

2 December 2021

Jessie Evans

Director – Resource Assessments

Department of Planning, Industry and Environment

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Dear Jessie

**RE: Martins Creek Quarry Project (SSD 6612) – Request for Additional Information**

As per correspondence dated 19 November 2021, the Department of Planning, Industry and Environment (DPIE) has requested additional information in relation to the status of Voluntary Planning Agreements (VPAs) associated with the Martins Creek Quarry Project (SSD 6612) (the Revised Project).

In particular, DPIE has requested the following information:

- the general terms of the VPAs, and
- the key milestones and dates for finalising the VPAs.

At this time, the VPAs are subject to ongoing consultation with both Dungog Shire Council (DSC) and Maitland City Council (MCC) in relation to the Revised Project. **Table 1** provides the key consultation undertaken in relation to VPAs in relation to the Revised Project.

**Table 1 Key Consultation with DSC and MCC in relation to VPAs**

Agency	Date	Details
DSC	28 May 2021	Correspondence providing proposed VPA arrangements
	31 May 2021	Meeting to discuss the status of the Revised Project and VPA
	12 November 2021	Correspondence providing a draft VPA document for consideration following the meeting held on 31 May 2021
	23 November 2021	Correspondence sent to DSC following up on request for further VPA discussions
	26 November 2021	Correspondence sent to DSC following up on request for further VPA discussions
	29 November 2021	DSC correspondence indicating they are getting advice on the proposed VPA and will arrange a suitable date to meet
MCC	13 April 2021	Meeting to discuss the status of the Revised Project and VPA
	10 May 2021	6 <sup>th</sup> May dated correspondence sent to MCC confirming the proposed VPA arrangements
	20 May 2021	Correspondence sent to MCC following up feedback on previous communication
	16 June 2021	Correspondence from MCC confirming they are using similar process they did with Brandy Hill Quarry
	22 October 2021	Correspondence sent to MCC confirming public exhibition and requesting further discussions on a VPA
	5 November 2021	Correspondence sent to MCC following up on request for further VPA discussions
	23 November 2021	Correspondence sent to MCC following up on request for further VPA discussions
	26 November 2021	Correspondence sent to MCC following up on request for further VPA discussions

The proposed draft VPA arrangements are attached to this letter for DPIE's information. As outlined in the Submissions Report, the proposed general terms of the VPA with DSC include:

- contributions towards roadworks in the order of \$2,339,731, including:
  - roadworks at the intersection of King and Duke Street
  - roadworks at the intersection of Dungog Road and Gresford Road
  - upgrade to the northern approach to Gostwyck Bridge
- a levy of \$0.25 per tonne of material transported by road to be used towards road maintenance
- a levy of \$0.05 per tonne of material transported by rail to be directed towards and services and infrastructure that directly benefits Martins Creek Village, including the Martins Creek Public School
- contributions towards pedestrian paths and bus shelters in the order of \$180,000, including:
  - installation of 4 covered bus shelters in the township of Paterson and accompanying signage
  - construction of up to 500m of 1.2m wide footpath in King and Duke Streets, Paterson
  - pedestrian crossings (2) and signage (2) on King Street and Duke Street intersection
- an annual contribution to the Community Benefits and Wellbeing Fund of \$40,000 per annum, based on proposed production and road haulage rates, over an estimated 25 year period, with the total value being \$1,000,000.

The general terms of the draft VPA arrangement with MCC is proposed to be a contributions arrangement relating to pavements for the MCC portion of the proposed haul route. Based on discussions with MCC, it is proposed to use the current formula used by MCC from the *Maitland City Wide Section 94 Contributions Plan 2016*. The council response to submission dated 29/7/21 also indicates that the MCC City Wide Contributions Plan would be utilised for monetary contributions. The calculations are pending MCC consideration.

In terms of key milestones and dates for finalising the VPAs, Daracon are currently awaiting DSC and MCC review of the proposed terms of the draft VPAs and completing their relevant processes. Daracon will continue to consult with both DSC and MCC to reach agreement on potential VPA arrangements, should the Revised Project be approved. At this point in time, Daracon is awaiting further consideration from DSC and MCC and are unable to confirm the dates for finalisation of the draft VPAs. Daracon will continue to provide DPIE updates on the negotiations as they process.



