

# LEGAL DOCUMENT LODGEMENT FORM



Lodgement Date	8 SEPTEMBER 2016
Date of Legal Documents	8 SEPTEMBER 2016
Type of Documents	VPA + FUNDING DEED
ie: Agreements, Contracts, Easements, General, Lease, Loans (see separate forms of Bank Guarantees and Certificates of Title)	
Expiry Date of Document (if applicable)	31 DECEMBER 2027 unless modified by amendment to SSN 5465
Parties	CENTRAL COAST COUNCIL + LAKECOAL PTY LTD.
Address	Hely Street, Wuyong 2259 + level 37, Eagle St, Brisbane Qld 4000 (the staff)
Details of Document	Payment & mgt of contributions for ROM extractions from Chain Valley Colliery.
Property Description	Lot Chain Valley Colliery + DP
Review Date	N/A.
Responsible Officer	JENNY MENING
Folder Number	F2016/01767
<b>Note:</b> This form and the original documents are to be delivered to Corporate Information	
Legal Document supersedes LDOC	(if applicable)
<b>After legal document is recorded on the computer a TRIM link is emailed to the responsible officer advising of registration</b>	
<b>Send Link to Meg Newington for the Agreement Register to be updated.</b>	
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**VOLUNTARY PLANNING AGREEMENT**

**CENTRAL COAST COUNCIL**

**AND**

**LAKECOAL PTY LTD**

# VOLUNTARY PLANNING AGREEMENT

DATE 1 September 2016

## PARTIES

**Central Coast Council** of Council Chambers, Hely Street Wyong in the State of New South Wales, 2259 ("Council")

and

**LakeCoal Pty Ltd** (ABN 46 094 084 787) of Level 37, 123 Eagle Street, Brisbane, Queensland 4000 ("LCPL")

## BACKGROUND (RECITALS)

- A. LCPL was granted the Project Approval in January 2012 to extract up to 1.2 million tonnes of ROM coal per calendar year until 31 December 2016.
- B. LCPL was granted the Development Consent in relation to the Land on 23 December 2013 and is permitted to extract up to 2.1 million tonnes of ROM coal per calendar year until 31 December 2027.
- C. In accordance with Condition 13 of Schedule 2 of the Development Consent, the Project Approval was surrendered by LakeCoal on 7 November 2014. Therefore, the requirement to make development contributions under the terms of the Project Approval is not relevant for the purposes of this Agreement, but remains relevant for determining the date from which the Contributions are payable.
- D. Condition 12 of Schedule 2 of the Development Consent requires LCPL to pay contributions to Council at a rate of \$0.035 for each tonne of product coal produced by the Development. Contributions are to be payable from the date of the Project Approval.
- E. LCPL and Council have agreed to enter into this Agreement in order to implement LCPL's obligations under Conditions 11 and 12 of Schedule 2 of the Development Consent.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following definitions apply:

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

**Agreement** means this voluntary planning agreement.

**Annual Environmental Management Report** means the annual environmental management report prepared in accordance with the conditions of the Mining Leases.

**Community Project** means a project undertaken for the purpose of improving public infrastructure or the provision of community projects for the communities of Summerland Point, Gwandalan, Chain Valley Bay and Mannering Park.

**Contributions** mean the monetary contributions specified at clause 5.

**Council** means Central Coast Council or its representatives or assigns.

**DRE** means the Department of Trade and Investment, Division of Resources and Energy.

**Development Consent** means the consent granted on 23 December 2013 by the Executive Director, Development Assessment Systems and Approvals pursuant to Part 4 of the Act in respect of SSD 5465 for the Chain Valley Extension Project, as modified from time to time.

**Development** means the development known as the Chain Valley Extension Project as authorised by the Development Consent, as modified from time to time.

**Explanatory Note** means the note exhibited with a copy of this Agreement, when this Agreement is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the Regulation.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Indexation** the Contributions will be subject to indexation using the following formula:

**Amount to be paid by LCPL = Contribution x (CPI-B/CPI-A)**

Where:

**Contribution** = the amount referred to in Schedule 1.

**CPI-A** means, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics as at 28 February 2013.

**CPI-B** means, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time a Contribution is invoiced by Council.

**Interest Rate** means a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.

**LakeCoal Community Funding Deed** means the deed executed by Council and LCPL about the management and distribution of Contributions paid by LCPL in accordance with this Agreement.

**Land** means the land defined in the Development Consent as the Site, specifically listed in Appendix 1 – Schedule of Lands, and shown on the figure within Appendix 2 – Development Area, of the Development Consent.

**LCPL** means LakeCoal Pty Ltd (ABN 46 094 084 787).

**Mining Lease** means one or more of the mining leases held by LCPL or a related entity for the purposes of carrying out the operations at Chain Valley Colliery.

**Parties** mean Council and LCPL, including both their successors and assigns.

**Project Approval** means approval granted on 23 January 2012 by Deputy Director-General, Development Assessment and Systems Performance in respect of MP 10\_0161 for the Chain Valley Colliery Domains 1 & 2 Continuation Project.

