
Voluntary Planning Agreement - Bowdens Silver Mine

Mid-Western Regional Council ABN 96 149 391 332

Bowdens Silver Pty Ltd ACN 009 250 051

Version: 1

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Voluntary Planning Agreement - Bowdens Silver Mine

Dated

Parties

Council **Mid-Western Regional Council ABN 96 149 391 332**

of 86 Market Street, Mudgee NSW 2850

Bowdens Silver **Bowdens Silver Pty Ltd ACN 009 250 051**

of 68 Maloneys Road, Lue NSW 2850

Background

- A In May 2020, Bowdens Silver made a Development Application to the Department seeking Development Consent to carry out the proposed Development on the Land. This Development is identified by the Department as State Significant Development Application - SSD-5765.
- B Bowdens Silver has made an offer to Council to enter into this Deed under section 7.4 of the EP&A Act and to pay the Development Contributions to the Council in connection with the carrying out of the Development.
- C In accordance with section 7.4 of the EP&A Act, this Deed formalises the arrangement between the Parties for the delivery of Development Contributions in connection with the Development.

1 Definition and interpretation

1.1 Definitions

In this Deed the following definitions apply:

Term	Definition
AACE	means the additional annual capital expenditure for the Development totalling \$54 million, which will be incurred over the life of the mine (with 1% of the AACE being \$0.54 million).
Authority	means any governmental, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or agency.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

Term	Definition
	<p>(a) one of the following trading banks:</p> <ul style="list-style-type: none"> (i) Australia and New Zealand Banking Group Limited, (ii) Commonwealth Bank of Australia, (iii) Macquarie Bank Limited, (iv) National Australia Bank Limited, (iv) St George Bank Limited, (v) Westpac Banking Corporation, or <p>(b) any other financial institution approved by the Council in its absolute discretion.</p>
Business Day	means a day that is not a Saturday, Sunday or public holiday in New South Wales.
Community Infrastructure and Services	<p>means the following public purposes:</p> <ul style="list-style-type: none"> (a) environmental protection and management; (b) provision and maintenance of community infrastructure; (c) local social amenity; or (d) training and education of the community.
Construction Commencement Date	means the date that Bowdens Silver notifies the Department (in writing) of the commencement of Construction in accordance with the Development Consent.
Construction	means any physical works to enable mining operations to be carried out in accordance with the Development Consent, but does not include preparatory works such as fencing, construction of roads and dams, demolition of buildings, surveying, tree planting, construction of environmental bunds and the salvage of Aboriginal objects.
Council	means Mid-Western Regional Council ABN 96 149 391 332 or its representatives or assigns.
CPI	means the published Consumer Price Index (Sydney – All Groups), or if that index is no longer published, then any other index which, in the reasonable opinion of the Council, is a similar index.
Deed	means this voluntary planning agreement.
Department	means the NSW Department of Planning, Industry and Environment.
Development	means the proposed silver, zinc and lead mining operations known as the Bowdens Silver Project described in Development Application SSD-5765, as approved by a Development Consent and as modified from time to time.
Development Application	means the application for the Development with reference number SSD-5765 lodged with the Department in May 2020.

Term	Definition
Development Consent	has the meaning given to that term in the EP&A Act.
Development Contributions	means the monetary contributions detailed in Schedule 2 of this Deed, and for the avoidance of doubt includes the Road Maintenance Contribution.
ELNO	has the same meaning as in the Electronic Conveyancing National Law (NSW).
EP&A Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Explanatory Note	means the note exhibited with a copy of this Deed, when this Deed is made available for inspection by the public in accordance with the EP&A Act, as contemplated by clause 25E of the Regulation.
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, epidemic, pandemic, labour dispute, failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies).
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
ICC	means the initial capital cost of the Development totalling \$246 million (with 1% of the ICC being \$2.46 million).
Land	means the parcels of land on which the Development will be carried out and as listed in any Schedule of Lands in the Development Consent (if such schedule forms part of the Development Consent).
Law	means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinate legislation of the Commonwealth, the State of New South Wales or other relevant Authority.
Bowdens Silver	means Bowdens Silver Pty Ltd ACN 009 250 051.
Bowdens Silver Land	means the part of the Land owned by Bowdens Silver, being the parcels of land listed in Schedule 3 of this Deed.
Mining Lease	means one or more of the mining leases held by Bowdens Silver or a related entity for the purposes of carrying out the Development.
Parties	means Council and Bowdens Silver, including both their successors and assigns.
Product	means any ore from which silver, lead or zinc may be extracted and recovered.

