

6/6/13
SYDNEY
Rw

Minister for Planning and Infrastructure

ABN 38 755 709 681

**Minister administering the National Parks and Wildlife Act
1974**

ABN 30 841 387 271

Black Hill Land Pty Ltd

ACN 129 266 468

Coal & Allied Operations Pty Ltd

ACN 000 023 656

Planning Agreement

Environmental Planning and Assessment Act 1979 (NSW)

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THIS PLANNING AGREEMENT is dated 6/6/13

PARTIES:

MINISTER FOR PLANNING AND INFRASTRUCTURE (ABN 38 755 709 681) of Level 33, Governor Macquarie House, 1 Farrer Place, Sydney, New South Wales, 2000 (**Planning Minister**)

MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974 (ABN 30 841 387 271) of Level 35, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Environment Minister**)

BLACK HILL LAND PTY LTD (ACN 129 266 468) of 123 Albert Street Brisbane, QLD 4000

and

COAL & ALLIED OPERATIONS PTY LTD (ACN 000 023 656) of 123 Albert Street Brisbane, QLD 4000

(collectively the **Developer**)

INTRODUCTION:

- A** The New South Wales Government is implementing the Lower Hunter Strategies.
- B** The Lower Hunter Strategies aim to:
 - (a) increase public ownership of certain land in the Lower Hunter region for dedication as a conservation reserve; and
 - (b) enhance the development potential of certain other land in the Lower Hunter region.
- C** The Proponent is the proponent for the Concept Plan Application, which proposes that the Land be developed and the Environmental Offset Land be transferred to the Environment Minister for conservation.
- D** The Developer:
 - (a) owns the Land;
 - (b) is related to the Proponent;
 - (c) intends to enable the carrying out of the Proposed Development; and
 - (d) has sought an amendment to an environmental planning instrument in relation to the Proposed Development.

- E** The parties have agreed to enter into this deed in order to:
- (a) implement the Lower Hunter Strategies insofar as they concern the Land and the Environmental Offset Land;
 - (b) give affect to the statement of commitments submitted by the Proponent to the Department of Planning and Infrastructure and dated 12 August 2011; and
 - (c) provide the Development Contribution.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in this deed or any new address notified by any party to all other parties as its new Address for Service;

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Planning Minister and Environment Minister, in their absolute discretion, to pay the face value of that undertaking (being such an amount as is required under this deed) on demand;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;

Claims means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity, under statute or otherwise;

Commencement Date means the date that this deed comes into operation in accordance with **clause 2.1**;

Concept Plan Application means the application for a Concept Plan Approval for the Proposed Development made by the Proponent and numbered MP10_0093;

Concept Plan Approval means concept plan approval given by the Planning Minister under section 75O of the Act in response to the Concept Plan Application;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Development Consent means any development consent granted under section 80 of the Act for all or part of the Proposed Development;

Development Contribution means the Environmental Land Offset Contribution as set out in the table to **clause 1** of **Schedule 4**;

DFS means the Department of Finance and Services or any similar department or authority that may be established from time to time.

Environmental Offset Land means the land identified by hatching on the Environmental Subdivision Plan;

Environmental Subdivision Plan means any plan of subdivision approved by the Planning Minister which creates a separate lot for the Environmental Land generally (but not finally) as set out in **Schedule 3**;

Explanatory Note means the explanatory note required by the Regulation;

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919 (NSW)*;

GST means any form of goods and services tax payable under the GST Law;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Land means the land identified in the table in **Schedule 3** and the Environmental Offset Land;

Lower Hunter Strategies means:

- (a) the Lower Hunter Regional Conservation Plan released by the former Department of Environment and Climate Change on 11 March 2009 as amended from time to time; and
- (b) the Lower Hunter Regional Strategy released by the former Department of Planning on 17 October 2006, endorsed by the NSW Cabinet on 3 October 2009 and as amended from time to time;

Project Approval means any project approval granted by the Planning Minister under section 75J of the Act for all or part of the Proposed Development;

Proponent means Coal and Allied Industries Limited (ACN 000 416 760);

Proposed Development means the development of approximately 183 hectares at Black Hill for use as employment lands;

Real Property Act means the *Real Property Act 1900* (NSW);

Register means the torrens title register maintained under the Real Property Act;

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

Service Easements means easements for services and drainage which are agreed between the Proponent and the Environment Minister and to be registered prior to or at the same time as the Environmental Offset Land is transferred in accordance with **Schedule 4**;

Transfer means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Environmental Offset Land to the Environment Minister or his nominee.