**Recipient** has the meaning given to that term in the GST Act.

**Supply and Supplier** has the meaning given to that term in the GST Act.

**Tax Invoice** has the meaning given to that term in the GST Act.

**Taxable Supply** has the meaning given to that term in the GST Act.

## **2. INTERPRETATION**

### **2.1. In this document:**

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day.
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (k) a reference to 'month' means calendar month.

## **3. PLANNING AGREEMENT UNDER THE ACT**

This Agreement constitutes a planning agreement within the meaning of section 93F of the Act and complies with each of the requirements of Division 6, Part 4 of the Act.

#### **4. OPERATION OF THIS AGREEMENT**

- 4.1. This Agreement does not exclude the operation of section 310 of the *Water Management Act 2000* or any conditions of the Development Consent.
- 4.2. The benefits under this Agreement are taken to be satisfactory for any development contributions payable under Section 94 of the Act in respect to the Development.
- 4.3. This Agreement excludes the contribution payable to Council by LCPL under the Road Maintenance Agreement dated 5 July 2013.

#### **5. PAYMENT OF CONTRIBUTIONS**

##### **Contribution payable**

- 5.1. LCPL must pay the Contributions to Council as required under the conditions of the Development Consent and as set out in Schedule 1 of this Agreement.
- 5.2. Council must expend the Contributions in accordance with the LakeCoal Community Funding Deed.
- 5.3. On and after 23 February 2013, Contributions will be subject to Indexation.

##### **Intention to make payment**

- 5.4. LCPL must give Council not less than two business days written notice of:
  - (a) its intention to pay a Contribution; and
  - (b) the amount proposed to be paid, including any GST to be paid by LCPL in respect to the Contribution.

##### **Requirement for invoices**

- 5.5. Council must upon receiving the notice under clause 5.4, provide LCPL with a Tax Invoice for the amount of the Contribution that LCPL proposes to pay.
- 5.6. *Subject to clause 5.8, LCPL must pay Council the Contribution within ten business days of receiving the Tax Invoice from Council under clause 5.5.*

##### **Time of payment**

- 5.7. A Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic transfer into a bank account nominated by Council.

##### **Payment of contribution**

- 5.8. LCPL:
  - (a) is not required to pay a Contribution; and
  - (b) will not be in breach of this Agreement if it fails to pay a Contribution at the time required by this Agreement,

if Council fails to provide LCPL with a Tax Invoice for the amount proposed to be paid by LCPL.

- 5.9. Subject to clause 5.8, if LCPL does not pay a Contribution in accordance with this Agreement, interest will accrue on the unpaid amount outstanding from time to time at the Interest Rate, calculated daily until payment in full is made. This clause does not apply to any Contributions payable before the date of this Agreement.

The Council may recover an amount due and payable under this Agreement, but unpaid for 28 days, as a debt due in a court of competent jurisdiction, without further notice to LCPL.

## 6. REVIEW OF THIS AGREEMENT

- 6.1. Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.
- 6.2. The Parties agree that this Agreement will form the basis for any revised agreement should LCPL obtain a modification to the Development Consent or a new development consent if either requires the payment of additional contributions.

## 7. DISPUTE RESOLUTION

- 7.1. If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, LCPL or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.
- 7.2. A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
- 7.3. (i) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
- (ii) The Parties agree that 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.
- (iii) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
- (iv) *The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.*
- (v) If any procedural aspects are not specified sufficiently in the rules under clause 7.1, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
- (vi) A legal representative acting for either of the Parties may participate in the mediation.
- 7.4. From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 7.5. Should mediation fail to resolve any dispute then either party can commence proceedings to *enforce any aspect of this Agreement.*

7.6. Despite clauses 7.1, 7.2, 7.3 and 7.4, either Council or LCPL may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

7.7. Each Party to the Dispute must pay its own costs of complying with clause 7.3. The Parties to the Dispute must equally pay the costs of the mediation including without limitation the fees of any mediator and the cost of room hire.

## 8. COSTS

8.1. LCPL agrees to pay or reimburse the costs of Council in connection with the negotiation, preparation and execution of this Agreement, at a maximum cost of \$2,000.

## 9. NOTICES

9.1. 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 in (b) below.
- (b) Faxed or emailed to that Party at the relevant details set out below.

(i) Council: Central Coast Council  
Attention: Chief Executive Officer  
Address: DX 7306, WYONG  
Fax No: (02) 4350 2098  
Email: [ask@centralcoast.nsw.gov.au](mailto:ask@centralcoast.nsw.gov.au)

(ii) LCPL: LakeCoal Pty Ltd  
Attention: Operations Manager  
Address: PO Box 7115 Mannering Park NSW 2259  
Fax No: (02) 4358 0879  
Email: [admin@lakecoal.com.au](mailto:admin@lakecoal.com.au)

9.2. If a party gives the other party 3 working days notice of a change of its postal address, email 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, emailed or faxed to the latest address or fax number.

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

- (a) If it is hand delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 working 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.
- (d) If it is sent by email, as soon as the sender receives an email receipt or other written confirmation or verbal confirmation from the recipient to the sender indicating that the email was received.

9.4. If any notice, consent, information, application or request is delivered, or an email receipt or error free transmission report in relation to it is received, on a day that is not a business day, or



if it is on a business day, after 5.00pm 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.

