

MINING LEASE

MINING ACT 1992

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NO. 1563

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DATED 23<sup>rd</sup> March 2005

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THE MINISTER FOR MINERAL  
RESOURCES

OF THE STATE

OF NEW SOUTH WALES

TO

**Creek Resources Pty Limited**  
(A. C. N. 100 228 886)

AND

**Betalpha Pty Limited**  
(A. C. N. 105 663 518)


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RECORDED in the Department of  
Primary Industries, Mineral Resources

this **fifth** day of **April 2005** A.D.

at the hour of **10:00**

o'clock in the fore noon.

  
Director-General

**MINING ACT 1992**

**MINING LEASE**

THIS DEED made the **twenty third** \_\_\_\_\_ day of **March** \_\_\_\_\_  
Two thousand and **five** \_\_\_\_\_ in pursuance of the provisions of the Mining  
Act 1992 (hereinafter called "the Act") **BETWEEN THE HONOURABLE KERRY  
ARTHUR HICKEY MINISTER FOR MINERAL RESOURCES** of the State of New  
South Wales (hereinafter called "the Minister" which expression shall where the  
context admits or requires include the successors in office of the Minister and the  
person acting as such Minister for the time being) **AND Creek Resources Pty  
Limited (A. C. N. 100 228 886) and Betalpha Pty Limited (A. C. N. 105 663 518)**  
(which with its successors and transferees is hereinafter called "the lease holder")

WHEREAS

- (a) in conformity with the Act application was made for a mining lease over the  
lands hereinafter described; and
- (b) all conditions and things required to be done and performed before granting a  
mining lease under the Act have been done and performed **NOW THIS DEED  
WITNESSETH** that in consideration of the observance and performance of the  
covenants contained in this Deed and the payment of royalty by the lease  
holder, the Minister in pursuance of the provisions of the Act **DOES HEREBY**  
demise and lease to the lease holder **ALL THAT** piece or parcel of land  
containing by admeasurement of **678.5 hectares** and more particularly  
described and delineated in the plan catalogue No. **M27037** attached for the  
purpose of prospecting and mining for **coal**.

TO HOLD the said land together with any appurtenances thereon subject to:

- (a) such rights and interests as may be lawfully subsisting therein or which may  
be reserved by the Act at the date of this Deed; and
  - (b) such conditions, provisos and stipulations as are contained in this Deed **UNTO**  
the lease holder from and including the date of this Deed for the period of  
**twenty one (21) years** for the purpose as stated and for no other purpose.
1. THAT in this lease except insofar as the context otherwise indicates or  
requires:
- (a) any reference to an Act includes that Act and any Act amending or in  
substitution for the same; "Director-General" means the person for the  
time being holding office or acting as Director-General, Department of  
Mineral Resources, Sydney; the word "mine" has the meaning assigned  
to it by the Act; words importing the singular number shall include the  
plural, the masculine gender the feminine or neuter gender and vice  
versa; and

- (b) any covenant on the part of two or more persons shall be deemed to bind them jointly and severally.
2. THAT the lease holder shall during the said term pay to the Minister in Sydney in respect of all such minerals as stated, recovered from the land hereby demised, royalty at the rate or rates prescribed by the Act and the Regulations thereunder at the time the minerals are recovered, or at the rate or rates fixed by the Minister from time to time during the term of this demise in exercise of the power in that behalf conferred upon him by the Act.
  3. THAT the lease holder shall at all times during the term of this lease keep and preserve the said mine from all avoidable injury or damage and also the levels, drifts, shafts, watercourses, roadways, works, erections and fixtures therein and thereon in good repair and condition and in such state and condition shall on the expiration or sooner determination of the said term or any renewal thereof deliver possession of the land and the premises hereby demised to the Minister or other persons authorised to receive possession thereof.
  4. THAT the conditions and provisions set forth in the Schedule of Mining Lease Conditions 2004 herein and numbered:- **1 to 21 (inclusive), 23, 24, 25, 29, 30 and 31** are embodied and incorporated within this Deed as conditions and provisions of the lease hereby granted.

