 0333  
**Facsimile:** (02) 4958 7257  
**Email:** council@lakemac.nsw.gov.au  
**Representative:** Development Contributions Coordinator

#### Developer:

**Name:** Metromix Pty Limited  
**ABN:** 39 002 886 839  
**ACN:** 002 886 839

##### Notice Details

**Address:** Unit 4, 107 Philip Street, Parramatta, NSW 2150  
**Telephone:** (02) 9849 7400  
**Facsimile:** (02) 8837 7104  
**Email:** Bills@metromix.com.au  
**Representative:** William Sanderson, Manager - Quarries

#### Land:

See definition of *Land* in clause 1.1.

#### Development:

See definition of *Development* in clause 1.1.

#### Development Contributions:

See Part 2.

#### Application of s94, s94A and s94EF of the Act:

See clause 8.

#### Security:

See clause 23.

#### Restriction on dealings:

See Part 5.

#### Dispute Resolution:

See Part 3.



Developer



Council

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## Teralba Quarry Agreement

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

Agreement made at \_\_\_\_\_ on \_\_\_\_\_

### Parties

**Council of the City of Lake Macquarie** ABN 81 065 027 868 of 126-138 Main Road, Speers Point NSW 2284 (**Council**)

and

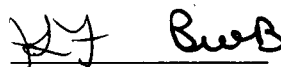
**Metromix Pty Limited** ABN 39 002 886 839 of Level 4, 107 Philip Street, Parramatta, NSW 2150 (**Developer**)

### Background

- A The Developer is the lessee of the Land on which the Quarry Development is carried out.
- B On 21 October 2010, the Developer lodged with the Department of Planning and Infrastructure, the Project Application for Project Approval for extension of the Quarry Development at the Land, including:
- a) The further development and operation of two extraction areas;
  - b) Modified processing operations;
  - c) The ongoing despatch of quarry and related products;
  - d) The ongoing importation of virgin excavated materials and excavated natural materials;
  - e) Progressive rehabilitation of the disturbed areas; and
  - f) Enabling quarry operations at the Land until 31 December 2038.
- C On 21 October 2010, the Project Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions if the Project Application was granted.
- D On 22 February 2013, the Minister's delegate granted Project Approval to the Project Application.
- E Pursuant to conditions 16 and 17 of the Project Approval, the Developer is to enter into this Agreement with the Council, in accordance with Division 6 of Part 4 of the Act.
- F This Agreement provides for payment to the Council of road maintenance levies, in lieu of the development contributions otherwise payable under the Act, for the public purpose of the maintenance, repair and upgrade of the Haulage Route.
- G As contemplated by section 93F of the Act, the parties wish to enter into an Agreement in connection with the Project Approval on the terms and conditions of this Agreement.



**Developer**



**Council**

## Operative provisions

### Part 1 - Preliminary

#### 1. Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

**Agreement** means this Agreement and includes any schedules, annexures and appendices to this Agreement.

**Approval** includes approval, certificate, consent, licence, permit, permission or the like.

**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date unless it is an expiry or end date after 31 December 2040, in favour of the Council to pay an amount or amounts of money to the Council on demand and without reference to the Developer or the owner of the Land, issued by:

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council.

**Business Day** means any day except for a Saturday or Sunday or a day which is a public holiday in NSW.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, expense, action, proceeding, order, judgment or right of action or the like arising out of the operation of this Agreement.

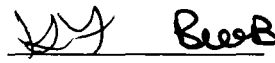
**Commencement Date** means the date that this Agreement is validly executed by all Parties.

**Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain or required to be disclosed by Law and which:

- (a) is by its nature confidential; or
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); or
- (c) is information which may reasonably be considered to be of a confidential nature.



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**Contribution Calculation Formula** means the formula in Schedule 1 to this agreement, which satisfies Schedule 2 Condition 17 of the Project Approval requiring the payment of the Initial Contribution Rate and the R&BCI on that Initial Contribution Rate.

**Development** means the development of the Land in accordance with the Project Approval as modified or amended from time to time.

**Dispute** means any dispute between the Parties in connection with this Agreement.

**Development Contributions** means the monetary contributions, to be used for, or applied towards the public purpose identified in this Agreement identified in Part 2.

**Explanatory Note** means the Explanatory Note set out in Schedule 3 of this Agreement.

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

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Haulage Route** means the following roads:

- (a) Rhondda Road west of the Top Gate access to the Land for a length of 1.64 kilometres;
- (b) Wakefield Road, south of Rhondda Road, for a length of 7.52 kilometres;
- (c) Wakefield Road and Northville Drive, north of Rhondda Road, for a length of 5.46 kilometres;
- (d) Railway Street, William Street, Short Street, York Street and Toronto Road, Teralba, for a length of 2.41 kilometres;

as depicted and shown in the map contained in Schedule 2 to this Agreement.

**Initial Contribution Rate** means \$0.066 per tonne of Quarry Products per kilometre transported over the Haulage Route.

**Land** means the whole of the land comprised in Lot 1 DP 224037 and Lot 2 DP 224037, known as Rhondda Road, Teralba, NSW, excluding the subleased area depicted and shown edged orange in Inset B on the plan contained in Schedule 4 to this Agreement.

**Law** means:

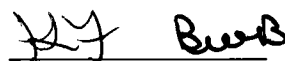
- (a) the common law including principles of equity, and
- (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws by any authority; and
- (c) any Approval, including any condition or requirement under it;

that presently apply or as they may apply in the future.

**Lease** means the lease of the Land between the Developer and the legally registered owner of the Land with registered dealing number AG190255.

**Minister** means the NSW Minister for Planning and Infrastructure.

  
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**Party** means a party to this Agreement.

**Quarry Development** means the extractive industry on the Land from time to time.

**Quarry Products** means quarry materials excavated and removed from the Land along the Haulage Route or any part of the Haulage Route from time to time.

**Project Application** means the application under Part 3A of the Act, No. 10\_0183 for Major Project Approval to the Minister for extension of the Quarry Development.

