

DATED

1 23<sup>RD</sup> JUNE

2022

(1) HANSON QUARRY PRODUCTS EUROPE LIMITED

and

(2) RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

## PLANNING OBLIGATION BY DEED OF AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

relating to land at Craig Yr Hesg Quarry, Berw Road, Pontypridd

Planning application ref: 21/0720/15

Appeal ref: APP/L6940/A/21/3282880

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THIS DEED OF AGREEMENT is made on

23<sup>RD</sup> JUNE

2022

**BETWEEN**

- (1) **HANSON QUARRY PRODUCTS EUROPE LIMITED** (Company Registration Number 00300002) of Hanson House, 14 Castle Hill, Maidenhead SL6 4JJ (**Owner**); and
- (2) **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL** whose principal office is at The Pavilions, Cambrian Park, Clydach Vale CF40 2XX (**Authority**).

**IT IS AGREED THAT**

**1. DEFINITIONS**

In this deed of agreement (except where the context otherwise requires):

<b>Act:</b>	the Town and Country Planning Act 1990 (as amended).
<b>Appeal:</b>	means the appeal against the Council's refusal to grant planning permission pursuant to the Application allocated reference APP/L6940/A/21/3282880
<b>Application:</b>	an application dated 24 May 2021 with reference 21/0720/15 for the continuation of quarrying and related operations without complying with conditions 1-4 inclusive and conditions 45 & 46 imposed on the Environment Act ROMP schedule of conditions issued by Rhondda Cynon Taf County Borough Council on 24 April 2013 ref:08/1380/10
<b>Commencement of Development:</b>	the commencement of Development in accordance with section 56(1) of the Act
<b>Contribution Date:</b>	each anniversary of the Commencement of Development
<b>Decision Letter:</b>	the decision letter to be issued by the Welsh Ministers confirming whether the Appeal is upheld or refused
<b>Development:</b>	the carrying out of development at the Site pursuant to the Planning Permission and documents and plans referred to therein
<b>Existing Mineral Planning Permissions:</b>	the planning permissions referred to within the list set out at Schedule 1 relating to winning and working of minerals in relation to part of the Site as

	reviewed in accordance with the relevant provisions of the Environment Act 1995
<b>Existing S106 Agreement:</b>	the agreement dated 20 August 1993 and made between Mid Glamorgan County Council (1) Taf Ely Borough Council (2) ARC (Western) Limited (3) and ARC South Wales Limited (4) requiring inter alia quarry operations at part of the Site to be undertaken in accordance with a particular planning permission
<b>Index:</b>	the Retail Prices Index (all items) published by the Office for National Statistics, or any index amending or replacing it.
<b>Index Review Date:</b>	the date of Commencement of Development and each anniversary of it
<b>Monitoring Contribution:</b>	an annual financial contribution of up to the Monitoring Contribution Limit payable in respect of costs incurred by the Authority in the year up to and including the Contribution Date in carrying out air quality monitoring including all incidental costs incurred in undertaking such monitoring within 550 metres of the boundary of the Site
<b>Monitoring Contribution Limit:</b>	the sum of £5,562 (exclusive of VAT) subject to review in accordance with clause 5.5
<b>Monitoring Period:</b>	the period from and including Commencement of Development to and including the date on which extraction and processing of minerals pursuant to the Planning Permission ceases or if earlier the date on which the Authority cease air quality monitoring due to the Development.
<b>Planning Permission:</b>	the planning permission to be granted by the Welsh Ministers following determination of the Appeal and any subsequent planning permission granted pursuant to section 73 of the Act to develop the Site without compliance with conditions attached to the Planning Permission
<b>Plan 1:</b>	the plan reference C10m/136 attached to this deed of agreement as Appendix 1
<b>Set-up Contribution:</b>	a financial contribution of £1,591 (exclusive of VAT) in respect of the set-up costs to be incurred by the Authority in preparation for carrying out air quality

monitoring within 550 metres of the boundary of the Site

**Site:** the land the subject of the Application shown for the purposes of identification only edged red but excluding those parts coloured yellow on Plan 1 being land at Craig Yr Hesg Quarry, Berw Road, Pontypridd

