

Deed of Agreement

Eurobodalla Shire Council (**the Council**)
Maureen Hollis (**Hollis**)

Deed of Agreement

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Details

Date

10 April 2003

Parties

Name	Eurobodalla Shire Council
Short form name	the Council
Notice details	of Campbell Street, Moruya in New South Wales, 2537
Name	Maureen Hollis
Short form name	Hollis
Notice details	of 3 Hay Avenue, Shoalhaven Heads in New South Wales, 2535

Background

- A. The Council has granted deferred commencement consent to Hollis for designated development application No. 848/02 ('the Development Consent') for a Hard Rock Quarry ('the Development') on the land described in the development application.
- B. The Development Consent is the subject of a Class 1 application in the New South Wales Land and Environment Court No. 10775 of 2002 ('the Proceedings').
- C. The Council has agreed to amend condition 1 of its proposed Conditions of Consent for the Development Consent on the terms set out in this Deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Agreed sum means the sum of \$17,000

Contribution means the contribution per tonne of material extracted over the life of the Development as specified in clause 3.1

Court means the Land and Environment Court of New South Wales

Land means those parts of lot 31 DP 854280 and 106 DP 752156 Nerrigundah Mountain Road, Bodalla described in the development application as the land on which the development will be carried out

1.2 Interpretation

In this Deed, unless otherwise indicated by the context:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of this Deed;
- (c) reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Deed;
- (d) where any word or phrase is given a definite meaning by this Deed, any part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) an expression importing a natural person included a body corporate, partnership, joint venture or association;
- (f) reference to a statute or regulation includes all amendments, consolidations or replacements thereof;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed;
- (i) a reference to a body, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (j) a reference to Hollis shall include her executors, administrators and assigns;
- (k) a reference to the Council shall include its successors and assigns.

2. Agreement to pay the Agreed Sum

2.1 Payment of the Agreed Sum

Hollis agrees to pay the Council the Agreed Sum within 14 days from the grant of development consent by the Court.

2.2 Refund by the Council

If the development consent lapses, the Council will refund any unexpended portion of the Agreed Sum within 14 days of the Council receiving a request by or on behalf of Hollis for a refund.

3. Agreement to pay Contribution

3.1 Payment of Contribution

Hollis agrees to:

(a) pay to the Council a contribution per tonne at the following rates:

- | | | |
|-------|-------------------------|-------------------|
| (i) | Non-specified road base | \$0.20 per tonne; |
| (ii) | Specified road base | \$0.35 per tonne; |
| (iii) | Aggregates | \$0.35 per tonne |

for material extracted over the life of the Development ('the Contribution').

(b) lodge a return with the Council detailing the volume of all material extracted, including specifying the volume for each Non-Specified road base, Specified road base and Aggregates, ('the Return') within 14 days of the end of each quarter.

(c) pay the Contribution quarterly within 14 days of lodging the Return to Council.

(d) upon request, to answer questions and to provide information to the Council about material extracted from the Development.

(e) allow the Council to undertake inspection of all records it holds in relation to the volume of material extracted from the Development, including records relating to each of the Non-Specified road base, Specified road base and Aggregates on 3 days written notice by the Council to Hollis.

3.2 Commencement of Returns

The obligation to lodge returns and to pay Contributions under clause 3.1 shall commence at the end of the first quarter in which extraction commences from the Development.

4. Contribution Review

The Contribution must be reviewed on the first day of July each year that the Development continues. The Council may increase (measured as a percentage) the Contribution in accordance with the increase (measured as a percentage) of the national CPI in the previous 12 months.

5. Council's Obligations

In consideration of the Agreed Sum and the Contribution paid to the Council by Hollis, the Council will amend Condition 1 of the Council's without prejudice Conditions of Consent in the Proceedings to provide:

- ‘1. The applicant must satisfy the council that the following upgrades have been completed:
- (a) The removal/relocation of the existing power pole on the south-western corner of the Eurobodalla Road and Princes highway;
 - (b) The placement of Give Way signs at Tyrone Bridge;
 - (c) The removal of a large eucalypt tree on the Eurobodalla Road, below Sutcliffe Street;
 - (d) The trimming of vegetation to improve sight distance at the intersection of Eurobodalla Road and Nerrigundah Mountain Road;
 - (e) The junction of Nerrigundah Mountain Road with Eurobodalla Road is provided with suitable warning signage to address the deficient sight distance;
 - (f) The pavement on the north-eastern corner of the Eurobodalla and Nerrigundah Mountain Road intersection be widened to allow a truck turning left toward Bodalla to clear a truck waiting on Nerrigundah Road to cross Tyrone Bridge;
 - (g) The rectification of the vertical alignment of the Tyrone Bridge prior to commercial quarrying activities commencing on the site; and
 - (h) The removal of some parts of the embankment within the road reserve Eurobodalla Road north of the intersection with Nerrigundah Mountain Road to improve sight distances to the reasonable satisfaction of the Council’s Technical Services and Property Manager.

6. Use of the Agreed Sum and Contribution

- (a) The Agreed Sum and the Contribution will be used by Council to undertake the works specified in condition 1 of the consent as outlined in clause 5 above.
- (b) The Contribution will be used by Council to address the impact of the Development on those sections of Eurobodalla and Nerrigundah Mountain Roads used as part of the haul route.

7. Rights and obligations of each Party

7.1 Operation of Rights and Obligations

The rights and obligations of Hollis and the Council under this deed will only arise if the Court grants consent to the development application (‘Development Consent’).

7.2 Credit allocation

If the Development Consent granted by the Court contains conditions requiring Hollis to carry out road works and maintenance in excess of the works required by condition 1 of the development consent set out in clause 5 of this deed, the cost of those works will be treated as a credit against the contributions which would otherwise be payable by Hollis under clause 3.1 of this deed.

8. Agreement to register public positive covenant

The parties agree that the obligations imposed on Hollis, her successors and assigns by this deed shall be incorporated into a public positive covenant to be registered on the title to the land pursuant to section 88E of the *Conveyancing Act 1919* (NSW).

9. Legal Costs and Disbursements

Each party will pay its own legal costs in the preparation and completion of this deed and all stamp duty payable on this deed.

10. Governing Law and Jurisdiction

This deed is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

11. Assignment

11.1 Assignment requires Council's consent

Hollis may assign her rights and obligations this Deed but only with the prior written consent of the Council. The Council must not unreasonably withhold its consent.

11.2 Need to obtain further like Deed

Subject always to Clause 11.1, if Hollis:

- (a) sells the Land; or
- (b) grants to another person the right to Carry out the Development

then, as a term of any such sale or the grant of any such right, she must require the purchaser or grantee (as the case may be) to enter into another Deed with the Council in like terms to this Deed.

12. Further Assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this deed.

13. Goods and Services Tax

Amounts expressed to be payable under this Deed do not include Goods and Services Tax within the meaning of the A New Tax System (Goods and Services Tax) Act 1999.

Signing page

EXECUTED as a Deed on the date set out on the commencement of this Deed.

Signed sealed and delivered by Maureen Hollis in the presence of

Signature of witness

Name of witness (print)

Maureen Hollis

Executed on behalf of Eurobodalla Shire Council by its General Manager, James Levy in the presence of

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Signature of witness

Name of witness (print)

James Levy
General Manager