Please do not hesitate to contact myself, or Kirsty Davies at Umwelt (0409 372 344 / [kdavies@umwelt.com.au](mailto:kdavies@umwelt.com.au) ) should you require clarification or further information.

Yours sincerely



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# Voluntary Planning Agreement

*Reference: HUN312-00009*

## **Draft 1**

**8 November 2021**

Buttai Gravel Pty Ltd  
ACN 003 386 570

Dungog Shire Council  
ABN 62 610 350 056

### **Newcastle**

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# Agreement

## Date

## Parties

### First party

Name	Buttai Gravel Pty Ltd ( <b>Developer</b> )
ACN	003 386 570
Contact	[Contact name]
Telephone	[Telephone no.]

### Second party

Name	Dungog Shire Council ( <b>Council</b> )
ABN	62 610 350 056
Contact	[Contact name]
Telephone	[Telephone no.]

## Background

- A. The Developer operates the Quarry under a license arrangement with the lessee of the Land.
- B. The Developer has submitted the Development Application to the Minister for Development Consent to carry out the Development on the Land.
- C. That Development Application was accompanied by an offer by made by the Developer to enter into this agreement to make contributions for public purposes to Council if Development Consent is granted.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

**Address** means a party's address set out in the Notices clause of this agreement;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building Professionals Act 2005* (NSW);

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

**CCC** means the community consultative committee for the Development;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

**Commencement Date** means the later of:

- (a) The date of this agreement;
- (b) The date on which all Approvals for the Development are granted on conditions which meet the reasonable satisfaction of the Developer;
- (c) If there is an appeal or review relating to the Development Consent for the Development, or any Approvals for the Development, the date of the Final Determination of that appeal or review if the outcome is that the Development Consent or relevant Approval is granted or upheld on conditions which meet the reasonable satisfaction of the Developer; and
- (d) If the validity of the Development Consent or any other Approval for the Development is questioned in legal proceedings, the date of the Final Determination of those proceedings if the outcome is that the Development Consent or relevant Approval is upheld on conditions which meet the reasonable satisfaction of the Developer;

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

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

**Development** means expansion of the Quarry and extension of operations at the Quarry as described in the Development Application, including the extraction of a maximum of 1.1Mtpa of quarry product material over 25 years, transported by road and rail, with road transportation up to 500,000tpa;

**Development Application** means SSD-6612 for expansion and extension of the Quarry, including the amended development application documents exhibited from 2 June 2021 to 31 July 2021;

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

**Development Contributions** means the monetary contributions, dedication of land and material public benefits to be provided by the Developer under this agreement;

**Final Determination** means the date on which all rights of appeal from any decision of a Court have expired;

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

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



**Land** means the land subject to the Development Application, including Lot 5 DP 242210, Lot 8 DP 1273949, Lot 1 DP 1006375, Lot 4 DP 249026, Lot 42 DP 815628 and Lot 1 DP 204377, a paper road extending from Station Street, Lot 2 DP 242210 and Lot 10 DP 1209239 located at Station Street, Martins Creek;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Life of the Development** means the period from the grant of any Development Consent for the Development to the end date of any such Development Consent;

**Minister** means the NSW Minister for Planning and Public Spaces

**Quarry** means the Martins Creek Quarry located at Station Street, Martins Creek;

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

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

**Related Body Corporate** has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

**Roads Act** means the *Roads Act 1993*; and

**Works** means those development contributions consisting of the carrying out and delivery of works for public purposes.

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;



- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in , Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.

- (b) Schedule 2 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

## 4 Application of this agreement

- (a) This agreement applies to:
  - (i) the Development, and
  - (ii) the Land.
- (b) Council acknowledges that the Development Contributions required under this agreement are in recognition of and commensurate with the expected impacts of the Development.

## 5 Operation of this agreement

### 5.1 Commencement

This agreement commences on and from the Commencement Date.

