

MID-WESTERN REGIONAL COUNCIL
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Planning Agreement

Bylong Coal Project

Mid-Western Regional Council (**Council**)
KEPCO Bylong Australia Pty Ltd (**Developer**)

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Planning Agreement

Bylong Coal Project

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Details

Date

Parties

Name **Mid-Western Regional Council**
ABN 96 149 391 332
Short form name **Council**
Notice details 86 Market Street, Mudgee NSW 2850
Facsimile: (02) 6378 2815
Attention: Mayor Desmond Kennedy

Name **KEPCO Bylong Australia Pty Ltd**
ABN 79 075 361 769
Short form name **Developer**
Notice details 1301/141 Walker Street, North Sydney NSW 2060
Facsimile: (02) 8904 9588
Attention: President and Chief Executive Officer of KEPCO Australia

Background

- A The Developer is the owner of the Land.
- B On 26 June 2015, the Developer issued a letter of Offer to enter into a Planning Agreement with the Council in accordance with the terms set out in that letter.
- C By resolution dated 15 July 2015, the Council resolved to accept the Offer.
- D On 22 July 2015, the Developer lodged a Development Application with the Department seeking Development Consent to carry out the Development on the Land and the Other Land.
- E By way of this Agreement, the Developer agrees to provide the Development Contributions on the terms and conditions of this Agreement pursuant to section 93F of the Act.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

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

Agreement means this Planning Agreement including any schedules.

Approval means any consent, modification, certificate, licence, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or agency.

Business Day means any day except for a Saturday, Sunday, or bank or public holiday in Sydney.

Commencement Date means the day on which this Agreement comes into operation in accordance with clause 4.

Consent Authority has the same meaning as in section 4 of the Act.

Community Investment Fund means a fund established under this Agreement to contribute monies toward initiatives which respond to community needs and, simultaneously, mitigate social risk and create a positive legacy for both the Development and its communities.

Community Plan means the Mid-Western Region Towards 2030 Community Plan endorsed by Council and consistent with the Integrated Planning and Reporting Framework.

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Department means the Department of Planning and Environment or any other Authority replacing it.

Development means the Bylong Coal Project as described in the Environmental Impact Statement and Response to Submissions Report for State Significant Development Application Number SSD 14_6367 lodged with the NSW Department of Planning and Environment, as modified from time to time.

Development Application has the same meaning as in section 4 of the Act.

Development Consent has the same meaning as in section 4 of the Act.

Development Contributions means the contributions as specified in clause 5.

Financial Year means each 12 month period during the Term commencing on 1 July each year and ending on 30 June each year.

GST has the same meaning as in the GST Law.

GST Law has the same meaning given to that term 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.

Land means the land listed in **Schedule 2** which is owned by the Developer.

Law means:

- (a) the common law including principles of equity;
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations and by-laws; and
- (c) any Approval, including any condition or requirement under it.

LPMA means the Land and Property Management Authority of NSW or any other Authority replacing it.

Mine has the same meaning as in the *Mining Act 1992* (NSW).

Mine Commencement Date means the date of commencement of the open cut operations of the Mine on the Land and the Other Land in connection with the Development.

Offer means the Developer's Offer to provide the Development Contributions as set out in its letter dated 26 June 2015.

Other Land means the land listed in **Schedule 3** which is not owned by the Developer but is the subject of the Development Application for the Development.

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

Planning Agreement has the same meaning as in section 93C of the Act.

Product Coal means coal mined at and transported from the Land or the Other Land.

Register means the Torrens Title register maintained under the *Real Property Act 1900* (NSW).

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Term means from the Commencement Date until the cessation of coal production and loading of product tonnes onto trains as required by the conditions of the Development Consent for the Development on the Land and Other Land.

WAF means construction and operation of a Workforce Accommodation Facility (WAF) and associated access road from the Bylong Valley Way.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;

- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

This agreement applies to the Land and the Development.

