

# **ATTACHMENT TO AGENDA ITEM**

Ordinary Meeting

21 June 2016

<b>Agenda Item 6.1</b>	<b>Cosgrove 3 Landfill Boral Agreement &amp; Stone Sale Agreement</b>	
<b>Attachment 1</b>	<b>Shepparton - Boral - Agreement .....</b>	<b>121</b>
<b>Attachment 2</b>	<b>Shepparton - Boral - Stone Sale Agreement .....</b>	<b>137</b>



**GREATER SHEPPARTON CITY COUNCIL**

and

**BORAL RESOURCES (VIC) PTY LTD**

**AGREEMENT**

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Ref: AJS 119780-02222  
20113011 1968938v1



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**THIS AGREEMENT** is made on

2016

## **PARTIES**

- 1 **GREATER SHEPPARTON CITY COUNCIL**  
of 90 Welsford Street, Shepparton VIC 3632  
("Council")
- 2 **BORAL RESOURCES (VIC) PTY LTD**  
ABN 87 004 620 731  
of 251 Salmon Street, Port Melbourne, 3207  
("Boral")

## **RECITALS**

- A Boral undertakes the Quarry Operations pursuant to rights under the Existing Stone Sale Agreement on the Land.
- B Council acquired the Land subject to the Existing Stone Sale Agreement.
- C Council and Boral wish to establish arrangements whereby:
  - the New Stone Sale Agreement can be entered into by the parties to replace the Existing Stone Sale Agreement;
  - Boral progressively continues its Quarry Operations on the Land;
  - Council progressively establishes the Proposed Landfill on the Pit 1 Area and subject to Boral's agreement, other parts of the Land;
  - an Operations Protocol is established to facilitate both the Quarry Operations and the Landfill Operations; and
  - they are mutually beneficial to both parties.
- D This Agreement operates as a Deed.

## **THE PARTIES AGREE THAT:**

### **1 DEFINITIONS**

In this Agreement:

- 1.1 "Agreement" means this agreement, including the recitals and any schedules or annexures to this Agreement.
- 1.2 "Annexure" means an annexure to this Agreement.
- 1.3 "Area 1", "Area 2" and "Area 3" are the areas within the Pit 1 Area so designated on the Plan.
- 1.4 "Boral Actions" means the actions to be undertaken by Boral as described in clause 5.
- 1.5 "Boral Permissions" means the work plan and work authority for extractive industry held by Boral from time to time (presently no. 76 dated 20 January 2009)

project number B03-012) under the *Mineral Resources (Sustainable Development) Act 1990 (Vic)*.

- 1.6 **“Business Day”** means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Melbourne.
- 1.7 **“Business Hours”** means subject to any provision to the contrary in this Agreement, the hours between 9.00 am and 5.00 pm on a Business Day.
- 1.8 **“Claim”** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, whether based in contract, tort, statute or otherwise but excludes any claim for consequential loss in the form of loss of profits, loss of good will or loss of opportunity.
- 1.9 **“Concrete Stockpile”** means the stockpile of crushed recyclable concrete as contemplated in Clause 7.
- 1.10 **“Council Actions”** means the actions to be undertaken by Council as described in clause 4.
- 1.11 **“Encumbrance”** means any mortgage, lien, charge, bill of sale, option, title retention, pledge, claim, restriction, condition, overriding interest or other encumbrance.
- 1.12 **“Existing Landfill”** means the landfill located at the north east intersection of Cosgrove and Lemnos Roads, Cosgrove.
- 1.13 **“Existing Stone Sale Agreement”** means the agreement made on 14 February 1966 between Roderick David Harmer and Ewen Frank Harmer (deceased) (“**Harmers**”) and Deane & Runge Pty Ltd and John William York and Thomas Arthur York as amended on 29 December 1972 and assigned from Deane & Runge Pty Ltd to Boral on 26 June 2001.
- 1.14 **“Land”** means the land within the Scheme known as 205 Cosgrove-Lemnos Road, Cosgrove and being the whole of the land more particularly described as Lots 1 on Title Plan 252790V (forming part of) certificate of title volume 8071 folio 681.
- 1.15 **“Landfill Operations”** means the establishment and future operation of the Proposed Landfill by the Council.
- 1.16 **“New Stone Sale Agreement”** means the new agreement proposed between Council and Boral for the ongoing Quarry Operations as contemplated in clause 3 of this Agreement.
- 1.17 **“Operations Protocol”** means the written document, to be established, maintained and updated (as contemplated in clause 6) to manage the interface and interactions between the Quarry Operations and the Landfill Operations.
- 1.18 **“Pit 1 Area”** means Pit 1 and its surrounding area so described on the Plan.
- 1.19 **“Pit 2 Area”** means Pit 2 and its surrounding area so described on the Plan.
- 1.20 **“Pits”** means Pit 1 and Pit 2.
- 1.21 **“Pit 1”** means the Pit marked “Pit 1” on the Plan.
- 1.22 **“Pit 2”** means the Pit marked “Pit 2” on the Plan.

- 1.23 “**Plan**” means the Plan forming part of this Agreement, at Annexure 1.
- 1.24 “**Planning Scheme**” means the Greater Shepparton Planning Scheme or any other planning scheme which applies to the Land from time to time.
- 1.25 “**Proposed Landfill**” means the proposed landfill which the Council intends to operate on the Land.
- 1.26 “**Quarry Area**” means the area to which the Quarry Agreement applies, from which Boral may exclusively extract stone.
- 1.27 “**Quarry Operations**” means the exclusive operation of the quarry by Boral on the Quarry Area pursuant to and in accordance with the relevant Stone Sale Agreement and Boral Permissions.
- 1.28 “**Register**” means the Register under section 27 of the *Transfer of Land Act 1958*.
- 1.29 “**Related Entity**” means a body corporate which is related to Boral within the meaning of Section 50 of the *Corporations Act 2001* (Cth).
- 1.30 “**Stone Sale Agreement**” means either the Existing Stone Sale Agreement or New Stone Sale Agreement, as the case may be.
- 1.31 “**Sunset Date**” means 30 June 2017.
- 1.32 “**Surplus Rock**” means surplus rock within Area 1, Area 2 and Area 3, that may be offered to Boral as provided in Clause 6.

