
Amended and Restated planning agreement

Wilpinjong Coal Pty Ltd

Mid-Western Regional Council

Version: 1

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Amended and restated planning agreement

Dated

Parties

- Wilpinjong** **Wilpinjong Coal Pty Ltd ACN 104 594 694**
of Level 14, 259 Queen Street, Brisbane, Queensland 4000
- Council** **Mid-Western Regional Council**
of 86 Market Street, Mudgee, New South Wales 2850

Background

- A On 8 September 2010, a delegate of the Minister granted consent to the modification of the Wilpinjong Coal Project which is the subject of the Project Approval.
- B Condition 12 of Schedule 2 of the Project Approval requires that Wilpinjong shall enter into a planning agreement with the Council which provides for the payment of contributions to Council for upgrading specified elements of the Council's road infrastructure affected by the Wilpinjong Coal Project.
- C By letter to the General Manager of the Council dated 4 August 2010, Wilpinjong offered to enter into this Agreement with the Council.
- D The purpose of the parties entering into this Agreement is to enable Wilpinjong to satisfy condition 12 of Schedule 2 of the Project Approval.
- E On or about 28 August 2012 the NSW Planning Assessment Commission granted consent to the modification of the Wilpinjong Coal Project the subject of the Project Approval.
- F By letter to the Assessment Officer of the Mining & Projects Division of the NSW Department of Planning and Infrastructure dated 14 June 2012, Wilpinjong offered to enter into an agreement with the Council on the terms within this amended Agreement.
- G The purpose of the parties amending this Agreement is to enable Wilpinjong to satisfy Condition 12A of Schedule 2 of the Project Approval.

Operative Part

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

| Term | Definition |
|---------------------------------|--|
| Act | means the <i>Environmental Planning and Assessment Act 1979</i> . |
| Agreement | means this agreement. |
| Annexure A | means Annexure A to this Agreement. |
| Business Day | means any day excluding Saturdays, Sundays and public holidays. |
| Community Infrastructure | means the infrastructure of a communal, human or social nature, which caters for the various life-cycle needs of the public including but not limited to childcare facilities, community halls, youth centres and aged persons facilities. |
| CPI | means the consumer price index for Sydney (All Groups) published by the Australian Bureau of Statistics or the index officially substituted for it. |
| Gravel | is that material excavated on Mining Lease 1573 and used for road building on the Wilpinjong Mine. It is of no particular grade or quality but is generally suitable for road building. For the purposes of this Agreement, this gravel is assumed to have a value of \$6.00 plus GST per cubic metre. |
| GST | has the same meaning as in the GST Law. |
| GST Law | has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any other Act or regulation relating to the imposition or administration of the GST. |
| Land | means the land to which the Project Approval applies as described in Appendix 1 of the Project Approval. |
| Modification Application | means the section 75W modification application submitted by Wilpinjong on 16 September 2011 and approved by the Planning Assessment Commission on or about 28 August 2012. |
| Minister | means the Minister for Planning. |
| Party | means a party to this Agreement, including their successors and assigns. |
| Primary Road Works | means the widening and sealing of that part of the Ulan Wollar Road located immediately west of the Marragamba Bridge and extending 2800 metres further west to meet the eastern extent of the existing sealing of |

| Term | Definition |
|--|---|
| | the same road. |
| Project Approval | means the project approval for the Wilpinjong Coal Project (05_0021) granted on 1 February 2006 as modified from time to time. |
| Regulation | means the <i>Environmental Planning and Assessment Regulation 2000</i> . |
| Road Capital Contribution | means an amount of \$600,000.00 plus GST. |
| Road Capital Contribution Remainder | means the Road Capital Contribution minus all payments made by Wilpinjong to Council in accordance with clause 6.1. |
| Secondary Road Works | means the upgrading of Ulan Road between Mudgee and the entrance to the underground surface facilities at the Ulan Coal Mine as described in the Ulan Road Strategy prepared in accordance with Condition 51 of Schedule 3 of the Project Approval. |
| Wilpinjong Coal Project | Means the development the subject of the Project Approval |

