
Wilpinjong Coal Pty Ltd
ABN 87 104 594 694

and

Mid-Western Regional Council
ABN 96 149 391 332

and

Excel Coal Limited
ABN 18 002 818 699

Wilpinjong Coal Project
Planning Agreement

S PARKE ■ ■
H ELMORE ■ ■
LAWYERS

Table of Contents

1	Definitions and interpretation.....	3
	1.1 Definitions.....	3
	1.2 Interpretation.....	4
2	Application of the Agreement.....	4
	2.1 Application of the Agreement.....	4
	2.2 Application of sections 94 and 94A of the Act.....	4
	2.3 Condition Precedent.....	5
3	Monetary Contributions.....	5
	3.1 Lump sum payment.....	5
	3.2 Community Infrastructure Contribution.....	5
	3.3 Road Maintenance Contribution.....	5
4	Route Assessment Study.....	5
	4.1 Route Assessment Study.....	5
	4.2 Obligation to conduct route assessment study.....	6
	4.3 Contribution to Road Upgrades.....	6
5	Guarantee.....	6
6	Transfer of Project.....	6
	6.1 Partial Transfer.....	6
	6.2 Total Transfer.....	7
	6.3 Council Concurrence.....	7
7	Notices.....	7
	7.1 Giving Notice.....	7
	7.2 Receipt.....	7
8	Invalidity.....	8
	8.1 Read Down.....	8
	8.2 Severability.....	8
	8.3 Survival.....	8
9	Disputes.....	8
	9.1 Not Commence.....	8
	9.2 Written Notice of Dispute.....	8
	9.3 Attempt to Resolve.....	9
	9.4 Mediation.....	9
	9.5 Court Proceedings.....	9
	9.6 Not Use Information.....	9
	9.7 No Prejudice.....	9
	Signing page.....	10

Agreement

Date

Parties

Name Wilpinjong Coal Pty Ltd ABN 87 104 594 694 (**Wilpinjong**)

Address Level 9, 1 York Street, Sydney, New South Wales, 2000

Fax Number 02 9247 2099

Email Address pdoyle@excelcoal.com.au

Contact Peter Doyle

Name Mid-Western Regional Council ABN 96 149 391 332 (**Council**)

Address 86 Market Street, Mudgee, New South Wales, 2850

Fax Number 02 6378 2815

Email Address council@mudgee.nsw.gov.au

Contact Catherine Van Laeren

Name Excel Coal Limited ABN 18 002 818 699 (**Guarantor**)

Address Level 9, 1 York Street, Sydney, New South Wales, 2000

Fax Number 02 9247 2099

Email Address pdoyle@excelcoal.com.au

Contact Peter Doyle

Background

- A. Wilpinjong proposes to undertake the Project.
- B. The parties propose to enter into this Agreement as a planning agreement under s93F of the Act in relation to the Project.

Operative Part

1 Definitions and interpretation

1.1 Definitions

In this document:

Act means the *Environmental Planning and Assessment Act 1979*.

Business Day means any day excluding Saturdays, Sundays and public holidays.

Community Infrastructure Contribution means \$40,000.00 multiplied by the ratio of:

- (a) CPI for the quarter last published prior to the date for payment; to
- (b) the CPI last published prior to the date of this Agreement.

CPI means the consumer price index for Sydney (All Groups) published by the Australian Bureau of Statistics or the index officially substituted for it.

Dispute means any dispute arising out of or relating to this Agreement including a dispute as to breach or termination of this Agreement.

Explanatory Note has the same meaning given to that term in clause 25E of the Regulation.

Land means the land to which the Project applies.

Project means the Wilpinjong Coal Project approved by the Minister for Planning in response to the project application made by Wilpinjong on 9 September 2005.

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

Roads means

- (a) Ulan Road between Mudgee and the intersection with the Ulan-Wollar Road;
- (b) Ulan-Wollar Road between the Project and the intersection with the Ulan Road; and
- (c) Wollar Road between the Project and the intersection with Ulan Road.

