



Sibelco Australia Voluntary Planning Agreement and Explanatory Note

In accordance with Section 93F of the Environmental Planning and Assessment Act, 1979, notice is hereby given that a draft Voluntary Planning Agreement and Explanatory Note between Hilltops Council and Sibelco Australia will be on public display from Thursday, 2 June 2016 to Wednesday 29 June 2016, at Council's office in Market Street Boorowa, East Street Harden and 189 Boorowa Street, Young during normal office hours and on Hilltops website www.hilltops.nsw.gov.au.

Submissions relating to the proposed draft Voluntary Planning Agreement and Explanatory Note between Hilltops Council and Sibelco Australia will be received up until 4.00pm Wednesday, 29 June 2016 to General Manager, Locked Bag 5, Young NSW 2594.

Anthony McMahon
General Manager

EXPLANATORY NOTE

to the Sibelco Planning Agreement between
Hilltops Council and Sibelco Australia

Pursuant to clause 25E of the
Environmental Planning and Assessment Regulation 2000.

What is a Voluntary Planning Agreement?

Planning legislation in NSW allows developers to enter into planning agreements with consent authorities (in this case Hilltops Council) to provide community facilities or to provide other means of paying applicable contributions, in lieu of the normally applicable section 94 development contributions. A planning agreement is made in accordance with clause 93F of the *Environmental Planning and Assessment Act 1979* (the Act).

Introduction

This explanatory note has been prepared in accordance with clause 25E of the Environmental Planning and Assessment Regulation 2000 (the Regulations).

The purpose of this explanatory note is to provide a summary to support the notification of the planning agreement between Hilltops Council and Sibelco Australia.

This explanatory note is not to be used to assist in construing the planning agreement.

Parties to the Planning Agreement

The parties to the Planning Agreement are:

1. Hilltops Council (Council).
2. Sibelco Australia (Developer).

Description of the Subject Land

The land to which the Planning Agreement relates is known as the Galong Mine, being Lot 102 DP1083781, Eubindal Road, Galong.

Why has the Planning Agreement been prepared?

The planning agreement relates to two development applications:

1. T03-025 (as amended) originally approved by Council on 18 December 2003, for the expansion and continued use of a limestone mine.

The increased production and transportation of quarried product from the Galong Mine as approved by modification number 3 of the original development consent T03-025. This consent was issued by Harden Shire Council on 15 July 2015 and permitted increased transportation of quarried product up to 320,000 tonnes per annum whilst modifying the requirement for an alternate haul route. The increased dispatch volume would result in greater road impacts over a short time period the costs of which would not be adequately covered by the applicable contributions plan, being Council's *Section 94 Contributions Plan – Road Works as a Result of Unpredictable*

Development which Generates Additional Heavy Vehicle Traffic Movements 2003.

This planning agreement has been entered into by both Council and Sibelco Australia to enable smooth continuation of site operations and the increased dispatch volumes in recognition that the increased traffic impact over a shorter timeframe would not be adequately covered by the contributions plan applicable at the time of the original approval. In recognising the need for an increased road contribution to cover greater volume of trucks and dispatch volumes an agreement has been reached that truly reflects the cost to Council to maintain the haulage routes whilst at the same time allowing for the impacted community to have improved facilities as a flow on effect of the economic viability of the mine.

Summary of the Objectives, Nature and effect of the Planning Agreement

The Objectives of the Planning Agreement

The objective of the planning agreement is to provide consistency in application and payment of section 94 contributions for heavy haulage for the development.

The Nature of the Planning Agreement

The planning agreement is a voluntary planning agreement under s93F of the Act.