**Project Approval** means the Project Approval 10\_0183 dated 22 February 2013 granted by the delegate of the Minister to the Project Application, in accordance with the Act, as modified or amended from time to time.

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

**Report** means a report referred to in clause 10.2 showing the amount of Quarry Products hauled along the Haulage Route or any part of the Haulage Route for a particular period of time in accordance with this Agreement.

**Reporting Date** means, for each year during the Term:

- (a) A date not later than 21 January; and
- (b) A date not later than 21 July.

**R&BCI** means Road and Bridge Construction New South Wales Index Number 3101 as published by the Australian Bureau of Statistics or any similar index which replaces it.

**Security** means a Bank Guarantee, or a bond or other form of security agreed in writing between the Parties.

**Security Amount** means \$422,000.

**Sunset Date** means the date on which the Project Approval expires or lapses.

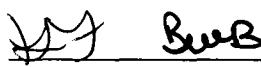
**Term** means the period beginning on the Commencement Date and ending on the earlier of 31 December 2038, the Sunset Date or the date this Agreement terminates or otherwise comes to an end in accordance with this Agreement.

**Weighbridge Records** are records indicating the quantity of Quarry Products transported from the Land from time to time.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing must be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

  
Developer

  
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- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement to any Law, legislation or legislative provision includes any statutory consolidation, modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Agreement to any agreement or document includes any agreement or document as amended, varied, novated, supplemented, assigned or replaced from time to time.
- 1.2.8 A reference to a clause, Party, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency or authority.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the party, the party's administrators, successors and assigns, including persons taking by way of novation.
- 1.2.14 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.15 Notes appearing in this Agreement are operative provisions of this Agreement.
- 1.2.16 If a Law is changed or a new Law comes into force (both referred to as "**New Law**"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.

## **2. Status of this Agreement**


- 2.1 This Agreement is a planning agreement within the meaning of s93F(1) of the Act.

## **3. Commencement of this Agreement**

- 3.1 The Parties agree that:
- 3.1.1 the commencement date for the payment of Development Contributions relating to the Project Approval is 1 January 2014; and
- 3.1.2 the Developer has already paid Development Contributions for the use of the Haulage Route in accordance with the Project Approval from 1 January 2014 to 30 June 2016; and
- 3.1.3 under the terms of this Agreement, the Council does not require the Developer to pay Development Contributions for the use of the Haulage Route from 1 January 2014 to 30 June 2016;
- 3.1.4 the Developer must pay Developer Contributions for the use of the Haulage Route in accordance with the Project Approval from 1 July 2016 to the Commencement Date.



**Developer**



**Council**

- 3.2 This Agreement takes effect on the date when all Parties have executed this Agreement.
- 3.3 The Party who executes this Agreement last must insert on the front page the date they did so.
- 3.4 Each Party must provide a fully executed and dated Agreement to any other person who is a Party.

#### **4. Application of this Agreement**

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

#### **5. Warranties**

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

#### **6. Further Agreements**

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

#### **7. Surrender of right of appeal, etc.**

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body questioning the validity of this Agreement.


#### **8. Application of s94 and s94A of the Act to the Development**

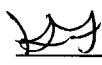

- 8.1 This Agreement excludes the application of:
- 8.1.1 s94, s94A of the Act; and
  - 8.1.2 any other monetary contributions required under the Act;
- in connection with the Project Application, Project Approval and Development, but only in respect of development contributions for haulage over the Haulage Route.
- 8.2 This Agreement does not exclude the application of s94EF to the Development.
- 8.3 References in this clause 8 to s.94 and s 94A are to be construed as references to any provisions which replace or substantially replace them.

### **Part 2 – Development Contributions**

#### **9. Provision of Development Contributions**

- 9.1 The Developer must pay Development Contributions in accordance with the Contribution Calculation Formula to the Council for the public purposes of the repair, maintenance and upgrade of the Haulage Route, in accordance with the Project Approval and this Agreement.

  
Developer

   
Council

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9.2 The Parties agree that the payment of Development Contributions in accordance with the Contribution Calculation Formula satisfies the requirement in Schedule 2 Condition 17 of the Project Approval for the payment of:

9.2.1 the Initial Contribution Rate; and

9.2.2 R&BCI on that Initial Contribution Rate.

9.3 The Council must apply each Development Contribution made by the Developer under this Agreement towards the repair, maintenance and upgrade of the Haulage Route, being the public purpose for which it is made, and otherwise in accordance with this Agreement.

9.4 Nothing in this Agreement:

9.4.1 obliges the Council:

9.4.1.1 to expend monies on the Haulage Route at any particular time;

9.4.1.2 carry out any particular repair or maintenance work to the Haulage Route at any particular time; or

9.4.1.3 to carry out any particular upgrade of the Haulage Route;

and the Developer acknowledges that these are matters within the discretion of the Council;

9.4.2 Imposes any liability on the Council in connection with failing to:

9.4.2.1 expend monies on the Haulage Route at any particular time;

9.4.2.2 carry out any particular repair or maintenance work to the Haulage Route at any particular time; or

9.4.2.3 carry out any particular upgrade of the Haulage Route;

9.4.3 entitles the Developer to require the Council to:

9.4.3.1 to expend monies on the Haulage Route at any particular time;

9.4.3.2 carry out any particular repair or maintenance work to the Haulage Route at any particular time; or

9.4.3.3 to carry out any particular upgrade of the Haulage Route.

## 10. Reports and Records

10.1 The Developer must retain:


10.1.1 All Weighbridge Records and any other documents relevant to the Weighbridge Records created during the Term for a period of 7 years from the date that those documents are created, that shows the amount of Quarry Products hauled along any part of the Haulage Route.


10.2 On:

10.2.1 the first Reporting Date, the Developer must provide to the Council a Report showing the amount of Quarry Products hauled along any part of the Haulage Route since the Commencement Date up to and including that Reporting Date; and

10.2.2 each subsequent Reporting Date, the Developer must provide to the Council a Report showing the amount of Quarry Products hauled along any part of the Haulage Route since the period covered by the previous Report.

