
Planning agreement for Cobbora Coal Project

Cobbora Holding Company Pty Ltd ACN 147 813 125

Dubbo City Council

Version: 3

Table of contents

Parties	3
Background	3
Agreed terms	3
1 Definitions and interpretation	3
1.1 Definitions	3
1.2 Interpretation	6
2 Application of the Agreement	7
3 Planning Agreement under the Act	7
4 Application of Sections 94, 94A and 94EF	7
5 Provision of Development Contributions under this Agreement	7
5.1 The Development Contributions	7
5.2 CPI	7
6 Payment of Development Contribution	8
6.1 Payments	8
6.2 Time of payment	8
6.3 Intention to make payment	8
6.4 Requirement for invoices	8
6.5 Application of Development Contributions	9
7 Enforcement	9
8 Bank Guarantee	9
8.1 Bank Guarantee	9
8.2 Release of Bank Guarantee	10
8.3 Discharge of obligations	10
9 Registration	10
10 Dispute resolution	10
10.1 Not Commence	10
10.2 Written Notice of Dispute	10
10.3 Attempt to Resolve	10
10.4 Mediation	10
10.5 Costs	11
10.6 Court Proceedings	11
10.7 Not Use Information	11
10.8 No Prejudice	11

11	Costs -----	11
12	GST -----	11
	12.1 GST exclusive	11
	12.2 Taxable Supply	11
	12.3 Later GST change	12
	12.4 Reimbursement or indemnity	12
	12.5 Warranty that Tax Invoice is issued regarding a Taxable Supply	12
	12.6 Progressive or Periodic Supplies	12
13	Explanatory Notice to this Agreement -----	12
14	General -----	12
	14.1 Amendments	12
	14.2 Assignment and novation	12
	14.3 Counterparts	13
	14.4 No merger	13
	14.5 Entire agreement	13
	14.6 Further assurances	13
	14.7 Representations and warranties	13
	14.8 Confidentiality	13
	14.9 No waiver	13
	14.10 Governing law and jurisdiction	14
	14.11 Severability	14
	14.12 Notice	14
	Schedule 1 -----	16
	Requirements of Division 6 of Part 4 of the EP&A Act	16
	Schedule 2 -----	17
	Development Contributions	17
	Schedule 3 -----	18
	Construction Personnel Contribution	18
	Schedule 4 -----	20
	Operational Personnel Contribution	20
	Schedule 5 -----	22
	Rehabilitation Personnel Contribution	22
	Execution -----	23

Planning agreement for Cobbora Coal Project

Dated

Parties

Developer

Cobbora Holding Company Pty Ltd ACN 147 813 125

Registered address: Second Floor, 133-135 King Street, Newcastle, NSW 2300

Contact: The Company Secretary

Council

Dubbo City Council

Registered address: Civic Administration Building, Church Street, Dubbo NSW 2830

Contact: The General Manager

Background

- A The Developer has been granted the Approval by the Minister under Part 3A of the Act for the carrying out of the Development.
- B By letter to the Council dated 26 February 2013 the Developer offered to enter into this Agreement with the Council.
- C The Developer is required under Appendix 4 of the Approval to make the Development Contributions to the Council. The Developer has come to an agreement with the Council to make Development Contributions to the Council in connection with the carrying out of the Development under section 93F of the Act.
- D The parties enter into this Agreement to give effect to the requirements of the Approval and the agreement reached between them.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document:

Term	Definition
the Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Agreement	means this Planning Agreement.