**Suspension Period:** any period beyond a period of 12 consecutive months when no works have been undertaken in accordance with the Planning Permission

**Welsh Ministers:** a Minister appointed under section 46 or 48 of the Government of Wales Act 2006

- 1.1 References to the masculine, feminine and neuter genders shall include the other genders.
- 1.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.
- 1.3 References to natural persons are to include corporation and vice versa.
- 1.4 Headings in this deed of agreement are for reference purposes only and shall not be taken into account in its construction or interpretation.
- 1.5 The expressions Owner and Authority shall include their respective successors in title and assigns.
- 1.6 A reference to a clause, paragraph or schedule is (unless the context otherwise requires) a reference to a clause, paragraph or schedule of this deed of agreement.
- 1.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.
- 1.8 Where in this deed of agreement a party includes more than one person any obligations of that party shall be joint and several.
- 1.9 Any references in this deed of agreement to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

## **2. INFORMATION**

- 2.1 The Owner is the registered proprietor of a leasehold surface interest in that part of the Site coloured green on Plan 1 registered at the Land Registry with title number WA689401.
- 2.2 The Owner is the registered proprietor of the freehold surface interest in the part of the Site coloured blue on Plan 1 registered at the Land Registry with title number CYM706100, together with other land.
- 2.3 Save for those parts coloured yellow on Plan 1 the Owner is the registered proprietor of the freehold interest in the remainder of the Site registered at the Land Registry with title numbers CYM706100 CYM678259 and WA698404.
- 2.4 The Authority is the mineral planning authority for the purposes of the Application and the Act and for the Site.
- 2.5 The Owner has by the Application applied to the Authority to carry out the Development on the Site.
- 2.6 The Authority has refused to grant planning permission pursuant to the Application.
- 2.7 The Owner has submitted the Appeal following the Authority's refusal to grant planning permission pursuant to the Application.

## **3. STATUTORY AUTHORITY AND LEGAL EFFECT**

- 3.1 This deed of agreement is made pursuant to section 106 of the Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity to this deed of agreement.
- 3.2 The obligations of the Owner in this deed of agreement are planning obligations for the purposes of section 106 of the Act and are enforceable by the Authority as Mineral Planning Authority.
- 3.3 Subject to clause 3.4, the Owner covenants with the Authority to the intent that this deed of agreement shall be enforceable without limit of time (other than as expressly mentioned in this deed of agreement) against the Owner respectively and any person deriving title through or under them to the Site or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 3.4 No person shall be bound by any obligations, rights and duties contained in this deed of agreement and/or be liable for any breach of a covenant and/or obligation contained in this deed of agreement after they shall have parted with all interest in the Site or the part in respect of which such obligation relates or such breach occurs provided that they shall remain liable for any subsisting breach of covenant prior to parting with their interest.

- 3.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this deed of agreement and/or be liable for any breach of a covenant and/or obligation contained in this deed of agreement in respect of any site used only as an electricity substation, gas governor or pumping station.
- 3.6 If the Planning Permission expires (within the meaning of sections 91, 92 or 93 of the Act) or is revoked or is quashed following a successful legal challenge or otherwise withdrawn this deed of agreement shall forthwith determine and cease to have effect and the Authority shall forthwith cause the cancellation of all entries made in the Register of Local Land Charges in respect of this deed of agreement at no cost to the Owner.
- 3.7 Nothing in this deed of agreement shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed of agreement.
- 3.8 Nothing in this deed of agreement shall be construed as restricting the exercise by the Authority of any powers exercisable by it under the Act or under any other statute or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

#### **4. CONDITION PRECEDENT**

- 4.1 The planning obligations contained in this deed of agreement shall not be enforceable by the Authority until the date of Commencement of Development other than the provisions of clauses 5.2, 5.3, 7, 10.1 and 11 which shall be enforceable from the date of this deed of agreement.
- 4.2 The Deed shall be null and void if for any reason the Welsh Ministers decides not to grant the Planning Permission for the Development pursuant to the Appeal.
- 4.3 In the event that the Welsh Ministers makes a finding and expressly states within the Decision Letter that any of the individual planning obligations in this deed (or part of said planning obligations) are not in accordance with the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) then such obligation(s) (or part of such obligation) herein as is so identified by the Welsh Ministers shall not be enforceable and shall cease to have effect notwithstanding the remaining provisions of this deed which (for the avoidance of doubt) shall take effect and remain in effect and enforceable.

