

Western Australia

# Mineral Sands (Eneabba) Agreement Amendment Bill 2008

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Western Australia

LEGISLATIVE ASSEMBLY

**Mineral Sands (Eneabba) Agreement  
Amendment Bill 2008**

**A Bill for**

**An Act to amend the *Mineral Sands (Eneabba) Agreement Act 1975*.**

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Mineral Sands (Eneabba) Agreement Amendment Act 2008*.

**2. Commencement**

5 This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. Act amended**

10 This Act amends the *Mineral Sands (Eneabba) Agreement Act 1975*.

**4. Section 2 amended**

In section 2 before the definition of *the Agreement* insert:

15 *the 2008 Variation Agreement* means the agreement a copy of which is set out in Schedule 3;

**5. Section 5 inserted**

After section 4 insert:

20

**5. 2008 Variation Agreement**

- (1) The 2008 Variation Agreement is ratified and its implementation is authorised.
  - (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the 2008 Variation Agreement operates and takes effect despite any other Act or law.
- 25

6. **Schedule 3 inserted**

After Schedule 2 insert:

**Schedule 3 — The 2008 Variation Agreement**

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[s. 2]

**THIS AGREEMENT** is made this 28<sup>th</sup> day of July 2008

BETWEEN

10 **THE HONOURABLE ALAN JOHN CARPENTER** MLA.,  
Premier of the State of Western Australia acting for and on behalf  
of the said State and its instrumentalities from time to time (**State**)

AND

**ILUKA RESOURCES LIMITED** ACN 008 675 018 of Level 23,  
140 St Georges Terrace, Perth, Western Australia (**Company**).

RECITALS

- 15 **A.** The State and the Company are now the parties to the  
agreement dated 27 June 1975 which was ratified by and is  
scheduled to the *Mineral Sands (Eneabba) Agreement Act 1975*  
and which as subsequently varied is referred to in this  
Agreement as the “*Principal Agreement*”.
- 20 **B.** In order to prolong the economic life of its Narngulu mineral  
processing facilities as the quantities of heavy mineral  
concentrates produced from the Mining Lease diminish, the  
Company wishes, as part of its operations under the Principal  
25 Agreement, to handle at such facilities the separation into heavy  
minerals of heavy mineral concentrates produced from its  
Jacinth-Ambrosia Project in South Australia and, with the  
Minister’s consent, of heavy mineral concentrates produced by  
itself or third parties from other projects within Australia or  
overseas.
- 30 **C.** The State for the purpose of promoting the development of the  
heavy minerals sands industry generally in Western Australia  
and employment opportunities generally in the Mid-West region

of Western Australia has agreed to vary the Principal Agreement upon the terms and conditions set out in this Agreement to enable the Company to undertake such new activities as part of its operations under the Principal Agreement.

5       **THE PARTIES AGREE AS FOLLOWS:**

1.       Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2.       The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 2008 or such later date as the parties may agree.
3.       (1)     Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.  
  
          (2)     If by 31 December 2008, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and neither party hereto shall have any claim against the other party with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.  
  
          (3)     On clause 4 coming into operation all the provisions of this Agreement will operate and take effect despite any enactment or other law.
4.       The Principal Agreement is hereby varied as follows:
  - (1)     in clause 1:
    - (a)     by inserting the following new definitions in their appropriate alphabetical position:  
  
          “Jacinth-Ambrosia Project” means the project, currently being undertaken by the Company, in the Eucla Basin of South Australia for the mining and concentration of rock soil or sand bearing heavy minerals;

“Narngulu mineral processing facilities” means the Meru separation plant, the Narngulu synthetic rutile plant and associated facilities constructed under this Agreement at Narngulu;

5 “Non-Mining Lease ore” means any rock soil or sand bearing heavy minerals mined from areas other than within the Mining Lease and whether within or outside Australia;

10 (b) by deleting the definition of “heavy mineral concentrates” and substituting the following new definition:

“heavy mineral concentrates” means:

(a) ore;

(b) Non-Mining Lease ore,

15 concentrated prior to separation into component heavy minerals;”

(2) in clause 6C(2) by deleting “section 40(1)(b)” and substituting “Part IV”;

20 (3) by deleting “If” at the beginning of clause 7 and substituting “Subject to Clause 7A, if”;

