

Mr Andrew Muir,  
Acting General Manager  
Lithgow City Council  
30<sup>th</sup> March 2017

**RE: Voluntary Planning Agreement - Invincible Southern Extension Project (PA07\_0127 MOD 5)**

As Lithgow City Council (Council) is aware Shoalhaven Coal Pty Ltd (trading as Castlereagh Coal) are seeking approval to modify the Project Approval (PA 07\_0127) for the Invincible Colliery. The modification, known as the Southern Extension Project, seeks an extension of the open cut operations to the south of the existing pit and mining infrastructure area at Invincible Colliery..

As part of the development of the Southern Extension Project, Castlereagh Coal formally notify Council of the intention, subject to granting of approvals, to enter into a Voluntary Planning Agreement (VPA), in accordance with the provisions of Division 6, Subdivision 2 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

The VPA is proposed on the basis of the terms discussed with Council at our meeting of 28 March 2017 and as outlined below:

- Castlereagh Coal will contribute \$0.05 per tonne of product coal for each financial year of operation of the Southern Extension Project
- The contributions will be made subject to specific provisions to be set out VPA to be agreed between Castlereagh Coal and Council.

Whilst it is understood that the use of development contribution under the VPA is subject to Council's prerogative, Castlereagh Coal encourages Council to utilise the contributions in the Cullen Bullen township and surrounds. Castlereagh Coal has engaged extensively with the local community in relation to the Southern Extension Project and the social and economic impact assessments undertaken for the Project have highlighted substantive local benefits should the Southern Extension project be approved. Council's use of contributions for local initiatives would further enhance and support Castlereagh Coal's significant contribution to the local area.

We request Council provide a formal response to this correspondence to confirm agreement with the terms of the proposed VPA at its earliest convenience. We look forward to continuing to work with Council to progress the formal terms of the VPA for the Southern Extension Project following approval of the modification application.

Should you have any questions or wish to discuss further please feel free to contact me on (02) 9879-9800

Yours Faithfully



Brett Moore  
Castlereagh Coal

# **Explanatory Note- Invincible Colliery - Southern Extension Project- 07\_0127 MOD 5**

## **Objectives of the Planning Agreement**

To provide a material benefit to be used for or applied towards a public purpose.

## **Nature of the Planning Agreement**

- \$0.05 per tonne of product coal for each financial year of operation of the Southern Extension Project for community facilities and infrastructure to be utilised in the Cullen Bullen township and surrounds.

## **Effect of the Planning Agreement**

The effect of the Planning Agreement will be to allow for contributions towards community facilities and infrastructure of Cullen Bullen and the surrounds.

## **Merits of the Planning Agreement**

- The proposed development is for an extension to an existing open cut coal mine being Invincible Colliery and will have the potential to impact on the Cullen Bullen community.
- In the assessment of the merits of the development, Council must consider the social impacts of the proposal on the immediate locality and on the wider community, and ensure through whichever means are available, for community facilities and infrastructure to be provided which will address this matter.
- The provision of community facilities are the main outcome derived from the development operation of the Planning Agreement.

## **Promotion of Council's Charter**

Council has a vision for the Lithgow area to be recognised as a desirable place to live and visit and a viable place in which to invest. The provision of community facilities and infrastructure will assist in promoting this vision.

## **Planning Purpose**

The Planning purpose of the Planning Agreement is:

- In compliance with the *Environmental and Planning Assessment Act 1979* and *Environmental and Planning Assessment Regulations 2000*.
- The relevant provision(s) of the Minister for Planning's development consent (made under delegation) and pursuant to Section 75W of the *Environmental Planning & Assessment Act 1979* in relation to the modification 07\_0127 MOD 5 to existing Invincible Colliery approval of 2008 (PA07\_0127).

- To enhance the positive social impact of the development on the locality.

**Capital Works Program**

Once funds from the Planning Agreement have been collected Council begins planning for their expenditure through incorporation into the capital works program.

As agreed this day:.....

Executed for and on behalf of Castlereagh Coal (Shoalhaven Coal Pty Ltd):

.....

Name:.....Position:.....

Executed for and on behalf of Lithgow City Council:.....

Name:.....Position:.....

Between LITHGOW CITY COUNCIL AND CASTLEREAGH COAL (SHOALHAVEN COAL PTY LTD)

## PLANNING AGREEMENT

### Parties

Lithgow City Council of 180 Mort Street Lithgow, New South Wales, 2790 (**Council**)

and

Castlereagh Coal (Shoalhaven Coal Pty Ltd) of 6 Frank Street, Gladsville NSW 2111 (**Developer**).

