



THE MINISTER FOR THE ENVIRONMENT

and

THE MINISTER FOR PLANNING

and

THE MINISTER FOR LANDS

and

COAL AND ALLIED INDUSTRIES LTD

MEMORANDUM OF UNDERSTANDING

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MEMORANDUM OF UNDERSTANDING

THIS MOU is made on _____ of _____ 2006.

Between

1. **THE MINISTER FOR THE ENVIRONMENT** of Level 36, Governor Macquarie Tower, 1 Farrer Place, Sydney in the State of New South Wales; and
2. **THE MINISTER FOR PLANNING** of Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney in the State of New South Wales
3. **THE MINISTER FOR LANDS** of Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney in the State of New South Wales
(together, the "Government"); and
4. **COAL AND ALLIED INDUSTRIES LTD** (the "Landholder").

Background

- A. The New South Wales Government intends to implement an Environmental Land Offset Scheme for the Lower Hunter region to complement and support the Lower Hunter Regional Strategy and the Lower Hunter Regional Conservation Plan.
- B. The Environmental Land Offset Scheme aims to:
 - (i) increase public ownership of certain land in the Lower Hunter region for dedication as a conservation reserve; and
 - (ii) recognise the development potential of certain other land in the Lower Hunter region.
- C. The purpose of this MOU is to set out the parties' intentions with respect to the implementation of the Environmental Land Offset Scheme, insofar as it concerns the Landholder.

1. Definitions and interpretation

- 1.1 In this MOU, unless the context otherwise requires:

"Conservation reserve" means any land intended to be reserved or dedicated under the *NPW Act* and includes references to a national park, nature reserve, state conservation area or regional park, as those terms are defined under that Act

“Development potential of Schedule 1 land” means the development potential specified in Schedule 1 for each parcel of Schedule 1 land (either hectares or dwellings or both).

“Dwelling” has the same meaning as in the *Standard Instrument—Principal Local Environmental Plan*.

“Environmental Land Offset Scheme” insofar as it concerns the Landholder means the Environmental Land Offset Scheme described in clause 3 of this MOU.

“EP&A Act” means the *Environmental Planning and Assessment Act 1979*, as amended from time to time.

“Lower Hunter Regional Conservation Plan” means the Lower Hunter Regional Conservation plan released by the NSW Department of Environment and Conservation, published on that Department’s website and as amended from time to time.

“Lower Hunter Regional Strategy” means the Lower Hunter Regional Strategy released by the NSW Department of Planning, published on that Department’s website and as amended from time to time.

“Map” means the maps titled “*Northern Area – Aerial*”, and “*Southern Area – Aerial*” as prepared by UrbisJHD and “*Catherine Hill Bay – Middle Camp Urban Area*” as prepared by Allen Jack + Cottier, “*Plan of Hunter Valley Operations & Warkworth Mt Thorley Roads*” and “*Plan of MTP Roads*” prepared by Coal and Allied Land and Property Department that are incorporated into this MOU by reference.

“MOU” means this Memorandum of Understanding which includes the Schedules and maps that are incorporated into this MOU by reference

“NPW Act” means the *National Parks and Wildlife Act 1974* as amended from time to time.

“Rezoning” means the mechanism of changing the landuse zone for a parcel of land contained in a environmental planning instrument (as defined by the EP&A Act), noting that this change in landuse zone may be effected by the gazettal of a State Environmental Planning Policy or a local environmental plan.

“Schedule 1 land” means the land identified in Schedule 1

“Schedule 2 land” means the parcels of land owned by the Landholder and identified in Schedule 2, or part thereof.

"TSC Act" means the *Threatened Species Conservation Act 1995* as amended from time to time.

"Transferred Schedule 2 land" means Schedule 2 land, or part thereof, transferred to the Minister for the Environment in accordance with clause 3.2.

