
Planning agreement for Ulan Coal Mines Limited -
Ulan Continued Operations Project

Ulan Coal Mines Limited ACN 000 189 248

Mid-Western Regional Council

Version: 1

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Planning agreement for Ulan Coal Mines – Ulan Continued Operations Project

Dated

Parties

Developer **Ulan Coal Mines Limited ACN 000 189 248**
Level 3, 1 Macquarie Place, Sydney NSW 2000

Council **Mid-Western Regional Council**
of 86 Market Street, Mudgee, New South Wales 2850

Background

- A The Developer has been granted the Approval by the Minister under Part 3A of the Act for the carrying out of the Development.
- B The Developer is required by the Approval to make the Development Contributions to the Council. The Developer has reached agreement with the Council to make Development Contributions to the Council in connection with the carrying out of the Development under section 93F of the Act.
- C The parties enter into this Agreement to give effect to the requirements of the Approval and the agreement reached between them.
- D Council acknowledges that the Approval is the subject of Class 1 – Merit Review proceedings in the NSW Land and Environment court. These proceedings are referred to as *Hunter Environment Lobby Inc v NSW Minister for Planning and Ulan Coal Mines Ltd* – Land and Environment Court proceedings No. 10998. of 2010.
- E Council acknowledges that if the Land and Environmental court upholds the appeal by the Hunter Environment Lobby Inc in Land and Environment Court proceedings No. 10998. of 2010 the Land and Environment Court may make an order that the Approval is void and of no effect and that the Project Application is refused.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document:

Term	Definition
the Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Agreement	means this Planning Agreement.
Approval	means Project Approval 08_0184 for the Ulan Continued Operations Project, dated 15 November 2010.
Business Day	means any day excluding Saturdays, Sundays and public holidays.
Community Infrastructure Fund	means a special purpose fund to be established by Council for the receipt of the contributions identified in Row 1 of Column 1 of Schedule 2.
Cope Road Maintenance Contribution	means the contribution paid by the Developer towards the maintenance of Cope Road under this agreement which is identified in Row 2 of Schedule 2.
Council	means Mid-Western Regional Council.
CPI	means the published Consumer Price Index (Sydney – All Groups), or if that index is no longer published, then any other index which, in the reasonable opinion of the Minister, is a similar index.
Developer	means Ulan Coal Mines Limited ACN 000 189 248
Development	means the development authorised by the Approval.
Development Contributions	means the monetary contributions described in Schedule 2.
Explanatory Note	means the note exhibited with a copy of this Agreement, when this Agreement is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the Regulation.
GST	has the meaning given to that term in the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Input Tax Credit	has the meaning given to that term in the GST Act.
Joint Venture Operator	has the meaning given to that term in the GST Act.
Land	means the land the subject of the Approval.
Minister	means the Minister administering the Act.

Term	Definition
Proceedings	means the Land and Environment Court proceedings <i>Hunter Environment Lobby Inc v Minister for Planning & Ulan Coal Mines Ltd</i> . Proceedings No 10998 of 2010.
Progressive or Periodic Supply	means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.
Project Application	means the Major Project Application No 08_0184 made by the Developer in accordance with the relevant provisions of Part 3A of the Environmental Planning and Assessment Act 1979 and submitted to the Department of Planning.
Recipient	has the meaning given to that term in the GST Act.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Representative Member	has the meaning given to that term in the GST Act.
Supplier	means the entity making the Supply.
Supply	has the meaning given to that term in the GST Act.
Tax Invoice	has the meaning given to that term in the GST Act.
Taxable Supply	has the meaning given to that term in the GST Act.
The Institute of Arbitrators and Mediators Australia	means the Institute of Arbitrators and Mediators Australia ACN 008 520 045, a company limited by guarantee and any successor organisation.
The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules	means the latest version of the 'Mediation and Conciliation Rules' published by the Institute of Arbitrators and Mediators Australia (whether or not that version was in force at the time of execution of this document).

1.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;

- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (j) a reference to 'month' means calendar month.

2 Application of the Agreement

This Agreement applies to:

- (a) the Land; and
- (b) the Development including any modifications of the Approval under the Act.

3 Planning agreement under the Act

This Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

4 Provision of Development Contributions under this Agreement

4.1 The Development Contributions

Subject to this Agreement, the Developer will pay to the Council the Development Contributions specified in Schedule 2.

4.2 Form of Development Contributions

The Development Contributions are to be made:

- (a) in accordance with the specification in column 1 of Schedule 2;
- (b) in the total amount referred to in column 2 of Schedule 2; and
- (c) at the times and in the amounts referred to in column 3 of Schedule 2.