**10. 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.

**11. FURTHER ACTS**

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

**12. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of New South Wales, Australia. 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 provided that the dispute resolution provisions in clause 7 of this Agreement have first been satisfied.

**13. NO FETTER**

Nothing in this Agreement is to 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 is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**14. SEVERABILITY**

If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

**15. WAIVER**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

**16. GST**

16.1. Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

16.2. If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
  - (b) the Supplier must give the Recipient a Tax Invoice for the Supply.
- 16.3. For clarity, the GST payable under clause 16.2 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- 16.4. If either Party has the right under this Agreement to be reimbursed or indemnified by another Party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which any Input Tax Credit may be claimed by the Party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person being entitled to put the Tax Credit (if any).
- 16.5. Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the tax invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- 16.6. Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 16.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## **17. EXPLANATORY NOTE**

Under clause 25E(7) of the *Environmental Planning and Assessment Regulation 2000 (NSW)*, the Parties agree that the Explanatory Note is not to be used to assist interpreting this Agreement.

## **18. ASSIGNMENT**

- 18.1. Subject to clauses 18.2 and 18.4, LCPL may (at its discretion) assign or novate to any of the following (New Party) the whole or a part of an interest in this Agreement:
- (a) the purchaser of the whole or an interest in the Development;
  - (b) the purchaser of the whole or an interest in any Mining Lease; or
  - (c) any subsidiary, parent company or related body corporate (as provided in the *Corporations Act 2001 (Cth)*) of LCPL or the party in clause 18.1(a) or 18.1(b).
- 18.2. If prior approval from DRE is not required for the transfer of the whole or an interest in any Mining Lease, then LCPL must obtain consent from Council for the assignment or novation of this Agreement to the New Party, and such consent must not be unreasonably withheld by Council. For the avoidance of doubt, Consent from Council is not required for the assignment or novation of this Agreement, if DRE has given approval for the transfer of the whole or an interest in any Mining Lease to the New Party.
- 18.3. If requested by LCPL, Council will sign all documents and undertake all acts reasonably necessary to give effects to LCPL's assignment of its rights or novation of its rights and obligations under this Agreement.
- 18.4. Before any assignment or novation referred to in clause 18.1, LCPL is to use its best endeavours to procure the execution by the New Party of a deed of assumption in favour of Council in which the New Party covenants to be bound by this Agreement as if it were a party to this Agreement.

18.5. LCPL must pay the reasonable cost of Council related to Council's compliance with its obligations under clause 18.2.

**19. TERMINATION**

19.1. This Agreement terminates if any of the following circumstances arise:

- (a) when the Development Consent expires or is surrendered;
- (b) if the Mining Lease, under which the Development is being carried out, is cancelled or surrendered;
- (c) if the parties agree in writing to terminate the operation of this Agreement at any time; or
- (d) a party becomes insolvent.

**20. REGISTRATION**

This Agreement will not be registered as provided for in section 93H of the Act.

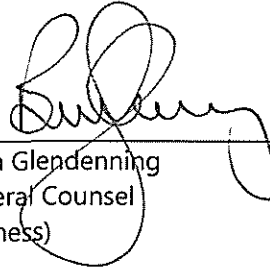
**EXECUTED** as an Agreement.

Date:

Executed as a Voluntary Planning Agreement  
pursuant to delegations under ss. 377 & 378  
of the Local Government Act 1993 :



\_\_\_\_\_  
Scott Cox  
Group Leader, Environment & Planning  
(Delegate)



\_\_\_\_\_  
Brian Glendenning  
General Counsel  
(Witness)

Executed for and on behalf of LakeCoal Pty Ltd in  
accordance with section 127(1) of the Corporations  
Act:



\_\_\_\_\_  
Director/Secretary [if not Sole Director]

KERRY ATKINS  
\_\_\_\_\_  
Name [BLOCK LETTERS]



\_\_\_\_\_  
Director/~~Sole~~ Director

PETER ROSS  
\_\_\_\_\_  
Name [BLOCK LETTERS]

## SCHEDULE 1

### Central Coast Council and LakeCoal Pty Ltd

#### Contribution and Timing of Payments (clause 5)

LCPL will pay the monetary Contributions, subject to indexation, to Council as set out in the table below:

Item No.	Contributions	Intended Use	Payment timing
1	<p><b>Monetary Contribution:</b> \$0.035 for each tonne of product coal produced by the Development.</p> <p>Calculated on the product coal produced by the Development from the previous calendar year as reported in the Annual Environmental Management Report; and Subject to indexation in line with the Consumer Price Index, as published by the Australian Bureau of Statistics.</p>	<p>For the purpose of improving public infrastructure and the provision of community projects for the communities of Summerland Point, Gwandalan, Chain Valley Bay and Mannering Park.</p>	<p>The payments for the period from 23 January 2012 to the date of this Agreement shall be made within one month of the date of this Agreement. Subsequent payments will be made by the end of March each year thereafter.</p>

**GST:** All dollar amounts in the above table are GST exclusive and subject to indexation in accordance with this Agreement.

