

Caroona Coal Project

Access Arrangement and Compensation Agreement (Agreement)

between

Coal Mines Australia Pty Ltd (ACN 062 855 270) (**CMAL**)

and

Liverpool Plains Shire Council (**Landowner**)



Date 17 August 2007

Background

- A The Landowner owns the Lands.
- B CMAL holds exploration licence No.6505 under the *Mining Act 1992* (NSW) for coal. The Exploration Licence covers a large area of land which includes the Lands.
- C Under the *Mining Act 1992* (NSW) the holder of an exploration licence has the right to 'prospect' for coal on the land subject to the exploration licence during the term of the exploration licence.
- D 'Prospect' is defined in the *Mining Act 1992* (NSW) to mean: "to carry out works on, or to remove samples from, land for the purpose of testing the mineral bearing qualities of the land...."
- E Under the *Mining Act 1992* (NSW) the holder of an exploration licence may not carry out 'prospecting' operations on any land otherwise than in accordance with an access arrangement.
- F Under the *Mining Act 1992* (NSW) an access arrangement can be determined in the following ways:
- (i) agreement between the holder of the exploration licence and the landholder; or
 - (ii) where such agreement can not be reached either party can request that the access arrangement be determined by an arbitrator agreed to by the parties or where agreement can not be reached by an arbitrator appointed by the Director-General of the Department of Primary Industries.
- G Following the determination of an access arrangement by an arbitrator both parties have a right to apply to a Warden's Court for a review of the determination. The decision of a Warden's Court on a review of an arbitrator's determination is final and is to be given effect to as if it were the determination of an arbitrator.
- H On the granting of an exploration licence, landholders of any land also become entitled to compensation for any "compensable loss" suffered or likely to be suffered by them as a result of the rights conferred by the exploration licence, as outlined in Sections 262 and 263 of the *Mining Act 1992* (NSW). The exploration licence holder and landholder are required to enter a written agreement regarding any compensation and usually this occurs as part of the access arrangement.
- I This Agreement is:
- (i) an access agreement which has been agreed between CMAL and the Landowner to allow CMAL to 'prospect' on the Lands in accordance with the terms of the Exploration Licence and this Agreement; and
 - (ii) a compensation agreement between CMAL and the Landowner under section 263 of the Mining Act on the terms outlined in the Agreement for "compensable loss" suffered or likely to be suffered by the Landowner as a result of the rights conferred by the Exploration Licence. For the avoidance of doubt, the Landowner has the right to claim compensation, additional to the compensation specified in clause 5.1, from CMAL for "compensable loss" (as defined in section 262(a), (e) or (f) of the Mining Act) arising as a result of exploration or prospecting operations carried out by CMAL on the Land.

Agreement

2. Interpretation

2.1 Where the following words appear in this Agreement they have the meaning provided below:

'Business day' means any day except Saturday or a Sunday or other public holiday;

'Exploration Licence' means exploration licence No.6505 granted under the *Mining Act 1992 (NSW)*;

'Pollution' has the same meaning as the word 'pollution' set out in the Protection of the Environment Operations Act 1997.

'Restoration' means CMAL will restore and remediate all damage to the land as soon as practical, repair damage to the land so that there is no material difference between the state of the land before the exploration and prospecting earth works, in such a manner that soil erosion will be minimised as far as practicable.

'Prospecting Operations' means all those works as defined in Categories 1, 2 and 3 in Exploration Licence No 6505 including those works identified in Clause 3 of this agreement.

'Emergency' means a period of time which in the opinion of CMAL exists as a result of a threat to:

- (a) the integrity of CMAL's property on the Land;
- (b) the health and safety of persons on the Land and in the community;
- (c) the environment; or
- (d) property on the Land.

'Land' means the land listed below:

"4D Road, Mystery Road, Waverly Road, Quirindi - Premier Road
and the Pine Ridge - Carroona Road"

'Landowner' means Liverpool Plains Shire Council;

'Landowner's Representative' means The General Manager;

2.2 In this Agreement unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa and a word importing a gender includes each other gender and a reference to a person includes an individual firm or body corporate;
- (b) a reference to a party includes the party's successors, substitutes (including persons taking by novation), transferees and assigns.

2.3 This document comprises the whole of the Agreement. This Agreement may only be modified in writing expressed to be supplemental hereto and signed by the parties.

2.4 This Agreement is governed by the laws of New South Wales and each party submits to the jurisdiction of the Courts of that State.

2.5 CMAL is responsible for paying any stamp duty required to be paid in relation to this Agreement.

3. Exploration and Mine Surface Works

CMAL may access the Land during the term of this agreement to conduct the following prospecting operations:

At site C3, C5, C9, C14, C25a, C32, C89a, and C123 works will include environmental due diligence, site surveying, site preparation, drilling of bore hole including core sampling, down hole testing, decommissioning of equipment; and site rehabilitation.

