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Deed

Grants Head Quarry Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Port Macquarie-Hastings Council
Hurd Haulage Pty Ltd

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4 July 2013

Grants Head Quarry Planning Agreement

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Grants Head Quarry Planning Agreement

Summary Sheet

Council:

Name: Port Macquarie-Hastings Council

Address: Cnr Lord & Burrawan Streets Port Macquarie NSW 2444

Telephone: (02) 6581 8111

Facsimile: (02) 6581 8123

Email: council@pmhc.nsw.gov.au

Representative: Vanessa Penfold

Developer:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] e: [REDACTED]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2.

Application of s94, s94A and s94EF of the Act:

See clause 8.

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Security:

See clause 15.

Restriction on dealings:

See clause 19.

Dispute Resolution:

Expert determination and mediation. See clauses 13 and 14.

Grants Head Quarry Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie-Hastings Council ABN 11 236 901 601 of Cnr Lord & Burrawan Streets Port Macquarie NSW 2444 (**Council**)

and

Background

- A The Developer is the lessee of the Land on which the Development pursuant to the Quarry Consent is carried out.
- B The Developer has lodged with the Council the S96 Application to modify the Quarry Consent to allow for an increase in the annual extraction rate from 120,000 tonnes per annum to 200,000 tonnes per annum for up to 5 years during the Term.
- C The Developer offers to make monetary Development Contributions on the terms set out in this Deed in connection with the carrying out of Development pursuant to the modified Quarry Consent.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:

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- (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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

Commencement Date means the date of the approval of the S96 Application.

Contract Year means the period of 12 months commencing on the Commencement Date and each period of 12 months commencing on each anniversary of the Commencement Date during the Term.

Contribution Year means a Contract Year during which the amount of Excavated Material exceeds 120,000 tonnes.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

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

Development means development the subject of the Quarry Consent.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose.

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

Excavated Material means material excavated and removed from the Land (as measured by the Developer's weighbridge) pursuant to the Quarry Consent.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Haulage Route means Ocean Drive and Houston-Mitchell Drive between the Land and the Pacific Highway.

Land means Lot 1 DP 1107705, otherwise known as Grants Head Quarry, Bonny Hills.

Lease means the lease of the Land between the Developer and the State of New South Wales with registered dealing number AD184298

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Party means a party to this Deed, including their successors and assigns.

PPI means the *Producer Price Index (Output of the General Construction Industry – Road and Bridge Construction)* for New South Wales published by the Australian Bureau of Statistics.

Quarry Consent means Development Consent to Development Application number DA1994/0468 for the extraction of material from the Land for a period of 25 years, as modified from time to time.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Report means a report referred to in clause 10.2.

Reporting Period means the period of 12 months covered by a Report.

S96 Application means the application under s96(2) of the Act to modify the Quarry Consent to allow for an increase in the annual extraction rate from 120,000 tonnes per annum to 200,000 tonnes per annum for up to 5 years in the Term.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Term means the period beginning on the Commencement Date and ending on the last day of the fifth Contribution Year.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the party, the party's successors and assigns and a person against whom this Deed is enforceable under s93H(3) of the Act.
- 1.2.15 Any schedules, appendices and attachments form part of this Deed.
- 1.2.16 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement of this Deed

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 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.

7 Surrender of right of appeal, etc.

- 7.1 The Developer 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, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed excludes the application of s94 and s94A to the Development.
- 8.2 This Deed does not exclude the application of s94EF to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to pay monetary Development Contributions to the Council for the purposes of the maintenance and upgrade of the Haulage Route, or such other public roads that Council determines as being impacted on by the Development, in accordance with this Deed.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.3 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Reports and records of Excavated Material

- 10.1 The Developer is to retain all weighbridge records, and any other documents created during the Term that show the amount of Excavated Material
- 10.2 Every 12 months from the Commencement Date, the Developer is to provide to the Council a report showing the amount of Excavated Material since the period covered by the previous report.
- 10.3 On Council's written request, the Developer is to promptly provide it with weighbridge records and any other information that is reasonably required for the Council to verify a Report.

11 Calculation of monetary Development Contributions

- 11.1 Within 10 business days of receiving the Report in any Contract Year, or if Council has requested information pursuant to clause 10.3 for that Report, within 10 days of receipt of that information, the Council is to provide a tax invoice to the Developer notifying it of the amount of monetary Development Contributions required to be paid in respect of the Reporting Period covered by that Report, calculated using the following formula:

$$\text{\$DC} = \text{\$0.54} \times (\text{T} - 120,000)$$

Where:

\\$DC means the amount of monetary Development Contributions required to be paid.

