

Planning Agreement

Muswellbrook Shire Council ABN 86 864 180 944

AND

Mangoola Coal Operations Pty Ltd ABN 54 127 535 755

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Planning Agreement

Date

4 April 2022

Parties Details

MUSWELLBROOK SHIRE COUNCIL ABN 86 864 180 944 of Campbell's Corner, 60-82 Bridge Street, Muswellbrook, NSW 2333

Telephone: (02) 6549 3700

Email: records@muswellbrook.nsw.gov.au

Attention: The General Manager

("MSC")

AND

MANGOOLA COAL OPERATIONS PTY LTD ABN 54 127 535 755 of Level 44, Gateway Building, 1 Macquarie Place, Sydney, NSW 2000

Email: Company.Secretary@glencore.com.au

Attention: Legal Counsel

("Mangoola")

("the Parties")

Recitals

- A. Mangoola operates the Mangoola Coal Mine, which is located west of the township of Muswellbrook in the Upper Hunter Valley in New South Wales.
- B. On 26 April 2021, Mangoola was granted Development Consent SSD 8642 for the Mangoola Coal Mine under Section 4.36 of the *Environmental Planning and Assessment Act 1979* (NSW).
- C. Condition A17 of the Mangoola Extension Consent requires Mangoola to enter into a Planning Agreement with MSC in accordance with the terms of Mangoola's offer for contributions as set out in Appendix 10 of SSD 8642 and Schedule 1 of this Agreement.
- D. Mangoola has offered to enter into a Planning Agreement on the terms of this Agreement to make Development Contributions for the purposes of satisfying Condition A17 of the Mangoola Extension Consent.

IT IS AGREED:

1 Definitions and interpretations

1.1 Definitions

In this document:

Act means *Environmental Planning and Assessment Act 1979* (NSW).

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Commencement Date means 26 April 2021.

Contribution Schedule means the plan for contributions to be made by Mangoola as set out in Schedule 1 of this Agreement.

CPI means the All Group Consumer Price Index for Sydney as published by the Australian Bureau of Statistics.

Development Contribution means a monetary contributions set out in the Contributions Schedule to be provided by Mangoola under this Agreement.

End of Mining Operations means when Mangoola has ceased extracting, processing and transporting coal from the Mangoola Coal mine and all associated mine rehabilitation has been completed.

Existing Planning Agreement means the planning agreement between Mangoola and MSC with a commencement date of 22 June 2012.

GST has the same meaning as GST Law.

GST Law has the meaning given to that term in *A New Tax System (goods and Services Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of the GST.

Interest Rate means the average interest rate between each anniversary paid by the institution within which the Recreation Assets Renewal Fund is invested.

Land means the land on which the Mangoola Coal mine coal processing plant is located currently being Lots 216 and 218 in DP750968.

Law means any contribution or provision, statute, Act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgement, rule of common law or equity, rule, approval, consent or condition of approval or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter.

Life of the Project means the period from the Commencement Date to the End of Mining Operations.

Mangoola Coal Mine means the coal mine operated by Mangoola pursuant to the Mangoola Extension Consent.

Mangoola Coal Community Fund is the fund established by the Contributions Schedule and administered in accordance with the Mangoola Coal Community Funding Deed.

Mangoola Coal Community Funding Deed means the deed executed by MSC and Mangoola dated on or about the date of this Agreement concerning the management and distribution of the Development Contributions paid by Mangoola in accordance with this Agreement.

Mangoola Consent means Project Approval PA 06_0014 for the Mangoola Coal mine which was granted by the Minister for Urban Affairs and Planning on 7 June 2007 as modified.

Mangoola Extension Consent means the development consent granted in response to Development Application State Significant Development Number 8642.

Notice means a written notice, consent, approval, direction, order or other communication.

Notice Address means the address specified in the Parties Details which describes that party.

Operating Plan means an operational plan approved by MSC under Section 405 of the *Local Government Act 1993* (NSW).

Party means a Party to this Agreement, including their successors and assigns.

Planning Agreement means a planning agreement within the meaning of Section 7.1 of the Act.

Project means the activities undertaken at the Mangoola Coal Mine in accordance with the Mangoola Consent and the Mangoola Extension Consent as approved under the Act.

Recreational Assets Renewal Fund means a fund established by MSC for the purposes of the renewal or replacement of recreational assets that are owned or maintained by MSC.

Regulations means the *Environmental Planning and Assessment Regulation 2000* (NSW).

1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) A reference to a party to a document includes that party's employees, contractors, representatives, administrators, successors, substitutes (including persons taking novation) and permitted transferees or assigns.

2 Planning agreement under the Act

This Agreement is a planning agreement governed by Division 7.1 of Part 7 of the Act.

3 Application of this Agreement

This Agreement is made in respect of the Mangoola Consent and the Mangoola Extension Consent and applies to the Mangoola Coal Mine.

4 Operation of this Agreement

- (a) This Agreement takes effect on and from the date of surrender of the Mangoola Consent as anticipated by conditions A15 and A16 of the Mangoola Extension Consent.
- (b) Subject to clause 4 (c), the Existing Planning Agreement will terminate on the date of surrender of the Mangoola Consent.
- (c) Nothing in this Agreement affects any obligation of Mangoola to make any contribution or to take any action under the Existing Planning Agreement prior to its termination or in respect of any period before its termination.

5 Mangoola Coal Community Fund

MSC and Mangoola will administer the Mangoola Coal Community Fund in accordance with the Mangoola Coal Community Funding Deed.