10.3 The Reports required under clause 10 must identify the amount of Quarry Products and the part of the Haulage Route traversed by trucks carrying the Quarry Products in the relevant period.

  
Developer

  
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10.4 On Council's reasonable written request, the Developer must within 14 Business Days provide it with Weighbridge Records and other information that is reasonably required for the Council to verify a Report.

10.5 If in any year during the Term the Developer is not able to meet a Reporting Date for any reason, the Developer may make a written request to Council to extend the Reporting Date, provided it is prior to 20 Business Days before the applicable Reporting Date. Council must not unreasonably withhold its consent to any such request to an agreed extension of time for the Report. The extension sought must not be greater than 15 Business Days, subject to the provisions of this Agreement.

10.6 If any Party gives notice of Dispute under clause 13.3 in connection with a Report or a Tax Invoice, then any:

10.6.1 tax invoice issued by the Council under clause 11; or

10.6.2 payment of that tax invoice by the Developer;

10.6.3 is without prejudice to either Parties' rights in respect of any amounts payable in respect of the Reporting period the subject of the Dispute.

## **11. Calculation of Development Contributions**

11.1 Within 20 Business Days of:

11.1.1 receiving the Report in respect of any period; or

11.1.2 if Council has requested information pursuant to clause 10.4 for that Report, receipt of that information,

the Council must provide a tax invoice to the Developer notifying it of the amount of Development Contributions required to be paid on or before the date specified in the tax invoice, in respect of the reporting period covered by that Report, calculated using the Contribution Calculation Formula in Schedule 1.

11.2 The Developer must pay the Development Contributions notified by the Council pursuant to clause 11 within 30 Business Days of the date of the relevant tax invoice.

## **12. Procedures relating to payment of monetary Development Contributions**



12.1 The Developer must pay the Development Contributions required under clause 11 either by cash, bank cheque made payable to the Council or by electronic transfer into a bank account, the details of which are to be provided by the Council to the Developer.

12.2 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into the bank account nominated by the Council.

## **Part 3 – Dispute Resolution**

### **13. Dispute resolution**

  
Developer

   
Council

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- 13.1 This clause applies to any Dispute arising in connection with this Agreement.
- 13.2 A Party must not commence any court proceedings (except for proceedings seeking urgent relief) relating to a Dispute unless it complies with clauses 13 to 22 of this Agreement.
- 13.3 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute and designating as its representative a person to negotiate (**Dispute Notice**).
- 13.4 If a notice is given under clause 13.3, the Chief Executive Officers or nominee of each Party are to meet within 14 Business Days of the Dispute Notice in an attempt to resolve the Dispute in good faith.
- 13.5 The Chief Executive Officers or nominee of each Party must use reasonable endeavours to settle or resolve the Dispute within 14 Business Days.
- 13.6 If the Dispute is not resolved within a further 28 Business Days from the Dispute Notice, the Dispute must be dealt with under clause 14.
- 13.7 Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a Dispute.


#### **14. Mediation**

- 14.1 If a Dispute under this Agreement:
- 14.1.1 is not resolved under clause 13, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee, to select a mediator.
- 14.2 If the Dispute is not resolved by mediation within a further 28 Business Days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then each Party must refer the matter to expert determination in accordance with clauses 15 to 22 of this Agreement.
- 14.3 Each Party must bear its own costs arising from or in connection with the appointment of the mediator and the mediation and must bear 50% of the mediator's fees.
- 14.4 The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement in connection with dispute resolution under this clause 14 is to attempt to settle the Dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under this clause 14 for any purpose other than in an attempt to settle the Dispute.
- 14.5 This clause 14 does not prejudice the right of a Party to institute court proceedings for urgent relief in relation to any matter arising out of or relating to this Agreement.

#### **15. Choice of Expert**

- 15.1 If a Dispute between the Parties under this Agreement:
- 15.1.1 is not resolved under clause 13 or 14; and

  
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15.1.2 the Parties agree that the Dispute concerns a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert,

the Dispute must be referred to an independent expert in the relevant field.

15.2 The independent expert in the relevant field is to be:

(a) agreed between and appointed jointly by the Parties within 5 Business Days of the agreement of the Parties to refer the matter to expert determination; or

(b) in the absence of agreement, appointed by the President or other senior officer for the time being of the body administering the relevant field.

15.3 If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Law Society (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

## **16. Requirements for Expert**

16.1 The expert appointed to determine a Dispute:

16.1.1 must have a technical understanding of the issues in context;

16.1.2 must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;

16.1.3 must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

16.2 The Parties must enter into an agreement with the expert appointed under this clause 16 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

## **17. Directions to Expert**

17.1 In reaching a determination in respect of a Dispute, the independent expert must give effect to the intent of the Parties entering into this Agreement.

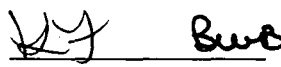
## **18. Expert Not Arbitrator**

18.1 The expert must:

18.1.1 act as an expert and not as an arbitrator; and

18.1.2 proceed in any manner as the expert thinks fit, but must observe the rules of natural justice (not the rules of evidence), not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and

  
Developer

  
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- 18.1.3 take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute; and
  - 18.1.4 not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
  - 18.1.5 issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
  - 18.1.6 issue a final certificate stating the expert's determination; and
  - 18.1.7 act with expedition with a view to issuing the final certificate as soon as practicable.

## **19. Compliance with Directions**

- 19.1 The Parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within a time period specified by the expert, give the expert:
  - 19.1.1 a short statement of facts; and
  - 19.1.2 a description of the Dispute; and
  - 19.1.3 any other documents, records or information the expert requests.

## **20. Expert may Commission Reports**

- 20.1 The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination.

