MINERAL SANDS (COOLJARLOO) MINING AND PROCESSING AGREEMENT AMENDMENT BILL 2017

EXPLANATORY MEMORANDUM

Section 1

Contains the short title of the Act.

Section 2

Provides that:

(a) sections 1 and 2 of the Act come into operation on the day it receives the Royal Assent.

(b) the remainder of the Act comes into operation on the day after sections 1 and 2 receive the Royal Assent.

Section 3

Specifies that the Act amends the *Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988* ("**Principal Act"**).

Section 4

Amends section 3 (Interpretation) of the Principal Act by:

(1) inserting the new definition of ***2017 variation agreement*** which means the agreement a copy of which is set out in Schedule 2; and

(2) amending the definition of ***the Agreement*** to recognise and incorporate the 2017 variation agreement amendments.

Section 5

Inserts a new subclause (1A) in section 4 of the Principal Act which ratifies the 2017 variation agreement. The heading of section 4 is also amended to read **Ratification and authorisation**.

Section 6

Replaces the heading of the Schedule with **Schedule 1 – Mineral Sands (Cooljarloo) Mining and Processing Agreement**.

Section 7

Inserts as Schedule 2 to the Principal Act a copy of the 2017 variation agreement.

2017 VARIATION AGREEMENT

PARTIES

The Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities (the "**State**") and Tronox Management Pty Ltd (the "**Joint Venturers**" in which term shall be included its successors and permitted assigns).

Note: In November 2016, the Joint Venturers (Tronox Western Australia Pty Ltd and Yalgoo Minerals Pty Ltd) assigned their interests under the Principal Agreement to Tronox Management Pty Ltd.

RECITALS

A. Provides that the parties to the Variation Agreement are now parties to the *Mineral Sands (Cooljarloo) Mining and Processing Agreement* dated 8 November 1988 (the "**Principal Agreement**") as originally ratified by the *Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988*.

B. Advises that the parties wish to vary the Principal Agreement on the terms and conditions set out in the Variation Agreement.

THE PARTIES AGREE AS FOLLOWS:

Ratification and operation

Clause 1(1)

Provides that the Variation Agreement (except clause 1) does not come into operation except in accordance with clause 1(2).

Clause 1(2)

States that the Variation Agreement (except clause 1) comes into operation on the day that it is ratified by an Act of Parliament ("**Operative Date**") unless it terminates prior to that day under clauses 1(4) or 1(5).

Clause 1(3)

Requires the State to introduce into Parliament, a Bill to ratify this Variation Agreement prior to 31 December 2017 (or a later date as agreed by the parties) and must endeavour to secure its passage as an Act.

Clause 1(4)

Provides, unless the parties otherwise agree, for the termination of the Variation Agreement (and without any party having a claim against any other) if by 30 June 2018 the Bill has not been ratified by an Act.

Clause 1(5)

Specifies that if the Principal Agreement is determined on a day prior to the Operative Date, then the Variation Agreement will also terminate on and from that day, and without any party having a claim against any other.

Variations of the Principal Agreement

Clause 2(1)

Amends clause 1 (Definitions) by:

(a) inserting the new definitions: "including"; "Kwinana pigment plant"; "Muchea dry processing plant"; "Muchea synthetic rutile plant"; "Non-Mining Lease heavy mineral concentrates"; "Non-Mining Lease ore"; and "titanium slag"; and

(b) deleting in the definition of "heavy minerals", "heavy mineral concentrates" and substituting "rock, soil or sand bearing heavy minerals which have been concentrated prior to such separation".

This change will allow the definition of “heavy minerals” to be used in relation to both the existing definition of "heavy mineral concentrates" and the new definition of "Non-Mining Lease heavy mineral concentrates".

Clause 2(2)

Inserts after subclause (2) in clause 7 (Royalties) the following new subclause:

(3) (a) allows the Joint Venturers, with the approval of the Minister, and for the principal purpose of providing feedstock to any one or more of the Muchea dry processing plant, the Muchea synthetic rutile plant and the Kwinana pigment plant (hereinafter called “the Principal Agreement facilities”), to blend:

(i) Mining Lease heavy mineral concentrates (HMC) with Non-Mining Lease HMC;

(ii) a heavy mineral produced from Mining Lease HMC, or blended concentrates, with the same type of heavy mineral produced from Non-Mining Lease HMC.

The Minister is required to give notice of his decision to the Joint Venturers within 2 months of receiving a request for his approval to undertake such blending.

(b) states that the Minister’s authority to blend given in paragraph (a) 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 ore of any blended heavy minerals.

This will enable the royalty payment for heavy minerals derived from the mining and processing of HMC from the Cooljarloo mine to be correctly established.

Further, the Minister may suspend any authority to blend if he ceases to be satisfied and the Joint Venturers have not addressed the concerns within 3 months of being consulted by the Minister.

(c) ensures that the correct apportionment referred to in paragraph (b) is made by requiring the Joint Venturers to keep the Minister fully informed of the area or areas from which Non-Mining Lease ore is being mined.

(d) provides that the blended mineral products will be subject to the provisions of the Mining Act with respect to the calculation and payment of royalties.

