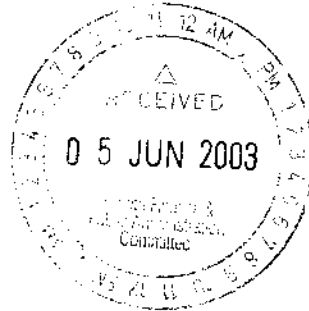


In Reply Please
Quote Reference: 03.7264 Pt3



EUROBODALLA SHIRE COUNCIL

Good Government, better living

2 June 2003

Mr A Sands
Australian Senate
Finance and Public Administration Reference Committee
Parliament House
CANBERRA ACT 2600

Mayor's Office Council Chambers
PO Box 99 Moruya NSW 2537
email: council@eurocoast.nsw.gov.au
website: www.esc.nsw.gov.au
DX 4873

Dear Mr Sands

Re: Inquiry into a funding matter under the Dairy Regional Assistance Program

Reference is made to the above Senate Inquiry.

For your information and to be treated as part of Council's submission, please find enclosed a copy of a report on the sewerage of the North Moruya Industrial Estate which was presented to Council on 27 May 2003. You will note that the company, Moruya Industrial Estates Pty Ltd, is proposing to repay Council over a ten year period.

If you require any further assistance, please phone my office on 4474 1308.

Yours faithfully

JAMES F. LEVY
GENERAL MANAGER

encl

A1 SEWERING OF NORTH MORUYA INDUSTRIAL ESTATE - CONFIRMATION OF
ARRANGEMENTS FOR DEVELOPER FUNDING 00.4581

SYNOPSIS

In accordance with the Letter of Understanding dated 29 August 2002 between Moruya Industrial Estates Pty Ltd (MIE Pty Ltd) and Council, the tender process for the construction component of the sewer project into the North Moruya Industrial Estate has been finalised through the Department of Commerce (formerly the Department of Public Works and Services).

Council should now enter into a contract with MIE Pty Ltd to confirm the financial arrangements underpinning the project in the terms of the Letter of Understanding.

BACKGROUND

On 27 August 2002, Council authorised the General Manager to sign a Letter of Understanding with Moruya Industrial Estate Pty Ltd regarding the sewerage of the North Moruya Industrial Estate. That Letter was signed by the General Manager and Mr John Nader as Director of MIE Pty Ltd on 29 August 2002.

The following terms were agreed with the estate owner, Moruya Industrial Estates Pty Ltd (MIE), and are the terms of the Letter of Understanding dated 29 August 2002.

- 1. Council and MIE agree to continue working towards the sewerage of the North Moruya Industrial Estate. The understanding of both parties at this time, acknowledging the potential variables that could have an impact on the project, is for the completion of the project by the end of 2003.*
- 2. Council will conduct an open tender process for the project works, to determine both the construction contractors and an acceptable tender price.*
- 3. MIE agrees to pay to Council the sum of \$309,000 within 60 days of Council issuing an invoice upon the commencement of works OR 1st April 2003 whichever is the later.*
- 4. In addition MIE agrees to contribute 25% of the tender price as determined by the tender process. The 25% contribution plus interest will be repaid to Council over a ten year period, by equal monthly instalments to be set when the tender price is known and agreed. MIE will retain the flexibility to pay out the amount earlier, on the proviso that no financial penalty accrues to Council. MIE agrees to pay the first instalment four months after the payment of the \$309,000 in Clause 3 OR on 1st August 2003 whichever is the later.*
- 5. The interest rate will be set at the rate that Council pays for borrowed funds at the time of the lending.*

A1 SEWERING OF NORTH MORUYA INDUSTRIAL ESTATE - CONFIRMATION OF
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6. *Council and MIE will enter a contract in these terms when the tender price is agreed. MIE acknowledges that Council will secure both the payment of \$309,000, and the 25% contribution by way of a 2nd mortgage over the remaining area of the North Moruya Industrial Estate being Lot 29 DP 1016983. MIE will provide to Council a current valuation of the property, and a statement from their bank on the amount owing on the first mortgage.*

Council staff instructed the Department of Commerce to prepare a detailed design and specifications for the sewer, and conduct an open tender for the construction component.

The tender was let by the Department of Commerce after referral to the Board of Advice and Review for approval.

The Letter of Acceptance was issued to the successful tenderer (Redline Contractors Pty Ltd) on 22 April 2003 – Contract Number 0202780 Vol 1 & 2.