#### **5. OBLIGATIONS**

- 5.1 The Owner covenants with the Authority that they will not from the date of Commencement of Development carry out further winning and working of minerals on the Site pursuant to the Existing Mineral Planning Permissions.
- 5.2 The Owner covenants with the Authority to pay the Set-up Contribution on the date of this deed of agreement.

- 5.3 The Owner shall give the Authority not less than seven days' notice in writing in advance of the date of Commencement of Development
- 5.4 Subject to clause 5.5 below the Owner covenants with the Authority to pay the Monitoring Contribution within 28 days of receipt of an invoice from the Authority specifying the amount due.
- 5.5 No Monitoring Contribution shall be payable for any period during the Monitoring Period when no air quality monitoring (as described in the definition of the Monitoring Contribution) cost is incurred by the Authority and/or for any period comprising a Suspension Period.
- 5.6 The Monitoring Contribution Limit shall be reviewed on each Index Review Date to equal:
- (a)  $A \times (B / C)$   
where
    - A is the sum of £5,562,
    - B is the index value for the Index for the month immediately before the month in which the relevant Index Review Date falls; and
    - C is the index value of the Index for the month of April 2019
  - (b) If the reference base used to compile the Index changes after the date of this deed of agreement, the figure taken to be shown in the Index after the change is to be the figure that would have been shown in the Index if the reference base current at the date of this deed of agreement had been retained.
- 5.7 The Authority covenants with the Owner that:
- (a) if for any reason the Welsh Ministers decides not to grant the Planning Permission for the Development pursuant to the Appeal it will refund the Set-up Contribution paid in accordance with clause 5.2 above to the Owner within 10 working days of any such decision;
  - (b) if Commencement of Development does not take place within 5 years of the grant of the Planning Permission then it will refund any part of the Set-up Contribution that has not been expended (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) in accordance with the terms of this deed of agreement to the Owner;
  - (c) it will expend the Set-up Contribution only on set-up costs relating to preparation for air quality monitoring within 550 metres of the boundary of the Site; and
  - (d) it will expend the Monitoring Contribution only on air quality monitoring within 550 metres of the boundary of the Site.
- 5.8 The Authority agrees with the Owner to grant the Planning Permission as soon as is reasonably practicable after completion of this deed of agreement.



**6. EXISTING SECTION 106 AGREEMENT**

- 6.1 On the date of Commencement of Development the Existing S106 Agreement is discharged and for the avoidance of doubt the Owner and their successors in title assigns and those deriving title from them are released from all obligations and covenants within the Existing S106 Agreement.
- 6.2 The Authority confirms to the Owner that the reference in the Existing S106 Agreement to the 1993 Permission is a reference to that permission from time to time such that the updated conditions applied to it by virtue of a determination of conditions (Reference 08/1380/10) dated 24 April 2013 should be considered part of that permission.

**7. COSTS**

The Owner agrees to pay to the Authority on the signing of this deed of agreement their reasonable costs and disbursements which are incidental to the preparation and execution of this deed of agreement up to a maximum of £1,000 with no VAT being payable.

**8. INVALIDITY**

It is agreed and declared that if any clause or sub-clause of this deed of agreement shall be deemed to be unenforceable or ultra vires the remainder of this deed of agreement shall remain in full force and effect provided severance from this deed of agreement is possible.

