

Planning Agreement

Rannock Storage Silos Project

Dennis Trading PTY LTD (**Developer**)

and

Coolamon Shire Council (**CSC**)

For Exhibition

8th August 2022

Planning Agreement

Rannock Storage Silo Project

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Details

1. Date **8th August 2022**

Parties

Name **Coolamon Shire Council**
ABN 32 573 173 265
Short form name **CSC**
Notice details 55 Cowabbie Street, Coolamon NSW 2701
 PO Box 101
 Coolamon NSW 2701
 Email: council@coolamon.nsw.gov.au
 Attention: The General Manager

Name **Dennis Trading Pty Ltd**
ABN 34101 109 755
Short form name **Developer**
Notice details Dennis Trading Pty Ltd
 120 Old Narrandera Rd
 Wagga Wagga 2650

 Phone: 0429 444 848
 Email: accounts@dennistrading.com.au
 Attention: Rodney and Michelle Dennis

Background

A Dennis Trading Pty Limited, lodged a Development Application (2022/05) with Coolamon Shire Council on the 25 January 2022 for the erection of 3 x Grain Storage Silos and associated road haulage, located at Rannock Road, Rannock.

The project encompasses, inter alia, the following scope of works:

- The installation of 3 x 2473 m³ grain silos for grain storage. The development includes 3 augers that will be used to unload the grain into the silos. The silos are approximately 18 metres high. The silos are proposed to be located directly behind 3 existing silos and approximately 30 metres from the front boundary (Rannock Road).
- This proposed consent would give a total of 14,000 tonnes in the existing silo's and an additional 7,000 tonnes for the new silo's – a total of 21,000 tonnes to be stored on the site at anyone time.
- Associated haulage of product to and from the site on Council managed roadways.

B A condition of the Development Consent requires that prior to carrying out any development the Developer must enter into a Voluntary Planning Agreement with Coolamon Shire Council, with the VPA to be formally registered on the title of the land and it must include the provision of funding for:

- A total of a \$4,000, heavy haulage monetary contribution, increased annually by CPI. The contribution would be used specifically on the Rannock Road affected by the development.

C By way of this Agreement, the Developer agrees to provide the Development Contributions on the terms and conditions of this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

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

Agreement means this Planning Agreement including any schedules.

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

Business Day means any day except for a Saturday, Sunday, or bank or public holiday in Sydney.

Cash Rate means the interest rate determined by the Reserve Bank of Australia which banks pay to borrow funds from other banks in the money market on an overnight basis. For the avoidance of doubt, the term Cash Rate has the same meaning as that adopted by the Reserve Bank of Australia.

Commencement of VPA Payments means when the new silos have been constructed and at issue of the required occupation certificate.

Commencement Date means the date upon which this Agreement comes into effect in accordance with clause 4 and the definition of **Commencement of VPA Payments** herein.

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

Development means the erection of the 3 new storage silos and associated road haulage, described in the Development Consent.

Development Application has the same meaning as in section 4 of the Act.

Development Consent means DA 2022/05 granted by Coolamon Shire Council in respect of the 3 new storage silos and associated road haulage Project.

Development Contributions means the contributions as specified in clause 5.

GST has the same meaning as in the GST Law.

GST Law has the same 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.

Council means Coolamon Shire Council (CSC).

Interest Rate means the rate which is the Cash Rate as set by the Reserve Bank of Australia as at the date that payments fall due, plus a margin of 2% per annum.

Land means the land subject to this planning Agreement and listed in **Schedule 2**

Law means:

- (a) the common law including principles of equity;

- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations and by-laws; and
- (c) any Approval, including any condition or requirement under it.

LPMA means the NSW Land and Property Management Authority.

Modification means a modification to the Development Consent that would result in changes to the approved Development.

Heavy Haulage has the same meaning as in the Development Consent and means any of the following developments that are defined in Coolamon Local Environmental Plan 2011: (a) extractive industry (b) mine, or (c) rural industry and where the development, if approved, will result in significant additional tonnages or volumes of material being removed from or delivered to the development site.

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

Planning Agreement has the same meaning as in section 7.4 of the Act.

Register means the Torrens Title register maintained under the *Real Property Act 1900* (NSW).

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Roads Maintenance Contributions means a Development Contribution to be used for or allocated towards the maintenance of roads in the Coolamon Local Government Area impacted by the Development and listed in **Schedule 5**.

Term means from the **Commencement Date** and for the approved life of the development, as per the Development Consent.

Transport Route has the same meaning as in the Development Consent.

VPA means this Planning Agreement.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;

- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any Agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any Agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a Planning Agreement governed the relevant provisions of the Act.

3. Application of this Agreement

This Agreement applies to the Land and to the Development.

