

Planning Agreement

MACH Energy Australia Pty Limited
ACN 608 495 441

Muswellbrook Shire Council
ABN 86 864 180 944

2024

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THIS AGREEMENT is made on

2024

BETWEEN:

- (1) **MACH Energy Australia Pty Limited** (ACN 608 495 441) of Level 3, Suite 302, 251 Wharf Road, Newcastle NSW 2300 ("**MACH Energy**"); and
- (2) **Muswellbrook Shire Council** (ABN 86 864 180 944) of 60-82 Bridge St, Muswellbrook NSW 2333 (the "**Council**").

(collectively, the "**Parties**")

INTRODUCTION

- (A) MACH Energy owns or otherwise lawfully occupies the Land and is the proponent of the Existing Project and the Optimisation Project that is authorised to be conducted on the Land under the Existing Consent and the SSD Consent respectively.
- (B) The SSD Consent was granted for the Optimisation Project by the NSW Independent Planning Commission on 6 September 2022.
- (C) Prior to the grant of the SSD Consent, MACH Energy offered Council to make the Monetary Contributions and Other Contributions.
- (D) Condition A16 of Schedule 2 of the SSD Consent requires MACH Energy to enter into a planning agreement in accordance with Division 7.1 of Part 7 of the Act and MACH Energy's offer in Appendix 7 of the SSD Consent.
- (E) MACH Energy has offered to enter into this Agreement with the Council to provide the Public Benefits on the terms of this Agreement and to satisfy condition A16 of Schedule 2 of the SSD Consent.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

1.1 Definitions

The following definitions apply in this document.

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

Agreement means this document.

Authorisation means

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, instrument, plan, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Days means a day other than a Saturday, Sunday or public holiday or bank holiday in New South Wales and concludes on 5 pm that day.

Care and Maintenance means the circumstances in which MACH Energy has notified the Department, pursuant to condition A12(e) of the SSD Consent, that all Mining Operations have temporarily ceased with the potential to recommence Mining Operations at a later date.

Claims means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity under statute or otherwise.

Commencement Date means the date this Agreement is executed by all parties.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; and
- (d) is information which may be reasonably considered to be of a confidential nature.

Consent authority has the same meaning as in the Act.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the All Group Consumer Price Index for New South Wales as published by the Australian Bureau of Statistics.

Dealing means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

Department has the same meaning as given to that term in the Existing Consent, and includes that department in any successor or renamed form.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

EPBC Referral means the referral no 2020/8735 made in respect of the Optimisation Project.

Existing Consent means the development consent granted in respect of development application DA 92/97 under the Act on 22 December 1999 by the Minister for Urban Affairs and Planning in respect of the Existing Project, as modified from time to time.

Existing Development Contribution has the same meaning as Development Contribution in the Existing Project VPA.

Existing EPBC Approval means the approval granted under the EPBC Act in respect of referral no 2011/5795 for the Existing Project, as varied from time to time.

Existing Project means the Mount Pleasant Coal Project.

Existing Project VPA means the voluntary planning agreement dated 9 December 2011 entered into by Council and Coal & Allied Operations Pty Limited in respect of the Existing Project, which was subsequently novated to MACH Energy by deed dated 16 May 2017 and to MACH Mount Pleasant Operations Pty Ltd by deed dated 6 July 2018.

Explanatory Note means the explanatory note required by clause 205 of the Regulation.

Force Majeure Event affecting a Party means anything outside that Party's reasonable control including, but not limited to, fire, storm, flood, drought, earthquake, failure of major dam, explosion, war, invasion, pandemic, rebellion, sabotage, epidemic, labour dispute, failure or delay in transportation and acts or omissions (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies).

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land that is identified in Appendix 1 to the SSD Consent.

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, Authorisation, consent or condition of Authorisation or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter.

Local Government Area means the local government area of Muswellbrook and those organisations and natural persons residing within that area.

MACH Mount Pleasant means MACH Mount Pleasant Operations Pty Ltd (ACN 625 627 723).

Minister means the Minister administering the Act.

Mining Operations means the carrying out of mining as part of the Optimisation Project, including the extraction, processing, stockpiling and transportation of coal on the site and the associated removal, storage and/or emplacement of vegetation, topsoil, overburden, tailings and reject material.

Monetary Contribution means that part of the Public Benefits described as "Monetary Contributions" in clause 1 of Schedule 3 to be paid by MACH Energy in accordance with this document.

New Development Contribution means the Public Benefits required by this Agreement.

Optimisation Project means the optimisation of the Existing Project to extract an additional 247 Mt of ROM coal, by deepening and extending part of the open cut areas and other development activities as authorised by the SSD Consent.

Other Contributions means that part of the Public Benefits described as "Other Contributions" in clause 1 of Schedule 3 to be provided by MACH Energy in accordance with this Agreement.

Part Land means Lot 7 in Deposited Plan 821183, Lot 2 in Deposited Plan 801249 and Lot 6 in Deposited Plan 821183.

Planning Agreement has the meaning set out in section 7.4 of the Act.

Proceedings means:

- (a) Land and Environment Proceedings No 2022/00367759 challenging the validity of the SSD Consent;
- (b) any Federal Court proceedings commenced against an approval granted under the EPBC Act in respect of the EPBC Referral; and
- (c) any appeals from the proceedings referred to in (a) and (b).

Public Benefits means the provision of benefits to the community by MACH Energy in the form specified in Schedule 3, specifically the Monetary Contribution and Other Contributions.

Redetermination Application means any application made by MACH Energy or a related body corporate (including MACH Mount Pleasant) under the Act for the redetermination of the Optimisation Project following the making of a declaration of invalidity in respect of the SSD Consent by a court of competent jurisdiction in any Proceedings concerning the SSD Consent.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

SSD Application means the State significant development application SSD-10418 made by MACH Energy for development consent under the Act to carry out the Optimisation Project.

SSD Consent means the development consent granted on 6 September 2022 in respect of the SSD Application for the Optimisation Project by the Independent Planning Commission under the Act, as modified from time to time.

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement (including this Agreement), or a provision of a document or agreement (including this Agreement), is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.

- (b) the provisions (including the definitions in clause 1.1) of this Agreement are intended to be applied from the Commencement Date;
- (c) a singular word includes the plural, and vice versa;
- (d) a word which suggests one gender includes the other genders;
- (e) "written" means in printed form on paper or in an electronic form that is capable of being printed on paper by normal office equipment;
- (f) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
- (g) this Agreement is not to be interpreted against the interests of a party merely because that party proposed this Agreement or some provision in it or because that party relies on a provision of this Agreement to protect itself;
- (h) the **schedules** and **annexures** form part of this document;
- (i) a reference to **including** and **includes** means "including, without limitation";
- (j) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (k) Words defined in the GST Act have the same meaning in clauses about GST;
- (l) an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons, binds them jointly and severally; and
- (m) references to dollars and "\$" are to be taken as referring to an amount in Australian currency.

1.3 **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.

2. **Application of the Act and Regulation**

2.1 **Application of this Agreement**

This Agreement is a Planning Agreement and applies to:

- (a) the Land; and
- (b) the Optimisation Project.

2.2 **Application of sections 7.11, 7.12 and 7.24 of the Act**

- (a) This Agreement excludes the application of section 7.11 of the Act to the Optimisation Project
- (b) This Agreement excludes the application of section 7.12 of the Act to the Optimisation Project
- (c) This Agreement excludes the application of section 7.24 of the Act to the Optimisation Project.

2.3 Practice note

The Council has considered the Department's Planning Agreements Practice Note dated February 2021 in negotiating and entering into this Agreement.

2.4 Explanatory note

The explanatory note prepared in accordance with clause 205 of the Regulation must not be used to assist in construing this Agreement.

3. Application, Operation, Registration and Termination of this Agreement

3.1 Operation

This Agreement commences on the Commencement Date.

3.2 Interim Arrangements Under the Existing VPA

The Parties acknowledge and agree that:

- (a) as at the date of this Agreement, MACH Energy continues to carry out the Existing Project under existing Statutory Approvals, including the Existing Consent and the Existing EPBC Approval;
- (b) MACH Energy has notified the Department of the commencement of the Optimisation Project under condition A12(a) of the SSD Consent;
- (c) during the period when both the Existing Consent and the SSD Consent are in force and any Proceedings are not finally determined:
 - (i) MACH Energy will continue to pay the Existing Development Contribution under the Existing Project VPA;
 - (ii) MACH Energy will not pay the New Development Contribution under this Agreement; and
- (d) once the Existing Consent is surrendered in accordance with:
 - (i) condition A14 of the SSD Consent; and
 - (ii) the Act and the Regulation,and notice of this surrender is provided by MACH Energy to the Council, MACH Energy will cease to pay the Existing Development Contribution under the Existing Project VPA and will commence to pay the New Development Contribution under this Agreement.
- (e) For the avoidance of doubt:
 - (i) the Existing Project VPA will terminate upon the surrender of the Existing Consent in accordance with condition A14 of the SSD Consent, the Act and the Regulation; and
 - (ii) this Agreement is taken to constitute a modification of the terms of the Existing Project VPA for the purposes of clause 29 of the Existing Project VPA.

3.3 Satisfaction of Development Contributions

The Parties acknowledge, as between the Parties, that:

- (a) this Agreement provides full and final satisfaction by MACH Energy of the Public Benefits required to be delivered by MACH Energy to the Council under condition A16 of the SSD Consent;

- (b) no additional contributions (other than those stipulated in Schedule 3 of this Agreement) will be required in relation to any modifications of the Optimisation Project or SSD Consent that do not:
 - (i) materially increase the impacts of the Optimisation Project; and
 - (ii) result in increased demand for public amenities and public services within the Council's Local Government Area;
- (c) For the avoidance of doubt, this Agreement satisfies condition A16 of Schedule 2 of the SSD Consent only.

3.4 **Registration of this Agreement**

- (a) MACH Energy represents and warrants to Council that as at the date of this Agreement it has obtained the consent of each person who has an estate or interest in the Part Land registered under the *Real Property Act 1900* (NSW) to enable registration of this Agreement pursuant to this clause.
- (b) MACH Energy agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) on the relevant titles to the Part Land in accordance with section 7.6 of the Act.
- (c) MACH Energy, at its own expense, will within 3 months after the date of this Agreement, take all practical steps, and otherwise do anything that Council reasonably requires to procure the registration of this Agreement on the titles to the Part Land under the *Real Property Act 1900* (NSW).
- (d) When requested to do so after termination of this Agreement, Council will, at MACH Energy's expense, promptly execute such documents and take such steps as may reasonably be required to remove notification of registration of this Agreement from the title to the Part Land.

3.5 **Termination**

This Agreement terminates on:

- (a) the making of a declaration by a court of competent jurisdiction in any Proceedings that either the SSD Consent or an approval granted under the EPBC Act in respect of the EPBC Referral is invalid; or
- (b) the date Mining Operations cease under the SSD Consent,

whichever is the earliest.

3.6 **Redetermination Application**

The Parties agree that if any Redetermination Application is made, each will use its best endeavours to enter into a new Planning Agreement in respect of the Mount Pleasant Optimisation Project which is on terms that are, to the greatest extent that is reasonable and practicable, materially the same as the terms of this document.

4. **Warranties**

4.1 **Mutual Warranties**

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to enter into this Agreement and to carry out the transactions that it contemplates;

- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and to carry out the transactions contemplated;
- (c) **(documents effective)** this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping;
- (d) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (e) **(no controller)** no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

5. **Enforcement**

5.1 **Interest**

- (a) MACH Energy agrees to pay interest on any amount under this Agreement which is not paid on the due date for payment. Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (b) The rate of interest applying to each daily balance is the maximum rate permitted to accrue on unpaid rates by Section 566(3) of the Local Government Act 1993 (NSW).

5.2 **Default**

- (a) If MACH Energy fails to pay a Monetary Contribution or deliver an Other Contribution within 28 days of the due date for the respective Monetary Contribution or Other Contribution under this Agreement, the Council may provide a notice to MACH Energy (**Default Notice**) giving particulars of the outstanding amounts and requiring the default to be remedied within a reasonable time, not being less than 10 Business Days.
- (b) If MACH Energy disputes a Default Notice, it may refer the dispute to dispute resolution under clause 8 of this Agreement.

5.3 **Commencement of proceedings by Council**

If MACH Energy, upon receipt of a Default Notice under clause 5.1 of this Agreement, fails to remedy the default within the time specified by the Default Notice (such time to be reasonable and not less than 10 Business Days), then Council may refer the matter subject to the Default Notice to dispute resolution under clause 8 of this Agreement.

6. **Public Benefit**

6.1 **MACH Energy to provide Public Benefits**

- (a) MACH Energy must, at its cost and risk, provide the Public Benefits to the Council in accordance with this Agreement.
- (b) The Monetary Contributions of the Public Benefits paid in accordance with Schedule 3 must be paid by cash, bank cheque made payable to Muswellbrook Shire Council or by electronic transfer into a bank account, the details of which are to be provided by the Council to MACH Energy.
- (c) A Monetary Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by deposit by means of electronic funds transfer of cleared funds into the bank account nominated by the Council.

7. Suspension of the Community Monetary Contributions

7.1 Grounds for suspension

- (a) If the Optimisation Project is placed into Care and Maintenance, MACH Energy may reduce the payment of any Monetary Contribution during the period the Optimisation Project is subject to Care and Maintenance as follows:
 - (i) the contribution in item 1 in Schedule 3 (Community Benefits) by 90%;
 - (ii) the contribution in item 2 in Schedule 3 (Council Road Maintenance) by 90%; and
 - (iii) the contribution in item 4 in Schedule 3 (Apprenticeships) by 100%.
- (b) If the Optimisation Project is placed into Care and Maintenance and it remains in Care and Maintenance continuously for 10 years, either party may thereafter give written notice to the other party terminating this Agreement.
- (c) For the avoidance of doubt, if the Optimisation Project ceases to be subject to Care and Maintenance following a period of time under clause 7.1(a), payment of the Monetary Contribution and delivery of the Other Contribution will recommence. Where the Monetary Contribution is payable on an annual basis, the Monetary Contribution will be payable on a pro rata basis according to any part of a year in which the Optimisation Project is operational.

7.2 MACH Energy to give notice

MACH Energy is required to give written notice to the Council at least 10 Business Days prior to the date it intends to suspend the payment of any Monetary Contribution or delivery of any Other Contribution in accordance with clause 7.1.

8. Dispute Resolution

Any Dispute must be determined in accordance with the procedure in this clause 8.

8.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

- (a) If any Dispute arises, a Party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the MACH Energy's Representative and the Council's Representative for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 8; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any provisions of this Agreement and acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.

8.3 **Attempt to resolve**

On receipt of notice under clause 8.2, the parties must promptly (and in any event within 10 Business Days) meet in good faith to attempt to resolve the dispute using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

8.4 **Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (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; or
- (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 NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 **Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 **No prejudice**

This clause 8 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.

9. **Dealings**

9.1 **General Dealings**

Any proposed Dealing must not take effect until this Agreement has been registered against the title to the Land.

9.2 **Dealing by the Council**

- (a) The Council may Deal with its interest in this document without the consent of MACH Energy if the Dealing is with a Government Agency. The Council must give MACH Energy notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The Council may not otherwise Deal with its interest in this document without the consent of MACH Energy, such consent not to be unreasonably withheld or delayed.

9.3 **Dealing by MACH Energy**

MACH Energy must not Deal with its rights or obligations under this document unless, prior to any Dealing, MACH Energy procures that the transferee, assignee or novatee executes and delivers to the Council prior to any such Dealing taking effect, a deed in favour of the Council whereby:

- (a) the transferee, assignee or novatee or dealer becomes contractually bound with the Council to perform all of MACH Energy's obligations under this Agreement (including obligations which may have arisen before the Dealing takes effect); and

- (b) the transferee, assignee, novatee or dealer warrants to Council that it has the financial resources and skills necessary to carry out MACH Energy's obligations under this Deed; and
- (c) MACH Energy is released from any obligations under or by virtue of this Agreement which at the time of the proposed Dealing contemplated by this clause are required to be performed or satisfied by MACH Energy at any time from or after the date on which that Dealing takes effect under this Agreement.

10. **Taxes and GST**

10.1 **Responsibility for Taxes**

- (a) MACH Energy is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this Agreement or the Public Benefits.
- (b) MACH Energy must indemnify the Council in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which MACH Energy is responsible under clause 10.1(a).

10.2 **Defined GST terms**

Capitalised terms in this clause 10 have the meaning ascribed to them in the GST Law.

10.3 **Supply subject to GST**

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.

10.4 **GST obligations survive termination**

This clause 10 will continue to apply after expiration or termination of this Agreement.

11. **The Council's position**

11.1 **Planning Agreement does not fetter Discretion**

This Agreement is not intended to operate to fetter, in any manner, the:

- (a) power of the Council to make any law; or
- (b) exercise by the Council of any statutory power or discretion (all referred to in this Agreement as a "**Discretion**").

11.2 **Severance of provisions**

- (a) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 11 is substantially satisfied; and
 - (ii) in the event that clause 11.2(a)(i) cannot be achieved without giving rise to a fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect.

12. Notices

- (a) A notice, consent or other communication under this Agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.
- (b) A party's address and email address are those set out in Schedule 1 for the Council's Representative and MACH Energy's Representative, or as the party notifies the sender in writing from time to time.

13. Confidentiality

13.1 Agreement not Confidential

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

13.2 Other Confidential Information

- (a) (a) The Parties acknowledge that:
 - (i) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this Agreement; and
 - (ii) the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Agreement.
- (b) Subject to clauses 13.2(c) and 13.2(d), each Party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this Agreement to any person without the prior written consent of the Party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this Agreement is kept confidential and protected against unauthorised use and access.
- (c) A Party may disclose Confidential Information in the following circumstances:
 - (i) in order to comply with the Law, state government policy, local government policy or any listing rule; or
 - (ii) to any of its servants, employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the servants, employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (d) The obligations of confidentiality under this clause 13 do not extend to information which is public knowledge other than as a result of a breach of this clause.

14. General Provisions

14.1 Relationship between the parties

- (a) Nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties.

- (b) No Party has the authority to bind any other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other Party or to pledge any other Party's credit.
- (c) If a Party must fulfill an obligation and that Party is dependent on another Party, then that other Party must do each thing reasonably within its power to assist the other in the performance of that obligation.

14.2 **Governing Law**

- (a) This Agreement is governed by the laws of New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.

14.3 **Operation of this Agreement**

- (a) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

14.4 **Amendment**

This Agreement can only be amended or replaced by another document executed by the Parties.

14.5 **Waiver**

A right may only be waived in writing, signed by the Party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

14.6 **Giving effect to this Agreement**

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.

14.7 **Time for doing acts**

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this document,
 expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

14.8 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

14.9 Preservation of existing rights

The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

14.10 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

14.11 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

14.12 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this Agreement.
- (b) A party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

14.13 Costs

- (a) MACH Energy must pay to Council the Council's reasonable costs (exclusive of GST) and disbursements in connection with the negotiation, preparation, execution, registration and release and discharge of this Agreement and any other document relating to this Agreement, and for all advertising and associated costs, within 7 days of a written demand by Council for such payment.
- (b) MACH Energy's liability under clause 14.13(a) is capped to a maximum amount of \$5,000 plus GST.

EXECUTED as an agreement.

EXECUTED for and on behalf of **MACH
Energy Australia Pty Limited** pursuant to s
127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name of director

Name of signatory

Signed for and on behalf of **MUSWELLBROOK**)
SHIRE COUNCIL ABN 86 864 180 944 by its)
authorised delegate under section 377 of the)
Local Government Act 1993 in the presence of:)
)
)
)

.....
Signature of Witness

.....
Derek Finnigan, General Manager

.....
Print name of Witness

Schedule 1

Requirements und the Act and Regulation (clause 2)

Item	Section of Act or Regulation	Provision/Clause of this Agreement
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</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 Development Application, or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes – the SSD Application</p> <p>(c) No</p>
2.	Description of land to which this document applies (section 7.4(3)(a) of the Act)	Clause 1.1 (definitions of "Land" and "SSD Consent") and clause 2.1 of this Agreement.
3.	Description of the development to which this document applies (section 7.4(3)(b) of the Act)	Clause 1.1 (definitions of "Optimisation Project", "Mining Operations" and "SSD Consent") and clause 2.1 of this Agreement.
4.	The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)	Schedule 3 of this Agreement.
5.	Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)	Clause 2.2 of this Agreement.
6.	Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)	Clause 2.2 of this Agreement.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Not applicable. This Agreement excludes section 7.11 of the Act: see clause 2.2 of this Agreement.

Item	Section of Act or Regulation	Provision/Clause of this Agreement
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 8 of this Agreement.
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 5 of this Agreement.
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 11 of this Agreement.
11.	Registration of this document (section 7.6 of the Act)	See clause 3.5 of this Agreement.
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued	Not Applicable
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued	Not Applicable
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued	Not Applicable
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document	Clause 2.4 of this Agreement.

Schedule 2

Agreement Details

Item	Term	Description
1.	Land	See Appendix 1 of SSD Consent.
2.	Council's Representatives	Name: The General Manager Address: 60-82 Bridge Street, Muswellbrook NSW 2333 Email: council@muswellbrook.nsw.gov.au
3.	MACH Energy's Representatives	Name: The Company Secretary Address: Level 3, Suite 302, 251 Wharf Road, Newcastle NSW 2300 Email: legal@machenergy.com.au

Schedule 3

Public Benefits (Clause 6)

1. Public Benefits - Overview

MACH Energy must provide the Public Benefit in accordance with Schedule 3 and this document. The amount, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below.

	Item	Public Benefit	Amount/date and specification
1.	Mount Pleasant Community Contribution	Monetary Contribution (Annual Contribution)	<p>\$604,079 per annum (indexed annually according to CPI). The first per annum contribution is to be paid within 10 Business Days after the date on which MACH Energy provides notice of the surrender of the Existing Consent to Council under clause 3.2(d) of this Agreement (First Due Date for Mount Pleasant Community Contribution). The second per annum contribution is to be paid within 12 months of payment of the First Due Date for Mount Pleasant Community Contribution, with each subsequent per annum contribution paid within 12 months of the date on which the per annum contribution was paid in the immediately previous year.</p> <p>Funds will be managed as part of the Muswellbrook Shire Community Benefit Fund (MSCBF) or in the interim where the MSCBF is not in place, a community representative committee will be established, including MACH Energy representatives, to make recommendations to Council regarding these community contributions.</p>
2.	Council Road Maintenance Costs	Monetary Contribution (Annual Contribution)	<p>Costs associated with the maintenance of roads, as reasonably apportioned to use the road by Mount Pleasant, of an annual payment of \$277,863 per annum (indexed annually according to CPI). The first per annum contribution is to be paid within 10 Business Days after the date on which MACH Energy provides notice of the surrender of the Existing Consent to Council under clause 3.2(d) of this Agreement (First Due Date for Council Road Maintenance Contribution). The second per annum contribution is to be paid within 12</p>

Item	Public Benefit	Amount/date and specification
		<p>months of payment of the First Due Date for Council Road Maintenance Contribution, with each subsequent per annum contribution paid within 12 months of the date on which the per annum contribution was paid in the immediately previous year.</p> <p>This contribution will be made for the recurrent road maintenance to be used at the Council's discretion for that purpose.</p>
3.	Environmental Officer	<p>Monetary Contribution (Annual Contribution)</p> <p>MACH Energy to make contributions to an Environmental Officer, of an amount of \$24,169 per annum (indexed annually according to CPI). The first per annum contribution is to be paid within 10 Business Days after the date on which MACH Energy provides notice of the surrender of the Existing Consent to Council under clause 3.2(d) of this Agreement (First Due Date for Environmental Officer Contribution). The second per annum contribution is to be paid within 12 months of payment of the First Due Date for Environmental Officer Contribution, with each subsequent per annum contribution paid within 12 months of the date on which the per annum contribution was paid in the immediately previous year.</p>
4.	Apprenticeships	<p>Other Contributions (Annual Contribution)</p> <p>MACH Energy to use its best endeavours to engage 4 apprentices per year for the life of the mine sourced from residents within the Muswellbrook Shire and Aberdeen.</p> <p>The first apprentices engagement is to occur within 12 months after the date on which MACH Energy provides notice of the surrender of the Existing Consent to Council under clause 3.2(d) of this Agreement (First Due Date for Apprentices Engagement). The second apprentices engagement is to be delivered within 12 months of the First Due Date for Apprentices Engagement, with each subsequent apprentices engagement to occur within 12 months of the date on which the contribution was previously delivered.</p>

Item	Public Benefit	Amount/date and specification
		<p>For the avoidance of doubt, provided that MACH Energy has:</p> <p>used its best endeavours to engage 4 apprentices per year for the life of the mine sourced from residents within the Muswellbrook Shire and Aberdeen; and</p> <p>made all reasonable and feasible endeavours to engage apprentices who are permanent residents of the Muswellbrook Shire Local Government Area,</p> <p>there is no obligation on MACH Energy to engage 4 apprentices per year for the life of the mine where its use of best endeavours or reasonable and feasible endeavours (as the case may be) has left it unable to deliver this Other Contribution, either wholly or in part.</p>

1.1 Indexation (Annual Contribution)

The Annual Contribution must be indexed as follows:

Annual Contribution (to be provided) =

Annual Contribution x (A/B)

where:

Annual Contribution is the contribution as per item(s) 1,2 and 3 of clause 1 above as increased by CPI annually from the Commencement Date.

A is the CPI Index Number most recently published before the annual anniversary of the Commencement Date;

B is the CPI Index Number most recently published before the date this Agreement commenced in accordance with clause 3.1 of this Agreement.

Notwithstanding any other provision to the contrary, the contributions in this Schedule 3 are indexed annually according to CPI from the Commencement Date irrespective of when the contribution payments are to commence.

If after the formula is applied the new Annual Contribution will be less than the Annual Contribution immediately before the indexation, the Annual Contribution will not be adjusted.

1.2 No Trust

Nothing in this Agreement creates any form of trust arrangement or fiduciary duty between the Council and MACH Energy.