

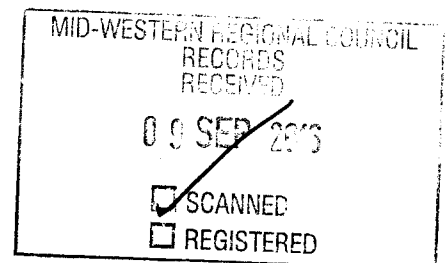
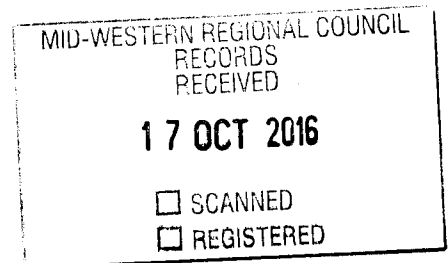
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## Wilpinjong Coal Mine - Deed of Amendment of Planning Agreement

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Wilpinjong Coal Pty Ltd ACN 104 594 694

Mid-Western Regional Council



Version: 1

# Deed of Amendment of Planning Agreement

Dated

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## Parties

**Wilpinjong**                      **Wilpinjong Coal Pty Ltd ACN 104 594 694**  
of Level 13, 259 Queen Street, Brisbane, Queensland 4000

**Council**                         **Mid-Western Regional Council**  
of 86 Market Street, Mudgee, New South Wales 2850

## Background

- A        The parties entered into the Amended Agreement on or about March 2013 to enable Wilpinjong to satisfy conditions 12 and 12A of Schedule 2 of the Project Approval.
- B        Wilpinjong lodged a development application on 8 January 2016 for the Wilpinjong Extension Project (SSD 6764). Once granted the Wilpinjong Extension Project will incorporate the existing approved Wilpinjong Coal Mine the subject of the Project Approval, and the Project Approval will be surrendered.
- C        On 5 April 2016, Wilpinjong offered to enter into a revised agreement with Council to provide additional commitments to take account of the Wilpinjong Extension Project.
- D        The parties have agreed to amend the Amended Agreement in the terms set out in this Deed to satisfy the conditions the Development Consent.

## Agreed terms

### **1 Definitions and interpretation**

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#### **1.1 Definitions**

In this document terms defined in the Amended Agreement have the same meaning when used in this document, and in this document the following terms are defined:

<b>Term</b>	<b>Definition</b>
<b>Amended Agreement</b>	means the Amended and Restated Planning Agreement executed by the parties on or about March 2013.
<b>Deed of Amendment</b>	means this document.
<b>Effective Date</b>	means the date that the development application for the Wilpinjong Extension Project (SSD 6764) is approved.

## 1.2 Interpretation

In this document, unless the contrary intention appears:

- (a) expressions and phrases used but not defined in this document will have the same meanings as they have in the Amended Agreement; and
- (b) clause 1.2 of the Amended Agreement will apply to the interpretation and construction of this document.

## 2 Variation of Amended Agreement

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### 2.1 Effective Date

- (a) On and from the Effective Date, the parties agree that the Amended Agreement is varied as set out in this document.
- (b) The parties agree to be bound by the terms of the Amended Agreement as varied by this document on and from the Effective Date.
- (c) For the avoidance of doubt, the parties agree that if the Wilpinjong Extension Project is refused, this document has no affect and the variations to the Amended Agreement contained in this document will not be made.

### 2.2 Amendments

- (a) The definition of 'Land' in clause 1.1 of the Amended Agreement is deleted and replaced with the following:

"means the land to which the Project Approval and Development Consent applies as described in the Project Approval and Development Consent respectively."

- (b) The definitions of 'Project Approval' and 'Wilpinjong Coal Project' in clause 1.1 of the Amended Agreement are deleted.
- (c) Add the following definitions in clause 1.1 of the Amended Agreement:

<b>Development Consent</b>	means the development consent for the Wilpinjong Extension Project (SSD 6764).
<b>Project Approval</b>	means the project approval for the Wilpinjong Coal Project (05_0021) granted on 1 February 2006 as modified, replaced or substituted from time to time, and includes the Development Consent.
<b>Wilpinjong Coal Project</b>	means Wilpinjong's coal mining operation located approximately 40 kilometres north east of Mudgee the subject of the Project Approval.
<b>Wilpinjong Extension Project</b>	means the development the subject of the Development Consent.
<b>Wollar General Store</b>	means the General Store located at the corner of Barnett Street and Maitland Street.
<b>Wollar Village</b>	means the village of Wollar within the Mid-Western

Region Local Government Area.

