

Voluntary Planning Agreement

Boggabri Coal Pty Limited
ABN 77 122 087 398

Narrabri Shire Council
ABN 957 1780 7656

Idemitsu Australia Resources Pty Ltd
ABN 45 010 236 272

Upper Hunter

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Agreement

Date

Parties

First party

Name **Boggabri Coal Pty Limited**
(Boggabri)

ABN ABN 77 122 087 398

Address P O Box 1127, Brisbane QLD 4001

Fax 07 3222 5665

Contact Brian Cox

Email Brian.Cox@idemitsu.com.au

Second party

Name **Narrabri Shire Council**
(Council)

ABN 957 1780 7656

Address P O Box 261, Narrabri NSW 2390

Fax 02 6799 6888

Contact Mr Pat White

Email council@narrabri.nsw.gov.au

Third party

Name **Idemitsu Australia**
Resources Pty Ltd (Idemitsu)

ACN 45 010 236 272

Address Level 28, 10 Eagle Street, Brisbane
QLD 4000

Fax 07 3222 5665

Contact Brian Cox

Email Brian.Cox@idemitsu.com.au

Background

- A. Boggabri made application for the Boggabri Approval.
- B. Boggabri made and Council accepted the Offer.
- C. Boggabri received the Boggabri Approval on 18 July 2012.
- D. Boggabri and the Council enter into this agreement under Condition 23.

- E. Boggabri is a wholly owned subsidiary of Idemitsu which enters into this Agreement to assure the performance of this Agreement by Boggabri.

Operative part

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Anniversary Date means each twelve months from the Effective Date.

Boggabri Approval means planning approval 09_0182 dated 18 July 2012 under Section 75J in Part 3A of the EPA Act for the Boggabri Coal Mine.

Boggabri CCC means the 'community consultative committee' established and operated under the Boggabri Approval.

Boggabri Coal Mine means the coal mine in the Boggabri Approval.

Closure Period means any time during which there is for any reason no coal production under the Boggabri Approval.

Condition 23 means condition 23 in Schedule 2 of the Boggabri Approval requiring Boggabri to enter this agreement.

Contributions Accounts means an account within the financial records of Council separately identified for the management of Contribution Amounts.

Contribution Amount means respectively the amounts identified in the Contributions Schedule in the column headed "Amount".

Contribution Purposes means respectively the purposes identified in the Contributions Schedule in the column headed "Use of Funds for Community Benefit".

Contributions Schedule means Schedule 1 to this Agreement so headed.

CPI Index Variation means the weighted average of any percentage increase in the All Groups Consumer Price Index at each of the eight capital cities in Australia as published by the Australian Bureau of Statistics between the Effective Date and the relevant Anniversary Date.

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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.

Guarantor means Idemitsu.

Land means the land having the benefit of the Boggabri Approval.

Payment Date means in respect of each respective Contribution the time stated in the Contributions Schedule in the column headed "Time for Payment" unless otherwise provided specifically in this Agreement.

Tax Invoice means a request for payment under the GST Law.

Term means as provided in clause 3.

1.2 Interpretation

Clause specific definitions are in the respective clauses.

In this Agreement, unless the context indicates a contrary intention:

(headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement.

(Party) a reference to a Party includes that Party's administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

(singular) the singular includes the plural and vice-versa.

(gender) words importing one gender include all other genders.

(rules of construction) neither this Agreement nor any part of it is to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

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(month) a reference to a month is a reference to a calendar month.

(year) a reference to a year is a reference to twelve consecutive calendar months.

2 Planning Agreement under the Act

2.1 This is a planning agreement governed by Division 6 of Part 4 of the EPA Act.

2.2 This Agreement satisfies Condition 23.

3 Term

This Agreement:

- a. operates from the Effective Date;
- b. terminates:
 - i. on the expiration of the life of the Boggabri Approval;
 - ii. on the Boggabri Approval ceasing for any reason to operate; or
 - iii. when the Boggabri Coal Mine is closed; and
- c. is suspended during any Closure Period of the Boggabri Coal Mine.

4 Application of this Agreement

This Agreement applies to the Land.

5 Purpose

This Agreement provides, related to the Boggabri Approval for:

- a. payments to the Council related to the need for additional infrastructure as envisaged by s94 of the EPA Act;
- b. community enhancement for the Council; and
- c. payment by Boggabri for 'environmental Developments'; and
- d. payment of an amount for each tonne of coal recovered under the Boggabri Approval.