4. Operation of this Agreement

This Agreement operates if:

- (a) Development Consent is granted by the Consent Authority for the Development on the Land and the Other Land; and
- (b) the Agreement is entered into as required by clause 25C(1) of the Regulation.

5. Development Contributions

- (a) Subject to this Agreement, the Developer is to make the following Development Contributions in respect of the Development:

- (i) payment of \$1.5 million to the Council on the granting of the Development Consent by the Consent Authority for the Development on the Land and the Other Land which is payable on the date that the Development is physically commenced;
 - (ii) payment of \$1.25 million to the Council on the Mine Commencement Date; and
 - (iii) payment of \$0.05 per tonne of Product Coal to the Council towards the Community Investment Fund, which is payable within three months of the end of each Financial Year for the Term.
- (b) The Parties acknowledge and agree that the amount of Development Contributions in:
- (i) clause 5(a)(i) and 5(a)(ii) will increase annually from 1 July 2017 in accordance with CPI; and
 - (ii) clause 5(a)(iii) will increase annually at the start of each Financial Year following the initial payment following the end of the first Financial Year in accordance with CPI.

6. Consultation with and Recognition of the Developer

- (a) The Council acknowledges and agrees that it will:
- (i) consult with the Developer in relation to the public purpose(s) that the Development Contributions will be used for to ensure the provision of a material public benefit(s);
 - (ii) provide regular updates to the Developer in relation to the implementation and delivery of the public purpose(s) for which the Development Contributions are used;
 - (iii) recognise the Developer's contribution to the funding and delivery of the public purpose(s) for which the Development Contributions are used; and
 - (iv) the expenditure of funds under this Agreement shall be consistent with the Community Plan and by resolution of Council.

7. Application of sections 94 and 94A of the Act

This Agreement excludes application of sections 94 and 94A of the Act to the Development.

8. Registration of this Agreement

8.1 Registration of this Agreement

The Developer must at its expense, procure the registration of this Agreement on the relevant folios of the Register held by the LPMA pertaining to the Land that it owns in accordance with section 93H of the Act as soon as reasonably practicable after the Agreement comes into operation and by no later than 40 Business Days after that date.

8.2 Release and discharge of this Agreement

The Council agrees to:

- (a) provide a release and discharge of this Agreement with respect to the Land or any lot on Council's satisfaction of the completion of the Developer's obligations under this Agreement; and

- (b) do all things necessary, including the execution of any documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the Register held by the LPMA.

9. Dispute Resolution

9.1 No arbitration or court proceedings

If a dispute arises out of this agreement (**Dispute**), a Party must comply with this clause 9 before starting arbitration or court proceedings (except proceedings for interlocutory or other urgent relief).

9.2 Notification

A Party claiming a Dispute has arisen must give the other Party to the Dispute notice setting out details of the Dispute.

9.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 9.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

9.4 Mediation

- (a) If the Parties do not agree within 14 days of receipt of notice under clause 9.3 (or any further period agreed in writing by them), the Parties must mediate the dispute in good faith and in the spirit of co-operation in accordance with the Mediation Rules of the Law Society of New South Wales.
- (b) If the Parties do not agree on a mediator a party may at any time request the President of the Planning Institute (NSW Division) or the President of the NSW Law Society, whichever is the most appropriate, to select the mediator and determine the mediator's remuneration, which cost must be borne by the Parties equally.

9.5 Confidentiality

Any information or documents disclosed by a Party under this clause 9:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

9.6 Costs

Each Party to a Dispute must pay its own costs of complying with this clause 9. The parties to the Dispute must equally pay the costs of any mediator.

9.7 Termination of process

- (a) A Party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 9.1 to 9.3.
- (b) Clauses 9.5 and 9.6 survive termination of the dispute resolution process.

9.8 Breach of this clause

If a Party to a Dispute breaches this clause 9, the other Party to the Dispute does not have to comply with those clauses in relation to the Dispute.

10. Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any Court of competent jurisdiction, subject to clause 9.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this Agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11. Termination

- (a) This Agreement will terminate:
 - (i) on the declaration by a court of competent jurisdiction that the Development Consent for the Development on the Land is invalid; or
 - (ii) at the end of the Term.
- (b) In the event of termination of this Agreement, any funds that have been paid by the Developer as Development Contributions prior to termination:
 - (i) can continue to be expended in accordance with the terms of this Agreement; and
 - (ii) are not refundable by the Council to the Developer,

12. Review of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

13. Assignment

A Party must not assign, novate or otherwise transfer its rights and/or obligations under this Agreement unless the other Party has provided its prior written consent, which consent may be withheld in that Party's absolute discretion.

14. No fetter

14.1 Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including but not limited to any statutory power or discretion of the Council relating to the assessment and determination of any Development Application for the Development (all referred to in this Agreement as a **Discretion**).

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 14.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement, which is to be held to be a fetter to the extent that is possible, having regard to the relevant court judgment.

15. Notices

15.1 Notices

Subject to clause 15.2, any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:
 - (i) Mid-Western Regional Council
86 Market Street, Mudgee NSW 2850
Fax: (02) 6378 2815
Attention: Mayor Desmond Kennedy
 - (ii) KEPCO Bylong Australia Pty Ltd
1301/141 Walker Street, North Sydney NSW 2060
Fax: (02) 8904 9588
Attention: President and Chief Executive Officer of KEPCO Australia
- (c) is taken to be given and made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause 15.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email

- (a) A Party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;

- (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) Mid-Western Regional Council
Attention: Mayor Desmond Kennedy
Email: council@midwestern.nsw.gov.au
 - (B) KEPCO Bylong Australia Pty Ltd
Attention: President and Chief Executive Officer of KEPCO Australia
Email: bylongproject@kepcoaustralia.com.au
- (b) The recipient of a Notice served under this clause 15.2 must:
- (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2(b) does not invalidate service of a Notice under this clause.

15.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 15.2 is taken to be given or made:
- (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,
- whichever occurs first.
- (b) If under clause 15.3(a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16. GST

16.1 Defined GST terms

In this clause 11, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

16.2 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the party providing the consideration for that Taxable Supply must also pay the GST Amount as additional consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

16.3 Tax invoice

If a party is liable for GST on any payments made under this Agreement, the other party must issue a tax invoice (or an adjustment note) to the liable party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

16.4 GST obligations to survive termination

This clause 11 will continue to apply after expiration of termination of this Agreement.

17. General

17.1 Relationship between Parties

- (a) Nothing in this Agreement:
 - (i) constitutes a partnership between the Parties; or
 - (ii) except as expressly provided, makes a Party an agent of another Party for any purpose.
- (b) A Party cannot in any way or for any purpose:
 - (i) bind another Party; or
 - (ii) contract in the name of another Party.
- (c) If a Party must fulfil an obligation and that Party is dependent on another Party, then that other Party must do each thing reasonably within its power to assist the other in the performance of that obligation.

17.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

17.3 Further assurances

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

17.4 Variation

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all Parties.

17.5 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

17.6 Legal expenses

Each Party is to pay its own legal costs and disbursements in connection with the negotiation, preparation and execution of this Agreement.

17.7 Entire agreement

The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

17.8 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 17.8(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 17.8(b)(i) or 17.8(b)(ii) applies.

17.9 Waiver

A right or remedy created by this Agreement cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

17.10 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this Agreement.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1 – Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this document applies- (Section 93F(3)(a))	The whole of the Land.
Description of the development to which this document applies- (Section 93F(3)(b)(ii))	All of the Development on the Land and the Other Land.
The scope, timing and manner of delivery of Development Contributions required by this document - (Section 93F(3)(c))	See clause 5 of this Agreement.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is wholly excluded in respect of all of the Development.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is wholly excluded in respect of all of the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of all of the Development.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 9 of this Agreement.
Enforcement of this document - (Section 93F(3)(g))	See clause 10 of this Agreement.
Registration of this document (Section 93H)	See clause 8 of this Agreement.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 14 of this Agreement.