Effect of the Planning Agreement

The planning agreement:

- relates to the carrying out by the Developer of development on the Land;
- requires payment of monetary development contributions for use of particular roads as a result of hauling heavy product;
- requires Council to apply the monetary development contribution made under the planning agreement towards the public purpose specified in the agreement;
- imposes obligations on the developer in relation to the carrying out of contribution payments;
- requires the developer to provide security to Council in the form of a bond to the value of a quarterly contribution, based upon an average of the previous five years of quarterly contributions. This is to ensure that if the developer does not pay, Council has the ability to still obtain the relevant contributions.
- provides a dispute resolution method for a dispute under the agreement;
- provides that the planning agreement is governed by the law of New South Wales; and
- provides that the *New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the Agreement.

Assessment of the merits of the Planning Agreement

a) How the Planning Agreement promotes the public interest

In accordance with section 93F(2) of the Act, the planning agreement promotes the public interest by permitting Council to ensure the section 94 heavy haulage development contributions are appropriately and sensibly levied on the development.

Public safety is the pinpoint of the planning agreement as it ensures the safety of road users by levying heavy haulage developments for using particular roads. Levied funds are then put back into the maintenance of these roads.

b) How the Planning Agreement promotes elements of the Council's Charter

In accordance with section 8 of the *Local Government Act 1993*, the planning agreement promotes the Council's charter by ensuring the delivery of the public benefits under the planning agreement. These public benefits represent:

- The provision, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- Secured funding for infrastructure provided to meet the needs of residents within the locality.

c) How the Planning Agreement promotes the objects of the Act

The planning agreement promotes the objects of the Act by ensuring that suitable security will be provided by the developer to guarantee the delivery of the Public Benefits that will assist in achieving:

- the proper management, development and conservation of natural and artificial resources; and
- the provision of public services.

d) The impact of the Planning Agreement on the public or any section of the public.

The planning agreement will have an effect on the public in terms of improved road infrastructure on areas used by the developer. The planning agreement will promote equity in that the community won't have to pay for repairs caused by heavy vehicles.

e) Whether the Planning Agreement conforms with Council's capital works program

The planning agreement will affect Council's capital works program as it will provide Council with funding to undertake maintenance works on roads affected by heavy haulage.

f) The planning purpose or purposes of the Planning Agreement

The purpose of the planning agreement is to:

- levy heavy haulage contributions on the development so as to enable smooth continuation of site operations, without the need for product separation, consistency in contributions paid for essentially the same product, and transparency of accounting; and
- comply with Condition 87A of T03-025 which requires the developer to enter into a planning agreement with Council.

g) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.

There are no requirements for the developer to pay contributions prior to the issue of any Part 4A certificate as none are required to be issued for the development and the contributions are ongoing.

HILLTOPS COUNCIL

Planning Agreement

Pursuant to section 93F of the Environmental Planning and
Assessment Act 1979

May 2016



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Schedules

Schedule 1 Section 93F Requirements

Schedule 2 Land

Schedule 3 Contributions and Requirements

Schedule 4 Criteria for Allocation of Funds

Planning Agreement

I. Details

Interpretation – Definitions are at the end of the General terms

Parties	Council and Developer	
Council Name	ABN Address Fax Phone	Hilltops Council 33984256429 3 East Street, Harden 189-205 Boorowa Street, Young 6-8 Market Street, Boorowa (02) 6386 0105 (02) 6386 0100
Developer Name	ABN Address Phone Fax Contact	Sibelco Australia Limited 20 000 971 844 Lot 3, Eubindal Road GALONG NSW 2585 (02) 8583 3122 (02) 6380 5100 Kevin Munday
Governing Law	New South Wales	
Date of Planning Agreement	See Signing Page	

II. Background

On 6th of May 2015, Sibelco Australia Limited made an Application to Harden Shire Council to modify Development Consent T03-025 to increase the permitted dispatch volumes from the site (the Land).

That Modification Application was accompanied by an offer by Sibelco Australia Limited to enter into a Planning Agreement under which Sibelco would make development contributions towards public facilities and infrastructure.

The Council granted development consent to Modification Application on 15 July 2015. Condition 87A of the modified consent requires Sibelco to enter into a planning agreement in accordance with the terms of its offer.

III. Operative Provisions

1. Planning Agreement under the Act

This is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2. Application of this Agreement

This planning agreement applies to:

- The Land as described in Schedule 2; and
- The Development.

