

## INSTRUMENT OF VARIATION

I, David Blackmore, A/Executive Director Resource Operations, as delegate of the Minister for Resources for the State of New South Wales, under delegation dated 14 May 2018, and pursuant to Clause 12 of Schedule 1B of the *Mining Act 1992*, vary ML 1671 (1992) as follows:

Condition 5 is varied by deleting the existing conditions and inserting instead the condition set out below:

### 5. Environmental Incident Report

The lease holder must provide environmental incident notifications and reports to the Secretary no later than seven (7) days after those environmental incident notifications and reports are provided to the relevant authorities under the *Protection of the Environment Operations Act 1997*.

### Definitions

**Environmental incident notifications and reports** means any notifications and reports required to be provided to relevant authorities under Part 5.7 or Part 5.7A of the *Protection of the Environment Operations Act 1997*.

This variation is effective from 20th of June 2018.

SIGNED



As delegate for the Minister for Resources

David Blackmore  
A/Executive Director Resource Operations  
Dated 20 June 2018

 Office of State Revenue  
NSW Treasury  
Client No: 1846988 2372  
Duty: N/A Trans No: WL 1671  
Asst details: ~~FOR PURPOSES~~

MINING LEASE (PURPOSES)

MINING ACT 1992

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NO 1671

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DATED 9 MARCH 2012

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THE MINISTER FOR RESOURCES AND  
ENERGY

OF THE STATE

OF NEW SOUTH WALES

TO

WERRIS CREEK COAL PTY LIMITED  
(ACN 107169 102)

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**MINING ACT 1992**

**MINING LEASE  
(PURPOSES)**

THIS DEED made the Ninth day of March Two Thousand and Twelve in pursuance of the provisions of the *Mining Act 1992* (hereinafter called "the Act") BETWEEN, **CHRIS HARTCHER MP, MINISTER FOR RESOURCES AND ENERGY** of the State of New South Wales (hereinafter called "the Minister" which expression shall where the context admits or requires include the successors in office of the Minister and the person acting as such Minister for the time being) AND **WERRIS CREEK COAL PTY LIMITED (ACN 107 169 102)** (which with its successors and transferees is hereinafter called "the lease holder") of **Level 28, 259 George Street, SYDNEY NSW 2000.**

WHEREAS

- (a) in conformity with the Act application was made for a mining lease over the lands hereinafter described; and
  
- (b) all conditions and things required to be done and performed before granting a mining lease under the Act have been done and performed NOW THIS DEED WITNESSETH that in consideration of the observance and performance of the covenants contained in this Deed, the Minister in pursuance of the provisions of the Act DOES HEREBY demise and lease to the lease holder ALL THAT piece or parcel of land containing by admeasurement **96.15 hectares** as shown on Plan No **M27210** more particularly described and delineated in the plan attached for mining purposes of:
  - (a) The construction, maintenance or use (in or in connection with mining operations) of any one or more of the following:
    - i. Any building or mining plant,
    - ii. Any road, railway, tramway, bridge or jetty,
    - iii. Any reservoir, dam, drain or water race,
    - iv. Any cable, conveyor, pipeline, telephone line or signalling system.
  - (c) The removal, stockpiling, management or depositing of overburden, ore or tailings to the extent that it is associated with mineral extraction or mineral beneficiation.

- (d) The storage of fuel, machinery, timber or equipment for use in or in connection with mining operations.
- (e) the generation and transmission of electricity for use in or in connection with mining operations.
- (f) the construction, maintenance and use (in or in connection with mining operations) of any drillhole or shaft for:
  - ii. drainage or conveyance of water, or
  - iv. conveyance of electricity, or
  - v. conveyance of materials.

TO HOLD the said land together with any appurtenances thereon subject to:

- (a) such rights and interests as may be lawfully subsisting therein or which may be reserved by the Act at the date of this Deed; and
- (b) such conditions, provisos and stipulations as are contained in this Deed UNTO the lease holder from and including the date of this Deed for the period of **twenty one (21) years**, for the purpose as stated and for no other purpose.

1. THAT in this lease except insofar as the context otherwise indicates or requires:

- (a) any reference to an Act includes that Act and any Act amending or in substitution for the same; "Director-General" means the person for the time being holding office or acting as Director-General, Department of Trade and Investment; Regional Infrastructure and Services; the word "mine" has the meaning assigned to it by the Act; words importing the singular number shall include the plural, the masculine gender the feminine or neuter gender and vice versa; and
- (b) any covenant on the part of two or more persons shall be deemed to bind them jointly and severally.