Schedule 2– Land to which this Agreement applies

Lot	DP	Land Tenure	Land Owner
1	198907	Freehold	KEPCO Bylong Australia Pty Ltd
1	223632	Freehold	KEPCO Bylong Australia Pty Ltd
1	512928	Freehold	KEPCO Bylong Australia Pty Ltd
1	618119	Freehold	KEPCO Bylong Australia Pty Ltd
1	1146893	Freehold	KEPCO Bylong Australia Pty Ltd
2	222796	Freehold	KEPCO Bylong Australia Pty Ltd
2	223632	Freehold	KEPCO Bylong Australia Pty Ltd
2	512025	Freehold	KEPCO Bylong Australia Pty Ltd
2	618119	Freehold	KEPCO Bylong Australia Pty Ltd
2	810449	Freehold	KEPCO Bylong Australia Pty Ltd
2	1150843	Freehold	KEPCO Bylong Australia Pty Ltd
2	1146893	Freehold	KEPCO Bylong Australia Pty Ltd
3	222796	Freehold	KEPCO Bylong Australia Pty Ltd
3	618119	Freehold	KEPCO Bylong Australia Pty Ltd
3	755420	Freehold	KEPCO Bylong Australia Pty Ltd
3	1150843	Freehold	KEPCO Bylong Australia Pty Ltd
4	755420	Freehold	KEPCO Bylong Australia Pty Ltd
4	1150843	Freehold	KEPCO Bylong Australia Pty Ltd
5	114659	Freehold	KEPCO Bylong Australia Pty Ltd
5	755420	Freehold	KEPCO Bylong Australia Pty Ltd
5	1150843	Freehold	KEPCO Bylong Australia Pty Ltd
6	1150843	Freehold	KEPCO Bylong Australia Pty Ltd
6	114659	Freehold	KEPCO Bylong Australia Pty Ltd
6	755420	Freehold	KEPCO Bylong Australia Pty Ltd
7	114602	Freehold	KEPCO Bylong Australia Pty Ltd
7	114659	Freehold	KEPCO Bylong Australia Pty Ltd
7	755420	Freehold	KEPCO Bylong Australia Pty Ltd
9	755438	Freehold	KEPCO Bylong Australia Pty Ltd
21	755420	Freehold	KEPCO Bylong Australia Pty Ltd
23	755420	Freehold	KEPCO Bylong Australia Pty Ltd
24	755420	Freehold	KEPCO Bylong Australia Pty Ltd
25	755420	Freehold	KEPCO Bylong Australia Pty Ltd
46	755420	Freehold	KEPCO Bylong Australia Pty Ltd
47	755420	Freehold	KEPCO Bylong Australia Pty Ltd