6 Contributions

- 6.1 Boggabri must pay to the Council each Contribution Amount within twenty eight (28) days of the respective Payment Date.
- 6.2 The Contribution Amount of \$100,000.00 to be applied for "Environment" developments must:
- a. be held by the Council in a separate identified Trust Account;
 - b. be applied in for the purposes and in the manner determined by the Boggabri Coal CCC; and
 - c. be released and paid by the Council as directed in writing by the chairman for the time being of the Boggabri CCC.
- 6.3 As to the remainder of the Contribution Amounts the Council must:
- a. pay to and hold the separate Contribution Amounts in separately identified Contribution Accounts; and
 - b. apply the separate Contribution Amounts to the respective Contribution Purpose.
- 6.4 Council must promptly issue a Tax Invoice to Boggabri for each Contribution Amount prior to it becoming payable.
- 6.5 When reasonably requested by Boggabri Council must provide to Boggabri a report on:
- a. the status, standing and position of;
 - b. the uses of money from; and
 - c. plans for expenditure from;
- each Contribution Account.

7 Tonnage Amount

- 7.1 For the purposes of this clause the following terms have the following respective meanings:
- a. **Boggabri Tonnage Account** means an account within the financial records of Council separately identified for management of the Tonnage Amount.
 - b. **Saleable Tonne** means coal removed by the Development included a monthly return by Boggabri under Part 14 of the *Mining Act 1992* (NSW).
 - c. **Tonnage Amount** means \$0.075 for each Saleable Tonne of coal recovered under the Boggabri Approval increased each Anniversary Date by the Factor.
 - d. **Tonnage Contribution Purpose** means the conduct of infrastructure developments (including environmental developments) at the discretion of the Council provided that when used for road works the money must be used initially as needed in proximity to a mine in the Narrabri Shire Council area and then radiating outwards.
- 7.2 Boggabri must pay the Tonnage Amount to the Council.
- 7.3 On the seventh (7) day of each month during the term (**Notification Date**) after the Effective Date Boggabri must notify the Council of the Saleable Tonnes

produced by the Development during the previous month (**Months Saleable Tonnes**).

- 7.4 Within seven (7) days of the Notification Date (**Invoice Date**) Council must issue a Tax Invoice for the appropriate Tonnage Amount for the Months Saleable Tonnes.
- 7.5 Within seven (7) days of the Invoice Date Boggabri must pay the Tonnage Amount for the invoiced month to the Council (**Monthly Tonnage Amount**).
- 7.6 The Council must:
- a. hold all Monthly Tonnage Amounts received by it in a separate identified Boggabri Tonnage Account; and
 - (b) apply its reasonable endeavours to use the separate Contribution Amounts to and in accordance with the Tonnage Contribution Purpose; and
 - b. when reasonably requested by Boggabri Council must provide to Boggabri a report on:
 - i. the status, standing and position of;
 - ii. the uses of money from; and
 - iii. plans for expenditure from;the 'Boggabri Tonnage Account'.
- 7.7 Subject to clause 7.6 the Council may apply the Tonnage Amount to any infrastructure development (including environmental Developments) within the Narrabri Shire with the written consent of Boggabri (which must not be unreasonably withheld by Boggabri).

8 Supply of Gravel

- 8.1 For the purposes of this clause:
- a. **Controller** means as that concept is envisaged under the *Work Health and Safety Act 2011* (NSW) and the *Coal Mines Health and Safety Act 2000* (NSW).
 - b. **Gravel** means basic uncrushed and unfinished conglomerate waste from within the active areas of the Development identified by Council as being base material suitable (in the opinion of Council) for use in road construction.
 - c. **Load Point** means the location within the Development area where Boggabri determines to locate the Gravel for Council.
- 8.2 If required by the Council, Boggabri must provide up to 25,000 tonnes (**Yearly Entitlement**) of Gravel to Council in any Year.
- 8.3 Council must give reasonable notice of its Gravel requirements.
- 8.4 The Yearly Entitlement of Council to Gravel is not cumulative.
- 8.5 Boggabri must make the Gravel available at the Load Point.
- 8.6 Council must load and take delivery of Gravel at the Load Point.
- 8.7 Council and Boggabri must cooperate and be reasonable in implementing this clause including with regard to:

- a. scheduling for Council's requirements for Gravel;
 - b. the availability of Gravel from Boggabri from the then current operations of the Boggabri Coal Mine;
 - c. Boggabri's mine schedule and business operations;
 - d. Council access to the Load Point; and
 - e. Council loading and taking delivery of the Gravel from the Load Point.
- 8.8 In the performance of the obligation in this clause:
- a. Boggabri is not required to provide Gravel if it is not reasonably available within the then currently active areas of the Boggabri Coal Mine;
 - b. Boggabri is not to be required to materially disrupt its mine scheduling;
 - c. Council alone determines the suitability of the Gravel but it must act reasonably;
 - d. Council must secure and hold all necessary planning, environmental and other applicable laws; and
 - e. Council will be the Controller from the Load Point.
- 8.9 If Boggabri so requests Council must at no cost to Boggabri crush and prepare in any year for Boggabri (to a maximum of 2,550 tonnes) up to ten per cent (10%) of the amount of Gravel taken by Council in that year of for use by Boggabri at the Development which Boggabri will load and haul.

9 Payments

Amounts paid by Boggabri to Council must be in Australian dollars (\$AUD) and be made by bank cheque or electronic funds transfer to the Council or by such other means as may be reasonably directed by Council.

10 Application of the Act

- 10.1 This Agreement does not exclude the operation of sections 94, 94A or 94EF of the EPA Act.
- 10.2 In the event of the application of any of sections 94, 94A or 94EF of the EPA Act at any time during the life of the Boggabri Approval the benefits bestowed on Council must be taken into account.
- 10.3 Council must without delay comply with all of its obligations under the EPA Act with regard to the entry of this agreement as a voluntary 'planning agreement' under the EPA Act.
- 10.4 Council and Boggabri must cooperate in seeking the agreement of the Director General of the Department of Planning and Infrastructure to any necessary extension of the time to enter this Agreement under Condition 23.

11 Registration of this Agreement

This Agreement will not be registered on the title of the Land pursuant to section 93H of the Act.

12 GST

- 12.1 Moneys paid by Boggabri under this Agreement are not GST inclusive under the GST Law.
- 12.2 The parties acknowledge that GST is not presently payable on the Contributions made under this Agreement.
- 12.3 In the event that GST is payable by the Council under the GST Law in respect of this Agreement, any provision of any goods or services or Taxable Supply (as defined in the GST Law) by Council to Boggabri and the Council issues a GST invoice to Boggabri then Boggabri must pay the amount of the GST to Council following receipt of the invoice.

13 Costs

Each of the Council and Boggabri must pay its own costs in relation to the negotiation, preparation and execution of this Agreement.

14 Further acts

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

15 Explanatory Note

The Explanatory Note must not be used to assist in construing this Agreement.

16 Waiver

- 16.1 A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right.
- 16.2 Delays by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

17 Guarantee by Idemitsu

- 17.1 For the purposes of this clause 17:
- a. **Control** means the same as in the *Corporations Act 2001* (Cth).
 - b. **Controller** means the entity which is in Control of Boggabri.
 - c. **Guarantee Deed** means a deed whereby Idemitsu is released from Liability under the Guarantee which is assumed by the new Controller.
 - d. **Liability** means the responsibility for the Guarantee arising from (then) pre-existing defaults or future defaults by Boggabri.
- 17.2 Idemitsu unconditionally and irrevocably guarantees to the Council the due and punctual performance by Boggabri of its obligations to Council under this Agreement (**Guarantee**).
- 17.3 Idemitsu as the Controller of Boggabri gives the Guarantee to Council in consideration of the Council entering into this Agreement with Boggabri.

- 17.4 This Guarantee is a continuing guarantee and remains in full force and effect for so long as:
- a. Boggabri has any obligations to the Council under this Agreement; or
 - b. Idemitsu is the Controller of Boggabri.
- 17.5 On any change of Control of Boggabri, Idemitsu must cause the new Controller of Boggabri to provide the Guarantee to Council.
- 17.6 If required by Idemitsu or the Council the Council, Boggabri, Idemitsu and the new Controller of Boggabri must at the cost of Boggabri enter into a Guarantee Deed to effectively implement the Guarantee for the benefit of the Council.

18 Novation by Boggabri

- 18.1 For the purposes of this clause 18:
- a. **New Owner** means a party that becomes entitled to exercise the Boggabri Approval.
 - b. **Novation Deed** means a 'deed' whereby the New Owner is substituted for Boggabri in this Agreement as to all Rights and Obligations.
 - c. **Novation Date** means the effective date of the Novation Deed.
 - d. **Rights** means all of the powers and entitlements of Boggabri, both past and future provided in this Agreement.
 - e. **Obligations** means as to Boggabri all of the duties, functions and responsibilities of Boggabri, both past and future provided in this Agreement and as to Idemitsu the Guarantee.
- 18.2 Boggabri must novate its position under this Agreement to any New Owner of the Development.
- 18.3 When required by Boggabri the Council, Idemitsu, Boggabri and the New Owner must, at the cost of Boggabri, enter into a Novation Deed.
- 18.4 From the Novation Date the:
- a. New Owner stands in the position of Boggabri under this Agreement: as to its Rights and its Obligations; and
 - b. Council releases and discharges Boggabri and Idemitsu from all Obligations.

19 Disputes under this Agreement

19.1 Not Commence

A party must not commence any court proceedings relating to a dispute of any matter under this Agreement (**Dispute**) unless it complies with this clause 19.

19.2 Written Notice of Dispute

A party claiming that a Dispute has arisen under or in relation to this Agreement must give notice (**Dispute Notice**) to the other parties specifying the nature of the Dispute.

19.3 Attempt to Resolve

On receipt of a Dispute Notice 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.

19.4 Mediation

If the parties do not agree within seven (7) days of the Dispute Notice (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 of the independent person required for such technique;

the parties must mediate the dispute (**Mediation**) in accordance with the Mediation Rules of the Law Society of New South Wales (or any replacement).

19.5 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 reference and remuneration.

19.6 Court Proceedings

If the Dispute is not resolved within forty two (42) days after the Dispute Notice any party which has complied with the Mediation provisions of this clause may in writing terminate the Mediation and may then commence court proceedings in relation to the Dispute.

19.7 Not Use Information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement in the Mediation is to attempt to settle the Dispute. No party may use any information or documents obtained through the Mediation for any purpose other than the Mediation.

19.8 No Prejudice

This provision with regard to Mediation 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.

20 Notices

20.1 Any notice, demand, consent or other communication given or made under this document must be:

- a. clearly readable;
- b. signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
- c. left at the address or sent by pre-paid security post to the address or to the fax number of the recipient.

20.2 A party may change its address or fax number for the purpose of service by giving notice of that change to the other party.

20.3 Any communication will be taken to be received by the recipient:

- a. in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;

- b. in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the fax number of the recipient; and
- c. if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at the commencement of the next Business Day.

21 General

21.1 Counterparts

This Agreement may be executed in any number of counterparts.

21.2 Entire Agreement

The contents of this Agreement constitute the entire Agreement between the parties with regard to the Boggabri Approval.

21.3 Variation

This Agreement can only be varied by a later written document executed by or on behalf of all parties.

Schedule 1 Contribution Schedule

Boggabri must make the following Development Contributions following the receipt of an appropriate tax invoice (to be issued at least 28 days prior to the required date for payment) in respect of each separate payment from Council:

Amount	Time for Payment	Use of Funds for Community Benefit
\$1,600,000	1 July 2013	To be applied to the upgrade of Boggabri Caravan Park and Swimming Pool Complex.
\$200,000	1 July 2012	Community contribution to the Boggabri Home and Community Care Centre to be applied to the purchase of its current premises and any upgrade of those premises.
\$4,300,000	1 July 2014	Funds to be applied to the replacement of the bridge across the Namoi River (and other works) on Harparary Road.
\$2,500,000	1 July 2013	Funds to be applied to the upgrade of the Narrabri Aquatic Centre to assist in it becoming a 365 day per year facility.
\$100,000	1 July 2013	Funds to be applied to "Environment" Developments within proximity of the Boggabri Mining Precinct as directed by the Boggabri Coal Community Consultative Committee (CCC).

Schedule 2 Explanatory Notes

Annexure A Signing page

Executed as a deed

Signed for the **Narrabri Shire Council** by)
 the Mayor and General Manager in the) Signature of Mayor
 presence of:

.....
 Signature of Witness

.....
 Signature of General Manager

.....
 Print name of Witness

Executed by **Boggabri Coal Pty Ltd** ABN)
 77 122 087 398 by an authorised officer in)
 the presence of:)
)


 Signature of Director


 Signature of Director/~~Secretary~~

KOJI ARAI
 Print name of Director

TOSHIRO SHIBAHARA
 Name of Director/~~Secretary~~

.....
 Office held



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 - c. plans for expenditure from;each Contribution Account.

7 Tonnage Amount

- 7.1 For the purposes of this clause the following terms have the following respective meanings:
 - a. **Boggabri Tonnage Account** means an account within the financial records of Council separately identified for management of the Tonnage Amount.
 - b. **Saleable Tonne** means coal removed by the Development included a monthly return by Boggabri under Part 14 of the *Mining Act 1992* (NSW).
 - c. **Tonnage Amount** means \$0.075 for each Saleable Tonne of coal recovered under the Boggabri Approval increased each Anniversary Date by the Factor.
 - d. **Tonnage Contribution Purpose** means the conduct of infrastructure developments (including environmental developments) at the discretion of the Council provided that when used for road works the money must be used initially as needed in proximity to a mine in the Narrabri Shire Council area and then radiating outwards.
- 7.2 Boggabri must pay the Tonnage Amount to the Council.
- 7.3 On the seventh (7) day of each month during the term (**Notification Date**) after the Effective Date Boggabri must notify the Council of the Saleable Tonnes

produced by the Development during the previous month (**Months Saleable Tonnes**).

- 7.4 Within seven (7) days of the Notification Date (**Invoice Date**) Council must issue a Tax Invoice for the appropriate Tonnage Amount for the Months Saleable Tonnes.
- 7.5 Within seven (7) days of the Invoice Date Boggabri must pay the Tonnage Amount for the invoiced month to the Council (**Monthly Tonnage Amount**).
- 7.6 The Council must:
- a. hold all Monthly Tonnage Amounts received by it in a separate identified Boggabri Tonnage Account; and
 - (b) apply its reasonable endeavours to use the separate Contribution Amounts to and in accordance with the Tonnage Contribution Purpose; and
 - b. when reasonably requested by Boggabri Council must provide to Boggabri a report on:
 - i. the status, standing and position of;
 - ii. the uses of money from; and
 - iii. plans for expenditure from;

the 'Boggabri Tonnage Account'.
- 7.7 Subject to clause 7.6 the Council may apply the Tonnage Amount to any infrastructure development (including environmental Developments) within the Narrabri Shire with the written consent of Boggabri (which must not be unreasonably withheld by Boggabri).

8 Supply of Gravel

- 8.1 For the purposes of this clause:
- a. **Controller** means as that concept is envisaged under the *Work Health and Safety Act 2011 (NSW)* and the *Coal Mines Health and Safety Act 2000 (NSW)*.
 - b. **Gravel** means basic uncrushed and unfinished conglomerate waste from within the active areas of the Development identified by Council as being base material suitable (in the opinion of Council) for use in road construction.
 - c. **Load Point** means the location within the Development area where Boggabri determines to locate the Gravel for Council.
- 8.2 If required by the Council, Boggabri must provide up to 25,000 tonnes (**Yearly Entitlement**) of Gravel to Council in any Year.
- 8.3 Council must give reasonable notice of its Gravel requirements.
- 8.4 The Yearly Entitlement of Council to Gravel is not cumulative.
- 8.5 Boggabri must make the Gravel available at the Load Point.
- 8.6 Council must load and take delivery of Gravel at the Load Point.
- 8.7 Council and Boggabri must cooperate and be reasonable in implementing this clause including with regard to:

- a. scheduling for Council's requirements for Gravel;
 - b. the availability of Gravel from Boggabri from the then current operations of the Boggabri Coal Mine;
 - c. Boggabri's mine schedule and business operations;
 - d. Council access to the Load Point; and
 - e. Council loading and taking delivery of the Gravel from the Load Point.
- 8.8 In the performance of the obligation in this clause:
- a. Boggabri is not required to provide Gravel if it is not reasonably available within the then currently active areas of the Boggabri Coal Mine;
 - b. Boggabri is not to be required to materially disrupt its mine scheduling;
 - c. Council alone determines the suitability of the Gravel but it must act reasonably;
 - d. Council must secure and hold all necessary planning, environmental and other applicable laws; and
 - e. Council will be the Controller from the Load Point.
- 8.9 If Boggabri so requests Council must at no cost to Boggabri crush and prepare in any year for Boggabri (to a maximum of 2,550 tonnes) up to ten per cent (10%) of the amount of Gravel taken by Council in that year of for use by Boggabri at the Development which Boggabri will load and haul.

