


Amended clause – Planning Agreement DA 73/2007 - Road Works Schedule A

Year	Description	Developer's Contribution	Cash	Developer's Contribution	In-Kind
2022/23 and 2023/24	Improvement works to Reids Flat and Morongla Road intersection to satisfy condition 14 of Consent 73/2007	\$181,581.00 incl GST. Condition 5.2 of this agreement is not applicable to this contribution: the Cash Contribution and the 'Developer's In-Kind Contribution' are required.		400m3 gravel subbase material meeting TfNSW Specification R305 I 1,136m3 gravel base material meeting TfNSW Specification R305 I 28m3 precoated 10mm sealing aggregate meeting TfNSW Specification R315 I 37m3 precoated 14mm sealing aggregate meeting TfNSW Specification R315 I	

Explanatory note: The objective of the amended 'Road Works Schedule A' of the existing Planning Agreement is to facilitate the construction of road works by Council, including contributions from the developer, that will satisfy condition 14 of Consent No 73/2007. The consent condition requires road works to re-align the Morongla Road and Reids Flat Road intersection to meet the current Austroads 'Guide to Road Design' recommendations.

The proposed road design changes to the Morongla Road and Reids Flat Road intersection will upgrade the intersection layout to comply with current Austroads 'Guide to Road Design' recommendations, resulting in improved road safety outcomes. Appropriate engineering plans have been submitted and accepted by Council's Assets and Technical Services Department.

PLANNING AGREEMENT


Received Date: _____
Time: _____
Registration Date: <u>15 July 09</u>
Document No: _____
Officer Initial: _____
Disposal
2 yrs <input type="checkbox"/> 7 yrs <input type="checkbox"/> 10 yrs <input type="checkbox"/> S/A <input type="checkbox"/>

Parties

Cowra Shire Council of 116 Kendall Street, Cowra, New South Wales (**Council**)

and

Glenella Quarry Pty Limited (ABN 75 117 019 155) (**Developer**)

Background

- A. On 30 April 2007 the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development Consent was granted.
- C. Development Consent was granted by Cowra Shire Council on 6 July 2007.

Operative provisions

1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

This Agreement applies to the Land.

3 Operation of this Agreement

This Agreement takes effect on the date that it is executed by the parties.

4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

Construction Certificate has the same meaning as in the Act.

Contribution means cash or works in-kind contribution.

Council means Cowra Shire Council.

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

Developer includes the operators of the Glenella Quarry from time to time and any assignee of Glenella Quarry Pty Limited under this agreement.

Development means the continuation and expansion of an Extractive Industry (Glenella Quarry) proposed by the Developer for the Land and the subject of Development Application 73/2007.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the amount referred to in Clause 5.2.

Dispute means a dispute regarding the terms or operation of this Agreement.

GST has the same meaning as in the GST Law.

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

Laden Truck means one truck and dog configuration loaded with saleable product.

Land means Lot 35 and 44 DP 752935, 483 Battery Road, Cowra via Morongla, known as "Glenella Quarry."

Material Stockpile Area means that section of the Reids Flat Road Reserve as defined on the Map in Appendix B.

Operating Volume means the volume of product measured by an average of thirty (30) laden trucks per week leaving the Land averaged over a six (6) month period.

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

Planning Agreement has the same meaning as in s.93C of the Act.

Public Facilities means the projects identified in the Road Works Schedule as projects to be benefitted from the Development Contribution. road network comprising Reids Flat Road, Morongla Road.

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

Road Works means the road works described in the Road Works Schedule.

Road Works Schedule means Schedule A.

Saleable Product means quartz pebble, sand, basalt or clay produced from Glenella Quarry for sale to a customer of the Developer.

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) 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.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) 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.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

The Developer will make the following Development Contributions:-

- 5.1 The Developer shall pay to Council the Development Contribution in the manner and at the timing set out in this clause.
- 5.2 The Developer will, at the developer's election pay to Council the Developer's Cash Contribution or provide the Developer's In-kind Contribution as set out in Road Works Schedule A.
- 5.3 The Road Works shall be undertaken when the operating volume is first achieved.

6 Payment Regime

6.1 The Developer will make the contribution required in clause 5.2 progressively for the works in the priorities identified for the year of contribution.