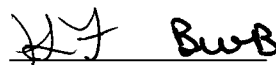
## **21. Expert may Convene Meetings**

- 21.1 The expert will hold a meeting with all the Parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion. The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

## **22. Final Determination of Expert**

- 22.1 The Parties agree that the final determination by an expert will be final and binding upon them (except in the case of fraud or misfeasance by the expert).
- 22.2 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination and must bear 50% of the expert's fees and hearing allocation costs.
- 22.3 The expert will not be liable in respect of the expert determination, except in the case of fraud or misfeasance by the expert.

  
Developer

  
Council

- 22.4 The Parties agree to release and indemnify the expert from and against all Claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the Dispute.

## **Part 4 – Enforcement**

### **23. Security for performance of obligations**

#### **23.1 Provision of Security**

- 23.1.1 The Developer must provide the Council with Security in the Security Amount in relation to the performance of its obligations under this Agreement.

- 23.1.2 The Developer must provide the Security to the Council on the Commencement Date.

- 23.2 The Developer must not cancel the Security or do anything to cause the Security to be ineffective unless the Council has given written notice to the Developer that the Security can be cancelled. The Council must not unreasonably withhold its consent to the cancellation of the Security and if it does agree it may require the Developer to provide a replacement Security before the Security is cancelled.

- 23.3 The Council must release and return the Security or any unused part of it to the Developer within 25 Business Days of:

- 23.3.1 the end of the Term;
- 23.3.2 the release of the Developer from this Agreement in accordance with the terms of this Agreement;
- 23.3.3 the resolution of any Dispute which occurs after the end of the Term;

whichever is earlier.

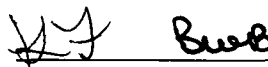
- 23.4 The Developer may at any time provide the Council with one or more replacement Securities totalling the amount required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Developer any Securities which it holds that have been replaced.

- 23.5 The Council must only exercise its rights under the Security in accordance with this clause 23.

- 23.6 The Council is entitled to make a call on the Security and use the proceeds of that call to satisfy the obligations of the Developer that ought to have been performed by the Developer pursuant to this Agreement, provided:

- 23.6.1 the Council has given the Developer a breach notice in accordance with clause 24 of this Agreement including a statement in the breach notice of its intention to call on the Security; and

- 23.6.2 the breach notice specifies the Development Contribution to which that Security payment relates and the amount and calculation of that Development Contribution; and

  
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**Developer**  
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**Council**

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23.6.3 the Developer has not given a notice of Dispute under clause 13.3 disputing the Developer's obligation to pay the amount or part of the amount in respect of which the Council proposes to call on the Security, which Dispute is not frivolous or vexatious.

23.7 If the Developer has given a notice of Dispute under clause 13.3 disputing the Developer's obligation to pay the amount or part of the amount in respect of which the Council proposes to call on the Security, the Council may nonetheless call on the Security but must make any required adjustment promptly after the dispute is determined under clauses 13 to 22 of this Agreement

23.8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Agreement.

23.9 The Developer must ensure that the Security provided to the Council is at all times maintained to the full current indexed value, in accordance with this Agreement.

## **24. Breach of obligations**

24.1 If the Council reasonably considers that the Developer is in breach of its obligation to pay monetary Development Contributions under this Agreement, it may give a written notice to the Developer:

24.1.1 specifying the nature and extent of the breach,

24.1.2 requiring the Developer to pay the outstanding monetary Development Contributions, and

24.1.3 specifying the period within which the outstanding monetary Development Contributions are to be paid, being a period that is reasonable in the circumstances and not being less than 21 Business Days from the date of the written notice.

24.2 If the Developer fails to fully comply with the notice referred to in 24.1 in relation to the payment of monetary Development Contributions, the Council may, subject to clause 23.6, call-up the Security provided by the Developer under this Agreement and apply it to remedy the Developer's breach.

24.3 Any reasonable costs incurred by the Council in remedying a breach may be recovered by the Council by calling up the Security provided by the Developer under this Agreement or as a debt due in a court of competent jurisdiction.

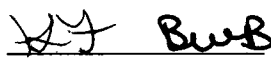
24.4 For the purpose of clause 24.4, the Council's costs of remedying a breach the subject of a notice given under clause 24 include, but are not limited to:

24.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

24.4.2 all fees and charges reasonably incurred by the Council in remedying the breach, and

24.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

  
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**Developer**

  
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**Council**

24.5 Nothing in this clause 24 prevents any Party from exercising any rights it may have at law or in equity in relation to a breach of this Agreement, including but not limited to seeking relief in an appropriate court.

## **25. Enforcement in a court of competent jurisdiction**

25.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.

25.2 For the avoidance of doubt, nothing in this Agreement prevents:

25.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,

25.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## **Part 5 –Restriction on Dealings**

### **26. Registration**

26.1 As contemplated by section 93H of the Act, the Developer, within three (3) calendar months of the date of this Agreement, agrees to procure the registration of this Agreement under the Real Property Act 1900 (NSW) on the title to the Land. The Developer must commence the registration process reasonably promptly following execution of this Agreement.

26.2 The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:

26.2.1 the consent of each person who:

26.2.1.1 has an estate or interest in the Land registered under the Real Property Act 1900 (NSW); or

26.2.1.2 is seized or possessed of an estate or interest in the Land; and

26.2.2 the execution of any relevant documents; and

26.2.3 the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the Register for the Land in accordance with section 93H of the Act.

26.3 The Developer will, within 15 Business Days of registration of this Agreement on the title to the Land in accordance with clause 26.1 provide the Council with a copy of title searches relating to the Land.

26.4 Where the Developer has satisfied its obligations under this Agreement following the:

26.4.1 the end of the Term; or



**Developer**



**Council**

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26.4.2 the release of the Developer in accordance with the terms of this Agreement;

the Council will do all things reasonably required by the Developer to release and discharge this Agreement with respect to the Land or any part of the Land including removing this Agreement from the title of any part of that Land within 30 Business Days after a written request to do so by the Developer.

