

# **Planning Agreement**

**Lithgow City Council**

**ABN 59 986 092 492**

**AND**

**Nu-Rock Technology Pty Ltd**

**ABN 12 062 560 169**

Table of Contents

Parties	1
Background	1
Operative Provisions	2
1 Planning Agreement under the EPA Act	2
2 Operation	2
3 Definitions and Interpretation	2
4 Section 7.11, 7.12 and 7.24 of the EPA Act	5
5 Development Consent	5
6 Contribution	6
7 Dispute Resolution	7
8 Enforcement	8
9 Risk	<u>98</u>
10 Notices	9
11 General	9
12 Costs	11
Schedule 1 – Development Consent	12
Schedule 2 – Modified Development Consent	19
Executed as a Deed	30

**Date** **2022**

## Parties

**Council** Lithgow City Council ABN 59 986 092 492  
Address 180 Mort Street  
Lithgow NSW 2790  
Representative Development Manager- Paul Cashel  
Attention Development Manager – Paul Cashel  
Contact Telephone (02) 6354 9999  
Contact Email [Paul.Cashel@lithgow.nsw.gov.au](mailto:Paul.Cashel@lithgow.nsw.gov.au)

**Applicant** Nu-Rock Technology Pty Ltd ABN 12 062 560 169  
Nu-Rock Mt. Piper Pt. Ltd. ABN 44 648 920 156  
Address 90/5 Woodlands Avenue  
Breakfast Point NSW 2137  
Representative Bartier Perry Ltd  
Level 10, 77 Castlereagh Street  
Sydney NSW 2000  
Attention Maroun G. Rahme  
Contact Telephone 0438 500 826  
Contact Email [maroun.rahme@nu-rock.com](mailto:maroun.rahme@nu-rock.com)

## Background

- A The Applicant is the Developer of the Land.
- B EnergyAustralia NSW Ltd (ABN 75 163 935 635) is the registered proprietor of the Land.
- C The Land is zoned SP2 Infrastructure (Electricity Generating Works) pursuant to the *Lithgow Local Environmental Plan 2014* and currently comprises a power station.
- D On 2 October 2015, Council granted consent to development application number DA292/14 ('Development Consent') to the Applicant for:
- Manufacturing plant – Fly ash conversion to construction materials
- at land identified as Lot 2 in Deposited Plan702619, otherwise known as Mount Piper Power Station, Boulder Road, Portland NSW 2847.
- E On 6 October 2015, the Development Consent commenced operation.
- F Condition 3 to the Development Consent provides:

Pursuant to section 80A(1) of the *Environmental Planning and Assessment Act* the draft Planning Agreement that relates to the Development Application, as per the terms of offer dated 29 September 2015 must be finalised prior to the issue of the Construction Certificate.

G On 28 September 2022, Council granted consent to modification application number MODDA041/22 ('Modified Development Consent') to the Applicant modifying the Development Consent.

H Condition 3 of the Modified Development Consent provides:

Pursuant to section 80A(1) of the *Environmental Planning and Assessment Act* the draft Planning Agreement that relates to the Development Application, as per the terms of offer dated 29 September 2015 must be finalised prior to the issue of an **Occupation Certificate**.

I The Development Consent will lapse on 6 October 2022.

J This Deed has been prepared pursuant to condition 3 of the Development Consent.

## Operative Provisions

### 1 Planning Agreement under the EPA Act

---

#### 1.1 Status of this Deed

- (a) The Parties agree that this Deed is a planning agreement within the meaning given to that term in section 7.4(1) of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) The planning agreement constituted by this Deed applies to the Land and the Planning Proposal.

### 2 Operation

---

#### 2.1 Commencement

- (a) The Parties agree that this Deed takes effect on the execution of this Deed by all of the Parties to it.
- (b) The party who executes this Deed last is to insert, on page 1, the date on which they did so and provide a copy of the fully executed and dated Deed to all other Parties to this Deed.

### 3 Definitions and Interpretation

---

#### 3.1 Definitions

In this Deed, the following definitions will apply:

**Applicant** means the Nu-Rock Technology Pty Ltd (ABN 12 062 560 169) and Nu-Rock Mt. Piper Pty. Ltd (ABN 44 648 920 156).

**Business Day** means any day except a bank or public holiday throughout New South Wales or a Saturday or Sunday.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action.

**Construction Certificate** means a construction certificate as defined under section 6.4 of the EPA Act, or if the Former Building and Subdivision Provisions apply, section 109C of the EPA Act.

**Contribution** means the ongoing monetary contribution payable by the Applicant, as outlined at clause 6 of this Deed.

**Council** means Lithgow City Council (ABN 59 986 092 492).

**CPI** means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Development Consent** means development consent number DA292/14 granted by Council on 2 October 2015 to the Developer and commencing operation on 6 October 2015 for “Manufacturing plant – fly ash conversion to construction materials” at the Land.