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# LakeCoal Community Funding Deed

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Central Coast Council

LakeCoal Pty Ltd ACN 094 084 787

Version: 2

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# LakeCoal Community Funding Deed

Dated

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## Parties

<b>Council</b>	<b>Central Coast Council</b> of Hely Street, Wyong, New South Wales, 2259
<b>LCPL</b>	<b>LakeCoal Pty Ltd ACN 094 084 787</b> of Level 37, 123 Eagle Street, Brisbane, Queensland 4000

## Background

- A LCPL operates the Chain Valley Colliery which is an underground coal mine located at the southern end of Lake Macquarie in New South Wales.
- B LCPL was granted development consent (SSD-5465) on 23 December 2013 and is permitted to extract up to 2.1 million tonnes of run of mine coal per calendar year until December 2027 (**Development Consent**).
- C Condition 12 of Schedule 2 of the Development Consent requires LCPL to pay contributions to Council at a rate of \$0.035 per tonne of product coal produced by the Development.
- D LCPL and Council entered into a Voluntary Planning Agreement dated in order to implement LCPL's obligations under condition 12 of Schedule 2 of the Development Consent.
- E LCPL and Council agree to enter into this document in order to establish a Community Fund and Community Advisory Panel for the management and distribution of Contributions paid by LCPL in accordance with the Voluntary Planning Agreement.

## Agreed terms

### 1.1 Definitions

In this document, terms defined in the Voluntary Planning Agreement have the same meaning when used in this document, and:

<b>Term</b>	<b>Definition</b>
<b>Community Advisory Panel</b>	means the Community Advisory Panel established under clause 2.1.
<b>Community Project</b>	means a project undertaken for the purpose of improving public infrastructure or the provision of community projects for the communities of Summerland Point, Gwandalan, Chain Valley Bay and Mannering Park.



<b>Term</b>	<b>Definition</b>
<b>Contributions</b>	means the monetary contributions made by LCPL to the Council in accordance with the Voluntary Planning Agreement dated.
<b>Operating Rules</b>	means the terms set out in the Chain Valley Colliery Contributions Expenditure Community Advisory Panel Operating Rules and Terms of Reference attached to this document as Annexure A.
<b>Voluntary Planning Agreement</b>	means the voluntary planning agreement entered into between Central Coast Council and LakeCoal Pty Ltd dated.

## **1.2 Interpretation**

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (i) a reference to 'month' means calendar month.

## **2 Community Advisory Panel**

### **2.1 Establishment**

The Council and LCPL will establish and administer the Community Advisory Panel in accordance with the Operating Rules reproduced in Annexure A to this document.

## **2.2 Role**

The role of the Community Advisory Panel is to make recommendations to the Council as to the specific Community Projects to which the Contributions should be applied in order to improve *public infrastructure and fund community projects in the communities of Summerland Point, Gwandalan, Chain Valley Bay and Mannering Park.*

## **2.3 Membership**

*The Community Advisory Panel will be comprised of representatives from Council, LCPL and the local community as specified in the Operating Rules.*

# **3 Expenditure of Contributions**

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## **3.1 Expenditure of Contributions**

- (a) The Council will hold the Contributions made by LCPL under the Voluntary Planning Agreement.
- (b) Subject to clause 4.1, expenditure of the Contributions may only be made in accordance with recommendations made by the Community Advisory Panel.
- (c) Council must not expend the Contributions otherwise than in accordance with this document.
- (d) Council will use its reasonable endeavours to:
  - (i) expend the Contributions within a reasonable period of the Contributions being paid to the Council; or
  - (ii) if required to achieve the recommendations of the Community Advisory Panel, Council will pool the Contributions until such time that there are sufficient funds to implement a particular Community Project.

## **3.2 No obligation**

Nothing in this Deed obliges the Council to expend any money other than the Contributions or apply any other resources available to the Council in accordance with any recommendations of the Community Advisory Panel.

## **3.3 Acknowledgement**

LCPL acknowledges that the expenditure of the Contributions may also be subject to the tendering requirements of the *Local Government Act 1993* or the Council's procurement policies.

# **4 Community Advisory Panel recommendations**

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## **4.1 Community Advisory Panel recommendations**

Council is not obliged to expend the Contributions in accordance with the recommendations of the Community Advisory Panel if those recommendations:

- (a) are not made in accordance with the Operating Rules or are otherwise made outside of the Community Advisory Panel's standard operating procedures;
- (b) are not for a Community Project or not in accordance with the intended use of the Contributions as set out in Schedule 1 of the Voluntary Planning Agreement;
- (c) are, or would, if implemented, be, unlawful; or
- (d) are considered by Council to inconsistent with the Council's other legal obligations.

#### **4.2 Notice**

If Council intends to expend the Contributions otherwise than in accordance with a recommendation made by the Community Advisory Panel, then Council must:

- (a) notify the Community Advisory Panel in writing; and
- (b) provide the Community Advisory Panel with 30 days to identify one or more alternative Community Project(s) for which the Contribution could be applied to.

## **5 Notice**

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### **5.1 Method of giving notice**

A notice, consent or communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
  - (i) delivered by hand to that person's address;
  - (ii) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
  - (iii) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
  - (iv) sent by email to that person's email address where the sender receives an email receipt or other written confirmation or verbal confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient.