## 2 AGREEMENT

Subject to the terms of this Agreement, the parties agree to negotiate and act at all times in good faith for the purpose of:

- 2.1 entering into the New Stone Sale Agreement to replace the Existing Stone Sale Agreement ;
- 2.2 facilitate the approval of the Proposed Landfill;
- 2.3 facilitate any necessary amendment to the Boral Permissions;
- 2.4 facilitate the Council Actions;
- 2.5 facilitate the Boral Actions; and
- 2.6 establish and maintain the Operations Protocol,

all with the objective of allowing the establishment of the Landfill Operations whilst maintaining the Quarry Operations, both as contemplated in this Agreement.

## 3 NEW STONE SALE AGREEMENT

- 3.1 The parties will, as soon as reasonably practicable after the execution of this Agreement, enter into the New Stone Sale Agreement on the following terms:
- 3.1.1 it will end the Existing Stone Sale Agreement and replace it with the New Stone Sale Agreement;

- 3.1.2 the Quarry Area will be the Quarry Area under the Existing Stone Sale Agreement but will exclude the Pit 1 Area;
  - 3.1.3 for the avoidance of doubt it is agreed the land east of Quarry Road, referred to in the Existing Stone Sale Agreement, is excluded from the legal relationship between the Council and Boral.
  - 3.1.4 the New Stone Sale Agreement will be updated and re-written to reflect current and appropriate drafting techniques with the emphasis on plain English.
  - 3.1.5 save as otherwise provided in this clause 3 or as otherwise agreed by the parties, it shall be on the same effective legal and commercial terms as the Existing Stone Sale Licence.
- 3.2 The parties agree that until such time as the New Stone Sale Agreement has been executed by both parties, the Existing Quarry Agreement will continue to remain in full force and effect and will govern the relationship between the parties in relation to the Land and the Quarry.

#### **4 COUNCIL ACTIONS**

The Council must:

- 4.1 at its cost and expense, undertake the various actions in relation to seeking to establish the Proposed Landfill;
- 4.2 undertake any rehabilitation or aftercare of the Pit 1 Area, proposed pursuant to Boral's application to excise the Pit 1 Area from the Boral work authority area; and
- 4.3 will provide to Boral as Boral requests and requires details of the rehabilitation or aftercare Council may undertake following the excision of the Pit 1 Area from the Boral work authority area.

#### **5 BORAL ACTIONS**

Boral must:

- 5.1 not object to and as required agrees to provide its consent to, the approval processes and establishment of the Proposed Landfill within the Pit 1 Area provided that the Proposed Landfill allows Boral to continue its Quarry Operations subject to the Operations Protocol, beyond the Pit 1 Area;
- 5.2 initiate and complete, with appropriate expedition, a variation request to the Boral Permissions so as to exclude the Pit 1 Area, with the objective of having that variation applied for and assessed by DSDPI concurrently with the works approval from the EPA sought by the Council and achieved in any case, no later than:
  - 5.2.1 one hundred and twenty (120) days after the grant of the EPA works approval for the Landfill; or
  - 5.2.2 such later date as agreed;



- 5.3 when, over time, stone resources are either used up in Pit 2 (or other parts of the Land), or Boral is not seeking to recover same, the parties may negotiate to further reduce the Quarry Area;
- 5.4 prior to the excision of the Pit 1 Area from the Boral work authority area, to the extent that such consent is required, Boral consents for the Council and its employees, consultants and contractors, to have necessary and appropriate access to the Pit 1 Area, subject to:
- the Council notifying Boral's quarry manager of the times when Council requires access and the quarry manager (acting reasonably) accepting those times;
  - compliance with appropriate occupational health and safety and other requirements of Boral;
  - carrying out of all necessary investigations, tests and study necessary to obtain the necessary approvals for and make preparations in respect of the Proposed Landfill;
  - the Council not interfering with the Quarrying Operations;
  - the Council not doing any act, matter or thing which interferes with or causes Boral to be in breach of, the Boral Permissions.

## 6 LANDFILL CONSTRUCTION – SURPLUS ROCK

In constructing the Proposed Landfill it is probable the Council will undertake excavation, including the extraction of rock. It is agreed that if such rock is of a quality that Boral wish to take for its purposes, then it will be offered to Boral in writing as Surplus Rock upon the following terms:

- 6.1 this clause applies only to rock from Area 1, Area 2 and Area 3 on the Plan;
- 6.2 if Council requires the rock solely for its own use (and not for the purpose of re sale) on the Land then it will not be offered;
- 6.3 any offer must be accepted by Boral within fourteen (14) days (or any extended period agreed) of being made;
- 6.4 Council will at its cost extract the Surplus Rock and set it aside for collection by Boral and Boral must undertake that collection by its own means, equipment and expense and subject to any reasonable directions of the Council;
- 6.5 further detail about the arrangements for Boral to take the Surplus Rock must be set out in the Operations Protocol;
- 6.6 no charge or royalty will be payable by Boral for any Surplus Rock offered or taken;
- 6.7 in any case where any tax, fee, royalty, penalty or charge is assessed as payable for the extraction of any Surplus Rock taken by Boral pursuant to statute regulation or at the direction of any government agency, either against Council or Boral, Boral agrees that it will pay (or reimburse to Council) any such amount;

## 6

6.8 Boral hereby releases Council against any damage, loss, penalty, cost or expense (but specifically excluding any consequential losses in the form of loss of profits) whatsoever suffered or incurred by Council as a result of:

6.8.1 any breach or negligence on the part of Boral;

6.8.2 any act or omission of any employee, consultant, contractor, licensee, agent or other representative of Boral;

6.8.3 any claim by any third party, against Council,

arising from the operation of, or any action by or on behalf of the parties, in relation to the matters only as contemplated in this clause 6.