3. Operation of this Agreement

This planning agreement operates on and from the date specified in Part I – Details.

4. Definitions and Interpretation

4.1 Definitions

In this Agreement the following definitions apply:

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

Authorised Representative means in the case of any Party, a director, secretary or an officer whose title contains the word ‘manager’ or a person performing the functions of any of them or any other person appointed by that Party to act as an Authorised Representative for the purpose of this Agreement.

Authority means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes where applicable, an accredited certifier accredited under s109T of the Act.

Bank Guarantee means an irrevocable and unconditional undertaking:

- a. By an Australian bank and which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/ 01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- b. On terms acceptable to Council, in the Council’s absolute discretion, to pay the face value of that undertaking (being such an amount as is required under this planning agreement) to the Council in accordance with this Agreement.

Business Day means a day on which banks are open for general banking business in NSW (not being a Saturday, Sunday or public holiday in that place).

Consent Authority means, in relation to this planning agreement, the Authority having the function to determine Development Applications in relation to the Land.

Contributions means the amount of Contributions payable by the Developer under, and by virtue of, Schedule 3 - Contributions and Requirements (clauses 5.1 and 5.2)

Costs includes costs, charges (including interest charges), and expenses, including those incurred in connection with advisers.

CPI means the Consumer Price Index All Groups Sydney, as published by the Australian Bureau of Statistics.

Council means Hilltops Council, its successors and assigns.

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

Developer means Sibelco Australia Limited, ABN 20 000 971 844, its successors and assigns.

Development means the development as approved in Development Consent T03-025 as modified as at February 2016.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost and/or the provision of a material public benefit as specified in Schedule 3.

Future Obligations means any obligations under or by virtue of this Agreement which, at the time of any proposed assignment or novation contemplated by Clause 13.1, 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.

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 or administration of the GST.

Land means the whole of the land comprised in the titles described in Schedule 2 - Land.

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

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

State means the State of New South Wales.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them.

4.2 Interpretation

In this planning agreement, the following provisions apply:

- a. Headings are inserted for convenience only and do not affect the interpretation of this Agreement
- b. A reference to this planning agreement includes any variation or replacement;
- c. The word 'person' includes a firm, a body corporate, an unincorporated association or an authority and also includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- d. A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this agreement are payable in Australian dollars
- e. A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision
- f. A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement
- h. A reference to a body, whether statutory or not which ceases to exist or whose powers or function are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- i. The schedules form part of this planning agreement;
- j. References to the word 'include' or 'including' are to be construed without limitation
- k. A reference to a Party to this agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns
- l. Any schedules and attachments for part of this Agreement

5. Development Contributions To Be Made Under This Agreement

5.1 Development Contributions

The Developer must provide the Development Contributions to the Council at the time or times and in the manner set out in Schedule 3 of this planning agreement.

5.2 Use of Development Contributions

The Council will allocate and spend the Development Contributions in accordance with the Criteria in Schedule 4 of this planning agreement at the time or times to be determined by it in its absolute discretion.

5.3 VPA Steering Committee

- a. A VPA Steering Committee will be established under s.355 of the *Local Government Act 1993* to consider and recommend projects to be implemented by the Council and funded from the Development Contributions.
- b. Membership of the Steering Committee will comprise:
 - i. 1 Councillor
 - ii. 1 Council Staff Member
 - iii. 1 Sibelco representative
 - iv. 2 Community Members
- c. In making any recommendation under 5.3(a) the Steering Committee must have regard to the criteria and projects listed in Schedule 4. These are listed in order of priority (so that projects in Item 1 are generally to be recommended over projects in Item 2 etc).
- d. Any person may present a proposal for projects meeting the criteria set out in Schedule 4 for consideration by the Steering Committee
- e. Committee meetings will be held monthly for the first 4 months from the date this Deed takes effect. Meetings will then be held a minimum of every six months or more frequently if decided by the committee members.