(4) by inserting after clause 7 the following new clause:

**“Non-Mining Lease heavy mineral concentrates**

25 7A. (1) During the continuance of this Agreement and while the Company is still mining ore from the Mining Lease the Company may, subject to the EP Act and the other provisions of this Agreement, submit to the Minister its fully detailed proposals (including, in connection with any proposed  
30 new works or modifications to existing works, plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose

5 area any such new or modified works are to  
be situated) with respect to the separation  
into heavy minerals at the Narngulu mineral  
processing facilities of heavy mineral  
concentrates produced from the  
Jacinth-Ambrosia Project, and subject to  
subclause (5) from other Non-Mining Lease  
ore, and if the Company so wishes the  
production at the Narngulu mineral  
10 processing facilities of heavy mineral  
products from such heavy minerals, and the  
transport and shipment of such heavy  
minerals and heavy mineral products  
produced which proposals shall include the  
15 location, area, lay-out, design, quantities,  
materials and time programme for the  
commencement and completion of  
construction or the provision (as the case  
may be) of each of the following matters:

20 (a) the unloading and storage at the port  
of heavy mineral concentrates to be  
used in such operations;

(b) the transport by road of such heavy  
25 mineral concentrates from the port to  
the Narngulu mineral processing  
facilities;

(c) the modification or expansion  
of the Narngulu mineral processing  
30 facilities including, without limitation,  
by the construction of new works as  
part of those facilities;

(d) the separation of such heavy minerals  
concentrates into heavy minerals;

35 (e) the production (if the Company so  
wishes) of any heavy mineral  
products from such heavy minerals



- including, without limitation,  
synthetic rutile from ilmenite;
- 5 (f) water supplies;
- (g) gas and electricity supplies;
- (h) the transport by road of such heavy  
minerals and heavy mineral products  
from the Narngulu mineral  
processing facilities to the port for  
export;
- 10 (i) storage and ship loading facilities at  
the port for such export;
- (j) the storage upon the Mining  
Lease during the continuance of  
this Agreement of monazite and  
15 any other heavy minerals separated  
from the heavy mineral concentrates;
- (k) disposal of waste rock and tailings;
- (l) any other works, services or facilities  
desired by the Company in connection  
20 with the proposed operations; and
- (m) subject to subclause (5)(c), any leases,  
licences or other tenure of land  
required from the State;
- 25 (n) measures to be taken for the  
protection and management of the  
environment including rehabilitation  
and/or restoration of storage areas  
upon the Mining Lease.
- 30 (2) Any of the proposals pursuant to  
subclause (1) may with the approval of the  
Minister, be submitted separately and in any  
order as to the matters mentioned in one or  
more of paragraphs (a) to (n) of  
subclause (1). Until all of its proposals under

- 5 this Clause have been approved the  
Company may withdraw and may resubmit  
any proposal but the withdrawal of any  
proposal shall not affect the obligations of  
the Company to submit a proposal under this  
Clause in respect of the subject matter of the  
withdrawn proposal.
- 10 (3) The Company shall, whenever any of the  
following matters referred to in this  
subclause are proposed by the Company  
(whether before or during the submission of  
proposals under this Clause), submit to the  
Minister details of any services (including  
15 any elements of the project investigations,  
design and management) and any works,  
materials, plant, equipment and supplies that  
it proposes to consider obtaining from or  
having carried out or permitting to be  
obtained from or carried out outside  
20 Australia, together with its reasons therefore  
and shall, if required by the Minister, consult  
with the Minister with respect thereto.
- 25 (4) The provisions of subclauses (5) and (6) of  
Clause 6B and the provisions of Clause 6C  
shall mutatis mutandis apply to detailed  
proposals submitted pursuant to this Clause  
including pursuant to subclause (6) of this  
Clause. For the avoidance of doubt the  
reference in subclause (1)(b) of Clause 6C to  
30 “subclause (3) of Clause 6B” is to be read as  
a reference to subclause (1) of this Clause.
- 35 (5) Notwithstanding any other provisions of this  
Agreement the Company shall not without  
the Minister’s prior consent submit  
proposals under this Clause:
- (a) in respect of more than 600,000  
tonnes (in aggregate) of heavy  
minerals concentrates; or