## **27. Restriction on dealings**

27.1 The Developer is not to:

27.1.1 assign the Lease or grant a sublease under the Lease, or

27.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person  
unless:

27.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Lease must be assigned or the sublease granted or the Developer's rights or obligations under this Agreement are to be assigned or novated, of an Agreement in favour of the Council on terms reasonably satisfactory to the Council and replacement Security, and

27.1.4 the Developer is not in breach of this Agreement, and

27.1.5 the Council otherwise consents to the sublease, assignment or novation, such consent not to be unreasonably withheld.

## **Part 6 – Indemnities**

### **28. Release**

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

28.2 The Council releases and discharges the Developer from any Claim it may have arising in connection with this Agreement, following the:

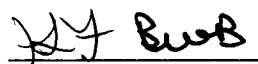
28.2.1 satisfaction or performance by the Developer of its obligations pursuant to this Agreement; or

28.2.2 assignment, transfer or novation of the Lease or the Developer's rights and obligations under this Agreement to any person in accordance with the terms of clause 27 of this Agreement except in relation to any Claim relating to antecedent breaches or liability incurred prior to the date of assignment, transfer or novation; or

28.2.3 termination, surrender or frustration of the Lease (except in relation to antecedent breaches) provided that:

28.2.3.1 the Agreement is registered in accordance with clause 26,

  
**Developer**

  
**Council**



28.2.3.2 the Developer has performed all outstanding obligations under this Agreement to the date of termination, surrender or frustration of the Lease; and

28.2.3.3 the Developer is not otherwise in breach of this Agreement.

## **29. Indemnity**

NOT USED.

## **Part 7 – Other Provisions**

### **30. Termination of and Term of Agreement**

30.1 This Agreement will remain in force until:

30.1.1 it is terminated by operation of Law;

30.1.2 the Sunset Date is reached; or

30.1.3 the Project Approval is surrendered in accordance with the Act; or

30.1.4 it is otherwise discharged or removed in accordance with the terms of this Agreement.

### **31. Review of Agreement**

31.1 The Parties agree to review this Agreement if:

31.1.1 either party is of the opinion that there is a change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development. For avoidance of doubt a change in the law relating to voluntary planning agreements is not a change which restricts or prohibits the Development, and to the maximum extent permissible at law the parties agree that this Agreement will survive any change in the law relating to voluntary planning agreements; or

31.1.2 the Project Approval is modified in a way which gives rise to a need to carry out additional repair and/or maintenance work to the Haulage Route as a result of the Development not originally provided for by the Project Approval.

31.2 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 31.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

31.3 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.

31.4 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 31.1 (but not 31.3) is not a Dispute for the purposes of this Agreement and is not a breach of this Agreement.

31.5 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 in accordance with clause 25D of the Regulation.



**Developer**



**Council**

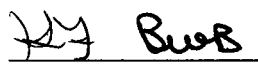
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## 32. Confidentiality

- 32.1 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.
- 32.2 The Parties agree, and must procure that any mediator or expert appointed under clauses 13 to 22 of this Agreement ("Dispute Resolution") agrees as a condition of their appointment:
- 32.2.1 Confidential Information has been supplied to some or all of the Parties in the negotiations leading up to the making of this Agreement; and
- 32.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Agreement; and
- 32.2.3 subject to paragraph 32.3, to keep confidential all Confidential Information, disclosed to them during or in relation to the expert determination or mediation; and
- 32.3 a Party may disclose Confidential Information in the following circumstance:
- 32.3.1.1 to a party or adviser who has signed a confidentiality undertaking to the same effect as this clause 32 ("Confidentiality"); or
- 32.3.1.2 in order to comply with a Law, local government policy or the ASX Listing Rules; or
- 32.3.1.3 for a purpose necessary in connection with an expert determination or mediation.
- 32.4 The Parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- 32.4.1 views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the Dispute; and
- 32.4.2 admissions or concessions made by a Party during the expert determination or mediation in relation to the Dispute; and
- 32.4.3 information, documents or other material, including Confidential Information concerning the Dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

## 33. Notices

- 33.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 33.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 33.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 33.1.3 emailed to that Party at its email address set out in the Summary Sheet.

  
Developer  
Council

- 33.2 If a Party gives the other Party 3 Business Days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 33.3 Any notice, consent, information, application or request must be treated as given or made if it is:
- 33.3.1 delivered, when it is left at the relevant address,
  - 33.3.2 sent by post, 7 Business Days after it is posted,
  - 33.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 33.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 48 hours of the email being sent.
- 33.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it must be treated as having been given or made at the beginning of the next Business Day.

#### **34. Approvals and Consent**


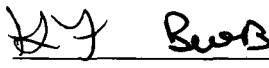
- 34.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- 34.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

#### **35. Costs**

- 35.1 The Developer must pay to the Council the Council's reasonable costs (exclusive of GST) of preparing, executing and stamping this Agreement, and any document relating to this Agreement, and of all advertising and associated costs, within 7 days of a written demand by the Council for such payment.
- 35.2 The Developer must pay to the Council the Council's reasonable costs at \$210 per hour (exclusive of GST) in connection with negotiating the terms of this Agreement, and any document related to this Agreement, within 7 days of a written demand by the Council for such payment.
- 35.3 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

#### **36. Entire Agreement**

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

  
**Developer**  
**Council**

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### **37. Further Acts**

- 37.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it, including giving an Approval.

### **38. Governing Law and Jurisdiction**

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

### **39. No Fetter**

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

### **40. Illegality**

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

### **41. Severability**

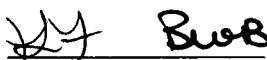
- 41.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 41.2 If any clause or part of a clause is illegal, unenforceable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

### **42. Counterparts**

- 42.1 This Agreement may be executed in any number of counterparts.

