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DATED:

2019

**Eurobodalla Shire Council**  
(the Council)

**Maureen Hollis**  
(Hollis)

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**VOLUNTARY PLANNING AGREEMENT**

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9<sup>th</sup> Floor, Canberra House, 40 Marcus Clarke Street, Canberra ACT 2601  
GPO Box 240 Canberra ACT 2601 | DX 5626 Canberra | [www.ballawyers.com.au](http://www.ballawyers.com.au)  
T: 02 6274 0999 | F: 02 6274 0888  
Our Ref: 182651

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# VOLUNTARY PLANNING AGREEMENT

**DATE:** 2019

**PARTIES:** Eurobodalla Shire Council of Vulcan Street, Moruya in NSW 2537  
(the Council)

Maureen Hollis of  
(Hollis)

## RECITALS

- A. In 2003 the Council granted a deferred commencement development consent to Hollis (DA No. 848/02) for the operation of a Hard Rock Quarry on part of lot 31 DP854280 and part of lot 106 DP752156 at Bodalla. This development consent included conditions which required Hollis to undertake road works on the haul roads associated with the quarry.
- B. The 2003 Consent was the subject of Court proceedings (*Motbey v Hollis and Eurobodalla Shire Council* [2003] NSWLEC 40). As part of those proceedings the Council agreed to amend condition 1 of the proposed conditions of consent on the terms set out in a Deed of Agreement between Council and Hollis dated 10 April 2003 (**the Agreement**).
- C. On 10 January 2017 Hollis submitted a further Development Application (No. 366/17) to substantially expand the Development footprint, to increase the annual limit of extraction and to expand the life of the quarry.
- D. As part of its Development Application, Hollis made an offer to enter into a voluntary planning agreement under s.7.4 of the Act with the Council under which she agrees to continue to pay the levy previously described in the Agreement.
- E. This Development Application was assessed by the Southern Regional Planning Panel and was granted consent subject to conditions on 4 December 2017 (**the Development Consent**).
- F. Condition 3 of the Development Consent requires Hollis to enter into a voluntary planning agreement with the Council in accordance with the terms of her offer prior to the commencement of works or use.

## 1. DEFINITIONS & INTERPRETATION

### 1.1 Specific Definitions

In this Agreement unless the context requires otherwise:

- (a) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW);
- (b) **Agreement** means the agreement between the parties constituted by this Agreement and “this Agreement” shall have a corresponding meaning and shall include all schedules, appendices, exhibits and annexures to this Agreement;
- (c) **Authority** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an “accredited certifier” as that term is defined in the Act;
- (d) **Business Day** means a day on which trading banks are open for ordinary business in New South Wales;

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- (e) **Contribution** means the contribution per tonne of material extracted over the life of the Development as specified in cl.5;
- (f) **Costs** means external costs, charges and expenses, including those incurred in connection with consultants and advisers;
- (g) **Council** means Eurobodalla Shire Council;
- (h) **Council's Policy** means the Council's *Planning Agreements Policy*, adopted by the Council on 27 June 2017;
- (i) **Court** means the Land and Environment Court of New South Wales;
- (j) **Development** means the development or any part of the development approved in the Development Consent and any subsequent modification of the Development Consent;
- (k) **Development Application** has the meaning given to that term under the Act;
- (l) **Development Consent** means consent to Development Application No. 366/17, for the expansion of the existing quarry;
- (m) **Encumbrance** in relation to any land, means any:
- (i) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title Conservation; or
  - (ii) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
  - (iii) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive Covenant, lease, or licence to use or occupy; or
  - (iv) third party right or interest or any right arising as a consequence of the enforcement of a judgment,
- or any agreement to create any of them or allow them to exist, in respect of that land;
- (n) **Explanatory Note** means the explanatory note in relation to the Planning Agreement, as required by cl.25E of the Regulations, and attached as [Annexure B](#);
- (o) **Land** means the land to which the Development Consent applies, being lot 1 DP 1165095 Nerrigundah Mountain Road Eurobodalla;
- (p) **Law** means
- (i) the common law including principles of equity; and
  - (ii) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,
- presently applying or as they may apply in the future;
- (q) **Legislation** means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority;
- (r) **Party** means a party to this Agreement, including their respective successors and assigns;