Road Maintenance Contribution means \$30,000.00 multiplied by the ratio of:

- (a) CPI for the quarter last published prior to the date for payment; to

(b) CPI last published prior to the date of this Agreement.

Route Assessment Study means a route assessment study carried out in accordance with clause 4.1

1.2 Interpretation

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

(Explanatory Note) the Explanatory Note is not to be used to assist in construing this Agreement.

(headings) clause headings and the table of contents are not relevant to the interpretation of this agreement.

(person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

(corporation) a reference to a corporation includes its successors and permitted assigns.

(statutory corporation) a reference to a statutory corporation includes its successors and permitted assigns.

(including) including and includes are not words of limitation.

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(singular) the singular includes the plural and vice-versa.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(writing) a reference to a notice, consent, request, approval or other communication under this document or an agreement between the parties means a written notice, request, consent, approval or agreement.

2 Application of the Agreement

2.1 Application of the Agreement

(a) This Agreement applies to the Land.

(b) This Agreement applies to the Project.

2.2 Application of sections 94 and 94A of the Act

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

2.3 Condition Precedent

This Agreement is of no effect until the grant of project approval for the Project under Part 3A of the Act.

3 Monetary Contributions

3.1 Lump sum payment

Wilpinjong must pay Council \$450,000.00 prior to the first shipment of coal from the Land.

3.2 Community Infrastructure Contribution

- (a) Wilpinjong must pay Council the Community Infrastructure Contribution annually in advance each year commencing on the first anniversary of the first shipment of coal from the Land for a period of 20 years.
- (b) Subject to clause 6.3, Wilpinjong must pay Council the Community Infrastructure Contribution in accordance with clause 3.2(a) whether or not the Project continues to operate.

3.3 Road Maintenance Contribution

Wilpinjong must pay Council the Road Maintenance Contribution annually in advance each year commencing on the first anniversary of the first shipment of coal from the Land for each year until Wilpinjong ceases mining coal on the Land.

4 Route Assessment Study

4.1 Route Assessment Study

Wilpinjong must carry out a Route Assessment Study which identifies:

- (a) The standard of compliance of the Roads with the applicable AUSTRROAD Standard;
- (b) traffic flows at the date of the Route Assessment Study which are not attributable to the Project;
- (c) predicted traffic flows over the life of the Project excluding traffic flows attributable to the Project;
- (d) predicted traffic flows and timing of traffic flows attributable to the Project.
- (e) whether the traffic flows identified in clause 4.2(b) or 4.1(c) require the upgrade of any part of the Roads to comply with the relevant AUSTRROAD Standard.

- (f) whether the predicted traffic flow attributable to the Project require the upgrade of any part of the Roads in order to comply with the relevant AUSTRROAD Standard where that upgrade would not be required, either at that time or at all, having regard to the traffic flows in clauses 4.1(b) and 4.1(c) only

4.2 Obligation to conduct route assessment study

- (a) Wilpinjong must undertake the Route Assessment Study within one year of the earlier of:
 - (1) Wilpinjong serving a notice on the Council that it intends to commence construction of the Project; or
 - (2) Wilpinjong commencing construction of the Project.
- (b) Wilpinjong must undertake the route assessment study in consultation with the Council.

4.3 Contribution to Road Upgrades

- (a) Wilpinjong must, at its option, either carry out or pay the costs of each upgrade to the Roads identified as required in the Route Assessment Study if:
 - (1) the incremental increase in traffic flow attributable to the Project require that upgrade of any part of the Roads in order to comply with the relevant AUSTRROAD Standard; and
 - (2) that upgrade would not be required at that time by the current or predicted traffic flows which are not attributable to the Project.
- (b) If Wilpinjong elects under clause 4.3(a) to carry out an upgrade of part of the Roads itself, Wilpinjong must comply with all laws in carrying out that upgrade.

5 Guarantee

The Guarantor guarantees to Council the due and punctual payment of all monies due to the Council and the performance of all obligations by Wilpinjong under this Agreement.

6 Transfer of Project

6.1 Partial Transfer

If Wilpinjong transfer or assigns part of its interest in the Project to another entity Wilpinjong may novate its rights and obligations under this Agreement to that entity.