## 7 CONCRETE STOCKPILE

7.1 Boral has created the Concrete Stockpile marked on the Plan, within the Pit 1 Area from crushed recyclable concrete brought on to the Land. In respect of the Concrete Stockpile it is agreed:

7.1.1 Boral may not add to the Concrete Stockpile as that exists as at the date of this Agreement;

7.1.2 it is to be progressively removed from the Land by Boral by its own means, equipment and expense;

7.1.3 subject to Clause 7.2, it may remain (including at a reducing size) on the Land until 30 September 2020;

7.1.4 it may remain at no fee to Boral;

7.1.5 Boral warrants it is constituted only of crushed recyclable concrete.

7.2 In any case, where the Council so directs, due to the Council's own construction or operational needs for the Proposed Landfill, that the Concrete Stockpile be:

7.2.1 relocated or reconfigured within the Pit 1 Area;

7.2.2 reduced in quantity; or

7.2.3 removed entirely,

Boral will comply with such direction, at Boral's expense, provided:

7.2.4 Council provides not less than twelve (12) months' written notice for the implementation of such direction;

7.2.5 no notice is given before 30 September 2016; and

7.2.6 failing compliance within time of such Council direction the Council may either remove or otherwise take ownership (at no cost to the Council) or otherwise deal with or dispose of the Concrete Stockpile as the Council thinks fit and at its own cost and expense.

7.3 To the extent required by any law, Boral must obtain, maintain and comply with, any and all necessary permissions, including any planning permit, required by law to permit the existence and progressive removal of the Concrete Stockpile.



- 7.4 Boral must manage the Concrete Stockpile, to the satisfaction of the Council in respect of dust and dust suppression, stormwater runoff and any other amenity or operational aspect, including the prompt compliance with any lawful and reasonable direction of Council in respect of same.
- 7.5 Further detail as agreed between the parties in relation to the Concrete Stockpile must be included in the Operations Protocol.
- 7.6 The rights in respect of the Concrete Stockpile granted to Boral are separate from the Stone Sale Agreements and are neither a licence or lease or right to enter or occupy the Pit 1 Area, other than as expressly provided in this clause 7.
- 7.7 Boral hereby releases Council against any damage, loss, penalty, cost or expense (but excluding any consequential losses in the form of loss of profit or loss of opportunity) whatsoever suffered or incurred by Council as a result of:
- 7.7.1 any breach or negligence on the part of Boral;
- 7.7.2 any act or omission of any employee, consultant, contractor, licensee, agent or other representative of Boral;
- 7.7.3 any claim by any third party, against Council.
- 7.8 The Council hereby releases Boral from any damage, loss, penalty, cost or expense (but excluding any consequential loss in the form of loss of profit or loss of opportunity) whatsoever suffered or incurred by Boral as a result of any required rehabilitation or aftercare of the Pit 1 Area after the Pit 1 Area is excised from the Boral Contract.

## **8 OPERATIONS PROTOCOL**

- 8.1 The parties agree to establish the Operations Protocol on the basis set out in this clause which will also be required upon the same terms, on an ongoing basis, under the New Stone Sale Agreement.
- 8.2 Key elements of the Operations Protocol will be as follows:
- 8.2.1 the intention is to establish the initial version of the Operations Protocol not less than (one) 1 month before commencement of construction of the Proposed Landfill, with a target, therefore of completion of the first Operations Protocol by 30 June 2016, or later by agreement.
- 8.2.2 the Operations Protocol is intended to be a document which the parties agree to:
- maintain;
  - review on not less than an annual basis;
  - comply with,
- for the balance of the term of the New Quarry Agreement.
- 8.2.3 the Operations Protocol should set out the various rights, obligations and commitments of the parties over the term of the New Quarry Agreement or for as long as Boral or a related entity of Boral

undertakes the Quarry Operations on part of the Land provided that in the case of any inconsistency the terms of the New Quarry Agreement prevail.

8.2.4 the Operations Protocol must set out arrangements in relation to management of and access to, the:

- Surplus Rock; and
- Concrete Stockpile.

8.2.5 the Operations Protocol must be reviewed and updated:

- annually; on or about the anniversary of this Agreement; or
- on receipt of a written notice from one party to the other party, that the Operations Protocol requires change or review,

in which case the parties agree to proactively, and in good faith, cooperate with each other, including necessary meetings to facilitate the ongoing Quarry Operations and Landfill Operations.

8.2.6 to recognise that, with the exception of royalties or other payments due under the New Quarry Agreement, any rights or obligations under this Agreement or under the Operations Protocol and would occur for the respective benefit of the parties and neither party will pay for such rights.

8.2.7 include arrangements for any separation of obligations for the payment of rates, statutory charges, payments for and utilities, services on the land, acknowledging that the Council will generally be exempt from such rates or charges and Boral may be liable for rates and charges relating to the land covered by the New Quarry Agreement.

8.2.8 include operational arrangements necessary or appropriate to give effect to the objectives of the parties including:

- appropriate levels of flexibility;
- appropriate certainty for planning and operational purposes.

8.3 Elements that are more specific, which will be incorporated within the Operations Protocol include:

8.3.1 proposed timing of construction of landfill cells subject to changes in airspace utilisation forecasts by Council;

8.3.2 timing for reduction of Quarry Area, initially the Pit 1 Area and then, as agreed progressively by the parties, the balance of the Land as the stone resource is removed or will not be utilised by Boral;

8.3.3 separation distances between the operations;

- 8.3.4 determination of blasting and matters associated with blasting such as:
- required periods of shutdown or restriction on use of the Proposed Landfill during blasting;
  - notice required to be given by Boral to Council of defined blasting days (eg, 6 monthly plan submitted or updated quarterly with week prior to blasting date confirmation);
  - health and safety protocols during blasting;
  - design requirements for the landfill to meet the potential blasting and vibration impacts of the quarry;
- 8.3.5 access arrangements (having two separate access points) – Council from Lemnos-Cosgrove Road and Boral from Quarry Road;
- 8.3.6 acknowledge access rights, in emergency circumstances by the Country Fire Authority;
- 8.3.7 boundary fencing between the Quarry Operations and the Landfill Operations, at the modified Quarry Area boundary, with cost, maintenance and repair obligations for the fencing being on account of the Council;
- 8.3.8 management of:
- dust;
  - noise;
  - vibration;
  - water licences and access to water; and
  - other environmental matters;
- 8.3.9 sequence of works for extraction;
- 8.3.10 future management and operation of Council for activities ancillary to landfill (e.g. waste transfer station or recycling depot on southern part of Land);
- 8.3.11 use of topsoil and overburden and storage of topsoil and overburden provided that in the absence of any agreement with Boral to the contrary, topsoil or overburden from within the Pit 2 Area is to remain within the Pit 2 Area;
- 8.3.12 any agreed arrangements between the parties for the other to use any overburden, topsoil or other material of one party's operation, in the other party's operation;
- 8.3.13 general occupational health and safety issues for entire site;

- 8.3.14 rehabilitation plans and discussion on responsibilities of each party other than in respect of the Pit 1 Area where the responsibility is solely with Council;
- 8.3.15 management of buffer zones / exclusion zones around:
- the Quarry Area;
  - existing Council Landfill;
  - Proposed Landfill;
  - operating quarry faces; and
  - haul roads.