**Developer** means Nu-Rock Technology Pty Ltd (ABN 12 062 560 169).

**Dispute** means a dispute or difference between the parties under or in relation to this Deed.

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

**Explanatory Note** means an explanatory note prepared under clause 25E(1) of the Regulation.

**Applicant’s Development Notice** a notice from the Applicant to the Council, specifying the Applicant intention to proceed with the development of the land in accordance with the terms of the Development Consent and Construction Certificate.

**Land** means the land comprised in Lot 2 in Deposited Plan 702619, otherwise known as Mount Piper Power Station, Boulder Road, Portland NSW 2847.

**Land Owner** means EnergyAustralia NSW Ltd (ABN 75 163 935 635).

**LEP** means the *Lithgow Local Environmental Plan 2014*.

**Modified Development Consent** means modification application number MODDA041/22 granted by Council on 28 September 2022.

**Occupation Certificate** means an occupation certificate as defined under section 6.4 of the EPA Act, or if the Former Building and Subdivision Provisions apply,

section 109C of the EPA Act, and includes an interim Occupation Certificate, a final Occupation Certificate or a partial Occupation Certificate as the case may be.

**Offer** means the offer made by the Developer (in the form of the draft Planning Agreement dated 29 September 2015) to enter into this Deed for the payment of monetary contributions to be spent by Council on community projects and/or activities.

**Parties** means the parties to this Deed.

**Plant** means the manufacturing plant for fly ash conversion to construction materials for which the Development Consent has been granted to the Applicant.

**Public Purpose** means the public purpose to which the Contribution will be applied.

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

### 3.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule or annexure attached to this Deed forms part of it;
- (e) a reference to a party includes its legal personal representatives, successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions; and
- (i) a reference to this Deed means this Deed and includes any variation or replacement of this Deed.

### 3.3 No fettering clause

The Applicant acknowledges that Council cannot fetter in advance the exercise of any of its statutory discretions, whether by way of contract, estoppel or otherwise, in relation to any application relating to the Land to be lodged with the vendor in its capacity as a governmental authority nor pre-determine any decision in respect of any such application.

### **3.4 Warranties**

The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) are able to fully comply with their obligations under this Deed.

### **3.5 Further agreements**

The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

### **3.6 Surrender of right of appeal**

The Applicant is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed in so far as the subject-matter of the proceedings relates to this Deed, unless it is in exercising rights in accordance with clause 7.2(e) of this Deed.

## **4 Section 7.11, 7.12 and 7.24 of the EPA Act**

---

### **4.1 Application of section 7.11, 7.12 and 7.24**

This Deed does not exclude the application of sections 7.11, 7.12 and 7.24 of the EPA Act in respect of any development applications for the future redevelopment of the Land.

### **4.2 Benefits**

Benefits obtained by Council under this Deed are not to be taken into consideration in determining any development contribution under section 7.11 of the EPA Act in respect of any development applications for the future redevelopment of the Land.

### **4.3 Offer by the Applicant**

The Applicant acknowledges that this Deed is in the terms of the Offer made by the Applicant in connection with the Planning Proposal.

## **5 Development Consent**

---

### **5.1 Lodgement of Planning Proposal**

- (a) The Council has granted the Modified Development Consent to the Applicant.
- (b) Condition 3 to the Development Consent provides:

Pursuant to section 80A(1) of the Environmental Planning and Assessment Act the draft Planning Agreement that relates to the Development Application, as per the terms of offer dated 29

September 2015 must be finalised prior to the issue of the Occupation Certificate.

- (c) Pursuant to section 7.4(1)(b) of the EPA Act, on 29 September 2015 the Applicant made an offer to enter into this Deed for the payment of the Contribution to be spent by Council on community projects and/or activities.
- (d) Council agrees to consult the Applicant on the community projects and/or activities for which Council intends to spend Contribution on, however Council will maintain discretion on expenditure if agreement between Council and the Applicant cannot be reached.
- (e) Nothing in this Deed relieves the Applicant of its statutory obligations under the EPA Act to obtain the necessary development consent/s for any future redevelopment of the Land.
- (f) Nothing in this Deed fetters Council's discretion under the EPA Act in assessing and determining as it sees fit any future development applications for a future redevelopment of the Land.

## 6 Contribution

### 6.1 Monetary Contribution

- (a) The Applicant is to pay the ongoing Contribution in the amount of **\$30,000.00** at the end of the first year and every year after that an amount calculated in accordance with the following formula, whichever is the greater:

$$\begin{array}{r}
 \$30,000.00 \quad \times \quad \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this agreement}}
 \end{array}$$

- (b) The parties agree and acknowledge that the Contribution will be used by the Council towards the Public Purpose for community projects and/or activities.
- (c) Despite clause 6.1(b), the Council may apply the Contribution towards any other public purpose which satisfies section 7.4(2) of the Act, other than the Public Purpose, if the Council reasonably considers that the public interest would be better served by applying the Contribution towards that other public purpose.
- (d) The Contribution is to be paid by the Applicant in ongoing instalments as follows:
  - (i) In the amount of **\$60,000.00** with payment to be made before the issue of the Occupation Certificate in relation to the Development Consent; and

- (ii) In the amount of **\$30,000.00** annually and continuing for the life of the Plant to be paid within fourteen (14) days from the date one year following payment made pursuant to clause 6.1(d)(i).
- (e) The Contribution is taken to have been made upon the receipt by Council of the full amount required under this Deed in cash or by unendorsed bank cheque or by the deposit via electronic funds transfer, and clearance of the full amount, into a bank account nominated by Council.

