

# **Deed**

## **Varaville Quarry Planning Agreement**

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

Development Application DA/0019/1516

**Goulburn Mulwaree Council**  
**Kristen Florance**

12 October 2017

# **Varaville Quarry Planning Agreement**

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**Varaville Quarry Planning Agreement  
Goulburn Mulwaree Council  
Kristen Florance**

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## **Varaville Quarry Road Works Planning Agreement Summary Sheet**

### **Council:**

**Name:** Goulburn Mulwaree Council

**Address:** Locked Bag 22, Goulburn NSW 2580

**Telephone:** (02) 4823 4444

**Facsimile:** (02) 4822 7999

**Email:** [council@goulburn.nsw.gov.au](mailto:council@goulburn.nsw.gov.au)

**Representative:** Warwick Bennett (General Manager)

### **Developer:**

**Name:** Kristen Florance

**Address:** 984 Bullamalita Road, Quialigo NSW 2580

**Postal Address:** PO Box 201, Chatswood NSW 2067

**Telephone:** (02) 9884 8490

**Facsimile:** (02) 9884 8582

**Email:** [adrian@olymel.com.au](mailto:adrian@olymel.com.au)

**Representative:** Adrian Florance

### **Land:**

See definition of *Land* in clause 1.1.

### **Development:**

See definition of *Development* in clause 1.1.

### **Development Contributions:**

See Clause 11, 12 and 13.

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

See clause 8.

### **Enforcement:**

See Part 4.

### **Registration:**

See clause 19.

### **Restriction on dealings:**

See clause 20.

### **Dispute Resolution:**

See Part 3.

## **Varaville Quarry Planning Agreement**

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

### **Parties**

**Goulburn Mulwaree Council** ABN 84 049 849 319 of 184-194 Bourke Street, Goulburn, NSW 2580 ('**Council**')

and

**Kristen Florance** of 984 Bullamalita Road, Qualigo NSW 2580 ('**Developer**')

### **Background**

- A The Developer owns the Land.
- B The Developer has submitted a Development Application (DA/0019/1516) to Council to establish an extractive industry on the land having a maximum extraction rate of 10,000 cubic metres per annum.
- C The Developer has made an offer to the Council to pay the monetary contribution and carry out the Developer Works if the Development Application (DA/0019/1516) is approved by the Council.
- D The Council has identified works that will be undertaken on Bullamalita Road if the Development Application (DA/0019/1516) is approved.
- E The Parties have agreed to enter into this Agreement.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **1 Interpretation**

1.1 In this Deed the following definitions apply:

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

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Council** means Goulburn Mulwaree Council

**Council works** means the works specified in items 4.-7. in Schedule 1.

**Court** means the Land and Environment Court of New South Wales.

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

**Developer Works** means the works specified in items 1 and 2 in Schedule 1.

**Development** means the development to which the Development Application DA/0019/1516 applies.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**Equivalent standard axle** means a reference axle load. The standard axle is a single axle with dual tyres transmitting a load of 80kN to the pavement. The number of equivalent standard axle loads is termed the number of equivalent standard axles.

**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.

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Land** means Lot 191 in DP 750044 at 984 Bullamalita Road, Quialigo.

**Monetary Contribution** means the payment of a levy as set in Clause 9.1.

**Occupation Certificate** has the same meaning as in the Act

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

**Public Purpose** means the maintenance and/or repair of the Bullamalita Road.

**Register** means the register maintained by the Registrar-General pursuant to s31B of the *Real Property Act 1900*,

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

- 1.2 In the interpretation of this Deed, 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 Deed.
  - 1.2.2 A reference in this Deed 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 is to be done under this Deed 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 Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.5 A reference in this Deed to a \$ value relating to a development contribution is a reference to the value inclusive of GST.
  - 1.2.6 A reference in this Deed 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.
  - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.

- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 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 this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Deed.
- 1.2.16 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

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

## **3 Commencement**

- 3.1 This Deed takes effect on the date when each of the Parties have executed separate counterparts of this Deed.
- 3.2 The Party who executes this counterpart last is to insert on the front page the date they did so.
- 3.3 The Parties are to exchange the original executed counterparts of this Deed.

## **4 Application & Operation of this Deed**

- 4.1 This Deed applies to the Land.
- 4.2 This Deed applies to the proposed Development.
- 4.3 For the avoidance of doubt, the Developer is under no obligation to make a development contribution to the Council in accordance with this Deed unless and until the Development Application has been approved by the Council.