### Background

(For Development Applications)

- A. On, 19 September 2016, the Developer made a Modification Application 07\_0127 MOD 5, under Section 75W of the *Environmental Planning & Assessment Act 1979* to the existing Invincible Colliery approval of 2008 (PA07\_0127) for a Southern Extension Project.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards community facilities and infrastructure of Cullen Bullen and surrounds.
- C. Subject to granting approval of the Southern Extension Project, Castlereagh Coal (Shoalhaven Coal Pty Ltd) has agreed to provide contributions as outlined in the conditions of consent and as per this Agreement.

### Operative provisions

#### 1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

#### 2 Application of this Agreement

This application applies to Modification Application 07\_0127 MOD 5 to the existing Invincible Colliery approval of 2008 (PA07\_0127) for a Southern Extension Project which applies to Lot 1 DP180294, Lot 11 DP614429, Lots 112 & 113 DP877190 and Ben Bullen State Forest.

#### 3 Operation of this Agreement

This Agreement takes effect on the date of execution. All contributions must be paid on an annual basis and within 21 days of the end of each financial year.

## 4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Development** means that associated with Modification Application 07\_0127 MOD 5 to the existing Invincible Colliery approval of 2008 (PA07\_0127) for a Southern Extension Project

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Land** means Lot 1 DP180294, Lot 11 DP614429, Lots 112 & 113 DP877190 and Ben Bullen State Forest.

**Party** means a party to this agreement, including their successors and assigns.

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

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, notated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

## 5 Development Contributions to be made under this Agreement

5.1 The developer pay a contribution of \$0.05 per tonne of product coal for each financial year of operation of the Southern Extension Project for community facilities and infrastructure to be utilised in the Cullen Bullen township and surrounds.

## 6 Application of the Development Contributions

6.1 Payments or provision of material public benefits must be made prior to 21 days of the end of each financial year.

## 7 Application of s94 and s94A of the Act to the Development

Sections 94 and 94A do not otherwise apply to the development.

## 8 Registration of this Agreement

This Agreement will not be registered as provided for in s93H of the Act as its provisions are to be finalised in accordance with and remain operative under the Development Consent for Invincible Colliery -Southern Extension project.

## 9 Review of this Agreement

This agreement shall not be reviewed except with the approval of both parties.

## 10 Dispute Resolution

Should a dispute arise as part of this agreement that cannot be resolved between the parties then the parties may engage an independent mediator to be funded by the parties to assist in resolving the dispute. If the dispute is not resolved by mediation then before either party has recourse to litigation, the party must submit the dispute to expert appraisal. If the parties do not agree upon an independent expert, either may request the Secretary General of the Australian Commercial Disputes Centre to nominate an expert.

## 11 Enforcement

If this agreement is not honoured within 21 days of the end of the first financial year since Development Consent was issued for the modification 07\_0127 MOD 5 to existing Invincible Colliery approval of 2008 (PA07\_0127), the Department of Planning & Environment will be notified for enforcement action in relation to non-compliance with conditions of consent.

## 12 Notices

12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

### **Council**

Attention: Andrew Muir

Address: 180 Mort Street, Lithgow, NSW 2790

Phone Number: 02 6354 9999

Fax Number: 02 63512927

Email: acm@lithgow.nsw.gov.au

### **Developer**

Attention: Castlereagh Coal ( Shoalhaven Coal Pty Ltd)

Address: 6 Frank Street, Gladesville NSW 2111

Phone Number: 02 9879 9800

Email: brett.moore@manildra.com.au

12.2 If a Party gives the other Party, 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.



12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 4.30pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## 13 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 14 Assignment and Dealings

The parties agree that should the developer intend to sell, transfer or assign the property, then the developer will, in any contract for sale or Deed of Assignment or Transfer, include a requirement that the purchaser or assignee must honour the same terms and conditions as this document.

## 15 Costs

Any incidental costs associated with this agreement shall be borne by the developer.

## 16 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

## 17 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

## 18 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## 19 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## 20 No fetter

Nothing in this Agreement shall 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 shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## 21 Representations and warranties

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

## 22 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## 23 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## 24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **Execution**

**Dated:**

**Executed as an Agreement:**

**Executed for and on behalf of Castlereagh Coal (Shoalhaven Coal Pty Ltd):**

.....

**Name:.....Position:.....**

**Executed for and on behalf of Lithgow City Council:**

.....

**Name:.....Position:.....**