- 
- (s) **Planning Agreement** means the provisions of this Agreement under which Hollis is required to make the Contributions, and includes any provisions that are incidental or supplementary to those provisions;
  - (t) **RP Act** means the *Real Property Act 1900* (NSW); and
  - (u) **Quarter** means each of the following three-month periods:
    - (i) 1 January to 31 March;
    - (ii) 1 April to 30 June;
    - (iii) 1 July to 30 September; and
    - (iv) 1 October to 31 December;
  - (v) **Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

## 1.2 Interpretation

In the interpretation of this Agreement, unless the contrary intention appears:

- (a) A reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) an individual or person includes a corporation, body corporate, partnership, joint venture, or association;
  - (iv) a party includes the party's executors, administrators, successors and assigns;
  - (v) a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (vi) a recital, clause, paragraph, schedule or annexure is a reference to a recital, clause, paragraph, schedule or annexure of or to this Agreement;
  - (vii) a body, whether statutory or not:
    - A. which ceases to exist; or
    - B. 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;
- (b) any schedule, attachment or other document referred to in or delivered with this Agreement forms part of this Agreement;
- (c) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (d) where words or phrases are given a defined meaning, any other part of speech or other grammatical form of those words or phrases shall have a corresponding meaning;

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- (e) a reference to "currency", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
  - (f) "including" and similar expressions are not and must not be treated as words of limitation;
  - (g) headings and tables of contents are inserted for convenience only and have no effect on interpretation;

## **2. STATUS OF AGREEMENT**

### **2.1 Status**

- (a) This Agreement operates from the date on which it is executed by all Parties.
- (b) The Parties will use their best endeavours to execute the Agreement within 20 Business Days from the end of the public notice period required by cl.25D of the Regulations.

### **2.2 Planning Agreement under the Act**

- (a) This Agreement constitutes a Planning Agreement within the meaning of s.7.4 of the Act and is governed by Subdivision 2 of Division 7.1 of the Act.
- (b) Schedule 1 of this Agreement summarises the requirements for planning agreements under s.7.4 of the Act and explains how this Agreement addresses those requirements.

### **2.3 Planning Agreement under Council's Policy**

The Planning Agreement has been prepared in accordance with Council's Policy.

### **2.4 Application of sections 7.11, 7.12, and 7.24 of the Act**

- (a) This Agreement does not exclude the application of s.7.11 of the Act to the Development.
- (b) This Agreement does not exclude the application of s.7.12 of the Act to the Development.
- (c) The benefits under this Agreement are to be taken into consideration in determining a development contribution under s.7.11 of the Act.
- (d) Section 7.24 of the Act does not apply to the Land.

## **3. APPLICATION OF AGREEMENT**

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

## **4. CONTRIBUTION**

### **4.1 Payment of Contribution**

- (a) Hollis must pay the Council the Contributions calculated in accordance with, and at the times specified, in this cl.4 for the life of the Development.
- (b) The purpose of the Contribution is to enable the Council to mitigate the impact of heavy vehicles associated with the Development on Council's roads and infrastructure as described in [Schedule 2](#) of this Agreement.

- 
- (c) The Contribution is to be calculated based on the quarterly extraction volume of the following materials using the following rates:
- |       |                            |                   |
|-------|----------------------------|-------------------|
| (i)   | Non-specified road base    | \$0.30 per tonne; |
| (ii)  | Specified road base        | \$0.55 per tonne; |
| (iii) | Aggregates                 | \$0.55 per tonne; |
| (iv)  | Concrete                   | \$0.60 per tonne; |
| (v)   | Resource recovery material | \$0.60 per tonne; |
| (vi)  | Compost material           | \$0.30 per tonne; |
- (d) Hollis must pay the Contribution to the Council on a quarterly basis and within 14 days of Hollis lodging a return with the Council in accordance with cl.4.2(a).

