

# Planning Agreement

Cobar Shire Council (**Council**)

Hera Resources Pty Ltd (**Developer**)

YTC Resource Pty Ltd (**Guarantor**)

### ***Parties***

**COBAR SHIRE COUNCIL**, ABN 71 579 717 155 (Council) of 36 Linsley Street, Cobar, NSW, 2835

**HERA RESOURCES PTY LTD**, ABN 72 138 992 999 (Developer) of 2 Corporation Place (PO Box 7058), Orange NSW 2800

AND

**YTC RESOURCES LTD**, ABN 37 108 476 384 (Guarantor) of 2 Corporation Place (PO Box 7058) Orange NSW 2800

### ***Background***

- A. Hera Resources Pty Ltd (the Developer) is the proponent of the Hera Project. The Hera Project will consist of a single underground mine, processing plant and infrastructure to support the extraction and processing of up to 355,000 tonnes of gold, silver, lead and zinc ore. The project is located approximately 100km south east of Cobar in Western NSW and 4km south of the village of Nymagee.
- B. The Developer was granted approval (**Project Approval**) under Part 3A of the *Environmental Planning and Assessment Act 1979 (the Act)* on 31 July 2012 to develop the Hera Project
- C. Condition 14 of Schedule 2 of the Project Approval requires the Developer to enter into a planning agreement with the Cobar Shire Council (Council) to provide development contributions in accordance with Division 6 of Part 4 of the Act.
- D. The Developer has agreed to provide the Development Contributions described in Schedule 1 of this Agreement, subject to the conditions outlined in this Agreement, in performance of the conditions of the Project Approval.
- E. The Guarantor has agreed to guarantee the Developer's obligation to provide the Development Contributions, subject to the terms of this Agreement.

### ***Operative Provisions***

#### **1. Planning agreement under the Act**

The Parties agree that this agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

#### **2. Application of this Agreement**

This Agreement is made in respect of the development the subject of the Project Approval and applies to the Land.

### 3. Operation of this Agreement

The Agreement takes effect on and from the Commencement Date.

### 4. Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

- a) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- b) **Commencement Date** means the date on which the Board of the Developer resolves to commence construction of the work the subject of the Project Approval.
- c) **Dealing** means, in relation to the Land, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.
- d) **Development** means the project approved under project approval DA 10-0191
- e) **Development Application** has the same meaning as in the Act
- f) **Development Consent** has the same meaning as in the Act
- g) **Development Contributions** means the monetary contributions set out in Schedule 1.
- h) **GST** has the same meaning as in GST Law.
- i) **GST Act** means *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.
- j) **GST Law** has the meaning given to that term in the GST Act.
- k) **Land** means that lot listed in Schedule 2.
- l) **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, approval, consent or condition of approval or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter.
- m) **Project Approval** means project approval DA 10-0191 for the Hera Project granted by the NSW Minister for Planning on 31 July 2012.
- n) **Regulation** means the *Environmental Planning and Assessment Regulation 2000*
- o) **Tax Invoice** has the meaning given to that term in the GST Act.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

- c) If the day on which the any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars
- e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to a party to this Agreement includes a reference to the servants, agents, and contractors of the party, and the party's successors and assigns.
- m) Any schedules and attachments form part of this Agreement.

## **5. Development Contributions to be made under this Agreement**

5.1 The Developer will pay to Council the instalments of the Development Contribution set out in Schedule 1 together with applicable GST.

5.2 The Developer:

- a) is not required to pay an installment; and
- b) will not be in breach of this Agreement if it fails to pay an installment at the time required by this Agreement,
- c) will have its payment obligations suspended for the relevant duration

if either (or both) of the following arise:

- d) Council fails to provide the Developer with a Tax Invoice for the installment at least seven (7) days before the due date for payment of that Development Contribution; or

e) in relation to a community fund installments only, the developer is able to demonstrate that the Hera Project is not cash flow positive to the Developer as demonstrated by published annual accounts.

5.3 The parties agree that upon the payment of the total amount of the Development Contributions to Council, no further monetary contributions are payable under this Agreement.

## **6. Application of the Development Contributions**

6.1 Council will preferentially allocate Community Fund contributions to projects that directly impact the Nymagee community. The Developer will be allocated representation on a community committee charged with allocating the funds from the Community Fund contributions

6.2 Council agrees to allocate \$15,000 of the first instalment paid under this Agreement to improvements of the Nymagee Community Hall

6.3 Nymagee Projects identified in Council's "Community Enhancement Programme" (CEP) will be given preference including:

- Upgrades to the Nymagee Community Hall
- Fencing of the Nymagee Cricket Oval
- Lighting on the Nymagee Airstrip
- Shading of the Childrens' Playground

## **7. Application of S. 94 and S. 94A of the Act to the Development**

The Development Contributions agreed to in this Agreement shall in complete satisfaction of all obligations of the Developer to make contributions including pursuant to S. 94 and S. 94A of the Act.