6. Security

6.1 Provision of Security

- a. The Developer must provide the Council with a Bank Guarantee equal to the value of a quarterly Development Contribution calculated based upon the approved dispatch limit of 320,000 tonnes per annum (and 80,000 per quarter), prior to the execution of this planning agreement by the Council;
- b. The Developer will review the Bank Guarantee every five years and provide increase the value of the Bank Guarantee by any additional amount necessary to

reflect the compounded CPI increase to the initial amount of the Bank Guarantee calculated in accordance with the formula in clause 1.2 of Schedule 3 of this Agreement.

6.2 Claims under Bank Guarantee

- a. The Council may call upon the Bank Guarantee (in full or in part) in the event that the Developer breaches any of the terms of this planning agreement (including non, incomplete or late payment of a monetary contribution) and may retain and use such monies drawn on the Bank Guarantee in its discretion to compensate the Council for the Developer's breach of those obligations, including costs and expenses incurred by Council in rectifying such breach;
- b. The Council agrees not to make any claim on the Bank Guarantee without notifying the Developer of its intention to do so in accordance with clause 11.

6.3 Return of Bank Guarantee

If the Developer has satisfied all of its obligations under this planning agreement, the Council will promptly return the Bank Guarantee to the Developer.

7. Application of s94 and s94A of the Act to the Development

Section 94 and 94A of the Act do not apply to the Development. The minister has made no direction under 94EF of the Act.

8. Registration of this Agreement

This planning agreement must be registered as provided for in section 93H of the Act.

9. Review of this Agreement

- a. This planning agreement may be reviewed or modified by the agreement of the Parties.
- b. Where required by Clause 25D of the Regulation, proposed amendments to this planning agreement will be placed on public exhibition.

10. Dispute Resolution

10.1 Application of clause

- a. If a dispute between any of the Parties arises in connection with this planning agreement or its subject matter, then the process and procedures set out below will apply.
- b. For clarity, late, partial or non-payment of a Development Contribution by the Developer is a breach of the agreement and is not to be treated as a dispute for the purpose of clauses 10.2 - 10.6 (unless the Council otherwise elects to do so).

10.2 Notice of Dispute

If a Party claims that a dispute has arisen under this planning agreement (the claimant), it must give written notice to the other Party (the Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (the Claim Notice).

10.3 Response to Notice

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

10.4 Negotiation

The nominated representatives must:

- a. Meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- b. Use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

10.5 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute (the Dispute Notice).

10.6 Mediation

The Parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- a. The Parties must agree to the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Division) apply);
- b. The Mediator will be agreed between the Parties, or failing the agreement within 5 Business Days of receipt of the Dispute 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 (Clause 9) 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 function as mediator, he being required to fully disclose any such interest or duty before his appointment.
- d. The Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and the performance of his duties;
- e. The Parties must within 5 Business Days of receipt of the Dispute 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;
- g. In relation to costs and expenses:
 - (i) Each Party will bear their 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 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.

10.7 Litigation

If the dispute is not finally resolved in accordance with this Clause (Clause 10), either Party is at liberty to litigate the dispute.

10.8 Continue to Perform Obligations

Each Party must continue to perform its obligations under this planning agreement, notwithstanding the existence of a dispute.

11. Notices

11.1 Form

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing signed by the sender (if an individual) or an Authorised Representative of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

11.2 Delivery of Notices

All notices are to be first emailed to the receiving Party at its email address as provided below in section 11.3, followed by a hard copy posted to the receiving Party using the details set out below.

11.3 Contact Details

Council

Attention: General Manager, Hilltops Council

Address: Locked Bag 5 Young NSW 2594

Email: council@harden.nsw.gov.au

Developer

Attention: Kevin Munday

Address: Galong Limestone Mine
Lot 3, Eubindal Road

Galong

Email: Kevin.Munday@sibelco.com.au

11.4 Effective Date for Notices

- a. A notice given by e mail will be effective unless the sender receives a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- b. All email notices take effect on the first Business Day after the day the email notice is sent unless a later time is specified in the email.
- c. Where a delivery failure message is received in response to an email then the notice will be taken to have been given 3 Business Days after the hard copy notice is posted.
- d. Except for the circumstances described in (c), the provision of a hard copy notice is for record keeping only.