## **7 Dispute Resolution**

---

### **7.1 Dispute resolution – expert determination**

- (a) This clause applies to a Dispute between the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
  - (i) the Parties to the Dispute agree that it can be so determined, and
  - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- (b) Such a Dispute is taken to arise if one party gives another party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 7.1(b), the Parties are to meet within 14 Business Days of the notice in an attempt to resolve the Dispute. At every such conference, each party must be represented by a person having authority to agree to a resolution. All aspects of every such conference, except the fact of the occurrence, will be privileged.
- (d) If, within 28 Business Days of a notice being given, the Parties have not resolved the Dispute, the Dispute must be referred to expert determination and be determined by an expert. If, within a further 10 Business Days, the Parties have not agreed upon an expert, the expert must be nominated by the Australian Commercial Disputes Centre.
- (e) The expert determination must be conducted in accordance with the Guidelines for Expert Determination of the Australian Commercial Disputes Centre. Except where the parties otherwise agree in writing or the Guidelines for Expert Determination of the Australian Commercial Disputes Centre otherwise provide:
  - (i) each party must bear its own costs and pay one half of the expert's fees and expenses;
  - (ii) the expert must not act as an arbitrator; and
  - (iii) the determination of the expert will be final and binding on the Parties.

### **7.2 Dispute Resolution – Mediation**

- (a) This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 7.1 applies.
  - (b) Such a Dispute is taken to arise if one party gives another party a notice in writing specifying particulars of the Dispute.
  - (c) If a notice is given under clause 7.2(b), the Parties are to meet within 14 Business Days of the notice in an attempt to resolve the Dispute.
  - (d) If, within 28 Business Days of a notice being given, the Parties have not resolved the Dispute, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
  - (e) If the Dispute is not resolved by mediation within a further 28 Business Days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
  - (f) Each party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
  - (g) The Parties are to share equally the costs of the President, the mediator, and the mediation.
- 7.3** Nothing in this clause 7 will prejudice the right of a party to institute proceedings to enforce payment due under this Deed or to seek injunctive or urgent declaratory relief.
- 7.4** Notwithstanding the existence of a Dispute, the parties must continue to perform their respective obligations under this Deed unless excused from performance by another provision of this Deed.

## **8 Enforcement**

---

### **8.1 Breach of Deed**

- (a) This clause applies to a breach of the Applicant's obligations under this Deed.
- (b) Council may give the Applicant written notice specifying the particulars of the breach, the means for rectifying the breach (if such exist), the reasonable timeframe for rectification of the breach or compensation Council will accept in a reasonable timeframe in lieu of the rectification of the breach.
- (c) Nothing in this clause prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Applicant, including but not limited to seeking relief in an appropriate court.

---

## **9 Risk**

---

### **9.1 Risk**

The Applicant performs this Deed at its own risk and its own cost.

### **9.2 Release**

The Applicant releases Council from any Claim it may have against Council arising in connection with the performance of the Applicant's obligations under this Deed except if, and to the extent that, the Claim arises because of Council's negligence or default.

### **9.3 Indemnity**

The Applicant indemnifies Council from and against all Claims that may be sustained, suffered, recovered or made against Council arising in connection with the performance of the Applicant's obligations under this Deed except if, and to the extent that, the Claim arises because of Council's negligence or default.

---

## **10 Notices**

---

### **10.1 Notices given under this Deed:**

- (a) must be in writing and clearly readable in the English language;
- (b) must be signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
- (c) may be delivered to a party by hand or by prepaid post to that party's address shown in page 1 of this Deed or to such other address or person as a party may specify by notice given in accordance with this clause.

### **10.2 A notice is taken to be duly given and received:**

- (a) if delivered by hand, when delivered; or
- (b) if delivered by prepaid post, three Business Days after being deposited in the mail with postage prepaid.

**10.3** Despite clause 10.211.2, notices received after 5.00pm in the place of receipt or on a non-Business Day are taken to be received at 9.00am on the next Business Day.

---

## **11 General**

---

### **11.1 Relationship between the Parties**

Except as expressly provided to the contrary in this Deed, nothing in this Deed will constitute the Parties as principal and agent, employer and employee, partners or otherwise liable for the acts or omissions of any other party.

### **11.2 Entire agreement**

This Deed records the entire agreement between the Parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the Parties in relation to the subject matter of this Deed.