## **9 CONTINUED COOPERATION OF THE PARTIES**

- 9.1 The parties agree to commit their respective organisations to continue to work together in a collaborative and cooperative manner into the future to:
- 9.1.1 share information regarding any Council Actions, Boral Actions and any other information that may be considered pertinent to negotiating, implementing and operating the Operations Protocol;
- 9.1.2 manage and resolve any potential or actual conflicts or complaints that may arise between or concerning their respective operations; and
- 9.1.3 ensure that there is a continued and regular dialogue between senior management of the respective organisations to achieve the intent of this Agreement.
- 9.2 The parties agree that any information disclosed to each other in relation to this Agreement is not:
- 9.2.1 to be disclosed in any form to anyone else;
- 9.2.2 except to:
- acquire or check information in connection with this Agreement; or
  - perform any of that parties obligations or exercise any of its rights under this Agreement,
- unless:
- the other party has first agreed in writing;
  - the information is disclosed to a professional adviser, banker or financial adviser of the party;
  - the law requires the disclosure or use; or
  - the information is available generally (but not if it is because a person has contravened a confidentiality obligation).

- 9.2.3 The obligations imposed by this clause 9.2 survive termination of this Agreement for a term of 2 years after termination of this Agreement, to the fullest extent permitted by law.

## 10 CHANGE IN CONTROL

Boral agrees that if it transfers or assigns any part of its interest in the Quarry Agreement other than to a Related Entity of Boral, it must give notice and a copy of this Agreement to the party acquiring its interest in the Quarry Agreement (whether in whole or in part) ("**Acquiring Party**") and Boral must use its reasonable endeavours to ensure that the Acquiring Party completes and signs a deed of novation, deed of assignment or any other such replacement Agreement to the satisfaction of Council in order to join the Acquiring Party as a party to this Agreement as if they had been an original party to the Agreement.

## 11 GENERAL

### 11.1 Entire Agreement

This Agreement and the Operations Protocol:

- 11.1.1 constitute the whole agreement between the parties; and
- 11.1.2 supersede all prior representations, warranties, arrangements, understandings and agreements between the parties,

relating to the subject matter of this Agreement.

### 11.2 Deed

This Agreement operates as a Deed.

### 11.3 Assignment

A party must not assign any right under this Agreement without the prior written consent of each other party.

### 11.4 Counterparts

This Agreement may be executed in any number of counterparts and all the counterparts together constitute one and the same instrument.

### 11.5 Alteration

This Agreement may only be altered in writing signed by the parties.

### 11.6 Time of the essence

Unless otherwise provided, time is of the essence as regards all dates, periods of time and times specified in this Agreement.

### 11.7 Further acts

Each party must, without further consideration, sign, execute and deliver any document and perform any other act that is necessary or desirable to give full effect to this Agreement.

**11.8 Party preparing document not to be disadvantaged**

No rule of contract interpretation must be applied in the interpretation of this Agreement to the disadvantage of one party on the basis that it prepared or put forward this Agreement or any document comprising part of this Agreement.

**11.9 Costs**

Except where otherwise stated to the contrary, each party will bear its own costs in connection with the negotiation and signing of this Agreement and any other agreement required after this Agreement.

**11.10 No restriction of powers**

This Agreement does not fetter or restrict the powers or discretions of the Council in relation to any powers or obligations it has under any Act, regulation, local law or bylaw that may apply to the subject matter of this Agreement or to any party to this Agreement.

**11.11 Notice**

Any notice, demand or other communication (**Notice**) to be given or required to be made pursuant to this Agreement is to be in writing and is to be given by post, facsimile or hand to a party at the party's address following:

if to Council:

Greater Shepparton City Council  
90 Welsford Street, Shepparton, 3632

if to Boral:

The General Manager - Boral Quarries South Region  
Boral Resources (Vic) Pty Ltd  
251 Salmon Street, Port Melbourne, 3207

or at such other address or facsimile number as is notified in writing by one party to the other parties. A Notice is deemed to be given or served:

- a. where sent by pre-paid post on the fifth Business Day following the day on which it was posted;
- b. where transmitted by facsimile during normal business hours on a Business Day on that day, or in any other case of transmission by facsimile on the Business Day following the day of transmission;
- c. where delivered by hand during normal business hours on a Business Day on that day, or in any other case of hand delivery on the Business Day following the day of delivery.



## 12 INTERPRETATION

In this Agreement, unless the contrary intention appears:

- 12.1 the singular includes the plural and vice versa;
- 12.2 words importing one gender include other genders;
- 12.3 a reference to a document or instrument, including this Agreement, includes that document or instrument as novated, altered or replaced from time to time;
- 12.4 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 12.5 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 12.6 other grammatical forms of defined words or expressions have corresponding meanings;
- 12.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
  - 12.7.1 two or more parties; or
  - 12.7.2 a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally;
- 12.8 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 12.9 a recital, schedule, annexure or description of the parties forms part of this Agreement;
- 12.10 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 12.11 if an act required to be done under this Agreement on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 12.12 all monetary amounts are in Australian dollars;
- 12.13 a party that is a trustee is bound both personally and in its capacity as trustee;
- 12.14 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity;
- 12.15 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Agreement;
- 12.16 a reference to a "related body corporate" of a body corporate is to a body corporate which is related to that body corporate within the meaning of Section 50 of the *Corporations Act 2001 (Cth)*.