Term	Definition
Production Commencement Date	means the date that Bowdens Silver notifies the Department (in writing) of the commencement of production, which is the date of commencement of extraction and recovery of Product from the Land.
Recipient	has the meaning given to that term in the GST Act.
Road Maintenance Contribution	means the contribution to be made by Bowdens Silver pursuant to the terms of this Deed to be applied towards the ongoing maintenance of Lue Road and ancillary roads that Council considers will be impacted by the Development.
Supply and Supplier	has the meaning given to that term in the GST Act.
Tax Invoice	has the meaning given to that term in the GST Act.
Taxable Supply	has the meaning given to that term in the GST Act.

1.2 Interpretation

In this Deed, unless context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(requirements)** 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;
- (g) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (h) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (i) **(singular)** the singular includes the plural and vice-versa;
- (j) **(gender)** words importing one gender include all other genders;

- (k) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (l) **(rules of construction)** neither this agreement 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;
- (m) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (n) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (o) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (p) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (q) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (r) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (s) **(month)** a reference to a month is a reference to a calendar month; and
- (t) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

2 Application of the Deed

This Deed applies to:

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

3 Planning agreement under the EP&A Act

This Deed constitutes a planning agreement within the meaning of section 7.4 of the EP&A Act and complies with each of the requirements of Part 7, Division 7.1 of the EP&A Act.

4 Operation of this Deed

- (a) This Deed operates, and becomes legally binding on both parties once this Deed is executed by the Parties as required by clause 25C(1) of the Regulation.
- (b) This Deed will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied.

5 Application of sections 7.11, 7.12 and 7.24

5.1 Sections 7.11, 7.12 and 7.24 of the EP&A Act

- (a) This Deed excludes the application of sections 7.11 and 7.12 of the EP&A Act to the Development.
- (b) This Deed does not exclude the application of section 7.24 of the EP&A Act to the Development.

6 Payment of Development Contributions

6.1 The Development Contributions

Subject to this Deed, Bowdens Silver will pay to Council the Development Contributions which are to be made:

- (a) for the purpose specified in column A of Schedule 2;
- (b) in the amount referred to in column B of Schedule 2 (subject to adjustment under clause 6.2); and
- (c) at the times referred to in column C of Schedule 2.

6.2 CPI

The Development Contributions are to be adjusted according to CPI as follows:

$$DCP = (DC \times A)/B$$

where:

- (a) DC equals the particular Development Contribution payment amount required to be paid as per column 3 of Schedule 2;
- (b) DCP equals the actual Development Contribution payment amount payable at the time the particular payment is made;
- (c) A equals the most recent CPI published before the date the payment is due to be made; and
- (d) B equals the most recent CPI published before the date of this Deed.

6.3 Intention to make payment

- (a) Bowdens Silver must give Council written notice of the Construction Commencement Date and the Production Commencement Date within 5 Business Days of each of those dates occurring.
- (b) Not less than 10 Business Days before a Development Contribution is required to be paid, Bowdens Silver must give Council written notice of:
 - (i) its intention to pay a Development Contribution; and
 - (ii) the amount of Development Contributions it is required to pay as determined under Schedule 2, including any GST (if applicable).

6.4 Requirement for tax invoices

- (a) Council must upon receiving the notice under clause 6.3, provide Bowdens Silver with a Tax Invoice for the amount of the Development Contribution that Bowdens Silver is required to pay.
- (b) Subject to clause 6.3, Bowdens Silver must pay Council the Development Contribution within ten business days of receiving the Tax Invoice from Council under clause 6.4.

6.5 Time of payment

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

6.6 Application of Development Contributions

- (a) Council will spend the Development Contributions paid for the purpose of Community Infrastructure and Services in accordance with the strategies and actions in the Community Strategic Plan and 4 year Delivery Program.
- (b) During the Term, Council must provide Bowdens Silver with an annual update by no later than 31 July each Financial Year on the Community Infrastructure and Services that have been funded by the Development Contributions.