## **5 Warranties**

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

## **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 Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

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

- 7.1 This Deed excludes the application of s94 to the Development.
- 7.2 This Deed excludes the application of s94A to the Development.
- 7.3 This Deed does not exclude the application of s94EF to the Development.

## **8 Deleted**

## **Part 2 – Development Contributions**

### **9 Payment of monetary development contribution**

- 9.1 The Developer is to pay to the Council as a Monetary Contribution the sum of \$0.0924 per tonne per kilometre or \$0.462 per equivalent standard axle per kilometre for 13.9km for all material transported from the site minus the value of the Developer Works. The payment of the Monetary contribution as either the per tonne per kilometre or equivalent axle per kilometre rate is dependent on the method employed to calculate and verify traffic haulage movements in accordance with Condition 11. of the deferred commencement consent dated 18 July 2017.
- 9.2 The Monetary Contribution referred to in clause 9.1 is to be paid on the 1 January, 1 April, 1 July and 1 October of each year for material transported from the site during the preceding quarter for as long as the quarry is operational. The contribution will be divided between Council and the Developer on the basis of 22% payable to Council by the Developer and 78% as a credit to the Developer until the monetary value of the Developer Works has been amortized. After which 100% of the contribution will be payable to Council by the Developer.
- 9.3 The Monetary Contribution referred to in clause 9.1 is made when the Council receives the full amount in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

### **10 Carrying out of Developer Works**

- 10.1 Prior to the commencement of operations, the Developer will carry out the Developer Works on the Bullamalita Road to the requirements of Council the items identified in Schedule 1 as the responsibility of the Developer:
- Gravel pavement repair on the Bullamalita Road generally between RA 720 and RA 1178 comprising the placement of approximately 1,400 tonnes of gravel from the Varaville quarry;
  - Complete a maintenance grade of the unsealed section of Bullamalita Road.

### **11 Public Purpose**

- 11.1 The Council is to apply the Monetary Contributions towards the Public Purpose in accordance with the Act for maintenance work and/or repairs on Bullamalita Road.



## **12 Council contributions**

- 12.1 Council agrees to undertake the works identified in Schedule 1 as the responsibility of Council

## **13 Carrying out of Work**

- 13.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval or any other applicable law.
- 13.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

## **14 Variation to Work**

- 14.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 14.2 Without limiting clause 14.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 14.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 14.2.
- 14.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before a Work is carried out in a specified manner and submit the variation to the Council for approval.
- 14.5 The Developer is to comply promptly with a direction referred to in clause 14.4 at its own cost.

## **15 Council's Obligations relating to Works**

- 15.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavors to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

## **16 Repair of Damage**

- 16.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 16.2 The Developer is to carry out its obligation under clause 16.1 at its own cost and to the satisfaction of Council.

## **17 Completion of work**

- 17.1 The Developer is to give the Council written notice of the date on which it will complete the Work required to be carried out under this Deed.
- 17.2 The Council will inspect the Work the subject of the notice referred to in clause 17.1 within 14 days of the date specified in the notice for completion of the Work.
- 17.3 Work required to be carried out by the Developer under this Deed, is completed for the purposes of this Deed when the Council, acting reasonably, give a written notice to the Developer to that effect.
- 17.4 If the Council is the owner of the land on which the Work the subject of a notice (is) referred to in (clause) 17.3, the Council assumes responsibility for the work upon the issuing of the notice.
- 17.5 Before Council gives the Developer a notice referred to in (clause) 17.3, it may give the Developer a written direction to complete, rectify, or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 17.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 17.5.

## **Part 3 – Dispute Resolution**

### **18 Dispute resolution – expert determination**

- 18.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
  - 18.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 18.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 18.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 18.3 If a notice is given under clause 18.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 18.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expertdetermination.
- 18.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 18.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 18.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **19 Dispute Resolution - mediation**

- 19.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 18 applies.

- 19.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 19.3 If a notice is given under clause 19.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 19.4 If the Dispute is not resolved within a further 28 days, 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 to select a mediator.
- 19.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 19.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 19.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 – Security for Enforcement**

### **20 Restriction on applying for Occupation Certificate**

- 20.1 The Developer is not to commence quarrying operations pursuant to Development Application DA/0019/1516 unless and until the Developer Works have been completed and approved in writing by Council.