The Development Contributions in Row 2 of Schedule 2 are to be adjusted according to CPI as follows:

$$DCP = \frac{DC \times A}{B}$$

where:

- (d) DC equals the particular Development Contribution payment amount required to be paid as per column 3 of Schedule 2;

- (e) DCP equals the actual Development Contribution payment amount payable at the time the particular payment is made;
- (f) A equals the most recent CPI published prior to the date the payment is due to be made; and
- (g) B equals the most recent CPI published prior to the date of this Agreement.

4.3 Use of Community Infrastructure Contribution

- (a) Council shall use the funds paid into the Community Infrastructure Fund for the purposes only of providing infrastructure located within the Mid-Western Regional Local Government Area for the benefit of the public.
- (b) Subject to Clause 4.3(a) Council may determine the infrastructure to be provided at its sole discretion in consultation with the Developer.

4.4 Use of Cope Road Maintenance Contribution

- (a) Council shall expend the Cope Road Maintenance Contribution only for maintenance of Cope Road.
- (b) Subject to Clause 4.4(a) Council may determine the maintenance to be undertaken at its sole discretion.

5 Payment of Development Contributions

5.1 Time of payment

A Development Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic transfer into a bank account nominated by Council.

5.2 Intention to make payment

The Developer must give the Council not less than two business day's written notice of:

- (a) its intention to pay a Development Contribution; and
- (b) the amount proposed to be paid.

5.3 Requirement for invoices

- (a) The Council must upon receiving the Developer's notice under clause 5.2, provide the Developer with a Tax Invoice for the amount of the contribution that the Developer proposes to pay.
- (b) The Developer:
 - (i) is not required to pay a Development Contribution; and
 - (ii) will not be in breach of this Agreement if it fails to pay a Development Contribution at the time required by this Agreement

if the Council fails to provide the Developer with a Tax Invoice for the amount proposed to be paid by the Developer.

5.4 Requirement for Information

- (a) Prior to the payment of any funds into the Community Infrastructure Fund, Council must provide the Developer with a report which identifies what community infrastructure the Developer Contributions are to be allocated to. Council acknowledges that the Developer will make this report publicly available on the Developer's Website.
- (b) On the first anniversary of the date of this Agreement Council must within 14 days of this anniversary provide the Developer with a report which identifies the total expenditure of any funds from the Community Infrastructure Fund including a description of any works which relate to any such expenditure and what expenditure is proposed for the following year. Council acknowledges that the Developer will make this report publicly available on the Developers Website.
- (c) Council shall provide the Developer with the report referred to in Cl. 5.4(b) on the second anniversary of this Agreement.

6 Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, 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; or
 - (ii) the Minister from exercising any function under this 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.

7 Registration

The Parties agree not to register this Agreement under section 93H of the Act.

8 Dispute resolution

Any dispute or difference whatsoever arising out of or in connection with this document must be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

9 GST

9.1 GST exclusive

Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

9.2 Taxable Supply

If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

9.3 Later GST change

For clarity, the GST payable under clause 9.2 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.

9.4 Reimbursement or indemnity

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

9.5 Warranty that Tax Invoice is issued regarding a Taxable Supply

Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

9.6 Progressive or Periodic Supplies

Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 9.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

10 Termination and Repayment of Contributions

- (a) If the Land and Environment Court upholds the appeal in the Proceedings and which results in an Order by the Court that the Project Application is refused Council will repay all contributions paid by the Developer pursuant to this Agreement within 30 days of any such Order being made by Land and Environment Court.
- (b) This Agreement will terminate on the date that Council repays all contributions paid by the Developer in accordance with clause 10(a).

11 Explanatory Notice to this Agreement

Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in interpreting this Agreement.

12 General

12.1 Amendments

This document may only be amended by written agreement between all parties.

12.2 Assignment

A party may only assign this document or a right under this document with the written consent of the other party whose consent may not be unreasonably withheld.

12.3 Counterparts

This document may be executed in any number of counterparts. All counterparts together make one instrument.

12.4 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

12.5 Entire agreement

- (a) This document supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this document.

12.6 Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

12.7 Representations and Warranties

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

12.8 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

12.9 Governing law and jurisdiction

- (a) New South Wales law governs this document.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

12.10 Severability

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

12.11 Notices

- (a) A notice, consent or communication under this document is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given as follows:
 - (A) delivered by hand to that person's address;
 - (B) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address; or
 - (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.
- (b) A notice, consent or communication delivered under clause 11.11(a) is given and received:
 - (i) if it is hand delivered or sent by fax:
 - (A) by 5.00pm (local time in the place of receipt) on a Business Day—on that day; or
 - (B) after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day—on the next Business Day; and
 - (ii) if it is sent by post:
 - (A) within Australia—three Business Days after posting; or
 - (B) to or from a place outside Australia—seven Business Days after posting.
- (c) A person's address and fax number are those set out below, or as the person notifies the sender:
 - (i) Ulan Coal Mines Limited