### **11.3 Further assurance**

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this Deed.

### **11.4 Counterparts**

This Deed and any variation of this Deed may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

### **11.5 Survival**

All warranties, releases, exclusions and limitations of liability, indemnities, terms with respect to intellectual property and confidential information in this Deed will remain valid and binding following expiry or termination of this Deed. Any other provision by its nature intended to survive expiry or termination of this Deed survives expiry or termination of this Deed.

### **11.6 No waiver**

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this Deed does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

### **11.7 Cumulative rights**

The rights, powers, authorities, discretions and remedies of a party under this Deed do not exclude any other right, power, authority, discretion or remedy.

### **11.8 Severability**

If any provision of this Deed is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (b) where the offending provision cannot be read down then that provision must be severed from the Deed in which event, the remaining provisions of this Deed operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this Deed.

**11.9 Variation**

This Deed can only be amended, supplemented or replaced by another document publicly notified and signed by the Parties in accordance with the Regulation.

**11.10 Governing law and jurisdiction**

This Deed is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this Deed.

**11.11 Explanatory Note**

Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

**12 Costs**

---

- 12.1** The Applicant agrees to pay Council's legal costs incurred to give effect to this Deed including but not limited to, the costs of preparing, negotiating and executing this Deed and any other related document within 28 Business Days of a written demand by Council for such payment.

**Schedule 1 – Development Consent**



**NOTICE OF DETERMINATION  
OF DEVELOPMENT APPLICATION**

(Pursuant to Pt 4, Div 2, Section 81(1)(a) of the Environmental Planning & Assessment Act 1979)

<b>Application No</b>	DA292/14
<b>Applicant's Name &amp; Address</b>	MAROON RAHME C/- NU-ROCK TECHNOLOGY PTY LTD 90/5 WOODLANDS AVE BREAKFAST POINT NSW 2137
<b>Owner's Name(s)</b>	ENERGY AUSTRALIA (NSW) LTD
<b>Land to Be Developed</b>	LOT 103 DP 1164619 MOUNT PIPER POWER STATION BOULDER ROAD PORTLAND NSW 2847
<b>Proposed Development</b>	MANUFACTURING PLANT - FLY ASH CONVERSION TO CONSTRUCTION MATERIALS
<b>Classification of Building(s)</b> <small>(Under Building Code of Australia)</small>	N/A
<b>Determination</b>	Consent granted subject to conditions in attached Schedule A
<b>Integrated Approval Bodies / General Terms of Approval</b>	Nil
<b>Approved Documentation</b>	Nu-Rock Statement of Environmental Effects (dated January 2015), Site Plan, Arquitectos Architects Plans – Site Plans Dwg No. DA-4-1a (dated 13/9/14), Ground Floor Plan Dwg No. DA-4-2a (dated 13/1/15), Section & Elevation # 1 Dwg No. DA-4-3 (dated 13/9/14), Section & Elevations # 2 Dwg No. DA-4-4 (dated 13/9/14), Roof Plan and Stormwater Dwg No. DA-4-5 (dated 13/9/14)
<b>Other Approvals Under Section 68 of Local Government Act 1993</b>	Nil
<b>Consent to Lapse On</b>	6 October 2020 (unless 'physically commenced' in accordance with provisions of the Environmental Planning & Assessment Act 1979)
<b>Consent to Operate from</b>	6 October 2015
<b>Determination Made On</b>	2 October 2015

Notice of Determination of Development Application DA292/14

PO Box 19, LITHGOW NSW 2790  
Tel: (02) 6354 9999 Fax: (02) 63514259  
Web: [www.lithgow.nsw.gov.au](http://www.lithgow.nsw.gov.au) Email: [council@lithgow.nsw.gov.au](mailto:council@lithgow.nsw.gov.au)

<b>Schedules / Attachments</b>	<p>A. Conditions of Consent (Consent Authority)</p> <p>B. Reasons for Imposition of Consent Conditions</p>
<b>Rights of Appeal</b>	<p>In accordance with Section 82A of the Environmental Planning Assessment Act 1979 you may request the Council to review the determination of the application within 6 months from the date of this determination. However, Section 82A does not apply to Designated Development, Integrated Development or State Significant development.</p> <p>If you are dissatisfied with the decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.</p> <p>Section 98 of the Environmental Planning Assessment Act 1979 allows an objector who is dissatisfied with the determination of a consent authority to grant consent to a development application for Designated Development within 28 days after the date on which notice of the determination was given, appeal to the Land and Environment Court.</p>
<b>Name of Authorised Officer</b>	A C Muir
<b>Signature of Authorised Officer</b> (on behalf of the Consent Authority)	
<b>Position of Authorised Officer</b>	Group Manager Environment & Development

