

# Tahmoor South Coal Project Planning Agreement

Wollondilly Shire Council ("**Council**")

ABN 93 723 245 808

Tahmoor Coal Pty Ltd ("**Tahmoor Coal**")

ABN 97 076 663 968

V1

## Deed made on

## Parties

**Wollondilly Shire Council ("Council")**

**ABN 93 723 245 808**

**Tahmoor Coal Pty Ltd ("Tahmoor Coal")**

**ABN 97 076 663 968**

## Background

- A. Tahmoor Coal owns and operates the Tahmoor Coking Coal Mine and has applied to the Independent Planning Commission (**IPC**) for consent for the Tahmoor South Project, a State significant development (Development Application No. SSD-8445) comprising the extension of underground longwall mining and associated activities, to the south of their existing Surface Facilities Area. The application includes the construction of two ventilation shafts.
- B. On 23 April 2021 Tahmoor Coal obtained Development Consent from the IPC to carry out the Development in accordance with the Development Consent.
- C. Condition A23 (Schedule 2) of the Development Consent requires Tahmoor Coal to enter into a Planning Agreement with the Council within six months of the date of commencement of construction as notified under condition A19(b) (Schedule 2) of the Development Consent, or other timeframe agreed by the Planning Secretary
- D. The Council and Tahmoor Coal have agreed to enter into this deed to satisfy the requirements of Condition A23 of the Development Consent.
- E. Tahmoor Coal agrees to provide the Contributions to the Council on the terms and conditions of this deed.
- F. In accordance with section 7.4 of the Act, this deed formalises the arrangement between the Parties for the delivery of the Contributions in connection with the Development

## Operative Provisions

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this deed:

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

**"Approval"** means any approvals, consents, modifications, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or other variations to them) which may be required by law in connection with the commencement

and carrying out, as applicable, of the works associated with the provision of the Contributions.

**“Authority”** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an “accredited certifier” as that term is defined in the Act.

**“Business Day”** means any day on which banks are open for business generally in NSW, except for Saturday, Sunday or a day which is a public holiday in NSW.

**“Business Hours”** means from 9am to 5pm on each Business Day.

**“Commencement”** has the same meaning as condition A19(b) of the Development Consent.

**“Contributions”** means the development contributions, being the making of monetary contributions, as described in clause 5 and set out at Annexure A of this deed.

**“Costs”** means external costs, charges and expenses, including those incurred in connection with consultants and advisers.

**“Council”** means Wollondilly Shire Council.

**“Council's Policy”** means the Council's *Planning Agreement Policy - PLA0037*, adopted by Council on 19 October 2015.

**“Development”** means the development, or any part of the development approved under the Development Consent (including any subsequent modification of the Development Consent under section 4.55 of the Act).

**“Development Application”** has the meaning given to that term under the Act and includes applications to modify development consents.

**“Development Consent”** means the consent granted by the Independent Planning Commission for Development Application No. SSD-8445 comprising the extension of underground longwall mining and associated activities, to the south of existing mining as amended from time to time.

**“Explanatory Note”** means the explanatory note in relation to the Planning Agreement, as required by clause 25E of the Regulations, and attached as Schedule 2 to this deed.

**“Force Majeure Event”** means an event affecting a party which is outside that party's reasonable control including, but not limited to, fire, storm, flood, drought, earthquake, failure of major dam, explosion, war, invasion, rebellion, sabotage, banning of coal production, and collapse of a mine the subject of the Development.

**“Guarantee”** means a parent or related company guarantee whereby the Parent Company agrees to be jointly and severally liable with Tahmoor Coal to the Council for the due and punctual performance of all obligations of the Developer under this deed, in the form set out in Schedule 3 to this deed.

**“GST”** has the same meaning as in the GST Law.

**“GST Law”** has the 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 of or administration of the GST.

**“Law”** means

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

**“Legislation”** means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

**“Minister”** means the NSW Minister for Planning and Public Spaces.

**“Party”** means a party to this deed, including their respective successors and assigns.

**“Public Purposes”** means the items referred to in Column 1 and Column 2 of Annexure A of this deed.

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

**“State”** means the State of New South Wales.

**“Suspension Event”** means when the mining operations permitted by the Development are suspended including, but not limited to, when the Development is under care and maintenance.