11.5 Change of Notification Address or Type

A Party may change its contact details specified in Section 11.3 by giving the other Party three Business Days' notice of the change.

12. Approvals and Consent

The Parties acknowledge that:

- a. Except as otherwise set out in this planning agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this planning agreement in that Party's absolute discretion and subject to any conditions determined by the Party;
- b. A Party is not obliged to give its reasons for giving or withholding a consent or for giving consent subject to conditions.

13. Assignment and Dealings

13.1 Developer Dealing with Interests

- a. The Developer may not sell, transfer, assign or novate or similarly deal with (Dealing) its right, title or interest in the Land (if any) or its rights or obligations under this planning agreement, or allow any interest in them to arise or be varied, in each case, without Council's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:
 - i. Gives the Council no less than 10 Business Days' notice in writing of the proposed Dealing; and

- ii. Provides details of the proposed transferee, assignee or novate and demonstrates to Council's reasonable satisfaction, including by providing any further information requested, that the proposed transferee, assignee or novate is of good repute, of sound financial standing and is able and willing to perform the Developer's obligations under this agreement; and
 - iii. Procures that the transferee, assignee or novate executes and delivers to Council prior to any such Dealing taking effect, a deed in favour of Council in form and substance acceptable to Council (acting reasonably) whereby the transferee, assignee or novate becomes contractually bound with Council to perform all of the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this agreement.
- b. The Developer's obligations under this planning agreement will continue unless and until the Council has granted its consent to the Dealing.

13.2 Dealings by Council

- a. If another Authority takes over the functions of Council under this planning agreement, or if the Council determines that it is desirable for this to happen, then Council may assign or novate or otherwise deal with its rights and obligations under this planning agreement to give effect to this change, and the Developer agrees to enter into such documentation as may be necessary to confer on the new Authority the rights and obligations of Council under this planning agreement.
- b. Normally any such action would take place by a statutory novation or delegation, however this clause applies to the extent that it is necessary.
- c. Without restricting Clause 19 – No Fetter, the Council must not otherwise assign or novate its rights and obligations under this planning agreement.

14. Costs

- a. The Developer agrees to pay or reimburse the Costs of Council in connection with:
 - i. The negotiation, preparation and execution of this planning agreement; and
 - ii. Advertising and exhibiting this planning agreement in accordance with the Act, within three Business Days after receipt of a tax invoice from Council.
- b. Both the Developer and the Council agree that the Cost of any changes to this planning agreement will be paid for in full by the initiator of the change (unless otherwise

agreed). Where both parties agree to initiate a change the each party will pay its own costs associated with that change.

15. Entire Agreement

This agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

16. Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

17. Governing Law and Jurisdiction

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

18. Joint and Individual Liability and Benefits

Except as otherwise set out in this planning agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

19. No Fetter

19.1 Discretion

Nothing in this planning agreement fetters:

- a. The sovereignty of the Parliament of the State to make any law;
- b. The power of the Executive Government of the State to make any statutory rule; or
- c. The exercise of any statutory power or discretion of any minister of the State or any Authority.

(all referred to in this planning agreement as a 'discretion')

19.2 No Fetter

No provision of this planning agreement is intended to, or does, constitute any unlawful fetter on any discretion. If, contrary to the operation of this clause, any provision of this planning agreement is held by a court of competent jurisdiction to constitute an unlawful 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. the relevant provision is to be severed and the remainder of this planning 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 planning agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgement.