## **Schedule A**

### **Conditions of Consent (Consent Authority)**

**Please Note:** It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

#### **ADMINISTRATIVE CONDITIONS**

1. That the development be carried out in accordance with the application, Statement of Environmental Effects, accompanying information, plans listed in the approval and any further information provided during the process unless otherwise modified in red by Council and/or any conditions of this consent.
2. That a Construction Certificate is obtained prior to the commencement of work.
3. Pursuant to section 80A(1) of the Environmental Planning and Assessment Act the draft Planning Agreement that relates to the Development Application, as per the terms of offer dated 29 September 2015 must be finalised prior to the issue of the Construction Certificate.
4. That the applicant make a separate application to the EPA to vary the Environment Protection Licence 20513 prior to commencing activities, to reflect the changes in the schedules activity and activity scale and to incorporate the additional land which will comprise the expanded manufacturing process.
5. Prior to the issue of a Construction Certificate a detailed survey plan is to be provided that satisfies TransGrid's requirements showing that the development will be clear of any TransGrid easements or infrastructure. Following receipt of the detailed survey plan, it shall be provided to TransGrid. The Construction Certificate cannot be issued until TransGrid has formally notified Council of its approval.

#### **WATER NSW REQUIREMENTS**

##### ***General***

6. The site layout and works shall be as specified in the Statement of Environmental Effects (Ver 2; e-mailed on 2 August 2015) prepared by Nu-ROCK Australia (NSW) Pty Ltd and shown on the Site Plan – Sewerage, Stormwater (Dwg. No DA-4-5, Amendment a; dated 18 June 2015) prepared by Arquitectos Architects. No revised site layout or external works that will impact on water quality, shall be permitted without the agreement of Water NSW.

***Domestic Wastewater Management***

7. The septic holding tank and associated sewer pipe shall be designed, located and installed in accordance with Section 4.3 of the Statement of Environmental Effects (Ver 2; e-mailed on 2 August 2015) and the letter to Council (dated 2 August 2015), both prepared by Nu-ROCK Australia (NSW) Pty Ltd and shown on the Site Plan – Sewerage, Stormwater prepared by Arquitectos Architects (Dwg. No DA-4-5, Amendment a; dated 18 June 2015), but with the following specific requirements:
  - the septic holding tank which collects all domestic wastewater generated on the site from amenities, sinks and showers, shall have a minimum volume of 5000 litres and shall be fitted with an outlet filter
  - the septic holding tank shall be connected to a 100mm diameter underground sewer pipe to transfer domestic wastewater from the site to the existing Mt Piper Power Station sewage treatment plant, and
  - there shall be no on-site disposal of domestic wastewater on Lot 103.
8. Appliances and fixtures with at least a four star rating shall be installed in the proposed building to minimise the volume of wastewater produced.

***Stormwater Management***

9. All stormwater treatment and management measures shall be implemented as specified in Section 10 of the Statement of Environmental Effects (Ver 2; e-mailed on 2 August 2015) and the letter to Council (dated 2 August 2015), both prepared by Nu-ROCK Australia (NSW) Pty Ltd, and shown on the Site Plan – Sewerage, Stormwater prepared by Arquitectos Architects (Dwg. No DA-4-5, Amendment a; dated 18 June 2015), except where varied by these conditions.
10. All hardstand areas as shown on the Site Plan – Sewerage, Stormwater (Dwg. No DA-4-5, Amendment a; dated 18 June 2015) prepared by Arquitectos Architects shall be sealed and any stormwater run-off shall be directed to the existing concrete drainage channels on the site and diverted to the existing stormwater treatment system on the Mt Piper Power Station site.
11. No truckwash water or other industrial wash-down water shall be discharged on the site. The truckwash water shall be captured and reused in the manufacturing plant production process.
12. A rainwater collection and reuse system for the proposed manufacturing plant roof shall be installed that incorporates the following specifications and requirements:
  - rainwater tanks with a minimum total capacity of 40,000 litres above any volume required for mains top-up
  - roofs and gutters designed so as to maximise the capture of rainwater in the tanks
  - the tanks plumbed to toilets, showers, industrial water needs, and other areas for non-potable use including use landscape watering, and
  - all rainwater tank overflow shall be directed to the stormwater drainage system on the Mt Piper Power Station site via a series of appropriately sized pits and pipes.
13. No variation to stormwater treatment or management shall be permitted without prior agreement of Water NSW.

***Chemical Management***

14. All chemicals used for the operation shall be appropriately applied and stored in containers in a secure location with concrete floor and appropriate bunding and spill containment, as specified in Section 5.4 of the Statement of Environmental Effects prepared by Nu-ROCK Australia (NSW) Pty Ltd (Ver 2; e-mailed on 2 August 2015). Used chemicals and their containers shall be disposed of at an appropriate licensed facility.

***Other***

15. Conditions 7 to 12 and 14 above shall be carried out prior to the issuance of an Occupation Certificate.

***Construction Activities***

16. An Erosion and Sediment Control Plan shall be prepared by a person with knowledge and experience in the preparation of such plans for all works proposed or required as part of the development. The Plan shall meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004) manual - the "Blue Book" and shall be to the satisfaction of Council.
17. Effective erosion and sediment controls shall be installed prior to any construction activity and shall prevent sediment or polluted water leaving the site or entering any stormwater drain or natural drainage system. The controls shall be regularly maintained and retained until works have been completed and ground surface stabilised or groundcover re-established.