#### 4.2 Lodgement of Return

- (a) Hollis must 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, within 14 days of the end of each Quarter.
- (b) Hollis must:
- (i) keep records evidencing the volume of each type of material extracted from the Land for a minimum period of 7 years; and
  - (ii) allow the Council to inspect and copy all records she holds in relation to the volume of material extracted from the Land under the Development Consent, 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.

#### 4.3 Review of Contribution

- (a) The Contribution must be reviewed on the first Business Day of July each year that the Development continues.
- (b) The Council may, at its sole discretion, annually increase (measured as a percentage) the Contribution in accordance with the increase (measured as a percentage) in the National Consumer Price Index in the previous 12 months.

### 5. INTERESTS IN THE LAND

#### 5.1 Ownership

Hollis represents and warrants to the Council that she is the legal owner of the Land and holds the Land in her capacity as registered proprietor.

#### 5.2 Registration of this Planning Agreement

- (a) Hollis agrees to procure the registration of this Planning Agreement under the RP Act in the relevant folios of the Register of the Land in accordance with s.7.6 of the Act.
- (b) Hollis must at her own expense, within 30 Business Days after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
- (i) the consent of each person who:
    - A. has an estate or interest in the Land registered under the RP Act; or



- 
- B. is seized or possessed of an estate or interest in the Land; and
- (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title,
- to enable the registration of the Planning Agreement in accordance with cl.5.2(a).
- (c) Hollis must take all practical steps, and otherwise do anything that the Council reasonably requires:
- (i) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 60 Business Days after that date; and
  - (ii) to procure the registration of the Planning Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after the Planning Agreement is lodged for registration.

### 5.3 Public Positive Covenant

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

## 6. ENFORCEMENT OF AGREEMENT

- (a) This Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) No person can appeal to the Court against the terms of this Planning Agreement (in accordance with s.7.8 of the Act).
- (c) Nothing in this clause prevents the Council from exercising any function under any Legislation, including the Act, or any other Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## 7. AMENDMENT OF AGREEMENT

- (a) This Planning Agreement may be amended or revoked by further agreement in writing signed by the Parties.
- (b) The proposed agreement, amendment or revocation will only have effect if:
  - (i) public notice has been given of the proposed agreement, amendment or revocation (in accordance with cl.6, cl.25D, and cl.33 of the Regulation);
  - (ii) a copy of the proposed agreement, amendment or revocation has been available for inspection by the public for a period of not less than 28 days; and
  - (iii) an Explanatory Note is prepared in accordance with the requirements in cl.25E of the Regulation; and
  - (iv) it is in accordance with Council's Policy.
- (c) The Council must comply with its statutory obligations under Subdivision 2 of Division 7.1 of the Act.
- (d) A variation to this Planning Agreement is effective only to the extent for which it is made or given.

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## 8. DISPUTE RESOLUTION

The Parties agree that any disputes under or in relation to this Agreement will be resolved in accordance with this cl.9.

### 8.1 Notice of Dispute

- (a) Except for a dispute arising, in or as a consequence of a review under this cl.9, if a dispute between any of the Parties arises in connection with this Agreement or its subject matter, then either Party may give the other Party a Notice of Dispute in writing adequately identifying and providing details of the dispute.
- (b) The Parties must continue to perform their respective obligations under this Agreement despite the existence of a dispute.

### 8.2 Representatives of Parties to Meet

- (a) Representatives of the parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The disputing parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting;
  - (ii) agree that further material or arbitration about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the disputing parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

## 9. ASSIGNMENT AND DEALING

Hollis agrees that she will not sell, transfer, or dispose of the whole or any part of her right, title or interest in the Land or the Development otherwise than in accordance with this cl.10.

### 9.1 Right to assign interest

- (a) Except in respect of any part of the Land where this Agreement has been released and discharged, Hollis must not settle on the sale, transfer, or disposal of the whole or any part of her right, title or interest in the Land to another person (**Transferee**) unless, before she does so;
  - (i) Hollis obtains written consent of the Council;
  - (ii) Hollis complies with any relevant requirements in Council's Policy;
  - (iii) Hollis satisfies the Council, acting reasonably, that the proposed Transferee is financially capable of complying with Hollis' obligations under this Agreement;
  - (iv) the rights of the Council are not diminished or fettered in any way;
  - (v) the Transferee executes a novation deed agreeing to perform the obligations of Hollis under this Agreement;
  - (vi) any default by Hollis has been remedied by Hollis or waived by the Council;  
and

- 
- (vii) Hollis and the Transferee pay the Council's reasonable costs in relation to the assignment.
  - (b) The Council must not unreasonably withhold its consent when requested under this cl.10.