PROVIDED always and it is hereby declared as follows:

- (a) THAT this lease is granted subject to amendment as provided under Section 79 of the Act.
- (b) THAT if the lease holder at any time during the term of this demise -
  - (i) fails to fulfil or contravenes the covenants and conditions herein contained; or
  - (ii) fails to comply with any provision of the Act or the Regulations with which the lease holder is required to comply; or
  - (iii) fails to comply with the requirements of any agreement or assessment in relation to the payment of compensation,

this lease may be cancelled by the Minister by instrument in writing and the cancellation shall have effect from and including the date on which notice of the cancellation is served on the lease holder or on such later date as is specified in the notice; and any liability incurred by the lease holder before the cancellation took effect shall not be affected.

- (c) THAT no implied covenant for title or for quiet enjoyment shall be contained herein.

- (d) THAT all the conditions and provisions contained in the Mining Act 1992 and the Regulations thereunder, the Mines Inspection Act 1901 and the Coal Mines Regulation Act 1982 or any other law hereafter to be passed or prescribed shall be incorporated within this Deed as conditions and provisions of the lease granted. The lease holder hereby covenants to observe, fulfil and perform the same.
- (e) THAT such of the provisions and conditions declared and contained in this Deed as requiring anything to be done or not to be done by the lease holder, shall be read and construed as covenants by the lease holder with the Minister which are to be observed and performed.

IN WITNESS WHEREOF the parties hereto have executed this Deed the day and year first abovewritten.

SIGNED SEALED AND DELIVERED  
BY

**The Honourable Kerry Arthur Hickey**  
as such Minister as aforesaid

*[Handwritten signature of Kerry Arthur Hickey]*  
.....  
Minister

in the presence of

*[Handwritten signature of witness]*  
.....  
Witness

SIGNED SEALED AND DELIVERED  
by the said

**Creek Resources Pty Limited**  
(A. C. N. 100 228 886)



*[Handwritten signature]*

in the presence of

*[Handwritten signature]*  
.....  
Witness

SIGNED IN ACCORDANCE WITH THE CONSTITUTION '81:

**Betalpha Pty Limited**  
(A. C. N. 105 663 518)

*[Handwritten signature]*  
.....  
K ROSS - DIRECTOR.

in the presence of

*[Handwritten signature]*  
.....  
Witness  
H. HUTTON - SECRETARY.

## MINING LEASE CONDITIONS 2004

### Notice to Landholders

1. Within a period of three months from the date of grant of this lease or within such further time as the Minister may allow, the lease holder must serve on each landholder of the land a notice in writing indicating that this lease has been granted and whether the lease includes the surface. An adequate plan and description of the lease area must accompany the notice.

If there are ten or more landholders affected, the lease holder may serve the notice by publication in a newspaper circulating in the region where the lease area is situated. The notice must indicate that this lease has been granted; state whether the lease includes the surface and must contain an adequate plan and description of the lease area.

### Mining, Rehabilitation, Environmental Management Process (MREMP)

#### Mining Operations Plan (MOP)

2. (1) Mining operations, including mining purposes, must be conducted in accordance with a Mining Operations Plan (the Plan) satisfactory to the Director-General. The Plan together with environmental conditions of development consent and other approvals will form the basis for:-
  - (a) ongoing mining operations and environmental management; and
  - (b) ongoing monitoring of the project.
- (2) The Plan must be prepared in accordance with the Director-General's guidelines current at the time of lodgement.
- (3) A Plan must be lodged with the Director-General:-
  - (a) prior to the commencement of mining operations (including mining purposes);
  - (b) subsequently as appropriate prior to the expiry of any current Plan; and
  - (c) in accordance with any direction issued by the Director-General.
- (4) The Plan must present a schedule of proposed mine development for a period of up to seven (7) years and contain diagrams and documentation which identify:-
  - (a) area(s) proposed to be disturbed under the Plan;
  - (b) mining and rehabilitation method(s) to be used and their sequence;
  - (c) areas to be used for disposal of tailings/waste;