## **8. Registration of this Agreement**

Unless otherwise required by law, the parties agree that this Agreement does not need to be registered against the title to the Land

## **9. Review of this Agreement**

Unless otherwise required by law, the parties agree that this Agreement does not need to be reviewed

## **10. Dispute Resolution**

10.1 Dispute

If any dispute arises out of this Agreement (*Dispute*) a party to the contract must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.

## 10.2 Notice of Dispute

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

## 10.3 Dispute resolution

If the parties do not agree within seven (7) days of receipt of the Notice (or such further period as agreed in writing by them) as to:

- a) the dispute resolution technique (eg expert determination) and procedures to be adopted;
- b) the timetable for all steps in those procedures; and
- 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 New South Wales, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

## 11. Enforcement

11.1 The Guarantor irrevocably and unconditionally guarantees to the Council that the Developer will pay the Development Contributions required under this Agreement on time.

11.2 If the Developer fails to fulfil its obligations to pay the Development Contributions under this Agreement, the Guarantor must pay that money on demand as if it was the Developer.

11.3 A demand under this clause may be made by the Council at any time and from time to time. A demand must specify the amount owing and how that amount is calculated.

11.4 The guarantee provided under this clause:

- 11.1. extends to the present and future balance of the Development Contributions;
- 11.2. is wholly or partially discharged by the whole or partial payment of the Development Contributions;
- 11.3. continues until all of the Development Contributions have been paid in full; and
- 11.4. is a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation.

11.5 Despite anything else in this Agreement, the maximum amount which the Guarantor may be required to pay under this Agreement is \$515,000

11.6 The Guarantor acknowledges entering into this Agreement in return for Council agreeing to this Agreement as required under the conditions of the Project Approval.

## 12. Notices

12.1 Any notice, consent, information, application, or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below
- (c) Emailed to that Party at its email address set out below.

### **Council**

Attention: The General Manager – Cobar Shire Council  
Address: 36 Linsley Street, Cobar NSW 2835  
Fax Number: 02 6836 5889  
Email: [mail@cobar.nsw.gov.au](mailto:mail@cobar.nsw.gov.au)

### **Developer**

Attention: The General Manager – Hera Project  
Address: 2 Corporation Place, Orange NSW 2800  
Fax Number: 02 6361 4711  
Email: [office@ytcresources.com](mailto:office@ytcresources.com)

### **Guarantor**

Attention: The Chief Executive Officer  
Address: 2 Corporation Place, Orange NSW 2800  
Fax Number: 02 6361 4711  
Email: [office@ytcresources.com](mailto:office@ytcresources.com)

12.2 If a Party gives another Party three (3) business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two (2) business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

### **13 Approvals and consent**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### **14 Assignment and dealings**

A Party must not assign its rights pursuant this Agreement without the prior written consent of the Parties, which consent must not be unreasonably withheld.

### **15 Costs**

Each Party must pay its own legal costs and disbursements in relation to the negotiation, preparation and completion of this Agreement and other documents referred to in it.

### **16 Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

### **17 Further acts**

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



## 18 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## 19 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of two (2) or more persons is for the benefit of them jointly and each of them individually.

## 20 No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

### Schedule 1

#### Development Contributions

	<u>Construction</u>		<u>Production</u>	
Period (years)	1.5		5.5	
	\$ annually	Due date	\$ annually	Due date
Road Contribution	NIL	N/A	63,700.00	Anniversaries of payment of the first instalment
Community Fund	50,000.00	Commencement of construction	16,300.00	
<b>Total</b>	<b>75,000.00</b>	-	<b>440,000.00</b>	-

### Schedule 2

#### Land

Western Lands Lease 2455 being Lot 664 in Deposited Plan 761702

**Signed and Dated by all Parties**

Seal affixed and attested on behalf of Cobar Shire Council



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**Cobar Shire Council – Mayor**

**Lillian Brady OAM**

Date: ..... 18/3/13 .....



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**Cobar Shire Council – General Manager**

**Gary Woodman**

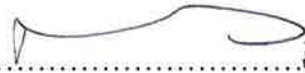
Date: ..... 15/3/13 .....



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**RIMAS KAIRAITIS**  
**DIRECTOR**

**Developer**

Date: ..... 10/4/13 .....



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**RIMAS KAIRAITIS**  
**MANAGING DIRECTOR**

**Guarantor**

Date: ..... 10/4/13 .....