1.2 Interpretation

In this deed, unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, or **schedule** is a reference to the introduction, a clause, or a schedule of this deed;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **introduction** and **schedules** form part of this deed;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this deed;

- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (m) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (n) **including** and **includes** are not words of limitation;
- (o) the words **at any time** mean at any time and from time to time;
- (p) a reference to a time is to that time in New South Wales;
- (q) a word that is derived from a defined word has a corresponding meaning;
- (r) **monetary amounts** are expressed in Australian dollars;
- (s) the singular includes the plural and vice-versa;
- (t) words importing one gender include all other genders; and
- (u) a reference to a thing includes each part of that thing.

1.3 Construction

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.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

This deed:

- (a) constitutes a planning agreement within the meaning of Section 93F of the Act;
- (b) until it operates, constitutes an irrevocable offer from the Developer to enter into the planning agreement if Concept Plan Approval is granted; and
- (c) commences operation and is effective from the date that is the later of the date when the following occurs:
 - (i) this deed is signed by all the parties; and
 - (ii) when a Project Approval or Development Consent is granted by the Planning Minister that is acceptable to the Developer that approves the subdivision of lots for the Environmental Offset Land;
- (d) is, subject to the operation (if applicable) of **clause 4** in **Schedule 4**, terminated when the Developer provides all of the contributions required by this deed to the Environment Minister.

2.2 Application

This deed applies to:

- (a) the Land; and
- (b) the Proposed Development.

2.3 Contributions

The Developer agrees that the Planning Minister and Environment Minister:

- (a) have no obligation to use a Development Contribution for a particular purpose and have no obligation to repay a Development Contribution; and
- (b) in circumstances where a Development Contribution is transferred to any Authority, have not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

3 APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in **Schedule 1**.

4 REQUIREMENT TO PROVIDE DEVELOPMENT CONTRIBUTIONS

The Developer will provide, or procure the provision of, the Development Contribution in the manner and at the times set out in **Schedule 4**.

5 REGISTRATION ON TITLE

5.1 Land ownership

The Developer represents and warrants that it is:

- (a) the legal and beneficial owner of the Land; and
- (b) to obtain all consents and approvals and to compel any person referred to in or contemplated by **clause 5.3(b)(i)** to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under **clause 5.3**.

5.2 No warranties

Except as expressly set out in this deed, the Developer makes (and has made) no representations and gives (and has given) no warranties in respect of the Land and the Environment Minister agrees to accept the Environmental Offset Land as it is.

(Note: this clause does not limit any existing or future obligation imposed on the Developer under any statutory approval).

5.3 Registration of deed

- (a) As contemplated by section 93H of the Act, the Developer agrees to procure the registration of this deed under the Real Property Act in the relevant folio of the Register.
- (b) The Developer at its own expense, will take all practical steps and otherwise do anything that the Planning Minister or Environment Minister reasonably require to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or

- (B) is seized or possessed of an estate or interest in the Land; and
- (ii) the execution of any documents; and
- (iii) the production of the relevant certificates of title; and
- (iv) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

5.4 Release and discharge of deed

The Planning Minister and Environment Minister agree to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

6 SECURITY

6.1 Compulsory acquisition

In addition to clause 6.2 below, the parties agree that clause 3 of Schedule 4 is the provision of security for the Environmental Land Offset Contribution.

6.2 Bank Guarantee

The Developer agrees to provide security in the form of Bank Guarantees:

- (a) in accordance with Schedule 5;
- (b) to secure all of the Developer's obligations under this deed as specified in Schedule 5 (**Secured Obligations**),

prior to any amendment to the relevant environmental planning instrument that would allow the Proposed Development on the Land.

6.3 Claims under a Bank Guarantee

The Developer agrees that the Planning Minister or Environment Minister (as applicable) may make claims under a Bank Guarantee on the following basis:

- (a) the Planning Minister or Environment Minister (as applicable) may call upon a Bank Guarantee (in full or in part) in the event that the Developer breaches the Secured Obligations and the Planning Minister or Environment Minister (as applicable) may retain and use such monies in his

discretion to compensate the Planning Minister or Environment Minister (as applicable) for the Developer's breach of the relevant obligation;

- (b) the Planning Minister or Environment Minister (as applicable) agrees not to make any claim under a Bank Guarantee without providing at least 10 Business Days' prior written notice to the Developer of its intention to do so;
- (c) the amount appropriated by the Planning Minister or Environment Minister (as applicable) under clause 6.3(a) must be applied towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.