- (d) existing and proposed surface infrastructure;
  - (e) existing flora and fauna on the site;
  - (f) progressive rehabilitation schedules;
  - (g) areas of particular environmental, ecological and cultural sensitivity and measures to protect these areas;
  - (h) water management systems (including erosion and sediment controls);
  - (i) proposed resource recovery; and
  - (j) where the mine will cease extraction during the term of the Plan, a closure plan including final rehabilitation objectives/methods and post mining landuse/vegetation.
- (5) The Plan when lodged will be reviewed by the Department.
  - (6) The Director-General may within two (2) months of the lodgement of a Plan, require modification and re-lodgement.
  - (7) If a requirement in accordance with clause (6) is not issued within two (2) months of the lodgement of a Plan, the lease holder may proceed with implementation of the Plan.
  - (8) During the life of the Mining Operations Plan, proposed modifications to the Plan must be lodged with the Director-General and will be subject to the review process outlined in clauses (5) - (7) above.

**Annual Environmental Management Report (AEMR)**

- 3. (1) Within 12 months of the commencement of mining operations and thereafter annually or, at such other times as may be allowed by the Director-General, the lease holder must lodge an Annual Environmental Management Report (AEMR) with the Director-General.
- (2) The AEMR must be prepared in accordance with the Director-General's guidelines current at the time of reporting and contain a review and forecast of performance for the preceding and ensuing twelve months in terms of:
  - (a) the accepted Mining Operations Plan;
  - (b) development consent requirements and conditions;
  - (c) Department of Environment and Conservation and Department of Infrastructure, Planning and Natural Resources licences and approvals;
  - (d) any other statutory environmental requirements;

- (e) details of any variations to environmental approvals applicable to the lease area; and
  - (f) where relevant, progress towards final rehabilitation objectives.
- (3) After considering an AEMR the Director-General may, by notice in writing, direct the lease holder to undertake operations, remedial actions or supplementary studies in the manner and within the period specified in the notice to ensure that operations on the lease area are conducted in accordance with sound mining and environmental practice.
- (4) The lease holder shall, as and when directed by the Minister, co-operate with the Director-General to conduct and facilitate review of the AEMR involving other government agencies and the local council.

### **Subsidence Management**

4. (a) The lease holder shall prepare a Subsidence Management Plan prior to commencing any underground mining operations which will potentially lead to subsidence of the land surface.
- (b) Underground mining operations which will potentially lead to subsidence include secondary extraction panels such as longwalls or miniwalls, associated first workings (gateroads, installation roads and associated main headings, etc), and pillar extractions, and are otherwise defined by the *Guideline for Applications for Subsidence Management Approvals*.
- (c) The lease holder must not commence or undertake underground mining operations that will potentially lead to subsidence other than in accordance with a Subsidence Management Plan approved by the Director-General, an approval under the *Coal Mines Regulation Act 1982*, or the document *New Subsidence Management Plan Approval Process – Transitional Provisions*.
- (d) Subsidence Management Plans are to be prepared in accordance with the *Guideline for Applications for Subsidence Management Approvals*.
- (e) Subsidence Management Plans as approved shall form part of the Mining Operations Plan required under Condition 2 and will be subject to the Annual Environmental Management Report process as set out under Condition 3. The SMP is also subject to the requirements for subsidence monitoring and reporting set out in the document *New Approval Process for Management of Coal Mining Subsidence - Policy*.

### **Working Requirement**

5. The lease holder must:
- (a) ensure that at least **28** competent people are efficiently employed on the lease area on each week day except Saturday or any week day that is a public holiday,

OR

- (b) expend on operations carried out in the course of prospecting or mining the lease area, an amount of not less than **\$490,000.00** per annum whilst the lease is in force.

The Minister may at any time or times, by instrument in writing served on the lease holder, increase or decrease the expenditure required or the number of people to be employed.