### 5.2 Termination

- (a) This agreement terminates on:
  - (i) the declaration by a Court of competent jurisdiction that any Development Consent or other Approval granted for the Development is invalid; or
  - (ii) if any Development Consent or other Approval granted for the Development ceases for any reason to operate.
- (b) If a Development Consent or other Approval granted for the Development is declared to be invalid pursuant to clause 5.2(a) and a new approval is granted in respect of the same development, Council agrees to accept provision of the Development Contributions under this agreement in satisfaction of any contributions required under the new approval.
- (c) If this agreement terminates pursuant to clause 5.2(a) this clause 5.2 (except clause 5.2(d) of this agreement) survives termination of the agreement.
- (d) This agreement terminates at the end of the Life of the Development.

## 6 Contributions to be made under this agreement

### 6.1 Development Contributions

- (a) The Developer will make the Development Contributions at the times and in the manner set out in the Contributions Schedule.
- (b)** The parties agree and acknowledge that the Development Contributions will be used by the Council towards the public purses specified in the Contributions Schedule.

## 7 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement excludes the application of section 7.11 of the Act to the Development.
- (b) This agreement excludes the application of section 7.12 of the Act to the Development.



- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) Council agrees and acknowledges that it:
  - (i) will not seek any further payments from the Developer other than in accordance with this agreement; and
  - (ii) will not request the Minister to impose a condition on any Development Consent for the Development requiring the payment of any contributions to Council, other than in accordance with this agreement.

## 8 Compliance with Laws

If a Law is changed or a new Law comes into force (both referred to as **New Law**) and the Developer is obliged by the New Law to do something or pay an additional amount for a purpose which it is already contractually obliged to do or pay under this agreement then, to the extent only that the relevant obligation is required under both the New Law and this agreement, compliance with this agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this agreement.

## 9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

## 10 Dispute Resolution

### 10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

### 10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

### 10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.



- (b) The parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting,
  - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

#### 10.4 Further Notice if Not Settled

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

#### 10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and

- (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
  - (i) Agreed upon and appointed jointly by the parties; and
  - (ii) In the event that no agreement is reached or no appointment is made within 15 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

#### 10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

#### 10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.



## 11 Enforcement

### 11.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

### 11.2 Proceedings

- (a) If:
  - (i) the Default Notice is not referred to dispute resolution and the Developer fails to comply with the Default Notice, or
  - (ii) the Default notice is referred to dispute resolution in accordance with clause 10 and the Developer fails to act in accordance with the outcome of that process,

Council may commence proceedings to enforce the obligations under this agreement.
- (b) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction. Subject to clause 10:
  - (i) a party may bring proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) the Council may exercise any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

## 12 Assignment and Dealings

### 12.1 Restriction on assignment

- (a) The Developer must not transfer assign or novate or similarly deal with (**Dealing**) its rights of interests under this agreement or in the Development without the written consent of Council.
- (b) Council must provide its consent under clause 12.1, within 10 Business Days after receiving a request from the Developer, if the Developer procures that the transferee, assignee or novate executes and delivers to the Council prior to any such Dealing taking effect, an agreement in favour of the Council whereby:
  - (i) the transferee, assignee or novate becomes contractually bound with Council to perform all of the Developer's obligations under this agreement



(including obligations which may have arisen before the transfer, assignment or novation takes effect); and

- (ii) the Developer is released from any obligations under or by virtue of this agreement which at the time of any proposed assignment or novation contemplated by this clause are required to be performed or satisfied by the Developer at any time from or after the date on which that assignment or novation takes effect under this agreement.

## 12.2 *Dealings not restricted*

- (a) Clause 12.2 does not apply to a Dealing that is solely for the purpose of the Developer obtaining finance for the Development by providing a security in the Developer or this agreement, provided that this agreement is disclosed to all relevant parties prior to the Dealing being made.
- (b) Clause 12.2 does not apply to any Dealing between the Developer and the lessee or the landowner of the Land, provided that this agreement is disclosed to all relevant parties prior to the Dealing being made.

## 13 *No fetter*

### 13.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of Council, including, but not limited to, any statutory power or discretion of Council relating to the Development Application or any other application for Approval (all referred to in this agreement as a "**Discretion**").

