

2 September 2022

Ms Jessie Evans  
Director Resource Assessments  
Department of Planning and Environment  
4 Parramatta Square, 12 Darcy Street  
PARRAMATTA NSW 2124

**Attention: Carl Dumpleton**

Dear Jessie

**Re: Howlong Sand and Gravel Quarry (SSD 8804) – Request for Information**

R.W. Corkery & Co Pty Ltd (RWC) has been commissioned by Fraser Earthmoving Construction Pty Ltd (FEC) to review and respond to a request for further information received from the Department of Planning and Environment (DPE) dated 10 April 2022 relating to the proposed expansion of the Howlong Sand and Gravel Quarry (the Project). The request identified two key matters that needed to be addressed prior to the assessment of the Project being finalised. These matters are as follows.

1. Finalisation of landowners consent for the parcel of Crown Land within the project boundary.
2. An agreed draft Voluntary Planning Agreement with Federation Council (Council) or other suitable arrangement agreed to by Council.

These matters are addressed below with reference to the attached documents provided by Crown Lands and Council and the draft Planning Agreement prepared by McCullough Robertson Lawyers.

**Crown Land**

**Figure A** presents the location and ownership of the land parcels that bisect Lot 231 DP 753744 as well as an easement for flooding adjacent to the Murray River. There are three parcels relevant to the operation with these described as follows.

- The small parcel adjacent to the Murray River (shaded pink) is Crown land and is understood to be an easement relating to flood management.
- The north-south paper road (shaded blue) is understood to be owned by Council.
- The remaining paper road that runs in a roughly northwest-southeast direction (shaded yellow) is understood to be Crown land.

Crown Land has provided landowner's consent for the lodgement of the development application (SSD 8804) with the consent document provided as **Attachment 1**. This resolves the outstanding matter required to be addressed relating to the Crown Land within the proposed Quarry Site.

It is noted that an application to purchase the northwest-southeast Crown road (shaded in yellow in **Figure A**) has been submitted to Crown Lands and is in progress. An enclosure permit application has also been submitted to Crown Lands for the enclosure of land within the broader property and the ongoing use of the land until such time as the closure process has been completed.

An application to close and purchase the small Crown land parcel adjacent to the Murray River (shaded pink) was made but has subsequently been withdrawn. This land would not be used for the Project.

Finally, Council has issued the correspondence provided as **Attachment 2**, providing landowner consent for use of the unformed road (shaded blue in **Figure A**), with closure and purchase of the land is to commence within 30 days of the letter. FEC has commenced consultation with Council on the process to close and purchase this land. This resolves the outstanding matter required to be addressed relating to the Council land within the proposed Quarry Site.

### **Planning Agreement**

Agreement on the terms for a Planning Agreement have been reached with Council. **Attachment 3** is the draft Planning Agreement prepared by McCullough Robertson Lawyers.

The draft Planning Agreement was publicly exhibited by Council from 27 July 2022 to 24 August 2022. We understand that no submissions were received by Council during the exhibition period that related to the Planning Agreement. It is expected that the final step in presenting and reviewing the agreement for endorsement will occur at the 19 September 2022 Council meeting.

In summary the terms of the agreement are as follows.

#### **Road Maintenance Contribution**

Road maintenance contributions calculated at the rate of \$0.04/t/km (over 1.8km) are to be paid to Council by the Applicant on an annual basis. This funding will be expended at Council's discretion on roads defined in the Planning Agreement. The contribution rate will be reviewed annually, in accordance with CPI for Transport weighted average of eight capital cities as published by Australian Bureau of Statistics.

<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>.

#### **Traffic Monitoring Contribution**

Where Council receives consistent, ongoing complaints involving more than one party that have not been resolved by FEC after notification, FEC agrees to pay a reasonable cost associated with the deployment and analysis of traffic monitoring up to a maximum of \$2,500 per investigation. Council agrees to provide FEC with a written report detailing the outcomes of any investigations enacted under the VPA within 7 days of payments being made.

Please contact myself or Greg Fraser of FEC with any further queries on these matters.