### **21 Enforcement in a court of competent jurisdiction**

- 21.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 21.2 For the avoidance of doubt, nothing in this Deed prevents:
- 21.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 21.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

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

### **22 Registration of this Deed**

- 22.1 On the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 22.1.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
- 22.1.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 22.2 The Council and Developer are to do such things as are reasonably necessary to enable registration of this Deed to occur.
- 22.3 Immediately upon quarrying operations permanently ceasing on the site, the Parties are to co-operate with each other and do all things reasonably necessary to expeditiously remove from the title to the Land any notation

relating to this Deed.

## **23 Restriction on dealings**

- 23.1 This clause does not apply once the Monetary Contributions required by clause 9 have been made to the Council.
- 23.2 The Developer is not to:
- 23.2.1 sell or transfer the Land, or
  - 23.2.2 assign the Developer's rights or obligations under this Deed, or novate this Deed, to any person unless:  
the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council.
- 23.3 Clause 23.2 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

## **Part 6 – Indemnities & Insurance**

### **24 Risk**

- 24.1 The Developer performs this Deed at its own risk and its own cost.

### **25 Release**

- 25.1 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 Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **26 Indemnity**

- 26.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

## **Part 7 – Other Provisions**

### **27 Notices**

- 27.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 27.1.1 delivered or posted to that Party at its postal address set out in the Summary Sheet,
  - 27.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 27.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 27.2 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.

- 27.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 27.3.1 delivered, when it is given to the Party or representative at the relevant address,
  - 27.3.2 sent by post and a delivery confirmation has been received,
  - 27.3.3 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
  - 27.3.4 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.
- 27.4 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.

## **28 Costs**

- 28.1 The Developer and Council will pay their own costs for preparing, negotiating and executing this Deed.

## **29 Entire Deed**

- 29.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 29.2 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 Deed was executed, except as permitted by law.

## **30 Further Acts**

- 30.1 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 Deed and all transactions incidental to it.

## **31 Governing Law and Jurisdiction**

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

## **32 No Fetter**

- 32.1 Nothing in this Deed 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.

### **33 Illegality**

- 33.1 If this Deed 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 Deed is entered into.

### **34 Severability**

- 34.1 If a clause or part of a clause of this Deed 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.
- 34.2 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 Deed, but the rest of this Deed is not affected.

### **35 Amendment**

- 35.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

### **36 Waiver**

- 36.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 36.2 A waiver by a Party is only effective if it is in writing.
- 36.3 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.

### **37 GST**

- 37.1 In this clause:

**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.

- 37.2 Subject to clause 37.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 37.3 Clause 37.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

- 37.4 No additional amount shall be payable by the Council under clause 37.2 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.
- 37.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed 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:
- 37.5.1 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;
- 37.5.2 that any amounts payable by the Parties in accordance with clause 37.2 (as limited by clause 37.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 37.6 No payment of any amount pursuant to this clause 37, 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.
- 37.7 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.
- 37.8 This clause continues to apply after expiration or termination of this Deed.

## **38 Explanatory Note**

- 38.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 38.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

## Execution


**Executed as a Deed**

**Dated:** 17<sup>th</sup> October 2017

**Executed on behalf of the Council**

General Manager 

Witness 

Mayor 

Witness 

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

Name/Position KRISTEN FLORANCE / DEVELOPER.



Name/Position ADRIAN FLORANCE / REPRESENTATIVE





## **Appendix**

(Clause 35)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

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

### **Parties**

**Goulburn Mulwaree Council** ABN 84 049 849 319 of 184-194 Bourke Street, Goulburn NSW 2580 (Council)

and

**Kristen Florance** 984 Bullamalita Road, Quialigo NSW 2580 (Developer)

### **Description of the Land to which the Draft Planning Agreement Applies**

Lot 1 in DP 750044 at 984 Bullamalita Road, Quialigo NSW 2580

### **Description of Proposed Development**

The Developer has made a Development Application (DA/0019/1516) to Council to establish an extractive industry on the site having a maximum extraction rate of 10,000 cubic metres per annum.

### **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

#### **Objectives of Draft Planning Agreement**

The objective of the Draft Planning Agreement is to require the Developer to make a Monetary Contribution to Council and undertake Developer Works for maintenance of Bullamalita Road.

The Developer has offered to make the Monetary Contribution and complete Developer Works if the Council approves the Development Application (DA/0019/1516).

