



# Deed of Assignment, Assumption and Release – NLC Exploration Deed

**BHP Billiton Nickel West Pty Ltd**

ABN 76 004 184 598

**Wirraway Metals & Mining Pty Ltd**

ABN 38 142 690 346

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THIS DEED is made on

2014

**BETWEEN:**

- (1) **BHP Billiton Nickel West Pty Ltd** ABN 76 004 184 598 (the **Assignor**);
- (2) **Wirraway Metals & Mining Pty Ltd** ABN 38 142 690 346 (the **Assignee**).

**RECITALS:**

- (A) The Assignor, the PBC and the Land Council are parties to the NLC Exploration Deed.
- (B) Pursuant to the Sale and Purchase Agreement, the Assignor is assigning its interests in the BHPBNW Tenements (among other assets) existing as at Completion to the Assignee.
- (C) E69/1505, E69/1530, E69/2313, E69/2201, E69/2338, M69/72, M69/73, M69/74 and M69/75 form part of the BHPBNW Tenements and are the subject of the NLC Exploration Deed.
- (D) The Assignor and the Assignee have entered into this Deed of Assignment and Assumption in compliance with clause 21 of the Restated Exploration Deed, set out in schedule 1 to the NLC Exploration Deed.

**THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this document.

**Authorisation** means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Authorised Representative** means, for a party, a person nominated by the party to the other party in a notice that is accompanied by, and certifies the correctness of, a copy of the signature of that person.

**BHPBNW Tenements** means E69/1505, E69/1530, E69/2069, E69/2070, E69/2201, E69/2313, E69/2338, M69/72, M69/73, M69/74 and M69/75.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Perth, Western Australia.

**Completion** has the meaning given under the Sale and Purchase Agreement.

**Continuing Parties** means PBC and the Land Council.

**Contractual Obligations** means all of the Assignor's liabilities and obligations (present or future, actual or contingent) under or in relation to the NLC Exploration Deed.

**Contractual Rights** means all of the Assignor's rights (present or future, actual or contingent) under or in relation to the NLC Exploration Deed.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Ngaanyatjarra ILUA** means the Ngaanyatjarra Lands Indigenous Land Use Agreement (Body Corporate Agreement) No.1 dated 16 November 2005 between the PBC, the Land Council, the Assignor and the State of Western Australia.

**Ngaanyatjarra ILUA Assignment Deed** means a deed of assignment, assumption and release between the Assignor and the Assignee under which the Assignee covenants to be bound by the terms of the Ngaanyatjarra ILUA.

**NLC Exploration Deed** means the Exploration Deed – Deed of Variation and Restatement dated 16 August 2012 between PBC, the Land Council and the Assignor.

**Sale and Purchase Agreement** means the Sale and Purchase Agreement entered into between the Assignor and the Assignee, amongst others, dated 2 April 2014.

**Security Interest** means:

- (a) a mortgage, charge, pledge, lien, hypothecation, power of attorney or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money, a notice under section 255 of the *Income Tax Assessment Act 1936* (Cth), subdivision 260-A in schedule 1 to the *Taxation Administration Act 1953* (Cth) or any similar legislation;
- (b) any other interest or arrangement of any kind that secures the payment of money or the performance of an obligation or which gives a creditor priority over unsecured creditors in relation to any property; or
- (c) an agreement to create any of them or to allow any of them to exist.

**Stated Time** means the time that duly executed copies of this document and the Ngaanyatjarra ILUA Assignment Deed are provided to the Land Council and the PBC.

**Tax** means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

## 1.2 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:

- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it and any part of it.
- (b) A singular word includes the plural, and vice versa.
  - (c) A word which suggests one gender includes the other genders.
  - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
  - (g) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
  - (h) The words **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.

### 1.3 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

### 1.4 **Multiple parties**

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party, then unless otherwise specified in this document:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and

- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

**1.5 When this document is effective**

This document is effective and binding on the Assignor and the Assignee upon execution by those parties.

**2. CONSIDERATION**

The Assignor acknowledges that it has received valuable consideration for entering into this document.