6.2 Total Transfer

If Wilpinjong transfers or assigns the whole of its interest in the Project to one or more other entities Wilpinjong must novate its rights and obligations under this Agreement to one of those entities.

6.3 Council Concurrence

- (a) Council must do all things necessary to permit and record the novation of Wilpinjong's rights and obligations in accordance with clause 6.1 or 6.2.
- (b) If requested by the Guarantor, Council must permit the Guarantor to novate the Guarantors obligations under this Agreement to an entity of reasonably adequate financial standing, having regard to the extent of those obligations.
- (c) If the rights and obligations under this Agreement are novated in accordance with clauses 6.3(b), the Guarantor is released from all obligations to the Council arising after the date of novation.

6.4 Release

If the rights and obligations under this Agreement are novated in accordance with clauses 6.1 or 6.2, Wilpinjong is released from all obligations to the Council arising after the date of novation.

7 Notices

7.1 Giving Notice

- (a) Any notice, demand, consent or other communication given or made under this document must be:
 - (1) clearly readable;
 - (2) signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
 - (3) 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 Fax Number for the purpose of service by giving notice of that change to the other party in accordance with clause 7.1.

7.2 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 Fax Number of the recipient; and
- (c) if the time of dispatch of a facsimile is not on a day, or is after 5.00 pm (local time) on a day, in which business generally is carried on in the place to which the facsimile communication is sent it will be taken to have been received at the commencement of business on the next day in which business is generally carried on in that place.

8 Invalidity

8.1 Read Down

A word or provision must be read down if:

- (a) this Agreement is void, voidable, or unenforceable if it is not read down;
- (b) this Agreement will not be void, voidable or unenforceable if it is read down; and
- (c) the provision is capable of being read down.

8.2 Severability

A word or provision must be severed if:

- (a) despite the operation of clause 8.1(a), the provision is void, voidable or unenforceable if it is not severed; and
- (b) this Agreement will be void, voidable or unenforceable if it is not severed.

8.3 Survival

The remainder of this Agreement has full effect even if clause 8.2(a) or (b) applies.

9 Disputes

9.1 Not Commence

A party may not commence any court proceedings relating to a Dispute unless it complies with this clause 9.

9.2 Written Notice of Dispute

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

9.3 Attempt to Resolve

On receipt of notice under clause 9.2, 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.

9.4 Mediation

If the parties do not agree within 7 days of receipt of notice under clause 9.2 (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; or
- (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. 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.

9.5 Court Proceedings

If the Dispute is not resolved within 42 days after notice is given under clause 9.2, then any party which has complied with the provisions of this clause 9 may in writing terminate any dispute resolution process undertaken pursuant to this clause and may then commence court proceedings in relation to the Dispute.

9.6 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 Part 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 Part for any purpose other than in an attempt to settle the Dispute.

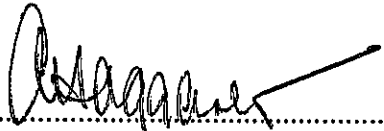
9.7 No Prejudice

This clause 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.

Signing page

Executed as an agreement

Executed by Wilpinjong Coal Pty Ltd ABN 87)
104 594 694 in accordance with section 127 of)
the Corporations Act 2001 (Cth) by:)



.....
Signature of Director

A. J. HAGGARTY

.....
Print name of Director

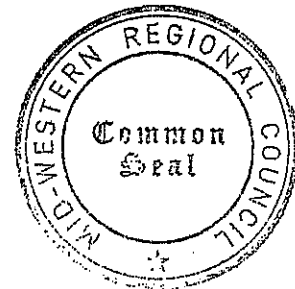


.....
Signature of Director/Secretary

ALAN DAVIS

.....
Print name of Director/Secretary

Executed by Administrator Colin Arnold as)
authorised representative for Mid-Western)
Regional Council ABN 96 149 391 332 who)
warrants that they are duly authorised to execute)
this document on behalf of Mid-Western)
Regional Council in the presence of:)