20. Representations and Warranties

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

21. Severability

- a. The Parties acknowledge that under and by virtue of section 93F(4) of the Act, any provision of this planning agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any money required to be paid by that provision.
- b. The Parties acknowledge that under and by virtue of section 93F(10) of the Act, any provision of this planning agreement is void to the extent to which it requires or allows anything to be done that, when done, would breach:
 - i. Any provision of the Act;
 - ii. The provisions of an environmental planning instrument; or
 - iii. A development consent applying to the relevant land.
- c. The Parties agree that to the extent permitted by law, this planning agreement prevails to the extent it is inconsistent with any law.
- d. If a clause or part of a clause of this planning 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.

- e. 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 planning agreement, but the rest of this planning agreement is not affected.

22. Modification

No modification of this planning agreement will be of any force or effect unless it is in writing and signed by the Parties.

23. Waiver

- a. 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.
- b. A waiver by a Party is only effective if it is in writing.
- c. 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.

24. GST

24.1 Construction

In this clause;

- a. Words and expressions which are not defined in this document, but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- b. GST Law has the same meaning given to that expression in the Australian Tax System (Goods and Services Tax) Act 1999.

24.2 Consideration GST Exclusive

Unless expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

24.3 Payment of GST

If GST is payable on any supply made under this document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

24.4 Timing of GST

The recipient will pay the amount referred to in clause 23.3 in addition to and under the same time that the consideration for the supply is to be provided under this document.

24.5 Tax Invoice

- a. The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under Clause 23.3.
- b. The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

24.6 Adjustment Event

If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable to the recipient under Clause 23.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

24.7 Reimbursements

Where a Party is required under this document to pay or reimburse an expense of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- a. The amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party, or to which the representative member for a GST group of which the other Party is a member, is entitled; and
- b. If the payment or reimbursement is subject to GST, an amount equal to that GST.

25. Confidentiality

25.1 This Planning Agreement is not Confidential

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

25.2 Proceedings

The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in an arbitral, judicial or other proceedings;

- a. Views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- b. Admissions or concessions made by a Party during the expert determinations or mediation in relation to the dispute; and
- c. Information, documents or other material, including confidential information concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