## 5.2 When is notice given

A notice, consent or communication given under clause 5.1 is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax or email	(a) that day, if delivered by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.
Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Days after posting, if sent to or from a place outside Australia.

## 5.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

	Council	LCPL
<b>Name</b>	Central Coast Council	LakeCoal Pty Ltd
<b>Attention</b>	Chief Executive Officer	Operations Manager
<b>Address</b>	DX 7306, Wyong New South Wales, 2259	PO Box 7115, Mannering Park New South Wales, 2259
<b>Fax</b>	(02) 4350 2098	(02) 4358 0879
<b>Email</b>	ask@centralcoast.nsw.gov.au	admin@lakecoal.com.au

## 6 General

### 6.1 Amendments

This document may only be amended by written agreement between both parties.

### 6.2 Assignment

A party may only assign this document or a right under this document with the written consent of the other party, whose consent may not be unreasonably withheld.

### 6.3 Counterparts

This document may be signed in any number of counterparts. All counterparts together make one instrument.

### 6.4 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

## **6.5 Entire agreement**

- (a) This document supersedes all previous agreements about its subject matter. This document embodies the entire agreement between the parties.
- (b) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.

## **6.6 Further assurances**

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

## **6.7 No waiver**

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

## **6.8 Governing law and jurisdiction**

- (a) New South Wales law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

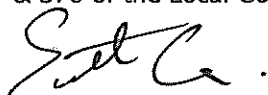
## **6.9 Severability**

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

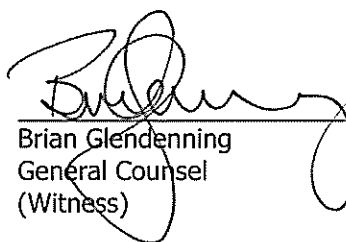
## Execution

EXECUTED as a deed

Executed as a Deed of Agreement on the 19th day of August 2016 pursuant to delegations under ss. 377 & 378 of the Local Government Act 1993:



\_\_\_\_\_  
Scott Cox  
Group Leader, Environment & Planning  
(Delegate)



\_\_\_\_\_  
Brian Glendenning  
General Counsel  
(Witness)

Executed for and on behalf of LakeCoal Pty Ltd in accordance with section 127(1) of the Corporations Act:



\_\_\_\_\_  
Director/Secretary [if not Sole Director]

KERRY ATKINS

\_\_\_\_\_  
Name [BLOCK LETTERS]



\_\_\_\_\_  
Director/Sole Director

PETER ROSS

\_\_\_\_\_  
Name [BLOCK LETTERS]

# Annexure

Operating Rules and Terms of Reference

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**Chain Valley Colliery  
Contributions Expenditure  
Community Advisory Panel**

**OPERATING RULES  
AND  
TERMS OF REFERENCE**



<b>Policy Code:</b>	
<b>Policy Title:</b>	Chain Valley Colliery Contributions Expenditure Community Advisory Panel Terms of Reference and Operating Rules
<b>Policy Owner:</b>	General Manager
<b>Prepared by:</b>	Governance and Legal Services
<b>Approved by:</b>	
<b>Date Approved:</b>	
<b>Version:</b>	
<b>Revision Date:</b>	
<b>Amendments:</b>	
<b>Relevant Legislation/Codes:</b>	Local Government Act 1993 and Environmental Planning and Assessment Act 1979
<b>Related Policies/Documents:</b>	
<b>Related Forms:</b>	Advisory Panel Member Undertaking

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# 1 Interpretation

1.1 Unless context determines otherwise, the following definitions apply to these Terms of Reference and Operating Rules:

1.1.1 **LG Act** means the *Local Government Act 1993* and  
**EPA Act** means the *Environmental Planning and Assessment Act 1979*.

1.1.2 **Council** means Central Coast Council and where appropriate includes its delegates and administration.

1.1.3 **General Manager** means the General Manager of Council and includes his/her delegate and includes an Interim General Manager.

1.1.4 **Contributions** has the same meaning as in the Agreement.

1.1.5 **Agreement** means the Voluntary Planning Agreement between the Council and LakeCoal Pty Ltd dated ~~xx xxxxxx xxxx~~ 1 September 2016

1.1.6 **LakeCoal** means LakeCoal Pty Ltd ACN 094 084 787.

1.1.7 **Advisory Panel** means the Chain Valley Colliery Contributions Expenditure Community Advisory Panel.

# 2 Establishment and dissolution

2.1 This Advisory Panel was established and these Terms of Reference and Operating Rules for the Advisory Panel were adopted by agreement between Council and LakeCoal.

2.2 The Advisory Panel will be made up of a minimum of three community members, one Council delegate and one representative from LakeCoal.

2.3 These Terms of Reference and Operating Rules may be amended by agreement of Council and LakeCoal. If any amendment to the Terms of Reference and Operating Rules cannot be agreed between Council and LakeCoal the matter is to be resolved in accordance with the Dispute process in the Agreement.

2.4 The Advisory Panel may be dissolved by agreement of Council and LakeCoal, or in the absence of agreement by the Secretary of the Department of Planning and Environment.