6.7 Road Maintenance Contribution

- (a) The following provisions apply to the Road Maintenance Contribution to be paid by Bowdens Silver in accordance with this Deed:
 - (i) The Road Maintenance Contribution is to be applied towards the maintenance of Lue Road and ancillary roads that Council considers will be impacted by the Development.
 - (ii) Road works undertaken are to be at the sole discretion of Council.

6.8 Force Majeure Event

If a Force Majeure Event has occurred:

- (a) Bowdens Silver may serve a notice on Council outlining the details of a Force Majeure Event and the impact of the Force Majeure Event on Bowdens Silver's operations;

- (b) within 20 Business Days of such notice being served in accordance with clause 6.8(a), Council agrees to meet with Bowdens Silver for good faith negotiations regarding the impact of the Force Majeure Event on Bowdens Silver's operations and whether in the circumstances Council agrees to the suspension of Development Contributions payments under clause 6.1 for the duration of the Force Majeure Event or such longer period as may be agreed between the Parties; and
- (c) for the avoidance of doubt, any suspension of Development Contributions payments agreed to between the parties under clause 6.8(b), does not alleviate Bowdens Silver of its obligations to make these payments to Council, however it suspends the timing for the making of the payment until the Force Majeure Event has ceased or until such later date that is agreed between the Parties.

7 Review of this Deed

7.1 Basis for review or amendment to Deed

- (a) Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Deed shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 7.5 of the EP&A Act.

8 Enforcement

8.1 Bank guarantee

- (a) Within 90 days of execution of this Deed, Bowdens Silver must give Council a Bank Guarantee in favour of and in terms acceptable to Council in the amount of \$80,000.
- (b) The amount of the Bank Guarantee is to be indexed in accordance with the CPI from the date of this Deed and Bowdens Silver is to ensure that the Bank Guarantee provided to and held by the Council is at all times maintained to the full current indexed value.
- (c) At any time following the provision of a Bank Guarantee under clause 8.1(a), Bowdens Silver may provide the Council with one or more replacement Bank Guarantees totalling the amount of the Bank Guarantee required to be provided under clauses 8.1(a) and (b). On receipt of such replacement Bank Guarantee, the Council must release and return to Bowdens Silver, as directed, the Bank Guarantee which it holds that has been replaced.
- (d) If Bowdens Silver fails to pay a Development Contribution or a per annum amount of a Development Contribution in accordance with this Deed then the Council may call-up and apply the Bank Guarantee in accordance with clause 8.2 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- (e) Without limiting clause 8.2 the Council may apply the proceeds of a Bank Guarantee provided under this clause towards satisfaction of:
 - (i) any obligation of Bowdens Silver under this Deed to pay the Development Contributions; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure of Bowdens Silver to pay the Development Contributions.

- (f) If the Council calls-up the Bank Guarantee or any portion of it, it may, by written notice to Bowdens Silver, require Bowdens Silver to provide a further or replacement Bank Guarantee to ensure that the amount of Bank Guarantee held by the Council equals the amount it is entitled to hold under this Deed.
- (g) The Council must release the Bank Guarantee in any of the following circumstances:
 - (i) if this Deed is terminated for any reason;
 - (ii) if the rights and obligations under this Deed are assigned or novated to another person and that person has provided a replacement Bank Guarantee; or
 - (iii) on satisfaction by Bowdens Silver of all of its obligations under this Deed to make Development Contributions.

8.2 Enforcement generally

- (a) Without limiting any other remedies available to the Parties, this Deed may be enforced by either Party in any court of competent jurisdiction.
- (b) Nothing in this Deed prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; or
 - (ii) the Minister or the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.
- (c) If Bowdens Silver fails to pay a Development Contribution or a per annum amount of a Development Contribution by the due date on a Tax Invoice as required under this Deed, Council may provide a notice to Bowdens Silver, notifying Bowdens Silver of the breach and Council's intention to commence proceedings to recover the specified Development Contribution if payment is not made within 14 days of the date of the notice.
- (d) If Bowdens Silver fails to pay the specified Development Contribution within 14 days of the date of a notice provided in accordance with clause 8.2(c), then Council may, without further notice to Bowdens Silver, do either or a combination of the following:
 - (i) call up the Bank Guarantee provided by Bowdens Silver under this Deed and apply it towards remedying Bowdens Silver's breach,
 - (ii) commence proceedings in a court of competent jurisdiction to recover such amount due.
- (e) Any costs incurred by the Council in remedying a failure to pay a Development Contribution in accordance with clause 8.2(d), may be recovered by the Council by either or a combination of the following means:
 - (i) by calling up and applying the Bank Guarantee provided by Bowdens Silver under this Deed, or
 - (ii) as a debt due in a court of competent jurisdiction.
- (f) For the purpose of clause 8.2(e), the Council's costs of remedying a breach the subject of a notice given under clause 8.2(c) include, but are not limited to:

