

**Deed**

**Sheraton Road Quarry**

**Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Dubbo Regional Council**

**Regional Hardrock Pty Limited**

26 July 2018

**Sheraton Road Quarry  
Dubbo Regional Council  
Regional Hardrock Pty Limited**

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## **Sheraton Road Quarry Planning Agreement**

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## **Sheraton Road Quarry Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Dubbo Regional Council  
**Address:** Civic Administration Building, Church Street, Dubbo, NSW 2830  
**Telephone:** (02) 6801 4000  
**Facsimile:** (02) 6801 4259  
**Email:** council@dubbo.nsw.gov.au  
**Representative:** Steven Jennings

#### **Developer:**

**Name:** Regional Hardrock Pty Limited  
**Address:** PO Box 332, 20L Sheraton Road, Dubbo NSW 2830  
**Telephone:** (02) 5852 1800  
**Facsimile:** (02) 6885 0536  
**Email:**  
**Representative:** Damian Porter

#### **Land:**

See definition of *Land* in clause 1.1.

#### **Development:**

See definition of *Development* in clause 1.1.

#### **Development Contributions:**

See Clause 8 and Schedule 1.

#### **Application of s7.11, s7.12 and s7.24 of the Act:**

See clause 7.

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**Registration:**

See clause 15.

**Restriction on dealings:**

See clause 16.

**Dispute Resolution:**

See Part 3.

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## **Sheraton Road Quarry Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Dubbo Regional Council** ABN 53 539 070 928 of **(Council)**

and

**Regional Hardrock Pty Limited** ABN 81 123 808 613 of 20L Sheraton Road,  
Dubbo NSW 2830 **(Developer)**

### **Background**

- A The Developer is the registered proprietor of the Land.
- B The Developer has offered to enter into a planning agreement in association with the proposal to develop the Land.
- C On 5 July 2017, Council issued a Notice of Determination of Development Consent for the Development.
- D On 25 September 2017, the Developer sought to modify the Consent and on 26 February 2018, the modification application was approved.
- E The Developer sought to vary conditions of consent requiring entry into a planning agreement with Council and the making of s7.11 Development Contributions.
- F On 26 February 2018, Council granted a modification requiring entry into a planning agreement for the maintenance of Sheraton Road. The Developer offers to enter into this Deed for the making of Development Contributions to the Council.

### **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).

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

**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

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the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

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

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

**Development** means the operation and use of the Land for the purposes of a quarry pursuant to development consent granted to D2016- 428 on 18 July 2017 as modified from time to time.

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

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

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include other benefits provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4 (3)(g) of the Act.

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

**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.

**Item** means specified in Column 1 of Schedule 1.

**Land** means Lot 211 DP 1220433.

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

**Product** means material procured from the Land and identified in dispatch dockets.

**Quarry** means the Development.

**Quarry Traffic** means traffic generated by the quarry.

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

**TPA** means tonnes per annum.

- 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.

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- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive 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 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 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 s7.4(1) of the Act.

## **3 Commencement**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
  - 3.1.1 both executed the same copy of this Deed, or
  - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.



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#### **4 Application of this Deed**

- 4.1 This Deed 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 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 s7.11, s7.12 and s7.24 of the Act to the Development**

- 7.1 This Deed excludes the application of s7.11 to the Development to the extent that those contributions relate to the maintenance of Sheraton Road.
- 7.2 This Deed excludes the application of s7.12 to the Development to the extent that those contributions relate to the maintenance of Sheraton Road.
- 7.3 This Deed does not exclude the application of s7.24 to the Development.

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

#### **8 Provision of Development Contributions**

- 8.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1 and any other provision of this Deed relating to the making of Development Contributions.
- 8.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

#### **9 Payment of monetary Development Contributions**

- 9.1 A Monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the Development Contribution payable under this Deed 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 ('**Monetary Contribution**').

