

Planning Agreement for Dubbo Zirconia Project

Australian Zirconia Limited

Dubbo City Council

PLANNING AGREEMENT

This Planning Agreement was made at Dubbo on 15 October 2014.

Parties

Dubbo City Council

ABN 77 296 185 278

of Civic Administration Building, Church Street, Dubbo, New South Wales

(Council)

Australian Zirconia Limited

ACN 091 489 511

ABN 51 091 489 511

Ground floor, 89
of 65 Burswood Road, Burswood, Western Australia

(Developer)

Background

- (a) On, 10 September 2013 the Developer made a Development Application to the Minister as a State Significant Development under Part 4, Division 4.1 of the Act to carry out the Development on the Land. This Development is identified by the NSW Department of Planning & Infrastructure as Major Project Application No. SSD-5251.
- (b) By correspondence to Council dated 11 July 2014 the Developer agreed to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted by the NSW Government.

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:

- (a) the Land; and
- (b) the Development.

3 Operation of this Agreement

- (a) The Parties agree that the terms of this Planning Agreement is subject to and conditional upon final Development Consent being received on terms and conditions acceptable to the Developer acting reasonably.
- (b) Subject to (a) above the Agreement will commence operation and be effective from the date that final Development Consent is received.
- (c) The Agreement is terminated on the date the Developer is released and discharged under, or by virtue of clause 9.

4 Definitions and Interpretation

4.1 Definitions

In this Agreement, the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by law or by adjoining owners for the commencement and carrying out of the Development generally and includes an approval under Part 4 of the Act (if relevant).

Business Day means a day on which banks are open for general business in Sydney excluding Saturdays, Sundays and public holidays.

Council means Dubbo City Council.

CPI means the published Consumer Price Index (Sydney- All Groups), or, if that Index is no longer published, then any other index which, in the opinion of the Minister, is a similar index.

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

Department means the NSW Department of Planning and Infrastructure.

Developer means Australian Zirconia Limited or any subsequent owner of that company or the Development.

Development means the development known as the Dubbo Zirconia Project as authorised by the Approval.

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 or the provision of a material public benefit, the detail of which is listed in clause 5 contained herein.

Dispute means a dispute regarding the terms and 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 (Commonwealth) and any other Act or Regulation relating to the imposition or administration of the GST.

Insolvency Event means any of the following events:

- a) a Party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
- b) a receiver, manager, receiver and manager, administrator or similar officer is appointed with respect to a Party or any of its assets;
- c) a Party enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors;
- d) a resolution is passed or an order is made for the winding up or dissolution of a Party; or
- e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land means the land the subject of the Approval and described in Schedule 1 of this Agreement.

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

4.2 Interpretation of this Agreement

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 in 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 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.
 - a. A reference to this Agreement includes the agreement recorded in this Agreement.

- (l) 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.
- (m) Any schedules, tables and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

Subject to satisfaction of the condition and operation of clauses 3 and 9 the Developer will make the following contributions:

5.1 Monetary Contributions

5.1.1 The Developer will pay to the Council a monetary contribution per annum as a contribution towards the Primary and Secondary impacts of the Development on the Council's services and infrastructure. These impacts are detailed in the table below, with the resultant contributions detailed in 5.1.2 below.

Table 1 – Primary & Secondary Impacts of Development on Council

Impact Type	Item	Overall Impact (10 Year Impact)	Overall Impact (20 Year Impact)	Annual Impact (Years 1 to 10)
Primary	Maintenance of Obley / Toongi Road	\$3,000,000	\$6,000,000	\$300,000
	Roads Contributions (to and from work)	\$420,000	\$840,000	\$42,000
	Roads Contributions (other direct vehicle trips for employees)	\$420,000	\$840,000	\$42,000
Sub Total		\$3,840,000	\$7,680,000	\$384,000
Secondary	Boundary Road (Keswick Parkway South to Sheraton Road)	\$2,300,000	\$2,300,000	\$230,000
Total		\$6,140,000	\$9,980,000	\$614,000

5.1.2 The Developer will pay to the Council:

- (a) The sum of \$300,000 per annum, and
- (b) The sum of \$84,000 per annum, and
- (c) The sum of \$230,000 per annum.

5.1.3 The payments in 5.1.2(a) and 5.1.2(b) above will be made with 50% on 1 January and 50% on 1 July each year for the duration of the agreement or the cessation of operations at the Development (if sooner).

5.1.4 The payment in 5.1.2(c) above will be made with 50% on 1 January and 50% on 1 July each year for the first 10 years of the agreement or the cessation of operations at the Development (if sooner).