- (i) the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (g) For the avoidance of doubt, the fact that the Council fails to do, or delays in doing, something the Council is entitled to do under this clause, does not amount to a waiver of any obligation of, or breach of obligation by, Bowdens Silver.

9 Termination

- (a) This Deed terminates if any of the following circumstances arise:
- (i) on the election of Bowdens Silver, if the Development Consent is held to be void by any Court;
 - (ii) if the Development Consent expires or is surrendered;
 - (iii) if the Mining Lease, under which the Development is being carried out, is cancelled or surrendered and a substitute Mining Lease is not granted within 24 months of cancellation or surrender, or a longer period as agreed between the parties;
 - (iv) if the parties agree in writing to terminate the Deed at any time.
- (b) If this Deed is terminated:
- (i) Bowdens Silver is not released from any liability or obligation that arose on or before the date of termination; and
 - (ii) Council is not required to reimburse any monetary Development Contributions that have been paid to the Council on or before the date of termination.
- (c) This clause 9 continues to apply after termination.

10 Dispute resolution

10.1 Not Commence

A Party may not commence any court proceedings relating to a dispute of any matter under this Deed (a Dispute) unless it complies with this clause 10.

10.2 Written Notice of Dispute

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

10.3 Attempt to Resolve

On receipt of notice under clause 10.2, 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.

10.4 Mediation

If the Parties do not agree within 14 days of receipt of notice under clause 10.2 (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; and
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales (or any replacement). The Parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

10.5 Costs

Each Party to a dispute must pay its own costs of complying with this clause 10. The Parties to the Dispute must equally pay the costs of the Mediation including without limitation the fees of any mediator and the cost of room hire.

10.6 Court Proceedings

If the Dispute is not resolved within 42 days after notice is given under clause 10.2, then any Party which has complied with the provisions of this clause 10 may in writing terminate any dispute resolution process undertaken pursuant to this clause 10 and may then commence court proceedings in relation to the Dispute.

10.7 Not Use Information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 10 is to attempt to settle the Dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 10 for any purpose other than in an attempt to settle the Dispute.

10.8 No Prejudice

This clause 10 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.

11 GST

11.1 GST exclusive

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

11.2 Taxable Supply

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

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

11.3 Later GST change

For clarity, the GST payable under clause 11.2 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.

11.4 Reimbursement or indemnity

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

11.5 Warranty that Tax Invoice is issued regarding a Taxable Supply

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

11.6 Progressive or Periodic Supplies

Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 11.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

12 Explanatory Note

Under clause 25E(7) of the *Environmental Planning and Assessment Regulation 2000 (NSW)*, the Parties agree that the Explanatory Note is not to be used to assist interpreting this Deed.

13 Assignment

13.1 Assignment and novation

- (a) Bowdens Silver is not to assign any of its rights or obligations under this Deed, or novate this Deed to any person unless:
 - (i) it has, at no cost to the Council, first procured the execution by the person to whom its rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council; and

- (ii) the Council has given written notice to Bowdens Silver stating that it reasonably considers that the assignee or novatee, is reasonably capable of performing its obligations under this Deed; and
 - (iii) Bowdens Silver is not in breach of this Deed; and
 - (iv) the Council otherwise consents to the assignment or novation, such consent not to be unreasonably withheld.
- (b) Bowdens Silver acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 13.1(a).
 - (c) Bowdens Silver must pay the reasonable costs of Council related to this clause 13.1.