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- 9.2 The Developer is to pay the Monetary Contributions by the time specified in column 4 of Table 1 of Schedule 1.
- 9.3 The Developer is to give the Council not less than 14 days written notice of its intention to pay a Monetary Contribution.
- 9.4 To permit Council to verify the amount of Product transported from the Quarry, the Developer's notice specified in clause 9.3 is to include:
- 9.4.1 weighbridge receipts or daily log books for the period 1 July to 31 December of the preceding year,
- 9.4.2 weighbridge or daily log books for the period 1 January to 30 June of that calendar year.
- 9.5 The Developer is not required to pay a Monetary Contribution under this Agreement unless Council, after having received the Developer's notice under clause 9.3, has given to the Developer a tax invoice for the amount of the Development Contribution.
- 9.6 The Developer is not in breach of this Agreement if it fails to pay a Monetary Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.
- 9.7 Monetary Contributions will be indexed annually in accordance with the Consumer Price Index (Mining and Construction) as published by the Australian Bureau of Statistics for the 12 months prior to the end of the period for which the Monetary Contributions are to be paid.
- 9.8 For the avoidance of doubt, nothing in this Deed requires the Developer to pay the Monetary Contribution beyond the period commencing on the date on which the first tonne of Product is dispatched from the Land and ending 30 years from that date.

## **Part 3 – Dispute Resolution**

### **10 Dispute Resolution - mediation**

- 10.1 This clause applies to any Dispute arising in connection with this Deed.
- 10.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 10.3 If a notice is given under clause 10.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 10.4 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.
- 10.5 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.

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- 10.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 10.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **11 Breach of obligations**

- 11.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
  - 11.1.1 specifying the nature and extent of the breach requiring the Developer to rectify the breach if it reasonably considers it is capable of rectification, or
  - 11.1.2 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 11.2 Nothing in this clause 11 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

### **12 Council to consult before enforcing this Deed**

- 12.1 This clause applies to any of the Developer's obligations under this Deed.
- 12.2 If the Council reasonably forms the opinion that the Developer has failed to comply with an obligation to which this clause applies, it is not to enforce this Deed against the Developer unless it has first notified the Developer in writing of its intention to do so and has consulted with the Developer as to:
  - 12.2.1 the reason for the non-compliance,
  - 12.2.2 the likely effects of the non-compliance, and
  - 12.2.3 the Developer's capacity in all of the circumstances to reasonably Rectify the non-compliance.
- 12.3 The Council is not to enforce this Deed against the Developer unless, after having consulted with the Developer:
  - 12.3.1 it has reasonably formed the opinion the Developer has no reasonable excuse for the non-compliance,
  - 12.3.2 it has notified the Developer in writing that it intends to enforce the Deed not earlier than 14 days from the date of the notice, and
  - 12.3.3 the notice specifies the enforcement action it intends to take.
- 12.4 At any time between the date of the notice referred to in clause 12.2 and the time when the Council takes action to enforce this Deed, the Developer may notify the Council of a Dispute under clause 10.
- 12.5 If the Developer notifies the Council in accordance with clause 12.4, the Council is not to enforce this Deed against the Developer in relation to the

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relevant non-compliance unless and until the dispute resolution process under clause 10 has been exhausted without resolution between the parties.

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

- 13.1 The Parties may enforce this Deed in any court of competent jurisdiction.
- 13.2 For the avoidance of doubt, except as provided for in clause 12, nothing in this Deed prevents:
  - 13.2.1 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
  - 13.2.2 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**

### **14 Registration of this Deed**

- 14.1 The Parties agree to register this Deed for the purposes of s7.6 (1) of the Act.
- 14.2 Not later than 21 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
  - 14.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
  - 14.2.2 the written irrevocable consent of each person referred to in s7.6 (1) of the Act to that registration.
- 14.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 14.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
  - 14.4.1 once the Developer has completed its obligations under this Deed or this Deed is terminated or otherwise comes to an end for any other reason.

### **15 Restriction on dealings**

- 15.1 The Developer is not to:
  - 15.1.1 sell or transfer the Land, or
  - 15.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
 to any person unless:

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- 15.1.3 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, and
- 15.1.4 the Developer is not in breach of this Deed.
- 15.2 Subject to clause 15.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 15.1.
- 15.3 Clause 15.1 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 – Other Provisions**

### **16 Review of Deed**

- 16.1 The Parties agree to review this Deed every three years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 16.2 For the purposes of clause 16.1, the relevant changes include (but are not limited to) any 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.
- 16.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 16.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 16.4 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 16.1 (but not 25.1) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

### **17 Notices**

- 17.1 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:
- 17.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 17.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 17.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 17.2 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.