Term	Definition
Approval	means the project approval granted by the Minister on 9 May 2014 in respect of major project application 10_0001 relating to the carrying out the Development.
Bank Guarantee	means a bank guarantee in favour of and in terms acceptable to Council in the amount of \$300,000 in respect of the contribution to be made under clause 5.1.
Business Day	means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
Construction Certificate	has the same meaning as in the Act.
Construction Period Commencement Date	means the date on which a Construction Certificate is issued for Construction Works.
Construction Period End Date	means the day immediately prior to the Operational Period Commencement Date.
Construction Personnel	means any Personnel engaged by the Developer at the Development for at least two of the four weeks preceding the Count Date.
Construction Personnel Contribution	means the annual payment made by the Developer to Council in accordance with Schedule 3.
Construction Works	means any works other than Preparatory Works.
Council	means Dubbo City Council.
Count Date	means 1 April of each year.
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 Minister, is a similar index.
Developer	means Cobbora Holding Company Pty Ltd ACN 147 813 125.
Development	means the development known as the Cobbora Coal Project as authorised by the Approval.
Development Contributions	means the monetary contributions detailed in Schedule 2.
Dispute	means a dispute regarding the terms and operations of this Agreement.
Explanatory Note	means the note exhibited with a copy of this Agreement, when this Agreement is made available for inspection by the public in accordance with the 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, 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

Term	Definition
	agencies).
GST	has the meaning given to that term in the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Input Tax Credit	has the meaning given to that term in the GST Act.
Joint Venture Operator	has the meaning given to that term in the GST Act.
Land	means the land the subject of the Approval.
Mining Lease	means a mining lease granted under the <i>Mining Act 1992</i> in respect of Mining Lease Application 442.
Minimum Personnel	means a minimum of 400 Personnel at the Development.
Mining Operations	means the ongoing operations required for the winning or removal of materials including clearing and grubbing, topsoil removal, drill and blast, overburden removal, stockpiling, processing and treatment of coal and rehabilitation of final landforms.
Minister	means the Minister administering the Act.
Operational Period Commencement Date	means the date which is two years after the Construction Period Commencement Date.
Operational Period End Date	means the date on which the completion of all winning and removal of coal from the Development occurs.
Operational Personnel	means any Personnel engaged by the Developer at the Development for the purposes of carrying out the Mining Operations.
Operational Personnel Contribution	means the annual payment made by the Developer to Council in accordance with Schedule 4.
Personnel	means employee, servant, agent, contractor and any of the contractor's personnel.
Preparatory Works	any development required for the ongoing care and maintenance of the Land or which is required to allow for construction of the Development to commence including but not limited to 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.
Progressive or Periodic Supply	means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.
Recipient	has the meaning given to that term in the GST Act.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Rehabilitation Period Commencement Date	means the final rehabilitation of the Land which commences the day after the completion of all winning and removal of coal from the Development.
Rehabilitation Period End Date	means the date on which the Mining Lease ceases to apply to the Development.

Term	Definition
Rehabilitation Personnel	means any Personnel engaged by the Developer between the Rehabilitation Period Commencement Date and the Rehabilitation Period End Date .
Rehabilitation Personnel Contribution	means the annual payment made by the Developer to Council in accordance with Schedule 5.
Representative Member	has the meaning given to that term in the GST Act.
Supplier	means the entity making the Supply.
Supply	has the meaning given to that term in the GST Act.
Suspension Event	means when the Mining Operations are suspended including, but not limited to, when the Development is under care and maintenance.
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 document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (j) a reference to 'month' means calendar month.

2 Application of the Agreement

This Agreement applies to:

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

3 Planning Agreement under the Act

This Agreement constitutes a planning agreement within the meaning of section 93F of the Act. Schedule 1 demonstrates how this Agreement complies with the requirements of Division 6 of Part 4 of the Act.

4 Application of Sections 94, 94A and 94EF

This Agreement excludes the application of sections 94, 94A and 94EF of the Act to the Development.

5 Provision of Development Contributions under this Agreement

5.1 The Development Contributions

Subject to this Agreement, the Developer will pay to the Council the Development Contributions which are to be made:

- (a) in accordance with the specification in column 1 of Schedule 2;
- (b) in the amount referred to in column 2 of Schedule 2; and
- (c) at the times referred to in column 3 of Schedule 2.

5.2 CPI

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

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

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 prior to the date the payment is due to be made; and
- (d) B equals the most recent CPI published prior to the date of this Agreement.