### 13.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

## 14 *Notices*

### 14.1 *Notices*

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;

- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address, or at the address last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to the Developer: Buttai Gravel Pty Ltd  
20 Kullara Close, Beresfield NSW 2322  
Email: [insert email]  
Attention: [insert contact name]
  - (ii) to Council: Dungog Shire Council  
198 Dowling Street, Dungog NSW 2420  
Email: [insert email]  
Attention: [insert contact name]
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, five Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of an email when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above or when the Notice is first opened or read by the recipient, whichever occurs first; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

## 15 General

### 15.1 Relationship between parties

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### 15.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time



for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

#### 15.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

#### 15.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

#### 15.5 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

#### 15.6 *Legal expenses and stamp duty*

The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this agreement.

#### 15.7 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

#### 15.8 *Representations and warranties*

The parties represent and warrant that they have the power and authority 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.

#### 15.9 *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.

#### 15.10 *Invalidity*

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.



- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 15.10(b) applies.

#### 15.11 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) 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.

#### 15.12 GST

- (a) Words or expressions used in this clause 15.12 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- (b) Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as "GST inclusive", does not include an amount on account of GST.
- (c) Despite any other provision in this agreement, if a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this agreement as "GST inclusive"):
  - (i) the consideration payable or to be provided for that supply under this agreement but for the application of this clause (**GST Exclusive Consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
  - (ii) the amount by which the GST Exclusive Consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- (d) The Recipient need not make a payment for a taxable supply made under or in connection with this agreement until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

#### 15.13 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.

- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## Schedule 1 Development Contributions

Item	Description and manner of delivery	Type of Contribution	Value	Timing	Public purpose and public benefit
1	Roadworks at the intersection of King and Duke Street, Paterson to be carried out generally in accordance with the plans at Annexure B and any Approval for the works under the Roads Act.	Works in Kind / Monetary contribution [SH <b>Note: Either Works in Kind or Monetary Contribution to be provided. To be discussed further with Council. If a monetary contribution is provided, Buttai Gravel will also provide to Council all designs and plans prepared for the proposed works to date]</b>	\$66,174	<b>[SH Note: Timing will depend on whether a WIK or monetary contribution is provided].</b> <b>[For WIK]</b> An application for Approval under the Roads Act is to be made within 6 months after the Development Application is finally determined. Council to determine all approvals within 3 months. The works are to be completed within 12 months after Approval under the Roads Act for those works is granted. <b>[Timing for monetary contributions to be discussed]</b>	Public road upgrades to provide increased safety for the public and drivers of heavy vehicles when travelling through the intersection.
2	Roadworks at the intersection of Dungog Road and Gresford Road to be carried out generally in accordance with the plans at Annexure B and any Approval for the works under the Roads Act.	Works in Kind / Monetary contribution [SH <b>Note: Either Works in Kind or Monetary Contribution to be</b>	\$1,724,382	<b>[For WIK]</b> An application for Approval under the Roads Act is to be made within 6 months after the Development Application is finally determined.	Public road upgrades to provide increased safety for the public and drivers of heavy vehicles when travelling through the intersection.



Item	Description and manner of delivery	Type of Contribution	Value	Timing	Public purpose and public benefit
3	Upgrade to the northern approach to Grostwyck Bridge to be carried out generally in accordance with the plans at Annexure B and any Approval for the works under the Roads Act.	<p>provided. To be discussed further with Council. If a monetary contribution is provided, Buttai Gravel will also provide to Council all designs and plans prepared for the proposed works to date]</p> <p>Works in Kind / Monetary contribution [SH  <b>Note: Either Works in Kind or Monetary Contribution to be provided. To be discussed further with Council. If a monetary contribution is provided, Buttai Gravel will also provide to Council all designs and plans prepared for the proposed works to date]</b></p>	\$549,175	<p>Council to determine all approvals within 3 months.  The works are to be completed within 12 months after Approval under the Roads Act for those works is granted.  <b>[Timing for monetary contributions to be discussed]</b></p> <p><b>[For WIK]</b> An application for Approval under the Roads Act is to be made within 6 months after the Development Application is finally determined.  Council to determine all approvals within 3 months.  The works are to be completed within 12 months after Approval under the Roads Act for those works is granted.  <b>[Timing for monetary contributions to be discussed]</b></p>	<p>Public road upgrades to provide increased safety for the public and drivers of heavy vehicles when travelling through the intersection.</p>