Yours sincerely



Nicholas Warren

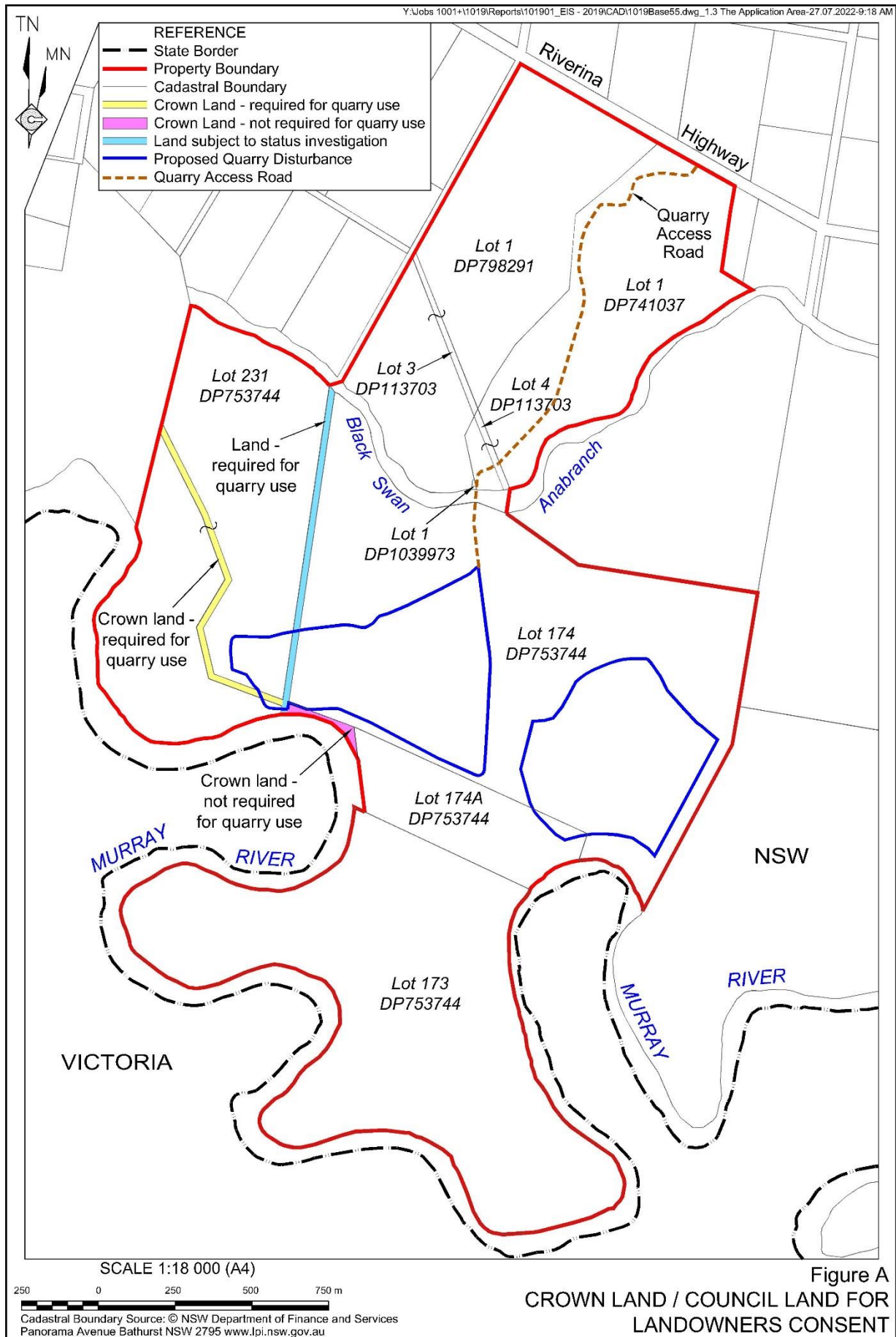
Principal Environmental Consultant

Encls: Figure A – Crown Land / Council Land for Landowners Consent

Attachment 1 - Land Owner Consent – Crown Land dated 1 September 2022

Attachment 2 - Land Owner Consent – Federation Council dated 26 August 2022

Attachment 3 - Draft Planning Agreement – McCullough Robertson Lawyers (20 June 2022)



# **Attachment 1**

Land Owner Consent –  
Crown Land dated  
1 September 2022



1 September 2022

Fraser Earthmoving Construction  
24 Kanard Lane  
SPLITTERS CREEK NSW 2640

Dear Sir/Madam

<b>Consent for Development Comprising:</b>	Lodgement of SSD 8804 for expansion of the Howlong Sand & Gravel Quarry
<b>Crown Land</b>	Crown Public Road through Lot 231 DP 753744, and Crown Public Road south of Lot 174 DP 753744.
<b>Parish</b>	Howlong
<b>County</b>	Hume
<b>Applicant</b>	Fraser Earthmoving Construction

Consent is granted by the Minister for Lands and Water to the lodgement of applications for approval under the *Environmental Planning and Assessment Act 1979*, and other associated applications required under other legislation, for the development proposal described above.

The Land Owner Consent is granted conditional to the following:

1. Land Owner Consent will expire after a period of 12 months from the date of this letter if not acted on within that time. Extensions of this consent may be sought
2. You are required to forward a copy of the planning approval to the NSW Department of Planning and Environment – Crown Lands (“the Department”) after approval and prior to commencing works.
3. You are required to ensure that the approval provided is consistent with this Land Owner Consent.
4. The Land Owner Consent is provided for the works detailed on the plans provided by you and retained by the Department as DOC22/033495 & DOC 22/033496.

Land Owner Consent is granted in accordance with the following:

- Land Owner Consent is given without prejudice so that consideration of the proposed development may proceed under the *Environmental Planning and Assessment Act 1979* and any other relevant legislation;
- The grant of this Land Owner Consent does not guarantee that any subsequent authority to occupy will be granted;
- Land Owner Consent does not imply the concurrence of the Minister for Lands and Water, for the proposed development and does not provide authorisation under the Crown Lands Management Act 2016 for this proposal;

- The issue of Land Owner Consent does not prevent the Department from making any submission commenting on, supporting or opposing an application;
- The Minister reserves the right to issue Land Owner Consent for the lodgement of applications for any other development proposals on the subject land concurrent with this Land Owner Consent;
- Any changes made to the proposal, including those imposed by the consent authority, must be consistent with the Land Owner Consent and therefore if modifications are made to the proposed development details must be provided to the Department for approval;
- Land Owner Consent also allows application to any other approval authority necessary for this development proposal.

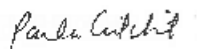
This letter should be submitted to the relevant consent or approval authority in conjunction with the development application and/or any other application. You are responsible for identifying and obtaining all other consents, approvals and permits required under NSW and Commonwealth laws from other agencies for the proposed development.

It is important that you understand your obligations relating to Condition 3. If any alterations are made to the application (whether in the course of assessment, by conditions of consent, or otherwise), it is your responsibility to ensure the amended or modified development remains consistent with this Land Owner Consent. If there is any inconsistency or uncertainty you are required to contact the Department before undertaking the development to ensure that the Department consents to the changes. A subsequent LOC application may incur additional application fees.