6 Payment of Development Contribution

6.1 Payments

- (a) For each Count Date between the Construction Period Commencement Date and the Construction Period End Date, the Developer will make the Construction Personnel Contribution to the Council.
- (b) For each Count Date between the Operational Period Commencement Date and the Operational Period End Date, the Developer will make the Operational Personnel Contribution to the Council.
- (c) For each Count Date between the Rehabilitation Period Commencement Date and the Rehabilitation Period End Date, the Developer will make the Rehabilitation Personnel Contribution to the Council.
- (d) If a Suspension Event or Force Majeure Event has been in effect for a continuous period exceeding 90 days in the year preceding the Count Date, the Development Contributions are to be reduced on a pro-rata basis by the number of months that the Suspension Event or Force Majeure Event occurred as notified to the Council.

6.2 Time of payment

- (a) A Development Contribution referred to in clause 6.1 is to be made no later than 60 days from the relevant Count Date, subject to Council complying with its obligations to provide a tax invoice under clause 6.4.
- (b) A Development Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic transfer into a bank account nominated by Council.

6.3 Intention to make payment

- (a) The Developer must give the Council not less than two business days following the Count Date written notice of:
 - (i) its intention to pay a Development Contribution as required by Schedule 2; and
 - (ii) the amount proposed to be paid.
- (b) Following receipt of the notice in accordance with clause 6.3(a) Council may request supporting documentation evidencing the calculation of the Development Contribution. The Developer must provide the documentation requested within 10 business days of receipt of this request from Council.

6.4 Requirement for invoices

- (a) The Council must upon receiving the Developer's notice under clause 6.3, provide the Developer with a Tax Invoice for the amount of the Development Contribution that the Developer proposes to pay.
- (b) The Developer must pay Council the Development Contribution within 10 business days of receiving the Tax Invoice from Council in accordance with Clause 6.4(a).
- (c) 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 the Council fails to provide the Developer with a Tax Invoice for the amount proposed to be paid by the Developer.

6.5 Application of Development Contributions

- (a) The Development Contributions must be applied to one or more of the following public purposes:
 - (i) road construction, upgrade and maintenance;
 - (ii) environmental protection and management;
 - (iii) provision and maintenance of community infrastructure;
 - (iv) local social amenity;
 - (v) training and education of the community; or
 - (vi) social impact assessment.
- (b) Within 60 days following receipt of a Development Contribution, Council must provide to the Developer a written proposal itemising the proposed public purposes for expenditure of the Development Contribution.
- (c) The Developer may only object to the written proposal provided in accordance with clause 6.5(b) if the proposed expenditure does not relate to one of the public purposes set out in 6.5(a). If the Developer objects, it must provide a written notice to Council in accordance with clause 10.2 of this Agreement.

7 Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; or
 - (ii) the Minister from exercising any function under this Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

8 Bank Guarantee

8.1 Bank Guarantee

Within 60 days of the Construction Period Commencement Date the Developer must provide Council with a Bank Guarantee.

8.2 Release of Bank Guarantee

Council must release the Bank Guarantee in any of the following circumstances:

- (a) if this Agreement is terminated for any reason;
- (b) if Council is provided with a replacement Bank Guarantee; or
- (c) upon receiving the final Rehabilitation Personnel Contribution.

8.3 Discharge of obligations

Any monies paid to Council pursuant to a demand made under the Bank Guarantee will be considered a discharge of the Developer's obligations to the extent of the monetary amount paid to Council.

9 Registration

The Parties agree not to register this Agreement under section 93H of the Act.

10 Dispute resolution

10.1 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 10.

10.2 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.

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 seven 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 Agreement.

11 Costs

The Developer agrees to pay the Council's reasonable costs not exceeding \$10,000 of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

12 GST

12.1 GST exclusive

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

12.2 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.

12.3 Later GST change

For clarity, the GST payable under clause 12.2 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.

12.4 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).

12.5 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.