2.5 The Advisory Panel is dissolved when the Council has expended the last of the Contributions and no further contributions are payable by LakeCoal or if the Agreement is terminated in accordance with the Agreement.

### **3 Purpose and terms of reference**

- 3.1 The Advisory Panel has been established to provide the Council with recommendations as to expenditure of the Contributions.
- 3.2 The Terms of Reference of this Advisory Panel are:
- 3.2.1 To provide recommendations to Council on expenditure of the Contributions; and
  - 3.2.2 To act as a forum for communication between Council, the General Manager, senior management of LakeCoal and other stakeholders in respect of the expenditure of the Contributions.
- 3.3 This Advisory Panel will be constituted to provide a forum for input from:
- 3.3.1 the communities of Summerland Point, Gwandalan, Chain Valley Bay and Mannering Park; and
  - 3.3.2 LakeCoal,
- into Council's expenditure of the Contributions.
- 3.4 This Advisory Panel will recognise that the responsibility for the expenditure of the Contributions rests with the Council.

### **4 Delegated functions**

- 4.1 Council has not delegated any functions to the Advisory Panel. However the Advisory Panel may (within these Terms of Reference):
- 4.1.1 Request that Council provide it with relevant information as necessary to make recommendations to Council in accordance with these Terms of Reference;
  - 4.1.2 Consult with appropriate external parties (subject to any legal obligations particularly in relation to confidential information);
  - 4.1.3 Request the attendance of any Council employee at an Advisory Panel meeting; and
  - 4.1.4 Request external advice considered necessary to meet the Advisory Panel's responsibilities.

Nothing in this clause 4.1 grants the Advisory Panel any right or power to information held by Council, to demand the attendance of any Council employee at any meeting of the Advisory Panel or otherwise, or authorise the Advisory Panel to expend any Council resource or any part of the Contributions on any external advice.

- 4.2 The Advisory Panel is constituted by individuals appointed by Council with the consent of the individuals, who (except in the case of employees of Council)

agree that they do not have a contract with Council to supply advisory services to Council.

- 4.3 Unless specifically delegated by these Terms of Reference and Operating Rules or other instrument:
- 4.3.1 The Advisory Panel cannot make decisions on behalf of Council; and
  - 4.3.2 The Advisory Panel (or any of its members) cannot direct any Council employee in his or her duties; and
  - 4.3.3 The Advisory Panel has no power or authority, whether by delegation, agency or otherwise to exercise any function, right, duty or power of Council, whether under a statute or other law, as a landowner or in any other capacity.

## 5 Administrative and facilitative support

- 5.1 The Council employee appointed pursuant to this clause 5 (being the Secretary) will be a member of the Advisory Panel but will not be a Voting Member.
- 5.2 The Council employee appointed pursuant to clause 5.3 will be entitled to attend and participate in all meetings of the Advisory Panel and may not be excluded from any meeting except by direction of the Chairperson.
- 5.3 The General Manager will appoint a Council employee to fulfil the role of the secretary:
- 5.3.1 The **Secretary** will be a Council employee who will provide administrative support to the Advisory Panel. The Secretary will have the following functions:
    - (a) Prepare agendas;
    - (b) Maintain the register of members;
    - (c) Maintain the Advisory Panel's register of delegations;
    - (d) Maintain the Advisory Panel's financial records;
    - (e) Take minutes at Advisory Panel meetings and prepare them for dissemination;
    - (f) Accept and collate Advisory Panel business papers prepared or submitted by Council officers, Advisory Panel members, working parties and stakeholders;
    - (g) Make agendas, minutes and Advisory Panel business papers available to Advisory Panel members and relevant Council officers;
    - (h) Make Advisory Panel governance papers available to Advisory Panel members, Councillors and relevant Council officers;
    - (i) Book meeting venues and organise the provision of any necessary equipment.

5.3.2 The Secretary will be a suitably qualified Council employee and the position may be shared amongst a number of suitably qualified Council employees.

## **6 Membership**

- 6.1 Council will seek to appoint individuals to the Advisory Panel who have the relevant skills, expertise and experience which are likely to assist the Advisory Panel in fulfilling the purpose specified in clause 3.1. Council may terminate the appointment of a member of the Advisory Panel with immediate effect but only with prior agreement of LakeCoal. A reason must be given by Council for the termination of the appointed member of the Advisory Panel.
- 6.2 Council will determine the number of members appointed to the Advisory Panel from time to time, but generally Council will seek to appoint individuals so that the Advisory Panel will have at least 5 members and not more than 7 members at any time.
- 6.3 The initial members of the Advisory Panel will include:
- 6.3.1 1 Council delegate, appointed by the General Manager (this Council delegate may be a Councillor);
  - 6.3.2 1 representative of LakeCoal;
  - 6.3.3 3 community members selected in accordance with clause 7.
- 6.4 Members will remain members of the Advisory Panel until the earlier of:
- 6.4.1 The expiry of their membership term under clause 6.8;
  - 6.4.2 The Advisory Panel is dissolved under clause 2.4 or 2.5; or
  - 6.4.3 Their membership is otherwise terminated by Council.
- 6.5 If the Council delegate (appointed under clause 6.3.1) or the representative of LakeCoal (appointed under clause 6.3.2) ceases to be an employee of the respective organisation or resigns from the Advisory Panel, then the respective organisation may nominate a replacement member who has similar expertise and skills. Such appointment is subject to clause 6.1.
- 6.6 If a Community member resigns from the Advisory Panel, the selection panel in clause 7 can reassess applications received in accordance with clause 7.
- 6.7 Advisory Panel members will not be paid sitting fees or expenses or any other remuneration for attending the Advisory Panel meetings.
- 6.8 Members are appointed for an initial term of 1 year, and subject to a review by Council after the initial year, extended to a maximum period of 3 years, subject to these Terms of Reference and Operating Rules. Following the initial term membership will generally be for a 3 year term unless otherwise determined by Council.
- 6.9 At the expiry of their membership term, Advisory Panel members are entitled to nominate for re-appointment.