### Control of Operations

- 6. (a) If an Environmental Officer of the Department believes that the lease holder is not complying with any provision of the Act or any condition of this lease relating to the working of the lease, he may direct the lease holder to:-
  - (i) cease working the lease; or
  - (ii) cease that part of the operation not complying with the Act or conditions;until in the opinion of the Environmental Officer the situation is rectified.
- (b) The lease holder must comply with any direction given. The Director-General may confirm, vary or revoke any such direction.
- (c) A direction referred to in this condition may be served on the Mine Manager.

### Reports

- 7. The lease holder must provide an exploration report, within a period of twenty-eight days after each anniversary of the date this lease has effect or at such other date as the Director-General may stipulate, of each year. The report must be to the satisfaction of the Director-General and contain the following:
  - (a) Full particulars, including results, interpretation and conclusions, of all exploration conducted during the twelve months period;
  - (b) Details of expenditure incurred in conducting that exploration;
  - (c) A summary of all geological findings acquired through mining or development evaluation activities;
  - (d) Particulars of exploration proposed to be conducted in the next twelve months period;
  - (e) All plans, maps, sections and other data necessary to satisfactorily interpret the report.

### **Licence to Use Reports**

8. (a) The lease holder grants to the Minister, by way of a non-exclusive licence, the right in copyright to publish, print, adapt and reproduce all exploration reports lodged in any form and for the full duration of copyright.
- (b) The non-exclusive licence will operate as a consent for the purposes of section 365 of the Mining Act 1992.

### **Confidentiality**

9. (a) All exploration reports submitted in accordance with the conditions of this lease will be kept confidential while the lease is in force, except in cases where:
  - (i) the lease holder has agreed that specified reports may be made non-confidential.
  - (ii) reports deal with exploration conducted exclusively on areas that have ceased to be part of the lease.
- (b) Confidentiality will be continued beyond the termination of a lease where an application for a flow-on title was lodged during the currency of the lease. The confidentiality will last until that flow-on title or any subsequent flow-on title, has terminated.
- (c) The Director-General may extend the period of confidentiality.

### **Terms of the non-exclusive licence**

10. The terms of the non-exclusive copyright licence granted under condition 8 (a) are:
  - (a) the Minister may sub-licence others to publish, print, adapt and reproduce but not on-licence reports.
  - (b) the Minister and any sub-licensee will acknowledge the lease holder's and any identifiable consultant's ownership of copyright in any reproduction of the reports, including storage of reports onto an electronic database.
  - (c) the lease holder does not warrant ownership of all copyright works in any report and, the lease holder will use best endeavours to identify those parts of the report for which the lease holder owns the copyright.
  - (d) there is no royalty payable by the Minister for the licence.
  - (e) if the lease holder has reasonable grounds to believe that the Minister has exercised his rights under the non-exclusive copyright licence in a manner which adversely affects the operations of the lease holder, that licence is revocable on the giving of a period of not less than three months notice.

## Blasting

11. (a) Ground Vibration

The lease holder must ensure that the ground vibration peak particle velocity generated by any blasting within the lease area does not exceed 10 mm/second and does not exceed 5 mm/second in more than 5% of the total number of blasts over a period of 12 months at any dwelling or occupied premises as the case may be, unless determined otherwise by the Department of Environment and Conservation.

(b) Blast Overpressure

The lease holder must ensure that the blast overpressure noise level generated by any blasting within the lease area does not exceed 120 dB (linear) and does not exceed 115 dB (linear) in more than 5% of the total number of blasts over a period of 12 months, at any dwelling or occupied premises, as the case may be, unless determined otherwise by the Department of Environment and Conservation.

## Safety

12. Operations must be carried out in a manner that ensures the safety of persons or stock in the vicinity of the operations. All drill holes shafts and excavations must be appropriately protected, to the satisfaction of the Director-General, to ensure that access to them by persons and stock is restricted. Abandoned shafts and excavations opened up or used by the lease holder must be filled in or otherwise rendered safe to a standard acceptable to the Director-General.