Item	Description and manner of delivery	Type of Contribution	Value	Timing	Public purpose and public benefit
4	<p>Haulage Route - Road Maintenance Contribution of \$0.25 per tonne of product moved by road from the Quarry, paid to Council on a quarterly basis.</p> <p>The rate of \$0.25 is to be adjusted from the Commencement Date in accordance with annual changes to the CPI.</p>	Monetary Contribution	\$0.25 (indexed in accordance with CPI) per tonne of product moved by road from the Quarry.	<p>From the Commencement Date until the end of the Life of the Project or until that part of the haulage route on Main Road 101 ceases to be classified as a "Regional Road" and is classified as a "State Road":</p> <p>(a) On the 15<sup>th</sup> of January, April, July and October in each year, the Developer will provide records to Council confirming the tonnage of material moved from the Quarry by road in the previous quarter (ending on the last day of the previous month).</p> <p>(b) On the 30<sup>th</sup> of January, April, July and October in each year, the Developer will pay the monetary contribution calculated for the previous quarter (ending on the last day of the previous month).</p>	Public road upgrades. The monetary contribution is to be used by Council for the maintenance of the haulage route and local roads in proximity to the haulage route for the Quarry.



Item	Description and manner of delivery	Type of Contribution	Value	Timing	Public purpose and public benefit
5	<p>Martins Creek Village contributions of \$0.05 per tonne of product moved by rail from the Quarry, paid to Council on a quarterly basis.</p> <p>The rate of \$0.05 is to be adjusted from the Commencement Date in accordance with annual changes to the CPI.</p>	Monetary Contribution	\$0.05 (indexed in accordance with CPI) per tonne of product moved by rail from the Quarry.	<p>From the Commencement Date until the end of the Life of the Project:</p> <p>(a) On the 15<sup>th</sup> of January, April, July and October in each year, the Developer will provide records to Council confirming the tonnage of material moved from the Quarry by rail in the previous quarter (ending on the last day of the previous month).</p> <p>(b) On the 30<sup>th</sup> of January, April, July and October in each year, the Developer will pay the monetary contribution calculated for the previous quarter (ending on the last day of the previous month).</p>	<p>Community infrastructure and amenities. The monetary contribution is to be used by Council in the following ways:</p> <p>(a) 50% of the contribution is to be directed to Martins Creek Public School, while it remains operating.</p> <p>(b) The balance is to be used for services and infrastructure that directly benefit the residents in the township of Martins Creek.</p>
6	Installation of 4 covered bus shelters in the township of Paterson and accompanying signage, generally in the locations identified in the plans at Annexure B (one existing location, one opposite and two at the local park) and any Approval for the works under the Roads Act, or other works	Monetary Contribution	\$80,000.00	To be paid within 6 months of execution of this planning agreement	<p>Public transport.</p> <p>Improvement of the safety and comfort for students and bus users throughout the township of Paterson. To reduce the need for parents and students to wait in cars near bus stops, which will</p>



Item	Description and manner of delivery	Type of Contribution	Value	Timing	Public purpose and public benefit
	that serve the same public purpose as determined by Council.				reduce congestion around bus stops.
7	Construction of up to 500m of 1.2m wide footpath in King and Duke Streets, Paterson, generally in accordance with the plans at Annexure B and any Approval for the works under the Roads Act, or other works to upgrade or improve pedestrian amenity as determined by Council.	Monetary Contribution	\$50,000.00	To be paid within 6 months of execution of this planning agreement	Public domain works. Upgrade of public pedestrian pathways between the various commercial businesses in the Paterson township. Improvement of pedestrian amenity.
8	Pedestrian crossings (2) and signage (2) on King Street and Duke Street intersection, and any Approval for the works under the Roads Act or other works to upgrade or improve pedestrian amenity as determined by Council.	Monetary Contribution	\$50,000.00	To be paid within 6 months of execution of this planning agreement	Public domain works. Upgrade of public pedestrian pathways between the various commercial businesses in the Paterson township. Improvement of pedestrian amenity.
9	A monetary contribution of \$40,000 per year from the Commencement Date to the end of the Life of the Development. The monetary contribution will be made to a Community Benefits and Wellbeing Fund to be established by the CCC. The money will be used to provide sponsorship or in-kind contributions that target impact areas and enhance	Monetary Contribution	\$40,000.00 per year over an estimated 25 year period, with the total value being \$1,000,000.00.	To be paid annually within 30 days of the anniversary of the Commencement Date.	Community infrastructure, amenities and activities. Provision of ongoing financial support during the Life of the Development to community activities, local community groups and projects that will have local benefits, in accordance with funding criteria established in