## **7 Community members**

- 7.1 The selection panel for community members (selection panel) will consist of:
- 7.1.1 A Councillor elected by Council;
  - 7.1.2 The General Manager; and
  - 7.1.3 A representative from LakeCoal.
- 7.2 The General Manager will determine the membership criteria for appointment to the Advisory Panel and will provide the criteria to the selection panel.
- 7.3 Expressions of interest for community members will be called for by way of notice:
- 7.3.1 In the Newcastle Herald and another newspaper circulating in the Wyong local government area; or
  - 7.3.2 On Council's website and LakeCoal's website; or
  - 7.3.3 By any other means deemed appropriate by the General Manager.
- 7.4 Applicants will be assessed by the selection panel against the membership criteria determined by the selection panel. Such assessment may include interviews and checking of references and qualifications. Preference will be given to community members that reside in the communities of Summerland Point, Gwandalan, Chain Valley Bay or Mannering Park.
- 7.5 The selection panel will by agreement or vote (each member having one vote on each prospective nominee):
- 7.5.1 nominate 3 community members to the Advisory Panel; and
  - 7.5.2 nominate one of those community members to be Chairperson of the Advisory Panel.
- 7.6 The Chairperson vacates office as Chairperson if he or she:
- 7.6.1 is removed from that office by the selection panel, or
  - 7.6.2 resigns that office by giving written notice addressed to the General Manager, or
  - 7.6.3 ceases to be a member of the Advisory Panel.
- 7.7 The selection panel process for the appointment of community members and Chairperson shall reconvene in the event there is a need for vacancies to be filled for community members of the Advisory Panel.

## **8 Meetings**

- 8.1 Meetings must be held at least once per year, or more frequently as determined by the General Manager or the Chairperson. The Chairperson, General Manager or Council may call an extraordinary meeting of the Advisory Panel with at least three days written notice to all members.
- 8.2 The Chairperson will preside as Chairperson at every meeting of the Advisory Panel. If the Chairperson is not available for a meeting of the Advisory Panel then the voting members of the Advisory Panel that are present at that meeting must elect one of them to chair that meeting.
- 8.3 For the purpose of clause 8.3, the Chairperson is deemed to be not available if not present within ten minutes after the time appointed for the meeting.
- 8.4 In addition to the agenda determined by the Chairperson, the order of business for meetings will be as follows:
  - 8.4.1 Open meeting.
  - 8.4.2 Account of those present or in attendance.
  - 8.4.3 Apologies and leave of absence.
  - 8.4.4 Adoption of previous minutes.
  - 8.4.5 Declaration of pecuniary and non pecuniary interests relating to the business of the meeting.
  - 8.4.6 Business arising from previous meeting.
  - 8.4.7 Items submitted by Council.
  - 8.4.8 Items submitted by Advisory Panel members.
  - 8.4.9 Items submitted by the Chairperson.
  - 8.4.10 General Business.
  - 8.4.11 Actions arising from meeting.
  - 8.4.12 Confirmation of details of next meeting.
  - 8.4.13 Close meeting.
- 8.5 Any member may seek to place an item on a meeting agenda by providing to the Chairperson in writing at least ten days prior to the day of the meeting:
  - 8.5.1 Details of the item;
  - 8.5.2 Any relevant business papers in relation to the item; and
  - 8.5.3 Any requests that a non-member address the meeting in relation to the item.



- 8.6 The Chairperson may reject any agenda item submitted by an Advisory Panel member if, in the opinion of the Chairperson, the agenda item:
- 8.6.1 Is not within the Terms of Reference of the Advisory Panel;
  - 8.6.2 Has an unlawful purpose;
  - 8.6.3 Is vexatious; or
  - 8.6.4 Except in the event of properly recurring matters, is substantially the same as a matter considered by the Advisory Panel in the previous six months, or twice within the previous two years, unless significant new material is provided.
- 8.7 If any proposed agenda item is rejected by the Chairperson, the Chairperson will inform the Advisory Panel of such rejection (and the reasons for it) in writing at the time of the meeting for which the agenda item was proposed.
- 8.8 The Secretary will provide notice of meetings (including the agenda and business papers) to members at least seven days prior to the day of the meeting. The notice, agenda and business papers may be transmitted to members electronically.
- 8.9 A quorum is required for a meeting to be convened. A quorum is constituted by attendance of a majority of the Voting Members of the Advisory Panel.
- 8.10 Any non-member may be invited to attend a meeting and speak at that meeting by:
- 8.10.1 The Advisory Panel by resolution;
  - 8.10.2 The General Manager;
  - 8.10.3 The Chairperson.
- 8.11 Unless otherwise resolved by the Advisory Panel, all meetings of the Advisory Panel will be open to the general public.
- 8.12 Any Councillor of Council may attend any meeting of the Advisory Panel as an observer.
- 8.13 The Chairperson will be responsible for keeping order at the meeting, including determining the order of speakers, accepting motions from members and where necessary placing reasonable restrictions on speakers, including as to their number and the time given to them to speak.