4. Operation of this Agreement

- (a) This Agreement operates if:
- (b) Development Consent for the Development is in place; and
- (c) the Agreement is entered into as required by clause 25C (1) of the Regulation.

5. Development Contributions

- (a) Subject to this Agreement, the Developer is to make the following Development Contributions to CSC in respect of the Development:
 - (i) Payment of the **Road Maintenance Contribution** in accordance with the following terms:

- (A) Annual payments of \$4,000 (exclusive of GST) for the life of the project (CPI Annually)
 - (B) The Road Maintenance Contribution will first be at the issuing of the occupation certificate for the development and then annually on the same date thereafter until Operations at the site cease. For any period shorter than a 12 month period the rate will be calculated pro rata.
 - (C) If, during the life of the Project, CSC has evidence of Development-related storage volumes, traffic volumes or vehicle types on the designated travel routes as listed in **Schedule 5** exceeding the levels proposed in the Development Consent, or of Development-related traffic on any other roads not named in the Development Consent, the Developer agrees to reach a negotiated settlement with CSC to provide additional funds for road repair, maintenance or upgrade works as deemed necessary by the roads authority.
 - (D) CSC agrees to maintain the roads listed at **Schedule 5** to a standard as deemed reasonable by the roads authority and to take appropriate action as and when required to ensure the Developer is able to conduct its business in an efficient manner over the life of this Agreement.
- I. The various Contributions shall be deemed to have been paid when cleared funds are deposited by means of electronic funds transfer by the Developer into the bank account nominated by CSC.
 - II. All the Contributions listed above are subject to CPI. The Contributions shall be indexed according to the CPI from the date of 30th September 2022.
 - III. In the event that the Developer plans to suspend operations for commercial reasons the Developer shall provide written notice to Council 14 days beforehand. Within 7 days after a suspension of operations the Developer must pay Council the full amount owing on the contribution type – calculated pro rata - as at the date of suspension. The liabilities for Contributions will resume as at the date of re-commencement of operations and payable as per the due dates set at the beginning of the Project, including CPI.
 - IV. The Developer agrees to pay interest to CSC on any amount of the Development Contributions from 28 days after they become due for payment, during the period that they remain unpaid, on demand, or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate (adjusted to be a daily interest rate).

6. Indexation of all the Development Contributions

This Agreement requires all Development Contributions to be automatically adjusted, or 'indexed', using annual movements in the CPI. The start date for measuring CPI will be September 2022.

7. Application of sections 7.11 and 7.12 of the Act

The Development Contributions agreed to in this Agreement shall be in complete satisfaction of all obligations of the Developer to make contributions. For the avoidance of doubt sections 7.11 and 7.12 of the Act shall not apply.

8. Registration of this Agreement

8.1 Registration of this Agreement

- (a) The Developer must at its expense, procure the registration of this Agreement on the relevant folios of the Register pertaining to the Land that it owns as specified in Schedule 3 in accordance with section 7.4 of the Act as soon as reasonably practicable after the Agreement comes into operation and by no later than 30 days after that date.

8.2 Release and discharge of this Agreement

- (a) CSC agrees to:
- (b) provide a release and discharge of this Agreement with respect to the Land or any lot on the Council's satisfaction of the completion of the Developer's obligations under this Agreement; and
- (c) do all things necessary, including the execution of any documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the Register held by the LPMA.

9. Dispute Resolution

9.1 No arbitration or court proceedings

If a dispute arises out of this Agreement (**Dispute**), a Party must comply with this clause 9 before starting arbitration or court proceedings (except proceedings for interlocutory or other urgent relief).

9.2 Notification

A Party claiming a Dispute has arisen must give the other Party to the Dispute notice setting out details of the Dispute.

9.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 9.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

9.4 Mediation

- (a) If the Parties do not agree within 14 days of receipt of notice under clause 9.3 (or any further period agreed in writing by them), the Parties must mediate the dispute in good faith and in the spirit of co-operation in accordance with the Mediation Rules of the Law Society of New South Wales.
- (b) If the Parties do not agree on a mediator a party may at any time request the President of the Planning Institute (NSW Division) or the President of the NSW Law Society, whichever is the most appropriate, to select the mediator and determine the mediator's remuneration, which cost must be borne by the Parties equally.

9.5 Confidentiality

Any information or documents disclosed by a Party under this clause 9:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

9.6 Costs

Each Party to a Dispute must pay its own costs of complying with this clause 9. The Parties to the Dispute must equally pay the costs of any mediator.

9.7 Termination of process

- (a) A Party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 9.1 to 9.3.
- (b) Clauses 9.5 and 9.6 survive termination of the dispute resolution process.

9.8 Breach of this clause

If a Party to a Dispute breaches this clause 9, the other Party to the Dispute does not have to comply with those clauses in relation to the Dispute.

10. Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any Court of competent jurisdiction, subject to clause 9.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) a Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11. Termination

- (a) This Agreement will terminate:
 - (i) on the declaration by a court of competent jurisdiction that the Development Consent for the Development on the Land is invalid; or
 - (ii) at the end of the Term.
 - (iii) The surrender of development consent for operations at the subject site.
- (b) In the event of termination of this Agreement, any funds that have been paid by the Developer as Development Contributions prior to termination:
 - (i) can continue to be expended in accordance with the terms of this Agreement; and
 - (ii) are not refundable by the Council to the Developer.

12. Review of this Agreement

- (a) During the life of this Agreement, the Parties agree to promptly review, amend or replace the Agreement if:
 - (i) Any further Modification to the Development is approved;
 - (ii) A change of ownership of either the Developer or the Development occurs, in part or in whole; or
 - (iii) The Development is placed in care and maintenance mode.

- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.
- (c) Regardless, at the time that the total storage of 21,000 tonnes of grain or related produce is reached, the Parties agree to negotiate a replacement for, or an extension of, this Agreement as determined by circumstances at the time. Until such time as a new Agreement is struck, this current Agreement shall remain in force.

13. No fetter

13.1 Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the CSC, including but not limited to any statutory power or discretion of the CSC relating to the assessment and determination of any Development Application for the Development (all referred to in this Agreement as a **Discretion**).

13.2 No fetter

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

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 13.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement, which is to be held to be a fetter to the extent that is possible, having regard to the relevant court judgment.

14. Notices

14.1 Notices

Subject to clause 14.2, any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:

Coolamon Shire Council
55 Cowabbie Street. Coolamon NSW 2701

PO Box 101, Coolamon NSW 2701
Email: council@coolamon.nsw.gov.au
Attention: The General Manager

Name	Dennis Trading Pty Ltd
ABN	34101 109 755
Short form name	Developer
Notice details	Dennis Trading Pty Ltd 120 Old Narrandera Rd

Wagga Wagga 2650

Phone: 0429 444 848

Email: accounts@dennistrading.com.au

Attention: Rodney and Michelle Dennis

- (c) is taken to be given and made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause 14.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

14.2 Notices sent by email

- (a) A Party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) Coolamon Shire Council
Attention: The General Manager
Email: council@coolamon.nsw.gov.au
 - (B) Dennis Trading Pty Ltd
Attention: Rodney and Michelle Dennis
accounts@dennistrading.com.au
- (b) The recipient of a Notice served under this clause 14.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice.
- (c) Failure to comply with clause 14.2(b) does not invalidate service of a Notice under this clause.

14.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 14.2 is taken to be given or made:

- (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,
- whichever occurs first.
- (b) If under clause 14.3(a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

15. GST

15.1 Defined GST terms

In this clause 15, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

15.2 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

15.3 Tax invoice

If a Party is liable for GST on any payments made under this Agreement, the other Party must issue a tax invoice (or an adjustment note) to the liable party for any GST payable under this Agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

15.4 GST obligations to survive termination

This clause 15 will continue to apply after expiration of termination of this Agreement.

16. General

16.1 Relationship between Parties

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

16.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

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

16.4 Variation

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all Parties.

16.5 Counterparts

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

16.6 Costs

The Developer agrees to pay CSC half the costs of the specialist services engaged by CSC to prepare and execute this Agreement. The payment by the Developer is due with CSC no later than 30 days after the VPA has been signed by both Parties.

16.7 Entire Agreement

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

16.8 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 16.8(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 16.8(b)(i) or 16.8(b)(ii) applies.

16.9 Waiver

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

16.10 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this Agreement.

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

Schedule 1 – Section 7.4 Requirements

Provision of the Act	This Agreement
Under section 7.4, the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an Agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this document applies	The land described in Schedule 2.
Description of the development to which this document applies	See definition of Development.
The scope, timing and manner of delivery of Development Contributions required by this document	See clause 5 of this Agreement.
Applicability of Sections 7.11 and 7.12 of the Act	This Agreement does not necessarily exclude the operation of section 7.11 of the Act from any further development on the site to which Councils Section 7.11 Plan may apply.
Mechanism for Dispute resolution	See clause 9 of this Agreement.
Enforcement of this document	See clause 10 of this Agreement.
Registration of this document	See clause 8 of this Agreement.
No obligation to grant consent or exercise functions	See clause 13 of this Agreement.

Schedule 2– Land to Which this Agreement Applies

The Development is located at:

Lot: 31 DP: 1025946
2250 Rannock Road, Rannock NSW 2701

Schedule 3 – Land Owned by the Developer

Lot	Deposited Plan
31	1025946

Schedule 4– Explanatory Note

Dennis Trading Pty Limited

and

Coolamon Shire Council

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed planning Agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

This explanatory note has been prepared jointly by the Parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW). It will be exhibited with a copy of the Agreement when the Agreement is made available for inspection by the public in accordance with the Act, as specified by clause 25E of the Regulation.

