

UNDERTAKING TO THE CLEAN ENERGY REGULATOR

Undertaking to the Clean Energy Regulator given for the purposes of section 45 of the
National Greenhouse and Energy Reporting Act 2007

by

Fitzroy (CQ) Pty Ltd

1 Glossary

- 1.1 In this Undertaking, unless the contrary intention appears, the following definitions apply:

Act means the *National Greenhouse and Energy Reporting Act 2007* (Cth).

ANREU means Australian National Registry of Emissions Units continued in existence under section 9 of the *Australian National Registry of Emissions Units Act 2011* (Cth).

Baseline Emissions Number has the meaning given by section 22XL of the Act.

CDCM means the coal mine called "Carborough Downs Coal Mine", that commenced production in 2006 and is located to the east of Moranbah in the Bowen Basin.

Declared Multi-Year Period has the meaning given by subsection 22XG(5) of the Act.

Designated Large Facility has the meaning given by section 22XJ of the Act.

Excess Emissions Number means, for a Facility and for a Monitoring Period for the Facility, the number by which the Net Emissions Number for the Facility for the Monitoring Period exceeds the Baseline Emissions Number for the Facility for the Monitoring Period.

Excess Emissions Situation has the meaning given by section 22XE of the Act.

Facility has the meaning given by section 9 of the Act.

Fitzroy means Fitzroy (CQ) Pty Ltd (ACN 103 902 389).

Ironbark means the coal mine facility called "Ironbark No. 1", that commenced production in 2022 and is located to the north-east of Moranbah in the Bowen Basin.

Monitoring Period has the meaning given by section 22XG of the Act.

MYMP means the period from 1 July 2021 to 30 June 2024.

Net Emissions Number has the meaning given by section 22XK of the Act.

Prescribed Carbon Unit has the meaning given to it in section 22XM of the

Act.

Regulator means the Clean Energy Regulator.

Responsible Emitter has the meaning given by section 22XH of the Act.

Safeguard Register means the register titled "Safeguard facility reported emissions data" which is published annually on the Regulator's website.

Safeguard Rule means the National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 made under subsection 22XS(1) of the Act.

Undertaking means this Enforceable Undertaking.

2 **Person giving Undertaking**

- 2.1 This Undertaking is given to the Regulator by Fitzroy for the purposes of section 45 of the Act.

3 **Background**

- 3.1 Fitzroy is an Australian company, incorporated on 27 February 2003.
- 3.2 Each of CDCM and Ironbark is a Facility under the Act.
- 3.3 Fitzroy is the Responsible Emitter for:
- (1) CDCM throughout the MYMP, and CDCM is a Designated Large Facility for at least 1 of the financial years in the MYMP; and
 - (2) Ironbark throughout the 2023-2024 financial year, and Ironbark became a Designated Large Facility for the first time for the 2023-2024 financial year.

Excess Emissions Situation

- 3.4 On 17 February 2023, following application received from Fitzroy under section 65 of the Safeguard Rule, the Regulator made a declaration under section 67 of the Safeguard Rule, declaring the MYMP as a Declared Multi-year Period for CDCM. Accordingly, pursuant to section 22XG(3) of the Act, the MYMP is a Monitoring Period for CDCM in relation to Fitzroy.
- 3.5 Fitzroy acknowledges that it applied for the MYMP to be declared as a Declared Multi-year Period for CDCM upon the understanding that it would be liable for civil penalty for contravening section 22XF of the Act if any Excess Emissions Situation existed in relation to CDCM for the MYMP on 1 April 2025.
- 3.6 Fitzroy acknowledges, and represents and warrants to the Regulator, that:
- (1) an Excess Emissions Situation exists in relation to CDCM for the MYMP, such that as at the date this Undertaking is executed by Fitzroy the Excess Emissions Number for CDCM for the MYMP is 546,906 tonnes of carbon dioxide equivalent; and
 - (2) an Excess Emissions Situation exists in relation to Ironbark for the 2023-2024 financial year Monitoring Period, such that as at the date this

Undertaking is executed by Fitzroy the Excess Emissions Number for Ironbark for the 2023-2024 financial year Monitoring Period is 36,173 tonnes of carbon dioxide equivalent.