Item	Description and manner of delivery	Type of Contribution	Value	Timing	Public purpose and public benefit
	local values with a focus on affected localities, including Martins Creek and the village of Paterson. Criteria for the expenditure of the Community Benefits and Wellbeing Fund will be established in consultation with the CCC and in accordance with any approved Social Impact Management Plan for the Development.				consultation with the CCC and any approved Social Impact Management Plan.
10	Reconstruction / rehabilitation of Station Street in the following stages: (a) Stage 1: Overlay works (b) Stage 2: Maintenance	Works in Kind / Monetary Contribution [SH <b>Note: Either Works in Kind or Monetary Contribution to be provided. To be discussed further with Council. If a monetary contribution is provided, Buttai Gravel will also provide to Council all designs and plans prepared for the proposed works to date.]</b>	a) Stage 1 \$109,428 b) As reasonably required and agreed between Council and Buttai Gravel	<b>[For WIK]</b> An application for Approval of the Stage 1 works under the Roads Act is to be made within 6 months after final determination of the Development Application. Council to give all approvals within 3 months  Stage 1 works are to be completed within 3 months after an Approval under the Roads Act for those works is granted.  Stage 2 works are to be completed as reasonably required and agreed between Council and Buttai Gravel.	Public road upgrades to provide increased safety for the public and drivers of heavy vehicles when travelling on the road

Item	Description and manner of delivery	Type of Contribution	Value	Timing	Public purpose and public benefit
				<i>[Timing for monetary contributions to be discussed]</i>	



## Schedule 2      Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Developer has:</p> <p>(a)      Sought a change to an environmental planning instrument</p> <p>(b)      Made, or propose to make a Development Application</p> <p>(c)      Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>Definition of “Land” in clause 1</p>
<p><b>Description of the development to which the Agreement applies – Section 7.4(3)(b)</b></p>	<p>Definition of “Development” in clause 1</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b></p>	<p>Clause 6 and Schedule 1</p>
<p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>	<p>Section 7.11 of the Act is excluded – clause 7</p>
<p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>	<p>Section 7.12 of the Act is excluded – clause 7</p>
<p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>	<p>Section 7.11 of the Act is not excluded – clause 7</p>
<p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>	<p>Clause 10</p>
<p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>Clause 11</p>
<p><b>No obligation to grant consent or exercise functions – Section 7.4(9)</b></p>	<p>Clause 13 (no fetter)</p>

Executed as an agreement

**Executed by Buttai Gravel Pty Ltd** )  
ACN 003 386 570 in accordance with )  
section 127 of the *Corporations Act 2001* )  
(Cth) by: )  
 )  
 )

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Print name of Director

.....  
Print name of Director/Secretary

**Signed** for and on behalf of **Dungog** )  
**Shire Council** ACN 62 610 350 056 by its )  
authorised delegate in accordance with a )  
resolution of the Council dated [insert )  
date]: )  
 )  
 )  
 )  
 )

.....  
Signature of Witness

.....  
Signature of Authorised Representative

.....  
Print name of Witness

# Annexure A Plan showing Land



**[SH Note: Plan to be updated given recent lot consolidation]**



## Annexure B Plans showing Works

[Insert diagrams showing extent of road works]

6 May 2021

Maitland City Council  
ATTN: Andrew Neil  
P.O. Box 220  
MAITLAND 2320



HEAD OFFICE  
20 Kullara Close, Beresfield NSW 2322  
PO Box 401 Beresfield NSW 2322  
P 02 4974 9200

dgroup@daracon.com.au  
www.daracon.com.au

SYDNEY  
184 Adderley Street West, Auburn NSW 2144  
P 02 8799 2600

HUNTER VALLEY  
2 Kime Road, Mount Thorley 2330  
P 02 6574 0200

GUNNEDAH  
171 Blackjack Road, Gunnedah NSW 2380  
PO Box 767 Gunnedah NSW 2380  
P 02 6742 4977

