

## **Explanatory Note- SSD-6084**

### **Objectives of the Planning Agreement**

To provide a material benefit to be used for or applied towards a public purpose.

### **Nature of the Planning Agreement**

- The developer shall pay an amount of \$0.025 per tonne of quarry product sold from the quarry on a quarterly basis for community facilities and infrastructure within the Lithgow Local Government Area. This planning agreement will commence and be effective on and from the date on which the consent is granted.

### **Effect of the Planning Agreement**

This planning agreement is made in satisfaction of condition 20, schedule 2 of the development consent, granted by the Minister for Planning (under delegation) in relation to State Significant Development application: SSD-6084, dated 15 July 2015. The effect of the Planning Agreement will be to allow for the provision of facilities for public use within the Lithgow Local Government Area.

### **Merits of the Planning Agreement**

- The proposed development is for the extension of the Austen Quarry.
- In the assessment of the merits of the development, Council must consider the social impacts of the proposal on the immediate locality and on the wider community, and ensure through whichever means are available for community facilities and infrastructure to be provided which will address this matter.
- The provision of community facilities and infrastructure is the main outcome derived from the development and operation of this Planning Agreement.

### **Promotion of Council's Charter**

Council has a vision for the Lithgow area to be recognised as a desirable place to live and visit and a viable place in which to invest. The provision of community facilities and infrastructure will assist in promoting this vision.

### **Planning Purpose**

The planning purpose of the Planning Agreement is to achieve compliance with :

- the Environmental Planning and Assessment Act and Regulation; and
- the relevant provision(s) of the Minister for Planning's development consent (made under delegation and pursuant to s 89E of the *Environmental Planning*

*and Assessment Act 1979*) in relation to State Significant Development: SSD-6084 dated 15 July 2015.

to ensure the public interest of the development, being to provide facilities which may be of benefit towards a public purpose; and

to enhance the positive social impact of the development on the locality.

**Capital Works Program**

Once funds from the Planning Agreement have been collected Council begins planning for their expenditure through incorporation into the capital works program.

As agreed this day:.....

“NAME”

Hy-Tec Industries Pty Limited:.....

Lithgow City Council:.....

Between LITHGOW CITY COUNCIL AND HY-TEC INDUSTRIES PTY LIMITED

## PLANNING AGREEMENT

### Parties

**Lithgow City Council** of 180 Mort Street Lithgow, New South Wales, 2790 (**Council**)

and

**Hy-Tec Industries Pty Limited** ACN 071 016 290 of Level 1, 157 Grenfell Street, Adelaide SA 5000 (**Developer**)

### Background

- A. On, 5 November 2014, the Developer made a State Significant Development Application to the Department of Planning for development consent to extend the Austen Quarry.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards Public Facilities and Infrastructure if that development consent was granted.
- C. On 15 July 2015, the Minister for Planning (under delegation) granted the Development Consent for the Development.
- D. Condition 20 of Schedule 2 of the Development Consent requires the Developer to enter into a planning agreement with Council in accordance with Division 6 of Part 4 of the Act with the inclusion of the terms specified in Appendix 7 of that consent.

### 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 is in relation to State Significant Development application: SSD-6084 for the extension of the Austen Quarry, which applies to Lots 1 and 2 in DP 1005511, Lot 31 in DP 1009967, and Lot 4 in DP 876394, being 391 Jenolan Caves Rd Hartley.

### 3 Operation of this Agreement

This Agreement takes effect on the date of execution. All contributions must be paid on a quarterly basis and within 21 days of the end of the relevant quarter.

### 4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

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

**Development** means the extension of the Austen Quarry as described in State Significant Development application: SSD-6084 and approved by the Minister for Planning (as delegated) on 15 July 2015.

**Development Application** has the same meaning as in the Act.

**Development Consent** means the consent granted by the Minister for Planning (as delegated) under s 89E of the Act for the Development and dated 15 July 2015.

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

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

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

**Land** means Lots 1 and 2 in DP 1005511, Lot 31 in DP 1009967, and Lot 4 in DP 876394 being 391 Jenolan Caves Rd Hartley NSW 2790.