- 3.7 Pursuant to section 22XF of the Act, Fitzroy had the following duties on 1 April 2025:
- (1) a duty to ensure that an Excess Emissions Situation did not exist in relation to CDCM for the MYMP; and
 - (2) a duty to ensure that an Excess Emissions Situation did not exist in relation to Ironbark for the 2023-2024 financial year Monitoring Period.
- 3.8 Fitzroy acknowledges that it has committed contraventions of section 22XF by failing to comply with its duties referred to in clause 3.7 of this Undertaking.
- 3.9 Fitzroy acknowledges that, pursuant to subsection 30(1) of the Act, its obligations to discharge its duties referred to in clause 3.7 of this Undertaking continue to subsist until those duties are fully discharged.
- 3.10 Fitzroy acknowledges that each day that it fails to comply with its duties referred to in clause 3.7 of this Undertaking, it commits separate contraventions of section 22XF of the Act pursuant to, and incurs liability for a civil penalty for each of such contraventions under, subsection 30(2C) of the Act.
- 3.11 Fitzroy acknowledges that after 1 April 2025 the only way to comply with its duties referred to in clause 3.7 of this Undertaking is through the surrender, in accordance with section 22XN of the Act, of Prescribed Carbon Units.
- 3.12 Fitzroy makes the following representations and warranties to the Regulator about its current financial position to the best of its knowledge based on its most recent unaudited accounts:
- (1) in its most recent financial year (which ended on 31 December 2024), Fitzroy made a loss in excess of \$427 million;
 - (2) Fitzroy's current financial position has been caused by, inter alia, geological conditions experienced at CDCM during 2024 which resulted in less coal being produced from this mine;
 - (3) the commissioning and ongoing operation of Ironbark will allow Fitzroy to recover production and significantly improve its financial position over the course of the calendar year 2025.
- 3.13 Fitzroy represents and warrants to the Regulator that due to its current financial position, it does not have the financial capacity to, immediately, purchase and, in accordance with section 22XN of the Act, surrender 583,079 Prescribed Carbon Units for the purpose of reducing:
- (1) the Net Emissions Number for CDCM for the MYMP, thus reducing the Excess Emissions Number for CDCM for the MYMP from 546,906 to zero; and
 - (2) the Net Emissions Number for Ironbark for the 2023-2024 financial year Monitoring Period, thus reducing the Excess Emissions Number for Ironbark for the 2023-2024 financial year Monitoring Period from 36,173 to zero.

- 3.14 Fitzroy notes that it intends to continue to investigate options that would allow it to meet and/or reduce its future obligations under the Act.

4 Terms of the Undertaking

- 4.1 Subsection 45(1) of the Act states that the Regulator may accept any of the following undertakings given by a person:
- (1) a written undertaking that the person will take specified action, in order to comply with the provisions of the Act, the *National Greenhouse and Energy Reporting Regulations 2008* (the **Regulations**) or the Safeguard Rule;
 - (2) a written undertaking that the person will refrain from taking specified action in order to comply with the provisions of the Act, the Regulations or the Safeguard Rule;
 - (3) a written undertaking that the person will take specified action directed towards ensuring that the person:
 - (a) does not commit a contravention of the Act, the Regulations or the Safeguard Rule; or
 - (b) is unlikely to commit a contravention of this Act, the Regulations or the Safeguard Rule;in the future;
 - (4) a written undertaking of a kind specified in Regulations made for the purposes of paragraph 45(1)(d) of the Act.
- 4.2 Fitzroy hereby undertakes, at its own cost and expense, to:

Resolve the Excess Emissions Situations

- (1) surrender, in accordance with section 22XN of the Act, Prescribed Carbon Units in the following amounts and by the following dates:
 - (a) **172,900** Prescribed Carbon Units by **30 June 2025**;
 - (b) **175,000** Prescribed Carbon Units by **30 September 2025**;
 - (c) **235,179** Prescribed Carbon Units by **15 December 2025**;for the purposes of reducing:
 - (d) the Net Emissions Number for CDCM for the MYMP; and
 - (e) the Net Emissions Number for Ironbark for the 2023-2024 financial year Monitoring Period;
- (2) undertake the surrender referred to in clause 4.2(1)(a) in such a way that on 1 July 2025 an Excess Emissions Situation does not exist in relation to Ironbark for the 2023-2024 financial year;
- (3) undertake the surrenders referred to in clause 4.2(1) in such a way that on 16 December 2025 an Excess Emissions Situation does not exist in relation to CDCM for the MYMP;

- (4) provide written notification to the Regulator on each occasion when it receives an amount of Prescribed Carbon Units into its ANREU account;

Investigate carbon abatement measures

- (5) commence each of the following feasibility studies before 30 June 2025 in order to demonstrate Fitzroy's commitment to both reducing greenhouse gas emissions from CDCM and Ironbark and reducing any potential future excess emissions liabilities:
 - (a) a feasibility study to investigate the expansion of Ironbark's electricity generation power station to enable it to generate more than 5 megawatt hours;
 - (b) a feasibility study on the construction of a pipeline to carry coal mine waste gas from Ironbark to Moranbah North Power Station;
 - (c) a feasibility study to investigate gas drainage initiatives (including "surface to in-seam" and/or "underground to in-seam" drainage) to capture and mitigate emissions being released from the ventilation systems at CDCM and Ironbark;
- (6) provide a written update to the Regulator on the outcome of the feasibility studies referenced in clause 4.2(5) of this Undertaking by 15 December 2025; and

Assurance regarding Excess Emissions Situations for the 2024-2025 financial year

- (7) take all steps needed to ensure that on 1 April 2026:
 - (a) an Excess Emissions Situation does not exist for CDCM for the 2024-2025 financial year Monitoring Period; and
 - (b) an Excess Emissions Situation does not exist for Ironbark for the 2024-2025 financial year Monitoring Period.

5 Acknowledgements

5.1 Fitzroy acknowledges:

- (1) the Regulator will make this Undertaking publicly available, including by publishing it on the Regulator's website;
- (2) the Regulator and officers of the Regulator will, from time to time, make public reference to this Undertaking;
- (3) the Undertaking in no way derogates from the rights and remedies available to any person arising from the conduct of Fitzroy, including the Regulator;
- (4) Fitzroy will bear all costs associated with their compliance with this Undertaking; and
- (5) breaching this Undertaking may, amongst other consequences,

result in the Regulator enforcing this Undertaking through the Federal Court.

6 Commencement of Undertaking

6.1 This Undertaking comes into effect when:

- (1) the Undertaking is executed by Fitzroy; and
- (2) the Regulator accepts the Undertaking so executed.

6.2 This Undertaking ceases to have effect once the requirements of clause 4 of this Undertaking have been completed.

Executed by

Fitzroy (CQ) Pty Ltd (ACN 103 902 389) in accordance with subsection 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

Signature of director.....*[Signature]*

Name of director (block letters).....*DAN CLIFFORD*

Signature of director/company secretary*.....*Brett Maff*

Name of ~~director~~/company secretary* (block letters).....*Brett Maff*

*delete whichever is not applicable

This *1st* day of *APRIL* 2025

Accepted by the Clean Energy Regulator pursuant to section 45 of the National Greenhouse and Energy Reporting Act 2007

Signature.....*[Signature]*

Name.....*CARL BINNING*

Position.....*Executive General Manager, Scheme Operations*

This *4* day of *April* 2025