## 9.2 Release

If Hollis settles on the sale, transfer or disposal of the whole or any part of the right, title or interest in the Land or the Development in accordance with this cl.10, Hollis will be released from all obligations under this Agreement arising after the date of novation, to the extent of the transfer of Hollis' interest in the Land or the Development.

## 9.3 Further Documents

The Parties must, and Hollis will cause any Transferee to, enter into all such further documents as are reasonably required to implement the provisions set out in this cl.10.

## 10. EXPLANATORY NOTE

The Explanatory Note must not be used to assist in construing this Agreement.

## 11. GST

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

## 12. NOTICES

- (a) A notice given by either party pursuant to this Agreement has no legal effect unless it is in writing.
- (b) All written notices given under this Agreement may be validly given by any one of the following means:
  - (i) by sending it by prepaid post or by document exchange to the address of the party to be served or its solicitor;
  - (ii) by email to the email address of the party to be served or its solicitor; or
  - (iii) by delivering it to the party to be served or to its solicitor.
- (c) The parties expressly acknowledge that it is each party's responsibility to ensure that the other is fully aware of that party's current contact details at all times throughout the duration of this Agreement. Notices sent by one party to the other party which are addressed to an address previously notified to the delivering party as the other party's address are deemed received by the other party unless and until that other party can prove it had notified the delivering party of a more recent address.
- (d) A notice shall be deemed to be given and received:
  - (i) if sent by pre-paid post or by document exchange, two (2) Business Days after it has been posted or has been delivered to the Document Exchange Centre;
  - (ii) if sent by email during Business Hours, on the day it was sent; and if sent by email outside Business Hours, on the first Business Day after the day it was sent; and
  - (iii) if delivered during Business Hours, on the day of delivery; and if delivered outside Business Hours, on the first Business Day after the day of delivery.
- (e) As at the date of this Agreement each party's address for service is as follows:

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**For the Council:**

Delivery address: Vulcan Street Moruya

Post: PO Box 99 Moruya NSW 2537

Email: [council@esc.nsw.gov.au](mailto:council@esc.nsw.gov.au)

**For Hollis:**

Delivery address: [insert]

Post: [insert]

Email: [insert]

- (f) A notice given or a document signed or served on behalf of any party by any director or company secretary or solicitor of that party shall be deemed to have been given, signed or served by that party personally.
- (g) Any notice sent by email will be taken to have been received by the addressee for the purposes of this Agreement unless the sender receives a message indicating that delivery has failed.

**13. MISCELLANEOUS**

**13.1 Relationship of the Parties**

- (a) Nothing in this Agreement creates a relationship of agency between the parties or authorises one of them to enter into any contracts or other commitments which bind any other party without their express written approval.
- (b) Nothing in this Agreement is intended or to be implied to create a relationship of employment, partnership or joint venture between the parties or any of their respective agents, employees, sub-contractors and assigns.

**13.2 No Waiver**

- (a) Any delay or failure to enforce any term of this Agreement will not be deemed to be a waiver.
- (b) There is no implied waiver by either party in respect of any term of this Agreement and any waiver granted by either party shall be without prejudice to any other rights.
- (c) Any waiver must be in writing, and in the case of the Council, is signed by the General Manager.
- (d) A waiver by a party of its rights under this Agreement is only effective in relation to the particular obligation or breach in respect of which it is given, and does not cover subsequent breaches of the same or a different kind.

**13.3 No Fetter**

Nothing in this Agreement is to be construed as requiring an authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) Nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) Nothing in this Agreement imposes any obligation on the Council to:
  - (i) grant development consent or project approval; or

- 
- (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

#### 13.4 **No Assignment**

A party must not assign any of its rights under this Agreement to any person without the written consent of the other parties. Any such consent may be given or withheld in the absolute discretion of the relevant party.

