

Planning Agreement

CADIA HOLDINGS PTY LIMITED
ACN 062 648 006

ORANGE CITY COUNCIL
ABN 85 985 402 386

BLAYNEY SHIRE COUNCIL
ABN 47 619 651 511

CABONNE SHIRE COUNCIL
ABN 41 992 919 200

ashurst

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Sydney NSW 2000
Australia
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Reference
MPB MJA 02 3000 8694

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PLANNING AGREEMENT

DATE

9 JULY 2013

PARTIES

Cadia Holdings Pty Limited ABN 062 648 006 of 1460 Cadia Road, South Orange NSW 2800 (**Cadia**);

and

Orange City Council ABN 85 985 402 386 of Byng St, Orange NSW 2800

and

Blayney Shire Council ABN 47 619 651 511 of 91 Adelaide Street, Blayney NSW 2799

and

Cabonne Shire Council ABN 41 992 919 200 of 99 - 101 Bank Street, Molong NSW 2866

BACKGROUND

- A. Cadia obtained the Part 3A Approval to the Project on the Site.
- B. Pursuant to the Part 3A Approval the Cadia East Mine has been in development for some time and is now in the early stages of production
- C. Administrative Condition 13 of the Part 3A Approval requires Cadia to enter into an agreement with Orange City Council, Cabonne Shire Council and Blayney Shire Council (collectively, the **Councils**) which provides for the payment of contributions to the Councils for:
 - a. upgrading the Councils' road infrastructure affected by the Project; and
 - b. general community enhancements to address social amenity and community infrastructure requirements arising from the Project.
- D. The purpose of the Parties entering into this Agreement is to enable Cadia to satisfy condition 13 of the Part 3A Approval.
- E. Cadia and the Councils shall develop and are by a separate process developing agreements for the maintenance of certain roads in relation to the Project (**Road Maintenance Agreements**). Monies provided under this Agreement are separate from the Road Maintenance Agreements and such monies are not provided for Road Maintenance. Accordingly this Agreement does not address the Road Maintenance Agreements.

AGREED TERMS**Interpretation****1.1 Definitions**

In this Agreement unless the context indicates a contrary intention:

Agreement means this agreement.

Annexure A means annexure A to this Agreement.

Annexure B means annexure B to this Agreement.

Annexure C means Annexure C to this Agreement.

Annual Payments means the amounts separately payable to each Council indicated as such in the table in Annexure B

Application means the Part 3A Major Projects Application No. 06_0295.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited; or
- (f) Westpac Banking Corporation,

or other financial institution (holding a then current authorisation under a law of the Commonwealth to carry on banking business in Australia) approved by the relevant Council, in response to a request from Cadia, in its absolute discretion to pay the relevant sum to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

Business Days means a day other than a Saturday, Sunday or public holiday in NSW and specifically excluding 27, 28, 29, 30 and 31 December.

Community Enhancements has the meaning specified in Annexure C.

Contributions means Section 94 Contributions, Section 94A Contributions and any other constructions or levies similar in nature which may be imposed.

Councils means Orange City Council, Blayney Shire Council and Cabonne Shire Council.

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

Monetary Contributions means the One-Off Payment and the Annual Payments.

One-Off Payment means the payment indicated as such in the table in Annexure B.

Part 3A Approval means the approval granted by the Minister for Planning on 6 January 2010 to the Project.

Project has the same meaning as in the Part 3A approval.

Road Upgrades has the meaning specified in Annexure C.

Schedule means the Schedule to this Agreement.

Section 94 Contributions means contributions under section 94 of the EPA Act.

Section 94A Contributions means contributions under section 94A of the EPA Act.

Site means the land described in Appendix 1 'Schedule of Land' of the Part 3A approval.

2. NATURE AND INTENT OF THIS PLANNING AGREEMENT

- (a) This Agreement is a voluntary agreement made in accordance with Division 6 of Part 4 of the EPA Act.
- (b) This Agreement is intended to fulfil Cadia's obligations under condition 13 of the Part 3A Approval to enter into a planning agreement with the Councils that is in accordance with Division 6 of Part 4 of the EPA Act. Annexure A demonstrates how this Agreement is in accordance with the requirements of Division 6 of Part 4 of the EPA Act.

3. PAYMENT OF MONETARY CONTRIBUTIONS

- (a) Cadia must pay the Monetary Contributions to the relevant Council by the due dates as specified in Annexure B as set out in this clause.
- (b) Cadia will pay each Council a separate and equal share of the One-Off Payment.
- (c) Cadia will pay each Council the Annual Payment payable to that Council each time the Annual Payment falls due.