(d) Clause 6.2A(b) of the Amended Agreement is deleted and replaced with the following:

(b) *The Annual Payment for each Payment Year will be determined by the following formulas:*

*(i) for Payment Years up to and including 2027:*

$$\text{Annual Payment (\$)} = (W-100) \times (\$12,000/20)$$

*(ii) for Payment Years on and from 2028:*

$$\text{Annual Payment (\$)} = W \times (\$12,000/20)$$

*Where 'W' is the total number of permanent employees and permanent contractors at the Wilpinjong Coal Project as determined by Wilpinjong (acting reasonably) on 28 February in any given year.*

(e) Clause 6.2A(c) of the Amended Agreement is deleted and replaced with the following:

*(c) A Payment Year is each of the remaining calendar years of the Project Approval provided the Project Approval remains in force.*

(f) Clause 6 of the Amended Agreement is amended by inserting the following clauses after clause 6.6:

#### **6.7 Additional contributions**

(a) In addition to the annual financial contributions provided for in clause 6, Wilpinjong must:

- (i) provide access to the ablution facilities at the Wollar General Store for public use during and beyond the store opening hours;
- (ii) provide cleaning services to the Wollar General Store ablution facilities; and
- (iii) provide continued ground keeping of the vacant and public land within Wollar Village, including church grounds, park and town entrances.

#### **6.8 Council commitments**

- (a) Council agrees to provide Wilpinjong with access to maintenance equipment as required by Wilpinjong to carry out its obligations under clause (iii).
- (b) Council will be responsible for repairs and upgrades to the maintenance equipment as and when required to enable Wilpinjong to fulfil its obligations under clause (a)(iii).

### **3 General**

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#### **3.1 Amendments**

This document may only be amended by written agreement between all parties.

#### **3.2 Assignment**

- (a) Wilpinjong may (at its discretion) assign or novate to any of the following (New Party) the whole or part of an interest in this Second Amended Agreement:
  - (i) the purchaser of the whole or an interest in the Wilpinjong Extension Project;
  - (ii) any subsidiary, parent company or related body corporate (as provided in the Corporations Act 2001 (Cth)) of Wilpinjong or the party in clause 3.2(a)(i).
- (b) If requested by Wilpinjong, Council will sign all documents and undertake all acts reasonably necessary to give effect to Wilpinjong's assignment of its rights or novation of its rights and obligations under this Second Amended Agreement.
- (c) Before any assignment or novation referred to in clause 3.2, Wilpinjong is to use its best endeavours to procure the execution by the New Party of a deed of assumption in favour of Council in which the New Party covenants to be bound by this Second Amended Agreement as if it were a party to this Second Amended Agreement.
- (d) Wilpinjong must pay the reasonable cost of Council related to Council's compliance with its obligations under clause 3.2(c).

#### **3.3 Counterparts**

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

#### **3.4 No merger**

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

#### **3.5 Entire agreement**

- (a) This document (together with the Amended Agreement) embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this document.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.

#### **3.6 Further assurances**

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

**3.7 No waiver**

- (a) 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.
- (b) 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.
- (c) 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.

## Execution

EXECUTED as a deed

Executed by Wilpinjong Coal Pty Ltd  
by:

^ *J Harvey*  
Director

^ *[Signature]*  
Director/Secretary

^ *Geoffrey David Harvey*  
Full name of Director

^ George John Schuller Jr  
Full name of Director/Secretary

Executed by Mid-Western Regional Council  
by:

^ *[Signature]*  
Director

^ *[Signature]*  
Director/Secretary

^ *DESMOND KENNEDY*  
Full name of Director

^ *Brad Cam*  
Full name of Director/Secretary