#### 13.5 **Joint and Several Liability**

- (a) Any obligation imposed by this Agreement on more than one person or entity and any covenant given in this Agreement by more than one person or entity binds those persons or entities jointly and each of them severally and may be enforced against anyone or any two or more of them.
- (b) Where a party is comprised of more than one person, the obligations and covenants of that party bind any two or more of those persons jointly and each of them severally.

#### 13.6 **Agreement binds Heirs**

The parties each intend this Agreement to be binding on their heirs, executors, administrators, receivers, liquidators, successors and assigns.

#### 13.7 **Further Assurance**

Each party must promptly do all things (including executing and delivering documents) that may reasonably be required to give full effect to this Agreement or to bring this Agreement to an end following lawful termination.

#### 13.8 **Governing Law**

This Agreement shall be governed by and construed in accordance with the Law of New South Wales and the Commonwealth of Australia and the parties submit themselves to the exclusive jurisdiction of the Courts of those jurisdictions and those that have jurisdiction to hear any appeals from them.

#### 13.9 **Entire Agreement**

This Agreement:

- (a) is the entire agreement of the parties concerning everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior representations, statements, promises or understanding on anything connected with that subject matter.

#### 13.10 **Severability**

If any provision of this Agreement is void, unenforceable or illegal in the jurisdiction governing this Agreement, then:

- (a) it is to be read down so as to be valid and enforceable; or
- (b) if it cannot be read down, the provision (or where possible the offending words), is severed from this Agreement and the rest of this Agreement remains in force.

#### 13.11 **Non-Merger**

Any provision of this Agreement which imposes any obligation or confers a right on a party after completion, or which remains to be performed or is capable of having effect following completion, shall not merge on completion but shall remain in full force and effect.

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13.12 **Legal Costs**

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

13.13 **Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together constitute one and the same document.

13.14 **Representation and Warranties**

(a) The Parties represent a warrant that they have the power to enter into this Agreement and to comply with their obligations under this Agreement.

13.15 **Confidentiality**

(a) This Agreement may be treated as a public document.

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**EXECUTION**

**EXECUTED** as an Agreement.

**EXECUTED** on behalf of )  
**Eurobodalla Shire Council (ABN 47 504 455 945)** )  
**by its General Manager** )  
in the presence of:

.....  
Signature of General Manager

.....  
Name of General Manager

.....  
Signature of Witness

.....  
Name of Witness in Full

**SIGNED** by )  
**Maureen Hollis** )  
in the presence of:

.....  
Signature of Maureen Hollis

.....  
Signature of Witness

.....  
Name of Witness in Full

# Schedule 1

## Section 7.4 Requirements

SUBJECT AND SUBSECTION OF THE ACT	THIS PLANNING AGREEMENT
<p>s.7.4(1) – Classification as a Planning Agreement</p> <p>Hollis has:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or proposes to make, a Development Application</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies</p>	<p>(a) No.</p> <p>(b) Yes.</p> <p>(c) No.</p>
s.7.4(3)(a) – Description of the land to which this Planning Agreement applies	The whole of the Land.
s.7.4(3)(b)(i) – Description of change to the environmental planning instrument to which this Planning Agreement applies	Not applicable.
s.7.4(3)(b)(ii) – Description of the development to which this Planning Agreement applies	Refer to the definition of <b>Development</b> in <a href="#">cl.1</a> of this Planning Agreement.
s.7.4(3)(c) – The nature and extent, timing, and manner of delivery of contribution required by this Planning Agreement	Refer to <a href="#">Schedule 2</a> of this Planning Agreement.
s.7.4(3)(d) – Applicability of s.7.11, 7.12, or s.7.24 of the Act	<p>The application of s.7.11 and 7.12 of the Act is not excluded in respect of the Development (see cl.2.4 of this Planning Agreement).</p> <p>Section 7.24 of the Act does not apply.</p>
s.7.4(3)(e) – Consideration of benefits under this Deed if s.7.11 of the Act applies	The benefits under this agreement are to be taken into consideration in determining a development contribution under s.7.11 of the Act.
s.7.4(3)(f) – Mechanism for dispute resolution	Refer to <a href="#">cl.9</a> of this Planning Agreement.
s.7.4(3)(g) – Enforcement of this Planning Agreement	Refer to <a href="#">cl.7</a> of this Planning Agreement.
s.7.4(3)(g) and s.7.6 – Registration of this Planning Agreement	Refer to <a href="#">cl.5.2</a> of this Planning Agreement.