1.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) **(headings)** clause headings and the table of contents are for convenience only and do not affect the interpretation of this Agreement;
- (b) **(Australian currency)** a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (c) **(corporation)** a reference to a corporation includes its successors and permitted assigns;
- (d) **(statutory corporation)** a reference to a statutory corporation includes its successors and permitted assigns;
- (e) **(including)** references to the word 'include' or 'including' are to be constructed without limitation;
- (f) **(corresponding meanings)** 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;
- (g) **(singular)** the singular includes the plural and vice-versa;
- (h) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under that legislation or legislative provision; and
- (i) **(writing)** a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.

2 Planning Agreement under the Act

This Agreement constitutes a planning agreement within the meaning of section 93F of the Act. Annexure A demonstrates how this Agreement complies with the requirements of Division 6 of Part 4 of the Act.

3 Application of the Agreement

- (a) This Agreement applies to the Land.
- (b) This Agreement applies to the Wilpinjong Coal Project.

4 Operation of this Agreement

This Agreement operates from the date upon which it is executed by the Parties.

5 Application of sections 94, 94A and 94EF of the Act

5.1 Sections 94, 94A and 94EF of the Act

This Agreement does not exclude the application of section 94, 94A and 94EF of the Act to the Wilpinjong Coal Project.

5.2 Section 94 of the Act

The payments under this Agreement are to be taken into consideration in determining a development contribution for the Wilpinjong Coal Project under section 94 of the Act.

5.3 Impact of the Wilpinjong Coal Project on local social amenity or Community Infrastructure

- (a) Subject to clause 5.3(b), Council must not seek from nor impose on Wilpinjong any financial contribution for the Wilpinjong Coal Project as approved or for any future modification of the Wilpinjong Coal Project (including without limitation any expansion), in addition to the contribution embodied in clause 6.2A of this Agreement, in relation to the impact of the Wilpinjong Coal Mine (or any expansion thereof) on local social amenity or Community Infrastructure; and
- (b) Council may only seek from or impose on Wilpinjong a financial contribution for a future modification of the Wilpinjong Coal Project in so far as it relates to Condition 5 of Schedule 2 of the Project Approval, in addition to the contribution embodied in clause 6.2A of this Agreement.

6 Development Contributions to be made under this Agreement

6.1 Road Capital Contribution-Ulan Wollar Road

- (a) **Primary Road Works**
 - (i) Council is to carry out the Primary Roads Works.

- (ii) Subject to clause 6.1(a)(iii), Council may issue an invoice to Wilpinjong for its costs reasonably incurred in carrying out each stage of construction of the Primary Road Works following the completion of each stage. The determination of the staging of construction for the Primary Road Works shall be at the sole discretion of Council.
- (iii) Wilpinjong must pay that proportion of the Road Capital Contribution due under each invoice issued by Council within 14 days provided that the aggregate amount sought under the invoice or invoices for the Primary Road Works does not exceed the Road Capital Contribution.

(b) Secondary Road Works

- (i) In the event that there is any unexpended portion of the Road Capital Contribution left following the payment by Wilpinjong to Council of all invoices issued for the Primary Road Works, then, subject to clause 6.1(b)(ii), Council may issue an invoice to Wilpinjong for its costs reasonably incurred in carrying out each stage of construction of the Secondary Road Works following the completion of each stage. The determination of the staging of construction for the Secondary Road Works shall be at the sole discretion of Council.
- (ii) Wilpinjong must pay that proportion of the Road Capital Contribution due under each invoice issued by Council within 14 days provided that the aggregate amount sought under the invoice or invoices for the Secondary Road Works does not exceed the Road Capital Contribution Remainder.