**EXECUTED** as a Deed.

**SIGNED SEALED AND DELIVERED** for and )  
on behalf of the **GREATER SHEPPARTON** )  
**CITY COUNCIL** by its authorised delegate. )

\_\_\_\_\_  
Peter Harriott  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
Date

**SIGNED** by **BORAL RESOURCES (VIC)** )  
**PTY LTD** pursuant to section 127(1) of the )  
Corporations Act 2001 (Cth): )

\_\_\_\_\_  
Director / Company Secretary

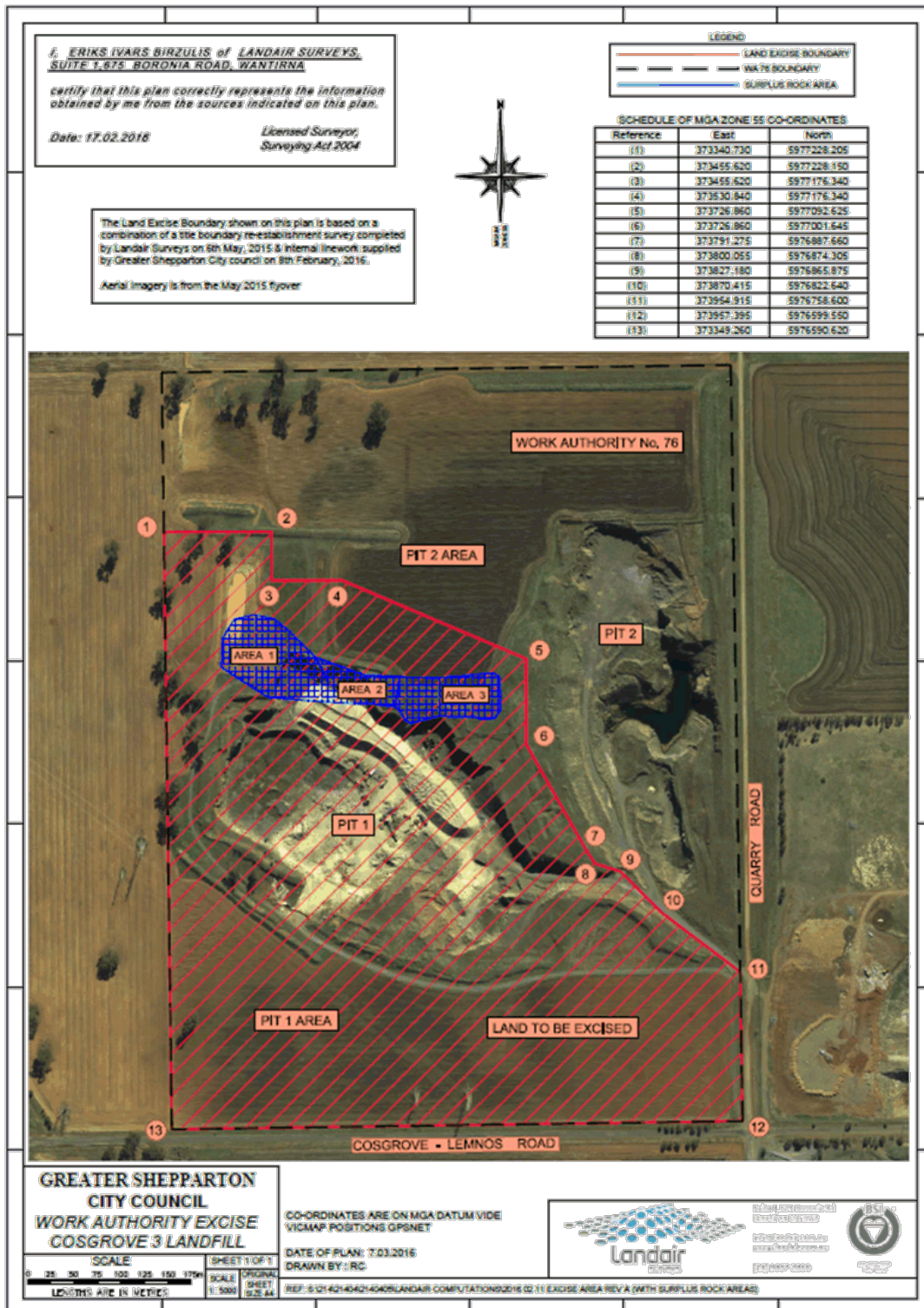
\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Date signed

**ANNEXURE 1  
Plan**





**GREATER SHEPPARTON CITY COUNCIL**

and

**BORAL RESOURCES (VIC) PTY LTD**

**STONE SALE AGREEMENT**



Russell Kennedy Pty Ltd ACN 126 792 470 ABN 14 940 129 185  
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[rk.com.au](http://rk.com.au)

Ref

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**THIS STONE SALE AGREEMENT** is made on

2016

**PARTIES**

- 1 **GREATER SHEPPARTON CITY COUNCIL**  
of 90 Welsford Street, Shepparton VIC 3632  
("Council")
- 2 **BORAL RESOURCES (VIC) PTY LTD**  
ABN 87 004 620 731  
of 251 Salmon Street, Port Melbourne, 3207  
("Boral")

**RECITALS**

- A Prior to this Agreement Boral undertook the Quarry Operations pursuant to rights under the Original Agreement.
- B The Original Agreement contemplated the extraction of Stone from both the Land and the Eastern Land and included various arrangements for:
- the ongoing extraction of Stone;
  - the right to extract that Stone (in favour of Boral) exclusively;
  - a term of, originally, 70 years to end on 17 February 2036;
  - the payment of Royalties; and
  - various ancillary rights and obligations.
- C The Council acquired the Land subject to the terms of the Original Agreement, insofar as it relates to the Land.
- D Council and Boral wish to enter into this Agreement the effect of which will be:
- insofar as it affects legal relations between the Council and Boral, replace the Original Agreement;
  - in due course, reduce the Quarry Area to exclude the Pit 1 Area on the Plan attached as Annexure 1;
  - allow further reduction of the Quarry Area subject to agreement of both parties;
  - establish and maintain the Operations Protocol allowing both the continuation of the Quarry Operations and the Proposed Landfill.
- E This Agreement operates as a Deed.



