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# Voluntary Planning Agreement

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Singleton Council (**Council**)

Ravensworth Operations Pty Ltd (**Developer**)

Xstrata Coal Pty Ltd (**Guarantor**)

# Voluntary Planning Agreement

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# Details

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Date 9 July 2012

## Parties

Name **Singleton Council**  
ABN 52 877 492 396  
Short form name **Council**  
Notice details Singleton Council  
PO Box 314  
SINGLETON, NSW, 2330

Name **Ravensworth Operations Pty Ltd**  
ABN 12 098 937 761  
Short form name **Developer**  
Notice details Ravensworth Operations  
C/O Xstrata Cumnock Management Pty Ltd  
Locked Bag 2  
SINGLETON, NSW, 2330

Name **Xstrata Coal Pty Ltd**  
ABN 18 082 271 930  
Short form name **Guarantor**  
Notice details Xstrata Coal Pty Ltd  
Level 38, Gateway Building  
1 Macquarie Place  
SYDNEY NSW 2000

## Background

- A. Ravensworth Operations Pty Ltd is the proponent of the Ravensworth Operations project (**Ravensworth Operations Project**). The Ravensworth Operations Project is the extension to the currently approved open cut mining operations located between the townships of Singleton and Muswellbrook in New South Wales (NSW). A plan showing the Ravensworth Operations Project, as at the date of this agreement, is set out in Part C of Schedule 2.
- B. On 11 February 2011 Ravensworth Operations Pty Ltd was granted approval (DA 09\_0176) (**Project Approval**) under Part 3A of the *Environmental Planning and Assessment Act 1979* (**the Act**) to develop the Ravensworth Operations Project.
- C. Condition 14 of Schedule 2 of the Project Approval requires the Developer to enter into a planning agreement with the Singleton Council to provide development contributions in accordance with Division 6 of Part 4 of the Act.

- D. The Developer has agreed to provide the Development Contributions described in Schedule 1 of this Agreement, subject to the conditions outlined in this Agreement, in performance of the conditions of the Project Approval.
- E. The Guarantor has agreed to guarantee the Developer's obligation to provide the Development Contributions, subject to the terms of this Agreement.

# Agreed terms

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## 1. Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

- (a) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales, Australia.
- (c) **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 Developer, is an equivalent index.
- (d) **Commencement Date** means the date the Agreement is executed by both parties.
- (e) **Development Contributions** means the monetary contributions identified in Schedule 1.
- (f) **End of Mining Operations** means the date on which the Developer ceases to extract coal from the mining pit shell as shown in the Project Approval.
- (g) **GST** has the same meaning as in GST Law.
- (h) **GST Act** means *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.
- (i) **GST Law** has the meaning given to that term in the GST Act.
- (j) **Land** means those lots listed in Part A of Schedule 2.
- (k) **Law** means any constitution or provision, statute, Act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, rule, approval, consent or condition of approval or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter.
- (l) **Operational Plan** means an operational plan approved by Council under section 405 of the *Local Government Act 1993* (NSW).
- (m) **Project Approval** means project approval DA 09\_0176 for the Ravensworth Operations Project over the Land granted by the NSW Minister for Planning on 11 February 2011.
- (n) **Tax Invoice** has the meaning given to that term in the GST Act.

1.2 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) If the day on which the 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.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars

- (d) 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.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) 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.
- (i) 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.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) 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.
- (m) Any schedules and attachments form part of this Agreement.

## 2. 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.

## 3. Application of this Agreement

This Agreement is made in respect of the development the subject of the Project Approval and applies to the Land.

## 4. Operation of this Agreement

The Agreement takes effect on and from the Commencement Date.

## 5. Provision of Development Contributions

### 5.1 The Development Contributions

Subject to this Agreement, the Developer will pay to Council the Development Contributions.

### 5.2 Form of Development Contributions

The Development Contributions are to be made:

- (a) for the purpose in column 1 of the tables in Part A and Part B of Schedule 1;
- (b) in the total amount referred to in column 2 of the tables in Part A and Part B of Schedule 1; and

- (c) at the times referred to in column 3 of the tables in Part A and Part B of Schedule 1. Council and the Developer will agree upon an indicative schedule for the execution of the works contemplated by column 1 of the table in Part A of Schedule 1.