### **43. Waiver**

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

  
**Developer**  
**Council**

#### 44. GST

44.1 In this clause:

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

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

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

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

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

44.2 Subject to clause 44.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

44.3 Clause 44.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

44.4 No additional amount shall be payable by the Council under clause 44.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

44.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:



44.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

44.5.2 that any amounts payable by the Parties in accordance with clause 44.2 (as limited by clause 44.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

44.6 No payment of any amount pursuant to this clause 44, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

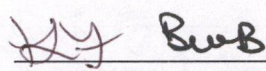
44.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

  
Developer

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

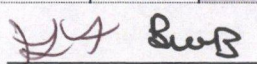
  
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**SCHEDULE 1**  
**CONTRIBUTION CALCULATION FORMULA**

			Haulage Route a (Rhondda Road)		Haulage Route b (Wakefield Road)		Haulage Route c (Wakefield Road & Northville Road)		Haulage Routed (Railway Street, William Street, Short Street, York Street, and Toronto Road)		Index - Road & Bridge Construction New South Wales		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
	= Column 14	= ((Column 4 x Column 5) +(Column 6 x Column 7) +(Column 8 x Column 9) +(Column 10 x Column 11)) x Column 2											= (Column 13 / 102.3) x 0.066
Reporting Date	Indexed Contributio n	Development Contributions	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Index Quarter	Index Number	Indexed Haulage Rate
Commencement Inputs											Dec-12	102.3	0.066
1 July 2016 - 31 December 2016			1.64		7.52		5.46		2.41		Sep-16		
1 January 2017 - 30 June 2017			1.64		7.52		5.46		2.41		Mar-17		
1 July 2017 - 31 December 2017			1.64		7.52		5.46		2.41		Sep-17		
1 January 2018 - 30 June 2018			1.64		7.52		5.46		2.41		Mar-18		
1 July 2018 - 31 December 2018			1.64		7.52		5.46		2.41		Sep-18		
1 January 2019 - 30 June 2019			1.64		7.52		5.46		2.41		Mar-19		
1 July 2019 - 31 December 2019			1.64		7.52		5.46		2.41		Sep-19		

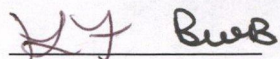
  
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			Haulage Route a (Rhondda Road)		Haulage Route b (Wakefield Road)		Haulage Route c (Wakefield Road & Northville Road)		Haulage Routed (Railway Street, William Street, Short Street, York Street, and Toronto Road)		Index - Road & Bridge Construction New South Wales		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
	= Column 14	= ((Column 4 x Column 5) + (Column 6 x Column 7) + (Column 8 x Column 9) + (Column 10 x Column 11)) x Column 2											= (Column 13 / 102.3) x 0.066
Reporting Date	Indexed Contribution	Development Contributions	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Index Quarter	Index Number	Indexed Haulage Rate
1 January 2020 - 30 June 2020			1.64		7.52		5.46		2.41		Mar-20		
1 July 2020 - 31 December 2020			1.64		7.52		5.46		2.41		Sep-20		
1 January 2021 - 30 June 2021			1.64		7.52		5.46		2.41		Mar-21		
1 July 2021 - 31 December 2021			1.64		7.52		5.46		2.41		Sep-21		
1 January 2022 - 30 June 2022			1.64		7.52		5.46		2.41		Mar-22		
1 July 2022 - 31 December 2022			1.64		7.52		5.46		2.41		Sep-22		
1 January 2023 - 30 June 2023			1.64		7.52		5.46		2.41		Mar-23		
1 July 2023 - 31 December 2023			1.64		7.52		5.46		2.41		Sep-23		
1 January 2024 - 30 June 2024			1.64		7.52		5.46		2.41		Mar-24		
1 July 2024 - 31 December 2024			1.64		7.52		5.46		2.41		Sep-24		

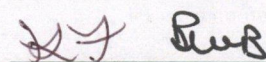
  
Developer

  
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			Haulage Route a (Rhondda Road)		Haulage Route b (Wakefield Road)		Haulage Route c (Wakefield Road & Northville Road)		Haulage Routed (Railway Street, William Street, Short Street, York Street, and Toronto Road)		Index - Road & Bridge Construction New South Wales		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
	= Column 14	= ((Column 4 x Column 5) + (Column 6 x Column 7) + (Column 8 x Column 9) + (Column 10 x Column 11)) x Column 2											= (Column 13 / 102.3) x 0.066
Reporting Date	Indexed Contribution	Development Contributions	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Index Quarter	Index Number	Indexed Haulage Rate
1 January 2025 - 30 June 2025			1.64		7.52		5.46		2.41		Mar-25		
1 July 2025 - 31 December 2025			1.64		7.52		5.46		2.41		Sep-25		
1 January 2026 - 30 June 2026			1.64		7.52		5.46		2.41		Mar-26		
1 July 2026 - 31 December 2026			1.64		7.52		5.46		2.41		Sep-26		
1 January 2027 - 30 June 2027			1.64		7.52		5.46		2.41		Mar-27		
1 July 2027 - 31 December 2027			1.64		7.52		5.46		2.41		Sep-27		
1 January 2028 - 30 June 2028			1.64		7.52		5.46		2.41		Mar-28		
1 July 2028 - 31 December 2028			1.64		7.52		5.46		2.41		Sep-28		
1 January 2029 - 30 June 2029			1.64		7.52		5.46		2.41		Mar-29		
1 July 2029 - 31 December 2029			1.64		7.52		5.46		2.41		Sep-29		

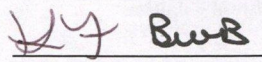
  
Developer

  
Council



			Haulage Route a (Rhondda Road)		Haulage Route b (Wakefield Road)		Haulage Route c (Wakefield Road & Northville Road)		Haulage Routed (Railway Street, William Street, Short Street, York Street, and Toronto Road)		Index - Road & Bridge Construction New South Wales		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
	= Column 14	= ((Column 4 x Column 5) +(Column 6 x Column 7) +(Column 8 x Column 9) +(Column 10 x Column 11)) x Column 2											= (Column 13 / 102.3) x 0.066
Reporting Date	Indexed Contributio n	Development Contributions	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Index Quarter	Index Number	Indexed Haulage Rate
1 January 2030 - 30 June 2030			1.64		7.52		5.46		2.41		Mar-30		
1 July 2030 - 31 December 2030			1.64		7.52		5.46		2.41		Sep-30		
1 January 2031 - 30 June 2031			1.64		7.52		5.46		2.41		Mar-31		
1 July 2031 - 31 December 2031			1.64		7.52		5.46		2.41		Sep-31		
1 January 2032 - 30 June 2032			1.64		7.52		5.46		2.41		Mar-32		
1 July 2032 - 31 December 2032			1.64		7.52		5.46		2.41		Sep-32		
1 January 2033 - 30 June 2033			1.64		7.52		5.46		2.41		Mar-33		
1 July 2033 - 31 December 2033			1.64		7.52		5.46		2.41		Sep-33		
1 January 2034 - 30 June 2034			1.64		7.52		5.46		2.41		Mar-34		
1 July 2034 - 31 December 2034			1.64		7.52		5.46		2.41		Sep-34		