**9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing contained in this deed of agreement shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Authority and to the specific person executing this deed of agreement as the Owner and their successors (if any) as defined in this deed of agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 ("1999 Act") and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of the 1999 Act shall have any rights of enforcement in respect of any matter contained in this deed of agreement.

**10. OTHER MATTERS**

- 10.1 The Owner agrees with the Authority to give the Authority written notice of any change in ownership of any of their respective interests in the Site occurring before all the obligations under this deed of agreement have been discharged such notice to give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.
- 10.2 The provisions of section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this deed of agreement and any such notice of approval shall be in writing and shall specifically refer to the name, date and

parties to this deed of agreement and shall cite the number and clause of this deed of agreement to which it relates.

10.3 This deed of agreement shall be registered as a Local Land Charge.

**11. JURISDICTION**

This deed of agreement is governed by and interpreted in accordance with the law of England and Wales as applied in Wales.

**IN WITNESS** of which the Parties have executed this agreement as a Deed and have delivered it upon dating the day and year first before written.

**SCHEDULE 1**

**CONFIDENTIAL INFORMATION**

1. Planning permission with reference 56/86/0827 dated 20 August 1993;
2. Planning permission with reference 349/Z/970 dated 27 January 1970;
3. Planning permission with reference P.22/2/596 dated 20 August 1965; and
4. Planning permission with reference 5183 dated 7 January 1949.

all subject to the conditions contained in a determination following review of those permissions pursuant to the Environment Act 1995 dated 24 April 2013 Reference 08/1380/10.

EXECUTED as a DEED by HANSON QUARRY )  
PRODUCTS EUROPE LIMITED )  
acting by: )

*[Signature]*  
.....  
Director

*Wendy F. Rogers*  
.....  
Director/Secretary

THE COMMON SEAL of RHONDDA CYNON )  
TAF COUNTY BOROUGH COUNCIL was )  
affixed to this Deed of Agreement in the presence )  
of:

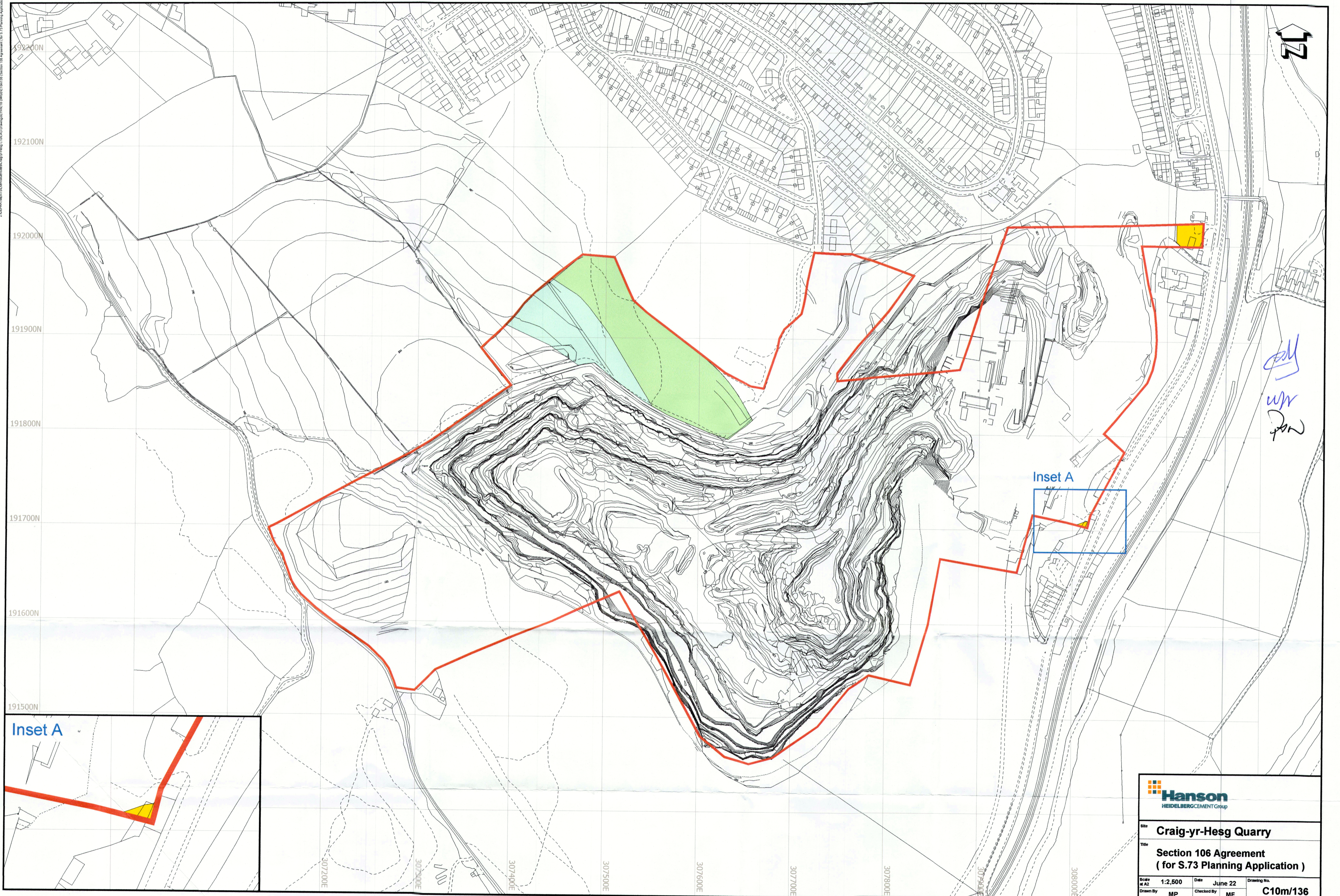
*[Signature]*  
.....  
Authorised Signatory