Lot	DP	Land Tenure	Land Owner
53	755438	Freehold	KEPCO Bylong Australia Pty Ltd
54	755438	Freehold	KEPCO Bylong Australia Pty Ltd
57	755438	Freehold	KEPCO Bylong Australia Pty Ltd
68	755438	Freehold	KEPCO Bylong Australia Pty Ltd
78	755438	Freehold	KEPCO Bylong Australia Pty Ltd
86	755421	Freehold	KEPCO Bylong Australia Pty Ltd
87	755421	Freehold	KEPCO Bylong Australia Pty Ltd
88	755421	Freehold	KEPCO Bylong Australia Pty Ltd
89	755421	Freehold	KEPCO Bylong Australia Pty Ltd
94	45337	Freehold	KEPCO Bylong Australia Pty Ltd
185	755421	Freehold	KEPCO Bylong Australia Pty Ltd
187	755421	Freehold	KEPCO Bylong Australia Pty Ltd
188	755421	Freehold	KEPCO Bylong Australia Pty Ltd
206	755421	Freehold	KEPCO Bylong Australia Pty Ltd
30	755438	Freehold	KEPCO Bylong Australia Pty Ltd
59	755438	Freehold	KEPCO Bylong Australia Pty Ltd
1	1188987	Freehold	KEPCO Bylong Australia Pty Ltd
1	1094509	Freehold	KEPCO Bylong Australia Pty Ltd
2	1094509	Freehold	KEPCO Bylong Australia Pty Ltd
9	755420	Freehold	KEPCO Bylong Australia Pty Ltd
10	755420	Freehold	KEPCO Bylong Australia Pty Ltd
15	755420	Freehold	KEPCO Bylong Australia Pty Ltd
16	1109210	Freehold	KEPCO Bylong Australia Pty Ltd
17	755420	Freehold	KEPCO Bylong Australia Pty Ltd
49	755420	Freehold	KEPCO Bylong Australia Pty Ltd
50	755420	Freehold	KEPCO Bylong Australia Pty Ltd
1	607945	Freehold	KEPCO Bylong Australia Pty Ltd
1	439505	Freehold	KEPCO Bylong Australia Pty Ltd
1	245047	Freehold	KEPCO Bylong Australia Pty Ltd
1	114659	Freehold	KEPCO Bylong Australia Pty Ltd
2	607945	Freehold	KEPCO Bylong Australia Pty Ltd
2	1100343	Freehold	KEPCO Bylong Australia Pty Ltd
2	114659	Freehold	KEPCO Bylong Australia Pty Ltd
2	245047	Freehold	KEPCO Bylong Australia Pty Ltd
3	1146893	Freehold	KEPCO Bylong Australia Pty Ltd
3	114659	Freehold	KEPCO Bylong Australia Pty Ltd
4	1146893	Freehold	KEPCO Bylong Australia Pty Ltd

Lot	DP	Land Tenure	Land Owner
4	114659	Freehold	KEPCO Bylong Australia Pty Ltd
11	755420	Freehold	KEPCO Bylong Australia Pty Ltd
12	755420	Freehold	KEPCO Bylong Australia Pty Ltd
21	755438	Freehold	KEPCO Bylong Australia Pty Ltd
31	755420	Freehold	KEPCO Bylong Australia Pty Ltd
32	755420	Freehold	KEPCO Bylong Australia Pty Ltd
33	755420	Freehold	KEPCO Bylong Australia Pty Ltd
35	755420	Freehold	KEPCO Bylong Australia Pty Ltd
40	755438	Freehold	KEPCO Bylong Australia Pty Ltd
40	755420	Freehold	KEPCO Bylong Australia Pty Ltd
41	755438	Freehold	KEPCO Bylong Australia Pty Ltd
41	755420	Freehold	KEPCO Bylong Australia Pty Ltd
42	755438	Freehold	KEPCO Bylong Australia Pty Ltd
43	755438	Freehold	KEPCO Bylong Australia Pty Ltd
44	755438	Freehold	KEPCO Bylong Australia Pty Ltd
45	755438	Freehold	KEPCO Bylong Australia Pty Ltd
50	755417	Freehold	KEPCO Bylong Australia Pty Ltd
51	755417	Freehold	KEPCO Bylong Australia Pty Ltd
51	755438	Freehold	KEPCO Bylong Australia Pty Ltd
52	755417	Freehold	KEPCO Bylong Australia Pty Ltd
52	755438	Freehold	KEPCO Bylong Australia Pty Ltd
52	755420	Freehold	KEPCO Bylong Australia Pty Ltd
53	755417	Freehold	KEPCO Bylong Australia Pty Ltd
55	755417	Freehold	KEPCO Bylong Australia Pty Ltd
55	755438	Freehold	KEPCO Bylong Australia Pty Ltd
56	755438	Freehold	KEPCO Bylong Australia Pty Ltd
61	755417	Freehold	KEPCO Bylong Australia Pty Ltd
61	755438	Freehold	KEPCO Bylong Australia Pty Ltd
67	755420	Freehold	KEPCO Bylong Australia Pty Ltd
68	755420	Freehold	KEPCO Bylong Australia Pty Ltd
70	755420	Freehold	KEPCO Bylong Australia Pty Ltd
71	755420	Freehold	KEPCO Bylong Australia Pty Ltd
74	755438	Freehold	KEPCO Bylong Australia Pty Ltd
85	755417	Freehold	KEPCO Bylong Australia Pty Ltd
86	755417	Freehold	KEPCO Bylong Australia Pty Ltd
99	704724	Freehold	KEPCO Bylong Australia Pty Ltd
101	778500	Freehold	KEPCO Bylong Australia Pty Ltd