7 Application of the Development Contributions

7.1 Council is to undertake the Road Works in the priority identified in the Road Works Schedule A.

7.2 The Road Works are to be completed within the year identified in the Road Works Schedule.

7.3 Council must apply the Development Contributions to the Road Works.

8 Material Stockpile Area

8.1 Council is to provide and maintain a Material Stockpile Area on the eastern side of Reids Flat Road, adjoining the intersection of Reids Flat Road and Morongla Road, as shown on the Map in Appendix B.

8.2 The Developer is to deliver all road base material which is to be part of the Developer's In-kind Contribution to the Material Stockpile Area, as shown on the Map in Appendix B, at which time property in the road based material passes to Council.

8.3 The Material Stockpile Area will be managed and maintained by Council at its risk.

9 Application of s94 and s94A of the Act to the Development

9.1 This Agreement excludes the application of s.94 or s.94A of the Act to the development.

9.2 S.94(6) of the Act does not apply to the Development Contribution that is to be provided pursuant to this Agreement and those benefits are not to be taken into consideration under section 94 of the Act in respect of any development for which Development Consent is sought.

9.3 For clarity, if the Development Consent is modified, this Agreement continues to apply to any development undertaken in accordance with the Development Consent unless this Agreement is amended under the Act.

10 Registration of this Agreement

The parties agree that Registration of this Agreement on the title to the Land is not required.

11 Review of this Agreement

This Agreement may only be amended by a further Planning Agreement entered into by the parties.

12 Dispute Resolution

12.1 If any dispute arises out of or in connection with this Agreement, the following procedure must be followed in order to resolve it:

(a) either party may give written notice of the dispute to the other party. A representative nominated by each party must meet within five (5) Business Days of receipt of that notice and attempt in good faith to resolve the dispute.

(b) if the dispute is not resolved between the nominated representatives within ten (10) Business Days of receipt of the notice referred to in clause (a) above, then the dispute will be notified to the relevant divisional manager (or officer holding the equivalent position) of each party who must

meet and attempt in good faith to resolve the dispute within five (5) Business Days of the date of receipt of that notice; and

(c) if the dispute remains unresolved with ten (10) Business Days from receipt of the notice referred to in clause (b) above, notice will be given to the Chief Executive Officers (or officer holding an equivalent position) of each party who must meet and attempt in good faith to resolve the dispute within five (5) Business Days of the receipt of that notice.

(d) For the purposes of this clause a meeting may take place by telephone or other means of communication.

12.2 If the parties fail to resolve the dispute after following the procedures set out in clause 11.1, then they must agree of the appropriate method of alternative dispute resolution (which may include expert determination or mediation) within ten (10) Business Days of the date of the final meeting held in accordance with clause 11.1(c).

12.3 If the parties select expert determination as the method of resolving the dispute, the expert must act as an expert and not an arbitrator, his determination will be binding upon the parties unless otherwise agreed and his costs must be equally shared between the parties.

12.4 If the parties fail to agree on the appropriate method of alternative dispute resolution in accordance with clause 11.2, the dispute must be referred for mediation to a mediator nominated by the then current Chairman of the Australian Commercial Disputes Centre in Sydney (ACDC), or, if ACDC no longer exists, as agreed between the Council and the Developer, or if the same cannot agree, then the developer shall choose a mediator from a panel of not fewer than three (3) mediators nominated by the Council. The role of the

mediator is to assist in the resolution of the dispute and the mediator may not make a decision which is binding on the parties.

12.5 The costs associated with appointing the mediator under clause 11.4 must be shared equally between the parties.

13 Enforcement

13.1 The Developer commits an "event of default" if it commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions to be performed or observed by the Developer under this Agreement.

13.2 Where the Developer commits an event of default the Council may:-

- (a) serve a notice on the Developer requiring the breach of this Agreement to be rectified within a reasonable period from the date of the notice; and
- (b) if the Developer fails to rectify the breach in accordance with a notice given under clause 12.2(a), claim damages for breach of contract from the Developer.

13.3 The rights vested in the Council pursuant to 12.2 do not prevent the Council from exercising any other rights that it may possess at law.

14 Notices

14.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.

(c) Emailed to that Party at its email address set out below.