5.1.5 The payments in 5.1.3 and 5.1.4 above will commence on the first occurrence of 1 January or 1 July (whichever is sooner) following the commencement of the Development in accordance with the Development approval (expected to be the commencement of the upgrade of the Obley / Toongi Road).

5.1.6 Contributions which are made in subsequent years to the date of this Agreement are required to be made with an increase in the payment amount in accordance with CPI adjustments. The base CPI figure will be that at the end of the first quarter after the date of this Agreement.

5.2 Contributions to Public Facilities

5.2.1 The Developer will, at its own cost, upgrade the Obley Road from the intersection with the Newell Highway to Toongi Road and Toongi Road to the Development entrance road in accordance with the Development approval.

6 Application of the Development Contributions

The parties agree the Development Contributions may be applied as follows:

- (a) The contribution detailed in 5.1.2(a) is for the purpose of maintaining the section of the Obley Road between the Newell Highway to Toongi Road and Toongi Road to the Development entrance road.
- (b) The contribution detailed in 5.1.2(b), is for the purpose of:
 - (i) Providing and maintaining community infrastructure;
 - (ii) Local social amenity; or
 - (iii) Advancement of the economic development of the Council's LGA.
- (c) The contribution detailed in 5.1.2(c) is for the purpose of developing the local road network within the Council's LGA for new or expanded housing developments.

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

The Agreement excludes the application of sections 94, 94A and 94EF of the Act to the Development.

8 Registration of this Agreement

The Developer will, at its own expense, procure the registration of this Agreement as contemplated by section 93H of the Act and provide Council with confirmation of that registration.

9 Termination and Suspension

9.1 Subject always to clause 10, this Agreement terminates in the following events:

- (a) the Developer permanently ceases operations at the Development, and commences rehabilitation of the Development site in accordance with NSW Government requirements;
- (b) the parties agree in writing to terminate the operation of this Agreement at any time;
- (c) an Insolvency Event affects a party;
- (d) notwithstanding (c) above, in the event that operations and site production continue at the Development, the Agreement shall not terminate until such time as those operations and site production also cease;
- (e) the Council, acting reasonably, serves notice on the Developer terminating this Agreement where the Developer has failed to comply with a notice issued in accordance with clause 11.2.

9.2 Upon termination of this Agreement:

- (a) all future rights and obligations of the parties under this Agreement are discharged; and
- (b) all pre-existing rights and obligations of the parties under this Agreement continue to subsist.

9.3 If in the Developer's sole opinion, the operation of the Development becomes uneconomic with the result that site production is halted, then the Developer shall give notice to the Council within 14 days of the suspension to that effect (including reasonable evidence to demonstrate site

production is suspended), in which case the obligation of the Developer under this Agreement to make the Development Contribution (or the balance which is then outstanding) shall be suspended. If mine production recommences, payments will recommence as per this Agreement, but the date for making them shall be extended by the same period as the term of the suspension of operations.

10 Dispute resolution

10.1 Not Commence

A Party may not commence any court proceedings relating to a dispute of any matter under this Agreement (a Dispute) unless it complies with this clause 10.

10.2 Written Notice of Dispute

A Party claiming that a Dispute has arisen under or in relation to this Agreement must give notice to the other Party specifying the nature of the Dispute.

10.3 Attempt to Resolve

On receipt of notice under clause 10.2, the Parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

10.4 Mediation

If the Parties do not agree within seven days of receipt of notice under clause 10.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales (or any replacement). The Parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

10.5 Costs

Each Party to a dispute must pay its own costs of complying with this clause 10. The Parties to the Dispute must equally pay the costs of the Mediation including without limitation the fees of any mediator and the cost of room hire.

10.6 Court Proceedings

If the Dispute is not resolved within 42 days after notice is given under clause 10.2, then any Party which has complied with the provisions of this clause 10 may in writing terminate any dispute resolution process undertaken pursuant to this clause 10 and may then commence court proceedings in relation to the Dispute.

10.7 Not Use Information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 10 is to attempt to settle the Dispute. No Party may

use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 10 for any purpose other than in an attempt to settle the Dispute.

10.8 No Prejudice

This clause 10 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

11 Enforcement

11.1 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.

11.2 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 (being not less than 28 Business Days from the date of the notice); and
- b) claim damages for breach of contract from the Developer.

11.3 The rights vested in Council pursuant to 11.2 above do not prevent the Council from exercising any other rights that it may possess at law.

11.4 If there is any dispute as to whether an event of default has occurred, then any enforcement by the Council of this Agreement shall be suspended pending the outcome of the dispute resolution procedure prescribed in clause 10.

12 Costs

Each Party shall pay its own costs in relation to negotiating, preparing and executing this Agreement.