Schedule 3– Other Land

Lot	DP	Land Tenure	Land Owner
1	722162	Crown	Crown
3	191508	Crown (Transport for NSW)	Transport for NSW
4	191508	Crown (Transport for NSW)	Transport for NSW
4	755438	Crown	Crown
56	755420	Crown	Crown
57	755420	Crown	Crown
65	755417	Crown	Crown
85	755438	Crown	Crown
95	45337	Crown	Crown
97	45338	Crown	Crown
98	704724	Crown	Crown
7001	96938	Crown	Crown
7300	1137901	Crown	Crown
1	1150843	Freehold	RF & BW Murdoch
53	755420	Freehold	RF & BW Murdoch
55	755420	Freehold	RF & BW Murdoch
66	755420	Freehold	RF & BW Murdoch
90	755420	Freehold	Endeavour Energy
59	755420	Freehold	JD, VK, AJ, LF, MG, NJ & K Brown & AN Bonarius
60	755420	Freehold	JD, VK, AJ, LF, MG, NJ & K Brown & AN Bonarius
73	755420	Freehold	JD, VK, AJ, LF, MG, NJ & K Brown & AN Bonarius
74	755420	Freehold	JD, VK, AJ, LF, MG, NJ & K Brown & AN Bonarius
79	755438	Crown (Minister for Education and Training)	Minister for Education and Training
1	348810	Freehold	RNK Wright
1	222796	Freehold	RNK Wright
12	755438	Freehold	RNK Wright
100	778500	Freehold	RNK Wright
1	108141	Crown (Transport for NSW)	Transport for NSW
1	191508	Crown (Transport for NSW)	Transport for NSW
1	430939	Crown (Transport for NSW)	Transport for NSW
1	430964	Crown (Transport for NSW)	Transport for NSW

Lot	DP	Land Tenure	Land Owner
1	436556	Crown (Transport for NSW)	Transport for NSW
2	191508	Crown (Transport for NSW)	Transport for NSW
2	430939	Crown (Transport for NSW)	Transport for NSW
2	436556	Crown (Transport for NSW)	Transport for NSW
3	431442	Crown (Transport for NSW)	Transport for NSW
4	431442	Crown (Transport for NSW)	Transport for NSW
5	431442	Crown (Transport for NSW)	Transport for NSW

Schedule 4 – Explanatory Note

Explanatory Note

Mid-Western Regional Council

and

KEPCO Bylong Australia Pty Ltd (ACN 075 361 769)

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed planning agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW).

Parties to the Planning Agreement

The parties to the Planning Agreement are Mid-Western Regional Council (**Planning Authority**) and KEPCO Bylong Australia Pty Ltd (**Developer**).

The Developer has made an offer to enter into the Planning Agreement in connection with a State Significant Development Application (No SSD 14_6367) for the development of an open cut and underground coal mine and associated infrastructure (Development Application).

Description of the Subject Land

The Planning Agreement applies to the land set out in Schedule 2 of the Planning Agreement (Subject Land).