6.4 Release of Bank Guarantee

- (a) Subject to clause 6.4(b), upon satisfaction of the Secured Obligations, the Planning Minister or Environment Minister (as applicable) will promptly return the Bank Guarantee to the Developer.
- (b) If the Planning Minister or Environment Minister (as applicable) has called upon the relevant Bank Guarantee, then upon satisfaction of the Secured Obligations the Planning Minister or Environment Minister (as applicable) will return to the Developer the Bank Guarantee amount less any monies appropriated by the Planning Minister or Environment Minister (as applicable) under clause 6.3(a).

7 DISPUTE RESOLUTION

7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this **clause 7**.

7.2 Written notice of dispute

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

7.3 Attempt to resolve

On receipt of notice under **clause 7.2**, 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.

7.4 Mediation

If the parties do not agree within 7 days of receipt of notice under **clause 7.2** (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 NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 42 days after notice is given under **clause 7.2** then any party which has complied with the provisions of this **clause 7** may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 7** is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this **clause 7** for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This **clause 7** 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 deed.

8 GST

8.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

8.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

8.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this **clause 8**.

8.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (**GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Environment Minister as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Environment Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Environment Minister.

8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 8.5** the Developer will assume the Environment Minister, is not entitled to any input tax credit.

8.8 No merger

This clause will not merge on completion or termination of this deed.

9 ASSIGNMENT

This deed is personal to each party and neither party may assign the rights or benefits of this deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
- (b) to any other person, with the prior consent of the other party, which the other party may acting reasonably give, give conditionally or withhold.

10 WARRANTIES OF CAPACITY**10.1 General warranties**

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

10.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11 GENERAL PROVISIONS**11.1 Entire agreement**

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2 Variation

This deed must not be varied except by a later written document executed by all parties.

11.3 Waiver

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

11.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

11.5 Time for doing acts

(a) If:

(i) the time for doing any act or thing required to be done; or

(ii) 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 pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.7 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

11.8 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.9 Counterparts

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

11.10 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

11.11 No fetter

Nothing in this deed will be construed as requiring the Planning Minister or the Environment Minister, to do anything that would cause it to be in breach of any of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

11.12 Explanatory note

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

11.13 Legal expenses and stamp duty

- (a) The Developer must pay its own and the Planning Minister's and Environment Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all stamp duty assessed on or in respect of this deed and any instrument or transaction required by or necessary to give effect to this deed.

11.14 Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered;
- (b) sent by facsimile transmission;
- (c) sent by prepaid ordinary mail within Australia; or
- (d) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.

A notice is given if:

- (a) hand delivered, on the date of delivery;
- (b) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
- (c) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (d) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

SCHEDULE 1

Requirements under section 93F

(clause 1.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 93F(1)) The Developer has: (a) sought a change to an environmental planning instrument (b) made, or proposes to make, a development/ project application (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	Yes Not applicable Yes
Description of land to which this Deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this Deed applies – (section 93F(3)(b))	Not applicable
The scope, timing and manner of delivery of contribution required by this Deed – (section 93F(3)(c))	See Schedule 4
Applicability of section 94 of the Act – (section 93F(3)(d))	Not Excluded
Applicability of section 94A of the Act – (section 93F(3)(d))	Not Excluded
Applicability of section 94EF of the Act – (section 93F(3)(d))	Not Excluded
Consideration of benefits under this Deed if section 94 applies – (section 93F(3)(e))	No
Mechanism for Dispute Resolution - (Section 93F(3)(f))	See clause 7
Enforcement of this Deed – (section 93F(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 93F(9))	See clause 11.11

SCHEDULE 2**Address for service****(clause 1.1)****Minister for Planning and Infrastructure****Contact:** Director-General, Department of Planning and Infrastructure**Address:** 23-33 Bridge Street
Sydney NSW 2000**Facsimile No:** (02) 9228 6455**Minister administering the National Parks and Wildlife Act 1974****Contact:** Director North East Branch, Department of Premier and Cabinet (Office of Environment and Heritage)**Address:** Locked Bag 914
Coffs Harbour NSW 2450**Facsimile No:** (02) 6659 8257**Black Hill Land Pty Ltd (ACN 129 266 468)****Contact:** Mr Keith Dedden**Address:** 123 Albert Street Brisbane, QLD 4000**Facsimile No:** (07) 3625 3001**Coal & Allied Operations Pty Ltd****Contact:** Mr Keith Dedden**Address:** 123 Albert Street Brisbane, QLD 4000**Facsimile No:** (07) 3625 3001

SCHEDULE 3**Land****(clause 1.1)**

The land that is identified in the Folio Identifiers in the table below is land that is proposed to be wholly or partly developed for the purpose of the Proposed Development.