It is advised that the Department will provide Planning with a copy of this Land Owner Consent.

For further information, please contact me via the details given in the letter head.

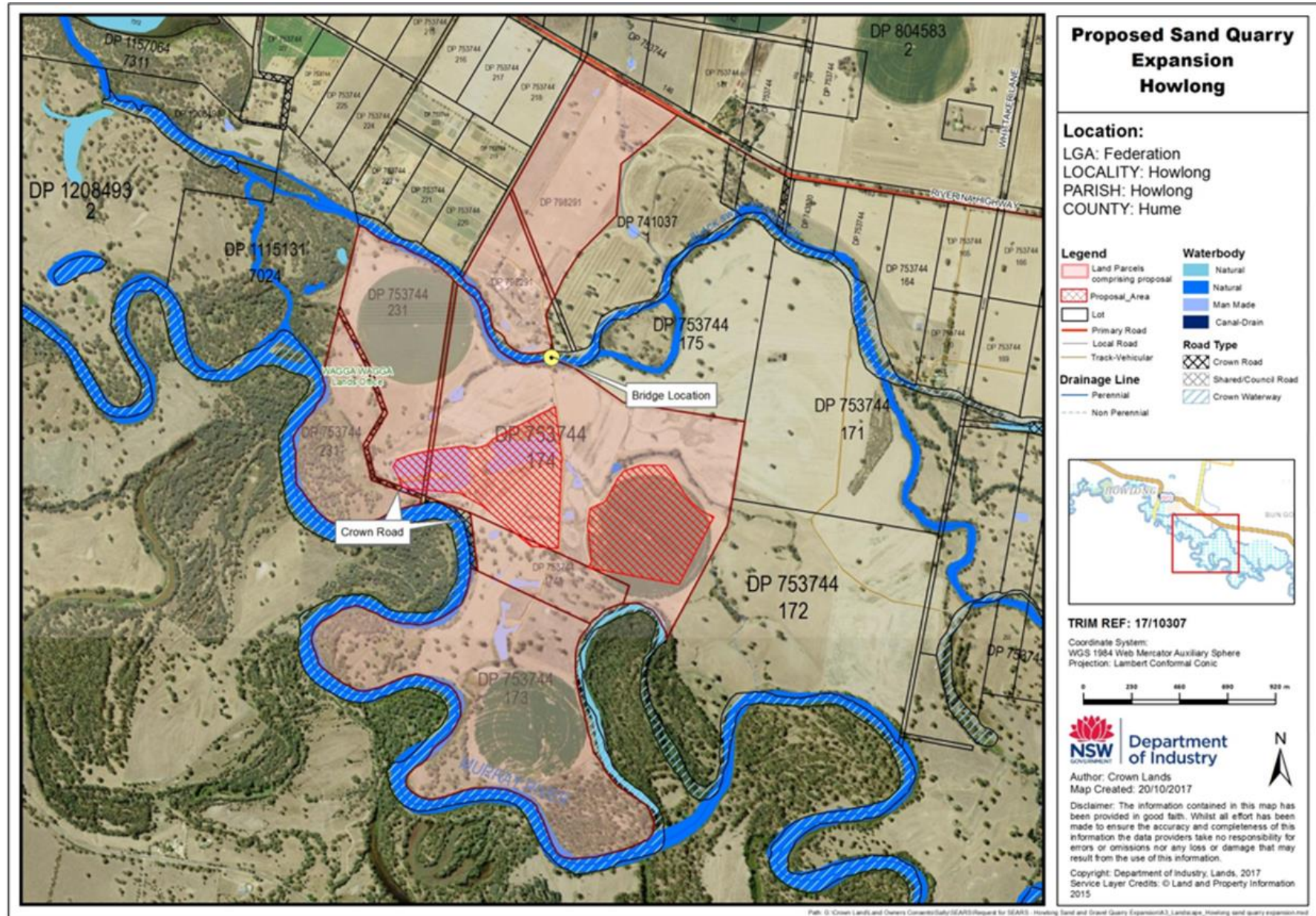
Yours sincerely



Paula Gilchrist  
 Natural Resource Management Project Officer  
 Department of Planning and Environment - Crown Lands  
 30 August 2022



## Attachment A – Location Map



# **Attachment 2**

Land Owner Consent –  
Federation Council dated  
26 August 2022



Reference: 22/31174  
Contact: Susan Appleyard

26 August 2022

RWCorkery & Co  
[admin@rwcorkery.com](mailto:admin@rwcorkery.com)

Dear Nicholas

**RE: OWNERS CONSENT FOR STATE SIGNIFICANT DEVELOPMENT 8804 – HOWLONG SAND AND GRAVEL QUARRY FOR ROAD RESERVE THAT BISECTS LOT 231, DP 753744**

Federation Council grants owners consent in accordance with clause 23(1)(b) of the Environmental Planning and Assessment Regulation 2021 for the road reserve which bisects Lot 231, DP 753744 and as pictured in the plan below for State Significant Development Application 8804 – Howlong Sand and Gravel Quarry.



The formal process to close the road reserve is to commence within 30 days of the date of this letter.

If you require further information please contact Council on 02 6033 8999.

Your Sincerely

A handwritten signature in black ink, appearing to read 'Susan Appleyard', with a stylized flourish at the end.