**“Tax Invoice”** has the meaning given to that term in the GST Law.

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) “person” includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a Party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to an Authority in this deed includes,
  - (1) where an Authority ceases to exist, the body which replaces it; and
  - (2) where an Authority has its powers or functions transferred to another body the body which has the same or similar powers and which performs the same or similar functions.
- (e) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

- (f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to dollars or \$ is to Australian currency; and
- (m) a reference to a term or expression defined in the Act shall have the meaning given to it by the Act.

## **2. Status of this deed**

- (a) This deed takes effect from the date on which it is executed by all Parties.
- (b) The Parties will use their best endeavours to execute this deed within 28 Business Days from the end of the public notice period required by clause 25D of the Regulations.

## **3. Planning Agreement under the Act and Policy**

- (a) The Parties agree that this deed is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 of this deed summarises the requirements for planning agreements under section 7.4 of the Act and the way this deed addresses those requirements.
- (c) This deed has been prepared in accordance with Council's Planning Agreements Policy (037).

## **4. Application of this deed**

This deed applies to the Development Consent.

## **5. Contributions**

### **5.1 Timing of Contributions**

- (a) The Contributions which Tahmoor Coal is required to make under this clause 5 must be made at the times set out in Annexure A.

- (b) Unless otherwise stated at Annexure A, the timing of all contributions is to be made with respect to the date of this deed.

## 5.2 Contribution

- (a) Tahmoor agrees to pay the Council the Contributions of \$3,375,000.00 to be paid in accordance with Annexure A'.
- (b) Each of the Contributions listed in Annexure A must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (c) Each of the Contributions listed in Annexure A will be taken to have been made when the Council receives the full, cleared amount of the contribution by bank cheque or by electronic funds transfer to the Council's bank account.
- (d) The Council agrees to apply the Contributions only towards the Public Purposes outlined at Annexure A.
- (e) The Council will publicise the Contributions in accordance with its statutory reporting obligations under the Act and the Local Government Act 1993.

## 5.3 Intention to make payment

Having regard to the dates for the making of contributions and contribution obligations set out in Annexure A, Tahmoor Coal must give Council not less than 10 Business Days written notice of:

- (a) its intention to pay a Contribution in accordance with Annexure A; and
- (b) the amount proposed to be paid, including any GST to be paid by Tahmoor Coal in respect of the Contribution.

## 5.4 Requirement for tax invoices

- (a) Council must upon receiving the notice under clause 5.3, provide Tahmoor Coal with a Tax Invoice for the amount of the Contribution that Tahmoor Coal proposes to pay.
- (b) Subject to clause 5.3, Tahmoor Coal must pay Council the Contribution within 20 Business Days of receiving the Tax Invoice from Council under this clause 5.4.

## 5.5 Variation in production

- (a) If a Suspension Event or Force Majeure Event is in effect for a continuous period exceeding 90 days in the year preceding the payment date, the Contributions will be reduced in proportion to the reduction in the production capacity of the mining operations over the relevant period.

## 5.6 Payment of contribution

Tahmoor:

- (a) is not required to pay a Contribution; and

- (b) will not be in breach of this deed if it fails to pay a Contribution at the time required by this deed,

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

## 5.7 Expenditure of Contributions

With respect to the Contributions payable by Tahmoor pursuant to Items 4 to 7 in Column 1 of Annexure A, Council must:

- (a) consult with Tahmoor with respect to the specific open space and recreation facilities which Council proposes to fund with these Contributions;
- (b) give Tahmoor adequate time to respond to Council regarding the intended expenditure of these Contributions on the proposed open space and recreation facilities; and
- (c) take into account any feedback provided by Tahmoor in relation to the proposed expenditure of these Contributions.

