
Moolarben Coal Mines Pty Ltd

ABN 82 108 601 872

and

Mid Western Regional Council

and

Felix Resources Limited

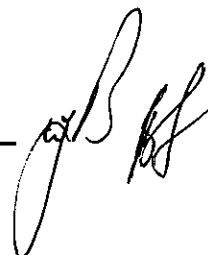
ABN 75 000 754 174

**Moolarben Coal Project
Planning Agreement**

S PARKE ■ ■
H ELMORE ■ ■
LAWYERS

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Agreement

Date

23rd April 2008

Parties

Name **Moolarben Coal Mines Pty Ltd (Moolarben)**
ABN 82 108 601 872

Address Level 14, 213 Miller Street, North Sydney NSW 2060

Fax Number 02 9923 2427

Email Address admin@felixresources.com.au

Contact Brian Flannery

Name **Mid Western Regional Council (Council)**

Address 86 Market Street, Mudgee NSW 2850

Fax Number 02 6378 2815

Email Address council@midwestern.nsw.gov.au

Contact The General Manager

Name **Felix Resources Limited (Felix)**
ABN 75 000 754 174

Address 316 Adelaide Street, Brisbane, Queensland, 4000

Fax Number 07 3211 7328

Email Address admin@felixresources.com.au

Contact Brian Flannery

Background

- A. On 20 December 2005, Moolarben lodged an application under Part 3A of the Act for the Project.
- B. By letter to the Minister for Planning dated 4 September 2007 Moolarben offered to enter into this Agreement with the Council.
- C. On 6 September 2007, the Minister for Planning granted the Project Approval.

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- D. The Project Approval requires that Moolarben shall enter into this Agreement with the Council.
- E. The parties enter into this Agreement as a planning agreement under section 93F of the Act in performance of condition 12 of Schedule 2 of the approval.
- F. The payments to be made by Moolarben to Council under this Agreement:
- (1) reflect an anticipation of 317 employees in connection with the Project and further anticipated mining development within Exploration Licence 6288; and
 - (2) recompense Council for the provision of additional services and facilities which arise in connection with 317 employees in the conduct of all mining within the area of Exploration Licence 6288.
- G. The payments under this Agreement will provide for the cost of goods or services to the local community and capital works required as a result of the construction and operation of the Project.

Operative Part

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

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

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

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

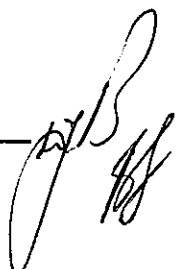
Explanatory Note has the same meaning given to that term in clause 25E of the Regulation.

Land means the land to which the Project applies as described in Appendix 1 of the Project Approval.

Project means the Moolarben Coal Project as approved by the Project Approval.

Project Approval means the project approval for the Project pursuant to section 75J of Part 3A of the Act by Minister on 6 September 2007.

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



1.2 Interpretation

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

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

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

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

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

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

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

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

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

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

2 Planning Agreement under the Act

This Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

3 Application of the Agreement

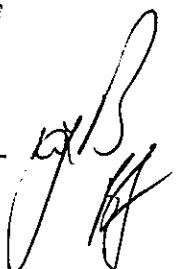
- (a) This planning agreement applies to the Land.
- (b) This planning agreement applies to the Project.

4 Operation of this Agreement

This Agreement operates from the date upon which any development (as defined in section 4 of the Act) occurs on the Land as provided for by the Project Approval.

5 Application of sections 94, 94A and 94 EF of the Act

- (a) This Agreement does not exclude the application of section 94, 94A and 94EF of the Act to the Project.



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- (b) The payments under this Agreement are to be taken into consideration in determining a development contribution under section 94 of the Act.

6 Development Contributions

6.1 Monetary Contribution – Open Cut Product Coal

- (a) Moolarben must pay to Council a monetary contribution of \$1,000,000 by three equal instalments.
- (b) The first instalment must be paid within seven days of the date of the first loading and dispatch of coal produced from the open cut operations of the Project.
- (c) The second and third instalments must be paid respectively within seven days of each of the first and second anniversary of the date referred to in clause 6.1(b).

6.2 Monetary Contribution – Underground Product Coal

Moolarben must pay to Council a monetary contribution of \$300,000 within seven days of the date of first loading and dispatch of coal produced from the underground operations of the Project.