## Rehabilitation

13. (a) Land disturbed must be rehabilitated to a stable and permanent form suitable for a subsequent land use acceptable to the Director-General and in accordance with the Mining Operations Plan so that:-

- there is no adverse environmental effect outside the disturbed area and that the land is properly drained and protected from soil erosion.
- the state of the land is compatible with the surrounding land and land use requirements.
- the landforms, soils, hydrology and flora require no greater maintenance than that in the surrounding land.
- in cases where revegetation is required and native vegetation has been removed or damaged, the original species must be re-established with close reference to the flora survey included in the Mining Operations Plan. If the original vegetation was not native, any re-established vegetation must be appropriate to the area and at an acceptable density.

- the land does not pose a threat to public safety.
- (b) Any topsoil that is removed must be stored and maintained in a manner acceptable to the Director-General.

14. The lease holder must comply with any direction given by the Director-General regarding the stabilisation and revegetation of any mine residues, tailings or overburden dumps situated on the lease area.

#### **Exploratory Drilling**

15. (1) At least twenty eight days prior to commencement of drilling operations the lease holder must notify the relevant Department of Infrastructure, Planning and Natural Resources regional hydrogeologist of the intention to drill exploratory drill holes together with information on the location of the proposed holes.
- (2) If the lease holder drills exploratory drill holes he must satisfy the Director-General that:-
- (a) all cored holes are accurately surveyed and permanently marked in accordance with Departmental guidelines so that their location can be easily established;
  - (b) all holes cored or otherwise are sealed to prevent the collapse of the surrounding surface;
  - (c) all drill holes are permanently sealed with cement plugs to prevent surface discharge of groundwaters;
  - (d) if any drill hole meets natural or noxious gases it is plugged or sealed to prevent their escape;
  - (e) if any drill hole meets an artesian or sub-artesian flow it is effectively sealed to prevent contamination of aquifers.
  - (f) once any drill hole ceases to be used the hole must be sealed in accordance with Departmental guidelines. Alternatively, the hole must be sealed as instructed by the Director-General.
  - (g) once any drill hole ceases to be used the land and its immediate vicinity is left in a clean, tidy and stable condition.

### **Prevention of Soil Erosion and Pollution**

16. Operations must be carried out in a manner that does not cause or aggravate air pollution, water pollution (including sedimentation) or soil contamination or erosion, unless otherwise authorised by a relevant approval, and in accordance with an accepted Mining Operations Plan. For the purpose of this condition, water shall be taken to include any watercourse, waterbody or groundwaters. The lease holder must observe and perform any instructions given by the Director-General in this regard.

### **Transmission lines, Communication lines and Pipelines**

17. Operations must not interfere with or impair the stability or efficiency of any transmission line, communication line, pipeline or any other utility on the lease area without the prior written approval of the Director-General and subject to any conditions he may stipulate.

### **Fences, Gates**

18. (a) Activities on the lease must not interfere with or damage fences without the prior written approval of the owner thereof or the Minister and subject to any conditions the Minister may stipulate.
- (b) Gates within the lease area must be closed or left open in accordance with the requirements of the landholder.

### **Roads and Tracks**

19. (a) Operations must not affect any road unless in accordance with an accepted Mining Operations Plan or with the prior written approval of the Director-General and subject to any conditions he may stipulate.
- (b) The lease holder must pay to the designated authority in control of the road (generally the local council or the Roads and Traffic Authority) the cost incurred in fixing any damage to roads caused by operations carried out under the lease, less any amount paid or payable from the Mine Subsidence Compensation Fund.
20. Access tracks must be kept to a minimum and be positioned so that they do not cause any unnecessary damage to the land. Temporary access tracks must be ripped, topsoiled and revegetated as soon as possible after they are no longer required for mining operations. The design and construction of access tracks must be in accordance with specifications fixed by the Department of Infrastructure, Planning and Natural Resources.

### **Trees and Timber**

21. (a) The lease holder must not fell trees, strip bark or cut timber on the lease without the consent of the landholder who is entitled to the use of the timber, or if such a landholder refuses consent or attaches unreasonable conditions to the consent, without the approval of a warden.

- (b) The lease holder must not cut, destroy, ringbark or remove any timber or other vegetative cover on the lease area except such as directly obstructs or prevents the carrying on of operations. Any clearing not authorised under the Mining Act 1992 must comply with the provisions of the Native Vegetation Conservation Act 1997.
- (c) The lease holder must obtain all necessary approvals or licences before using timber from any Crown land within the lease area.