14 Registration

- (a) This Deed is to be registered on the title to the Bowdens Silver Land as provided for in section 7.6 of the EP&A Act.
- (b) Upon the commencement of this Deed, Bowdens Silver is to:
 - (i) procure the preparation of an electronic registrable form and instrument requesting registration of this Deed on the title to the Bowdens Silver Land and notify the Council of such preparation, and
 - (ii) deliver to the Council the written irrevocable consent of each registered proprietor of the Bowdens Silver Land and each other person referred to in s7.6(1) of the Act to the registration of this Deed on title to the Bowdens Silver Land.
- (c) Bowdens Silver is to do such other things as are reasonably necessary to enable registration of this Deed to occur through an ELNO.
- (d) The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Bowdens Silver Land once Bowdens Silver has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

15 General

15.1 Counterparts

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

15.2 No merger

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

15.3 Entire agreement

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

15.4 Further assurances

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

15.5 Representations and warranties

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

15.6 Confidentiality

Any information or documents disclosed by a party under this Deed:

- (g) must be kept confidential unless it is already available in the public domain; and
- (h) may only be used to attempt to resolve a dispute.

15.7 No waiver

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

15.8 Governing law and jurisdiction

- (a) New South Wales law governs this document.
- (l) Each party irrevocably submits to the exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.
- (m) The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 10 of this Deed have first been satisfied.

15.9 Severability

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

15.10 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.

15.11 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.

15.12 No fetter

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

16 Notice

16.1 Method of giving notice

A notice, consent or communication under this document is only effective if it is:

- (a) in writing;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
 - (i) delivered by hand to that person's address;
 - (ii) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
 - (iii) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
 - (iv) sent by email to that person's email address and the sender receives an email receipt or other written confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient.

16.2 When is notice given

A notice, consent or communication given under clause 16.1(a) is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax or email	(a) that day, if delivered or sent by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.
Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Days after posting, if sent to or from a place outside Australia.

16.3 Address for notices

A person's address, fax number and email address are those set out below, or as the person notifies the sender:

Name	Mid-Western Regional Council
Attention	General Manager
Address	86 Market Street, Mudgee NSW 2850
Phone	1300 765 002 or (02) 6378 2850
Fax	(02) 6378 2815
Email	council@midwestern.nsw.gov.au

Name	Bowdens Silver Pty Ltd
Attention	General Manager
Address	Level 11, 52 Phillip Street, Sydney NSW 2000
Fax	(02) 8316 3999
Email	information@bowdensilver.com.au

17 Costs

- (a) The parties are to pay their own costs of preparing, negotiating, executing, stamping (if required) this Deed.
- (b) Bowdens Silver is to pay its own cost and the Council's costs related to registration and removal of registration of this Deed within 7 days of a written demand by the Council for such payment.
- (c) Bowdens Silver is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

Draft

Schedule 1

Requirements of Part 7, Division 7.1, Subdivision 2 of the EP&A Act

Subject and subsection of the EP&A Act	This Deed
<p>Planning Instrument or Development Application (Section 7.4(2)) Bowdens Silver has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a development application or application for a complying development certificate; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) and (b) applies.</p>	<p>No.</p> <p>Yes.</p> <p>Yes.</p>
<p>Description of the land to which the Deed applies (Section 7.4(3)(a))</p>	<p>See definition of 'Land' in clause 1 of the Deed.</p>
<p>Description of the development to which this Deed applies – (Section 7.4(3)(b))</p>	<p>See definition of 'Development' in clause 1 of the Deed.</p>
<p>The scope, timing and manner of delivery of contribution required by the Deed (Section 7.4(3)(c))</p>	<p>See clause 6 and Schedule 2.</p>
<p>Applicability of section 7.11 of the EP&A Act (Section 7.4(3)(d))</p>	<p>The application of section 7.11 of the EP&A Act is not excluded.</p>
<p>Applicability of section 7.12 of the EP&A Act (Section 7.4(3)(d))</p>	<p>The application of section 7.12 of the EP&A Act is not excluded.</p>
<p>Applicability of section 7.24 of the EP&A Act (Section 7.4(3)(d))</p>	<p>The application of section 7.24 of the EP&A Act is not excluded.</p>
<p>Mechanism for dispute resolution (Section 7.4(3)(f))</p>	<p>See clause 10.</p>
<p>Security and enforcement of the Deed (Section 7.4(3)(g))</p>	<p>See clause 8.</p>
<p>Registration of the Deed (Section 7.4(3)(g))</p>	<p>See clause 14.</p>
<p>No obligation to grant consent or exercise functions – (section 7.4(9))</p>	<p>See clause 15.12.</p>

Schedule 2

Contribution and Timing of Payments

Bowdens Silver will pay the Development Contributions to Council as set out in the table below:

Item	A – Purpose	B – Development contribution	C – Date for payment
1	Community Infrastructure and Services	\$500,000 subject to CPI adjustment (representing a lump sum upfront portion of the 1% of the ICC).	Within one calendar month of the Construction Commencement Date.
2	Community Infrastructure and Services	\$500,000 subject to CPI adjustment (representing a lump sum upfront portion of the 1% of the ICC).	Within one calendar month of the Production Commencement Date.
3	Community Infrastructure and Services	Balance of the ICC contribution (being \$1.46 million) payable in instalments being \$94,200 per annum (subject to CPI adjustment) for 15 years and \$47,000 (subject to CPI adjustment) on the date that is 15.5 years after the Production Commencement Date.	(a) \$94,200 per annum (subject to CPI adjustment) to be paid on each anniversary of the Production Commencement Date for 15 years, and (b) \$47,000 (subject to CPI adjustment) to be paid on the date that is 15.5 years after the Production Commencement Date.
4	Community Infrastructure and Services	\$540,000 (representing 1% of AACE) payable in instalments being \$34,840 per annum (subject to CPI adjustment) for 15 years and \$17,400 on the date that is 15.5 years after the Production Commencement Date.	(a) \$34,840 per annum (subject to CPI adjustment) to be paid on each anniversary of the Production Commencement Date for 15 years, and (b) \$17,400 (subject to CPI adjustment) to be paid on the date that is 15.5 years after the Production Commencement Date.
5	Road Maintenance Contribution	\$1,705,000 payable in instalments being \$110,000 per annum (subject to CPI adjustment) for 15 years and \$55,000 (subject to CPI adjustment) on the date that is 15.5 years after the Production Commencement Date.	(a) \$110,000 per annum (subject to CPI adjustment) to be paid on each anniversary of the Production Commencement Date for 15 years, and (b) \$55,000 (subject to CPI adjustment) to be paid on the date that is 15.5 years after the Production Commencement Date.
6	Community Infrastructure and Services	\$94,200 per annum (subject to CPI adjustment) for each year the Development is carried out beyond the date that is 15.5 years after the Production Commencement Date.	(a) \$94,200 per annum (subject to CPI adjustment) to be paid on the date that is 16.5 years after the Production Commencement Date, and on each anniversary of that date, and

			(b) a pro-rated amount of \$94,200 per annum (subject to CPI adjustment) for the final year the Development is carried out.
7	Community Infrastructure and Services	\$34,840 per annum (subject to CPI adjustment) for each year the Development is carried out beyond the date that is 15.5 years after the Production Commencement Date.	(a) \$34,840 per annum (subject to CPI adjustment) to be paid on the date that is 16.5 years after the Production Commencement Date, and on each anniversary of that date, and (b) a pro-rated amount of \$34,840 per annum (subject to CPI adjustment) for the final year the Development is carried out.
8	Road Maintenance Contribution	\$110,000 per annum (subject to CPI adjustment) for each year the Development is carried out beyond the date that is 15.5 years after the Production Commencement Date.	(a) \$110,000 per annum (subject to CPI adjustment) to be paid on the date that is 16.5 years after the Production Commencement Date, and on each anniversary of that date, and (b) a pro-rated amount of \$110,000 per annum (subject to CPI adjustment) for the final year the Development is carried out.

GST: All dollar amounts in the above table are GST exclusive in accordance with this Deed.

Schedule 3

Bowdens Silver Land

1/814633
2/814633
2/776858
11/810747
1/835810
25/755435
26/755435
86/755435
118/755435
119/755435
127/755435
140/755435
143/755435
161/755435
1/1171691
132/1050074
102/1124638
3/755412
42/755412
73/755412
74/755412
76/755412
107/755412
178/755412
2/572701

Execution

EXECUTED as a deed

Signed for and on behalf of
Mid-Western Regional Council ABN 96 149 391 332
in accordance with a resolution under section 377
of the *Local Government Act 1993 (NSW)* passed
on:

Signature of Mayor

Signature of General Manager

Print name

Print name

Executed for and on behalf of Bowdens Silver Pty
Ltd ACN 009 250 051 in accordance with section
127(1) of the *Corporations Act 2001 (Cth)*:

Director/Secretary [if not Sole Director]

Director/Sole Director

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]