**3. ASSIGNMENT OF CONTRACTUAL RIGHTS AND ASSUMPTION OF CONTRACTUAL OBLIGATIONS**

**3.1 Assignment of Contractual Rights**

With effect from the Stated Time, the Assignor assigns to the Assignee, and declares a trust in favour of the Assignee over, all of the Assignor's right, title and interest in the Contractual Rights free of any Security Interest on the terms set out in this document. The Assignee accepts the assignment.

**3.2 Assumption of Contractual Obligations**

With effect from the Stated Time:

- (a) the Assignee assumes all of the Contractual Obligations on the terms set out in this document; and
- (b) the Assignee must indemnify the Assignor against, and must pay the Assignor on demand the amount of, all losses, costs, liabilities, expenses and Taxes incurred in connection with the Assignee failing to comply with the liabilities and obligations referred to in clause 3.2(a).

**3.3 Acknowledgement of release**

The Assignee acknowledges that upon execution of this document the Assignor is wholly and unconditionally released from the Contractual Obligations in accordance with clause 21.2 of the Restated Exploration Deed, set out in Schedule 1 to the NLC Exploration Deed.

**3.4 Notice to PBC and Land Council**

At the same time as the Assignor executes this document, the Assignor must execute and deliver to the PBC and the Land Council (with a copy to the Assignee) a notice of assignment in the form set out in Schedules 1 and 2.

**4. REPRESENTATIONS AND WARRANTIES**

**4.1 Representations and warranties of each party**

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to:
  - (i) own its property and to carry on its business; and

- (ii) enter into this document and to carry out the transactions that it contemplates;
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
  - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
  - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
  - (iii) enable it to properly carry on its business as it is now being conducted,
 and it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(document effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) **(no contravention)** neither its execution of this document, nor the carrying out by it of the transactions that this document contemplates, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any agreement binding on it or any of its property; or
  - (iv) contravene its constitution or the powers or duties of its directors;
- (f) **(commercial benefit)** the execution by it of this document, and the carrying out by it of the transactions that this document contemplates, is for its corporate benefit and in its commercial interests; and
- (g) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable.

#### 4.2 **Reliance on representations and warranties**

Each party acknowledges that the other parties have executed this document and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made in this clause 4.

### 5. **NOTICES**

#### 5.1 **How to give a notice**

A notice, consent or other 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 in one of the following ways:
  - (i) left at the address set out in clause 5.6;
  - (ii) sent by prepaid ordinary post (by airmail, if sent from one country to another) to the address set out in clause 5.6; or
  - (iii) sent by fax to the fax number set out in clause 5.6.

## 5.2 **When effective**

All notices, consents or other communications under this document take effect from the time they are received or taken to be received under clause 5.3 (whichever happens first) unless a later time is specified.

## 5.3 **When taken to be received**

All notices, consents or other communications under this document are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

## 5.4 **Receipt outside business hours**

Despite clauses 5.2 and 5.3, if any notices, consents or other communications under this document are received or taken to be received under clause 5.3 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## 5.5 **When a notice is given**

A notice, consent or other communication that complies with this clause 5 is conclusively regarded as given and received:

- (a) if it is sent by fax or delivered, if received:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail, when it would be delivered in the ordinary course of post, but in any event:
  - (i) not later than three Business Days after posting within Australia; or
  - (ii) not later than seven Business Days after posting to or from a place outside Australia;
- (c) if given personally, when actually received by that person; and



- (d) if it is given in any other manner permitted by law, when actually received by that person, unless a later time of receipt is specified in it.

## 5.6 **Address for notices**

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

### **Assignor**

Address: Level 42, "City Square Building", 125 St George's Terrace, Perth WA 6000  
Fax number: +61 8 6321 4444  
Attention: Company Secretary

### **Assignee**

Address: 945 Wellington Street, West Perth WA 6005  
Fax number: +61 8 9322 7602  
Attention: Richard Bevan, Managing Director

### **PBC**

Address: c/o Ngaanyatjarra Land Council (Aboriginal Corporation),  
58 Head Street, Alice Springs, Northern Territory, Australia  
Fax number: (08) 8953 1892  
Attention: Principal Legal Officer

### **Land Council**

Address: 58 Head Street, Alice Springs, Northern Territory, Australia  
Fax number: (08) 8953 1892  
Attention: Principal Legal Officer

## 6. **AMENDMENT**

This document can only be amended or replaced by another document executed by the parties.