6.3 Road Maintenance Contribution – Cope Road and Ulan Road

- (a) Moolarben must pay to Council a road maintenance contribution of \$1,000,000 by three equal instalments.
- (b) The first instalment must be paid within seven days of the date of commencement of construction works for the Project.
- (c) The second and third instalments must be paid respectively within seven days of each of the first and second anniversary of the date referred to in clause 6.3(b).

6.4 Road Maintenance Contribution - General

- (a) Moolarben must pay to Council a road maintenance contribution of \$1,250,000 in twenty equal instalments.
- (b) The first instalment must be paid on the first anniversary of the first loading and dispatch of coal produced from the operations of the Project. However, if requested by Council, Moolarben must pay the first instalment within 7 days of the first loading and dispatch of coal from the operations of the Project.
- (c) The remaining nineteen instalments must be paid respectively within seven days of each of the first to the nineteenth anniversary of the date referred to in clause 6.4(b) being the date the first instalment was paid to Council.

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- (d) The amount of each instalment referred to in 6.4(c) must be multiplied by the ratio of:
- (1) CPI for the quarter last published prior to the date for payment; to
 - (2) CPI last published immediately prior to the date of this Agreement.

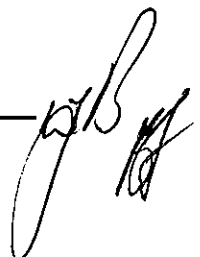
6.5 Community Infrastructure Contribution

- (a) Moolarben must pay to Council a community infrastructure contribution of \$1,000,000 in ten equal instalments.
- (b) The first instalment must be paid on the first anniversary of the first loading and dispatch of coal produced from the operations of the Project. However, if requested by Council, Moolarben must pay the first instalment within 7 days of the first loading and dispatch of coal from the operations of the Project.
- (c) The remaining nine instalments must be paid respectively within seven days of each of the first to the ninth anniversary of the date referred to in 6.5(b) being the date the first instalment was paid to Council.
- (d) The amount of each instalment referred to in clause 6.5(c) must be multiplied by the ratio of:
 - (3) CPI for the quarter last published prior to the date for payment; to
 - (4) CPI last published immediately prior to the date of this Agreement.

6.6 Council Acknowledgement

Council must apply amounts paid by Moolarben under this Agreement under:

- (b) clause 6.1 and 6.2 to provide goods or services to the local community and capital works required as a result of conduct of the Project;
- (c) clause 6.3 to the maintenance and upgrade of Cope Road and Ulan Road required as a result of the conduct of the Project;
- (d) clause 6.4 for general road maintenance required as a result of the conduct of the Project; and
- (e) clause 6.5 for the establishment of community infrastructure within the area of the Council.



6.7 Method of Payment

Moolarben must pay the contributions required under this agreement by electronic transfer into a bank account directed by the Council.

7 Registration

This Agreement will not be registered as provided for in section 93H of the Act.

8 Review of this Planning Agreement

This Agreement may be reviewed or modified by agreement providing any variation must be in writing and be expressed to be supplemental to this Agreement and must be executed by the parties.

9 Guarantee by Felix

9.1 Guarantee

In consideration of the Council entering into this Agreement, Felix unconditionally and irrevocably guarantees the obligations of Moolarben under this Agreement including the payment of all amounts due to the Council.

9.2 Continuing Guarantee and Indemnity

Subject to clause 9.3, this guarantee is a continuing guarantee and remains in full force and effect for so long as Moolarben has any obligation to pay any monies to the Council under this Agreement.

9.3 Change of Control

- (a) If there is a change of Control of Moolarben, Felix must:
- (1) notify Council of the change in Control;
 - (2) subject to the release of Felix as provided for in clause 9.3(b), cause the new Parent of Moolarben to guarantee the performance by Moolarben of its obligations under this Agreement in the same terms as the guarantee provided by Felix to Council in this Agreement; and
 - (3) pay the reasonable costs of Council in connection with the agreement entered into under clause 9.3(a).
- (b) If there is a change of Control of Moolarben; and
- (1) Council is satisfied (acting reasonably) that the new Parent has the financial capacity to perform the obligations under clause 9.1;
 - (2) Felix so requests Council; and

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- (3) Felix and Moolarben have complied with obligations under this Agreement to that time,

Council must enter into such documents as may be reasonably requested by Felix to release Felix from its future obligations under this Agreement.

9.4 Further Definitions

For the purposes of this clause 9:

- (a) "Control" means the same as in the *Corporations Act 2001* (Cth); and
- (b) "Parent" means the person who achieves the immediate Control of Moolarben following a change of Control of Moolarben.