## **9 Motions and resolutions**

- 9.1 Motions put to the Advisory Panel must be consistent with these Terms of Reference and Operating Rules. The Chairperson may reject any motion that he/she considers inconsistent with these Terms of Reference and Operating Rules.

- 9.2 Motions shall be moved and seconded before they are debated by the Advisory Panel. Any Voting Member may move or second a motion. Any motion that is not seconded will lapse.
- 9.3 The mover and seconder of a motion shall have a right to speak in favour of a motion. A minimum of two members will be allowed to speak against a motion. The mover of the motion shall have a right of reply.
- 9.4 The Chairperson, the General Manager and Council's delegate shall have a right to speak to any motion.
- 9.5 Additional speakers shall be allowed to speak to the motion at the Chairperson's discretion.
- 9.6 Once the Chairperson has given the mover of a motion his or her right of reply, a motion shall be put to the meeting and determined by a simple majority vote by those Voting Members present. Each Voting Member shall be entitled to one vote. In the event of a tie, the Chairperson shall have a second and casting vote.
- 9.7 If a motion is adopted by the Advisory Panel, it shall constitute a resolution of the Advisory Panel.
- 9.8 The Advisory Panel may make resolutions in relation to the operation of the Advisory Panel and the resources available to it.
- 9.9 The Advisory Panel may by resolution make recommendations to the General Manager and Council however the Advisory Panel may not make decisions binding on Council unless specifically authorised to do so.
- 9.10 All reports must be in the form approved by the General Manager and prepared in accordance with clause 12.

## **10 Minutes**

- 10.1 Minutes of all Advisory Panel meetings will be recorded by the Secretary and settled by the Chairperson.
- 10.2 As soon as practicable following the meeting to which they relate, draft minutes will be:
  - 10.2.1 Recorded in Council's electronic data management system; and
  - 10.2.2 Made available to Advisory Panel members.
- 10.3 As soon as practicable following the adoption of minutes, the adopted minutes will be:
  - 10.3.1 Recorded in Council's electronic data management system; and
  - 10.3.2 Made available to Advisory Panel members.

## **11 Confidentiality**

- 11.1 Items of Advisory Panel business are not confidential unless identified as such by the Chairperson in a business paper or by the Advisory Panel at a meeting.
- 11.2 If a member discloses any confidential Advisory Panel information to a person other than to an Advisory Panel member or appropriate Council officer without the authority of the Advisory Panel or General Manager, that member shall have committed a serious act of disorder.
- 11.3 If a Councillor member has committed a serious act of disorder pursuant to clause 11.2, the Advisory Panel must refer that serious act of disorder to Council.

## **12 Reporting and recommendations**

- 12.1 All recommendations made by the Advisory Panel must be by way of report in the proper form setting out the Advisory Panel's resolution recommending the manner in which the Contributions or a part of the Contributions should be expended.
- 12.2 The Advisory Panel may submit other reports to the General Manager on matters *within its terms of reference*.
- 12.3 The Advisory Panel may provide reports to the Chairperson for review and comment before submission. The Chairperson may annexe a commentary note to a report provided to the Chairperson under this clause.

## **13 Public Comment**

- 13.1 The Advisory Panel shall not make any public comment except with the prior consent of Council.

## **14 Review**

- 14.1 The Terms of Reference and operation of the Advisory Panel may be reviewed by Council and LakeCoal from time to time and will be reviewed after an initial term of one year and again every three years after the initial year.

**Central Coast Council  
Advisory Panel Member Undertaking**

I ..... declare as follows:

1. wish to become a member of the Advisory Panel.
2. I understand the importance attached to my role as a member of the Advisory Panel.
3. I will contribute to the Advisory Panel for the benefit of the people of the Shire of Wyong.
4. I have read, understood and agree to be bound by the terms of:
  - i. The Terms of Reference and Operating Rules of the Advisory Panel; and
  - ii. The Central Coast Council Code of Conduct, for the duration of my membership of the Advisory Panel.
5. I understand that my personal information (including my name and organisation (if relevant)) will be public information, will be entered into the Advisory Panel register and may be published on Council's website.

**Signature:** ..... **Date:** .....

**Witness name:**.....  
(print)

**Witness Signature:** ..... **Date:** .....

**Guardian Consent** (required if member under 18)

I ..... am the legal guardian of the above named person. I consent to the above named person becoming a member of the above named Advisory Panel/ working party.

**Signature and Date** .....

**Contact number** ... ..