13 Notices

13.1 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, Dubbo City Council

Address: Church Street, Dubbo, NSW 2830 (PO Box 81)

Fax Number: 02 6801 4259

Email: dcc@dubbo.nsw.gov.au

Developer

Attention: Company Secretary, Australian Zirconia Limited

Address: 65 Burswood Rd, Burswood WA 6100

Fax Number: +61 8 9227 8178

Email: mail@alkane.com.au

13.2 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.

13.3 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, 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.

13.4 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.

14 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.

15 Assignment and novation

- (a) The Developer may (at its discretion) assign or novate to any of the following (New Party) the whole or a part of an interest in this Agreement:
 - (b) the purchaser of the whole or an interest in the Development;
 - (c) the purchaser of the whole or an interest in the Mining Lease; or
 - (d) any subsidiary, parent company or related body corporate (as provided in the Corporations Act) of the Developer or the party in clause 15(b) or 15(c).
- (e) If requested by the Developer, Council will execute all documents and undertake all acts reasonably necessary to give effects to the Developer's assignment of its rights or novation of its rights and obligations under this document.
- (f) The Developer must pay the reasonable costs of Council related to the compliance by Council with Council's obligations under this clause 15.
- (g) Before any assignment or novation referred to in clause 15(a), the Developer must procure the execution by the New Party of a deed of assumption in favour of the Council in which the New Party covenants to be bound by this Agreement as if it were a party to this Agreement.

16 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.

17 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.

18 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.

19 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.

20 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.

21 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.

22 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.

23 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.

24 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.

25 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.

26 Confidentiality

The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by either Party.

Schedule 1

Requirements of Division 6 of Part 4 of the EP&A Act

<p>Subject and subsection of the Act Planning Instrument and/or Development Application (Section 93F(l)) The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a project or development application</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.</p>	<p>No.</p> <p>Yes.</p> <p>No.</p>
<p>Planning Instrument and/or Development Application (Section 93F(l)) For the purpose or being used or applied towards a public purpose, the Developer has:</p> <p>(a) dedicated land free of cost;</p> <p>(b) paid a monetary contribution;</p> <p>(c) provided any other material public benefit.</p>	<p>(a) No.</p> <p>(b) Yes.</p> <p>(c) Yes.</p>
<p>Description of the land to which the Planning Agreement applies (Section 93F(3)(a))</p>	<p>Part Lot 311 DP595631, Lot 271 DP593668, Part Lot 35 DP753220, Part Lot 1 DP133581, Part Lot 18 DP753252, Lot A & B DP439352, Lot 19 DP 753252, Part Lot A DP391069, Lot 55 DP 753252, Lot B DP 391069, Lot X DP 405495, Lot 211 DP595631, Lot 1 DP818802, Lot 50 DP 753252, Lot 7300 DP1149010 (licensed for grazing), Unformed "Paper" Road (Crown Land) separating Lot 311 DP55631 and Lots A & B DP439352, Unformed "Paper" Road (Dubbo City Council) separating Lot 1 DP818802 and Lot 7300 DP1149010.</p>
<p>Description of the development to which the Agreement applies (Section 93F(3)(b)(ii))</p>	<p>See clause 2.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement (Section 93F(3)(c))</p>	<p>See clause 5 and 6.</p>
<p>Applicability of section 94 of the Act (Section 93F(3)(d))</p>	<p>See clause 7 (excluded).</p>
<p>Applicability of section 94A of the Act (Section 93F(3)(d))</p>	<p>See clause 7 (excluded).</p>
<p>Applicability of section 94EF of the Act (Section 93F(3)(d))</p>	<p>See clause 7 (excluded).</p>
<p>Mechanism for dispute resolution (Section 93F(3)(f))</p>	<p>See clause 10.</p>
<p>Enforcement of the Planning Agreement (Section 93F(3)(g))</p>	<p>See clause 11.</p>
<p>Registration of the Planning Agreement (Section 93F(3)(g))</p>	<p>See clause 8.</p>

Execution

Executed as an agreement

Executed by

Australian Zirconia Limited

ACN 091 489 511

ABN 51 091 489 511

KB Council floor 89
of 65 Burswood Road, Burswood, Western Australia

af (Developer)

The Common Seal of Australian Zirconia Limited
was hereunto affixed this 17th day October 2014 .

Managing Director IAN CHALMER

Company Secretary KAREN BROWN



Executed by

Dubbo City Council

ABN 77 296 185 278

The Common Seal of the Council of the City
of Dubbo was hereunto affixed this 23rd day
of October 2014 pursuant to a resolution
of Council dated 21 July 2014.

Mark Riley
General Manager

Clr Mathew Dickerson
Mayor of Dubbo