2. THAT the lease holder shall at all times during the term of this lease keep and preserve the said mine from all avoidable injury or damage and also the levels, drifts, shafts, watercourses, roadways, works, erections and fixtures therein and thereon in good repair and condition and in such state and condition shall on the expiration or sooner determination of the said term or any renewal thereof deliver possession of the land and

the premises hereby demised to the Minister or other persons authorised to receive possession thereof.

3. THAT the conditions and provisions set forth in the Schedule of Mining Lease Conditions 2010 herein and numbered: **1-7 (inclusive), 10-15 (inclusive), 18, 20 and 24** are embodied and incorporated within this Deed as conditions and provisions of the lease hereby granted AND that the lease holder shall observe fulfil and perform the same. Conditions 2 to 7 and 12 to 16 (if included in the mining lease) are identified as conditions relating to environmental management for the purposes of Section 374A(1) of the *Mining Act 1992*.

*Note: Conditions 2 to 7 and 12 to 15 of this mining lease are imposed pursuant to sections 238 and 239 of the Mining Act 1992. Clause 7 of Schedule 12 of the Mining Regulation 2010 saves higher penalties for a breach of condition imposed by or under sections 238 or 239 of the Act.*

PROVIDED always and it is hereby declared as follows:

- (a) THAT this lease is granted subject to amendment as provided under Sections 79 and 168A of the Act.
- (b) THAT if the lease holder at any time during the term of this demise -
- (i) fails to fulfil or contravenes the covenants and conditions herein contained; or
  - (ii) fails to comply with any provision of the Act or the Regulations with which the lease holder is required to comply; or
  - (iii) fails to comply with the requirements of any agreement or assessment in relation to the payment of compensation,

this lease may be cancelled by the Minister by instrument in writing and the cancellation shall have effect from and including the date on which notice of the cancellation is served on the lease holder or on such later date as is specified in the notice; and any liability incurred by the lease holder before the cancellation took effect shall not be affected.

- (c) THAT no implied covenant for title or for quiet enjoyment shall be contained herein.

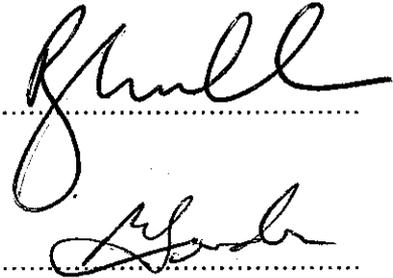
- (d) THAT all the conditions and provisions contained in the *Mining Act 1992* and the Regulations thereunder, the *Mine Health & Safety Act 2004*, *Mine Health & Safety Regulation 2007* or *Coal Mine Health & Safety Regulation 2006*, or any other law hereafter to be passed or prescribed shall be incorporated within this Deed as conditions and provisions of the lease granted. The lease holder hereby covenants to observe, fulfil and perform the same.
  
- (e) THAT such of the provisions and conditions declared and contained in this Deed as requiring anything to be done or not to be done by the lease holder, shall be read and construed as covenants by the lease holder with the Minister which are to be observed and performed.

IN WITNESS WHEREOF the parties hereto have executed this Deed the day and year first abovewritten.

SIGNED AND DELIVERED  
BY

WERRIS CREEK COAL PTY LIMITED  
(ACN 107 169 102)

in the presence of



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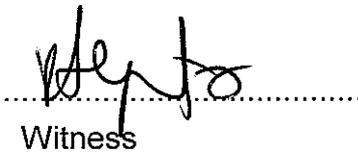
Witness

SIGNED AND DELIVERED  
BY

in the presence of



A handwritten signature in cursive script, appearing to read 'Ch. Hartley', is written above a horizontal dotted line.



A handwritten signature in cursive script, appearing to read 'W. J. ...', is written above a horizontal dotted line.

Witness

# MINING LEASE CONDITIONS 2010

## Content

### Definition

1. Notice to Landholders
2. Environmental Harm
3. Mining Operations Plan
4. Environment Management Report
5. Environmental Incident Report
6. Additional Environmental Reports
7. Rehabilitation
10. Blasting
11. Safety
12. Prevention of Soil Erosion and Pollution
13. Transmission lines, Communication lines and Pipelines
14. Roads and Tracks
15. Trees and Vegetation
18. Indemnity
20. Single Security
24. Cooperation Agreement

## **Note: Exploration Reports (Geological and Geophysical)**

### **Definition:**

"Director-General" means the Director-General of the Department of Trade and Investment; Regional Infrastructure and Services.

