

Deed of Release

Deed of Release

Date

Parties

BETWEEN: [Hunter and Central Coast Development Corporation ABN 94 688 782 063] of 6 Stewart Avenue, Newcastle West, New South Wales, 2302 (**NMGF Administrator**)

AND: [INSERT] (**Applicant**)

Recitals

- A. The parties entered into the Newcastle Mines Grouting Fund Contribution Deed in respect of the Project Site dated [Insert] (the "**NMGF Contribution Deed**").
- B. The NMGF Administrator wishes to pay the Contribution Amount to the Applicant under the NMGF Contribution Deed and requires the Applicant to provide the NMGF Administrator with this deed of release.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the contrary intention appears, the following terms have the following meanings:

Business Day means a day that is Monday to Friday (inclusive) of any week (excluding a public holiday).

Contribution Amount has the same meaning as in the NMGF Contribution Deed.

Claim means any and all claims, actions, disputes, differences, demands, proceedings, accounts, interest, costs, expenses, losses, liabilities and debts (including those which are prospective, contingent or unascertainable) of whatever nature and however arising which the parties may now have or at any time hereafter might have had.

Effective Date means the date of this deed.

Grouting Works has the same meaning as in the NMGF Contribution Deed.

Project Site has the same meaning as in the NMGF Contribution Deed.

Release Matters has the meaning given in clause 2.1.

1.2 Interpretation

In this deed, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of this deed;

- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (g) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (h) the word "month" means calendar month and the word "year" means a period of 12 months;
- (i) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (j) a reference to a thing includes a part of that thing;
- (k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (l) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (m) money amounts are stated in Australian currency unless otherwise specified; and
- (n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

2. Release

2.1 In consideration of receiving the Contribution Amount from the NMGF Administrator under the NMGF Contribution Deed, on and from the Effective Date the Applicant unconditionally and irrevocably releases and discharges the NMGF Administrator from all Claims directly or indirectly in relation to the:

- (a) NMGF Contribution Deed; and
- (b) the Grouting Works,

howsoever caused, and agrees not to make any further Claims against the NMGF Administrator directly or indirectly relating to or arising from the above matters (the "**Release Matters**").

2.2 The Applicant unconditionally and irrevocably indemnifies the NMGF Administrator against all actions, demands, liability, loss, damage or costs incurred or suffered directly or indirectly in connection with breach of this Deed.

3. Bar to further proceedings

Any person or entity who has the benefit of the releases under clause 2 of this deed may plead this deed as a full and complete defence to any action, suit or proceedings commenced, continued or taken by another party to this deed in relation to the Release Matters.

4. Confidentiality

The parties agree that the terms of this deed are confidential and may not be disclosed to any other person except:

- (a) with the prior written consent of the other party;
- (b) to the parties' financial or legal advisors for the purposes of obtaining professional advice or assistance and to the extent necessary, the parties' insurers and the insurers' legal advisors;
- (c) for the purposes of enforcing or otherwise giving effect to the terms of this deed; or
- (d) if required by law.

5. General

5.1 Nature of obligations

If obligations are undertaken or benefits are received by a party to this deed comprising 2 or more persons, or a group of parties, then:

- (a) the obligations are undertaken or benefits received by those persons, or the persons comprising the group of parties, jointly and severally; and
- (b) the Claims include claims by or against those persons or the persons comprising the group of parties or any one or more of them.

5.2 Entire understanding

- (a) This deed contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this deed, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this deed.

5.3 No adverse construction

This deed is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

5.4 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this deed.

5.5 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this deed does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this deed.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

5.6 Severability

Any provision of this deed which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this deed in any other case,

without invalidating or affecting the remaining provisions of this deed or the validity of that provision in any other jurisdiction.

5.7 Successors and assigns

This deed binds and benefits the parties and their respective successors and permitted assigns.

5.8 No assignment

A party cannot assign or otherwise transfer the benefit of this deed without the prior written consent of the other party.

5.9 No variation

This deed cannot be amended or varied except in writing signed by the parties.

5.10 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this deed and other documents referred to in it, unless expressly stated otherwise.

5.11 Governing law and jurisdiction

- (a) This deed is governed by and must be construed in accordance with the laws in force in New South Wales.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this deed, its performance or subject matter.

5.12 Notices

Any notice or other communication to or by a party under this deed:

- (a) may be given by personal service, post or email;
- (b) must be in writing, legible and in English;
- (c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the *Corporations Act 2001* (Cth); and
- (d) is deemed to be given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the addressee;
 - (ii) if posted, 2 Business Days (or 6 Business Days, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or

- (iii) if sent by email, one hour after the email is recorded as being sent by the device from which the sender sent that email, unless the sender knows or could reasonably be expected to know that an email system has failed and as a result, the email was not received,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

The addresses and details for delivery of notices are as follows, as amended by notice to the other party from time to time:

[Drafting Note: For completion by the Applicant.]

Hunter and Central Coast Development Corporation

Address: 6 Stewart Avenue, Newcastle West, New South Wales, 2302

Email: info@hccdc.nsw.gov.au

Attention: NMGF Manager

[Insert]

Address: **[Insert]**

Email: **[Insert]**

Attention: **[Insert]**

5.13 Counterparts

If this deed consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

5.14 Conflicting provisions

If there is any conflict between the main body of this deed and any schedules or annexures comprising it, then the provisions of the main body of this deed prevail.

5.15 Non merger

A term or condition of, or act done in connection with, this deed does not operate as a merger of any of the rights or remedies of the parties under this deed and those rights and remedies continue unchanged.

5.16 No right of set-off

Unless this deed expressly provides otherwise, a party has no right of set-off against a payment due to another party.

5.17 Relationship of parties

Unless this deed expressly provides otherwise, nothing in this deed may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

5.18 Injunctive relief

The parties acknowledge that, if a party breaches this deed, damages will not, on its own, be a satisfactory remedy. Accordingly, the defaulting party will not object to the innocent party applying to the court for injunctive or other equitable relief.

Executed as a deed.

EXECUTION PAGE

Date: [INSERT DATE]

EXECUTED for and on behalf of **HUNTER AND CENTRAL COAST DEVELOPMENT CORPORATION** ABN 94 688 782 063 by [HCCDC CEO], without assuming any personal liability and in the presence of:

.....
Signature of witness

.....
Signature of [HCCDC CEO]

.....
Name of witness *(please print)*

[Drafting Note: Use this execution clause for a multi-director company.]

EXECUTED by [COMPANY NAME] ACN [] in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officers:

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director
(please print)

.....
Name of director/company secretary *(please print)*

[Drafting Note: Use this execution clause for a sole director/secretary company.]

EXECUTED by [COMPANY NAME] ACN [] in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by:

.....
Signature of sole director and sole company secretary

.....
Name of sole director and sole company secretary *(please print)*