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- 17.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 17.3.1 delivered, when it is left at the relevant address,
  - 17.3.2 sent by post, 2 business days after it is posted,
  - 17.3.3 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
  - 17.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 17.4 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.

## **18 Approvals and Consent**

- 18.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party must act reasonably in withholding an approval or consent to be given under this Deed or in imposing any conditions on any approval or consent that is given by that Party under this Deed.

## **19 Costs**

- 19.1 The Developer is to pay to the Council the Council's costs not exceeding of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

## **20 Entire Deed**

- 20.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 20.2 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.

## **21 Further Acts**

- 21.1 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.

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## **22 Governing Law and Jurisdiction**

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

## **23 Joint and Individual Liability and Benefits**

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

## **24 No Fetter**

- 24.1 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.

## **25 Illegality**

- 25.1 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.

## **26 Severability**

- 26.1 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.
- 26.2 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.

## **27 Amendment**

- 27.1 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.

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## **28 Waiver**

- 28.1 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.
- 28.2 A waiver by a Party is only effective if it:
- 28.2.1 is in writing,
  - 28.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 28.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 28.2.4 is signed and dated by the Party giving the waiver.
- 28.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 28.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 28.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## **29 GST**

- 29.1 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.

- 29.2 Subject to clause 29.4, 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.
- 29.3 Clause 29.4 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.



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- 29.4 No additional amount shall be payable by the Council under clause 29.4 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.
- 29.5 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:
- 29.5.1 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;
- 29.5.2 that any amounts payable by the Parties in accordance with clause 29.2 (as limited by clause 29.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 29.6 No payment of any amount pursuant to this clause 29, 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.
- 29.7 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.
- 29.8 This clause continues to apply after expiration or termination of this Deed.

### **30 Explanatory Note**

- 30.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 30.2 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.

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**Schedule 1**

(Clause 9)

**Development Contributions**

**Table 1**

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Timing
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\$0.10 per tonne of Product Maintenance of Sheraton Road

By 31 January each year for Product transported from the Land in the 6 months to 31 December of the preceding year.

By 31 July each year for Product transported from the Land in the 6 months to 30 June of that year.

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Regional Hardrock Pty Limited**

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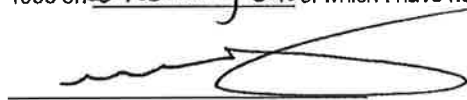
**Execution**

**Executed as a Deed**


**Dated:** 13 August 2018

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**Executed on behalf of the Council** by me, Michael McMahon,  
pursuant to a delegation granted by the Council under section 377 of the Local Government Act  
1993 on 26 February 2018 of which I have no notice of revocation



Chief Executive Officer



Witness Lisa Adams

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



Name/Position

Westley Jon Noers

Name/Position

Director

Regional Hardrock Pty Ltd.

## **Appendix**

(Clause 49)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Dubbo Regional Council** ABN 53 539 070 928 of Civic Administration Building, Church Street, Dubbo, NSW 2830 (**Council**)

**Regional Hardrock Pty Limited** ABN 81 123 808 613 of 20L Sheraton Road, Dubbo NSW 2830 (**Developer**)

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

This Planning Agreement applies to land located at 20L Sheraton road Dubbo, also identified as Lot 211 DP 1220433 ('**Quarry Site**').

### **Description of Proposed Development**

The Developer has received development consent to operate and use the Land for the purposes of a quarry.

## **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 provide for the maintenance of Sheraton Road.

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

The draft planning agreement is a planning agreement under s7.6 of the EPA Act and is required under condition 3 of development consent D2016 - 482 as modified on 26 February 2018.

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

- The draft planning agreement contains provisions under which:
  - The Developer agrees to pay to Council an amount every six months calculated on the basis of \$.10 per tonne of material extracted from the quarry and transported on Sheraton Road for a period of 30 years commencing when the first load of Quarry Product is transported from the Land.
  - The planning agreement is required to be registered on title.
  - There are procedures specified for dispute resolution.
  - The Developer and Council are restricted from assigning or transferring the land or their rights and obligations under the planning agreement without the consent of Council.