6.2 Contribution of Funds or Gravel

- (a) Subject to clause 6.2(c), Wilpinjong must pay to Council a contribution of \$50,000.00 plus GST to be used by Council for general upgrading of the Ulan Wollar Road.
- (b) The payment under clause 6.2(a) must be made by Wilpinjong to Council within 30 days of the commencement of this Agreement.
- (c) In lieu of the monetary payment under clause 6.2(a), Wilpinjong may at its sole discretion provide to Council the equivalent value in Gravel to be used by Council for the upgrading of the Ulan Wollar Road.
- (d) If Wilpinjong is to make a contribution to Council under clause 6.2(c) above, Wilpinjong must deliver the contribution to the location(s) located within the boundaries of the land subject to Mining Lease 1573 nominated by Council on the date(s) notified by Council.

6.2A Contribution of Social Amenity or Community Infrastructure Annual Payment

Contribution payable

- (a) Wilpinjong must pay Council the Annual Payment by 31 March each Payment Year in accordance with this clause.

Annual Payment

- (b) The Annual Payment is determined by the following formula:

$$\text{Annual Payment (\$)} = (W-100) \times (\$12,000/20)$$

Where 'W' is the total number of permanent employees and permanent contractors at the Wilpinjong Coal Project as determined by Wilpinjong (acting reasonably) on 28 February in any given year.

Payment Year

- (c) A Payment Year is each of the remaining calendar years of the current Project Approval.

Provision of Information in Support of Calculation of Annual Payment

- (d) In addition to the Annual Payment Wilpinjong is to provide the information supporting the calculation required by clause 6.2A(b) in writing to Council by 31 March in the Payment Year.

Indexation

- (e) The Annual Payment payable:
- (i) in the 2013 Payment Year is not subject to indexation; and
 - (ii) in each Payment Year commencing 2014 must be indexed in accordance with CPI for the December quarter of the previous calendar year.

Use

- (f) Council must expend all monies received from the Annual Payment in relation to local social amenity or Community Infrastructure.

Time frame

- (g) Council must expend all monies received from the Annual Payment within a reasonable time of receiving the Annual Payment.

6.3 Method of Payment

Wilpinjong must pay the monetary contributions required under clauses 6.1, 6.2 and 6.2A of this Agreement by electronic transfer into a bank account directed by the Council.

6.4 Completion of Road Works

Council agrees to use its reasonable endeavours to complete the road works referred to clauses 6.1 and 6.2 within 24 months of the commencement of the this Agreement.

6.5 Confirmation of Payment

Council must provide written confirmation to Wilpinjong within 14 days of receiving an Annual Payment.

6.6 Enforcement

Within 60 days of execution of this Agreement, Wilpinjong and Peabody Energy Australia Pty Ltd (ABN 93 096 909 410) (PEA) will enter into a parent company guarantee in favour of and in terms acceptable to Council (acting reasonably) whereby PEA unconditionally and irrevocably guarantees Wilpinjong's obligations under clause 6.3.

7 Registration

This Agreement will not be registered as provided for in section 93H of the Act.

8 Review of this Planning Agreement

This Agreement may be reviewed or modified by agreement providing that any variation must be in writing and must be executed by the Parties. This clause does not derogate from any requirement under section 93G of the Act or the Regulation with respect to the amendment of a planning agreement.

9 Notices

9.1 Giving Notice

- (a) Any notice, demand, consent or other communication given or made under this Agreement must be:
 - (i) clearly readable;
 - (ii) signed by the Party giving or making it (or signed on behalf of that Party by its authorised representative); and
 - (iii) left at the address or sent by pre-paid security post (air mail if outside Australia) to the address or to the fax number of the recipient.
- (b) A Party may change its address or facsimile number for the purpose of service by giving notice of that change to the other Party in accordance with clause 9.1.
- (c) The Parties' respective addresses and facsimile numbers are those set out in the Schedule.

9.2 Receipt

Any communication will be taken to be received by the recipient:

- (a) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the facsimile number of the recipient; and
- (c) if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at the commencement of the next Business Day in which business is generally conducted in that place.