## 6. Application of s.7.11, s.7.12 and s.7.24 of the Act to the Development

- (a) This deed does not exclude the application of section 7.11 of the Act to the Development.
- (b) This deed does not exclude the application of section 7.12 of the Act to the Development.
- (c) This deed does not exclude the application of section 7.24 of the Act to the Development.

## 7. Interests in the land the subject of the Development Consent

### 7.1 Rights to carry out the Development

Tahmoor represents and warrants to the Council that it has the right to carry out the Development on or under the land listed in the Schedule of Lands in Appendix 1 of the Development Consent on which the Development will be carried out.

## 8. Enforcement of Obligations

### 8.1 Default

- (a) If a Party considers that another Party has failed to perform or fulfil an obligation under this deed it may give notice in writing to the other party (**Default Notice**) giving particulars of the default and requiring the default to be remedied within a reasonable time (not being less than 21 days).
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it, as well as whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this deed.

## 8.2 Enforcement

- (a) This deed may be enforced by any Party in any court of competent jurisdiction.
- (b) Tahmoor Coal covenants with the Council that it will not rescind or terminate this deed or make a claim that this deed is void, voidable, illegal or unenforceable because a condition of the Development Consent requires Tahmoor Coal to enter into a planning agreement in the terms of this deed.

## 8.3 Security

- (a) Tahmoor Coal agrees to provide security in the form of the Guarantee to secure the making of the Contributions.
- (b) Tahmoor Coal is to provide the Security to the Council within 20 Business Days of the execution of this deed.
- (c) The Council may call upon and apply the Security to remedy a failure by Tahmoor Coal to pay any contribution amount as required by clause 5.1(a).
- (d) If, as the result of Tahmoor Coal defaulting in its obligations under this deed, the Council incurs costs or expenses in calling on the Guarantee then the Council may:
  - (1) issue an invoice to Tahmoor Coal or the Guarantor for payment of those reasonable additional costs; and
  - (2) recover those costs as a debt due to it in a court of competent jurisdiction.

## 9. Termination

This deed terminates if any of the following circumstances arise:

- (a) If the Development Consent is held to be void by any Court;
- (b) if the Development Consent expires or is surrendered; or
- (c) if the mining lease, under which the Development is being carried out, is cancelled or surrendered.

## 10. Dispute Resolution

### 10.1 Parties to meet

- (a) If a dispute between the Parties arises in connection with this deed or its subject matter then either Party may give the other Party a Notice of Dispute in writing identifying and providing details of the dispute.
- (b) The Parties must continue to perform their respective obligations under this deed despite the existence of a dispute.
- (c) Representatives of the Parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (d) The disputing Parties may, without limitation:

- (1) resolve the dispute during the course of that meeting;
- (2) agree that further material or arbitration about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
- (3) agree that the disputing parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

## 10.2 Further Notice if Not Settled

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, any disputing Party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.3.

## 10.3 Mediation

If a disputing Party gives a Determination Notice calling for the dispute to be mediated:

- (a) The disputing Parties must agree to the terms of reference for the mediation within 20 Business Days of the receipt of the Determination Notice (or any further period agreed in writing by them), and those terms are to include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply.
- (b) The mediator will be agreed between the disputing Parties or, failing agreement within 20 Business Days of receipt of the Determination Notice (or any further period agreed in writing by them), any disputing Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator.
- (c) The mediator appointed pursuant to this clause 10.3 must:
  - (1) have reasonable qualifications and practical experience in the area of the dispute; and
  - (2) have no interest or duty which conflicts or may conflict with his or her function as a mediator and disclose any such interest or duty before his or her appointment.
- (d) The mediator is to be required to give an undertaking to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties.
- (e) The disputing Parties must within 20 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, in which case the Council must give notice of its representative within 5 Business Days of the resolution).
- (f) The disputing Parties agree to be bound by a mediation settlement (if settlement is achieved) and may not initiate court proceedings in respect of a dispute which is the subject of a mediation settlement except for the purpose of enforcing that mediation settlement.

- (g) In relation to costs and expenses:
- (1) each Party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (2) the costs of the mediator will be shared equally by the disputing Parties unless the mediator determines that a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that Party.