**SUSAN APPLEYARD**  
**DIRECTOR DEVELOPMENT AND ENVIRONMENT**

# **Attachment 3**

Draft Planning Agreement  
– McCullough Robertson  
Lawyers (20 June 2022)

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## Voluntary Planning Agreement - Howlong Sand and Gravel Quarry Continuation and Expansion Project

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Federation Council ABN 30 762 048 084

Fraser Earthmoving Construction Pty Ltd ACN 158 077 304

Nangunia Pastoral Pty Ltd ACN 096 615 780

Version: 1



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# Voluntary Planning Agreement - Howlong Sand and Gravel Quarry Continuation and Expansion Project

Dated

## Parties

<b>Council</b>	<b>Federation Council ABN 30 762 048 084</b> of 100 Edward Street, Corowa NSW 2646
<b>Developer</b>	<b>Fraser Earthmoving Construction Pty Ltd ACN 158 077 304</b> of Suite 4, Level 1, 574-576 Kiewa Street, Albury NSW 2640
<b>Landowner</b>	<b>Nangunia Pastoral Pty Ltd ACN 096 615 780</b> of Suite 4, Level 1, 574-576 Kiewa Street, Albury NSW 2640

## Background

- A In March 2020, the Developer made a Development Application to the Department seeking Development Consent to carry out the proposed Development on the Land. This Development is identified by the Department as State Significant Development Application SSD-8804.
- B The Developer has made an offer to Council to enter into this Deed under section 7.4 of the EP&A Act and to pay the Development Contributions to the Council in connection with the carrying out of the Development.
- C In accordance with section 7.4 of the EP&A Act, this Deed formalises the arrangement between the Parties for the delivery of Development Contributions in connection with the Development.

## 1 Definition and interpretation

### 1.1 Definitions

In this Deed the following definitions apply:

<b>Term</b>	<b>Definition</b>
<b>Authority</b>	means any governmental, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or agency.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in New South Wales.
<b>Commencement Date</b>	means the date that the Developer notifies the Department (in writing) of the commencement of any

<b>Term</b>	<b>Definition</b>
	Development to be undertaken pursuant to the Development Consent.
<b>CoRD Holder Consent</b>	means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.
<b>Council</b>	means Federation Council ABN 30 762 048 084 or its representatives or assigns.
<b>CPI</b>	means the published Consumer Price Index for Transport weighted average of eight capital cities as published by Australian Bureau of Statistics, or if that index is no longer published, then any other index which, in the reasonable opinion of the Minister, is a similar index.
<b>Deed</b>	means this voluntary planning agreement.
<b>Department</b>	means the NSW Department of Planning and Environment.
<b>Developer</b>	means Fraser Earthmoving Construction Pty Ltd ACN 158 077 304.
<b>Development</b>	means the proposed Howlong Sand and Gravel Quarry Expansion Project described in Development Application SSD-8804, as approved by a Development Consent and as modified from time to time.
<b>Development Application</b>	means the application for the Development with reference number SSD-8804 lodged with the Department in March 2020.
<b>Development Consent</b>	has the meaning given to that term in the EP&A Act.
<b>Development Contributions</b>	means the contributions detailed in Schedule 2 of this Deed, and for the avoidance of doubt comprises the Road Maintenance Contribution and the Traffic Monitoring Contribution.
<b>Development Land</b>	means Lot 174 in DP753744 and Lot 231 in DP753744 on which the Development will be carried out and which are owned by the Landowner.
<b>Dispute</b>	means a dispute about the terms and operations of this Deed.
<b>ELNO</b>	has the same meaning as in the Electronic Conveyancing National Law (NSW).
<b>EP&amp;A Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Explanatory Note</b>	means the note exhibited with a copy of this Deed, when this Deed is made available for inspection by the public in accordance with the EP&A Act, as contemplated by clause 205 of the Regulation.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

<b>Term</b>	<b>Definition</b>
<b>Haulage Route</b>	means the approximate 1.8 kilometre section of local and regional roads depicted in Schedule 3, being the sections of roads maintained by Council that would be used as part of the haulage route for the Development.
<b>Landowner</b>	means Nangunia Pastoral Pty Ltd ACN 096 615 780
<b>Law</b>	means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinate legislation of the Commonwealth, the State of New South Wales or other relevant Authority.
<b>Party and Parties</b>	means Council, the Developer and the Landowner, including their successors and assigns.
<b>Quarry</b>	means the Howlong Sand and Gravel Quarry that is the subject of the Development Consent.
<b>Quarry Products</b>	means quarry materials excavated and removed from the Development Land from time to time.
<b>Recipient</b>	has the meaning given to that term in the GST Act.
<b>Regulation</b>	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
<b>Report</b>	means a report based on the Weighbridge Records showing the amount of Quarry Products hauled along the Haulage Route or any part of the Haulage Route for the purpose of the Development, for a particular period of time, prepared in accordance with this Deed.
<b>Reporting Date</b>	means 1 July for each year during the Term.
<b>Road Maintenance Contribution</b>	means the contribution to be made by the Developer pursuant to the terms of this Deed that is to be applied towards the ongoing maintenance of the Haulage Route depicted in Schedule 3.
<b>Supply and Supplier</b>	has the meaning given to that term in the GST Act.
<b>Sunset Date</b>	means the date on which the Development Consent expires or lapses.
<b>Tax Invoice</b>	has the meaning given to that term in the GST Act.
<b>Taxable Supply</b>	has the meaning given to that term in the GST Act.
<b>Term</b>	means the period beginning on the Commencement Date and ending on the earlier of the Sunset Date or the date this Deed terminates or otherwise comes to an end in accordance with this Deed.
<b>Traffic Monitoring Contribution</b>	means the contribution to be made by the Developer pursuant to the terms of this Deed that is to be applied towards traffic monitoring services such as: <ul style="list-style-type: none"> <li>(a) the deployment and analysis of traffic counters;</li> </ul>



Term	Definition
	(b) the deployment and analysis of video monitoring; and
	(c) any time taken by Council officers in investigating a complaint.
<b>Weighbridge Records</b>	means the records indicating the quantity of Quarry Products transported from the Development Land along the Haulage Route from time to time.