Council

Attention: The General Manager

Address: Cowra Shire Council

PO Box 342

COWRA NSW 2794

Fax Number: (02) 6340 2011

Email: council@cowra.nsw.gov.au

Developer

Attention: The Directors

Address: Glenella Quarry Pty Limited

483 Battery Road

COWRA NSW 2794

Fax Number: (02) 6345 4212

Email: michael@glenellaquarry.com

14.2 If a Party gives the other Party three (3) business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

14.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

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

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

15 Approvals and consent

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

16 Assignment and Dealings

A party must not assign this planning agreement or any right under this planning agreement without the prior written consent of the other party which must not be unreasonably withheld.

17 Costs

Each party must bear its own costs of preparing and executing this planning agreement.

18 Entire agreement

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

19 Further acts

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

20 Governing law and jurisdiction

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

21 Joint and individual liability and benefits

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

22 No fetter

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.

23 Representations and warranties

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

24 Severability

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

25 Modification

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

26 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation, by another Party. A waiver by a Party is only effective if it is in writing. 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.

27 GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount

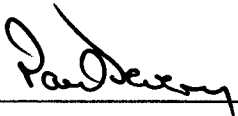
equal to the GST on that supply provided that no additional amount is payable under this clause until the supplier issues a tax invoice to the recipient for the supply.

Execution

Dated:

Executed as an Agreement:

Signed for and on behalf of Cowra Shire Council



General Manager

Name:

PAUL DEVERY

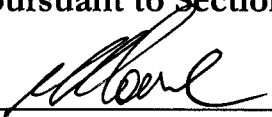
Witness



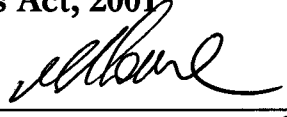
Name: MICHAEL CARTER

Executed by GLENELLA QUARRY PTY. LIMITED ABN 75 117 019

155 pursuant to Section 127 of the Corporations Act, 2001



Director



FOR AND ON BEHALF OF
Secretary GLENELLA QUARRY
PTY LTD

Name: MICHAEL HOWE

Name: MICHAEL HOWE

Road Works Schedule A

Year	Description	Developer's Cash Contribution (\$)	Developer's In-Kind Contribution
1	Extend Culverts on Reids Flat Road	33,421.30	Nil
2	Widen and Overlay Morongla Road 0-1km from Reids Flat Rd	56,184.28	1,914m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification 3051) 84m ³ sealing aggregate (RTA Specification 3151)
2	Widen Box Culvert 0.76 on Morongla Road	15,456.86	Nil
3	Widen and Overlay Morongla Road 1-2km from Reids Flat Rd	56,184.28	1,914m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification 3051) 84m ³ sealing aggregate (RTA Specification 3151)
3	Widen and Overlay Morongla Road 2-3km from Reids Flat Rd	56,184.28	1,914m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification

			3051) 84m ³ sealing aggregate (RTA Specification 3151)
4	Widen and Overlay Reids Flat Road 0.25- 1.25km from Battery Rd	56,184.28	1,914m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification 3051) 84m ³ sealing aggregate (RTA Specification 3151)
5	Widen and Overlay Morongla Road 3-4km from Reids Flat Rd	56,184.28	1,914m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification 3051) 84m ³ sealing aggregate (RTA Specification 3151)
6	Widen and Overlay Morongla Road 4-5km from Reids Flat Rd	56,184.28	1,914m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification 3051) 84m ³ sealing aggregate (RTA Specification 3151)
6	Widen and Overlay Morongla Road 5-6.1km from Reids Flat Rd	58,690.72	2,105m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification 3051) 84m ³ sealing aggregate (RTA

			Specification 3151)
7	Widen and Overlay Reids Flat Road 1.4- 2.6km from Battery Rd	62,633.12	2,299m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification 3051) 84m ³ sealing aggregate (RTA Specification 3151)
7	Widen and Overlay Reids Flat Road 3.03- 3.58km from Battery Rd	45,184.92	1,053m ³ uncompacted gravel road base (Minimum DGB20, RTA Specification 3051) 84m ³ sealing aggregate (RTA Specification 3151)

Material Stockpile Area Map Schedule B