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- (b) in respect of heavy mineral concentrates obtained other than from the Jacinth-Ambrosia Project; or
  - (c) for the grant of any leases, licences or other tenure to support the undertaking of operations pursuant to such proposals; or
  - (d) to bring heavy mineral concentrates into Western Australia otherwise than through the port or to export heavy minerals or heavy mineral products obtained from such heavy minerals otherwise than through the port.
- (6) Subject to subclause (5) if the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities in relation to Non-Mining Lease ore that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement beyond those activities specified in any proposals submitted and approved pursuant to this Clause it shall give notice of such desire to the Minister and shall within 2 months thereafter submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in subclause (1) as the Minister may require.
- (7) To avoid doubt the parties acknowledge that the provisions of this Agreement do not apply to the mining of Non-Mining Lease ore, the production of heavy mineral concentrates from such ore or to the transport of such heavy mineral concentrates to Western Australia.”;

(5) in clause 12 by inserting the following new subclause:

“(17) This Clause does not apply to the transport of heavy mineral concentrates produced from Non-Mining Lease ore or to heavy minerals or heavy mineral products produced from such heavy mineral concentrates.”;

(7) by inserting in clause 20 the following new subclause:

“(4) (a) In this subclause :

“Mining Lease heavy mineral concentrates” means ore concentrated prior to separation into component heavy minerals; and

“Non-Mining Lease heavy mineral concentrates” means Non-Mining Lease ore concentrated prior to separation into component heavy minerals.

(b) The Company may with the approval from time to time of the Minister blend a heavy mineral resulting from the separation of Mining Lease heavy mineral concentrates with the same type of heavy mineral resulting from the separation of Non-Mining Lease heavy mineral concentrates.

(c) The authority given under paragraph (b) is subject to the Minister being reasonably satisfied that there is in place adequate systems and controls for the correct apportionment between the Mining Lease and the areas from within which Non-Mining Lease ore is being mined of the quantities of the relevant heavy mineral being blended and which systems and controls monitor production, concentration, processing, transportation, stockpiling and shipping activities in respect of all such blended heavy minerals. If at any time the Minister ceases to be so satisfied he may,

5 after consulting the Company and provided  
that Company has not within three (3)  
months after the commencement of such  
consultation addressed the matters of  
concern to the Minister to his satisfaction,  
by notice in writing to the Company suspend  
the above authority in respect of the relevant  
blending arrangements until he is again  
satisfied in terms of this paragraph (c).

10 (d) If any blending occurs as contemplated by  
this subclause then for the purposes of  
calculating royalty as provided in  
subclause (1) on the quantity of heavy  
mineral resulting from the separation of  
15 Mining Lease heavy mineral concentrates  
and used in the admixture, the gross sale  
price of the blended heavy mineral product  
as set out in the invoices relating to the sale  
(and converted if necessary to Australian  
20 currency in accordance with the *Mining  
Regulations 1981*) shall be apportioned to  
the abovementioned quantity of heavy  
mineral (as its gross invoice value) in the  
same proportion as that quantity of heavy  
mineral bears to the total quantity of the  
25 blended heavy mineral product.” ;

(8) by deleting clause 23; and

(9) by inserting after clause 39 the following new clause:

**“Term of Agreement**

30 39A. Subject to the provisions of Clauses 32 and 33, this  
Agreement shall expire on the earlier of:

35 (a) the date occurring 5 years (or with the  
Minister’s approval such longer time not  
exceeding 7 years) after the Company ceases  
to mine ore from the Mining Lease; and

**s. 6**

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(b) the expiration or sooner determination of the Mining Lease.”

**EXECUTED** as a deed.

5       **SIGNED by THE HONOURABLE**       )  
          **ALAN JOHN CARPENTER**        )  
          in the presence of:            )

*A J Carpenter*

10       \_\_\_\_\_  
          Name  
          Kent Frederick Alott

*Kent Alott*

15       **THE COMMON SEAL of**            )  
          **ILUKA RESOURCES LIMITED**    )  
          ACN 008 675 018 was hereto affixed    )  
          in accordance with its constitution    )  
          in the presence of:                    )

[C.S.]

*David Robb*  
\_\_\_\_\_  
Director

20       *C. Wilson*  
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Director/Secretary

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