

MINERAL SANDS (ENEABBA) AGREEMENT AMENDMENT BILL 2008

EXPLANATORY MEMORANDUM

Section 1

Contains the short title of the Act.

Section 2(a)

Provides for sections 1 and 2 of the Act to come into operation on the day it receives the Royal Assent.

Section 2(b)

Provides for the remainder of the Act to come into operation on the day after sections 1 and 2 receive the Royal Assent.

Section 3

Specifies that this Act amends the *Mineral Sands (Eneabba) Agreement Act 1975* ("Principal Act").

Section 4

Provides that section 2 ("Interpretation") of the Principal Act is amended by inserting the new definition of "the 2008 Variation Agreement" which is defined to mean the agreement a copy of which is set out in Schedule 3 of the Principal Act.

Section 5

Inserts a new section 5 into the Principal Act which:

- (1) ratifies the 2008 Variation Agreement and authorises its implementation; and
- (2) provides for the 2008 Variation Agreement to operate despite any other act or law, without limiting or affecting the application of the *Government Agreements Act 1979*.

Section 6

Inserts as Schedule 3 to the Principal Act a copy of the 2008 Variation Agreement.

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2008 VARIATION AGREEMENT

Schedule 3 referred to in section 6 of the Bill contains a copy of an agreement between the State and Iluka Resources Limited (“Iluka”) dated 28 July 2008 (“2008 Variation Agreement”). The 2008 Variation Agreement seeks to vary the agreement ratified by the Principal Act (“Principal Agreement”).

RECITALS

The Recitals outline the intention of the parties in entering into the 2008 Variation Agreement.

Recital A

Acknowledges that the State and Iluka are parties to the agreement ratified by the *Mineral Sands (Eneabba) Agreement Act 1975* and which as varied is referred to in the 2008 Variation Agreement as the “Principal Agreement”.

Recital B

Acknowledges that Iluka wishes, as part of its operations under the Principal Agreement, to treat at its Narngulu mineral processing facilities:

- heavy mineral concentrates produced from its Jacinth-Ambrosia Project in South Australia; and
- with the consent of the Minister responsible for the administration of the Principal Act (“Minister”), heavy mineral concentrates produced by itself or third parties from other projects within Australia or overseas.

This will prolong the economic life of Iluka’s Narngulu processing facilities as quantities of heavy mineral concentrates produced from its State Agreement Mining Lease at Eneabba diminish.

Recital C

Acknowledges that the State agrees to vary the Principal Agreement for the purpose of promoting the development of the heavy mineral sands industry in Western Australia and employment opportunities in the Mid West region.

OPERATIVE CLAUSES

Clause 1

Specifies that, subject to the context, the words and expressions used in the 2008 Variation Agreement have the same respective meanings as they have in the Principal Agreement.

Clause 2

Provides that the State will introduce a Bill into Parliament to ratify the 2008 Variation Agreement and will endeavour to secure its passage as an Act by 31 December 2008 or such later date as agreed by the parties.

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Clause 3(1)

States that Clause 4 does not come into operation unless an Act passed in accordance with Clause 2 ratifies the 2008 Variation Agreement.

Clause 3(2)

Provides that if Clause 4 has not come into operation by 31 December 2008 or such later date as agreed then, unless the parties otherwise agree, the 2008 Variation Agreement shall cease and determine with no party having liability or claim against the other with respect to any matter etc under the 2008 Variation Agreement.

Clause 3(3)

Specifies that, on Clause 4 coming into operation, all the provisions of the 2008 Variation Agreement will take effect despite any enactment or other law.

Clause 4(1)(a)

Varies Clause 1 (“Definitions”) of the Principal Agreement by inserting the definitions of the following in their appropriate alphabetical position:

- “Jacinth-Ambrosia Project”;
- “Narngulu mineral processing facilities”; and
- “Non-Mining Lease ore”.

Clause 4(1)(b)

Substitutes a new definition for the existing definition of “heavy mineral concentrates” in Clause 1 of the Principal Agreement.

Clause 4(2)

Varies Clause 6C(2) (“Minister’s Approval of Proposals”) of the Principal Agreement by substituting “Part IV” for “section 40(1)(b)” in the EP Act.

Clause 4(3)

Varies Clause 7 (“Additional Proposals”) of the Principal Agreement so that it is subject to the new Clause 7A.

Clause 4(4)

Inserts a new Clause 7A:

- (1) provides that Iluka, whilst it is still mining ore from the mining lease may, subject to the EP Act and other provisions of the Principal Agreement, submit to the Minister detailed proposals 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 Non-Mining Lease ore and, if Iluka wishes, for the production at the Narngulu facilities of heavy mineral products from such heavy minerals, and the transport and shipment of such heavy minerals and heavy mineral products.