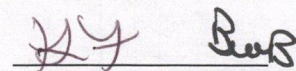
  
Developer

  
Council



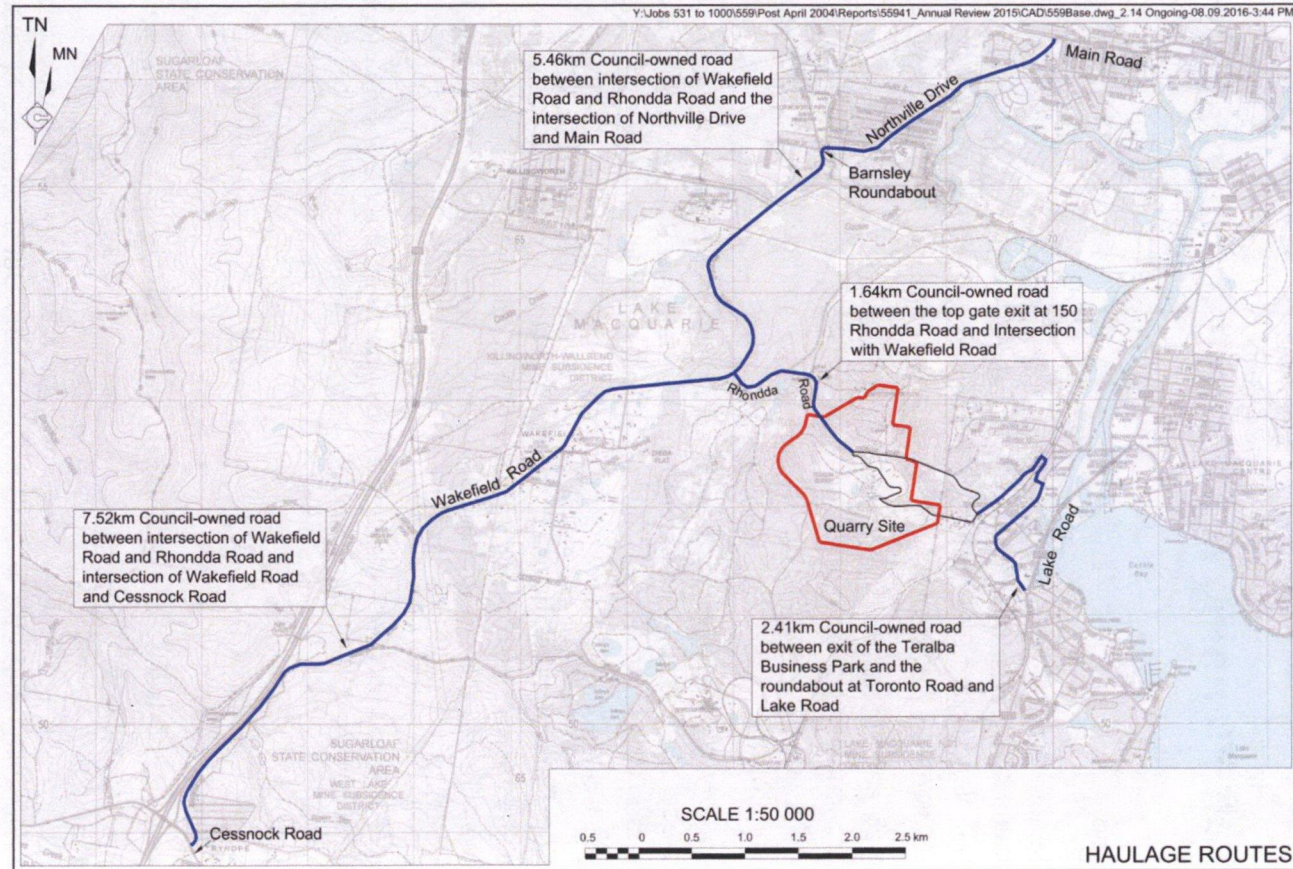
Column 1	Column 2	Column 3	Haulage Route a (Rhondda Road)		Haulage Route b (Wakefield Road)		Haulage Route c (Wakefield Road & Northville Road)		Haulage Routed (Railway Street, William Street, Short Street, York Street, and Toronto Road)		Index - Road & Bridge Construction New South Wales		Column 14
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	
	= Column 14	= ((Column 4 x Column 5) + (Column 6 x Column 7) + (Column 8 x Column 9) + (Column 10 x Column 11)) x Column 2											= (Column 13 / 102.3) x 0.066
Reporting Date	Indexed Contribution	Development Contributions	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Total Length	Total Tonnes Hauled	Index Quarter	Index Number	Indexed Haulage Rate
1 January 2035 - 30 June 2035			1.64		7.52		5.46		2.41		Mar-35		
1 July 2035 - 31 December 2035			1.64		7.52		5.46		2.41		Sep-35		
1 January 2036 - 30 June 2036			1.64		7.52		5.46		2.41		Mar-36		
1 July 2036 - 31 December 2036			1.64		7.52		5.46		2.41		Sep-36		
1 January 2037 - 30 June 2037			1.64		7.52		5.46		2.41		Mar-37		
1 July 2037 - 31 December 2037			1.64		7.52		5.46		2.41		Sep-37		
1 January 2038 - 30 June 2038			1.64		7.52		5.46		2.41		Mar-38		
1 July 2038 - 31 December 2038			1.64		7.52		5.46		2.41		Sep-38		

  
Developer

  
Council



## SCHEDULE 2 HAULAGE ROUTES



Developer

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Council



### SCHEDULE 3

# Explanatory Note

## Draft Planning Agreement for land at Teralba

### Introduction

Clause 25E of the *Environmental Planning and Assessment Regulation 2000* requires a planning authority (Lake Macquarie City Council) proposing to enter into a planning agreement under Section 93F of the *Environmental Planning and Assessment Act 1979* to prepare an explanatory note about the planning agreement.