Vibrating wireline piezometers will also remain grouted into C89a and C123 boreholes and an additional water monitoring bore will be drilled adjacent to C89a, and C123 boreholes to monitor the aquifer on an ongoing basis. To facilitate the monitoring of these piezometers a BHP Billiton employee and/or consultant will need to return to sites C89a and C123 at approximately 3 month intervals to download the data logger. At the completion of this agreement (unless extended by mutual agreement) or at the landowners request the monitoring equipment will be removed and the site rehabilitated. Results from the water monitoring site will be routinely made available to the landowner.

Refer to map attached for site locations.

4. Notice of Access

- (a) Notice in writing will be given to the Landowner or Landowner's Representative at least 5 days in advance of the first date that CMAL intends to enter upon the Lands.
- (b) CMAL shall give reasonable notice to the Landowner when requiring subsequent access and shall use its best endeavours to minimise disruption to, or interference with, the Landowner's operations on the Lands.
- (c) Unless in the case of an Emergency CMAL will only access the Lands between 6am and 6pm on Business days unless otherwise agreed with the Landowner. CMAL must notify the Landowner of any such Emergency and access as soon as is reasonably possible in the circumstances.

5. Compensation

5.1 CMAL shall pay the following compensation to the Landowner which shall be the full and only compensation entitlement of the Landowner under the *Mining Act 1992* (NSW) and this Agreement:

- The sum of \$330 per week or part thereof whilst a drilling rig is on each individual site as identified in clause 2.1 "Land". Payment will be made at the completion of each borehole.

5.2 For the avoidance of doubt, the Landowner has the right to claim compensation, additional to the compensation specified in clause 5.1, from CMAL for "compensable loss" (as defined in section 262(a), (e) or (f) of the *Mining Act*) arising as a result of exploration or prospecting operations carried out by CMAL on the Land.

- 5.3 Where the compensation is a Taxable Supply (as defined in the GST Law), CMAL shall pay that compensation plus any GST payable on the Taxable Supply within thirty (30) days of receipt from the Landowner by CMAL of a valid tax invoice (or other document adequate to enable CMAL to claim an Input Tax Credit (as defined in the GST Law)).

GST Law means the *A New Tax System (Goods and Service Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of GST.

6. Term

This agreement shall commence on the date that this Agreement was signed by the parties and terminates on the earliest of the following events to occur:

- (a) at the completion of the nominated works;
- (b) two years from the date of this agreement;
- (c) if the Landowner ceases to be the owner of the Lands. Where the Landowner ceases to be the owner of part of the Lands only this Agreement continues to apply to those parts of the Lands that the Landowner still owns;
- (d) if the Exploration Licence ceases to remain in force. Where the Exploration Licence is renewed under the *Mining Act 1992 (NSW)* the Exploration Licence is considered to remain in force and this Agreement continues to bind the parties;
- (e) CMAL indicates in writing to the Landowner that it wishes to terminate the Agreement; or
- (f) the parties agree in writing to terminate the Agreement.

7. Conditions of Access

While on the Lands, CMAL shall:

- (a) [Access] use such purpose built access ways or access ways as may be reasonably directed by the Landowner from time to time;
- (b) [Weather] only access the Lands by all weather access ways in wet conditions;
- (c) [Gates] leave open gates open and closed gates closed;
- (d) [Camping] not camp overnight;
- (e) [Fire Protection] take proper fire precautions;
- (f) [Rubbish] not leave rubbish on the Lands;
- (g) [Fences] only cross fence lines at gates;
- (h) [Dogs] not bring any dogs onto the Lands;
- (i) [Water] not use any water, other than in an Emergency, that is on the Lands without the agreement of the Landowner;
- (j) [Guns] not bring any guns or firearms onto the Lands;
- (k) [Soil] minimise soil disturbance and erosion; and

- (l) **[Pollution]** not pollute any land, stream or watercourse including underground water, artesian basins, freshwater aquifers and saline aquifers under the flood plains and ridges.

8. Restoration

On completion of prospecting operations on the Lands, CMAL will:

- (a) **[Equipment]** remove all equipment;
- (b) **[Repair]** repair any damage to the Lands or any fence, building or other improvement on the Lands as near as practicable to its original condition. Where practicable, such repairs will be carried out prior to the completion of prospecting operations on the Lands;
- (c) **[Access Track]** repair any access track as near as practicable to its original condition;
- (d) **[Seed]** seed and fertilize any area as may be reasonably requested by the Landowner; and
- (e) **[Boreholes]** fill all boreholes on drilling sites with cement and cover the surface with topsoil.
- (f) CMAL will restore all damage to the Land as soon as practical and re-contour excavations and earth works effected on the Land in such a manner that soil erosion will be minimised as far as practicable.