4. USE OF MONETARY CONTRIBUTIONS

- (a) The Councils must use the Monetary Contributions for the purposes set out in Annexure C.
- (b) The Councils will provide a written report to Cadia on each anniversary of this Agreement outlining the extent to which the Monetary Contributions received have been used for the purposes set out in Annexure C.

5. EFFECT OF AGREEMENT ON CONTRIBUTIONS

This Agreement does not affect the application of sections 94, 94A or 94EF of the EPA Act to the Project. The Monetary Contributions are, however, to be taken into consideration in the event that Contributions are required for the Project or for other future activities on the Site.

6. PROVISION OF SECURITY

6.1 Provision of Bank Guarantee

- (a) Cadia agrees to take reasonable steps to provide a separate Bank Guarantee to each of the Councils within six months of the date of this Agreement securing Cadia's obligations under this Agreement.
- (b) The amount of each Bank Guarantee provided to a Council is to be equal to the amount of the Annual Payment to that Council as set out in Annexure B.

6.2 Call on Bank Guarantee

In the event that:

- (a) Cadia is in breach of clause 3; and
 - (b) The relevant Council serves notice of the breach; and
 - (c) Cadia does not rectify the breach within 28 days of the date of the notice,
- then that Council may call on its Bank Guarantee.

6.3 Further Bank Guarantee

In the event that the relevant Council calls on its Bank Guarantee under clause 6.2, then Cadia must within a further 28 days, provide a fresh Bank Guarantee to that Council, unless there are no further Annual Payments to be made at that time.

6.4 Return of Bank Guarantee

Once all payments required to be made by Cadia under this Agreement have been made then each Council must return its Bank Guarantee to Cadia.

7. DISPUTE RESOLUTION

7.1 Notice of dispute

- (a) If a difference or dispute (together called a **Dispute**) between the Parties arises out of or relates to this Agreement, or the breach, termination, validity or subject matter of it, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, then any Party may give the other Parties a written notice of dispute adequately identifying and providing details of the Dispute (**Notice of Dispute**). This difference or dispute may arise between the Parties or any of them from any aspect of this Agreement.
- (b) Notwithstanding the existence of a Dispute, all Parties will, subject to this Agreement, continue to perform the agreement evidenced by this Agreement.

7.2 Conference

Within ten Business Days after receiving a Notice of Dispute, the Parties will confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each Party will be represented by a person having authority to conduct negotiations as to such resolution or methods. All aspects of every such conference, except the fact of its occurrence, will be privileged.

7.3 Expert mediation

- (a) If the Dispute is not resolved within the following five Business Days (or such further period as the representatives may agree is appropriate), the Parties in dispute agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to litigation.
- (b) The mediation will be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.
- (c) This clause does not merge upon termination of this Agreement.

7.4 Exchange of information

The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the Dispute between the Parties. No Party may use any information or documents obtained through the dispute resolution process established by clause 7.2 for any purpose other than an attempt to settle a Dispute between the Parties.

7.5 Termination of dispute resolution

After expiration of the time established by or agreed under this clause for agreement on the dispute resolution process, any Party which has complied with the provisions of clauses 7.1 to 7.4, may in writing terminate the dispute resolution process provided for in those clauses and may then refer the Dispute to litigation.

8. TERMINATION

- (a) If Cadia relinquishes the Part 3A approval, or otherwise ceases to carry on the Project, Cadia may terminate this Agreement immediately upon notice to the Councils.
- (b) Any valid exercise by Cadia of the right to terminate under clause 8(a) is not a breach or repudiation of this document.

9. ENTIRE AGREEMENT

This document 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 document and has no further effect.

10. AMENDMENT


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

11. NOTICE PROCEDURE

- (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 fax. If it is sent by mail, it is taken to have been received 3 Business Days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) The Parties respective addresses and facsimile numbers are those set out in the Schedule.

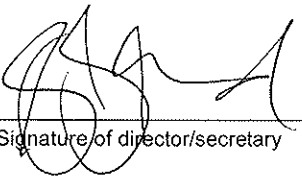
Executed as an Agreement:

EXECUTED by **CADIA HOLDINGS PTY LIMITED** pursuant to s.127 of the Corporations Act 2001:



Signature of director

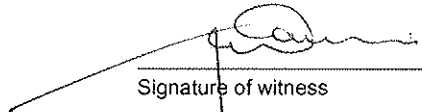
CERARD BOND



Signature of director/secretary

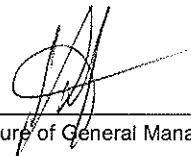
SCOTT G. LANGFORD

EXECUTED by **Orange City Council** by the General Manager who, by their execution, confirms that they have authority to bind the Council in the terms of this Agreement