## 1. Notice to Landholders

- (a) Within a period of three months from the date of grant/renewal of this lease or within such further time as the Minister may allow, the lease holder must serve on each landholder of the land a notice in writing indicating that this lease has been granted/renewed and whether the lease includes the surface. An adequate plan and description of the lease area must accompany the notice.
- (b) If there are ten or more landholders affected, the lease holder may serve the notice by publication in a newspaper circulating in the region where the lease area is situated. The notice must indicate that this lease has been granted/renewed; state whether the lease includes the surface and must contain an adequate plan and description of the lease area.

## 2. Environmental Harm

- (a) The lease holder must implement all practicable measures to prevent and/or minimise any harm to the environment that may result from the construction, operation or rehabilitation of any activities under this lease.
- (b) For the purposes of this condition:
  - (i) environment means components of the earth, including:
    - (A) land, air and water, and
    - (B) any layer of the atmosphere, and
    - (C) any organic or inorganic matter and any living organism, and
    - (D) human-made or modified structures and areas,and includes interacting natural ecosystems that include components referred to in paragraphs (A)–(C).
  - (ii) harm to the environment includes any direct or indirect alteration of the environment that has the effect of degrading the environment and, without limiting the generality of the above, includes any act or omission that results in pollution, contributes to the extinction or degradation of any threatened species, populations or ecological communities and their habitats and causes impacts to places, objects and features of significance to Aboriginal people.

### 3. Mining Operations Plan

- (a) Mining operations must not be carried out otherwise than in accordance with a Mining Operations Plan (MOP) which has been approved by the Director-General.
- (b) The MOP must:
- (i) identify areas that will be disturbed by mining operations;
  - (ii) detail the staging of specific mining operations;
  - (iii) identify how the mine will be managed to allow mine closure;
  - (iv) identify how mining operations will be carried out in order to prevent and or minimise harm to the environment;
  - (v) reflect the conditions of approval under:
    - the *Environmental Planning and Assessment Act 1979*
    - the *Protection of the Environment Operations Act 1997*
    - and any other approvals relevant to the development including the conditions of this lease; and
    - have regard to any relevant guidelines adopted by the Director-General.
- (c) The leaseholder may apply to the Director-General to amend an approved MOP at any time.
- (d) It is not a breach of this condition if:
- (i) the operations constituting the breach were necessary to comply with a lawful order or direction given under the *Mining Act 1992*, the *Environmental Planning and Assessment Act 1979*, *Protection of the Environment Operations Act 1997*, *Mine Health and Safety Act 2004 / Coal Mine Health and Safety Act 2002* and *Mine Health and Safety Regulation 2007 / Coal Mine Health and Safety Regulation 2006* or the *Occupational Health and Safety Act 2000*; and
  - (ii) the Director-General had been notified in writing of the terms of the order or direction prior to the operations constituting the breach being carried out.
- (e) A MOP ceases to have effect 7 years after date of approval or other such period as identified by the Director-General.

#### **4. Environment Management Report**

- (a) The lease holder must lodge Environmental Management Reports (EMR) with the Director-General annually or at dates otherwise directed by the Director-General.
- (b) The EMR must:
  - (i) report against compliance with the MOP;
  - (ii) report on progress in respect of rehabilitation completion criteria;
  - (iii) report on the extent of compliance with regulatory requirements; and
  - (iv) have regard to any relevant guidelines adopted by the Director-General;

#### **5. Environmental Incident Report**

- (a) The lease holder must report any environmental incidents. The report must:
  - (i) be prepared according to any relevant Departmental guidelines;
  - (ii) be submitted within 24 hours of the environmental incident occurring;
- (b) For the purposes of this condition, environmental incident includes:
  - (i) any incident causing or threatening material harm to the environment
  - (ii) any breach of Conditions 1 to 9 and 11 to 24;
  - (iii) any breach of environment protection legislation; or,
  - (iv) a serious complaint from landholders or the public.
- (c) For the purposes of this condition, harm to the environment is material if:
  - (i) it involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial, or
  - (ii) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, where loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment.

#### **6. Additional Environmental Reports**

Additional environmental reports may be required from time to time as directed in writing by the Director-General and must be lodged as instructed.

## 7. Rehabilitation

Any disturbance as a result of activities under this lease must be rehabilitated to the satisfaction of the Director-General.