T is the amount of Excavated Material (in tonnes) during the Reporting Period to which the Report relates.

- 11.2 Subject to clause 11.3, the Developer is to pay the amount of monetary Development Contributions notified by the Council pursuant to clause 11.1 within 10 business days of the date of the relevant tax invoice.
- 11.3 If the amount of monetary Development Contributions notified pursuant to clause 11.1 is less than zero, no amount is payable by the Developer to the Council for the relevant Reporting Period.
- 11.4 The amount of monetary Development Contributions required to be paid under this Deed is to be indexed annually in accordance with the PPI as follows:

$$\text{\$DC}_n = \text{\$DC} \times (\text{PPI}_n / \text{PPI}_{n-1})$$

Where:

\\$DC_n is the indexed amount of monetary Development Contributions

\\$DC means the amount of monetary Development Contributions calculated in accordance with clause 11.1

PPI_n is the most recently published PPI as at the date of the Report

PPI_{n-1} is the most recently published PPI as at the Commencement Date

12 Procedures relating to payment of monetary Development Contributions

- 12.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

Part 3 – Dispute Resolution

13 Dispute resolution – expert determination

- 13.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 13.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 13.1.2 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.
- 13.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 13.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination and is to bear 50% of the expert's fees and hearing allocation costs.

14 Dispute Resolution - mediation

- 14.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- 14.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 14.3 If a notice is given under clause 14.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 14.4 If the Dispute is not resolved within a further 28 days, 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, or the President's nominee, to select a mediator.
- 14.5 If the Dispute is not resolved by mediation within a further 28 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.

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- 14.6 Each Party is to bear its own costs arising from or in connection with the appointment of the mediator and the mediation and is to bear 50% of the mediator's fees.

Part 4 – Enforcement

15 Security for performance of obligations

- 15.1 The Developer is to provide the Council with a rolling Security in the amount of \$50,000.00 in relation to the performance of its obligations under this Deed.
- 15.2 The Developer is to provide the Security to the Council on the granting of Approval to the S96 Application.
- 15.3 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of the end of the Term.
- 15.4 The Developer may at any time provide the Council with a replacement Security.
- 15.5 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 15.6 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 15.7 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.
- 15.8 The Council is not to call-up the Security unless prior to doing so it has given the Developer 7 days notice of its intention to do so.

16 Breach of obligations

- 16.1 If the Council reasonably considers that the Developer is in breach of its obligation to pay monetary Development Contributions under this Deed, it may give a written notice to the Developer:
- 16.1.1 specifying the nature and extent of the breach,
- 16.1.2 requiring the Developer to:
- (a) pay the outstanding monetary Development Contributions, and
 - (b) cease carrying out the Development until such time as the outstanding monetary Development Contributions are paid.
- 16.1.3 specifying the period within which the outstanding monetary Development Contributions are to be paid, being a period that is reasonable in the circumstances.
- 16.2 If the Developer fails to fully comply with the notice referred to in 16.1 in relation to the payment of monetary Development Contributions, the Council

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may, subject to clause 15.8, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.

- 16.3 Any costs incurred by the Council in remedying a breach may be recovered by the Council by calling up the Security provided by the Developer under this Deed or as a debt due in a court of competent jurisdiction.
- 16.4 For the purpose of clause 16.2, the Council's costs of remedying a breach the subject of a notice given under clause 17.1 include, but are not limited to:
- 16.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 16.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 16.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 16.5 Nothing in this clause 16 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 Developer, including but not limited to seeking relief in an appropriate court.

17 Enforcement in a court of competent jurisdiction

- 17.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 17.2 For the avoidance of doubt, nothing in this Deed prevents:
- 17.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates,
 - 17.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 –Restriction on Dealings

18 Registration

- 18.1 The Parties agree not to register this Deed under s93H of the Act.

19 Restriction on dealings

- 19.1 The Developer is not to:
- 19.1.1 assign the Lease or grant a sublease under the Lease, or
 - 19.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:

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- 19.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Lease is to be assigned or the sublease granted or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 19.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the, sublessee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 19.1.5 the Developer is not in breach of this Deed, and
- 19.1.6 the Council otherwise consents to the, sublease, assignment or novation, such consent not to be unreasonably withheld.

Part 6 – Indemnities and Insurance

20 Risk

- 20.1 The Developer performs this Deed at its own risk and its own cost.