#### 10.4 Litigation

- (a) If a dispute arises between the Council and Tahmoor Coal in relation to this deed then the disputing Parties must not commence any court proceedings relating to the dispute unless the disputing Parties have first complied with the processes in clauses 10.1-10.3.
- (b) If the dispute is not finally resolved in accordance with the process in clauses 10.1-10.3 then any disputing Party is at liberty to litigate the dispute.
- (c) Nothing in this clause 10 prevents:
  - (1) either party from seeking urgent interlocutory relief;
  - (2) the Council from bringing proceedings in a Court of competent jurisdiction to enforce any aspect of this deed or any matter to which this deed relates; or
  - (3) the Council from exercising any function under any Legislation, including the Act, or any other Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

### 11. Assignment, Novation and Dealing

- (a) Tahmoor may (at its discretion) assign or novate to any of the following (New Party) the whole or a part of an interest in this deed:
  - (1) the purchaser of the whole or an interest in the Development;
  - (2) the purchaser of the whole or an interest in a mining lease related to the Development; or
  - (3) any subsidiary, parent company or related body corporate (as provided in the *Corporations Act 2001 (Cth)* of Tahmoor or the party in clause 11(a)(1) or clause 11(a)(2),subject to:
  - (4) Tahmoor providing prior notice to the Council of such assignment or novation; and
  - (5) in the case of assignment of Tahmoor's rights, Tahmoor procuring that such assigned acknowledges the terms of this deed; and
  - (6) in the case of novation of Tahmoor's rights and obligations, Tahmoor procuring that such novatee acknowledges the terms of this deed and undertakes to perform Tahmoor's obligations under this deed.

- (b) If requested by Tahmoor, Council will execute all documents and undertake all acts reasonably necessary to give effect to Tahmoor's assignment of its rights or novation of its rights and obligations under this deed.
- (c) Tahmoor must pay the reasonable costs of Council related to the compliance by Council with Council's obligations under this clause 11.
- (d) Tahmoor shall notify Council as soon as reasonably practicable of any change of ownership or control (as defined in section 50AA of the *Corporations Act 2001* (Cth)) of Tahmoor.

## **12. Registration**

This deed will not be registered as provided for in section 7.6 of the Act.

## **13. Review and amendment of this deed**

- (a) The Council and Tahmoor Coal agree to review this deed:
  - (1) within 20 days of each anniversary of the commencement of the deed; and
  - (2) if the Development Consent is modified.
- (b) This deed may also be reviewed or modified by the Parties at any time. Any review or modification of this deed will be conducted in the circumstances and in the manner determined by the Parties.
- (c) No modification or review of this deed will be of any force or effect unless it is in writing and signed by both Parties.
- (d) A Party is not in breach of this deed if it does not agree to an amendment to this deed requested by a Party in, or as a consequence of, a review.

## **14. Costs**

- (a) Tahmoor Coal is to pay:
  - (1) its own costs and expenses (including legal fees) of and incidental to the preparation, negotiations, execution and (where applicable) the stamping and registration of this deed, including all Stamp Duty payable; and
  - (2) the Council's reasonable costs of and incidental to the preparation, negotiation, execution, stamping and registration and, where necessary, enforcement of this deed.

## **15. GST**

- (a) Words and expressions which are not defined in this deed but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.

- (c) If GST is imposed on any supply made under or in accordance with this deed, Tahmoor Coal must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

## 16. Use of Explanatory Note

The Explanatory Note must not be used to assist in construing this deed.