Schedule 1 Section 93F Requirements

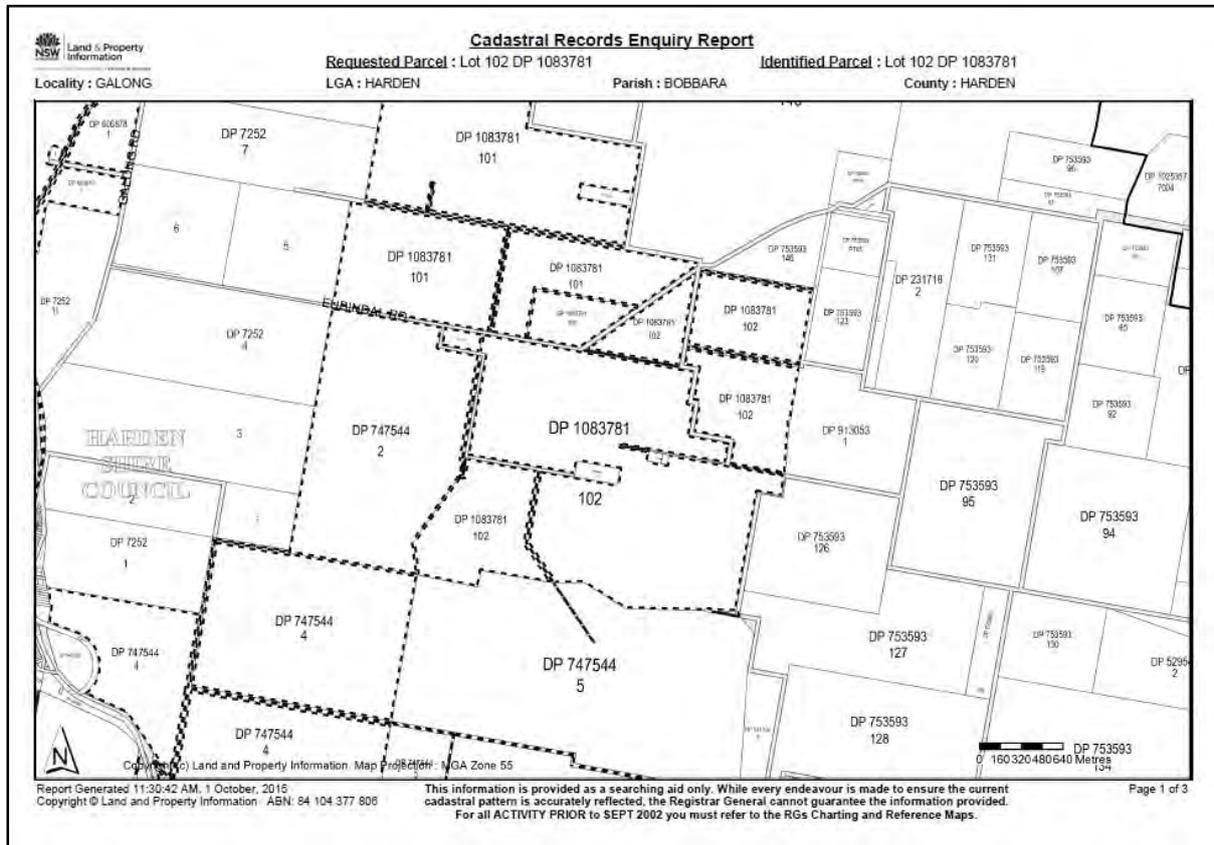
Subject and Subsection of the Act	This Planning Agreement
<p>Planning Instrument and/or Development Application – s93F(1)</p> <p>The Developer has</p> <ul style="list-style-type: none"> a. sought a change to an EPI; b. made, or proposes to make _____, a Development Application; c. entered into an agreement with, or is otherwise associated with, a person to whom paragraph a) or b) applies. 	<ul style="list-style-type: none"> a. No b. Yes c. No
<p>The Land affected by this planning agreement – s93F(3)(a)</p>	<p>The Land described in Schedule 2.</p>
<p>The EPI of the development affected by this planning agreement – s93F(3)(b)</p> <p>Describe:</p> <ul style="list-style-type: none"> a. the proposed change to the EPI to which the agreement applies; OR b. the development to which the agreement applies 	<ul style="list-style-type: none"> a. n/a OR b. T03-025 as modified by consent T03-025 MOD 3 dated 15 July 2015 to operate a limestone mine including the extraction and processing of not more than 500,000 tonnes of limestone per year, for a period of forty (40) years and to dispatch not more than 320,000 tonnes of crushed and processed limestone product per annum
<p>The scope, timing and manner of the delivery of contribution required by this planning agreement – s93F(3)(c)</p>	<p>See Schedule 3 to this planning agreement.</p>

<p>Applicability of s94, s94A and s94EF of the Act – s93F(3)(d)</p> <p>a. applies wholly to the development; b. does not apply to the development; c. parts apply to the development</p>	<p>S94, s94A and s94EF do not apply to the development (See clause 6 of this planning agreement).</p>
<p>Consideration of benefits under this planning agreement if s94 applies – s93F(3)(e)</p> <p>Are the benefits under this planning agreement to be taken into consideration of Section 94 of the Act applies?</p>	<p>S94 does not apply to the development (See clause 6 of this planning agreement).</p>
<p>Dispute Resolution – s93F(3)(f)</p> <p>This planning agreement provides a mechanism for the resolution of disputes under the agreement</p>	<p>Clause 9– Dispute Resolution provide a mechanism for the resolution of disputes under this planning agreement.</p>
<p>Security – s93F(3)(g)</p> <p>The developer has provided suitable security for its obligations under this planning agreement such as a security bond or guarantee.</p>	<p>See Clauses 5.3 - 6.3 of this planning agreement</p>
<p>No Obligation – s93F(9)</p> <p>The Parties acknowledge that this planning agreement does not impose an obligation on a planning authority to grant development consent or to exercise any function under this Act in relation to a change to an environmental planning instrument.</p>	<p>See Clauses 12 and 19 of this planning agreement.</p>

Schedule 2 Land (Clause 2)

Land means the land comprising the following folio identifiers:

Lot 102 in Deposited Plan 1083781



Schedule 3 Development Contributions

The Developer agrees to provide the Contributions and satisfy the relevant requirements at its cost and risk in the time and manner specified below.