PMB 3006
4505 Ulan Road
MUDGEE NSW 2850
Fax: 02 6372 5333

- (ii) Mid-Western Regional Council
86 Market Street
MUDGEE NSW 2850
Fax: 02 6378 2815

Schedule 1

Requirements of Division 6 of Part 4 of the EPA&A Act

Subject and subsection of the Act	The planning agreement
<p>Planning Instrument and/or Development Application (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a project or development application</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.</p>	<p>No.</p> <p>Yes.</p> <p>No.</p>
<p>Planning Instrument and/or Development Application (Section 93F(1))</p> <p>For the purpose or being used or applied towards a public purpose, the Developer has:</p> <p>(d) dedicated land free of cost;</p> <p>(e) paid a monetary contribution;</p> <p>(f) provided any other material public benefit.</p>	<p>No.</p> <p>Yes.</p> <p>No.</p>
<p>Description of the land to which the Planning Agreement applies (Section 93F(3)(a))</p>	<p>See clause 2.</p>
<p>Description of the development to which the Agreement applies (Section 93F(3)(b)(ii))</p>	<p>See clause 2.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement (Section 93F(3)(c))</p>	<p>See clauses 4 and 5.</p>
<p>Applicability of section 94 of the Act (Section 93F(3)(d))</p>	<p>The application of s94 of the Act is not excluded.</p>
<p>Applicability of section 94A of the Act (Section 93F(3)(d))</p>	<p>The application of s94A of the Act is not excluded.</p>
<p>Applicability of section 94EF of the Act (Section 93F(3)(d))</p>	<p>The application of s94EF of the Act is not excluded.</p>

Subject and subsection of the Act	The planning agreement
Mechanism for dispute resolution (Section 93F(3)(f))	See clause 8.
Enforcement of the Planning Agreement (Section 93F(3)(g))	See clause 6.
Registration of the Planning Agreement (Section 93F(3)(g))	See clause 7.

Schedule 2

Development Contributions


Purpose of Development Contribution	Development Contribution	Date for payment of Development Contribution
Mid-Western Regional Council		
Community Infrastructure Fund	\$3.475 million	First contribution of \$2 million to be made within 30 days of the date of this agreement. Second contribution of \$1.475 million to be paid within a year of the date of the first contribution.
Contribution towards the maintenance of Cope Road	\$1.05 million	First contribution of \$50,000 to be made within 30 days of the date of this agreement. Subsequent contributions of \$50,000 to be paid annually on the anniversary of the date of the first contribution, to a total of 21 contributions.


Execution

EXECUTED as an agreement

Executed by

Ulan Coal Mines Limited ACN 000 189 248 by:


 A Director

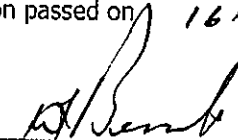

 A Director/Secretary

DANIEL DAVID CLIFFORD
 A Full name of Director

MARK ANDREW KLASER
 A Full name of Director/Secretary

Signed by

Mid-Western Regional Council in accordance with a
 resolution passed on 16th MARCH 2011


 A Signature of authorised person

~~Signature of authorised person~~

WARWICK L. BENNETT
 A Name of authorised person

~~Name of authorised person~~

GENERAL MANAGER
 A Office held

~~Office held~~

Explanatory Note

Planning agreement for the Ulan West Continued Operations Project

Introduction

- 1 Clause 25E of the *Environmental Planning Assessment Regulation 2000 (NSW)* requires a planning authority (in this case Mid-Western Regional Council) proposing to enter into a planning agreement under section 93F of the *Environmental Planning and Assessment Act 1979 (NSW)* (**Act**) to prepare an explanatory note about the planning agreement.
- 2 This explanatory note relates to the planning agreement proposed to be entered into by the parties described below in respect of the development approved by Project Approval 08_0184 dated 15 November 2010 (**Approval**) for the Ulan West Project (**Development**).
- 3 Council acknowledges that up to the date of this Agreement the Developer has paid \$678,000 to Council as a loan pursuant to the terms of a Deed of Agreement between the Developer, Council and the Minister for Planning and Environment.
- 4 Council acknowledges that the Developer has paid Council contributions in accordance with the following where required to do so :
 - (a) Development Consent, as modified, for Ulan Colliery granted by the Hon. Eric Bedford, Minister for Planning and Environment dated 26 May 1981.
 - (b) Deed of Agreement between Eric Lance Bedford, Minister for Environment and Planning, the Council of the Shire of Mudgee and Ulan Coal Mines Limited executed on or about 6 May 1983.
 - (c) Development Consent, as modified, for Ulan Coal Mine Stage 2 granted by the Hon. Bob Carr, Minister for Planning dated 4 October 1985.
 - (d) Development Consent DA 16/93 and DA 78/93 granted by the Hon. Robert Webster Minister for Planning dated 12 December 1993 for construction and operation of an underground coal mine.
 - (e) Development Consent DA 113-12-98 for extension of underground coal mining operations and construction of associated surface facilities at Ulan Coal Mine granted by the Hon. Andrew Refshauge MP Minister for Urban Affairs and Planning dated 20 December 1999.
 - (f) Deed of Agreement between Ulan Coal Mines Limited and Mudgee Shire Council dated 1 September 2003.
 - (g) Interim Rates Deed between Ulan Coal Mines Limited and Mid-Western Regional Council dated 6 July 2005.
 - (h) Development Consent DA103-5-2005 marked and dated Sydney 2005 granted Ulan Coal Mines Limited by the Hon. Frank Sartor MP Minister for Planning for alterations and additions to the Ulan Coal Mine.
 - (i) Deed of Agreement between Ulan Coal Mines Limited and Mid-Western Regional Council dated 23 March 2007.