## 17. Notices

- (a) A notice given by either Party pursuant to this deed has no legal effect unless it is in writing.
- (b) All written notices given under this deed may be validly given by any one of the following means:
- (1) by sending it by prepaid post or by document exchange to the address of the Party to be served or its solicitor;
  - (2) by email to the email address of the Party to be served or its solicitor;  
or
  - (3) by delivering it to the Party to be served or to its solicitor.
- (c) The Parties expressly acknowledge that it is each Party's responsibility to ensure that the other is fully aware of that Party's current contact details at all times throughout the duration of this deed. Notices sent by one Party to the other Party which are addressed to an address previously notified to the delivering Party as the other Party's address are deemed received by the other Party unless and until that other Party can prove it had notified the delivering Party of a more recent address.
- (d) A notice shall be deemed to be given and received:
- (1) if sent by pre-paid post or by document exchange, 2 Business Days after it has been posted or has been delivered to the Document Exchange Centre;
  - (2) if sent by email during Business Hours, on the day it was sent and, if sent by email outside Business Hours, on the first Business Day after the day it was sent; and
  - (3) if delivered during Business Hours, on the day of delivery and, if delivered outside Business Hours, on the first Business Day after the day of delivery.
- (e) As at the date of this deed each Party's address for service is as follows:

### **For the Council:**

Delivery address: 60-64 Menangle Street

Picton NSW 2571

Post: PO Box 21

Picton NSW 2571

Email: council@wollondilly.nsw.gov.au

**For Tahmoor Coal**

Delivery address: 2975 Remembrance Drive

Bargo NSW 2574

Post: PO Box 100

Tahmoor NSW 2573

Email: Tahmoorenquiries@simecgfg.com

- (f) A notice given or a document signed or served on behalf of any Party by any director or company secretary or solicitor of that Party shall be deemed to have been given, signed or served by that Party personally.
- (g) Any notice sent by email will be taken to have been received by the addressee for the purposes of this deed unless the sender receives a message indicating that delivery has failed.
- (h) A Party may change its address for notices by giving the other Party 3 Business Days' written notice of the change.

## **18. Miscellaneous**

### **18.1 Relationship of the Parties**

- (a) Nothing in this deed creates a relationship of agency between the Parties or, except as expressly provided, authorises one of them to enter into any contracts or other commitments which bind any other Party without their express written approval.
- (b) Nothing in this deed is intended or to be implied to create a relationship of employment, partnership or joint venture between the Parties or any of their respective agents, employees, sub-contractors and assigns.

### **18.2 No Waiver**

- (a) Any delay or failure to enforce any term of this deed will not be deemed to be a waiver.
- (b) There is no implied waiver by either Party in respect of any term of this deed and any waiver granted by either Party shall be without prejudice to any other rights.
- (c) Any waiver must be in writing, and in the case of the Council, signed by the General Manager.

- (d) A waiver by a Party of its rights under this deed is only effective in relation to the particular obligation or breach in respect of which it is given, and does not cover subsequent breaches of the same or a different kind.

### 18.3 **No Fetter**

Nothing in this deed is to be construed as requiring an authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this deed imposes any obligation on the Council to:
  - (1) grant development consent or project approval; or
  - (2) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

### 18.4 **Governing Law**

This deed shall be governed by and construed in accordance with the Law of New South Wales and the Commonwealth of Australia and the parties submit themselves to the exclusive jurisdiction of the courts of those jurisdictions and those that have jurisdiction to hear any appeals from them.

### 18.5 **Entire Agreement**

This deed:

- (a) is the entire agreement of the Parties concerning everything connected with the subject matter of this deed; and
- (b) supersedes any prior representations, statements, promises or understanding on anything connected with that subject matter.

### 18.6 **Severability**

If any provision of this deed is void, unenforceable or illegal in the jurisdiction governing this deed, then:

- (a) it is to be read down so as to be valid and enforceable; or
- (b) if it cannot be read down, the provision (or where possible the offending words), is severed from this deed and the rest of this deed remains in force.

### 18.7 **Counterparts**

This deed may be executed in any number of counterparts, all of which taken together constitute one and the same document.

### 18.8 **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 deed.

**18.9 Representation and Warranties**

The Parties represent and warrant that they have the power to enter into this deed and to comply with their obligations under this deed.

**18.10 Confidentiality**

This deed may be treated as a public document.

**18.11 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 deed 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 5.00pm on the specified day, it is taken to have been done on the following Business Day.