**THE PARTIES AGREE THAT:****1 DEFINITIONS**

In this Agreement:

- 1.1 **"Agreement"** means this agreement, including the recitals and any schedules or annexures to this Agreement.
- 1.2 **"Excision Agreement"** means the Agreement made between the parties which:
- 1.2.1 led to the substitution of the Original Agreement with this Agreement;
- 1.2.2 reduced the Quarry Area to allow the progressive establishment of the Proposed Landfill.
- 1.3 **"Annexure"** means an annexure to this Agreement.
- 1.4 **"Boral Permissions"** means any statutory permissions required by Boral to undertake the Quarry Operations including any necessary planning permissions pursuant to the *Planning and Environment Act 1987* and any Work Authority.
- 1.5 **"Business Day"** means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Melbourne.
- 1.6 **"Business Hours"** means the hours between 9.00 am and 5.00 pm on a Business Day.
- 1.7 **"Claim"** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, whether based in contract, tort, statute or otherwise.
- 1.8 **"Concrete Stockpile"** means the existing stockpile of crushed recyclable concrete within Pit 1, as contemplated in the Excision Agreement.
- 1.9 **"Eastern Land"** means the land contained in certificates of title volume 1042 folios 677 and 678, presently owned by Roderick David Harmer.
- 1.10 **"Encumbrance"** means any mortgage, lien, charge, bill of sale, option, title retention, pledge, claim, restriction, condition, overriding interest or other encumbrance.
- 1.11 **"GST"** means the goods and services tax as provided for by the GST Law.
- 1.12 **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.13 **"GST Law"** means the GST Act and any associated legislation including without limitation delegated legislation;
- 1.14 any expression used that is defined in the GST Law has that defined meaning where the context permits.
- 1.15 **"Land"** means the land within the Scheme known as 205 Cosgrove-Lemnos Road, Cosgrove and being the whole of the land more particularly described as Lot 1 on Title Plan 252790V, namely certificate of title volume 8071 folio 681.
- 1.16 **"Landfill Operations"** means the establishment and future operation of the Proposed Landfill.



- 1.17 “**Operations Protocol**” means the written document, to be established, maintained and updated to manage the interface and interactions between the Quarry Operations and the Landfill Operations.
- 1.18 “**Original Agreement**” means the agreement made on 14 February 1966 between Roderick David Harmer and Ewen Frank Harmer (deceased) (“**Harmers**”) and Deane & Runge Pty Ltd and John William York and Thomas Arthur York as amended on 29 December 1972 and assigned from Deane & Runge Pty Ltd to Boral on 26 June 2001.
- 1.19 “**Pits**” means Pit 1 and Pit 2.
- 1.20 “**Pit 1**” means the Pit marked “Pit 1” on the Plan attached as Annexure 1.
- 1.21 “**Pit 2**” means the Pit marked “Pit 2” on the Plan attached as Annexure 1.
- 1.22 “**Pit 1 Area**” means Pit 1 and its surrounding area so described on the Plan.
- 1.23 “**Pit 2 Area**” means Pit 2 and its surrounding area so described on the Plan.
- 1.24 “**Plan**” means the Plan forming part of this Agreement, at Annexure 1.
- 1.25 “**Proposed Landfill**” means the proposed landfill which the Council intends to operate on the Land, including in accordance with this Agreement.
- 1.26 “**Quarry Area**” means the area from which Boral may extract Stone as provided in clause 4.
- 1.27 “**Quarry Operations**” means the operation of the quarry by Boral on the Quarry Area pursuant to and in accordance with this Agreement and Boral Permissions.
- 1.28 “**Related Entity**” is to a body corporate which is related to Boral within the meaning of Section 50 of the *Corporations Act 2001* (Cth).
- 1.29 “**Royalty or Royalties**” means the royalties to be paid by Boral to Council as provided in clause 6.
- 1.30 “**Scheme**” means the Greater Shepparton Planning Scheme or any other planning scheme which applies to the Land from time to time.
- 1.31 “**Stone**” means the stone material which may be extracted by Boral from the Quarry Area pursuant to this Agreement.
- 1.32 “**Surplus Rock**” means the rock in the Pit 1 Area, that may be offered to Boral as provided in the Excision Agreement.
- 1.33 “**Term**” means the term of this Agreement.
- 1.34 “**Work Authority**” means the work plan and authority for extractive industry held by Boral in respect of the Land or parts of the Land, from time to time (presently no. 76 dated 20 January 2009 project number B03-012) under the *Mineral Resources (Sustainable Development) Act 1990* (Vic).

**2 GRANT AND TERM****2.1 Grant**

The Council grants to Boral the right to exclusively and on an uninterrupted basis access the Quarry Area on its Land for excavation works and associated activities allowing the exclusive extraction of Stone in accordance with the terms of this Agreement.

**2.2 Title**

Upon extraction of any Stone, legal and beneficial title to all Stone extracted from the Quarry Area vests exclusively in Boral.

**2.3 Term**

This Agreement will:

2.3.1 commence on the execution of this Agreement by both parties;

2.3.2 be for a term expiring on 14 February 2036 or any earlier or later date agreed by the parties in writing.

**3 ORIGINAL AGREEMENT**

The parties agree that in respect of the Original Agreement:

3.1 that Original Agreement is at an end insofar as it relates to the Land and the Council with effect from the date that this Agreement commences;

3.2 that each of the parties hereby releases the other in respect of any Claim known or unknown or yet to come into existence either before or after the date of this Agreement, arising out of or related to the Original Agreement.

**4 QUARRY AREA****4.1 Quarry Area**

The Quarry Area as at the date of this Agreement is represented by the area presently designated in Work Authority existing as at the date of this Agreement.

**4.2 Future Quarry Area**

On 30 June 2016 (or earlier by agreement) the Quarry Area will be reduced to exclude the Pit 1 Area on the Plan and Boral agrees:

4.2.1 it will seek to amend its Work Authority to reflect the reduced Quarry Area; and

4.2.2 seek to amend any other of the Boral Permissions as required to reflect the reduced Quarry Area.

**4.3 Further Reduction**

Subject to an agreement in writing of both parties, the Quarry Area may be further reduced over the term of this Agreement.

## 5 OPERATIONS PROTOCOL

The parties agree to establish the Operations Protocol on the basis set out in this clause:

5.1 Key elements of the Operations Protocol will be as follows:

5.1.1 the intention is to establish the initial version of the Operations Protocol not less than (one) 1 month before commencement of construction of the Proposed Landfill, with a target, therefore of completion of the first Operations Protocol by 30 June 2016, or later by agreement.