## 10. Blasting

### (a) Ground Vibration

The lease holder must ensure that the ground vibration peak particle velocity generated by any blasting within the lease area does not exceed 10 mm/second and does not exceed 5 mm/second in more than 5% of the total number of blasts over a period of 12 months at any dwelling or occupied premises as the case may be, unless determined otherwise by the Department of Environment, Climate Change and Water.

### (b) Blast Overpressure

The lease holder must ensure that the blast overpressure noise level generated by any blasting within the lease area does not exceed 120 dB (linear) and does not exceed 115 dB (linear) in more than 5% of the total number of blasts over a period of 12 months, at any dwelling or occupied premises, as the case may be, unless determined otherwise by the Department of Environment, Climate Change and Water.

## 11. Safety

Operations must be carried out in a manner that ensures the safety of persons or stock in the vicinity of the operations. All drill holes shafts and excavations must be appropriately protected, to the satisfaction of the Director-General, to ensure that access to them by persons and stock is restricted. Abandoned shafts and excavations opened up or used by the lease holder must be notified in writing to the Department and filled in or otherwise rendered safe to a standard acceptable to the Director-General.

## **12. Prevention of soil erosion and pollution**

Prospecting operations must be carried out in a manner that does not cause or aggravate air pollution, water (including groundwater) pollution, soil contamination or erosion, unless otherwise authorised by a relevant approval, and in accordance with an accepted Mining Operations Plan.

## **13. Transmission lines, Communication lines and Pipelines**

Operations must not interfere with or impair the stability or efficiency of any transmission line, communication line, pipeline or any other utility on the lease area without the prior written approval of the Director-General and subject to any conditions stipulated.

## **14. Roads and Tracks**

- (a) The lease holder must pay to the relevant roads authority in control of the road or track the reasonable costs incurred by the roads authority in making good any damage to roads or tracks caused by operations carried out under this lease less any amount paid or payable from the Mine Subsidence Compensation Fund.
- (b) During wet weather the use of any road or track must be restricted so as to prevent damage to the road or track.
- (c) Existing access tracks should be used for all operations where reasonably practicable. New access tracks must be kept to a minimum and be positioned in order to minimise damage to the land, watercourses or vegetation.
- (d) Temporary access tracks must be rehabilitated and revegetated to the satisfaction of the Director-General as soon as reasonably practicable after they are no longer required under this lease.

## **15. Trees and Vegetation**

- (a) The lease holder must not fell trees, strip bark or cut timber on any land subject of this lease without the consent of the landholder who is entitled to the use of the timber.
- (b) The lease holder must contact Forests NSW and obtain any required permit, licence or approval before taking timber from any Crown land within the lease area.

*Note: Any clearing not authorised under the Act must comply with the requirements of the Native Vegetation Act 2003. Any clearing or taking of timber on Crown land is subject to the requirements of the Forestry Act 1916.*

## **18. Indemnity**

The lease holder must indemnify and keep indemnified the Crown from and against all actions, suits, claims and demands of whatsoever nature and all costs, charges and expenses which may be brought against the lease holder or which the lease holder may incur in respect of any accident or injury to any person or property which may arise out of the construction, maintenance or working of any workings now existing or to be made by the lease holder within the lease area or in connection with any of the operations notwithstanding that all other conditions of this lease shall in all respects have been observed by the lease holder or that any such accident or injury shall arise from any act or thing which the lease holder may be licensed or compelled to do.

## **20 Single Security**

A single security in the sum of **\$4,062,000** must be given and maintained with the Minister by the lease holder for the purpose of ensuring the fulfilment by the lease holder of obligations under each Mining Lease 1563 (Act 1992) and any lease granted in satisfaction of Mining Lease Applications 407, 408 and 409 (Act 1992).

## **24. Cooperation Agreement**

The lease holder must make every reasonable attempt, and be able to demonstrate their attempts, to enter into a cooperation agreement with the holder(s) of any overlapping title(s). The cooperation agreement should address but not be limited to issues such as:

- access arrangements
- operational interaction procedures
- dispute resolution
- information exchange
- well location
- timing of drilling
- potential resource extraction conflicts and

- rehabilitation issues.

Note: Exploration Reports (Geological and Geophysical)

*The lease holder must lodge reports to the satisfaction of the Director-General in accordance with section 163C of the Mining Act 1992 and in accordance with clause 57 of the Mining Regulation 2010.*

*Reports must be prepared in accordance with Exploration Reporting: A guide for reporting on exploration and prospecting in New South Wales (Department of Trade and Investment; Regional Infrastructure and Services 2010).*