12.6 Progressive or Periodic Supplies

Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 12.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

13 Explanatory Notice to this Agreement

Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist interpreting this Agreement.

14 General

14.1 Amendments

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

14.2 Assignment and novation

- (a) Subject to clause 14.2(d), the Developer may (at its discretion) assign or novate to any of the following (**New Party**) the whole or a part of an interest in this Agreement:
 - (i) the purchaser of the whole or an interest in the Project;
 - (ii) the purchaser of the whole or an interest in the Mining Lease; or
 - (iii) any subsidiary, parent company or related body corporate (as provided in the Corporations Act) of the Developer or the party in clause 14.2(a)(i) or 14.2(a)(ii).
- (b) If requested by the Developer, Council will execute all documents and undertake all acts reasonably necessary to give effects to the Developer's assignment of its rights or novation of its rights and obligations under this document.

- (c) The Developer must pay the reasonable costs of Council related to the compliance by Council with Council's obligations under this clause 14.2.
- (d) Before any assignment or novation referred to in clause 14.2(a), the Developer is to use its best endeavours to procure the execution by the New Party of a deed of assumption in favour of the Council in which the New Party covenants to be bound by this Agreement as if it were a party to this Agreement.

14.3 Counterparts

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

14.4 No merger

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

14.5 Entire agreement

- (a) This document supersedes all previous agreements about its subject matter and 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, has no effect except to the extent expressly set out or incorporated by reference in this document.

14.6 Further assurances

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

14.7 Representations and warranties

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

14.8 Confidentiality

The parties agree that the terms of this Agreement are not confidential and that this Agreement may be treated as a public document and exhibited or reported without restriction by either party.

Any additional information or documents disclosed by a party under this Agreement:

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

14.9 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.

14.10 Governing law and jurisdiction

- (a) New South Wales law governs this document.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

14.11 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.

14.12 Notice

- (a) A notice, consent or communication under this document is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given as follows:
 - (A) delivered by hand to that person's address;
 - (B) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address; or
 - (C) 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.
- (b) A notice, consent or communication delivered under clause 14.12(a) is given and received:
 - (i) if it is hand delivered or sent by fax:
 - (A) by 5.00pm (local time in the place of receipt) on a Business Day—on that day; or
 - (B) after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day—on the next Business Day; and
 - (ii) if it is sent by post:
 - (A) within Australia—three Business Days after posting; or

(B) to or from a place outside Australia—seven Business Days after posting.

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

(i) The Company Secretary
Cobbora Holding Company Pty Ltd
Second Floor
133-135 King Street
NEWCASTLE NSW 2300
Fax: (02) 4924 3699

(ii) The General Manager
Dubbo City Council
Civic Administration Building
Church Street
Dubbo NSW 2830
Fax: (02) 6378 2815

Schedule 1

Requirements of Division 6 of Part 4 of the EP&A Act

Subject and subsection of the Act	The planning agreement
<p>Planning Instrument and/or Development Application (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a project or development application</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.</p>	<p>No.</p> <p>Yes.</p> <p>No.</p>
<p>Planning Instrument and/or Development Application (Section 93F(1))</p> <p>For the purpose or being used or applied towards a public purpose, the Developer has:</p> <p>(a) dedicated land free of cost;</p> <p>(b) paid a monetary contribution;</p> <p>(c) provided any other material public benefit.</p>	<p>No.</p> <p>Yes.</p> <p>No.</p>
<p>Description of the land to which the Planning Agreement applies (Section 93F(3)(a))</p>	<p>See clause 2.</p>
<p>Description of the development to which the Agreement applies (Section 93F(3)(b)(ii))</p>	<p>See clause 2.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement (Section 93F(3)(c))</p>	<p>See clauses 5 and 6.</p>
<p>Applicability of section 94 of the Act (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act is excluded.</p>
<p>Applicability of section 94A of the Act (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act is excluded.</p>
<p>Applicability of section 94EF of the Act (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act is excluded.</p>
<p>Mechanism for dispute resolution (Section 93F(3)(f))</p>	<p>See clause 10.</p>
<p>Enforcement of the Planning Agreement (Section 93F(3)(g))</p>	<p>See clause 7 and 8.</p>
<p>Registration of the Planning Agreement (Section 93F(3)(g))</p>	<p>See clause 9.</p>