2. Implementation

2.1 The parties are committed to using their best endeavours to implement this MOU.

2.2 The parties acknowledge and agree that:

2.2.1 this MOU is intended to express the parties' objectives and firm intentions with regard to those matters with which it deals, but is not intended to create enforceable or binding legal obligations between them;

2.2.2 nothing in this MOU shall be taken to fetter the discretion of the Minister for Planning in exercising functions under the *EP&A Act* or the Minister for the Environment in exercising functions under the *NPW Act* or the *TSC Act* or the discretion of the Landholder in negotiating a commercial acceptable outcome; and

2.2.3 nothing in this MOU is intended to constitute a representation, warranty or guarantee by or on behalf of the Government, the Minister for Planning or the Minister for the Environment or the Landholder.

2.3 All parties acknowledge and agree that they have not relied or acted or forborne from acting in any way as a result of any statement made by any of the parties in this MOU or in discussions leading up to this MOU.

3. The Environmental Land Offset Scheme

3.1 The Parties have agreed that the Schedule 1 Land has the Development Potential as identified by Schedule 1 and a Rezoning application will be submitted to the Minister for Planning.

3.2 The Minister for Planning intends to use reasonable endeavours to allow the Landholder to achieve the development potential of Schedule 1 land by either:

3.2.1 Rezoning the land through an amendment to State Environmental Planning Policy 2005 (Major Projects) and approval of any concept plan submitted under Part 3A of the *EP&A Act* ; and/or

3.2.2 Facilitating the rezoning of the land through the gazettal of a Local Environmental Plan prepared by the relevant local government authority and made by the Minister for Planning and approval of any concept plan submitted under Part 3A of the EP&A Act; and/or

3.2.3 Any other means that achieves the development potential of Schedule 1 Lands;

in accordance with, the Lower Hunter Regional Conservation Plan and subject to the requirements of the *EP&A Act*.

3.3 The Landholder intends to transfer ownership of Schedule 2 land to the Minister for the Environment upon the rezoning of Schedule 1 land and approval to the concept plan(s) being obtained on reasonably acceptable terms.

3.4 The Minister for the Environment intends to ensure Transferred Schedule 2 land is dedicated as part of the national park estate or as a conservation reserve.

3.5 The Landholder intends not to undertake any action or activity, pending transfer of Schedule 2 land or rezoning of Schedule 1 land that will have detrimental effect on the conservation or Aboriginal heritage values of Schedule 2 lands except where the Landholder is

3.5.1 directed to undertake such an action or activity by another Government agency or instrumentality (such as the Rural Fire Service), or

3.5.2 is otherwise required by law to undertake such an action or activity, or

3.5.3 continuing any existing use (including those approved to commence) action or activity

3.6 Notwithstanding clause 3.5 the Landholder, in the context of discussions with the Roads & Traffic Authority on its proposed compensatory habitat requirements for 299 hectares of Stockrington land for a Proposed Highway Link between the F3 and Branxton, intends to continue to negotiate the sale of 24.3 hectares of land to Newcastle Coal Company Pty Limited for the purposes of surface mining facilities on the following basis:

3.6.1 that the Landholder's negotiations with Newcastle Coal Company Pty Limited are to specify that an alternative area of land shall be transferred by Newcastle Coal to the Minister for the Environment that is at least 24.3 hectares in size,

3.6.2 the land to be transferred by Newcastle Coal is to meet the obligations for compensatory habitat identified in conditions 48, 49 and 50 of the Approval granted by the Minister for Planning under section 115B(2) of the EP&A Act in relation to the *Proposed Highway Link Between the F3 and Branxton* dated November 2001, and

3.6.3 the Minister for the Environment agreement to the transfer of land by Newcastle Coal Company Pty Limited.