Folio
30/870411

Plan of: Environmental Offset Land

Projection: MGA Z56

Date: 9 Feb 2011

Project: Black Hill

Location: Black Hill and Stockrington

Contour Interval: N/A

Plan By: G.C.R.

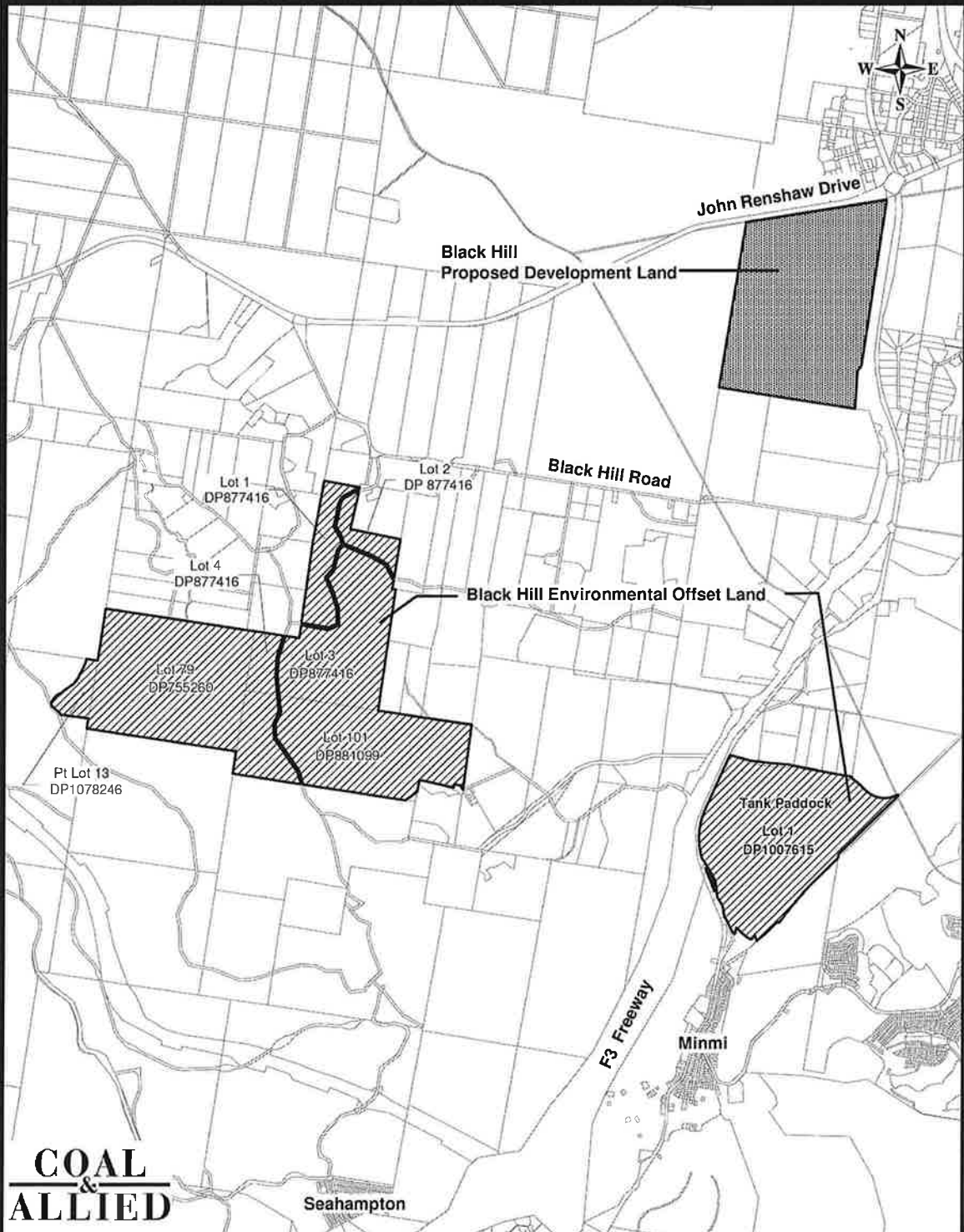
Layout: Transfer Plan

Council: Cessnock and Newcastle

Source: N/A

Version: 2

Sheet: 1 of 1

**COAL
&
ALLIED**

Coal & Allied - Lower Hunter Land

SCHEDULE 4

Development Contribution

(clause 4)