## 7. **GENERAL**

### 7.1 **Governing law**

- (a) This document is governed by the laws of Western Australia.
- (b) Each party submits to the jurisdiction of the courts of the State of Western Australia, and of any court that may hear appeals from any of those courts, for any proceedings in connection with this document.
- (c) Each party irrevocably waives:
- (i) any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and
  - (ii) any immunity from set-off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.

### 7.2 **Liability for expenses**

- (a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating, executing and registering this document.

- (b) The Assignee must indemnify each other party against, and must pay each other party on demand the amount of, any duty that is payable on or in relation to this document and the transactions that it contemplates.

### **7.3 Giving effect to this document**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this document.

### **7.4 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

### **7.5 Operation of this document**

- (a) Subject to clause 7.5(b), this document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

### **7.6 Operation of indemnities**

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

### **7.7 Exclusion of contrary legislation**

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

### **7.8 Inconsistency with other documents**

If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

## 7.9 Counterparts

This document may be executed in counterparts.

## SCHEDULE 1

### NOTICE OF ASSIGNMENT

To: Ngaanyatjarra Land Council (Aboriginal Corporation)  
58 Head Street  
Alice Springs, Northern Territory

Attention: The Principal Legal Officer

#### **Exploration Deed – Deed of Variation and Restatement dated 16 August 2012**

We refer to the Exploration Deed – Deed of Variation and Restatement dated 16 August 2012 between BHP Billiton Nickel West Pty Ltd (formerly WMC Resources Limited) (the **Assignor**), the Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation) for and on behalf of the Ngaanyatjarra Lands Common Law Holders, and the Ngaanyatjarra Land Council (Aboriginal Corporation) (the **Exploration Deed**).

1. The Assignor gives you notice that:
  - (a) it has assigned all its right, title and interest in the rights (present or future, actual or contingent) under or in relation to the Exploration Deed (the **Contractual Rights**) to Wirraway Metals & Mining Pty Ltd ABN 38 142 690 346 (the **Assignee**); and
  - (b) the Assignee has assumed all of the **liabilities and obligations (present or future, actual or contingent) under or in relation to the Exploration Deed (the Contractual Obligations)**.
2. The Assignor is released from its liability for the performance of its Contractual Obligations, in accordance with clause 21.2 of the Exploration Deed.
3. The Assignor is not entitled to raise any set-off, counterclaim or other right that may affect the right of the Assignee to enforce the Contractual Rights in accordance with the terms of the Exploration Deed.
4. This notice is governed by the laws of Western Australia, is irrevocable and may not be amended, terminated or withdrawn without the prior written consent of the Assignee.
5. Please acknowledge receiving this notice of assignment by signing the acknowledgement that is attached to the enclosed copy of this notice, and sending it to the Assignee at the address set out below:

Wirraway Metals & Mining Pty Ltd  
945 Wellington Street, West Perth WA 6005  
Attention: Richard Bevan, Managing Director

#### **Dated:**

For and on behalf of **BHP Billiton Nickel West Pty Ltd** by its Authorised Representative:

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name

## ACKNOWLEDGEMENT

To: Wirraway Metals & Mining Pty Ltd  
945 Wellington Street, West Perth WA 6005

Attention: Richard Bevan, Managing Director

### Acknowledgement of Notice of Assignment

The Ngaanyatjarra Land Council (Aboriginal Corporation) (the **Land Council**) acknowledges receiving a copy of the **attached** notice of assignment dated:

The PBC confirms that:

- (a) the Assignor is released from its liability for the performance of the Contractual Obligations, in accordance with clause 21.2 of the Exploration Deed;
- (b) it is not entitled to raise any set-off, counterclaim or other right that may affect the right of the Assignee to enforce the Contractual Rights in accordance with the terms of the Exploration Deed; and
- (c) it has not previously received a notice of assignment of all or any part of the Contractual Rights.