10 Disputes

10.1 Not Commence

A Party may not commence any court proceedings relating to a dispute of any matter under this Agreement (a Dispute) unless it complies with this clause 10.

10.2 Written Notice of Dispute

A Party claiming that a Dispute has arisen under or in relation to this Agreement must give notice to the other Party specifying the nature of the Dispute.

10.3 Attempt to Resolve

On receipt of notice under clause 10.2, the Parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

10.4 Mediation

If the Parties do not agree within seven days of receipt of notice under clause 10.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales (or any replacement). The Parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

10.5 Costs

Each Party to a dispute must pay its own costs of complying with this clause 10. The Parties to the Dispute must equally pay the costs of the Mediation including without limitation the fees of any mediator and the cost of room hire.

10.6 Court Proceedings

If the Dispute is not resolved within 42 days after notice is given under clause 10.2, then any Party which has complied with the provisions of this clause 10 may in writing terminate any dispute resolution process undertaken pursuant to this clause 10 and may then commence court proceedings in relation to the Dispute.

10.7 Not Use Information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 10 is to attempt to settle the Dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 10 for any purpose other than in an attempt to settle the Dispute.

10.8 No Prejudice

This clause 10 does not prejudice the right of a Party to institute Court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

11 Entire Agreement

This Agreement contains the entire agreement between the Parties have agreed in relation to the matters it deals with. 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 Agreement was executed, except as permitted by law.

12 Further Acts

Each party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

13 Governing Law and Jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non exclusive jurisdiction of its court and court of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

13 Joint and Individual Liability and Benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

14 No Fetter

Nothing in this Agreement 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.

15 Representations and Warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

16 Severability

If a clause or part of a clause of this Agreement 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. 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 Agreement, but the rest of this Agreement is not affected.

17 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

18 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. 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.

Schedule

| | |
|----------------|---|
| Name | Wilpinjong Coal Pty Ltd |
| Contact | Ian Livingstone-Blevins – General Manager |
| Address | Locked Bag 2005, Mudgee, NSW 2850 |
| Fax | 02 6373 4575 |

| | |
|----------------|-------------------------------------|
| Name | Mid-Western Regional Council |
| Contact | The General Manager |
| Address | 86 Market Street, Mudgee, NSW 2850 |
| Fax | 02 6378 2815 |

Execution

EXECUTED as an agreement

Executed by Wilpinjong Coal Pty Ltd

[Redacted signature]

Director

[Redacted signature]

Director/Secretary

[Redacted name]

Full name of Director

[Redacted name]

Full name of Director/Secretary

Executed by Mid-Western Regional Council
by:

[Redacted signature]

Director *MAYOR*

[Redacted signature]

Director/Secretary *General Manager*

[Redacted name]

Full name of Director *MAYOR*

[Redacted name]

Full name of Director/Secretary *General Manager.*

Annexure A

Table detailing how Agreement fulfils section 93F(3) EPA Act requirements for the contents of Planning Agreements

| Subsection | Requirement | Agreement clause |
|-------------------|--|--|
| 93F(3)(a) | A description of the land to which the agreement applies. | Definitions – 'Land' |
| 93F(3)(b)(i) | A change to the environmental planning instrument to which the agreement applies. | Not relevant |
| 93F(3)(b)(ii) | A description of the development to which the agreement applies. | Definitions – 'Wilpinjong Coal Project' |
| 93F(3)(c) | The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made. | Clause 6 – 'Development Contributions to be made under this Agreement' |
| 93F(3)(d) | Whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development. | Clause 5 – 'Application of sections 94, 94A and 94EF of the Act' |
| 93F(e) | If the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94. | Clause 5 – 'Application of sections 94, 94A and 94EF of the Act' |
| 93F(3)(f) | A mechanism for the resolution of disputes under the agreement. | Clause 10 'Disputes' |
| 93F(3)(g) | The enforcement of the agreement by suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer. | Clause 6A – 'Enforcement' |