ISSUES

Having concluded the tender for the construction component of the project, the Department of Commerce and Council engineers have determined the acceptable tender price (total project cost) to be \$1,096,000. This is the figure to be applied in terms of Clause 2 of the Letter of Understanding.

MIE Pty Ltd has agreed that figure to be the “acceptable tender price” referred to in the Letter of Understanding. Council will now finalise a contract with MIE Pty Ltd in accordance with the Letter of Understanding to secure the MIE Pty Ltd contributions.

Note that the financial arrangements have changed from the Letter of Understanding in that MIE Pty Ltd has secured bank finance for the whole of its contribution.

This confirms the Council and MIE Pty Ltd contributions are:

Acceptable Tender Price	\$1,096,000
Less MIE Pty Ltd contributions:	
initial payment within 60 days of Council issuing an invoice upon the commencement of works	\$291,500
final payment within 60 days of Council issuing an invoice at the commissioning of works	\$291,500
Council contribution	\$513,000

Based on these figures, Council will contribute 47% of project cost, the estate owner will contribute 53%.

A1 SEWERING OF NORTH MORUYA INDUSTRIAL ESTATE - CONFIRMATION OF
ARRANGEMENTS FOR DEVELOPER FUNDING 00.4581

Legal

Contract documentation has been prepared by Council's solicitor, to be executed with MIE Pty Ltd in terms approved by Council.

As noted above, MIE has indicated the company would prefer to separately fund what was to be a \$274,000 proposed loan from Council. MIE has proposed a new payment schedule which will result in Council receiving the contributions earlier than originally identified in the Letter of Understanding.

Policy

As has been stated in previous reports to Council, servicing the North Moruya Industrial Estate is seen as essential to the future economic growth of the Shire, specifically through underpinning the predominantly tourism based economy with a substantial and viable light manufacturing and commercial service sector.

Similarly, Council services estates with water and sewer to the property boundary where there is evidence of economical number of connections and/or environmental benefit with the owner obliged to construct internal reticulation works. Headworks charges may also apply where the developer will contribute to the cost of upgrading the pump or treatment works based on the additional loads created by the development. It may also include construction of transport or pump systems at full cost to a developer. In this particular case, the developer MIE is paying contributions to the sewerage of the estate to accelerate its priority, at a lesser potential cost to Council.

Environmental

The estate is currently operating on septic and pumpout systems that are totally unsuitable to a modern industrial/commercial estate. Septic systems will continue to hinder industrial development, through their lack of capacity to process various industrial by-products.

The completion of the sewer project will enable additional enterprises to be established by overcoming these environmental constraints.

Economic Development Employment Potential

This project will indirectly facilitate several hundred jobs over the next five to ten years.

Letters of commitment to generate more than 60 new jobs have been received in support. These letters detail business expansions and relocations that are directly dependent and waiting on the sewer service.

The owner of the estate is already developing further subdivision expansion areas within the estate to meet the economic demand being generated by the sewer project.

A1 SEWERING OF NORTH MORUYA INDUSTRIAL ESTATE - CONFIRMATION OF
ARRANGEMENTS FOR DEVELOPER FUNDING 00.4581

Financial

The financial arrangements as per the Letter of Understanding were noted by the Finance Manager in the previous report dated 27 August 2002, however note that Council is no longer financing any of the MIE Pty Ltd contribution.

The contract has been prepared by Council's legal representative, Sautelle White of Bega and Narooma.

Council will receive appropriate headwork contributions and ultimately sewer rates once the subdivision proceeds and new lots are created.

CONCLUSION

Council has previously committed to sewerage the North Moruya Industrial Estate. The estate owner is ready to sign a formal contract securing the financial contributions to the project.

Council now needs to authorise the General Manager to formalise contractual arrangements with MIE Pty Ltd as a matter of urgency to maintain the project schedule.

RECOMMENDED

THAT:

1. Council notes the outcome of the open tender process for the construction component of the project and that the total project sum amounts to \$1.096 million.
2. Formal contractual arrangements be entered into with Moruya Industrial Estate Pty Ltd in the terms of the attached Contract that will secure the contributions to the project as outlined in this paper.
3. Council's seal be affixed to the subject document.