Clause 2(3)

Amends clause 11 (Additional Proposals):

(a) so that it is now subject to the new Clause 11A; and

(b) by inserting after "Clause 9": "(but with the reference in subclause (2) to "section 40(1)(b) of the EP Act" being read as a reference to "Part IV of the EP Act")".

This insertion reflects amendments that have been made to the *Environmental Protection 1986*.

Clause 2(4)

Inserts after clause 11 new clauses 11A and 11B.

Clause 11A – Non-Mining Lease heavy mineral concentrates and other Non-Mining Lease derived feedstocks

Subclause (1) enables the Joint Venturers, subject to the EP Act and the other provisions of the Principal Agreement, to submit detailed proposals to the Minister with respect to:

(a) at the *Muchea dry processing plant*, the separation of Non-Mining Lease HMC (including blended concentrates) into heavy minerals;

(b) at the *Muchea synthetic rutile plant,* the use in the production of synthetic rutile of:

(i) blended heavy minerals;

(ii) heavy minerals resulting from the separation of Non-Mining Lease HMC (including blended concentrates) whether separated at the Muchea dry processing plant or, if the Joint Venturers so wish, elsewhere;

(c) at the *Kwinana pigment plant,* the use in the production of titanium dioxide pigment of:

(i) synthetic rutile whether produced at the Muchea synthetic rutile plant or, if the Joint Venturers so wish, elsewhere;

(ii) blended heavy minerals;

(iii) heavy minerals resulting from the separation of Non-Mining Lease HMC (including blended concentrates) whether separated at the Muchea dry processing plant or, if the Joint Venturers so wish, elsewhere;

(iv) titanium dioxide slag, if the Joint Venturers so wish.

and outlines that such detailed proposals shall include the following matters:

(d) modification or expansion of any one or more of the Principal Agreement facilities;

(e) water supplies;

(f) energy supplies;

(g) if applicable, transport by road of: blended concentrates from the Mining Lease to Muchea; heavy minerals or synthetic rutile (as referred to in paragraphs (a) and (b)) from Muchea to Kwinana; and waste;

(h) temporary storage upon the Mining Lease of Non-Mining Lease HMC for the purpose of blending;

(i) any facilities desired by the Joint Venturers relating to the proposed operations;

(j) use of local services, labour and materials;

(k) measures to be taken for the protection and management of the environment;

(l) disposal or storage of waste.

Subclause (2) provides for the submission of detailed proposals under subclause (1) by reference to the requirements of Clause 8(2) to (4), which are to be considered by the Minister by reference to the procedure under Clause 9 (with minor exceptions).

Subclause (3) provides that if the Joint Venturers desire to significantly modify, expand or otherwise vary their activities referred to in subclause (1)(a), (b) or (c) beyond those activities specified in any approved proposals, they shall give notice to the Minister and, if required by the Minister, submit detailed proposals within 2 months.

Subclause (4) specifies that, to avoid doubt, the parties acknowledge that the provisions of the Principal Agreement do not apply to:

- the mining or concentration of Non-Mining Lease ore; or
- other than as referred to in subclause (1)(g), the transport of Non-Mining Lease HMC or the transport of heavy minerals or synthetic rutile produced from Non-Mining Lease HMC; or
- the transport of titanium slag.

Subclause (5) states that the Joint Venturers acknowledge that the provisions of both Clause 7(3) and Clause 11A are intended to enable them to continue its processing operations under the Principal Agreement by expanding the sources of feedstock for any one or more of its Principal Agreement facilities.

For the avoidance of doubt, the Joint Venturers also acknowledge that, subject to Clause 23 (Force Majeure), they must continue to operate the Principal Agreement facilities during the continuance of the Principal Agreement in accordance with its provisions and approved proposals.

Clause 11B – Provision of services and sharing of Agreement mine infrastructure with proposed Cooljarloo West and Jurien mining projects

Clause 11B allows the Joint Venturers, with the Minister's prior consent, to use any existing or new facilities on the Mining Lease at Cooljarloo for the purposes of developing and operating, under the Mining Act, its proposed mining projects at Cooljarloo West and Jurien.

Clause 2(5)

Deletes clause 17 (Rail Transport).

This clause is obsolete as the Joint Venturers are no longer obligated to use rail. All transport is by road.

Clause 2(6)

Amends subclause (1) of clause 33 (Arbitration) by:

(a) deleting "1985" after “Commercial Arbitration Act” and substituting "2012" so that this clause refers to that updated Act; and

(b) deleting "notwithstanding section 20(1) of that Act" which is no longer applicable.

Clause 2(7)

Amends clause 35 (Term):

(a) so that subclause (3) is now subject to the new subclause (4) in respect to the area of the Mining Lease that the Joint Venturers’ nominate in its notice to the Minister; and

(b) by inserting new subclause (4) which ensures that any area of the Mining Lease at Cooljarloo that has not been rehabilitated will be included as part of the mining lease under the Mining Act that the Joint Venturers, after giving notice to the Minister, will be granted under subclause (3) once the Mining Lease expires on 1 March 2020.

The Joint Venturers will need to follow all relevant processes under the *Native Title Act 1993* and the *Mining Act 1978* in order for the new mining lease to be granted. The company’s operations will then continue to operate under the general laws of the land and the provisions of the *Mining Rehabilitation Fund Regulations 2013* will apply to the Mining Act tenure.