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The sublease outlines the matters that such detailed proposals shall (if appropriate) include and address:

- (a) unloading and storage of heavy mineral concentrates at the port;
 - (b) transport by road of heavy mineral concentrates from the port to the Narngulu processing facilities;
 - (c) modification or expansion of the Narngulu processing facilities;
 - (d) separation of heavy mineral concentrates into heavy minerals;
 - (e) production of any heavy mineral products;
 - (f) water supplies;
 - (g) gas and electricity supplies;
 - (h) transport by road of heavy minerals from the Narngulu processing facilities to the port for export;
 - (i) storage and ship loading facilities at the port for such export;
 - (j) storage of monazite and any other heavy minerals on the Mining Lease;
 - (k) disposal of waste rock and tailings;
 - (l) any facilities desired by the Company relating to its operations;
 - (m) any tenure of land required from the State; and
 - (n) environmental protection and management.
- (2) enables, with the approval of the Minister, any of the proposals pursuant to subclause (1) to be submitted in any order as to the matters mentioned in that subclause. This Clause also allows any proposal to be withdrawn and resubmitted up to the time all proposals are approved but the withdrawal does not affect the obligations of the company to submit the relevant proposal.
- (3) requires the Company to submit to the Minister details on any services or elements of the project that it is considering obtaining from outside Australia and to consult with the Minister if required.
- (4) allows Iluka, with the Minister's approval, to use existing facilities for its proposed activities forming part of its proposal under Clause 7A(1) and requires the Company to submit details relating to its marketing and financing arrangements. This Clause also provides that the Minister's decision on the proposals submitted pursuant to subclause (1) shall be made in accordance with Clause 6C of the Principal Agreement.
- (5) states that the Company shall not submit proposals under Clause 7A, without the Minister's prior consent, relating to:
- (a) more than 600,000 tonnes (in aggregate) of heavy mineral concentrates; or
 - (b) heavy mineral concentrates obtained other than from the Jacinth-Ambrosia Project; or
 - (c) the grant of any tenure to support the operations pursuant to such proposals; or
 - (d) bringing heavy mineral concentrates into Western Australia or to export heavy minerals or heavy mineral products otherwise than through the port of Geraldton.

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This will ensure that the Minister will be properly consulted regarding any additional changes at Narngulu prior to the submission of proposals under the State Agreement.

- (6) permits, subject to subclause (5), the Company to submit additional proposals if it desires to significantly modify or expand its activities in relation to Non-Mining Lease ore.
- (7) specifies that, to avoid doubt, the parties agree that the provisions of the 2008 Variation Agreement do not apply to the mining of Non-Mining Lease ore, the production of heavy mineral concentrates from Non-Mining Lease ore or to the transport of such heavy mineral concentrates to Western Australia.

Clause 4(5)

Varies Clause 12 (“Railways”) of the Principal Agreement by inserting new subclause (17) which specifies that 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.

Clause 4(7)

Varies Clause 20 (“Royalties”) of the Principal Agreement by inserting the following new subclause (4):

- paragraph (a) contains definitions of “Mining Lease heavy mineral concentrates” and “Non-Mining Lease heavy mineral concentrates”;
- paragraph (b) allows the Company, with the Minister’s approval, to blend heavy minerals produced from Mining Lease heavy mineral concentrates with the same type of heavy minerals produced from Non-Mining Lease heavy mineral concentrates;
- paragraph (c) states that the Minister’s authority under paragraph (b) is subject to the Minister being reasonably satisfied that adequate controls and systems are in place for the correct apportionment to be made between Mining Lease and Non-Mining Lease heavy mineral concentrates of any blended heavy minerals. This will enable the royalty payment derived from the mining and processing of heavy mineral concentrates from Eneabba to be correctly established.

Further, the Minister may suspend any approval if he ceases to be so satisfied and Iluka has not addressed the concerns within 3 months of it being consulted by the Minister.

- paragraph (d) sets out the method of calculating royalty as a result of any blending (if it occurs).

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Clause 4(8)

- Deletes Clause 23 (“Ratings”) of the Principal Agreement which relates to the rating of all lands subject to the Principal Agreement at unimproved value. This will remove the rating restriction on local governments. With a mature State Agreement such as this, it is appropriate that the unimproved ratings clause be removed to enable local governments to rate lands on the same basis as other properties and tenure which are not associated with a State Agreement.

Clause 4(9)

Inserts new Clause 39A (“Term of Agreement”) which provides that, subject to the provisions of Clauses 32 (“Determination of Agreement”) and 33 (“Effect of Cessation and Determination of Agreement”), the Principal Agreement shall expire on the earlier of:

- (a) the date occurring 5 years (or up to 7 years with the Minister's approval) after the Company ceases to mine ore from the Mining Lease; and
- (b) the expiration or sooner determination of the Mining Lease.

The 5 to 7 year period will provide sufficient time to allow for consultation between Iluka and the Government to address any outstanding matters prior to the determination of the State Agreement.