.....
Signature of Witness

ACTING GENERAL MANAGER
KATHRYN WOOLLEY

.....
Print name of Witness

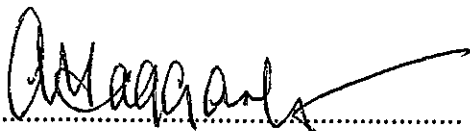
Colin Arnold

.....
Signature of Authorised Representative

COLIN ARNOLD

.....
Print name of Authorised Representative

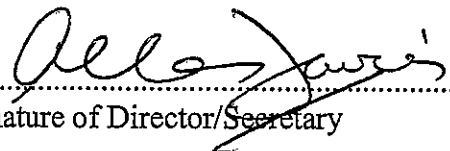
Executed by Excel Coal Limited ABN 18 002)
818 699 in accordance with section 127 of the)
Corporations Act 2001 (Cth) by:)



.....
Signature of Director

A. J. HAGGARTY

.....
Print name of Director



.....
Signature of Director/Secretary

ALAN DAVIS

.....
Print name of Director/Secretary

Upper Hunter
57 Brook Street
Muswellbrook NSW 2333
PO Box 266
Muswellbrook NSW 2333
DX 7341 Muswellbrook
Ph: 02 6542 4000
Fax: 02 6543 3607

Our Ref: rem:WIL125/2

Adelaide Level 19 Santos House 91 King William Street Adelaide SA 5000 GPO Box 2573 Adelaide SA 5001 DX 220 Adelaide Ph: 08 8415 9800 Fax: 08 8211 6630	Brisbane Level 8 AMP Place 10 Eagle Street Brisbane QLD 4000 PO Box 10220 Brisbane QLD 4000 DX 302 Brisbane Ph: 07 3016 5000 Fax: 07 3211 7783	Canberra Level 10 Canberra House 40 Marcus Clarke Street Canberra ACT 2600 GPO Box 2562 Canberra ACT 2601 DX 5676 Canberra Ph: 02 6263 6300 Fax: 02 6248 7522	Melbourne Level 40 Bourke Place 600 Bourke Street Melbourne VIC 3000 PO Box 82 Collins Street West Melbourne VIC 8007 DX 30959 Stock Exchange Ph: 03 9291 2333 Fax: 03 9291 2399	Newcastle Level 7 Sparke Helmore Building 28 Honeysuckle Drive Newcastle NSW 2300 PO Box 812 Newcastle NSW 2300 DX 7829 Newcastle Ph: 02 4924 7200 Fax: 02 4924 7299	Perth Level 12 The Quadrant 1 William Street Perth WA 6000 PO Box 5621 Perth WA 6831 DX 115 Perth Ph: 08 9288 8000 Fax: 08 9288 8099	Sydney Level 30 Citigroup Centre 2 Park Street Sydney NSW 2000 PO Box Q1164 QVB Post Office Sydney NSW 1230 DX 282 Sydney Ph: 02 9373 3555 Fax: 02 9373 3599	Upper Hunter 57 Brook Street Muswellbrook NSW 2333 PO Box 266 Muswellbrook NSW 2333 DX 7341 Muswellbrook Ph: 02 6542 4000 Fax: 02 6543 3607
---	--	---	--	--	--	---	---

Explanatory Note

Planning Agreement between Wilpinjong Coal Pty Limited and Mid-Western Regional Council

Wilpinjong Coal Pty Limited ("Wilpinjong") and the Mid-Western Regional Council ("Council") propose to enter a planning agreement under section 93F of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") in relation to the Wilpinjong Coal Project.

Clause 25E of the *Environmental Planning and Assessment Regulation 2000* requires that an explanatory note be prepared jointly between the parties to the agreement and that it be available for public inspection at the same time as the proposed planning agreement.

Description of the project

The Wilpinjong Coal Project includes the development and operation of an open cut mine and associated activities including construction and operation of a coal handling and preparation plant, raw and product coal handling facilities and rail and train loading infrastructure.

The Wilpinjong Coal Project will be located 40km northeast of Mudgee, near the village of Wollar. The Ulan-Wollar Road and Gulgong-Sandy Hollow Railway are on the northern boundary of the site and Wollar Road is on its southern boundary.

