

Explanatory Note

Draft Planning Agreement Brandy Hill Quarry

*Environmental Planning & Assessment Act 1979, section 7.4
Environmental Planning & Assessment Regulation 2021, clause 205*

1. Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the exhibition of a proposed draft planning agreement (the **Planning Agreement**) prepared under section 7.4 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

2. Parties

The parties to the Planning Agreement are Port Stephens Council (**Council**) and Hanson Construction Materials Pty Ltd (**Developer**). This explanatory note has been prepared jointly by the parties.

3. Description of the Subject Land

The Agreement applies to the following land (**Land**) as identified in Appendix 1 of the development consent for the Project granted on 16 July 2020, reference SSD-5899 (**Development Consent**).

Lot	DP
3	1006516
1	823760
19	752487
220	752487
21	752487
1	737844
2	823760
56	752487

36	752487
236	752487
1	47313
101	712886
12	264033
25	1101305
100	712886
1	264033
2	264033
59	752487
58	752487
2	1006516
1	1006516
2	737844 [REFERRED TO IN ERROR AS LOT2 DP737847 IN THE CONSENT]
57	752487

4. Description of the Development

The Agreement relates to the Brandy Hill Quarry Expansion Project as described in the Development Consent.

5. Summary of Objectives, Nature and Effect of the Planning Agreement Objectives

The Planning Agreement provides that the Developer will contribute the following monetary development contributions:

Column 1 Development Contribution	Column 2 Monetary amount (\$)	Column 3 Timing	Column 4 Public Purpose
Local Roads Advance Payment	\$1,500,000 (not subject to indexation)	In three (3) instalments: (1) \$120,000 immediately following execution of the Agreement (2) \$690,000 within 20 Business Days of Council providing the Developer with written notice that it has completed construction of 25% of the length of the Pathway. (2) \$690,000 within 20 Business Days of Council providing the Developer with written notice that it has completed construction of 75% of the length of the Pathway.	The design and construction of the bus-bays and the maintenance of local roads used for haulage of quarry products in accordance with the provisions relating to section 7.11 Haulage levies in the Port Stephens Local Infrastructure Contributions Plan.
Pathway Contribution	\$2,500,000 (not subject to indexation)	In instalments as follows: (1) \$1,250,000 immediately following execution of the Agreement. (2) \$416,667 within 120 days following the execution of the agreement. (3) \$416,667 within 210 days following the execution of the agreement. (4) \$416,667 within 300 days following the execution of the agreement	The design and construction of the Pathway.

By requiring the Monetary Contributions, the Planning Agreement will help ensure that the costs incurred by Council in responding to road safety concerns created as a result of the Development are contributed to by the Developer.

The obligations of the Developer are secured by registration of the Planning Agreement.

The Agreement also:

- a) excludes the operation of section 7.12, former section 7.24 and Subdivision 4 of Division 7.1 of the Act, subject to Ministers approval;

- b) does not exclude the operation of section 7.11 of the Act but will allow the Developer to be given credits for the amounts paid to be offset against the obligation to pay contributions under the Development Consent;
- c) provides mechanisms for dispute resolution and enforcement in relation to the Agreement; and
- d) sets out how the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the Development Contributions.

Assessment of the merits of the Planning Agreement

How the Planning Agreement promotes the public interest and the objects of the Act

In accordance with Section 7.4 of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Planning Agreement also promotes the public interest by promoting the objects of the Act, in particular:

- 1.3 (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- 1.3 (c) to promote the orderly and economic use and development of land,
- 1.3 (g) to promote good design and amenity of the built environment.

How the Planning Agreement promotes the objects of the Local Government Act 1993

The Monetary Contributions required by the Planning Agreement are consistent with and promote the objects in section 7 of the *Local Government Act 1993*. In particular:

- 7 (e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

How the Planning Agreement promotes the elements of the Councils' charter (now the principles for local government)

The Planning Agreement promotes the principles for local government under Chapter 3 of the *Local Government Act 1993*. In particular:

- 8A (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- 8A (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- 8A (g) Councils should work with others to secure appropriate services for local community needs.
- 8B (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- 8C (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- 8C (h) Councils should manage risks to the local community or area or to the council effectively and proactively.

How the Planning Agreement serves planning purposes

The Planning Agreement facilitates the safety of roads for the local community and is a reasonable means for achieving that planning purpose, as it provides for the payment of Monetary Contributions to the Council for ensuring the safety of Brandy Hill Drive.

The timing of the payment of Monetary Contributions allows the Council to construct the bus bays and shared pathway in association with an increase in production from the Quarry.

Whether the Planning Agreement conforms with the Councils' capital works program

The Council's capital works program as set out in the Port Stephens Local Contributions Plan 2020 lists Brandy Hill Pathway as an item to be delivered in 2027. The Planning Agreement will enable to the expedited funding and delivery of this infrastructure.

Further information

The Planning Agreement is available on the Council's website.