Executed as a deed on ..... 2022

**EXECUTED** for and on behalf of **Wollondilly Shire Council** by its authorised delegate, in accordance with a resolution of the Council made on

.....  
Signature of Authorised Delegate

.....  
Name of Authorised Delegate (in full)

.....  
Signature of Witness

.....  
Name of Witness (in full)

**EXECUTED** for and on behalf of Tahmoor Coal Pty Ltd ABN 97 076 663 968 under Power of Attorney in the presence of:

  
^ \_\_\_\_\_  
Signature of witness

  
^ \_\_\_\_\_  
Signature of Attorney

^ \_\_\_\_\_  
Raquel Stankovic  
Name of witness (print)

^ \_\_\_\_\_  
Francis Placanica  
Full name of Attorney

## Annexure A: Obligations

| <b>Column 1</b>   | <b>Column 2</b>           | <b>Column 3</b>  | <b>Column 4</b>     |
|---|---------------------------|--|---------------------|
| <b>Item/<br/>Contribution</b>   | <b>Public<br/>Purpose</b> | <b>Manner &amp; Extent</b>   | <b>Contribution</b> |
| 1.Funding for Bargo Sportsground Masterplan                           | Open Space & Recreation   | Due Sixty (60) days after the execution of the Planning Agreement. | \$40,000.00         |
| 2.Stage 1 - Bargo Sportsground - Playground Upgrades                  | Open Space & Recreation   | Due Sixty (60) days after the execution of the Planning Agreement. | \$45,000.00         |
| 3.Stage 1 - Bargo Sportsground - Wet-Pour Surfacing                   | Open Space & Recreation   | Due Sixty (60) days after the execution of the Planning Agreement. | \$115,000.00        |
| 4.Bargo Sportsground - Implementation of Master Plan - Further Stages | Open Space & Recreation   | Due three (3) years after Commencement.                            | \$250,000.00        |
| 5.Bargo Sportsground - Implementation of Master Plan - Further Stages | Open Space & Recreation   | Due five (5) years after Commencement.                             | \$975,000.00        |
| 6.Bargo Sportsground - Implementation of Master Plan - Further Stages | Open Space & Recreation   | Due eight (8) years after Commencement.                            | \$975,000.00        |

| <b>Column 1</b>  | <b>Column 2</b>           | <b>Column 3</b>                           | <b>Column 4</b>       |
|--|---------------------------|---|-----------------------|
| <b>Item/<br/>Contribution</b>  | <b>Public<br/>Purpose</b> | <b>Manner &amp; Extent</b>                | <b>Contribution</b>   |
| 7. Final Payment - residual remaining of the total monetary contribution | Open Space & Recreation   | Due eleven (11) years after Commencement. | \$975,000.00          |
| <b>Total</b>   |                           |   | <b>\$3,375,000.00</b> |

## Schedule 1: Section 7.4 Requirements

| SUBJECT AND SUBSECTION OF THE ACT  | THIS PLANNING AGREEMENT                                    |
|--|--|
| <p>Tahmoor Coal has:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or proposes to make, a 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>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>                 |
| Description of the land to which this Planning Agreement applies – s.7.4(3)(a)   | Not applicable   |
| Description of the development –s.7.4(3)(b)  | Refer to the definition of Development Consent in clause 1 |
| The nature and extent, timing, and manner of delivery of contribution required by this Planning Agreement – s. 7.4(3)(c)   | Refer to clause 5  |
| Applicability of s.7.11 of the Act – Section 7.4(3)(d)   | Refer to clause 6  |
| Applicability of section 7.12 of the Act – Section 7.4(3)(d)   | Refer to clause 6  |
| Applicability of section 7.24 of the Act – Section 7.4(3)(d)   | Refer to clause 6  |
| Whether benefits are to be taken into account under section 7.11 – Section 7.4(3)(e)   | Refer to clause 6  |
| Mechanism for dispute resolution – Section 7.4(3)(f)   | Refer to clause 10   |
| Enforcement of the Planning Agreement – Section 7.4(3)(g)  | Refer to clause 8.2  |
| Registration of the Planning Agreement – Section 7.6   | Refer to clause 10   |
| No obligation to grant consent or exercise functions – Section 7.4(9)  | Refer to clause 18.3                                       |

## Schedule 2: Explanatory Note

### Planning Agreement for provision of Works in accordance with the Development Consent

#### Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (the "**Planning Agreement**") prepared under Section 7.4 of the *Environmental Planning & Assessment Act 1979* (the "**the Act**").