5.1.2 the Operations Protocol is intended to be a document which the parties agree to:

- maintain;
- review on not less than an annual basis; and
- comply with,

for the balance of the term of the Quarry Agreement.

5.1.3 the Operations Protocol should set out the various rights, obligations and commitments of the parties over the term of the Quarry Agreement or for as long as Boral or a related entity of Boral undertakes the Quarry Operations on part of the Land provided that if there is any inconsistency between the Operations Protocol and this Agreement, the terms of this Agreement prevail.

5.1.4 the Operations Protocol must set out arrangements in relation to the management of, and access to, the:

- Surplus Rock; and
- Concrete Stockpile,

both as provided in the Excision Agreement.

5.1.5 the Operations Protocol must be reviewed and updated:

- annually; on or about the anniversary of this Agreement; or
- on receipt of a written notice from one party to the other party, that the Operations Protocol requires change or review,

in which case the parties agree to proactively, and in good faith, cooperate, including necessary meetings to facilitate the ongoing Quarry Operations and Landfill Operations.

5.1.6 to recognise that with the exception of Royalties or other payments due under the Quarry Agreement, any rights or obligations under this Agreement or under the Operations Protocol and would occur for the respective benefit of the parties and neither party will pay for such rights.

5.1.7 include arrangements for any separation of obligations for the payment of rates, statutory charges, payments for and utilities,

## 6

services on the Land, acknowledging that the Council will generally be exempt from such rates and Boral may be liable for rates and charges relating to the land covered by the Quarry Agreement.

- 5.1.8 include operational arrangements necessary or appropriate to give effect to the objectives of the parties including:
- appropriate levels of flexibility;
  - appropriate certainty for planning and operational purposes.
- 5.2 Elements that are more specific, which will be incorporated within the Operations Protocol include:
- 5.2.1 proposed timing of construction of landfill cells subject to changes in airspace utilisation forecasts by Council;
- 5.2.2 proposed timing for reduction of Quarry Area, for the balance of the Land as the stone resource is removed or will not be utilised by Boral;
- 5.2.3 separation distances between the operations;
- 5.2.4 determination of blasting and matters associated with blasting such as:
- required periods of shutdown or restriction on use of the Proposed Landfill during blasting;
  - notice required to be given by Boral to Council of defined blasting days (eg, 6 monthly plan submitted or updated quarterly with week prior to blasting date confirmation); and
  - health and safety protocols during blasting;
- 5.2.5 access arrangements (having two separate access points) – Council from Lemnos-Cosgrove Road and Boral from Quarry Road;
- 5.2.6 boundary fencing between the Quarry Operations and the Landfill Operations, at the modified Quarry Area boundary, with cost, maintenance and repair obligations for the fencing based and apportioned on the respective legal and other responsibilities of the parties;
- 5.2.7 management of:
- dust;
  - noise;
  - vibration;
  - water licences and access to water; and
  - other environmental matters;
- 5.2.8 sequence of works for extraction;

- 5.2.9 future management and operation of Council for activities ancillary to landfill (e.g. waste transfer station or recycling depot on southern part of Land);
- 5.2.10 use of topsoil and overburden and storage of topsoil and overburden;
- 5.2.11 any agreed arrangements between the parties for the other to use any overburden, topsoil or other material of one party's operation, in the other party's operation;
- 5.2.12 general occupational health and safety issues for entire site;
- 5.2.13 rehabilitation plan and discussion on responsibilities of each party;
- 5.2.14 management of buffer zones / exclusion zones around:
- existing Council Landfill;
  - Proposed Landfill;
  - operating quarry faces; and
  - hard roads.

## **6 ROYALTIES**

### **6.1 Royalty**

On and from the commencement of this Agreement Boral must pay to the Council 41.25 cents for each tonne of Stone extracted provided further:

- 6.1.1 Boral must keep accurate records of the amount of Stone extracted and provide copies of that detail to the Council on a monthly basis including any supporting survey information on an electronic basis;
- 6.1.2 Royalties must be paid by Boral, monthly in arrears, to the Council;
- 6.1.3 the amount expressed to be paid as a Royalty excludes any GST and subject to the obligation of Council to provide an appropriate GST invoice, Boral must also pay GST;
- 6.1.4 no minimum Royalty is payable, that is, if no Stone is extracted within any particular period, no Royalty is payable.

### **6.2 Indexation**

The amount payable per tonne in respect of Royalties will increase each year on and from 1 July in that year by 50% of the increase in the CPI (all indices) for Melbourne, for the previous 12 month period.

## **7 OTHER OBLIGATIONS**

### **7.1 Boral permissions**

Boral agrees it will conduct the Quarry Operations in accordance with the Boral Permissions.

## 7.2 Fencing

Council agrees to fence and keep and leave the Quarry Area safely and substantially fenced off and this obligation includes an obligation to shift and re-fence any reduced Quarry Area required or agreed under the terms of this Agreement.

## 7.3 Rates

Boral agrees that it will pay all rates and taxes only in respect of the Quarry Area for the currency of this Agreement. In the case of land tax, Boral will only be required to pay on a single holding basis as if the Land is the only land owned by the Council in Victoria.

## 7.4 Expiration

Upon expiration of the term of this Agreement, or earlier by Agreement, Boral agrees to:

- 7.4.1 remove from the Land any mobile plant and equipment, chattels or other such items;
- 7.4.2 unless otherwise directed by the Council, remove any buildings, fixtures or other improvements on the Land; and
- 7.4.3 comply with a notice from the Council, directing the clean up or remediation of any damage or contamination to the Land save and except for the excavation of the Stone and related material.