GREG BOWMAN
ACTING BUSINESS DEVELOPMENT MANAGER

DEED

PARTIES

EUROBODALLA SHIRE COUNCIL
(‘Eurobodalla Shire Council’)
AND

MORUYA INDUSTRIAL ESTATE PTY LIMITED
(‘Moruya Industrial Estate Pty Limited’)

DATED

Sautelle White Lawyers

128- 32 Carp Street, Bega NSW 2550

DX 4903 Bega

02 6492 4199

02 6492 2771

Ref: ASW:ASW:231006

THIS DEED dated

2003

PARTIES: **EUROBODALLA SHIRE COUNCIL** of Vulcan St Moruya, NSW 2537
(**'COUNCIL'**)

MORUYA INDUSTRIAL ESTATE PTY LIMITED (ACN 002415590) of
Lot 29 Shelley Rd North Moruya in the State of New South Wales (**'MIE'**)

INTRODUCTION

1. Council is the responsible body for the installation, repair, maintenance and management of sewerage systems within the Eurobodalla Shire.
2. MIE has a commercial interest in the installation of sewer services in the North Moruya Industrial Estate.
3. Council and the Company have agreed to contribute to the cost of construction of a sewerage scheme in the North Moruya Industrial Estate.
4. The parties have agreed that in consideration of Council installing and taking responsibility for the repair, maintenance and management of a sewerage system servicing the North Moruya Industrial Estate MIE will pay to it certain monies.

IT IS AGREED

1. INTERPRETATION

1.1. In this Deed, unless otherwise indicated by the context:

- (a) *Business Day* means a day that is not a Saturday, Sunday, public holiday or bank holiday in NSW.

1.2. 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) a 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 in this Deed, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (e) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- (f) a reference to a statute, statutory provision 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) a covenant or agreement on the part of two or more persons binds them severally;
and

(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.

2. MIE CONTRIBUTION

(a) Council shall construct a sewerage system servicing the North Moruya Industrial Estate in accordance with the specifications of contract number 0202780 Volumes 1 and 2 let by the Department of Commerce on 22 April 2003.

(b) MIE shall pay to Council within 60 days of an invoice being served upon it by Council the sum of \$291,500.00 (Two hundred and ninety one thousand and five hundred dollars) plus any GST applicable save that such invoice shall not be served until construction of the sewerage system has commenced.

(c) MIE shall pay to Council within 60 days of an invoice being served upon it by Council a further sum of \$291,500.00 (Two hundred and ninety one thousand and five hundred dollars) plus any GST applicable save that such invoice shall not be served until construction of the sewerage system has been commissioned.

(d) Any sums payable to Council herein are exclusive of GST (if applicable).

3. NOTICES

3.1. A notice or other communication required or permitted to be given by one party to another must be in writing and:

(a) delivered personally;

(b) sent by pre-paid mail to the address of the addressee specified in this Deed; or

(c) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.

3.2. A notice or other communication is taken to have been given (unless otherwise proved):

(a) if mailed, on the second Business Day after posting; or

(b) if sent by facsimile before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

3.3. A party may change its address for service by giving notice of that change in writing to the other parties.

4. WAIVER OR VARIATION

- 4.1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 4.2. The exercise of a power or right does not preclude:
- (a) its future exercise; or
 - (b) the exercise of any other power or right.
- 4.3. The variation or waiver of a provision of this Deed or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

5. GOVERNING LAW AND JURISDICTION

- 5.1. This Deed is governed by the laws of NSW.
- 5.2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of NSW.

6. 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.

7. COUNTERPARTS

This Deed may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Deed will be the date on which it is executed by the last party.

8. WHOLE AGREEMENT

In relation to the subject matter of this Deed:

- (a) this Deed is the whole agreement between the parties; and
- (b) this Deed supersedes all oral and written communications by or on behalf of any of the parties.

9. NO RELIANCE ON WARRANTIES AND REPRESENTATIONS

In entering into this Deed, each party:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Deed made by any person; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of this Deed.

This clause does not apply to warranties and representations that this Deed expressly sets out.

10. SEVERANCE

If any part of this Deed is invalid or unenforceable, this Deed does not include it. The remainder of this Deed continues in full force.

11. NO MERGER

Nothing in this Deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

12. CONSENTS AND APPROVALS

Where this Deed gives any party a right or power to consent or approve in relation to a matter under this Deed, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or approval must comply with any conditions the other party imposes on its consent or approval.

EXECUTED AS A DEED.

THE SEAL OF THE COUNCIL OF)
EUROBODALLA was hereunto affixed)
on 2003)
pursuant to a resolution of Council dated)
2003)
In the presence of:)

.....

General Manager

.....

Mayor

THE COMMON SEAL OF MORUYA)
INDUSTRIAL ESTATE PTY LIMITED)
ACN 002415590 was hereunto)
affixed on 2003)
by authority of its Board of Directors)
In the presence of:)

.....

Secretary

.....

Director