This Explanatory Note has been prepared jointly by the Parties as required by clause 25E of the *Environmental Planning & Assessment Regulation 2000* ("**the Regulation**").

This explanatory note is not to be used to assist in construing the deed.

#### Parties to the Planning Agreement

The Parties to the Planning Agreement are Wollondilly Shire Council ("**Council**") and Tahmoor Coal Pty Ltd ("**Tahmoor Coal**"). The Independent Planning Commission has granted development consent to the development application lodged by Tahmoor Coal (Development Application No. SSD-8445 for the extension of underground coal mining at the existing Tahmoor Mine. The mine extension will be to the south of Tahmoor Coal's existing Surface Facilities Area and will include the construction of two ventilation shafts.

The development will continue to be accessed via the surface facilities at Tahmoor Mine and would utilise the existing surface infrastructure at the Tahmoor Mine Surface Facilities Area.

Tahmoor Coal has made the offer to pay monetary contributions to the Council to support the upgrade of the Bargo Sportsground and other public purposes.

#### Summary of the objectives, nature and effect of the Planning Agreement

The objective of the Planning Agreement is to record the terms of the offer made by Tahmoor Coal and its obligations to provide certain material public benefits to the Council.

The effect of the agreement is that Tahmoor Coal will be required to pay a monetary contribution in the order of \$3,375,000.00 to the Council over an 11-year period, which is to be applied by the Council towards the planning and design of open space and recreation facilities and to the upgrade of existing playgrounds, and the installation of new play equipment.

#### Assessment of the Merits of the Planning Agreement

The benefits of the Planning Agreement are that Tahmoor Coal will provide funding for the:

- (a) development of the Bargo Sportsground Masterplan and implementation of future stage works; and
- (b) Bargo Sportsground playground upgrades.

#### Identification of how the Planning Agreement promotes the public interest and the objects of the Act

The Planning Agreement promotes the public interest and the objects of the Act by providing a monetary contribution that offsets the costs that would otherwise have been drawn from Council funds.

**Identification of how the Planning Agreement promotes elements of the Council's Charter under the *Local Government Act 1993***

The Planning Agreement is consistent with the following guiding principles for Councils in section 8A of the *Local Government Act 1993* (which have replaced the Council Charter):

- In exercising functions generally:
  - Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
  - Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
  - Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
  - Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
  - Councils should work with others to secure appropriate services for local community needs.
- In decision making:
  - Councils should recognise diverse local community needs and interests.
  - Councils should consider the long term and cumulative effects of actions on future generations.

The Planning Agreement is consistent with these principles in that it requires a monetary contribution to the development of infrastructure valued by the community.

**Identification of the planning purpose served by the Planning Agreement and whether the Planning Agreement provides for a reasonable means of achieving that purpose**

The planning purpose served by the Planning Agreement is the strategic planning and design of open space and recreation facilities for public purposes.

The Planning Agreement provides a reasonable means of achieving these public purposes.

**Identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any),**

The Planning Agreement is not inconsistent with Council's Capital Works Program.

**How the Planning Agreement promotes the public interest**

The Planning Agreement promotes the public interest by supporting the planning and design of open space and recreation facilities and contributing to the upgrade of existing playgrounds at the Bargo Sportsground.

## Schedule 3: Form of Guarantee

### 1. Definitions

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In this deed:

**Guaranteed Obligations** means all agreements, conditions, covenants, provisions, obligations and liabilities expressed or implied on the part of Tahmoor to be performed, observed or complied with under this deed in favour of the Council pursuant to the Planning Agreement.

**LPMA** means Liberty Primary Metals Australia Pty Ltd, ACN 631 112 573, whose registered office is located at Level 27, 8 Chifley Square, Sydney NSW 2000.