1 DEVELOPMENT CONTRIBUTION

The Developer undertakes to make the following Development Contribution:

Development Contribution	Date Payable
1 Environmental Offset Land Contribution The Developer must transfer the Environmental Offset Land to the Environment Minister or his nominee.	In accordance with the process set out in clause 2 of this Schedule.

2 ENVIRONMENTAL OFFSET LAND CONTRIBUTION

- (a) The Developer agrees not to transfer or otherwise deal with the Environmental Offset Land unless the Environment Minister has consented in writing to the transfer or dealing.
- (b) In order to give effect to the transfer of the Environmental Offset Land to the Environment Minister in accordance with **clause 1** of this Schedule there must be a subdivision of the Land to create the parcels of land that will comprise the Environmental Offset Land.
- (c) Within 3 months of any approval being given by the Planning Minister for the Environmental Subdivision Plan, the Developer must lodge the Environmental Subdivision Plan for registration at the DFS.
- (d) The Developer must within 7 days of the date of notification that the Environmental Subdivision Plan has been registered, serve a Transfer on the Environment Minister or his nominee with the relevant certificates of title and in circumstances where:
 - (i) the Environmental Offset Land is free from any encumbrances other than the Service Easements; or
 - (ii) relevant discharges in registrable form are also served on the Environment Minister or his nominee at the same time in relation to any encumbrances other than the Service Easements.

- (e) The Developer must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Environmental Offset Land.
- (f) The Developer will pay all rates and taxes owing in respect of the Environmental Offset Land up to and including the date of dedication of the Environmental Offset Land after which the Environment Minister or his nominee will be liable.
- (g) The Environment Minister agrees to consider, as soon as practicable after the registration of the Transfer, how conservation of the Environmental Offset Land is most appropriately achieved, whether by reservation as national park, as reserve of another category under the *National Parks and Wildlife Act 1979 (NSW)*, or by a combination of these or otherwise.
- (h) Notwithstanding **clause 2.1(b)** of this deed, the Developer must, from the date that this deed is signed by all the parties not undertake any action or activity, prior to the Transfer being registered that will have a detrimental effect on the conservation or Aboriginal heritage values of the Environmental Offset Land except where the Developer is:
 - (i) directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service);
 - (ii) maintaining existing access and existing tracks; or
 - (iii) otherwise required by law to undertake such an action or activity.

3 COMPULSORY ACQUISITION

- (a) If the Developer does not transfer any part of the Environmental Offset Land to the Environment Minister or his nominee as required by this deed, the Developer consents to the Environment Minister or his nominee compulsorily acquiring that part of the Environmental Offset Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*, for the amount of \$1.00.
- (b) The Developer and the Environment Minister agree that:
 - (i) this **clause 3** is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
 - (ii) in this **clause 3**, they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

- (c) The Developer indemnifies and agrees to keep indemnified the Environment Minister or his nominee against all Claims made against the Environment Minister or his nominee as a result of any acquisition by the Environment Minister or his nominee of the whole or any part of the Environmental Offset Land under this **clause 3**.
- (d) The Developer must pay the Environment Minister or his nominee, promptly on demand, an amount equal to all costs, charges or expenses incurred by the Environment Minister or his nominee acquiring the whole or any part of the Environmental Offset Land as contemplated by this **clause 3**.

4 REZONING

- (a) In the event that:
 - (i) legal proceedings are commenced in a Court of competent jurisdiction by the date that is 6 months after the date of the first Project Approval or Development Consent for any part of the Proposed Development and a declaration is obtained that has the effect that any environmental planning instrument is invalid to the extent that the Land is no longer zoned to allow the Proposed Development of the Land; and
 - (ii) the Land is not subsequently re-zoned under an environmental planning instrument on a basis that would allow the Proposed Development on the Land (subject to issue of Project Approval or Development Consent) by the date that is 5 years after the date of the first Project Approval or Development Consent (whichever is the earlier) for any part of the Development,

the Environment Minister (or his nominee) agrees to transfer:

- (A) each part of the Environmental Offset Land that was transferred by the Developer to the Environment Minister (or his nominee) pursuant to this deed, back to the Developer; or
- (B) each part of the Environmental Offset Land that was compulsory acquired from the Developer by the Environment Minister (or his nominee) pursuant to this deed, back to the Developer,

free of all encumbrances and affectations that were created after the date that the Environment Minister (or his nominee) acquired that land (by way of transfer or compulsory acquisition) (other than the Service Easements).