#### Dated:

For and on behalf of the **Ngaanyatjarra  
Land Council (Aboriginal Corporation)**  
by its Authorised Representative:

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name

## SCHEDULE 2

### NOTICE OF ASSIGNMENT

To: Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation)  
c/- Ngaanyatjarra Land Council (Aboriginal Corporation)  
58 Head Street  
Alice Springs, Northern Territory

Attention: The Principal Legal Officer

#### **Exploration Deed – Deed of Variation and Restatement dated 16 August 2012**

We refer to the Exploration Deed – Deed of Variation and Restatement dated 16 August 2012 between BHP Billiton Nickel West Pty Ltd (formerly WMC Resources Limited) (the **Assignor**), the Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation) for and on behalf of the Ngaanyatjarra Lands Common Law Holders, and the Ngaanyatjarra Land Council (Aboriginal Corporation) (the **Exploration Deed**).

6. The Assignor gives you notice that:
  - (c) it has assigned all its right, title and interest in the rights (present or future, actual or contingent) under or in relation to the Exploration Deed (the **Contractual Rights**) to Wirraway Metals & Mining Pty Ltd ABN 38 142 690 346 (the **Assignee**); and
  - (d) the Assignee has assumed all of the **liabilities and obligations (present or future, actual or contingent) under or in relation to the Exploration Deed (the Contractual Obligations)**.
7. The Assignor is released from its liability for the performance of its Contractual Obligations, in accordance with clause 21.2 of the Exploration Deed.
8. The Assignor is not entitled to raise any set-off, counterclaim or other right that may affect the right of the Assignee to enforce the Contractual Rights in accordance with the terms of the Exploration Deed.
9. This notice is governed by the laws of Western Australia, is irrevocable and may not be amended, terminated or withdrawn without the prior written consent of the Assignee.
10. Please acknowledge receiving this notice of assignment by signing the acknowledgement that is attached to the enclosed copy of this notice, and sending it to the Assignee at the address set out below:

Wirraway Metals & Mining Pty Ltd  
945 Wellington Street, West Perth WA 6005  
Attention: Richard Bevan, Managing Director

#### **Dated:**

For and on behalf of **BHP Billiton Nickel West Pty Ltd** by its Authorised Representative:

---

Signature of Authorised Representative

---

Name

## ACKNOWLEDGEMENT

To: Wirraway Metals & Mining Pty Ltd  
945 Wellington Street, West Perth WA 6005

Attention: Richard Bevan, Managing Director

### Acknowledgement of Notice of Assignment

The Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation) (the **PBC**) acknowledges receiving a copy of the **attached** notice of assignment dated:

The PBC confirms that:

- (a) the Assignor is released from its liability for the performance of the Contractual Obligations, in accordance with clause 21.2 of the Exploration Deed;
- (b) it is not entitled to raise any set-off, counterclaim or other right that may affect the right of the Assignee to enforce the Contractual Rights in accordance with the terms of the Exploration Deed; and
- (c) it has not previously received a notice of assignment of all or any part of the Contractual Rights.

### Dated:

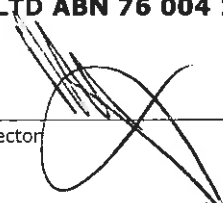
For and on behalf of the **Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation)** by its Authorised Representative:


\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name


**EXECUTED** as a deed.

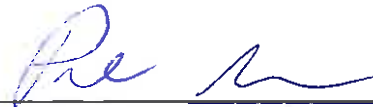
**EXECUTED** by **BHP BILLITON NICKEL WEST PTY LTD ABN 76 004 184 598:**

  
\_\_\_\_\_  
Signature of director  
PAUL JOHN HARVEY  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Signature of ~~director~~/secretary  
Robin Brian Lees  
\_\_\_\_\_  
Name

**EXECUTED** by **WIRRAWAY METALS & MINING PTY LTD ABN 38 142 690 346:**

  
\_\_\_\_\_  
Signature of director  
RICHARD BEVAN  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Signature of director/~~secretary~~  
Phil Warren  
\_\_\_\_\_  
Name