## 1.2 Interpretation

In this Deed, unless 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) **(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;
- (g) **(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;
- (h) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (i) **(singular)** the singular includes the plural and vice-versa;
- (j) **(gender)** words importing one gender include all other genders;
- (k) **(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;
- (l) **(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;

- (m) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (n) **(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 Sydney, Australia, even if the obligation is to be performed elsewhere;
- (o) **(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;
- (p) **(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;
- (q) **(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;
- (r) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (s) **(month)** a reference to a month is a reference to a calendar month; and
- (t) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

## 2 Application of the Deed

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This Deed applies to:

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

## 3 Planning agreement under the EP&A Act

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This Deed constitutes a planning agreement within the meaning of section 7.4 of the EP&A Act and complies with each of the requirements of Part 7, Division 7.1 of the EP&A Act.

## 4 Operation of this Deed

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- (a) This Deed operates, and becomes legally binding on both parties if:
  - (i) The Applicant is granted Development Consent for the Development; and
  - (ii) this Deed is executed by the Parties as required by clause 203(1) of the Regulation.
- (b) This Deed will remain in force until the earliest of:

- (i) the Deed is terminated by operation of Law;
- (ii) the operations at the Quarry which are the subject of the Development Consent cease;
- (iii) all obligations under the Deed are performed or satisfied;
- (iv) on the election of the Developer, if the Development Consent is held to be void by any Court;
- (v) if the Development Consent expires or is surrendered; or
- (vi) if the parties agree in writing to terminate the Deed at any time.

## **5 Application of sections 7.11, 7.12 and 7.24**

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### **5.1 Sections 7.11, 7.12 and 7.24 of the EP&A Act**

- (a) This Deed does not exclude the application of sections 7.11 and 7.12 of the EP&A Act to the Development.
- (b) This Deed does not exclude the application of section 7.24 of the EP&A Act to the Development.

## **6 Payment of Development Contributions**

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### **6.1 The Development Contributions**

- (a) Subject to the terms of this Deed including clause 6.2, the Developer will pay to Council the Development Contributions which are to be made:
  - (i) for the purpose specified in column A of Schedule 2;
  - (ii) in the amount referred to in column B of Schedule 2 (subject to adjustment under clause 6.2); and
  - (iii) at the times referred to in column C of Schedule 2.
- (b) A Development Contribution is made for the purposes of this Deed when cleared funds are deposited by means of electronic transfer into a bank account nominated by Council.

### **6.2 CPI**

The Development Contributions are to be adjusted according to CPI as follows:

$$\text{DCP} = (\text{DC} \times \text{A})/\text{B}$$

where:

- (a) DC equals the particular Development Contribution payment amount required to be paid as per column B of Schedule 2;
- (b) DCP equals the actual Development Contribution payment amount payable at the time the particular payment is made;

- (c) A equals the most recent CPI published before the date the payment is due to be made; and
- (d) B equals the most recent CPI published before the date of this Deed.

### **6.3 Application of Development Contributions**

- (a) Council:
  - (i) may spend the Road Maintenance Contribution at Council's discretion towards the maintenance, improvement or repair of the Haulage Route; and
  - (ii) must spend the Traffic Monitoring Contribution only for the purpose specified in column A of Schedule 2 and for no other purpose.

## **7 Payment of Road Maintenance Contribution**

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### **7.1 Calculation of and issuing of Tax Invoice for Road Maintenance Contribution**

- (a) The Developer must:
  - (i) retain all Weighbridge Records created during the Term for a period of 7 years from the date that those documents are created;
  - (ii) on the first Reporting Date, provide Council with a Report summarising the total volume of Quarry Product transported from the Quarry based on the Weighbridge Records since the Commencement Date up to the end of the financial year prior to the first Reporting Date; and
  - (iii) on each subsequent Reporting Date, provide to the Council a Report summarising the total volume of Quarry Product transported from the Quarry based on the Weighbridge Records for the financial year immediately proceeding the Reporting Date.
- (b) If in any year during the Term the Developer is not able to provide the Report by the Reporting Date for any reason, the Developer may make a written request to Council to extend the Reporting Date, provided it is prior to 20 Business Days before the applicable Reporting Date. Council must not unreasonably withhold its consent to any such request to an agreed extension of time for the Report.
- (c) Within 20 Business Days of receiving the Report in respect of any period, Council must provide a Tax Invoice to the Developer notifying it of the amount of the Road Development Contribution required to be paid, in respect of the relevant period covered by that Report, calculated in accordance with the formula for the Road Maintenance Contribution in Schedule 2.

## **8 Traffic Complaints Management and Traffic Monitoring Contribution**

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### **8.1 Complaint Management Register**

- (a) The Developer must:
  - (i) maintain a complaints register on its website in accordance with the requirements of the Department and the NSW Environment Protection Authority;



- (ii) ensure any substantiated complaints received by the Developer will be investigated and a response provided to the complainant regarding the outcomes of the complaint; and
- (iii) document the number and nature of complaints received by the Developer or Landowner in relation to the Quarry at the Quarry and report on these each year in the Annual Review undertaken for the Quarry's operations in accordance with the conditions of the Development Consent.