### 5.3 Adjustment for CPI

The Development Contributions in Part A of Schedule 1 are not subject to adjustment for changes in CPI.

The Development Contributions in Part B of Schedule 1 are to be adjusted for changes in CPI as follows:

$$DCP = \frac{DC \times A}{B}$$

where:

- DCP = the actual Development Contribution payment amount payable at the time the particular payment is made;
- DC = the particular Development Contribution payment amount required to be paid as per column 2 of the table in Part B of Schedule 1;
- A = the most recent CPI (Index Number) published by the ABS prior to the date the payment is due to be made; and
- B = the most recent CPI (Index Number) published by the ABS prior to the date of this Agreement.

### 5.4 Payment of Development Contributions

- (a) A Development Contribution is made for the purposes of this Agreement when cleared funds are deposited by the Developer by means of electronic transfer into a bank account nominated by Council.
- (b) Before making any Development Contribution, the Developer must give Council not less than two Business Days' written notice of:
- (i) its intention to make a Development Contribution; and
  - (ii) the amount proposed to be paid.
- (c) The Developer must give a notice to Council pursuant to clause 5.4(b) within 14 days after:
- (i) in respect of the Development Contributions set out in Part A of Schedule 1, receipt from Council of a valid Operational Plan pertaining to the relevant Development Contribution; and
  - (ii) in respect of the Development Contributions set out in Part B of Schedule 1, the date for payment of the Development Contribution as set out in column 3 of the table in Part B of Schedule 1.



## **5.5 Valid Operational Plan**

For the purposes of clause 5.4(c)(i) and column 3 of the table in Part A of Schedule 1, a valid Operational Plan is a plan that:

- (a) identifies forecasted expenditure by Council for a purpose and amount that accords with column 1 and 2 of the table in Schedule 1 (or such portion remaining that hasn't already been released to Council) for that relevant portion of the Development Contributions; or
- (b) identifies forecasted expenditure for a public purpose in lieu of a purpose identified in Schedule 1 column 1 and for an amount that accords with column 2 of the table in Schedule 1 (or such portion remaining that hasn't been released to Council) and the Developer has agreed in writing (prior to the preparation by Council of the Operational Plan) to the use of the Development Contributions for the alternative public purpose.

## **5.6 Requirement for invoices**

- (a) Upon receiving a notice from the Developer pursuant to clause 5.4(b), Council must provide the Developer with a Tax Invoice for the amount of the contribution that the Developer proposes to pay.
- (b) The Developer:
  - (i) is not required to pay a Development Contribution; and
  - (ii) will not be in breach of this Agreement if it fails to pay a Development Contribution at the time required by this Agreement,

if Council fails to provide the Developer with a Tax Invoice for the amount proposed to be paid by the Developer.

## **5.7 Effect of making the Development Contributions**

- (a) The parties agree that once funds for each of the Development Contributions set out in Part A of Schedule 1 have been transferred to Council by the Developer in accordance with clause 5.4 for an amount equalling the amount in column 2 of the table in Part A in Schedule 1, then no further funds are required to be transferred by the Developer to Council for the relevant purpose.
- (b) If on the date that is 20 years after the Commencement Date the Council has failed to provide the Developer with an Operational Plan satisfying clause 5.4(a) for some or all of the Development Contributions set out in Part A of Schedule 1, the Developer must transfer the funds corresponding to the remaining Development Contributions set out in Part A of Schedule 1 to Council in satisfaction of the Developer's obligations under this Agreement.
- (c) The parties agree that upon the payment of the total amount of the Development Contributions to Council, no further monetary contributions are payable under this Agreement.

## **5.8 Use of Development Contributions**

Council shall only use the funds transferred by the Developer to Council as Development Contributions for the purposes outlined in column 1 of the tables in Part A and Part B of Schedule 1, or as otherwise agreed by the Developer in writing.