### **Resource Recovery**

- 23.
- (a) Notwithstanding any description of mining methods and their sequence or of proposed resource recovery contained within the Mining Operations Plan, if at any time the Director-General is of the opinion that minerals which the lease entitles the lease holder to mine and which are economically recoverable at the time are not being recovered from the lease area, or that any such minerals which are being recovered are not being recovered to the extent which should be economically possible or which for environmental reasons are necessary to be recovered, he may give notice in writing to the lease holder requiring the holder to recover such minerals.
  - (b) The notice shall specify the minerals to be recovered and the extent to which they are to be recovered, or the objectives in regard to resource recovery, but shall not specify the processes the lease holder shall use to achieve the specified recovery.
  - (c) The lease holder must, when requested by the Director-General, provide such information as the Director-General may specify about the recovery of the mineral resources of the lease area.
  - (d) The Director-General shall issue no such notice unless the matter has firstly been thoroughly discussed with and a report to the Director-General has incorporated the views of the lease holder.
  - (e) The lease holder may object to the requirements of any notice issued under this condition and on receipt of such an objection the Minister shall refer it to a Warden for inquiry and report under Section 334 of the Mining Act, 1992.
  - (f) After considering the Warden's report the Minister shall decide whether to withdraw, modify or maintain the requirements specified in the original notice and shall give the lease holder written notice of the decision. The lease holder must comply with the requirements of this notice.

## Indemnity

24. The lease holder must indemnify and keep indemnified the Crown from and against all actions, suits, claims and demands of whatsoever nature and all costs, charges and expenses which may be brought against the lease holder or which the lease holder may incur in respect of any accident or injury to any person or property which may arise out of the construction, maintenance or working of any workings now existing or to be made by the lease holder within the lease area or in connection with any of the operations notwithstanding that all other conditions of this lease shall in all respects have been observed by the lease holder or that any such accident or injury shall arise from any act or thing which the lease holder may be licensed or compelled to do.

## Security

25. (a) A security in the sum of **\$50,000.00** must be given and maintained with the Minister by the lease holder for the purpose of ensuring the fulfilment by the lease holder of obligations under this lease. If the lease holder fails to fulfil any one or more of such obligations the said sum may be applied at the discretion of the Minister towards the cost of fulfilling such obligations. For the purpose of this clause the lease holder shall be deemed to have failed to fulfil the obligations of this lease if the lease holder fails to comply with any condition or provision hereof, any provision of the Act or regulations made thereunder or any condition or direction imposed or given pursuant to a condition or provision hereof or of any provision of the Act or regulations made thereunder.
- (b) The lease holder must provide the security required by sub-clause (a) in one of the following forms:
- (i) cash,
  - (ii) a security certificate in a form approved by the Minister and issued by an authorised deposit-taking institution.

## Barriers

29. (a) Unless with the consent of the Minister first had and obtained and subject to such further conditions as he may impose, the lease holder shall not mine within a barrier of 50 metres in width against the underground workings of the former Werris Creek Colliery as referred to in the Environmental Impact Statement entitled "Werris Creek Coal Pty Limited – ABN 69 107 169 103 - Environmental Impact Statement for the Proposed Werris Creek Coal Mine" dated August 2004.
- (b) The lease holder must, prior to seeking the Ministers consent under this condition, complete a risk assessment to determine hazards and develop management controls. This risk assessment is to be subject to any amendments as may be required by the Director General.

### **Special Conditions**

30. The lease holder shall ensure that operations on the lease area are conducted in a manner consistent with the Environmental Impact Statement, except where no longer applicable due to subsequent approval, conditioning or exemption.
31. The lease holder shall ensure that 53 hectares of the rehabilitated landform is revegetated with species from the White Box Yellow Box Blakley's Red Gum Endangered Ecological Community, and stock are excluded from the 200 hectares as shown in Figure 4.15 of the Environmental Impact Statement.