The objective of the Planning Agreement is to facilitate the delivery of the development contributions to the Council.

Parties to the Planning Agreement

The Parties to the Planning Agreement are Coolamon Shire Council (**CSC**) and Dennis Trading Pty Ltd (**Developer**).

The Developer has made an offer to enter into the Planning Agreement in connection with Development Application (DA 2022/05) for development for the erection of 3 x Grain Storage Silos and assoicated road haulage on a site located on Rannock Road. (**Development Application**).

Description of the Subject Land

The Planning Agreement applies to the land set out in Schedule 2 of the Planning Agreement (**Subject Land**).

Description of the Development Application (Proposed Development)

The development encompasses, inter alia, the following scope of works:

- The installation of 3 x 2473 m³ grain silos for grain storage. The development includes 3 augers that will be used to unload the grain into the silos. The silos are approximately 18 metres high. The silos are proposed to be located directly behind 3 existing silos and approximately 30 metres from the front boundary (Rannock Road).
- This proposed consent would give a total of 21,000 tonnes, 14,000 tonnes in the existing silo's and an additional 7,000 tonnes for the new silo's – a total of 20,000 tonnes to be stored on the site at anyone time.
- Associated haulage of product to and from the site on Council managed roadways.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make the following development contributions to the CSC:

- (a) A total of a \$4,000.00 heavy haulage monetary contribution increased annually by CPI. The contribution would be used specifically on the Rannock Road affected by the development.

- (b) All the Development Contributions are subject to CPI effective from 30th September 2022.
- (c) (The Road Maintenance Contribution will first be at the issuing of the occupation certificate for the development and then annually on the same date thereafter until Operations at the site cease. For any period shorter than a 12 month period the rate will be calculated pro rata.
- (d) The Development Contributions agreed to in this Agreement shall be in complete satisfaction of all obligations of the Developer to make contributions. For the avoidance of doubt Sections 7.11 and 7.12 of the Act do not apply to this Agreement.

The Developer is required to register the Planning Agreement on the title to the Subject Land which it owns in accordance with section 7.4 of the Act.

Assessment of Merits of Planning Agreement

Purpose of the Planning Agreement

In accordance with section 7.4, the development contributions the subject of the Planning Agreement will be applied to a public purpose(s) that will ensure the provision of a public benefits.

The Council and the Developer have assessed the Planning Agreement and hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving a public purpose(s).

This is because the development contributions that are the subject of the Planning Agreement reflect there are broad tangible and intangible environmental, social and economic costs arising from the Development and the said contributions will assist the Council to provide needed material public benefits to its communities, as well as addressing broader community social impacts.

How the Planning Agreement Promotes the Elements of each Council's Charter

The Planning Agreement promotes a number of elements of Council's Charter under section 8 of the *Local Government Act 1993* (NSW). In particular, the Planning Agreement, through the delivery of a public purpose(s) and material public benefit(s), allows the Council to:

- provide directly or on behalf of other levels of government, 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;
- exercise community leadership;
- bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible; and
- keep the local community informed about its activities.

The Impact of the Planning Agreement on the Public or any Section of the Public

The Planning Agreement will benefit the public and the local community through the delivery of a public purpose(s) and material public benefit(s).

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by committing the Developer to make monetary contributions towards a public purpose(s).

How the Planning Agreement Promotes the Objects of the Act

Relevant Objects of the Act supported and promoted by this Planning Agreement include:

- 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; and
- to promote the orderly and economic use and development of land.

The Planning Agreement promotes these objects of the Act by requiring the Developer to make monetary contributions towards public purposes.

Requirements in relation to Construction, Occupation and Subdivision Certificates

Clause 5 of the Planning Agreement sets out the timing for the payment of the development contributions.

The Planning Agreement does not specify any requirements that must be complied with prior to the issue of any Subdivision Certificate, Construction Certificate or Occupation Certificate.

Interpretation of Planning Agreement

This Explanatory Note is not intended to be used to assist in construing the Planning Agreement.

Schedule 5 – Roads Subject to Road Maintenance

- Rannock Road

Signing pages

EXECUTED as a Deed.

SIGNED, SEALED AND DELIVERED by
Dennis Trading Pty Ltd ABN 34101 109 755
in accordance with section 127 of the
Corporations Act 2001 (Cth) by

Signature of director

Full name (print)

←

Signature of director/company secretary
(Please delete as applicable)

Full name (print)

SIGNED, SEALED AND DELIVERED
by the authorised delegate for **Coolamon**
Shire Council ABN 32 573 173 265 in
accordance with a resolution of the Council
dated _____ in the presence of

Signature of witness

Name of witness (print)

←

Signature of authorised delegate

←