Schedule 2

Development Contributions

Purpose of Development Contribution	Development Contribution	Date for payment of Development Contribution
Construction Personnel Contribution	Calculated in accordance with Schedule 3.	Annually in accordance with clause 6 of this Agreement.
Operational Personnel Contribution	Calculated in accordance with Schedule 4.	Annually in accordance with clause 6 of this Agreement.
Rehabilitation Personnel Contribution	Calculated in accordance with Schedule 5.	Payment to be made in accordance with Schedule 5.

Schedule 3

Construction Personnel Contribution

1 Contribution payable

The Developer must pay Council the Construction Personnel Contribution on an annual basis commencing from the first Count Date to occur following the Construction Period Commencement Date.

2 Explanation

During the construction phase, the Developer will make a financial contribution of \$1,000 per employee per annum which is to be split equally between the four Councils (25% each). This means that each Council will receive \$250 per employee per annum.

Financial contributions will be based on actual number of workers as at 1 April each year, with payments based on a minimum workforce of 400 people. Therefore, each Council is guaranteed a minimum payment of \$100,000 per annum during the construction phase (400 workers x \$1,000 x 25%).

It is expected that all Construction Personnel will reside in the construction camp provided by the Developer. The Developer will only pay the additional Construction Personnel Contribution of \$1,000 per employee per annum if the total number of Construction Personnel exceeds the Minimum Personnel. In these circumstances, the additional \$1,000 per employee will be paid to the Council in which the employee resides.

3 Calculating the Construction Personnel Contribution

The Construction Personnel Contribution is determined by the following formula:

Construction Personnel Contribution if the total number of Construction Personnel is greater than or equal to 400 people (Construction Personnel Contribution 1) (\$) =	= (MP x \$250) + (\$1000 x WLGA)
Construction Personnel Contribution if the total number of Construction Personnel is less than 400 people (Construction Personnel Contribution 2) (\$) =	= MP x \$250

$$\text{Construction Personnel Contribution (\$)} = W \times \$250$$

Where:

MP means the Minimum Personnel.

WLGA means the number of Construction Personnel residing in the Council's Local Government Area as at the Count Date but only if the total number of Construction Personnel exceeds the Minimum Personnel.

4 Examples

Between the Construction Period Commencement Date and the Construction Period End Date

Example 1:

Assuming there is a total number of 414 Construction Personnel working at the Development as at 1 April 2014, with 400 residing at the construction camp, 11 residing in the Dubbo City Local Government Area and 3 residing in other Local Government Areas, then the Developer will pay Council the Construction Personnel Contribution for 1 April 2014 at the following rate:

$$= 400 (\text{Construction Personnel}) \times \$250 + 11 (\text{residents of Dubbo City LGA}) \times \$1000 = \mathbf{\$111,000}$$

Example 2:

Assuming there is a total number of 382 Construction Personnel working at the Development as at 1 April 2014, then the Developer will pay Council the Construction Personnel Contribution for 1 April 2014 at the following rate:

$$= 400 (\text{Minimum Personnel}) \times \$250 = \mathbf{\$100,000}$$

Schedule 4

Operational Personnel Contribution

1 Contribution payable

The Developer must pay Council the Operational Personnel Contribution on an annual basis commencing from the first Count Date to occur following the Operational Period Commencement Date.

2 Explanation

During the operational phase, the Developer will make a financial contribution of \$1,000 per employee per annum.

From the total contribution of \$1,000 per employee, each of the four Councils will receive 15% of this amount (four Councils x 15% = 60%) which equates to \$150 per employee per Council.

The remaining 40% of the total \$1,000 will be distributed between the four Councils based on the number of employees residing within the individual LGAs. This means that each Council will receive an additional \$400 per employee that resides in their LGA.