Objectives, nature and effect of proposed agreement

The proposed planning agreement will provide the Council with development contributions in lieu of contributions that may have been levied under section 94 and 94A of the EP&A Act. The contributions are considered to be commensurate with the development of the project and the Council can use these contributions to provide community infrastructure and transport related and other services to the local government area.

The agreement provides that Wilpinjong must pay the Council the following amounts:

- \$450,000 as a lump sum payment;
- \$40,000 per year for 20 years even if mining ceases before the approval expires; and
- \$30,000 per year for road maintenance while mining is being carried out.

In addition to these amounts, Wilpinjong must undertake a route assessment study and may have to contribute to road upgrades dependent on the outcome of the study.

Merits of the agreement

The proposed agreement will provide the Council with the certainty of receiving contributions that will enable the Council to:

- Provide a greater range of services;
- Improve and maintain existing services;
- Provide new infrastructure and community facilities;

- Improve and maintain existing infrastructure including roads;
- Provide new and improve existing programs; and
- Borrow against the future income stream.

The proposed agreement will have a positive impact on the public as it will provide Council with a level of funds that will enable the Council to deliver new and maintain and improve existing infrastructure and services. The proposed agreement will also allow the Council to use the contributions to borrow funds for further activities if the Council decides to do so.

Promotion of the objects of the EP&A Act

The following objects of the EP&A Act are promoted by the proposed agreement:

- The proper , management, development and conservation of cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- The promotion and co-ordination of the orderly and economic use and development of land; and
- The provision and co-ordination of community services and facilities.

The contributions made under the proposed agreement will promote these objects by allowing the Council to provide new and improve infrastructure, services and programs such as:

- Road upgrades, road building and road maintenance;
- Child care facilities;
- Medical facilities; and
- Public facilities such as pools, parks, cycleways and libraries.

Promotion of the purposes of the *Local Government Act 1993*

The following purpose of the *Local Government Act 1993* ("LG Act") is promoted by the proposed agreement:

- To give Councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public.

The contributions made under the proposed agreement will promote this purpose by allowing the Council to provide new and improve infrastructure, services and programs such as:

- Road upgrades, road building and road maintenance;
- Child care facilities;
- Medical facilities; and
- Public facilities such as pools, parks, cycleways and libraries.

Promotion of the elements of the Council's Charter

The following elements of the Council's Charter are promoted by the proposed agreement:

- 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;
- to promote and to provide and plan for the needs of children;

- to 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;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible; and
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants.

The contributions made under the proposed agreement will promote these elements by allowing the Council to provide new and improve infrastructure, services and programs such as:

- Road upgrades, road building and road maintenance;
- Child care facilities;
- Public facilities such as pools, parks, cycleways and libraries;
- Medical facilities; and
- Raising funds through borrowing against the contributions.

Promotion of the public interest

The proposed agreement promotes the public interest by addressing the objects of the EP&A Act, LG Act and the Council Charter. It provides certainty for Council through a contractual relationship. The end use of the contributions will not only provide benefits through improved infrastructure and services to the local community but will also provide benefits to the wider public and regional economy through increased tourism and the attraction of business and investment to the Council area.

Planning purpose served by the proposed agreement

The following planning purposes are served by the proposed agreement:

- Building new community infrastructure and maintaining existing community infrastructure;
- Providing for new and improving existing services;
- Maintaining roads; and
- Upgrading roads if required by the proposed route assessment study.

The proposed agreement provides for a reasonable means to address these planning purposes by providing for adequate contributions by both a lump sum and annual payments that are guaranteed under the proposed agreement.

Capital works program

Council's Management Plan identifies that works in the nature of the following Capital Works would be undertaken by Council: Road construction and maintenance, swimming pool upgrades and maintenance, community facilities including libraries, and child care centre upgrades.

As these funds are to be specifically allocated to improve various infrastructure and community facilities such as: road construction and maintenance, swimming pool upgrades and maintenance, community facilities including libraries, and child care centre upgrades, then the provision of these funds under the agreement are consistent and conform with capital works envisioned in Councils Management Plan.