## **8.2 Trigger for Payment of Traffic Monitoring Contribution**

- (a) The following complaints management process must be followed in respect of the Traffic Monitoring Contribution:
  - (i) all complaints received by Council relating to the Quarry are to be provided by Council to the Developer within five Business Days from when the complaint is received;
  - (ii) before Council proceeds to undertake or obtain traffic monitoring and/or an analysis of any traffic monitoring, Council is to provide the Developer with a minimum of five Business Days to respond to the complaint, including undertaking its own investigations;
  - (iii) any investigations by or on behalf of Council will be prompted by the receipt of consistent, ongoing complaints involving more than one party that have not be resolved by the Developer after notification in accordance with clause 8.2(a);
  - (iv) the outcomes of any investigation that is undertaken by or on behalf of Council under the terms of this Deed will be provided to the Developer in the form of a written report that summarises the outcomes of the investigation within 7 days of the Traffic Monitoring Contribution being made to Council by the Developer;
  - (v) the Traffic Monitoring Contribution required to be paid by the Developer in respect of any investigation undertaken by or on behalf of Council regarding a complaint made will not exceed \$2,500 (on each occasion) unless with the prior agreement of the Developer; and
  - (vi) if there is a dispute between the parties as to the need for or nature of a traffic investigation that is proposed to be undertaken by or on behalf of Council, the matter is to be referred to the Secretary of the Department for resolution.

## **9 Review of this Deed**

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### **9.1 Basis for review or amendment to Deed**

- (a) Any amendments, variation or consent to any departure by any party from the terms of this Deed shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 7.5 of the EP&A Act.
- (b) If an alternative route is proposed by the Developer for the haulage of Quarry Product from the Quarry, then the Parties agree to review the Road Maintenance Contribution payable by the Developer prior to the alternative route being used.

## **10 Enforcement**

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- (a) Without limiting any other remedies available to the Parties, this Deed may be enforced by either Party in any court of competent jurisdiction.
- (b) Nothing in this Deed prevents:
  - (i) 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
  - (ii) the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.
- (c) If the Developer fails to pay a Development Contribution within one calendar month of the due date of a Tax Invoice as required under this Deed, Council may provide a notice to the Developer (after the one calendar month has elapsed), notifying the Developer of Council's intention to commence proceedings to recover the specified Development Contribution if payment is not made within 14 days of the date of the notice.
- (d) If the Developer:
  - (i) fails to pay the specified Development Contribution within 14 days of the date of a notice issued in accordance with clause 10(c); and
  - (ii) has not issued a notice of Dispute in accordance with clause 11 during the 14 day period provided by clause 10(c),

then after the expiry of the 14 days, the Council may commence court proceedings to recover the specified Development Contribution owing by the Developer.

## **11 Dispute resolution**

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### **11.1 Not Commence**

A Party may not commence any court proceedings relating to a dispute of any matter under this Deed (a Dispute) unless it complies with this clause 11.

### **11.2 Written Notice of Dispute**

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

### **11.3 Attempt to Resolve**

On receipt of notice under clause 11.2, 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.

### **11.4 Mediation**

If the Parties do not agree within 14 days of receipt of notice under clause 11.2 (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.

#### **11.5 Costs**

Each Party to a dispute must pay its own costs of complying with this clause 11. 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.

#### **11.6 Court Proceedings**

If the Dispute is not resolved within 42 days after notice is given under clause 11.2, then any Party which has complied with the provisions of this clause 11 may in writing terminate any dispute resolution process undertaken pursuant to this clause 11 and may then commence court proceedings in relation to the Dispute.

#### **11.7 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 11 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 11 for any purpose other than in an attempt to settle the Dispute.

#### **11.8 No Prejudice**

This clause 11 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 Deed.

### **12 GST**

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#### **12.1 GST exclusive**

Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

#### **12.2 Taxable Supply**

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

### **12.3 Later GST change**

For clarity, the GST payable under clause 12.2 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.

### **12.4 Reimbursement or indemnity**

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

### **12.5 Warranty that Tax Invoice is issued regarding a Taxable Supply**

Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

### **12.6 Progressive or Periodic Supplies**

Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 12.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## **13 Explanatory Note**

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Under clause 205 of the *Environmental Planning and Assessment Regulation 2021 (NSW)*, the Parties agree that the Explanatory Note is not to be used to assist interpreting this Deed.

## **14 Assignment**

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### **14.1 Assignment and novation**

- (a) The Developer may (at its discretion) novate the whole or a part of its rights, interest and obligations in this Deed to a new operator of the Quarry (**New Party**).
- (b) Before novating its rights, interests and obligations under this Deed, the Developer must procure the New Party to enter into a deed of novation on the same terms as this Deed.
- (c) If requested by the Developer, Council and the Landowner will execute all documents and undertake all acts reasonably necessary to give effects to the Developer's novation of its rights and obligations under this Deed.

## **15 Registration**

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- (a) This Deed is to be registered on the title to the Development Land as provided for in section 7.6 of the EP&A Act.
- (b) Upon the commencement of this Deed, the Landowner is to:



- (i) procure the preparation of an electronic registrable form and instrument requesting registration of this Deed on the title to the Development Land and notify the Council of such preparation;
  - (ii) deliver to the Council the written irrevocable consent of each registered proprietor of the Development Land and each other person referred to in section 7.6(1) of the EP&A Act to the registration of this Deed on title to the Development Land; and
  - (iii) procure the production of the certificates of titles to the Development Land, or electronic lodgement of the relevant CoRD Holder Consents for the Development Land (if required) through an ELNO.
- (c) The Developer and Landowner are to do such other things as are reasonably necessary to enable registration of this Deed to occur.
  - (d) The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Development Land once this Deed is terminated or otherwise comes to an end for any other reason.