## ADVISORY NOTES

### ***Building Code of Australia Compliance***

- AN1. From the information provided with the application the construction material to be used may be required to satisfy the alternate solutions provisions of the National Construction Code Volume 1 in order to gain a Construction Certificate.
- AN2. The access provisions of Part D3.2 of may not comply with National Construction Code Volume 1 requirements and may need to be addressed by an access consultant in order to satisfy the requirements of the National Construction Code Volume 1 and the Access to Premises Standard.
- AN3. Full identification of fire services and standard of performance will need to form part of the Construction Certificate documentation.

### ***Endeavour Energy***

- AN4. As the proposed development will involve work near electricity infrastructure, workers run the risk of an electric shock causing substantial damage to plant and equipment. Below is the link to Endeavour Energy's public safety training resources, which were developed help general public/workers to understand why you may be at risk and what you can do to work safely:

<http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw+homepage/communitynav/safety/safety+brochures>

## **Schedule B**

### **REASONS FOR CONDITIONS**

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure there is no unacceptable impact on the water quality.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

**Schedule 2– Modified Development Consent**



**NOTICE OF DETERMINATION  
OF SECTION 4.55 MODIFICATION OF CONSENT**  
(Pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979)

<b>Application No</b>	DA292/14
<b>Modification No</b>	MODDA041/22
<b>Applicant's Name &amp; Address</b>	Nu-Rock Technology Pty Ltd 90/5 Woodlands Avenue BREAKFAST POINT NSW 2137
<b>Owner's Name(s)</b>	Energy Australia NSW Pty Ltd
<b>Land to Be Developed</b>	Lot 2 DP 702619 Mount Piper Power Station 350 Boulder Road PORTLAND NSW 2847
<b>Proposed Development</b>	MODIFICATION - MANUFACTURING PLANT - FLY ASH CONVERSION TO CONSTRUCTION MATERIALS,
<b>Classification of Building(s)</b> <small>(Under Building Code of Australia)</small>	N/A
<b>Determination</b>	Consent granted subject to conditions in attached Schedule A
<b>Integrated Approval Bodies / General Terms of Approval</b>	NIL
<b>Approved Documentation</b>	See Condition 1.
<b>Other Approvals Under Section 68 of Local Government Act 1993</b>	NIL
<b>Consent to Lapse On</b>	6 October 2020 (unless 'physically commenced' in accordance with provisions of the Environmental Planning & Assessment Act 1979)

<b>Consent to Operate from</b>	6 October 2015
<b>Determination Made On</b>	28 September 2022
<b>Schedules / Attachments</b>	A. Conditions of Consent (Consent Authority) B. Reasons for Imposition of Consent Conditions
<b>Rights of Appeal</b>	<p>In accordance with Part 8, Division 8.2 of the Environmental Planning Assessment Act 1979 you may request the Council to review the determination of the application within 6 months from the date of this determination. However, this right of review does not apply to Designated Development, Integrated Development or State Significant development.</p> <p>If you are dissatisfied with the decision, Part 8, Division 8.3 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.</p> <p>Part 8, Division 8.3 of the Environmental Planning Assessment Act 1979 allows an objector who is dissatisfied with the determination of a consent authority to grant consent to a development application for Designated Development within 28 days after the date on which notice of the determination was given, appeal to the Land and Environment Court.</p>
<b>Name of Authorised Officer</b>	Paul Cashel
<b>Signature of Authorised Officer</b> (on behalf of the Consent Authority)	
<b>Position of Authorised Officer</b>	Development Manager



## Schedule A

### Conditions of Consent (Consent Authority)

*Please Note: It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.*

#### ADMINISTRATIVE CONDITIONS

1. That the development be carried out in accordance with the application, Statement of Environmental Effects, accompanying information, plans listed in the approval and any further information provided during the process unless otherwise modified in red by Council and/or any conditions of this consent

Plan No.	Plan Name	Date
	<b>Additional Information – Nu-Rock</b>	<b>27/09/2022</b>
	Amended Site Plan & Location Plan	21/3/2022
	Additional Information supplied- Nu-Rock Technology Pty Ltd	5/7/2022, 2/6/2022 & 7/9/2022
	Arquitectos Architects – Ground Floor Plan, Roof Floor Plan, Elevations, Sections	31/1/2015 & 13/9/2014
	Nu-Rock Statement of Environmental Effects	January 2015