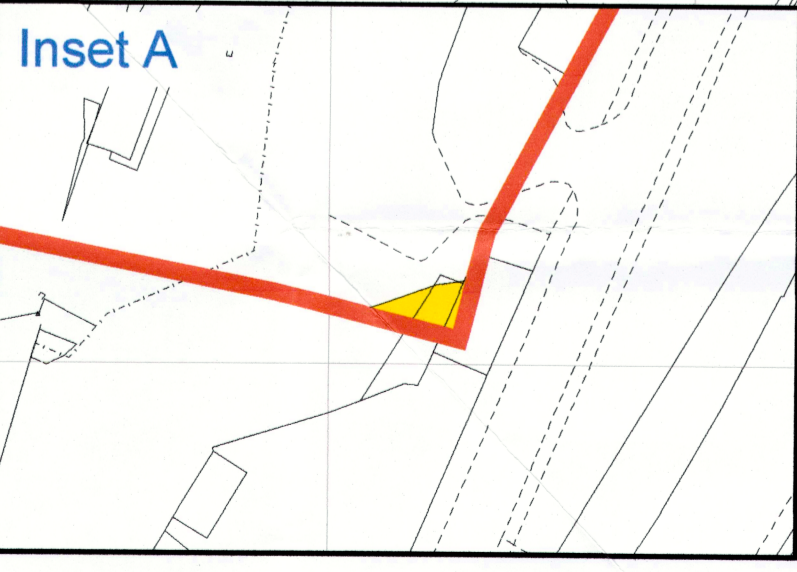
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AUTHORITY	
MINUTE No.	
SUB. CTTEE	
CTTEE	SCHEME OF
DATE	DELEGATION
SU.	P.P.
CTTES	
CHAIRMAN	
VICE CHAIRMAN	
DATE	
CERTIFIED	SAM

APPENDIX 1 – PLAN 1




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*Handwritten signature in blue ink*

 HEIDELBERGCEMENT Group			
<b>Craig-yr-Hesg Quarry</b>			
<b>Section 106 Agreement ( for S.73 Planning Application )</b>			
Scale at A2	1:2,500	Date	June 22
Drawn By	MP	Checked By	MF
			Drawing No. <b>C10m/136</b>