Description of the Development Application

The Developer is seeking development consent for a coal mine and associated infrastructure including:

- (a) the initial development of two open cut mining areas over an approximate 10 year period;
- (b) construction and operation of an underground coal mining for an approximate 20 year period;
- (c) a combined maximum extraction rate of up to 6.5 million tonnes per annum run-of-mine coal;
- (d) construction and operation of administration, workshop, bathhouse, explosives magazine and other open cut mining facilities, as well as haul roads and overburden emplacement areas;
- (e) a workforce of up to approximately 665 during the initial construction phase and a peak of approximately 470 full-time equivalent operations employees at full production;
- (f) construction and operation of a Workforce Accommodation Facility and associated access road from the Bylong Valley Way;
- (g) construction and operation of a rail loop and associated rail load out facility and connection to the Sandy Hollow to Gulgong Railway Line to facilitate the transport of product coal;
- (h) construction and operation of surface and groundwater management and water reticulation infrastructure, communications and electricity reticulation infrastructure, and road upgrades; and

infilling of mining voids, progressive rehabilitation of disturbed areas, decommissioning of Project infrastructure and rehabilitation of the land progressively following mining operations, (**Proposed Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make the following development contributions to the Planning Authority:

- (a) payment of \$1.5 million on the grant of development consent in relation to the Proposed Development towards a public purpose(s);
- (b) payment of \$1.25 million on the commencement of mining operations on the Subject Land towards a public purpose(s); and
- (c) payment of \$0.05 per tonne of coal transported by rail in connection with the Proposed Development towards a Community Investment Fund which will implement initiatives to respond to community needs and mitigate social risk and create a positive legacy for the Proposed Development and its communities.

These contribution amounts will be paid subject to indexation in accordance with the Planning Agreement.

The Developer is required to register the Planning Agreement on the title to the Subject Land in accordance with section 93H of the Act.

The objective of the Planning Agreement is to facilitate the delivery of the development contributions to the Planning Authority.

Assessment of Merits of Planning Agreement

Purpose of the Planning Agreement

In accordance with section 93F, the development contributions the subject of the Planning Agreement will be applied to a public purpose(s) that will ensure the provision of a material public benefit(s).

The Planning Authority and the Developer have assessed the Planning Agreement and hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving a public purpose(s).

This is because the development contributions the subject of the Planning Agreement will assist the Planning Authority in providing needed material public benefits to the community.

How the Planning Agreement Promotes the Elements of the Planning Authority's Charter

The Planning Agreement promotes a number of elements of the Planning Authority's Charter under section 8 of the Local Government Act 1993 (NSW). In particular, the Planning Agreement, through the delivery of a public purpose(s) and material public benefit(s), allows the Planning Authority to:

- provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- exercise community leadership;
- properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible;
- engage in long-term strategic planning on behalf of the local community; and
- keep the local community and the State government (and through it, the wider community) informed about its activities.

The Impact of the Planning Agreement on the Public or any Section of the Public

The Planning Agreement will benefit the public and local community through the delivery of a public purpose(s) and material public benefit(s).

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by committing the Developer to make monetary contributions towards a public purpose(s).

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the following objects of the Act by encouraging:

- the promotion and co-ordination of the orderly and economic use and development of land.

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to make monetary contributions towards a public purpose(s).

Requirements relation to Construction, Occupation and Subdivision Certificates

Clause 5 of the Planning Agreement sets out the timing for the payment of the development contributions.

The Planning Agreement does not require the payment of any monetary contributions and does not specify any requirements that must be complied with prior to the issue of any Subdivision Certificate, Construction Certificate or Occupation Certificate.

Interpretation of Planning Agreement

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


Signing page

EXECUTED as a deed.

SIGNED, SEALED AND DELIVERED by the authorised delegate for **Mid-Western Regional Council ABN 96 149 391 332** in accordance with a resolution of the Council dated 2016 in the presence of



Signature of witness



Signature of authorised delegate

Mette Sutton

Name of witness (print)

SIGNED, SEALED AND DELIVERED by **KEPCO Bylong Australia Pty Ltd ABN 21 133 264 230** in accordance with section 127 of the *Corporations Act 2001* (Cth) by



Signature of director



Signature of ~~director~~/company secretary
(Please delete as applicable)

JG HYEON KIM

Full name (print)

Taehwan Kim

Full name (print)