Financial contributions will be based on actual number of workers as at 1 April each year, with payments based on a minimum workforce of 400 people. Therefore, based on a minimum workforce of 400 people, each Council will receive a payment of \$60,000 (400 workers x \$1,000 x 15%) plus potentially a percentage of the remaining \$160,000 based on the number of workers residing in their LGA.

3 Calculating the Operational Personnel Contribution

The Operational Personnel Contribution is determined by the following formulas:

Operational Personnel Contribution if the total number of Operational Personnel is greater than or equal to 400 people (**Operational Personnel Contribution 1**) (\$) = $(\$150 \times WD) + (\$400 \times WLGA)$

Operational Personnel Contribution if the total number of Operational Personnel is less than 400 people (**Operational Personnel Contribution 2**) (\$) = $(\$150 \times WD) + (\$400 \times WLGA) + (\$250 \times MP)$

Where:

WD means the total number of Operational Personnel as at the Count Date.

WLGA means the number of Operational Personnel residing in the Council's Local Government Area as at the Count Date.

MP means the difference between the Minimum Personnel and WD as at the Count Date.

4 Examples

Example 1:

Assuming there is a total number of 423 Operational Personnel as at 1 April 2015 who are residing in the following Local Government Areas:

- (i) total number residing in Mid - Western Local Government Area – 100 people
- (ii) total number residing in Warrumbungle Local Government Area – 50 people
- (iii) total number residing in Wellington Local Government Area – 50 people
- (iv) total number residing in Dubbo Local Government Area – 223 people

Then the Operational Personnel Contribution 1 will apply.

On this basis, the Developer will pay Council the Operational Personnel Contribution for 1 April 2015 at the following rate:

$$= (\$150 \times 423) + (\$400 \times 223) = \mathbf{\$152,650}$$

Example 2:

Assuming there is a total number of 305 Operational Personnel as at 1 April 2015 who are residing in the following Local Government Areas:

- (i) total number residing in Mid - Western Local Government Area – 125 people
- (ii) total number residing in Warrumbungle Local Government Area – 80 people
- (iii) total number residing in Wellington Local Government Area – 30 people
- (iv) total number residing in Dubbo Local Government Area – 70 people

Then the Operational Personnel Contribution 2 will apply. In these circumstances MP will equal 95 as the difference between the Minimum Personnel of 400 people and the total number of Operational Personnel being 305 is 95 people.

On this basis, the Developer will pay Council the Operational Personnel Contribution for 1 April 2015 at the following rate:

$$= (\$150 \times 305) + (\$400 \times 70) + (\$250 \times 95) = \mathbf{\$97,500}$$

Schedule 5

Rehabilitation Personnel Contribution

1 Contribution payable

The Developer must pay Council the Rehabilitation Personnel Contribution on an annual basis commencing from the first Count Date to occur following the Rehabilitation Period Commencement Date.

2 Explanation

During the rehabilitation phase, the Developer will make a financial contribution of \$1,000 per employee per annum which is to be split equally between the four Councils (25% each). This means that each Council will receive \$250 per employee per annum. There will be no minimum personnel requirement during the rehabilitation phase and therefore, the Developer will only make contributions based on actual workforce numbers as at April 1 each year during the rehabilitation phase.

3 Calculating the Rehabilitation Personnel Contribution

The Rehabilitation Personnel Contribution is determined by the following formula:

$$\text{Rehabilitation Personnel Contribution (\$)} = W \times \$250$$

Where:

W means the total number of Rehabilitation Personnel as calculated on the Count Date.

Example:

Assuming there is a total number of 60 Rehabilitation Personnel during the Rehabilitation Period as at 1 April 2033 then the Developer will pay Council the Rehabilitation Personnel Contribution for 1 April 2033 at the following rate:

$$= 60 (\text{Rehabilitation Personnel}) \times \$250 = \mathbf{\$15,000}$$