**Minister** means the Minister for Planning (New South Wales)

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

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

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, notated, 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

5.1 The Developer shall, for the duration of the Development Consent, pay to Council a Development Contribution in the amount of \$0.025 per tonne of quarry products sold from the quarry on a quarterly basis for the provision of community facilities and infrastructure in the Lithgow Local Government Area.

5.2 On each anniversary of the date of this Agreement, the Development Contribution payable under clause 5.1 will be reviewed in accordance with the following formula:

$$\text{NDC} = \text{DC} \times (\text{CPI}_n / \text{CPI}_{n-1})$$

Where:

NDC is the new Development Contribution

DC is the Development Contribution immediately prior to the review

CPI<sub>n</sub> is the most recently published CPI on the date of the rent review

CPI<sub>n-1</sub> is the CPI most recently published CPI as at the date of the previous rent review (or, in the case of the first review, as at the date of this Agreement)

CPI is the Consumer Price Index (Sydney, all groups index) published by the Australian Bureau of Statistics each quarter

5.3 Each payment shall be:

5.3.1 based on weighbridge records of the quantity of material sold from the quarry in the relevant quarter; and

5.3.2 paid within 21 days of the end of the relevant quarter.

5.4 The Developer shall pay each payment by direct debit into Council's elected bank account (details below):

Account Name:

BSB:

Account Number:

## 6 Application of s94, s94A and s94EF of the Act to the Development

Sections 94,94A and s94EF do not otherwise apply to the Development.

## 7 Registration of this Agreement

This Agreement will not be registered as provided for in s93H of the Act as its provisions are to be finalised in accordance with and remain operative under the Development Consent.

## 8 Review and amendment of this Agreement

This agreement shall not be reviewed or amended except with the approval of both parties.

## 9 Dispute Resolution

Should a dispute arise as to any part of this agreement that cannot be resolved between the parties then the parties may engage an independent mediator to be funded by the parties to assist in resolving the dispute.

## 10 Enforcement

10.1 Within 28 days after the execution of this agreement, the Developer shall provide Council with a bank guarantee for \$25,000 for the purposes of securing the Developer's obligations under this agreement. The bank guarantee will have an expiry date of 10 years from the date of this agreement and, on expiry, will be replaced with a further bank guarantee with an expiry date of a further 10 years.

10.2 Before drawing down on any bank guarantee, Council shall give the Developer two weeks notice in a form and by a method which complies with the requirements of clause 11 of this agreement.

10.3 Upon the Developer's full and final discharge of its obligations under this agreement, Council must, within 28 days thereafter, return to the Developer any bank guarantee provided by the Developer to Council under this agreement.

## 11 Notices

11.1 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.

### **Council**

Attention: Andrew Muir

Address: 180 Mort Street, Lithgow, NSW 2790

Phone Number: 02 6354 9999

Fax Number: 02 63512927

Email: acm@lithgow.nsw.gov.au

### **Developer**

Attention: The Company Secretary

Address: Level 1, 157 Grenfell Street, Adelaide  
SA 5000

Phone Number: (08) 8223 8015

Fax Number: (08) 8215 0030

If a Party gives the other Party 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.

11.2 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, 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.

11.3 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 4.30pm 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.

## 12 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.

## 13 Assignment and Dealings

The parties agree that this agreement shall not be assigned to any other party. Should the developer intend to sell, transfer or otherwise dispose of the property the subject of the agreement then the developer hereby agrees to honour the terms of the agreement prior to such sale, transfer or disposition.

## 14 Costs

Any reasonable incidental costs associated with this agreement shall be borne by the Developer up to a maximum of \$5,000 plus GST.

## 15 Entire agreement

This Agreement, in conjunction with the relevant provision(s) of the Development Consent, 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.

## 16 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.

## 17 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.

## 18 Joint and individual liability and benefits

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

## 19 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.

## 20 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.

## 21 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.

## 22 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.

## 23 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.

## 24 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 recipient of the supply must pay an additional amount equal to the GST on that supply.

## Execution

### Dated:

### Executed as an Agreement:

Executed for and on behalf of

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**LITHGOW CITY COUNCIL**

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in the presence of:

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\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Date

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Position

Executed for and on behalf of

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**HY-TEC INDUSTRIES PTY LTD**

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in the presence of:

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Witness

Signature

Name (please print)

Name (please print)

Date

Position