Signature of witness


John Nelson
Name of witness



Signature of General Manager

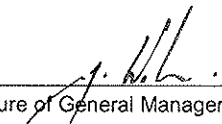
Cerily Skyles
Name of General Manager

EXECUTED by **Blayney Shire Council** by the General Manager who, by their execution, confirms that they have authority to bind the Council in the terms of this Agreement



Signature of witness


SCOTT FERGUSON
Name of witness



Signature of General Manager

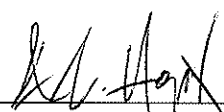
G.A. Wilcox
Name of General Manager

EXECUTED by **Cabonne Shire Council** by the General Manager who, by their execution, confirms that they have authority to bind the Council in the terms of this Agreement



Signature of witness

IAN JOSEPH GOSPER
Name of witness



Signature of General Manager

ANDREW HOPKINS
Name of General Manager

Schedule

Cadia Holdings Pty Limited	<p>Cadia Holdings Pty Limited</p> <p>Private Mail Bag South Orange 2800</p> <p>Attn: Andrew Wannan, Environment Manager</p> <p>Fax: 02 6366 4333</p>
Orange City Council	<p>Civic Centre Cnr Byng St & Lords Place Orange 2800, or</p> <p>P.O. Box 35 Orange 2800</p> <p>Attn: Mr Garry Styles, General Manager</p> <p>Fax: 02 6393 8199</p>
Blayney Shire Council	<p>91 Adelaide Street Blayney 2799, or</p> <p>P.O. Box 62 Blayney 2799</p> <p>Attn: Mr Glenn Wilcox, General Manager</p> <p>Fax: 02 6368 2104</p>
Cabonne Shire Council	<p>101 Bank Street Molong 2866, or</p> <p>P.O. Box 17 Molong 2866</p> <p>Attn: Mr Robert Staples Director of Engineering and Technical Services</p> <p>Fax: 02 6392 3260</p>

Annexure A

Table detailing how Agreement fulfils section 93F(3) EPA Act requirements for Planning Agreement contents

SUBSECTION	REQUIREMENT	AGREEMENT CLAUSE
93F(3)(a)	a description of the land to which the agreement applies	Definitions – "Site"
93F(3)(b)(i)	the change to the environmental planning instrument to which the agreement applies	NOT RELEVANT
93F(3)(b)(ii)	a description of the development to which the agreement applies	Definitions – "Project"
93F(3)(c)	the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made	Clause 3 – "Payment of Monetary Contribution" Annexure B
93F(3)(d)	whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development	Clause 5 – "Effect of Agreement on Contributions"
93F(3)(e)	if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94	Clause 5 – "Effect of Agreement on Contributions"
93F(3)(f)	a mechanism for the resolution of disputes under the agreement	Clause 7 – "Dispute Resolution"
93F(3)(g)	the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer	Clause 6 – "Provision of Security"

Annexure B

Monetary contributions payable by Cadia

Column 1	Column 2	Column 3
Contribution type	Amount	Due Date
One-Off Payment	\$3,000,000 (\$1,000,000 to each Council)	On the date of this Agreement
Annual Payment Orange City Council Blayney Shire Council Cabonne Shire Council	\$157,895 \$52,632 \$52,632	Within 28 days of 30 June in each year from the date of this Agreement until 30 June 2031. Each Annual Payment, after the first, shall be increased in accordance with the annual all groups CPI percentage change as determined for the 12 months to June 30 in the year preceding the payment.

Annexure C

Purpose of Monetary Contributions to be provided by Cadia

The One-Off Payment will be used by the Councils as a contribution for Road Upgrades. In the event that the Road Upgrades cost less than the amount of the One-Off Payment, the surplus monies may also be used by the Councils for Community Enhancements.

The Annual Contribution will be used by the Councils for Community Enhancements and/or Road Upgrades.

Meaning of Road Upgrades and Community Enhancements

Road Upgrades are:

Works undertaken to upgrade the Councils' road infrastructure affected by the Project. The Road Upgrades that may be undertaken include (but are not limited to):

1. Sealing of Cadia Road south of new mine entrance in Blayney Shire area;
2. Improvements to the Four Mile Creek Road and Cadia Road intersection in Cabonne Shire area; and
3. Improvements to the Forest Road Southern Link Road and Huntley Road intersection and approaches in Orange City area.

Community Enhancements are:

Enhancement activities undertaken to address social amenity and community infrastructure requirements arising from the Project.