## 7.5 Cropping and grazing

Boral agrees that in respect of any part of the Quarry Area which is not being actively used or planned for use in the next 12 month period after the date of this Agreement, for the extraction of Stone, that the Council may either itself or through a licence or agistment arrangement, have a third party graze, crop or otherwise manage those portions of the Quarry Area in which case:

- 7.5.1 the Council agrees that it will include provisions within any agistment or licence agreement allowing its early termination to assist Boral if Boral requires access to that part of the Quarry Area;
- 7.5.2 including provisions requiring:
  - if the Quarry Area is used for the grazing of livestock, constructing secure and appropriate fencing which separates that use from the Quarry Operations to Boral's satisfaction;
  - controlling access to a single, far northern, gate unless the consent of the Council and Boral is first received;
  - providing notice to both Boral and Council of any proposed burn off and then complying with any direction (including postponement) in relation to such burn issued by the Council or Boral;
  - obtaining advice from Council of any intended Boral activities within a next 6 month period prior to the sowing of any crop;
  - not to interfere with the activities of Boral in any way;



- acknowledging the Boral operations on parts of the site and including a right to allow Boral to undertake investigations, extend quarry activities and comply with the direction not to enter the licensed area at any time if Boral or its agents is undertaking particular activities (for example, blasting).

## 8 CONTINUED COOPERATION OF THE PARTIES

8.1 The parties agree to commit their respective organisations to continue to work together in a collaborative and cooperative manner into the future to:

8.1.1 share information regarding any Council actions, Boral actions and any other information that may be considered pertinent to negotiating, implementing and operating the Operations Protocol;

8.1.2 manage and resolve as quickly as possible any potential or actual conflicts or complaints that may arise between or concerning their respective operations; and

8.1.3 ensure that there is a continued and regular dialogue between senior management of the respective organisations to achieve the intent of this Agreement.

8.2 The parties agree that any information disclosed to each other in relation to this Agreement is not:

8.2.1 to be disclosed in any form to anyone else;

8.2.2 except to:

- acquire or check information in connection with this Agreement; or
- perform any of that parties obligations or exercise any of its rights under this Agreement,

unless:

- the other party has first agreed in writing;
- the information is disclosed to a professional adviser, banker or financial adviser of the party;
- the law requires the disclosure or use; or
- the information is available generally (but not if it is because a person has contravened a confidentiality obligation).

8.2.3 The obligations imposed by this clause 8.2 survive termination of this Agreement, to the fullest extent permitted by law.

## 9 ASSIGNMENT/CHANGE OF CONTROL

In any case where Boral seeks to assign this Agreement to a party other than a Boral Related Entity it must:

9.1 give notice of that proposed assignment to the Council;

9.2 obtain the Council's consent (which the Council may not unreasonably withhold) to the relevant assignment; and

9.3 procure the execution by the proposed assignee of a deed of assignment or such other replacement agreement to the satisfaction of the Council.

## **10 GENERAL**

### **10.1 This Agreement**

This Agreement:

10.1.1 constitutes the whole agreement between the parties; and

10.1.2 supersedes all prior representations, warranties, arrangements, understandings and agreements between the parties,

relating to the subject matter of this Agreement.

### **10.2 Assignment**

Except as otherwise specified in this Agreement, a party must not assign any right under this Agreement without the prior written consent of each other party.

### **10.3 Counterparts**

This Agreement may be executed in any number of counterparts and all the counterparts together constitute one and the same instrument.

### **10.4 Alteration**

This Agreement may only be altered in writing signed by the parties.

### **10.5 Time of the essence**

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

### **10.6 Further acts**

Each party must, without further consideration, sign, execute and deliver any document and perform any other act that is necessary or desirable to give full effect to this Agreement.

### **10.7 Party preparing document not to be disadvantaged**

No rule of contract interpretation must be applied in the interpretation of this Agreement to the disadvantage of one party on the basis that it prepared or put forward this Agreement or any document comprising part of this Agreement.

### **10.8 No restriction of powers**

This Agreement does not fetter or restrict the powers or discretions of the Council in relation to any powers or obligations it has under any Act, regulation, local law or by-law that may apply to the subject matter of this Agreement or to any party to this Agreement.

**10.9 Costs**

Each party will bear its own costs in connection with the preparation, negotiation and finalisation of this Agreement.

**10.10 Notices**

Any notice, demand or other communication (**Notice**) to be given or required to be made pursuant to this Agreement is to be in writing and is to be given by post, facsimile or hand to a party at the party's address following:

if to Council:

Greater Shepparton City Council  
90 Welsford Street, Shepparton, 3632

if to Boral:

The General Manager - Boral Quarries South Region  
Boral Resources (Vic) Pty Ltd  
251 Salmon Street, Port Melbourne, 3207

or at such other address or facsimile number as is notified in writing by one party to the other parties. A Notice is deemed to be given or served:

- a. where sent by pre-paid post on the fifth Business Day following the day on which it was posted;
- b. where transmitted by facsimile during normal business hours on a Business Day on that day, or in any other case of transmission by facsimile on the Business Day following the day of transmission;
- c. where delivered by hand during normal business hours on a Business Day on that day, or in any other case of hand delivery on the Business Day following the day of delivery.

**11 INTERPRETATION**

In this Agreement, unless the contrary intention appears:

- 11.1 the singular includes the plural and vice versa;
- 11.2 words importing one gender include other genders;
- 11.3 a reference to a document or instrument, including this Agreement, includes that document or instrument as novated, altered or replaced from time to time;
- 11.4 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 11.5 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 11.6 other grammatical forms of defined words or expressions have corresponding meanings;
- 11.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:

- 11.7.1 two or more parties; or
- 11.7.2 a party comprised of two or more persons,
- is made or given and binds those parties or persons jointly and severally;
- 11.8 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 11.9 a recital, schedule, Annexure or description of the parties forms part of this Agreement;
- 11.10 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 11.11 if an act required to be done under this Agreement on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 11.12 all monetary amounts are in Australian dollars;
- 11.13 a party that is a trustee is bound both personally and in its capacity as trustee;
- 11.14 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity;
- 11.15 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Agreement; and
- 11.16 a reference to a "related body corporate" of a body corporate is to a body corporate which is related to that body corporate within the meaning of Section 50 of the *Corporations Act 2001 (Cth)*.

**EXECUTED** as a Deed.

**SIGNED SEALED AND DELIVERED** for and )  
on behalf of the **GREATER SHEPPARTON** )  
**CITY COUNCIL** by its authorised delegate. )

\_\_\_\_\_  
Peter Harriott  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
Date

**SIGNED** for and on behalf of **BORAL** )  
**RESOURCES (VIC) PTY LTD** by its )  
authorised representative )  
in the presence of: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Authorised Representative

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Date signed



**ANNEXURE 1  
Plan**