1. Contribution Payments

1.1. Contribution

- a. The Developer must pay to Council the flat rate Contributions as follows:

Development Contribution	Value	Timing
Contribution Amount –		
Cash contribution towards the ongoing maintenance of approved haulage routes and identified public facilities and infrastructure	\$0.75 per tonne of product dispatched from the site	Calculated quarterly and paid within six weeks from the end of each quarter

- b. Each Contribution Amount will be an amount equal to the sum represented by “X” in the following formula:

$$X = N \times \$$$

“N” means the number of tonnes of product, however processed, dispatched from the site.

“\$” means \$0.75

- c. Evidence of the tonnage of all material leaving the quarry and its destination is to accompany the contributions so that the Contributions can be verified. Evidence may be supplied to Council as described in clause 11 of this document
- d. Documentation is to be submitted at the end of the financial year, in the form of a statutory declaration from the Company Auditor detailing the tonnage of all material removed from the site during the year and its destination.

1.2. Increase to Contribution Amount

The amount of each Contribution must be increased to reflect any increase in the Final Domestic Demand of the Producer Price Index (as provided in the Producer Price Indexes 6427 published by the Australian Bureau of Statistics) since the date of this planning agreement with the relevant amount being calculated as at the required date for payment.

Schedule 4 Criteria for Allocation of Funds

1. Road Maintenance in Galong:
 - a. Roads impacted by Sibelco Operations (Southern and Northern Haulage Routes) including the following works:
 - i. Ryan Street/Galong Road/Boorowa Road – Pavement Reconstruction (with smaller chips to reduce noise);
 - ii. Hangman’s Ridge Bridge;
 - iii. Galong railway bridge approaches – redesign for safety;
 - iv. Solar speed indicator signs;
 - v. Ongoing road maintenance;
 - vi. Ryan Street/Galong Road/Boorowa Road 60km limit to intersection.
2. Public Infrastructure in Galong:
 - a. Public infrastructure projects which will improve Sibelco’s compliance with DA conditions.
 - b. Other projects that are likely to have a benefit to either a significant portion of the residents of Galong or a vulnerable group within the community of Galong (such as children or residents effected by noise from Sibelco’s operations), including the following:
 - i. Installing air conditioning in Galong Hall.
 - ii. Constructing a footpath around Galong (in addition to the footpath described in Consent Condition 99)
 - iii. undertaking landscaping around Galong
 - iv. Water Reservoir augmentation to enhance firefighting capability
 - v. Improve recreation grounds in Galong.
3. Road Maintenance in the Harden-Murrumburrah:
 - a. Any road on which it can be reasonably justified that Sibelco Operations have an impact;
 - b. Roads requiring upgrade or maintenance to improve public safety;
 - c. Roads requiring upgrade or maintenance which will result in increased development in Harden-Murrumburrah.
4. Public Infrastructure in Harden-Murrumburrah:
 - a. Funds will only be allocated to public infrastructure in the Harden-Murrumburrah once all other opportunities for road maintenance or public infrastructure in Galong have been exhausted
 - b. Projects that are likely to have a benefit to either a significant portion of the residents at the location of the proposed infrastructure or projects which are likely to result in an increase in development in the location.

Execution

Executed as an agreement.

Signed for and on behalf of **HILLTOPSCOUNCIL** by:

Signature of Authorised Representative

Signature of Witness

Name of Authorised Representative

Name of Witness

Executed by **SIBELCO AUSTRALIA LIMITED**

under section 127(1) of the Corporations Act 2001 (Cth) by the authority of its directors:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary