

# **PLANNING AGREEMENT**

New Cobar Complex  
Underground Project  
(SSD-10419)

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Peak Gold Mines Pty Ltd

and

Cobar Shire Council

# Planning Agreement

## New Cobar Complex Underground Development

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## Details

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### Parties

Name **Cobar Shire Council**  
ABN **71 579 717 155**  
Short form name **CSC**  
Notice details 36 Linsley Street (PO Box 223) Cobar, NSW 2835  
  
Phone: (02) 6836 5812  
  
Fax: (02) 6836 3964  
  
Email: peter.vlatko@cobar.nsw.gov.au; mail@cobar.nsw.gov.au  
  
Attention: The General Manager

Name **Peak Gold Mines Pty Ltd**  
ABN **63 001 533 777**  
Short form name **Developer**  
Notice details Peak Gold Mines Pty Ltd  
  
Street Address: Hillston Road Cobar NSW 2835  
Phone: (02) 6830 2351  
Email: craig.thomas@aureliametals.com.au; office@aureliametals.com.au  
  
Attention: The General Manager

### Background

A Peak Gold Mines Pty Ltd, is a wholly owned and operated subsidiary of Aurelia Metals Limited (Aurelia). It owns and operates the Peak Gold Mines operation at Cobar, NSW, comprising the New Cobar Complex and the nearby Peak Complex.

The Peak Complex has been operational since 1991. The New Cobar Complex has been operational since 2000 with the development of the New Cobar open cut. The underground decline commenced in 2004 and has been operational since this time.

The New Cobar Complex Project [State Significant Development (SSD 10419)] (the **Project**) is an amalgamation of existing underground mining operations and development of new underground workings. Refer to Schedule 2 of this Agreement. The Project is defined by the Project Boundary (pink line).

Approval is also being sought to consolidate all existing development approvals applicable to the New Cobar Complex into a single consent issued by DPIE and to extend the life of the New Cobar Complex by 12 years, until 2035.

The current development approvals at the Peak Complex allow for the operations to continue indefinitely and process up to 800,000 tonnes per annum of ore.

Ore processing, tailings storage and concentrate handling is undertaken at the Peak Complex with ore from the New Cobar Complex trucked by public road to processing facilities at the Peak Complex. Ore truck movements to the Peak Complex will increase from an average of 25 movements to 50 movements per day.

B Peak Gold Mines Pty Ltd (the Developer) and Cobar Shire Council have negotiated a Planning Agreement whereby the Developer agrees to provide the Development Contributions in accordance with the terms and conditions of this Agreement.

## Agreed terms

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### 1. Defined terms & interpretation

#### 1.1 Defined terms

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

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

**Agreement** means this Planning Agreement including any schedules.

**Approval** means any consent, modification, certificate, licence, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or agency.

**Business Day** means any day except for a Saturday, Sunday, or bank or public holiday in New South Wales.

**Cash Rate** means the interest rate determined by the Reserve Bank of Australia which banks pay to borrow funds from other banks in the money market on an overnight basis. For the avoidance of doubt, the term Cash Rate has the same meaning as that adopted by the Reserve Bank of Australia.

**Change in Control** means a change in ownership, directly or indirectly, of more than 50% of the voting shares of the Developer.

**Commencement Date** means the date on which this Agreement comes into operation in accordance with clause 4.

**Community Enhancement Contributions** means financial assistance intended to be allocated to local projects that increase the amenity of Cobar to attract and retain potential residents. Priority shall be given to local projects that directly contribute to the education, health and wellbeing of the residents of Cobar.

**CPI** means the All-Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

**Council** means CSC.

**Developer** means Peak Gold Mines Pty Ltd

**Development** means the New Cobar Complex Underground Development that is the subject of the Development Consent (once issued).

**Development Application** has the same meaning as in section 4 of the Act.

**Development Consent** means the consent issued by the Minister for Planning and Public Spaces in respect of the New Cobar Complex Underground Development, namely State Significant Development (SSD) number 10419.

**Development Contributions** means the financial contributions to be made by the Developer to CSC for a Public Purpose in accordance with clause 5.

**DPIE** means the NSW Department of Planning, Industry and Environment.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same 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.

**Interest Rate** means the rate which is the Cash Rate as set by the Reserve Bank of Australia as at the date that payments fall due, plus a margin of 2% per annum.

**Land** means the land subject to this Planning Agreement and listed in Schedule 2

**Law** means:

- (a) the common law including principles of equity;
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations and by-laws; and
- (c) any Approval, including any condition or requirement under it.

**LGA** means the Local Government Area

**LPMA** means the Land and Property Management Authority of NSW or any other Authority replacing it.

**Mining Operations** has the same meaning as in the Development Consent.

**Modification** means a modification to the Development Consent that would result in changes to the approved Development.

**Party** means a party to this Agreement, including their successors and assigns.

**Planning Agreement** has the same meaning as in section 7.1 of the Act.

**Project** means the development as described in the EIS and the subsequent Development Consent (once issued).

**Public Purpose** has the same meaning as in the Act and includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) ) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.

**Register** means the Torrens Title register maintained under the *Real Property Act 1900* (NSW).

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**Reserve Bank of Australia** means Australia's central bank as constituted under the *Reserve Bank Act 1959* (Cth).

**Tax Invoice** has the same meaning as in the GST Law.

**Term** means from the Commencement Date of the Planning Agreement until the cessation of Mining Operations and Rehabilitation as specified in the Development Consent (once issued).

## **1.2 Interpretation**

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney, NSW, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

## **2. Planning Agreement under the Act**

The Parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.



### **3. Application of this Agreement**

This Agreement applies to the Land and to the Development.

### **4. Operation of this Agreement**

This Agreement takes effect from the later of:

- (a) Development Consent for the Development is granted; and
- (b) the Agreement is entered into as required by clause 25C of the Regulation.

### **5. Development Contributions**

- (a) Subject to this Agreement, the Developer is to make the following Development Contributions in respect of the Development:
  - (i) Payment of the Community Enhancement Contributions in accordance with the following terms:
    - (A) Pay to CSC a once-off sign-on payment of \$75,000, payable within 30 days of CSC issuing a Tax Invoice to the Developer; and
    - (B) The Developer must notify CSC at least 30 days prior of the intention to commence construction of the Development or the Developer triggers adoption of the DPIE-issued conditions of the consent (for example, increased truck movements). On and from the commencement of construction of the Development or the Developer triggering the Development Consent (whichever occurs first) the Developer must pay to CSC \$250,000 per annum (payable within 30 days of CSC issuing a Tax Invoice to the Developer) comprising the following components:
      - \$150,000 per annum to a Community Enhancement Fund, for application to projects aimed at attracting and retaining people within Cobar; and
      - \$65,000 per annum to help promote the viability and advancement of the Cobar Early Learning Centre; and
      - \$35,000 per annum to provide enhanced resource capacity to CSC to oversee Development Consent management, other local consent management and this Agreement.
  - (ii) If at any time the Cobar Early Learning Centre enters a period of permanent or temporary shutdown, the \$65,000 per annum will not be payable. For clarity, a temporary shutdown must extend for greater than a 12 month period (i.e. if the Cobar Early Learning Centre is shutdown for three months, the full \$65,000 per annum is payable).
  - (iii) Subject to mine operations planning, it is anticipated that the the annual Community Enhancement Contributions under clause 5(a)(i) will first be payable from approximately mid-2023.
  - (iv) The payments specified in 5(a)(i)(B) are subject to CPI adjusted annually on the anniversary of the signing date. The payments shall be indexed in accordance with clause 6 at the time the Planning Agreement is signed.
  - (v) The quantum for the portion of the year between the anniversary date and the cessation of Mining Operations will be calculated pro-rata.

- (vi) The Developer will pay the contributions within 30 days of receiving a Tax Invoice. The contributions are deemed to be paid when cleared funds are deposited by means of electronic funds transfer into the bank account nominated by CSC.
- (vii) The Developer agrees to pay interest to CSC on any amount of the financial contributions from 28 days after they become due for payment, during the period that they remain unpaid, on demand, or at times determined by CSC, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate (adjusted to be a daily interest rate).
- (viii) Where the Developer has contributed financially towards projects, programs, activities, etc, CSC agrees to publicly acknowledge the Developer within 30 days of completing the work, should the Developer so desire, by way of published media release or social media. To determine the Developers desire to be acknowledged, CSC must proactively consult with the Developer prior to the completion of the project, program, activity, etc.
- (ix) CSC agrees to provide an annual performance report to the Developer which specifies how the abovementioned Development Contributions have been allocated, managed and accounted for. The annual performance report will be supplied to the Developer at the time CSC issues the Tax Invoice for the Development Contributions. The Developer is not obliged to pay the Tax Invoice, and will not be subject to interest or be in breach of this Agreement if the annual performance report is not provided at the same time as the Tax Invoice.
- (x) The annual performance report must include (as a minimum):
  - A Financial Statement including all incoming and outgoing monies and any amounts that have not been spent and are currently being held by CSC. This Financial Statement must include all monies payable under this Agreement.
  - A summary of all projects, programs, activities etc, that CSC used the Community Enhancement Funds to support in the previous 12 month period.
  - A summary of the known projects, programs, activities, etc, that CSC anticipates it will be using the Community Enhancement Fund to support in the next 12 month period and an estimate of the cost of each project, program, activities, etc.
  - CSC acknowledges and agrees that it will proactively engage with the Developer regarding projects, programs, activities, etc it intends to support with the Community Enhancement Fund. If the Developer is of the opinion that a project, program, activity, etc does not meet the intentions of the Community Enhancement Fund, CSC must, acting in good faith, take into account the reasonably held views of the Developer in relation to those projects, programs, activities, etc.

## 6. Indexation of Development Contributions

Where this Agreement provides that an amount is to be increased by CPI, then the amount will be increased in accordance the following formula:

$$A = B \times C/D$$

Where:

A = the current Development Contribution payable.

B = the contribution amount or rate stated in the Agreement.

C = the CPI most recently published before the date of payment for the current Development Contribution.

D = the CPI most recently published before the date of signing this Agreement.

## **7. Registration of this Agreement**

### **7.1 Registration of this Agreement**

- (a) Unless otherwise required by law, the Parties agree that this Agreement does not need to be registered against the title of the Land.

### **7.2 Release and discharge of this Agreement**

CSC agrees to:

- (a) provide a release and discharge of this Agreement with respect to the Land or any lot on the CSC's satisfaction of the completion of the Developer's obligations under this Agreement; and
- (b) do all things necessary, including the execution of any documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the Register held by the LPMA.

## **8. Dispute Resolution**

### **8.1 No arbitration or court proceedings**

If a dispute arises out of this Agreement (**Dispute**), a Party must comply with this clause 8 before starting arbitration or court proceedings (except proceedings for interlocutory or other urgent relief).

### **8.2 Notification**

- (a) A Party claiming a Dispute has arisen must give the other Party to the Dispute notice setting out details of the Dispute. The Dispute Notice must:
- (i) be in writing;
- (ii) 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 document acts, errors or omissions of any person, relevant to the Dispute; and
- (C) where applicable, the financial quantum in dispute and if not precisely known, the best estimate available.

### **8.3 Parties to resolve Dispute**

During the 30 days after a notice is given under clause 8.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them so requests.

### **8.4 Mediation**

- (a) If the Parties cannot resolve the Dispute within the 30 days, they must refer the Dispute to an accredited mediator if one of them so requests and the Parties must mediate the Dispute

in accordance with the Mediation Rules the Australian Institute of Arbitrators and Mediators.

- (b) If the Parties do not agree on a mediator, either Party may request the President of the Australian Institute of Arbitrators and Mediators select the mediator and determine the mediator's remuneration, the costs of which must be borne equally by the Parties.
- (c) The Parties commit to adopting a spirit of goodwill and compromise, with an equal sharing of power, to reach a resolution within 60 days.

### **8.5 Confidentiality**

Any information or documents disclosed by a Party under this clause 8:

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

### **8.6 Costs**

Each Party to a Dispute must pay its own costs of complying with this clause 8. The Parties to the Dispute must equally pay the costs of any Mediator.

### **8.7 Termination of process**

- (a) A Party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 8.1 to 8.3.
- (b) Clauses 8.5 and 8.6 survive termination of the dispute resolution process.

### **8.8 Breach of this clause**

If a Party to a Dispute breaches this clause 8, the other Party to the Dispute does not have to comply with those clauses in relation to the Dispute.

## **9. Enforcement**

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any Court of competent jurisdiction, subject to clause 8.
- (b) Nothing in this Agreement prevents:
  - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
  - (ii) CSC from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## **10. Termination**

- (a) This Agreement will terminate:
  - (i) on the declaration by a court of competent jurisdiction that the Development Consent for the Development on the Land is invalid; or
  - (ii) at the end of the Term.
- (b) In the event of termination of this Agreement, any funds that have been paid by the Developer as Development Contributions prior to termination:
  - (i) can continue to be expended in accordance with the terms of this Agreement; and
  - (ii) are not refundable by CSC to the Developer.

## 11. Force Majeure

- (a) The Developer's obligations in this Agreement will be suspended (including the calculation of time) for the length of time that such obligations are genuinely affected by any event, circumstance or combination of events or circumstances occurring after the Commencement Date that:
  - (i) are not within the Developer's reasonable control;
  - (ii) the occurrence or effect of which the Developer could not have avoided through compliance with its obligations under this Agreement and the exercise of due diligence; and
  - (iii) causes or results in the prevention or delay of the Developer from performing any of its obligations under this Agreement,
- (b) If the Developer is affected by a Force Majeure Event, it must:
  - (i) notify CSC in writing as soon as reasonably possible of the details of the Force Majeure Event, the date of commencement and expected duration of the Force Majeure Event and an estimate of time required to enable the Developer to resume full performance of its obligations;
  - (ii) use all reasonable efforts to mitigate the effect upon its performance of this Agreement and to fulfil its obligations under this Agreement;
  - (iii) keep CSC informed of the steps being taken to mitigate the effect of the Force Majeure Event upon its performance of this Agreement; and
  - (iv) when the period for which its obligations affected by a Force Majeure Event cease, recommence performance of all its affected obligations under this Agreement.

## 12. Review of this Agreement

- (a) During the Term of this Agreement, the Parties agree to act in good faith and a spirit of co-operation to promptly review and possibly amend or replace the Agreement. The Development Contributions will remain payable by the Developer until such time as:
  - (i) The Parties agree to modify them; or
  - (ii) The Development Consent is the subject of further modifications at which time this Agreement may be reviewed and amended; or
  - (iii) The Development is sold to another party at which time this Agreement may be reviewed and amended; or
  - (iv) The Development reaches the end of its operational life and closes; or
  - (v) The Development is placed in 'care and maintenance' mode in which case the obligation to pay the Development Contribution is suspended from the date on which the Developer gives CSC written notice that the Development is in 'care and maintenance' mode, until operations are resumed.
- (b) In the event that clause 12(a) is triggered and both Parties are unable to agree to amend or replace the Agreement, the Agreement shall remain in force.
- (c) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

- (d) Regardless, during the final year of the Project, the Parties agree to discuss any future related development plans and if appropriate negotiate a replacement for, or an extension of, this Agreement as determined by circumstances at the time. Until such time as a new Agreement is struck, this current Agreement shall remain in force as per the terms herein.

## **13. No Fetter**

### **13.1 Discretion**

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of CSC, including but not limited to any statutory power or discretion of CSC relating to the assessment and determination of any Development Application for the Development (all referred to in this Agreement as a **Discretion**).

### **13.2 No fetter**

No provision of this Agreement is intended to constitute any fetter on the 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:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 13.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement, which is to be held to be a fetter to the extent that is possible, having regard to the relevant court judgment.

## **14. Notices**

### **14.1 Notices**

Any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by email, by hand, by prepaid post or by fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:

Name

**Cobar Shire Council**

36 Linsley Street (PO Box 223) Cobar, NSW 2835

Phone: (02) 6836 5888

Fax: (02) 6836 3964

Email: peter.vlatko@cobar.nsw.gov.au; mail@cobar.nsw.gov.au

Attention: The General Manager

Name

**Peak Gold Mine Pty Ltd**

407 Hillston Road (PO Box 328), Cobar NSW 2835

Phone: +61 2 6830 2265

Email: craig.thomas@aureliametals.com.au; office@aureliametals.com.au

Attention: The General Manager, Peak Gold Mine

- (c) is taken to be given and made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of email, when a delivery or read receipt notice is received by the sender;
  - (iii) in the case of delivery by post, seven Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
  - (iv) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause 14.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

## **15. GST**

### **15.1 Defined GST terms**

In this clause 15, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

### **15.2 GST to be added to amounts payable**

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

### **15.3 Tax invoice**

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

### **15.4 GST obligations to survive termination**

This clause 15 will continue to apply after expiration of termination of this Agreement.

## **16. General**

### **16.1 Cost of preparing the Planning Agreement**

The Developer shall pay CSC the reasonable costs up to \$10,000 excluding GST for professional fees and costs incurred in negotiating and preparing the Planning Agreement. It is the Developer's expectation that CSC will assist with the professional fees and costs incurred in negotiating and preparing the Planning Agreement and the Developer will not bear this cost in its entirety. The payment is due within 30 days of signing the Agreement and the Developer receiving a Tax Invoice. The Tax Invoice must provide details on the professional services provided and the cost of each service.

## **16.2 Relationship between Parties**

- (a) Nothing in this Agreement:
  - (i) constitutes a partnership between the Parties; or
  - (ii) except as expressly provided, makes a Party an agent of another Party for any purpose.
- (b) A Party cannot in any way or for any purpose:
  - (i) bind another Party; or
  - (ii) contract in the name of another Party.
- (c) If a Party must fulfil 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.

## **16.3 Time for doing acts**

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement 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 5pm on the specified day, it is taken to have been done on the following Business Day.

## **16.4 Further assurances**

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

## **16.5 Variation**

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all Parties.

## **16.6 Counterparts**

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

## **16.7 Entire Agreement**

The contents of this Agreement constitute the entire Agreement between the Parties and supersede any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

## **16.8 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause 16.8(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.



- (c) The remainder of this Agreement has full effect even if clause 16.8(b)(i) or 16.8(b)(ii) applies.

**16.9 Waiver**

A right or remedy created by this Agreement cannot be waived except in writing signed by the Party entitled to that right. Delay 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.

**16.10 Governing law and jurisdiction**

- (a) The Laws applicable in New South Wales govern this Agreement.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## Schedule 1 –Requirements under Section 7.3 of the Act

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the Act.

<b>Requirement under the Act</b>	<b>This Planning Agreement</b>
Planning instrument and/or development application – [Section 7.4 (1)]. The Developer has:	
(a) sought a change to an environmental planning instrument	No
(b) made, or proposes to make, a development application	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
<b>Description of the land to which this Planning Agreement applies-</b> [Section 7.4 (3)(a)]	The land described in Schedule 2.
<b>Description of the development to which this Planning Agreement applies –</b> [Section 7.4 (3)(b)]	See the ‘Background’ section of the Agreement and the definition of Development in Clause 1.1.
<b>The scope, timing and manner of delivery of Development Contributions required by this document –</b> [Section 7.4 (3)(c)]	See clause 5 of this Agreement.
<b>Applicability of Section 7.11 (an amenity or services contribution) and Section 7.12 (a fixed development levy) of the Act –</b> [Section 7.4 (3)(d)]	The Development Contributions agreed to in this Agreement shall be in complete and final satisfaction of all obligations of the Developer to make contributions including pursuant to section 7.11 and section 7.12 of the Act.
<b>Applicability of section 7.24 (a special infrastructure contribution) of the Act –</b> [Section 7.4 (3)(d)]	The application of section 7.24 of the Act is excluded.
<b>Consideration of benefits under this Planning Agreement if section 7.11 applies –</b> [Section 7.4 (3)(e)]	The Development Contributions agreed to in this Agreement shall be in complete and final satisfaction of all obligations of the Developer to make contributions including pursuant to section 7.11 and section 7.12 of the Act.
<b>Mechanism for Dispute resolution –</b> [Section 7.4 (3)(f)]	See clause 8 of this Agreement.
<b>Enforcement of this document –</b> [Section 7.4 (3)(g)]	See clause 9 of this Agreement.

<b>Requirement under the Act</b>	<b>This Planning Agreement</b>
<b>No obligation to grant consent or exercise functions – [Section 7.4 (9)]</b>	See clause 13 of this Agreement.

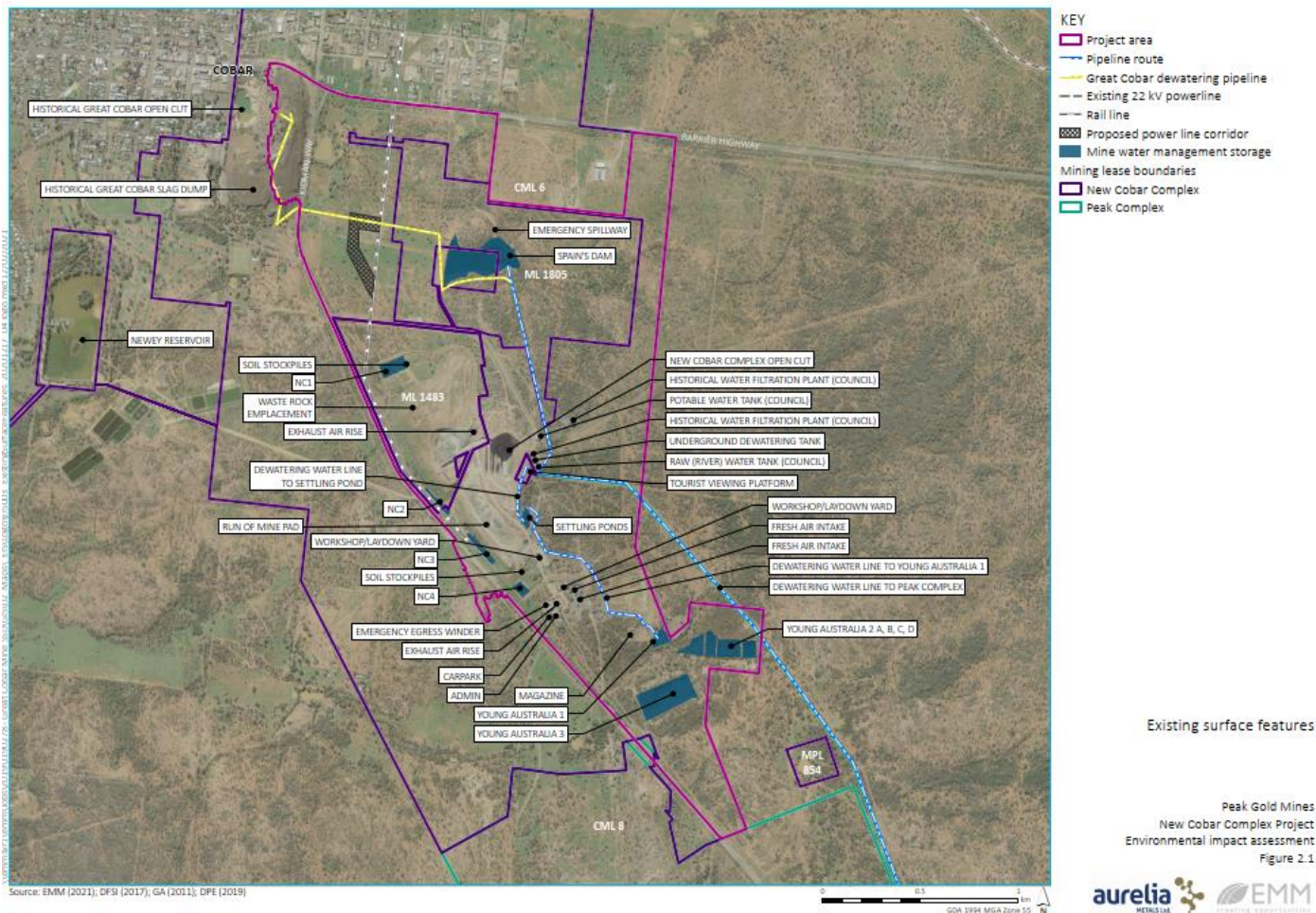
## Schedule 2– Land to Which this Agreement Applies

The Land for which this Agreement applies is the same as the description of the "project area" provided in the New Cobar Complex Project Environmental Impact Statement (EIS) dated February 2021. The Project is defined by the Project Boundary (the coloured pink line) shown on the map below.

Extract from the New Cobar Complex Project EIS dated February 2021:

“The project area (shown on Figure 2.1) is defined as the area south of the Barrier Highway and east of Kidman Way, with a 10 m buffer around proposed underground workings. This includes all areas of existing and proposed mining disturbance associated with the project.

Project development will be limited to the project area at the New Cobar Complex, and will take place within CML 6, ML 1483, ML 1805 and MPL 854. Processing of materials from the New Cobar Complex will continue at the Peak Complex within CML 8 under existing CSC approvals and is therefore outside the scope of this project.”



## Schedule 3: Explanatory Note

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Peak Gold Mines Pty Ltd

and

Cobar Shire Council

### Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed Planning Agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**). For the avoidance of doubt, this Explanatory Note does not form part of the Planning Agreement and does not bind any of the Parties.

This explanatory note has been prepared jointly by the Parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW). It will be exhibited with a copy of the Agreement when the Agreement is made available for inspection by the public in accordance with the Act, as specified by clause 25E of the Regulation.

### Parties to the Planning Agreement

The Parties to the Planning Agreement are Cobar Shire Council (**CSC**) and Peak Gold Mines Pty Ltd (**Developer**).

The Developer has made an offer to enter into the Planning Agreement in connection with a State Significant Development Application (SSD-10419) for the development of the New Cobar Complex Underground Development (**Development Application**).

### Description of the Subject Land

The Planning Agreement applies to the land set out in Schedule 2 of the Planning Agreement (**Subject Land**).

### Description of the Development Application (Proposed Development)

Peak Gold Mine Pty Ltd, a wholly owned and operated subsidiary of Aurelia Metals Limited (Aurelia), owns and operates the Peak Gold Mine operations in Cobar, NSW. It comprises the New Cobar Complex and the nearby Peak Complex.

Peak Gold Mine has been operational at the Peak Complex since 1991. The New Cobar Complex has been operational since 2000 with the development of the New Cobar open cut. The underground decline commenced in 2004 and has been operational since this time.

The New Cobar Complex Project State Significant Development (SSD 10419) (the **Project**) is an amalgamation of existing underground mining and development of new underground workings at the New Cobar Complex.

Approval is also sought to consolidate all existing development approvals applicable to the New Cobar Complex into a single consent issued by DPIE and extend the life of the mine by 12 years, until 2035.

The current development approvals at the Peak Complex and the New Cobar Complex allow for the operations to continue indefinitely and process up to 800,000 tonnes per annum of ore.

Ore processing, tailings storage and concentrate handling is undertaken at the Peak Complex with ore from the New Cobar Complex trucked by public road to processing facilities at the Peak Complex. Ore

truck movements to the Peak Complex will increase from an average of 25 movements to 50 movements per day.

See the Project EIS for more details.

### **Summary of Objectives, Nature and Effect of the Planning Agreement**

The objective of the Planning Agreement is to facilitate the delivery of the development contributions to CSC for the provision of public benefits.

The Planning Agreement provides that the Developer will make the following Development Contributions in respect of the Development until Mining Operations and Rehabilitation are completed:

- (a) Payment of Community Enhancement Contributions in accordance with the stated terms:
  - (i) To CSC a once-off sign-on payment of \$75,000, payable within thirty days of signing this Agreement and following receipt of a Tax Invoice; and
  - (ii) Within 30 days of the date construction commences or the Developer triggers adoption of the DPIE-issued conditions of the consent (for example, increased truck movements) and following receipt of a Tax Invoice, pay to CSC \$250,000 per annum comprising the following components:
    - \$150,000 per annum to a Community Enhancement Fund, for application to projects aimed at attracting and retaining people within Cobar; and
    - \$65,000 per annum for fostering the viability and advancement of the Cobar Early Learning Centre; and
    - \$35,000 per annum to provide enhanced resource capacity for CSC to oversee Project consent management.

The above-mentioned payments are subject to CPI. The payments shall be indexed according to the CPI at the time the Planning Agreement is signed.

The quantum for the portion of the year between the anniversary date and the cessation of Mining Operations and Rehabilitation will be calculated pro-rata.

The contributions are deemed to be paid when cleared funds are deposited by means of electronic funds transfer into the bank account nominated by CSC.

The Developer is required to register the Planning Agreement on the title to the Subject Land which it owns in accordance with section 7.6 of the Act.

### **Assessment of Merits of Planning Agreement**

#### ***Purpose of the Planning Agreement***

In accordance with section 7.4, the development contributions, the subject of the Planning Agreement will be applied to a public purpose(s) that will ensure the provision of a public benefits.

CSC and the Developer have assessed the Planning Agreement and hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving a positive public purpose(s).

This is because the development contributions that are the subject of the Planning Agreement reflect there are broad tangible and intangible environmental, social and economic costs arising from the Development and the said contributions will assist CSC to provide needed material public benefits to its communities, as well as addressing broader community social impacts. It is noted however, the Development will

deliver significant social and economic benefits to the local community and the state of NSW. These benefits and impacts have been outlined in more detail in the EIS.

### ***How the Planning Agreement Promotes the Elements of Council's Charter***

The Planning Agreement promotes a number of elements of Council's Charter under section 8 of the *Local Government Act 1993* (NSW). In particular, the Planning Agreement, through the delivery of a public purpose(s) and material public benefit(s), allows CSC to:

- provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- exercise community leadership;
- bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible; and
- keep the local community and the State government (and through it, the wider community) informed about its activities.

### ***The Impact of the Planning Agreement on the Public or any Section of the Public***

The Planning Agreement will benefit the public and local communities through the delivery of a public purpose(s) and material public benefit(s).

### ***How the Planning Agreement Promotes the Public Interest***

The Planning Agreement promotes the public interest by committing the Developer to make monetary contributions towards a public purpose(s).

### ***How the Planning Agreement Promotes the Objects of the Act***

Relevant Objects of the Act supported and promoted by this Planning Agreement include:

- to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources; and
- to promote the orderly and economic use and development of land.

The Planning Agreement promotes these objects of the Act by requiring the Developer to make monetary contributions towards public purposes.

### ***Requirements in relation to Construction, Occupation and Subdivision Certificates***

Clause 5 of the Planning Agreement sets out the timing for the payment of the development contributions.

The Planning Agreement does not require the payment of any monetary contributions and does not specify any requirements that must be complied with prior to the issue of any Subdivision Certificate, Construction Certificate or Occupation Certificate.

### ***Interpretation of Planning Agreement***

This Explanatory Note is not intended to be used to assist in construing the Planning Agreement.

## Signing page

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**EXECUTED** as a Deed.

**SIGNED, SEALED AND DELIVERED** by  
**Peak Gold Mines Pty Ltd**  
**ABN 37 108 476 384** in accordance with  
section 127 of the *Corporations Act 2001* (Cth)  
by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Full name (PRINT)

\_\_\_\_\_  
Full name (PRINT)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**SIGNED, SEALED AND DELIVERED**  
by the authorised delegate for **Cobar Shire**  
**Council ABN 71 579 717 155**  
in accordance with a resolution of the  
Council dated \_\_\_\_\_

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name (PRINT)

\_\_\_\_\_  
Full name of witness (PRINT)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date