Sent by email: [Andrew.Neil@maitland.nsw.gov.au](mailto:Andrew.Neil@maitland.nsw.gov.au)

Dear Andrew,

**RE: State Significant Development Application 6612, Martins Creek Quarry  
Applicant: Buttai Gravel Pty Ltd**

Thank you for taking the time (along with Anne Humphries and Scott Henderson) to meet with our people from Buttai Gravel Pty Ltd. It was good to have the opportunity to brief you on the status of the SSDA and the key project parameters.

As we discussed, Buttai Gravel, as the applicant for the SSDA, is seeking to confirm the contribution arrangements relating to pavements for the Maitland City Council portion of the proposed haul route, should the SSDA be approved.

It was concluded at the meeting that the current formula used by Council from the City Wide S94 Contribution would be applicable. The haul route is from Dungog Shire/Maitland boundary marker on Tocal Road to Melbourne Street, East Maitland, a distance of 15.7klms (see Attachment A for map).

To assist you in that calculation, I am able to recommend the following project parameters. Note that the Vi number is based on your previous Brandy Hill calculation in order to keep the contributions consistent.

Annual Tonnage by Road	500,000 tonnes
Density	2.70
Initial Volume of Heavy Vehicles (Vi)	609*
Additional Volume from Development (Vd)	132
Our modelling based upon Truck & Dog	32 tonne per load

\*Source: attached letter with base truckload of 550 plus the approved 59 Brandy Hill trucks

Daromin Engineering Pty Ltd  
ABN 20 001 236 255 trading as  
Daracon Plant Hire  
Daracon Heavy Haulage

Daracon Mining Pty Ltd  
ABN 82 117 236 272 trading as  
Daracon Mining Services  
Daracon Coal Services

Daracrete  
ABN 54 141 441 312  
trading as Daracon Concrete

Buttai Gravel Pty Ltd  
ABN 47 003 386 570 trading as  
Daracon Quarries

Arenco (NSW) Pty Ltd  
ABN 61 002 671 392

Daracon Engineering Pty Ltd  
ABN 84 002 640 262

Daracon Contractors Pty Ltd  
ABN 82 002 344 667

Paramount Landscaping Pty Ltd  
ABN 40 003 530 201 trading as  
Daracon Landscaping

Daracon Engineering Pty Ltd  
as trustee for Daracon Unit Trust  
ABN 75 529 095 602

Should you require any further information, please do not hesitate to contact Darren Robson by mobile on 0409 900 647.

I look forward to your calculations at your earliest convenience.

Yours faithfully

A handwritten signature in dark ink, appearing to be 'AK', written in a cursive style.

Adam Kelly  
**Director – Business Development**  
**BUTTAI GRAVEL PTY LTD**

Attachment A: Haul Route

Attachment B: Brandy Hill Quarry Expansion Letter



**Attachment A: Brandy Hill Quarry Expansion Letter**



Our Ref: (2020/220115)

Phone Enquiries: [REDACTED]  
Scott Henderson

9/06/2020

Office of the Independent Planning Commission NSW  
Level 3, 201 Elizabeth Street  
SYDNEY NSW 2000

Dear Stephen,

**Re: Brandy Hill Quarry Expansion – SSD 5899**

I refer to your letter dated 2 June 2020 regarding Brandy Hill Quarry Expansion – SSD 5899 and provide the following comment:

**1. Road maintenance contribution**

The Road Maintenance Contribution has been modelled on a 30-year timeframe, and for varying discount rates (which factors in the Road Cost Index). Assumptions have been made on: the volume of material extraction (including road density), initial average volume of daily heavy vehicles on the subject route, and the discount rate.

Over a 30-year, the estimated monetary contribution is \$158,931 using a discount rate of 3% per annum. Modelling of Road Maintenance Contribution has been undertaken for additional discount rates and is provided in the Attachment 1.

**2. Road classification and heavy vehicle haulage routes**

Paterson Road is classified as a Local road from the Maitland local government area boundary at Paterson River to Tocal Road, and, is classified as a Regional Road from Tocal Road to Flat Road.