The Council has agreed to undertake roadworks on Bullamalita Road if the Development Application (DA/0019/1516) is approved.

#### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is an agreement under s93F of the Environmental Planning and Assessment Act 1979 (Act). The Draft Planning Agreement is a voluntary agreement under which development contributions are made and developer works undertaken by the Developer towards supplementary maintenance of Bullamalita Road.

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

The Draft Planning Agreement:

- relates to the carrying out of the Development on the Land,
- requires the Developer to make certain development contributions and undertake certain developer works.
- requires the Council to undertake certain works

## **Assessment of the Merits of the Draft Planning Agreement**

### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- provides for developer works that contribute to providing transport infrastructure (Bullamalita Road)
- provides monetary development contributions towards the recoupment of the recurrent costs of maintenance of Bullamalita Road
- provides for Council works to improve the road condition

### **How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979**

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

### **How the Draft Planning Agreement Promotes the Public Interest**

Monetary contributions and Developer works will contribute towards supplementary maintenance and/or repair of Bullamalita Road. The Developer works will enable pavement repair along an existing section of Bullamalita Road and a maintenance grade of the unsealed section of the road prior to quarry operations commencing. The Council works will improve the condition of Bullamalita Road for the safety of all road users.

### **For Planning Authorities:**

#### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

#### ***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

#### ***Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter under section 8 of the***

***Local Government Act 1993***

Under Section 8A of the Act, guiding principle (1)(f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way. The Regional Community Strategic Plan 2016-2036 includes the following Strategy which is relevant to the Draft Planning Agreement:

- CSP Strategy IN3 Maintain and improve road infrastructure and connectivity

***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program***

The Developer and Council works proposed in the Draft Planning Agreement can be accommodated in Council’s capital works program.

***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

The agreement states that the developer is not to commence quarrying operations pursuant to Development Application DA/0019/1516 unless and until the identified Developer Works have been completed.

The Council works shall be undertaken in accordance with the capital works program commencing in the 2017/18 financial year should the Development Application (DA/0019/1516) be approved.

## Schedule 1

Column 1	Column 2	Column 3	Column 4
Item/Contribution	Public Purpose	Manner & Extent	Timing
<b>Developer Works</b>			
1. Gravel pavement repair on the Bullamalita Road generally between RA 720 and RA 1178 comprising the placement of approximately 1400 tonnes of gravel from the Varaville Quarry	Road repair	The works to be undertaken to the Council's satisfaction in accordance with clauses 14, 16 and 17.	Prior to the commencement of operations
2. Complete a maintenance grade of the unsealed section of Bullamalita Road	Road maintenance		Prior to commencement of operations
<b>Developer Monetary Contributions</b>			
3. The Developer is to pay to the Council as a Monetary Contribution the sum of \$0.462 per equivalent standard axle or \$0.0924 per tonne per kilometre for 13.9km for all material transported from the site minus the value of the Developer Works	Road repair and/or maintenance	Payment made to Council in accordance with Clause 9 Payment of Monetary Development Contribution. The contribution will be divided between Council and the Developer on the basis of 22% payable to Council by the Developer and 78% as a credit to the Developer until such time as the monetary value of the Developer Works has been amortized after which 100% of the contribution will be payable to Council by the Developer.	Payments to be received quarterly once development is operational
<b>Council Works</b>			
4. Windellama Road intersection – vegetation removal for visibility	Improved road condition	Council works	Designs commenced in 16/17 financial year.
5. Bullamalita Road widening: section 0 – 9km from intersection with Windellama Road <i>0.0676km to 1.1km</i> <i>6.5.837km to 5.958km</i> <i>7.9.525km to 9.634km</i>	Improved road condition	Council works – widen the road to 7m for up to 1.5km of road length at predetermined locations	Works (in order of priority) to be commenced in 17/18 financial year.
6. Bullamalita Road works: section 7.6 – 9.9km from intersection with Windellama Road <i>7.62km to 8.143km</i> <i>8.827km to 9.0303km</i> <i>9.723km to 9.945km</i>	Improved road condition	Council works – between 7.6 and 9.9km along Bullamalita Road there are three curves where works will be undertaken to improve visibility.	
7. Bullamalita Road works: section 10-10.3km from intersection with Windellama Road	Improved road condition	Council works – between 10 and 10.3km along Bullamalita Road, works will be undertaken to improve visibility through the curve	