A planning agreement results from an offer by a developer to a consent authority to dedicate land, make monetary contributions, construct facilities and / or provide any other material public benefit, to be used for or applied toward a public purpose associated with a development proposal.

This explanatory note relates to the draft Planning Agreement (hereafter referred to as "Planning Deed") proposed to be entered into by Metromix Pty Ltd ("the Developer") and the Lake Macquarie City Council ("the Council") in respect of land at Lot 1 DP 224037 and Lot 2 DP 224037 Teralba ("the Land").

The Planning Deed makes provision for the Developer to pay a haulage contribution to Council for the renewal and repair of parts of Rhondda Road, Wakefield Road, Northville Drive, Railway Street, William Street, Short Street, York Street, and Toronto Road, Teralba ("Haulage Route").


This explanatory note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

### Background

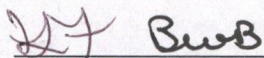
The Developer is the lessee of the Land on which the Quarry Development is carried out pursuant to the Project Approval.

The Developer lodged with the Department of Planning and Infrastructure the Project Application for Project Approval to continue the Quarry Development until 2038 and to allow for an increase in the annual extraction rate.

The Minister's delegate granted Project Approval to the Project Application on 22 February 2013.



Developer



Council



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Pursuant to condition 16 of the Project Approval the Developer is required to enter this Planning Deed with the Council, making provision for the matters contained in condition 17 of the Project Approval.

### **Objectives of the Planning Deed**

The objective of the Planning Deed is to secure a monetary contribution to be paid to Council progressively for the purpose of renewal and repair of the Haulage Route.

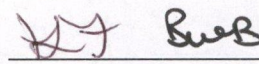
### **Nature of the Planning Deed**

The Planning Deed is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). The Planning Deed is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Deed) are made by the Developer for various public purposes (as defined in s93F (2) of the Act).

### **Effect of the Planning Deed**

The Planning Deed:

- relates to the carrying out of the Development pursuant to the Project Approval on the Land by the Developer,
- imposes obligations on the Developer to make monetary Development Contributions,
- excludes the application of s94 and s94A of the Act to the Development, but only in respect of Development Contributions for haulage over the Haulage Route,
- does not exclude the application of s94EF of the Act to the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Lease or assigning, or novating an interest under the Planning Deed,
- provides two dispute resolution methods for a dispute under the Planning Deed, being expert determination and mediation,
- provides that the Deed 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 Planning Deed.

  
Developer  
Council



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**Assessment of the Merits of the Planning Deed in relation to the Public Interest**  
**The Planning Purposes Served by the Planning Deed**

The Planning Deed encourages the provision and co-ordination of community services and facilities.

The Planning Deed provides funding for recurrent expenditure required to renew and repair the Haulage Route.

The Planning Deed is a reasonable means for achieving that planning purpose, as it provides for the progressive payment of monetary contributions to Council for renewal and repair of the Haulage Route.

**How the Draft Planning Deed Promotes the Public Interest**

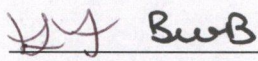
The Planning Deed promotes the public interest by promoting the objects of the Act as set out in s5(a)(v) of the Act.

**How this Planning Deed promotes the Elements of the Council's Charter under Section 8 of the Local Government Act 1993**

Under Section 8 of the *Local Government Act 1993*, a council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism
- to promote and to provide and plan for the needs of children
- 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 engage in long-term strategic planning on behalf of the local community
- to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants

  
Developer

  
Council



- 
- to keep the local community and the State government (and through it, the wider community) informed about its activities
  - to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected
  - to be a responsible employer.

The Planning Deed promotes Council's charter under section 8 of the *Local Government Act 1993* as it:

- provides adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively, and
- provides a means that allows the wider community to make submissions to the Council in relation to the Planning Deed.

**Assessment of whether the Planning Deed conforms to Council's Capital Works Program**

Council's Capital Work Program provides for the renewal and repair of roads. The Planning Deed conforms with Council's Capital Works Program as monetary contributions will be used for the renewal and repair of the Haulage Route.

**Whether the Planning Deed specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

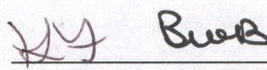
The Planning Agreement does not specify any requirements that must be provided before the issuing of a construction certificate, occupation certificate, or subdivision certificate.

Note: this explanatory note is a summary only of the amended Planning Agreement, is not to be relied upon as a complete description of the amended Planning Agreement, and is not to be used as an aid in construing the amended Planning Agreement.

**Metromix Pty Ltd**

**Council of the City of Lake Macquarie**

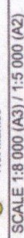
  
Developer

  
Council



LA BubB

**Council**





## Execution

Executed as a Deed

Dated:



**Executed on behalf of the Council** by affixing its Common Seal pursuant to resolution made by the Council on 5 December 2016

Brian Bell

Signature of General Manager

Kay Fraser

Signature of Mayor

Brian Bell

Name of General Manager

Kay Fraser

Name of Mayor

**Executed on behalf of the Developer** in accordance with s127(1) of the Corporations Act (Cth) 2001

[Signature]

Name/Position

SCOTT BUCHANAN

Name/Position

GENERAL MANAGER

METROMIX PTY LTD

[Signature]

Developer

[Signature] BueB

Council