*(Amended as per MODDA011/22 dated 27/9/22)*

***(Amended as per MODDA041/22 dated 28/09/2022)***

2. That a Construction Certificate is obtained prior to the commencement of work.
3. Pursuant to section 80A(1) of the Environmental Planning and Assessment Act the draft Planning Agreement that relates to the Development Application, as per the terms of offer dated 29 September 2015 must be finalised prior to the issue of the ~~Construction Certificate~~ **an Occupation Certificate.**  
***(Amended as per MODDA041/22 dated 28/09/2022)***
4. That the applicant make a separate application to the EPA to vary the Environment Protection Licence 20513 prior to commencing activities, to reflect the changes in the schedules activity and activity scale and to incorporate the additional land which will comprise the expanded manufacturing process.
5. Prior to the issue of a Construction Certificate a detailed survey plan is to be provided that satisfies TransGrid's requirements showing that the development will be clear of any TransGrid easements or infrastructure. Following receipt of the detailed survey plan, it shall be provided to TransGrid. The Construction Certificate cannot be issued until TransGrid has formally notified Council of its approval.

#### WATER NSW REQUIREMENTS

##### **General**

6. The site layout and works shall be as specified in the Statement of Environmental Effects (Ver 2; e-mailed on 2 August 2015) prepared by Nu-ROCK Australia (NSW) Pty Ltd and shown on the Site Stormwater Layout Plan (Job No. 17003, Sheet: C01, Rev 1, dated

31.08.22) prepared by A & G Consulting Engineers Pty Ltd. No revised site layout or external works that will impact on water quality, shall be permitted without the agreement of Water NSW.

*(Amended as per MODDA011/22 dated 27/9/22)*

7. The aerated wastewater treatment system (AWTS) shall be designed, located, and installed in accordance with the recommendations in Designing and Installing On-Site Wastewater Systems (WaterNSW, 2019). The system shall:

- ensure AWTS collects all domestic wastewater generated on the site from amenities, sinks and showers, and
- have a minimum treatment capacity of 2000 litres.

*(Amended as per MODDA011/22 dated 27/9/22)*

- 7a. There shall be no on-site disposal of domestic wastewater on Lot 2 DP 702619.

*(Added as per MODDA011/22 dated 27/9/22)*

8. Appliances and fixtures with at least a four star rating shall be installed in the proposed building to minimise the volume of wastewater produced.

***Stormwater Management***

9. All stormwater treatment and management measures shall be implemented as as per the Site Stormwater Layout Plan and Details (Job No. 17003, Sheet Nos: C01 and C02, Rev 1, dated 31.08.22) prepared by A & G Consulting Engineers Pty Ltd. Stormwater management measures shall include:

- pits, pipes and inlet filters (OceanGuard or Water NSW endorsed equivalent)
- rainwater collection and reuse systems, and
- bioretention swale.

*(Amended as per MODDA011/22 dated 27/9/22)*

~~10.~~ *(Removed as per MODDA011/22 dated 27/9/22)*

11. No truckwash water or other industrial wash-down water shall be discharged on the site. The truckwash water shall be captured and reused in the manufacturing plant production process.

12. A rainwater collection and reuse system for the proposed manufacturing plant roof shall be installed that incorporates the following specifications and requirements:

- rainwater tanks with a minimum total capacity of 50,000 litres above any volume required for mains top-up
- roofs and gutters designed so as to maximise the capture of rainwater in the tanks
- the tanks plumbed to toilets, showers, industrial water needs, and other areas for non-potable use including use landscape watering, and
- all rainwater tank overflow shall be directed to the bioretention swale or existing stormwater drainage structures.

*(Amended as per MODDA011/22 dated 27/9/22)*

13. The bioretention swale shall:

- be designed consistent with Adoption Guidelines for Stormwater Biofiltration Systems Version 2 (Payne et al, 2015, Melbourne, CRC for Water Sensitive Cities)

- have a minimum swale width of 1.8 metres
- have a minimum swale depth of 0.2 metres
- also incorporate the following:
  - a minimum filter area of 76 square metres
  - a filter depth (excluding transition layers) of 500 mm above the underdrains
  - a filter media consisting of a clean sandy loam with a certified median particle diameter of 0.5 mm, a maximum orthophosphate concentration of 40 mg/kg and a maximum total nitrogen concentration of 400 mg/kg
- be planted with appropriate deep-rooted, moisture-tolerant vegetation protected by rock mulch (grass and turf is not appropriate vegetation and organic mulch is not suitable)
- direct all discharge and overflow to the existing stormwater drainage structures via an armoured discharge point such that discharge does not cause erosion
- be accessible from driveway by machinery to facilitate cleaning, monitoring, and maintenance of the structures
- be constructed after all hardstand areas have been paved or sealed and all ground surfaces have been stabilised
- be permanently protected from heavy vehicle damage by guardrails, castellated kerb, bollards, or similar structures, with a sign to be erected to advise of its nature and purpose in water quality management, and
- be protected by sediment and erosion control measures during any construction and post-construction phase until the ground surface is re-vegetated or stabilised.