9. Supervisor

- (a) CMAL appoints the following person as the CMAL Contact for the prospecting operations to be carried out pursuant to this Agreement:

Darren Swain, Field Supervisor
Mobile telephone: 0427662508

- (b) CMAL will ensure that the CMAL Contact is available at all reasonable times to liaise with the Landowner concerning the provisions of this Agreement.
- (c) If CMAL changes the CMAL Contact for the prospecting operations to be carried out pursuant to this Agreement they will notify the Landowner of the person who will be the new CMAL Contact.

10. Indemnity and insurance

- (a) CMAL agrees without limitation to indemnify the Landowner against any and all claims and/all losses, liabilities, penalties (excluding criminal penalties), fines, cleanup orders, remediation orders and expenses incurred by the Landowner whatsoever, in connection with the CMAL's operations, activities or prospecting operations on the land.
-  (b) CMAL shall effect and maintain for any period for which it has prospecting operations occurring on the land a public liability insurance policy with a minimum insurance of \$100 million with respect of these activities.

- (c) The terms of the Mining Act are not intended to limit the landowner's rights to seek indemnification from CMAL under clause 10(a).
- (d) CMAL or the licence holder shall provide to the landholder a Certificate of Currency in relation to the public liability insurance 14 days prior to commencing prospecting activities on the land.

11. Ownership of Infrastructure

Whilst this Agreement has effect, infrastructure and equipment installed on the Lands by CMAL, in accordance with the terms of this Agreement, remains the property of CMAL.

12. Exercise of Rights, Assignment of Rights and Novation

- (a) CMAL may exercise its rights hereunder by itself or through its employees, agents, servants and contractors.
- (b) CMAL may assign its rights hereunder at any time during the term of this Agreement subject to the written consent of the Landowner, which written consent must not be withheld unreasonably except for assignment to any related body corporate of CMAL (including BHP Billiton Limited and its related bodies corporate).
- (c) CMAL may novate this Agreement to any body corporate of CMAL, to the holder or holders from time to time of the Exploration Licence and any mining lease which may affect the Lands subject to the written consent of the Landowner, which written consent must not be withheld unreasonably except for novation to any related body corporate of CMAL (including BHP Billiton Limited and its related bodies corporate)..

13. Legal Advice

CMAL will reimburse the Landowner for his legal costs in obtaining legal advice in relation to this Agreement up to a maximum of \$500.

14. Third Party Rights

The Landowner agrees not to grant any right to a third party that is inconsistent with CMAL's rights under this Agreement.

15. Resolution of Disputes

15.1 Upon notification of a dispute by either party:

- (a) The parties will attempt to resolve any such dispute arising from this agreement within 21 days;
- (b) If a dispute arising from this agreement cannot be resolved in accordance with clause 15.1(a) the dispute should be resolved under the *Mining Act 1992 (NSW)*.

- 15.2 Notification by the Landowner regarding this Agreement of a dispute must be given to CMAL in accordance with clause 17.

16. Force Majeure

CMAL is not liable for a breach of the conditions of this Agreement to the extent that the breach is caused by circumstances outside the control of CMAL, its employees, servants or agents and for the period those circumstances continue. If CMAL becomes aware of a breach it must:

- a) immediately notify the Landowner; and
- b) try to remedy the cause quickly.

CMAL must notify the Landowner when the cause has been remedied.

17. Notices

- (a) Any notices may be sent to CMAL by pre paid post to:

The General Manager
Caroona Coal Project
PO Box 124
Caroona 2343

and shall be deemed to have been received by CMAL 7 days after posting, or by facsimile transmission to:

0267464601

and shall be deemed to have been received by CMAL at the conclusion of the successful transmission of the facsimile.

- (b) Any notices may be sent to the Landowner by pre paid post to:

The General Manager
Liverpool Plains Shire Council
PO Box 152,
Quirindi NSW 2343.

and shall be deemed to have been received by the Landowner 7 days after posting, or by facsimile transmission to:


0267 463255

and shall be deemed to have been received by the Landowner at the conclusion of the successful transmission of the facsimile.

Signing page

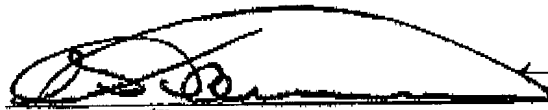
EXECUTED is an agreement.

Signed for CAL Pty Ltd by an authorised officer in the presence of


Signature of witness

Doreen Swain
Name of witness (print)

GENERAL MANAGER
Office held

← 
Signature of officer

STEPHEN DAVID
Name of officer (print)

Signed for Liverpool Plains Shire Council by an authorised officer in the presence of



Kerrie Yennie
Signature of witness

KERRIE A. TOLMIE
Name of witness (print)

Office held
GENERAL MANAGER

←  ←
Signature of Council Representative

ROBERT C HUNT
Name of signatory (print)