21 Release

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

22 Indemnity

- 22.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the Developer's negligence or default except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Part 7 – Other Provisions

23 Termination of Deed

- 23.1 If the Lease is terminated for any reason before the end of the Term, then this Deed terminates on the later of:
 - 23.1.1 the date of the Council's tax invoice given under clause 11.1 in respect of a Reporting Period (as referred to in that clause) that covers the date of termination of the Lease, and

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- 23.1.2 the date on which all monetary Development Contributions required to be paid under this Deed have been paid.
- 23.2 If, before the end of the Term, the Developer is no longer authorised under the amended Quarry Consent to extract at an annual extraction rate above 120,000 per annum, then this Deed terminates on the later of:
- 23.2.1 the date of the Council's tax invoice given under clause 11.1 in respect of a Reporting Period (as referred to in that clause) that covers the date from which the Developer is no longer authorised to extract above 120,000 per annum, and
- 23.2.2 the date on which all monetary Development Contributions required to be paid under this Deed have been paid.
- 23.3 For the avoidance of doubt, the Developer is not required to pay any Development Contributions in respect of any period after the termination of this Deed.

24 Review of Deed

- 24.1 The Parties agree to review this Deed if either party is of the opinion that there is a change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 24.2 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 24.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 24.3 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 24.4 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 24.1 (but not 24.3) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

25 Notices

- 25.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 25.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 25.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 25.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 25.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.

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- 25.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 25.3.1 delivered, when it is left at the relevant address,
 - 25.3.2 sent by post, 2 business days after it is posted,
 - 25.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 25.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 25.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

26 Approvals and Consent

- 26.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 26.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

27 Costs

- 27.1 The Developer is to pay to the Council the Council's reasonable costs not exceeding \$11,000.00 (exclusive of GST) of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 27.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

28 Entire Deed

- 28.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 28.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

29 Further Acts

- 29.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

30 Governing Law and Jurisdiction

- 30.1 This Deed is governed by the law of New South Wales.
- 30.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 30.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

31 No Fetter

- 31.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

32 Illegality

- 32.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

33 Severability

- 33.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 33.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

34 Modification

- 34.1 No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

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35 Waiver

- 35.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 35.2 A waiver by a Party is only effective if it is in writing.
- 35.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

36 GST

- 36.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 36.2 Subject to clause 36.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 36.3 Clause 36.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 36.4 No additional amount shall be payable by the Council under clause 36.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 36.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 36.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

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- 36.5.2 that any amounts payable by the Parties in accordance with clause 36.2 (as limited by clause 36.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 36.6 No payment of any amount pursuant to this clause 36, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 36.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 36.8 This clause continues to apply after expiration or termination of this Deed.

37 Explanatory Note

- 37.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 37.2 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 Planning Deed.

**Grants Head Quarry Planning Agreement
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Hurd Haulage Pty Ltd**

Execution

Executed as an Deed

Dated:

4 July 2013.

PORT MACQUARIE - HASTINGS Council

Executed on behalf of the Council

[Redacted Signature]

General Manager

[Redacted Signature]

EA to General Manager

Witness/Name/Position

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

[Redacted Signature]

[Redacted Signature]

Name/Position

[Redacted Signature]

[Redacted Signature]

Name/Position

15 APRIL 2013

Appendix

(Clause 37)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie Hastings Council ABN 11 236 901 601 of Cnr Lord & Burrawan
Streets Port Macquarie NSW 2444 (**Council**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 1 DP 1107705, otherwise known as Grants Head Quarry, Bonny Hills.

Description of Proposed Development

Development the subject of the modified Quarry Consent.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to secure the provision of monetary Development Contributions for the purpose of maintaining and upgrading the Haulage Route.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 (Act). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development pursuant to the modified Quarry Consent on the Land by the Developer,
- imposes obligations on the Developer to make monetary Development Contributions only if the S96 Application is approved.
- excludes the application of s94 and s94A of the Act to the Development,
- does not exclude the application of s94EF of the Act to the Development,
- is not to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Lease or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- encourages the proper management, development and conservation of natural and artificial resources, including water, for the purpose of promoting the social and economic welfare of the community and a better environment,

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- promotes and co-ordinates the orderly and economic use and development of the Land to which the Agreement applies,
- encourages the provision and co-ordination of community services and facilities, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(i), (ii), (v) and 5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively,
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The Draft Planning Agreement does not conform with the Capital Works Program set out in Council's Operational Plan for 1 July 2012 - 30 June 2013 but conforms with Council's 2011-2015 Delivery Program

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

The Draft Planning Agreement does not specify any requirements that must be provided before the issuing of a subdivision certificate, occupation certificate or subdivision certificate.