## **16 General**

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### **16.1 Counterparts**

This document may be executed in any number of counterparts. All counterparts together make one instrument.

### **16.2 No merger**

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

### **16.3 Entire agreement**

- (e) This document supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (f) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this document.

### **16.4 Further assurances**

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

### **16.5 Representations and warranties**

The parties represent and warrant that they have the power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any law.

### **16.6 Confidentiality**

Any information or documents disclosed by a party under this Deed:

- (g) must be kept confidential unless it is already available in the public domain; and
- (h) may only be used to attempt to resolve a dispute.

#### **16.7 No waiver**

- (i) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (j) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (k) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

#### **16.8 Governing law and jurisdiction**

- (a) New South Wales law governs this document.
- (l) Each party irrevocably submits to the exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.
- (m) The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 11 of this Deed have first been satisfied.

#### **16.9 Severability**

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

#### **16.10 Relationship of Parties**

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

#### **16.11 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 Deed 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 5.00pm on the specified day, it is taken to have been done on the following Business Day.

## 16.12 No fetter

Nothing in this Deed is to 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 is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## 17 Notice

### 17.1 Method of giving notice

A notice, consent or communication under this document is only effective if it is:

- (a) in writing;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
  - (i) delivered by hand to that person's address;
  - (ii) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
  - (iii) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
  - (iv) sent by email to that person's email address and the sender receives an email receipt or other written confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient.

### 17.2 When is notice given

A notice, consent or communication given under clause 17.1(a) is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax or email	(a) that day, if delivered or sent by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.
Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Days after posting, if sent to or from a place outside Australia.

### 17.3 Address for notices

A person's address, fax number and email address are those set out below, or as the person notifies the sender:

<b>Name</b>	<b>Federation Council</b>
<b>Attention</b>	General Manager
<b>Address</b>	100 Edward Street, Corowa NSW 2646
<b>Phone</b>	[TBC]
<b>Fax</b>	[TBC]
<b>Email</b>	council@federationcouncil.nsw.gov.au

<b>Name</b>	Fraser Earthmoving & Construction Pty Ltd
<b>Attention</b>	Greg Fraser
<b>Address</b>	Suite 4, Level 1, 574-576 Kiewa Street, Albury NSW 2640
<b>Fax</b>	[TBC]
<b>Email</b>	Greg@fraserearthmoving.com.au

<b>Name</b>	Nangunia Pastoral Pty Ltd
<b>Attention</b>	Warwick Ashby
<b>Address</b>	Suite 4, Level 1, 574-576 Kiewa Street, Albury NSW 2640
<b>Fax</b>	[TBC]
<b>Email</b>	wta@ashbyag.com

## 18 Costs

- (a) The parties are to pay their own costs of preparing, negotiating, executing, stamping (if required) this Deed.
- (b) The Developer is to pay its own cost and the Council's costs related to registration and removal of registration of this Deed within 7 days of a written demand by the Council for such payment.

# Schedule 1

Requirements of Part 7, Division 7.1, Subdivision 2 of the EP&A Act

Subject and subsection of the EP&A Act	This Deed
<b>Planning Instrument or Development Application</b> (Section 7.4(2)) The Development has: (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a development application or application for a complying development certificate; or (c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) and (b) applies.	No.  Yes.  Yes.
<b>Description of the land to which the Deed applies</b> (Section 7.4(3)(a))	See definition of 'Land' in clause 1 of the Deed.
<b>Description of the development to which this Deed applies</b> – (Section 7.4(3)(b))	See definition of 'Development' in clause 1 of the Deed.
<b>The scope, timing and manner of delivery of contribution required by the Deed</b> (Section 7.4(3)(c))	See clauses 6 and <b>Error! Reference source not found.</b> and Schedule 2.
<b>Applicability of section 7.11 of the EP&amp;A Act</b> (Section 7.4(3)(d))	The application of section 7.11 of the EP&A Act is not excluded.
<b>Applicability of section 7.12 of the EP&amp;A Act</b> (Section 7.4(3)(d))	The application of section 7.12 of the EP&A Act is not excluded.
<b>Applicability of section 7.24 of the EP&amp;A Act</b> (Section 7.4(3)(d))	The application of section 7.24 of the EP&A Act is not excluded.
<b>Mechanism for dispute resolution</b> (Section 7.4(3)(f))	See clause 11.
<b>Security and enforcement of the Deed</b> (Section 7.4(3)(g))	See clause 10.
<b>Registration of the Deed</b> (Section 7.4(3)(g))	See clause 15.
<b>No obligation to grant consent or exercise functions</b> – (section 7.4(9))	See clause 16.12.