## **6. Enforcement and guarantee**

- (a) The Guarantor irrevocably and unconditionally guarantees to the Council that the Developer will pay the Development Contributions required under this Agreement on time.
- (b) If the Developer fails to fulfil its obligations to pay the Development Contributions under this Agreement, the Guarantor must pay that money on demand as if it was the Developer.
- (c) A demand under this clause may be made by the Council at any time and from time to time. A demand must specify the amount owing and how that amount is calculated.
- (d) The guarantee provided under this clause:
  - (i) extends to the present and future balance of the Development Contributions;
  - (ii) is wholly or partially discharged by the whole or partial payment of the Development Contributions;
  - (iii) continues until all of the Development Contributions have been paid in full; and
  - (iv) is a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation.
- (e) Despite anything else in this Agreement, the maximum amount which the Guarantor may be required to pay under this Agreement is an amount equal to \$4,320,000 (before adjustment for CPI in accordance with clause 5.3).
- (f) The Guarantor acknowledges entering this document in return for Council agreeing to this Agreement as required under the conditions of the Project Approval.

## **7. Application of s94 and s94A of the Act**

This Agreement does not exclude the operation of sections 94 and 94A of the Act to the Project Approval.

## **8. Registration of this Agreement**

This Agreement is to be registered under section 93H of the Act, but only in respect of those lots listed in Part B of Schedule 2.

## **9. Review of this Agreement**

This Agreement may be varied or amended only by the express written approval of all the parties and in compliance with the Act.

## 10. Dispute Resolution

### 10.1 Application

Any dispute or difference between the parties arising under or in connection with this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement (**Dispute**) must be resolved as set out in this clause 10. A party must not commence any court proceedings relating to a dispute unless it complies with this clause 10.

### 10.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

### 10.3 Parties to resolve Dispute

Within 14 days of the party receiving the notice referred to in clause 10.2 the parties (or those parties the subject of the Dispute) must meet to attempt in good faith to resolve the Dispute.

### 10.4 Arbitration

- (a) If within 21 days of receiving notification under clause 10.2, or such further time as agreed in writing by the parties, the Dispute is not resolved, either party will have the right to refer the Dispute to binding arbitration pursuant to the *Commercial Arbitration Act 1984* (NSW) by issuing a written notice requiring the matter to be referred.
- (b) The arbitration shall be conducted in accordance with the Institute of Arbitrators and Mediator's Australia Rules for the conduct of Commercial Arbitrations.
- (c) A party must not commence arbitration proceedings in respect of a Dispute unless it has complied with clause 10.2 and 10.3.
- (d) The arbitrator will be appointed by the President of the Institute of Arbitrators and Mediators Australia.
- (e) The seat or legal place of arbitration shall be in Sydney, NSW.
- (f) Parties to the arbitration shall be entitled to legal representation.
- (g) The laws relating to evidence will apply to the arbitration.

### 10.5 Confidentiality

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

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

### 10.6 Breach of this clause

If a party to a Dispute breaches clauses 10.1 to 10.5, the other parties to the Dispute do not have to comply with those clauses in relation to the Dispute.

### 10.7 Court Proceedings

If the dispute is not resolved within 60 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 under clause 10 and may commence court proceedings in relation to the dispute.

### 10.8 No prejudice

This clause 10 does not prejudice the right of any party to institute court proceedings for urgent injunctive or declaratory relief in any matter arising out of or relating to this Agreement.

## 11. Agreement does not fetter discretion

- (a) 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.

## 12. GST

### 12.1 Defined GST terms

Defined terms used in this clause 12 have the meaning ascribed to them in the GST Law.

### 12.2 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

### 12.3 Tax invoice

If a party is liable for GST on any payments made under this Agreement, the other party must issue a tax invoice (or an adjustment note) to the liable party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

### 12.4 GST obligations to survive termination

This clause 12 will continue to apply after expiration of termination of this Agreement.

## 13. Notices

13.1 Any notice, consent, information, application or request that must or may be given or made to a party 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: Lindy Hyam  
Address: Singleton Council  
PO Box 314  
Singleton, NSW, 2330  
Fax Number: (02) 6572 4197  
Email: lhyam@singleton.nsw.gov.au