10 Transfer of Project

10.1 Partial Transfer

If Moolarben transfers or assigns all or any part of its interest in the Project to another entity Moolarben may novate the relevant proportion of its rights and obligations under this Agreement to that entity.

10.2 Release

Moolarben will be released from all obligations to the Council arising after the date of novation to the extent of the transfer of Moolarben's interest in the Project.

10.3 Further Documents

The parties must and Moolarben will cause any transferee to enter into all such further documents as are reasonably required to implement this clause 10.

11 Notices

11.1 Giving Notice

- (a) Any notice, demand, consent or other communication given or made under this document must be:
- (1) clearly readable;
 - (2) signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
 - (3) left at the address or sent by pre-paid security post (air mail if outside Australia) to the address or to the fax number of the recipient.

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- (b) A party may change its address or fax number for the purpose of service by giving notice of that change to the other party in accordance with clause 11.1.

11.2 Receipt

Any communication will be taken to be received by the recipient:

- (a) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the fax number of the recipient; and
- (c) if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at the commencement of the next Business Day.

12 Disputes

12.1 Not Commence

A party may not commence any court proceedings relating to a dispute of any matter under this Agreement (a **Dispute**) unless it complies with this clause 12.

12.2 Written Notice of Dispute

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

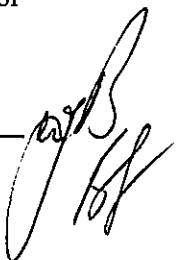
12.3 Attempt to Resolve

On receipt of notice under clause 12.2, 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.

12.4 Mediation

If the parties do not agree within 7 days of receipt of notice under clause 12.2 (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.

12.5 Court Proceedings

If the Dispute is not resolved within 42 days after notice is given under clause 12.2, then any party which has complied with the provisions of this clause 12 may in writing terminate any dispute resolution process undertaken pursuant to this clause 12 and may then commence court proceedings in relation to the Dispute.

12.6 Not Use Information

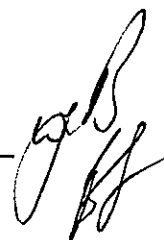
The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 12 is to attempt to settle the Dispute. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 12 for any purpose other than in an attempt to settle the Dispute.

12.7 No Prejudice

This clause 12 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

13 Goods and Services Tax

- (a) In this clause:
 - (1) "GST" refers to goods and services tax under A New Tax System (Goods and Services Tax) Act 1999 ("GST Act") and the terms used have the meanings as defined in the GST Act.
 - (2) "Development Contributions" means all the contributions payable by Moolarben to Council under this Agreement.
 - (3) "Contribution" means a contribution referred to in clause 6 which together with the other contributions set out therein comprise the Development Contributions.
- (b) It is agreed that the Development Contributions are exclusive of GST.
- (c) If the Council is liable for any GST on any Development Contributions paid or payable by Moolarben, Moolarben will within seven days of receipt of a Tax Invoice from Council pay the amount of that Tax Invoice to Council.
- (d) A Tax Invoice must comply with the GST Act and GST Regulations.



Signing page

Executed as an agreement

Executed by **Moolarben Coal Mines Pty Ltd**)
ACN 108 601 872 in accordance with)
section 127 of the *Corporations Act 2001* (Cth))
by:)


.....
Signature of Director

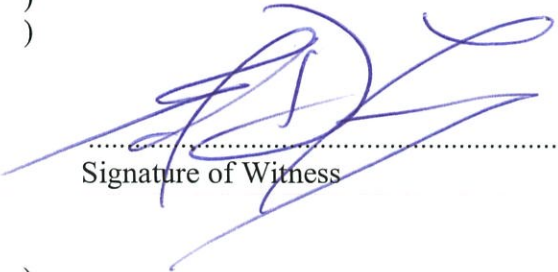
BRIAN J. FLANNERY
.....
Print name of Director


.....
Signature of ~~Director~~/Secretary

CRAIG SMITH
.....
Print name of ~~Director~~/Secretary

Executed by **Mid Western Regional Council**)
in accordance with a resolution dated: *16/4/08*)


.....
Signature of General Manager


.....
Signature of Witness

Executed by **Felix Resources Limited**)
ACN 000 754 174 in accordance with)
section 127 of the *Corporations Act 2001* (Cth))
by:)


.....
Signature of Director

BRIAN J. FLANNERY
.....
Print name of Director


.....
Signature of ~~Director~~/Secretary

CRAIG SMITH
.....
Print name of ~~Director~~/Secretary