- (b) If **clause 4(a)** of this **Schedule 4** applies, then no later than the date that is 20 Business Days after the expiry of the 5 year period referred to in **clause**

4(a), the Environment Minister (or his nominee) must deliver to the Developer:

- (i) a form of transfer or transfers in respect of the relevant part of the Environmental Offset Land in favour of the Developer, for a consideration of \$1, executed by the Environment Minister (or his nominee) and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
- (ii) the certificate or certificates of title for the relevant part of the Environmental Offset Land,

and the Environment Minister (or his nominee) must take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the relevant part of the Environmental Offset Land to the Developer free of all encumbrances and affectations that were created after the date that the Environment Minister (or his nominee) acquired that land (by way of transfer or compulsory acquisition) (other than the Service Easements).

5 REMEDIATION, RESERVE ESTABLISHMENT AND OTHER WORKS

- (a) In this clause:

"RPS" numbers refer to the RPS numbers contained in the report titled "Environmental Audit Report for Southern Conservation Estates" prepared by RPS Harper Somers O'Sullivan and dated January 2009.

"Cost" means the cost of the work to be carried out as set out in an independent quantity survey obtained by the Landowner and approved by the Environment Minister prior to any work commencing.

- (b) The remediation and establishment works as set out in the table below must be completed to the satisfaction of the Environment Minister within the time referred to in the table and to the assigned Cost.

Item	Location	Work	Cost	Timing
1.	RPS report notes some major weed infestations on proposed conservation land.	Identify major weed infestations (including aquatic weeds) and develop control programs that include: treatment of major weed infestations including spraying at optimum times over successive seasons and follow up work including replanting; treatment of aquatic weed infestation including initial harvesting	\$22,500 – Year 1 \$11,250 – Year 2 \$4,950 – Years 3 & 4 (Note: Costs subject to review upon finalisation of the weed management plans, and annual	For works in kind, commencing on 1 January 2011 and ending 4 years after that date. Developer to provide the Office of Environment and Heritage with a detailed schedule of all works carried out under the weed control program.

		and successive treatments for 3 years.	review of the program performance).	
2.	RPS 35	Developer to remediate former gravel quarry area.		Prior to the transfer of the Environmental Offset Land.

SCHEDULE 5**Security****(clause 6)**

Each Bank Guarantee will be:

- (a) in favour of the favouree;
- (b) in the amount;
- (c) as security for the Secured Obligation,

as set out in the table below.

Favouree	Bank Guarantee Amount	Secured Obligation
Minister administering the National Parks and Wildlife Act 1974, Office of Environment and Heritage ABN 30 841 387 271	\$4,350,000	Developer's obligations under clause 1 of Schedule 4
Minister administering the National Parks and Wildlife Act 1974, Office of Environment and Heritage ABN 30 841 387 271	\$43,650	Developer's obligations under clause 5 of Schedule 4

EXECUTED as a deed

EXECUTED by the **MINISTER FOR PLANNING
AND INFRASTRUCTURE** in the presence of:

Signature of witness

Signature

Name of witness

Name of signatory

EXECUTED by the **MINISTER
ADMINISTERING THE NATIONAL PARKS
AND WILDLIFE ACT 1974** in the presence of:

Signature of witness

Signature

Name of witness

Name of signatory

EXECUTED by **BLACK HILL LAND PTY LTD**
(ACN 129 266 468) in accordance with
section 127 of the Corporations Act:

Signature of Director

Signature of Director/Secretary

Eric Stephen Biggs

Claire Elizabeth Fidler

Name of Director

Name of Director/Secretary

EXECUTED by COAL & ALLIED
 OPERATIONS PTY LTD (ACN 000 023 656) in
 accordance with section 127 of the Corporations
 Act:

X 
 Signature of Director

Matthew William Halliday

Name of Director

X 
 Signature of Director/Secretary

Claire Elizabeth Fidler
~~Gillian Mary Lyons~~

Name of Director/Secretary