## Schedule 2

### Contribution and Timing of Payments

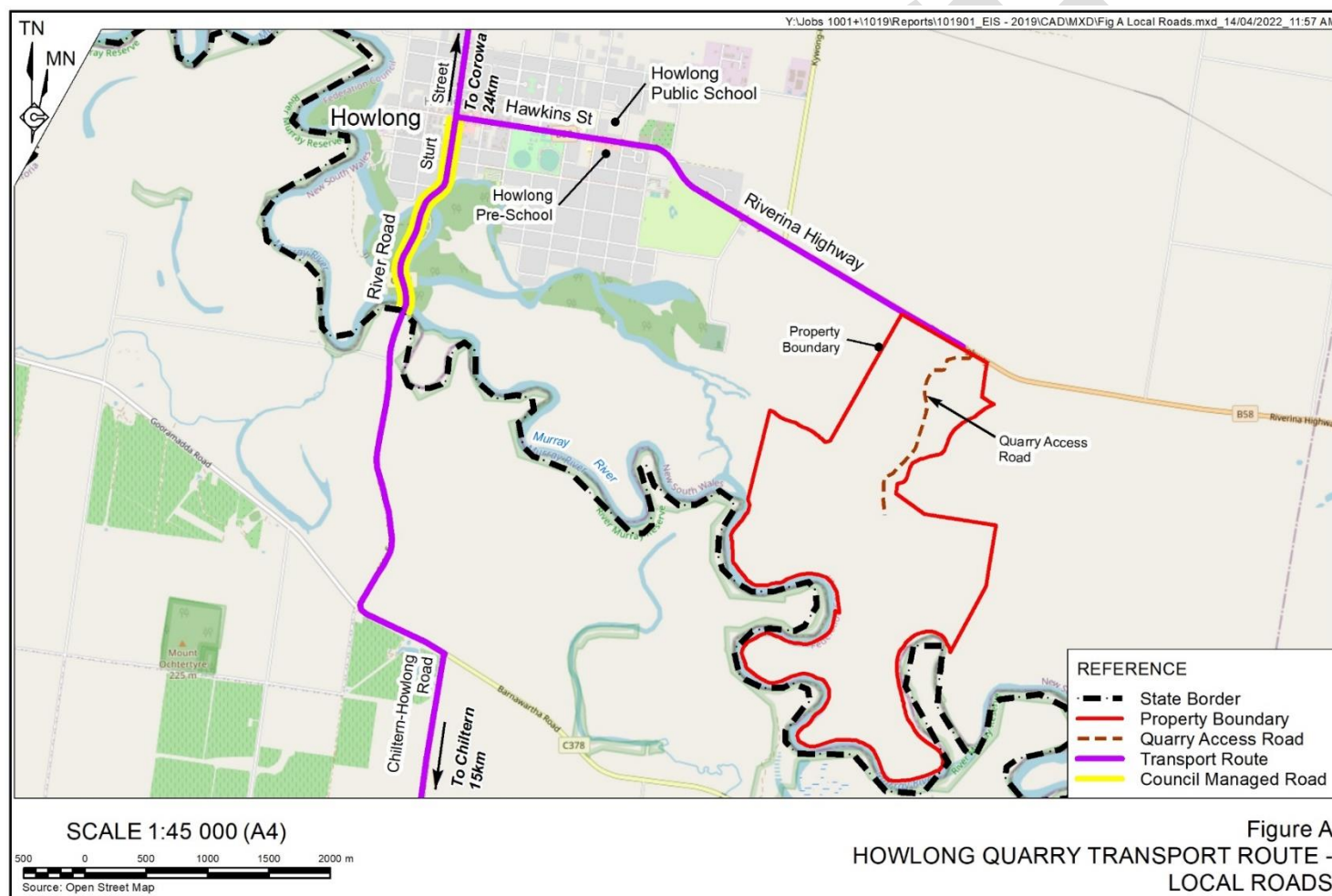
The Developer will pay the Development Contributions to Council as set out in the table below:

Item	A – Purpose	B – Development contribution	C – Timing of payment
1	Road Maintenance Contribution	The sum of \$0.04/tonne/kilometre (in respect of the Haulage Route depicted in Schedule 3) subject to CPI adjustment determined at the date of the relevant Tax Invoice.	Within one calendar month of the Developer receiving a Tax Invoice from Council in accordance with clause 7 and on an annual basis thereafter up until the end of the Term.
2	Traffic Monitoring Contribution	Where Council receives sufficient substantiated complaints regarding traffic levels at the Quarry to prompt a compliance investigation, the Developer agrees to pay all reasonable costs associated with the deployment and analysis of traffic monitoring up to a maximum total of \$2,500 per investigation subject to clause <b>Error! Reference source not found.</b> of this Deed.	Within one calendar month of the Developer receiving a Tax Invoice from Council in accordance with clause 8.

**GST:** All dollar amounts in the above table are GST exclusive in accordance with this Deed.

## Schedule 3

### Haulage Route



## Execution

EXECUTED as a deed

Signed for and on behalf of  
Federation Council ABN 30 762 048 084  
in accordance with a resolution under section 377  
of the *Local Government Act 1993 (NSW)* passed  
on:

\_\_\_\_\_  
Signature of Mayor

\_\_\_\_\_  
Signature of General Manager

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

Executed for and on behalf of Fraser Earthmoving  
Construction Pty Ltd ACN 158 077 304 in  
accordance with section 127(1) of the  
*Corporations Act 2001 (Cth)*:

\_\_\_\_\_  
Director/Secretary [if not Sole Director]

\_\_\_\_\_  
Director/Sole Director

\_\_\_\_\_  
Name [BLOCK LETTERS]

\_\_\_\_\_  
Name [BLOCK LETTERS]

Executed for and on behalf of Nangunia Pastoral  
Pty Ltd ACN 096 615 780 in accordance with  
section 127(1) of the *Corporations Act 2001 (Cth)*:

\_\_\_\_\_  
Director/Secretary [if not Sole Director]

\_\_\_\_\_  
Director/Sole Director

\_\_\_\_\_  
Name [BLOCK LETTERS]

\_\_\_\_\_  
Name [BLOCK LETTERS]