- 3.7 The Minister for Lands intends to use his best endeavours to enable the Landholder, to acquire title to the Crown Roads for mining purposes as described in the maps titled "*Plan of Hunter Valley Operations and Warkworth Mt Thorley Roads*" and "*Plan of MTP Roads*" adjacent or within the existing or proposed coal mine developments known as Hunter Valley Operations, Warkworth Mt Thorley and Mount Pleasant, subject to an agreed value being negotiated which recognises the land to be transferred by the Landholder to the Minister for the Environment as identified in Schedule 2.

4. Agreement

- 4.1 Notwithstanding clause 3, the details of the Environmental Land Offset Scheme described in clause 3 are the subject of ongoing negotiation by the parties, which they propose will form part of a legally enforceable agreement to be entered into by them.

- 4.2 All parties are to use their best endeavours to enter into such an agreement referred to in clause 4.1 as soon as possible noting a target date of three months for this to occur.

- 4.3 The parties acknowledge that the proposed agreement referred to in clause 4.1 will include a schedule of commitments that set out the sequencing and staging of Schedule 1 land and the dedication for conservation of Schedule 2 lands.

- 4.4 The parties acknowledge that:

4.4.1 If there is any reduction in Schedule 2 Land to be transferred then a proportional reduction will result for the development potential of Schedule 1 Land. This clause will apply separately to the Northern and Southern Coal & Allied lands.

4.4.2 If the development potential of Schedule 1 Land in relation to the number of dwellings or lots to be achieved is reduced then a proportional reduction will occur in the amount of Schedule 2 Land to be transferred to the Minister for the Environment. This clause will apply separately to the Northern and Southern Coal & Allied lands


5. Term


- 5.1 This MOU starts on the date it is signed by both parties and continues until the parties enter into an agreement of the type referred to in clause 4, or 1 year, whichever is the later.

This Memorandum of Understanding is signed on 17 October 2006.



The Honourable Bob Debus MP
The Minister for the Environment

The Honourable Frank Sartor MP
The Minister for Planning

The Honourable Tony Kelly MLC
The Minister for Lands

Doug Ritchie, Managing Director Coal & Allied for and on behalf of
[The Landholder]

SCHEDULE 1 – POTENTIAL DEVELOPMENT LANDS

This Schedule forms part of the MOU.

Schedule 1 Land

Property description	Map reference	Development potential
	Southern Lands – Catherine Hill Bay – nominated as 'blue land' on the Map prepared by Urbis JHD	<ul style="list-style-type: none"> Residential development covering up to 50 hectares to achieve 300 dwellings Residential development to be in accordance with the development footprint on the map titled "<i>Catherine Hill Bay – Middle Camp Urban Area</i>" as prepared by Allen Jack + Cottier
	Southern Lands – Nords Wharf – nominated as 'blue land' on the Map prepared by Urbis JHD	Residential development covering up to 9 hectares to achieve 90 dwellings
	Southern Lands – Gwandalan – nominated as 'blue land' on the Map prepared by Urbis JHD	Residential development covering up to 80 hectares to achieve 700 dwellings
	Northern Lands – Minmi and Newcastle Link Roads – nominated as 'blue lands' on the Map prepared by Urbis JHD	Residential development covering up to 526 hectares with a density of up to an average of 12 dwellings per hectare subject to detailed planning and constraints analysis
	Northern Lands – Black Hill – nominated as 'blue lands' on the Map prepared by Urbis JHD	Employment lands development covering up to 183 hectares

SCHEDULE 2 – ENVIRONMENTAL LANDS OFFSETS

This Schedule forms part of the MOU.

Schedule 2 Land

Property description	Map reference	Area
	Southern Lands – Catherine Hill Bay and Wallarah Peninsular – nominated as ‘green lands’	657 hectares
	Southern Lands – Gwandalan and Cranagan Bay – nominated as ‘green lands’	192 hectares
	Northern Lands – Stockrington – nominated as ‘green lands’	2326 hectares
	Northern Lands – Tank Paddock – nominated as ‘green lands’	147 hectares
		Total 3322 hectares