South of Flat Road there are two heavy haulage route options identified:

**Option 1:-**

The Flat Road and Pitnacree Road route are classified as Regional Roads. Pitnacree Road joins with the State road network at Melbourne Street.

**Option 2:-**

Paterson Road south of Flat Road is classified as a Regional road and connects to a Regional road route to the State road network at the New England Highway. This Regional road route is via Belmore Road – Ken Tubman Drive – Alan Walsh Drive – Church Street.

Haulage routes identified in the application (SSD 5899 and described in this letter) currently permit general access heavy vehicles and are subject to exemptions and restrictions. General access vehicles are those vehicles that do not exceed 2.5 metres in width, 12.5 metres in length (rigid truck) or 19 metres (articulated combination), 4.3 metres in height and General Mass Limits (GML) as set by law.

285 - 287 High Street  
Maitland NSW 2320

t 02 4934 9700  
f 02 4933 3209

info@maitland.nsw.gov.au  
maitland.nsw.gov.au

All correspondence should be directed to: General Manager P.O. Box 220 Maitland NSW 2320

In New South Wales, the National Class 3 Truck and Dog Trailer Mass Exemption Notice 2018 (No.2) under the Heavy Vehicle Law, provides exemptions on the vehicle type and loading permitted on the road network (e.g. Schedule 2: New South Wales 2. Conditions – General mass limits, and steer axle mass exemption limits 1) The mass of a truck and Dog heavy vehicle operating under this notice and the steer axle mass exception limits must not be more than: b) in the case of a combination consisting of a rigid truck with 3 axles towing a dog trailer with 4 axles – 50.5t.).

There are also local posted signage restrictions from time to time on sections of the road network which limit the vehicle type and loading (e.g. restriction on the number of heavy vehicles on bridge).

Should you require further information please contact me on [REDACTED]

Yours sincerely,



Andrew Neil  
Manager Strategic Planning  
Planning and Environment | Maitland City Council

## Attachment 1: Calculations using methodology in Maitland City Wide Section 94 Contributions Plan 2016 Brandy Hill Quarry Expansion Project

### Brandy Hill Quarry: Material extraction

mass (quarry expansion component)	m	880,000	tonnes
density	p	2.65	
volume	V	332,075	cubic metres

### Traffic distribution

Heavy Vehicle deliveries distribution	f	25%	through Maitland LGA
Volume material extraction	Z	83,019	cubic metres

### Road maintenance contribution

Maintenance cost	Ms	\$ 8,059	
Length of sealed road	Ls	9.9	kilometres
Volume of initial heavy vehicles on network	Vi	550	vehicle trips per day
Volume of heavy vehicles from development (quarry)	Vd	59	vehicle trips per day
Proportion of Heavy vehicles from development	$Vd/(Vi + Vd)$	0.10	
Road Cost Index (RCI)	ly	1.047	RCI from 2015 (time of Maitland Citywide Contributions Plan to 2020)
Road Maintenance Contribution	Cs	\$ 8,108.53	year 2020

### Financial Modelling

Annual fee	A	\$ 8,108.53	\$ 8,108.53	\$ 8,108.53	\$ 8,108.53
Discount rate	DF	2.0%	3.0%	5.0%	10.0%
periods	n	30	30	30	30
Present Worth Factor	P/A	22.39646	19.60044	15.37245	9.42691
Present worth	P	\$181,602.33	\$158,930.77	\$124,647.98	\$ 76,438.42

### Discount rate

nominal interest rate	i	3.2648%				p.a.
inflation rate	h	1.2400%				p.a.
real interest rate	r	2.0000%	3.0000%	5.0000%	10.0000%	p.a.

Note: Assuming inflation rate, h equals Road Cost Index, RCI, and, Discount rate, DF equals real interest rate, r

### Road Cost Index (Maintenance) Annual Movement

2014/15	RCI %change	1.0%	p.a.
2015/16	RCI %change	0.4%	p.a.
2016/17	RCI %change	0.5%	p.a.
2017/18	RCI %change	1.4%	p.a.
2018/19	RCI %change	2.9%	p.a.
5yr-Avg p.a.	RCI %change	1.2%	p.a.



Attachment A: Haul Route