9 Payments

Amounts paid by Boggabri to Council must be in Australian dollars (\$AUD) and be made by bank cheque or electronic funds transfer to the Council or by such other means as may be reasonably directed by Council.

10 Application of the Act

- 10.1 This Agreement does not exclude the operation of sections 94, 94A or 94EF of the EPA Act.
- 10.2 In the event of the application of any of sections 94, 94A or 94EF of the EPA Act at any time during the life of the Boggabri Approval the benefits bestowed on Council must be taken into account.
- 10.3 Council must without delay comply with all of its obligations under the EPA Act with regard to the entry of this agreement as a voluntary 'planning agreement' under the EPA Act.
- 10.4 Council and Boggabri must cooperate in seeking the agreement of the Director General of the Department of Planning and Infrastructure to any necessary extension of the time to enter this Agreement under Condition 23.

11 Registration of this Agreement

This Agreement will not be registered on the title of the Land pursuant to section 93H of the Act.

12 GST

- 12.1 Moneys paid by Boggabri under this Agreement are not GST inclusive under the GST Law.
- 12.2 The parties acknowledge that GST is not presently payable on the Contributions made under this Agreement.
- 12.3 In the event that GST is payable by the Council under the GST Law in respect of this Agreement, any provision of any goods or services or Taxable Supply (as defined in the GST Law) by Council to Boggabri and the Council issues a GST invoice to Boggabri then Boggabri must pay the amount of the GST to Council following receipt of the invoice.

13 Costs

Each of the Council and Boggabri must pay its own costs in relation to the negotiation, preparation and execution of this Agreement.

14 Further acts

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

15 Explanatory Note

The Explanatory Note must not be used to assist in construing this Agreement.

16 Waiver

- 16.1 A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right.
- 16.2 Delays by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

17 Guarantee by Idemitsu

- 17.1 For the purposes of this clause 17:
 - a. **Control** means the same as in the *Corporations Act 2001* (Cth).
 - b. **Controller** means the entity which is in Control of Boggabri.
 - c. **Guarantee Deed** means a deed whereby Idemitsu is released from Liability under the Guarantee which is assumed by the new Controller.
 - d. **Liability** means the responsibility for the Guarantee arising from (then) pre-existing defaults or future defaults by Boggabri.
- 17.2 Idemitsu unconditionally and irrevocably guarantees to the Council the due and punctual performance by Boggabri of its obligations to Council under this Agreement (**Guarantee**).
- 17.3 Idemitsu as the Controller of Boggabri gives the Guarantee to Council in consideration of the Council entering into this Agreement with Boggabri.

- 17.4 This Guarantee is a continuing guarantee and remains in full force and effect for so long as:
- a. Boggabri has any obligations to the Council under this Agreement; or
 - b. Idemitsu is the Controller of Boggabri.
- 17.5 On any change of Control of Boggabri, Idemitsu must cause the new Controller of Boggabri to provide the Guarantee to Council.
- 17.6 If required by Idemitsu or the Council the Council, Boggabri, Idemitsu and the new Controller of Boggabri must at the cost of Boggabri enter into a Guarantee Deed to effectively implement the Guarantee for the benefit of the Council.

18 Novation by Boggabri

- 18.1 For the purposes of this clause 18:
- a. **New Owner** means a party that becomes entitled to exercise the Boggabri Approval.
 - b. **Novation Deed** means a 'deed' whereby the New Owner is substituted for Boggabri in this Agreement as to all Rights and Obligations.
 - c. **Novation Date** means the effective date of the Novation Deed.
 - d. **Rights** means all of the powers and entitlements of Boggabri, both past and future provided in this Agreement.
 - e. **Obligations** means as to Boggabri all of the duties, functions and responsibilities of Boggabri, both past and future provided in this Agreement and as to Idemitsu the Guarantee.
- 18.2 Boggabri must novate its position under this Agreement to any New Owner of the Development.
- 18.3 When required by Boggabri the Council, Idemitsu, Boggabri and the New Owner must, at the cost of Boggabri, enter into a Novation Deed.
- 18.4 From the Novation Date the:
- a. New Owner stands in the position of Boggabri under this Agreement: as to its Rights and its Obligations; and
 - b. Council releases and discharges Boggabri and Idemitsu from all Obligations.

19 Disputes under this Agreement

19.1 Not Commence

A party must not commence any court proceedings relating to a dispute of any matter under this Agreement (**Dispute**) unless it complies with this clause 19.

19.2 Written Notice of Dispute

A party claiming that a Dispute has arisen under or in relation to this Agreement must give notice (**Dispute Notice**) to the other parties specifying the nature of the Dispute.

19.3 Attempt to Resolve

On receipt of a Dispute Notice 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.

19.4 Mediation

If the parties do not agree within seven (7) days of the Dispute Notice (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 of the independent person required for such technique;

the parties must mediate the dispute (**Mediation**) in accordance with the Mediation Rules of the Law Society of New South Wales (or any replacement).

19.5 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 reference and remuneration.

19.6 Court Proceedings

If the Dispute is not resolved within forty two (42) days after the Dispute Notice any party which has complied with the Mediation provisions of this clause may in writing terminate the Mediation and may then commence court proceedings in relation to the Dispute.

19.7 Not Use Information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement in the Mediation is to attempt to settle the Dispute. No party may use any information or documents obtained through the Mediation for any purpose other than the Mediation.

19.8 No Prejudice

This provision with regard to Mediation 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.

20 Notices

20.1 Any notice, demand, consent or other communication given or made under this document must be:

- a. clearly readable;
- b. signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
- c. left at the address or sent by pre-paid security post to the address or to the fax number of the recipient.

20.2 A party may change its address or fax number for the purpose of service by giving notice of that change to the other party.

20.3 Any communication will be taken to be received by the recipient:

- a. in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;

- b. in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the fax number of the recipient; and
- c. if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at the commencement of the next Business Day.

21 General

21.1 Counterparts

This Agreement may be executed in any number of counterparts.

21.2 Entire Agreement

The contents of this Agreement constitute the entire Agreement between the parties with regard to the Boggabri Approval.

21.3 Variation

This Agreement can only be varied by a later written document executed by or on behalf of all parties.

Schedule 1 Contribution Schedule

Boggabri must make the following Development Contributions following the receipt of an appropriate tax invoice (to be issued at least 28 days prior to the required date for payment) in respect of each separate payment from Council:


Amount	Time for Payment	Use of Funds for Community Benefit
\$1,600,000	1 July 2013	To be applied to the upgrade of Boggabri Caravan Park and Swimming Pool Complex.
\$200,000	1 July 2012	Community contribution to the Boggabri Home and Community Care Centre to be applied to the purchase of its current premises and any upgrade of those premises.
\$4,300,000	1 July 2014	Funds to be applied to the replacement of the bridge across the Namoi River (and other works) on Harparary Road.
\$2,500,000	1 July 2013	Funds to be applied to the upgrade of the Narrabri Aquatic Centre to assist in it becoming a 365 day per year facility.
\$100,000	1 July 2013	Funds to be applied to "Environment" Developments within proximity of the Boggabri Mining Precinct as directed by the Boggabri Coal Community Consultative Committee (CCC).

Schedule 2 Explanatory Notes

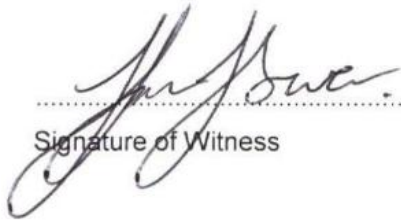
Annexure A Signing page

Executed as a deed

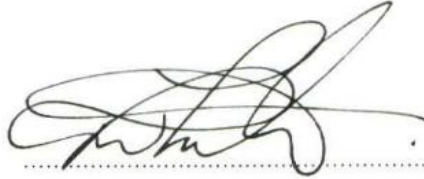
**Signed for the Narrabri Shire Council by)
the Mayor and General Manager in the)
presence of:**



Signature of Mayor



Signature of Witness



Signature of General Manager

Ken Flower

Print name of Witness

**Executed by Boggabri Coal Pty Ltd ABN)
77 122 087 398 by an authorised officer in)
the presence of:)
)**

Signature of Director

Signature of Director/Secretary

Print name of Director

Name of Director/Secretary

Office held