**Planning Agreement** means the Planning Agreement entered into between Tahmoor and Council relating to the Development Consent granted by the Independent Planning Commission for Development Application No. SSD-8445

Terms defined in the Planning Agreement have the same meaning in this Deed.

### 2. Guarantee

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LPMA guarantees to the Council the performance, observance or compliance of the Guaranteed Obligations by Tahmoor provided that the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and on the basis that the Council mitigates damages to the extent (if any) that it has such a duty to mitigate damages to Tahmoor.

### 3. Payment

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- (a) If Tahmoor defaults in the payment of any monetary amount forming part of the Guaranteed Obligations, LPMA must pay that amount to the Council.
- (b) Any amount which LPMA is liable to pay the Council must be paid within 20 Business Days of a demand which must:
  - (i) be in writing;
  - (ii) state that it is made under this deed;
  - (iii) state and provide details of the amount being demanded and confirm that:
    - (A) a written demand for payment of the amount has been made on Tahmoor by the Council;
    - (B) at least 20 Business Days have passed since the demand on Tahmoor was made; and
    - (C) the demand on Tahmoor remains unsatisfied; and
  - (iv) be signed by or on behalf of the Council.

#### **4. Liability unaffected by other events**

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The liability of LPMA is not affected by anything which, but for this provision, might release, prejudicially affect or discharge that liability or in any way relieve LPMA from any obligation, including any of the following (whether with or without the consent of LPMA):

- (a) the grant to Tahmoor or any other person or both of any time, waiver or other indulgence, or the discharge or release of Tahmoor or any other person or both;
- (b) any transaction or arrangement that may take place between the Council and Tahmoor or any other person or both;
- (c) the liquidation of Tahmoor;
- (d) the Council becoming a party to or bound by any compromise, moratorium, assignment of property, scheme of arrangement, composition of debts or scheme of reconstruction by or relating to Tahmoor;
- (e) the Council exercising or delaying or refraining from exercising any right, power or remedy given to the Council by Law or by this deed;
- (f) the amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, determination, loss, release, discharge, abandonment, assignment or transfer, in whole or in part and either with or without consideration, of this deed at any time or of any right, obligation, power or remedy;
- (g) the failure by Tahmoor to notify LPMA of any default by Tahmoor under the Planning Agreement;
- (h) the Council obtaining a judgment against Tahmoor for the payment of money payable under this deed;
- (i) any legal limitation, disability, incapacity or other circumstances relating to Tahmoor, LPMA or any other person or both; and
- (j) any change in circumstance (including of a person or in the members or constitution of a partnership),

provided that this deed is not invalid, voidable or irrecoverable and is fully enforceable with respect to the Guaranteed Obligations.

#### **5. Principal and independent obligation**

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This guarantee is a principal and independent obligation. Except for stamp duty purposes, it is not ancillary or secondary to another right or obligation.

#### **6. Continuing guarantee**

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This is a continuing guarantee despite any settlement of account, intervening payment or anything else until all Guaranteed Obligations have been performed, observed and complied with by Tahmoor.

## **7. Variation**

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This guarantee covers this deed as amended, varied or replaced from time to time, with the consent of LMPA.

## **8. Release of Guarantee**

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### **8.1 Release upon performance of Guaranteed Obligations**

All obligations of LPMA under this guarantee in relation to the Guaranteed Obligations shall be released in respect of any claim made by the Council under this guarantee after the date on which the Guaranteed Obligations are performed or satisfied.

### **8.2 Release upon assignment or novation of Planning Agreement**

If Tahmoor novates its obligations under the Planning Agreement, then LPMA shall have no liability to the Council in respect of the Guaranteed Obligations as from the date such novation becomes effective other than for those Guaranteed Obligations which arise before the date of such novation.

## **9. Limitation on Guarantee and Indemnity**

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Despite any other provision in this deed the aggregate maximum liability of LPMA under this deed in relation to the Guaranteed Obligations is the lesser of:

- (a) \$3,375,000; and
- (b) the total value of Contributions that have not been made.