Parties to the planning agreement

- 5 The parties to the planning agreement are:
- (a) Ulan Coal Mines Limited ACN 000 189 248 (**Developer**); and
 - (b) Mid-Western Regional Council (**Council**).
- 6 The parties enter into this agreement to give effect to the requirements of Schedule 1 – Condition 16 and Appendix 8 and Appendix 9 of the Approval.

Description of the land the subject of the planning agreement

- 7 The planning agreement applies to the land the subject of the Approval (Land).

Description of the Development

- 8 The development includes:
- (a) Continued operation of Ulan No. 3 underground, to complete longwall mining in the currently approved area;
 - (b) Longwall mining of the North 1 mining area;
 - (c) Longwall mining of the approved Ulan West area via a modified mine layout;
 - (d) Recommencement of open cut operations; including a 239 hectare extension area that adjoins the western boundary of previous open cut mining, previously approved for highwall mining;
 - (e) Continued use and upgrade of approved and existing Coal Handling and Preparation Plants (**CHPP**) and rail loading facilities to cater for an increase in total approved production capacity from 10 to 20 million tonnes per annum (**Mtpa**) product coal; and
 - (f) Continued use of approved and existing surface facilities and ancillary activities and construction and use of new surface facilities and ancillary activities to support the abovementioned operations.
 - (g) Rail refueling and provisioning facilities
 - (h) Provisions for the employment of a workforce of up to 931 employees and contractors

Summary of objectives, nature and effect of the planning agreement

- 9 The planning agreement provides that the Developer will contribute:
- (a) \$3.475 million to a community infrastructure fund; and
 - (b) \$1.05 million towards the maintenance of Cope Road,
- as described in Schedule 2 of the planning agreement (**the Contribution**);
- 10 The objective of the planning agreement is to facilitate the Contribution to the Council. Schedule 2 of the planning agreement details the payment schedule for the Contribution.

Assessment of merits of the planning agreement

The planning purposes served by the planning agreement

- 11 In accordance with section 93F(2) of the Act, the planning agreement fulfils the public purpose of funding recurrent expenditure relating to the provision of public amenities or public services, or other infrastructure within the Council Local Government Area.
- 12 The Council and the Developer have assessed the planning agreement and both hold the view that the provisions of this planning agreement provide a reasonable means of achieving those public purposes.

How the planning agreement promotes the public interest and one or more objects of the Act

- 13 The draft planning agreement promotes the following objects of the Act as set out in section 5 of the Act to encourage:
 - (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - (b) the provision and co-ordination of community services and facilities; and
 - (c) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats.
- 14 The planning agreement promotes the public interest by providing funding to the Council to enable the provision of public services and facilities.

How the planning agreement promotes the Council's Charter

- 15 The draft planning agreement promotes the following elements of the Council's charter:
 - (a) 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 facilities and services are managed efficiently and effectively; and
 - (b) to properly manage, develop, protect, restore, enhance and conserve the environment of the area (including the built environment) for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

How the planning agreement promotes one or more of the objects of the *Local Government Act 1993*

- 16 The planning agreement promotes the objects of the LGA 1993 by enhancing Council's ability to provide services and facilities appropriate to the current and future needs of the local community and of the wider public and facilitates the improvement and development of the resources of the Mid-Western Local Government Area.

How the planning agreement conforms with the planning authority's capital works program

- 17 Increased traffic on Cope Road will require additional maintenance of Cope Road which is not currently funded in Council's Works Program. The Developer will make a substantial contribution

to the maintenance works required for the road which will not detract from the adopted priorities of Council's Capital Works Program.

Interpretation of planning agreement

18 This explanatory note is not to be used to assist in construing the planning agreement.