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## Schedule 2

### Use of the Agreed Sum and Contribution

1. Works which the Council considers are necessary or appropriate to address the impact of the Development on roads used as part of the haul route, including sections of Eurobodalla Road and Nerrigundah Mountain Road.

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**Annexure A**

**Title Searches of the Land**

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# Annexure B

## Explanatory Note

### Explanatory Note

#### Exhibition of draft Voluntary Planning Agreement

*Environmental Planning & Assessment Regulation 2000 (clause 25E)*

#### Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the Developer to make monetary contributions in connection with operation of a Quarry/Resource Recover facility on the Land described below.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### Parties

Maureen Hollis (**the Developer**) made an offer to Eurobodalla Shire Council (**the Council**) to enter into a Voluntary Planning Agreement, in connection with the Development.

#### Description of subject land

The land to which the Planning Agreement applies is as follows (**the Land**).

Lot 1 Nerrigundah Mountain Road, Eurobodalla

#### Description of the Development Application to which the Planning Agreement applies

The Planning Agreement relates to Development Consent 366/17 which allows the Developer to carry out quarrying operations on the Land for 30 years from the date of commencement of operations. Extraction and removal of the quarried material from the Land is limited to 1400 tonnes in any one day and 175,000 tonnes in any one year. Blasting operations will be involved.

The Consent also allows limited resource recovery operations and composting activities to take place on the Land.

The conditions of the Consent impose limits on the hours of operation of the quarry and limit the maximum number of truck movements which can take place each day.

#### Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement requires the Developer to make quarterly payments of money to the Council to be put towards road works. The amount of the Contribution is linked to the volume and type of material which is extracted.

The Council can increase the rate used to calculate the value of the Contribution annually in accordance with CPI.

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## Assessment of the Merits of the Planning Agreement

### *How the Planning Agreement Promotes the Objects of the Act and the public interest*

The draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

Objective 1.3(a), to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources by facilitating appropriate and economically beneficial development and the proper management of the likely impacts of that development on the community.

Objective 1.3(b), to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment by requiring the Developer to make contributions which will mitigate the impact of the Development on public roads.

### *How the draft Planning Agreement promotes the public interest*

The Planning Agreement promotes the public interest by improving and providing funds for the maintenance of roads which form part of the haul route proposed to be used by the Development.

### *How the Planning Agreement promotes the objectives of the Local Government Act 1993 and the elements of the Council's Charter under s.8 of that Act*

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government, and
- to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective by requiring the Developer to report on the contributions which are made and facilitating the review and amendment of the agreement if circumstances change.

The Planning Agreement is consistent with the following guiding principles for Councils in section 8A of the *Local Government Act 1993* (which have replaced the Council Charter):

- In exercising functions generally:
  - Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
  - Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
  - Councils should work with others to secure appropriate services for local community needs.
- In decision making:
  - Councils should recognise diverse local community needs and interests.
  - Councils should consider the long term and cumulative effects of actions on future generations.

The Planning Agreement is consistent with these principles in that it establishes a long term mechanism for mitigating the costs of the impacts of the Development on rate payers by requiring the Developer to contribute to the cost of works on roads impacted by the Development.

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*The Planning Purposes served by the Planning Agreement*

The planning purpose served by the planning agreement is the mitigation of the impact of the Development on road infrastructure.

This Planning Agreement provides a reasonable means of achieving this purpose

**Whether the Planning Agreement Conforms with the Council's Capital Works Program**

The Planning Agreement conforms with the Council's Capital Works Program.

**Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement does **not** specify that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

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