*(Amended as per MODDA011/22 dated 27/9/22)*

**Chemical Management**

14. All chemicals used for the operation shall be appropriately applied and stored in containers in a secure location with concrete floor and appropriate bunding and spill containment, as specified in Section 5.4 of the Statement of Environmental Effects prepared by Nu-ROCK Australia (NSW) Pty Ltd (Ver 2; e-mailed on 2 August 2015). Used chemicals and their containers shall be disposed of at an appropriate licensed facility.

**Other**

15. No variation to wastewater and stormwater treatment and/or management shall be permitted without prior agreement of Water NSW.

*(Amended as per MODDA011/22 dated 27/9/22)*

**Construction Activities**

16. A Soil and Water Management Plan shall be prepared by a person with knowledge and experience in the preparation of such plans for all works proposed or required as part of the development. The Plan shall:
- be prepared prior to the issuance of a Construction Certificate and be to the satisfaction of Council
  - meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004) manual
  - include controls that prevent sediment or polluted water leaving the site or entering any stormwater drain or natural drainage system.

*(Amended as per MODDA011/22 dated 27/9/22)*

17. The Soil and Water Management Plan shall be implemented, and no works shall commence until effective erosion and sediment controls have been installed. The controls shall be regularly maintained and retained until works have been completed and ground surface stabilised or groundcover re-established.  
*(Amended as per MODDA011/22 dated 27/9/22)*

***Operational Environmental Management Plan***

18. Operational Environmental Management Plan shall be prepared by a person with knowledge and experience in the preparation of such plans. The Plan shall:
- be prepared in consultation with Water NSW prior to the issuance of an Occupation Certificate
  - include details on the location, description, and nature of stormwater management structures such as pits, pipes, inlet filters, bioretention swale, and rainwater collection systems
  - include details on the location, description, and nature of wastewater treatment system and reuse structures
  - outline details on the location, storage, use and management of chemicals
  - outline the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all stormwater management structures, including the frequency of such activities
  - identify the individuals or positions responsible for inspection and maintenance activities including a reporting protocol and hierarchy, and
  - include checklists for recording inspections and maintenance activities, particularly for bioretention swale. All stormwater treatment devices, wastewater treatment and chemical management shall be monitored, maintained, and managed as per the Operational Environmental Management Plan.

*(Added as per MODDA011/22 dated 27/9/22)*

## ADVISORY NOTES

### ***Building Code of Australia Compliance***

- AN1. From the information provided with the application the construction material to be used may be required to satisfy the alternate solutions provisions of the National Construction Code Volume 1 in order to gain a Construction Certificate.
- AN2. The access provisions of Part D3.2 of may not comply with National Construction Code Volume 1 requirements and may need to be addressed by an access consultant in order to satisfy the requirements of the National Construction Code Volume 1 and the Access to Premises Standard.
- AN3. Full identification of fire services and standard of performance will need to form part of the Construction Certificate documentation.

### ***Endeavour Energy***

- AN4. As the proposed development will involve work near electricity infrastructure, workers run the risk of an electric shock causing substantial damage to plant and equipment. Below is the link to Endeavour Energy's public safety training resources, which were developed help general public/workers to understand why you may be at risk and what you can do to work safely:

<http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw+homepage/communitynav/safety/safety+brochures>

## **Schedule B**

### **Reasons for Imposition of Consent Conditions (Issued by Consent Authority)**

The conditions of consent have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure there is no unacceptable impact on the water quality.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

## **Schedule B**

### **Reasons for Imposition of Consent Conditions (Issued by Consent Authority)**

The conditions of consent have been imposed for the following reasons:

1. To ensure compliance with the terms of the relevant Planning Instruments
2. To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
3. Due to the circumstances of the case and the public interest.
4. To ensure that adequate road and drainage works are provided.
5. To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities.
6. To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities
7. To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
8. To ensure the structural integrity of the development.
9. To ensure the protection of the health and safety of the occupants of the development.
10. To protect the environment.
11. To prevent, minimise, and/or offset adverse environmental impacts.
12. To ensure lots are adequately serviced.
13. To ensure there is no unacceptable impact on the water quality.
14. To ensure compliance with the requirements of the Rural Fire Services.
15. To ensure adequate soil conservation and protect against movement of soil and sediments.



---

**Executed as a Deed**

---

**Executed by  
Lithgow City Council (ABN 59 986  
092 492) by its authorised officers:**

---

Signature of Authorised Officer

---

Signature of Witness

---

Name and Position of Authorised Officer

---

Name of Witness

**Executed by  
Nu-Rock Technology Pty Ltd (ABN 12  
062 560 169) in accordance with section  
127(1) of the *Corporations Act 2001*  
(Cth):**

---

Signature of Director/Company Secretary

---

Signature of Director

---

Name of Director/Company Secretary

---

Name of Director

**Executed by  
Nu-Rock Mt. Piper Pty Ltd (ABN 44 648  
920 156) in accordance with section  
127(1) of the *Corporations Act 2001*  
(Cth):**

---

Signature of Director/Company Secretary

---

Signature of Director

---

Name of Director/Company Secretary

---

Name of Director