6 Development Contributions

6.1 Development Contributions

- (a) Subject to MSC complying with clause 6.3, Mangoola must pay by bank cheque or electronic funds transfer to the MSC the monetary contributions set out in the Contribution Schedule in Schedule 1 by the time or times and in the manner set out in the Contribution Schedule, subject to extensions of time which may be agreed by the Parties. The parties agree that all monetary contributions are to be paid either on or as soon as practicable after 25 May 2022 and each anniversary of that date thereafter (as applicable).
- (b) As stated in the Contributions Schedule, Mangoola will use reasonable endeavours to engage six (6) apprentices a year sourced from residents within the Muswellbrook Shire and Upper Hunter Shires from the Commencement Date until the End of Mining Operations.

6.2 Application of the Development Contributions

The public purposes for which the Development Contributions are to be applied are detailed in the Contribution Schedule.

6.3 Requirement for invoices

- (a) MSC must provide Mangoola with a Tax Invoice for the amount set out in the Contribution Schedule each year; and
- (b) Upon receipt of the relevant Tax Invoice from MSC, Mangoola must pay each Development Contribution within 30 days.

6.4 Adjustment for CPI

The amount of the Development Contributions in column 3 of the table in Schedule 1 are subject to adjustment for changes in CPI as follows:

$$DCP = \frac{DC \times A}{B}$$

where:

- DCP = the actual Development Contribution payment amount payable at the time the particular payment is made;
- DC = the particular Development Contribution payment amount required to be paid as per column 3 of the table in Schedule 1;
- A = the most recent CPI published by the ABS prior to the date the payment is due to be made; and
- B = the most recent CPI published by the ABS prior to the date of this Agreement.

6.5 Effect of making the Development Contributions

- (a) The parties agree that once funds for each of the Development Contributions have been transferred to MCS by Mangoola then no further funds are required to be transferred by Mangoola to MSC for the relevant purpose under this Agreement.
- (b) The parties agree that upon the payment of the total amount of the Development Contributions to MSC, no further monetary contributions are payable under this Agreement.

6.6 Use of Development Contributions

MSC may only use the funds transferred by Mangoola to MSC as Development Contributions for the purposes outlined in the relevant row of Schedule 1, or as otherwise agreed by Mangoola in writing.

7 Application of Section 7.11, Section 7.12 and Section 7.24 of the Act

- (a) This Agreement does not exclude the operation of Section 7.11, Section 7.12 and Section 7.24 of the Act to the Project for the Life of the Project.
- (b) This Agreement does not prevent the Parties from entering into other planning agreements within the meaning of Section 7.4 of the Act in relation to the Project.
- (c) This Agreement is to be taken into account in determining any development contribution under Section 7.11 and /or Section 7.12 of the Act.

7.1 Compliance with laws

- (a) If a Law is changed or a new Law comes into force (both referred to as New Law) and Mangoola is obliged by the New Law to do something or pay an additional amount for a purpose which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with this Agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this Agreement.
- (b) If there is any doubt as to whether compliance with this Agreement will constitute compliance with the New Law, Mangoola will pay such amounts required under the New Law and MSC agrees that such payments will act as a credit with respect to any future payments required under this Agreement so that the aggregate amount (as escalated

in accordance with the Contributions Schedule) Mangoola has paid or will pay under this Agreement is not exceeded.

8 Review of this Agreement

This Agreement may be varied or amended only by the express written approval of all the Parties and in compliance with the Act.

9 Registration of this Agreement

This Agreement will be registered on the title of the Land pursuant to Section 7.6 of the Act within 3 months after the date of this Agreement. This Agreement may be removed from the title of the Land upon termination of this Agreement. Mangoola will promptly at its own expense execute all documents and do all things as required by MSC to effect registration of this Agreement on the title to the Land. When requested to do so after termination of this Agreement, MSC must at Mangoola's expense, promptly execute such documents and take such steps as may reasonably be required to remove notification of registration of this Agreement from the title to the Land.

10 Termination

- (a) This Agreement terminates on the declaration by a Court of competent jurisdiction that either the Mangoola Consent or the Mangoola Extension Consent (if applicable) is invalid.
- (b) If either the Mangoola Consent or the Mangoola Extension Consent is declared to be invalid pursuant to clause 10(a) and a new approval (or similar planning approval) is granted in respect of the same development, then subject to any contrary term of the new approval, MSC agrees to accept payment of the Development Contributions under this Agreement as satisfaction of any contributions required under the new approval.
- (c) If this Agreement terminates pursuant to clause 10(a) this clause 10 (except for clause 10(d) of this Agreement) survives termination of the Agreement.
- (d) This Agreement will also terminate at the end of the Life of the Project. If the Project is extended beyond the Life of the Project, then a new agreement is to be negotiated between the parties.
- (e) This Agreement also terminates at such time as mutually agreed between the Parties in writing.

11 Default

11.1 Notice of Default

If Mangoola fails to pay a Development Contribution or to provide any other Contribution anticipated by this Agreement within 20 Business Days of the due date as required under this Agreement, MSC may serve a notice on Mangoola (after the 20 Business Days have elapsed) (**Default Notice**), giving full particulars of the matters in respect of which it considers the default has occurred and by such notice require the default to be remedied within a reasonable time not being less than Business Days.

11.2 MSC's remedies

If Mangoola fails to rectify the default as specified in a Default Notice within 20 Business Days of the notice date, then MSC may commence proceedings in a court of competent jurisdiction to recover such amount due.

If the issue of whether Mangoola is in default pursuant to a Default Notice has been referred for determination under clause 13, MSC may only exercise its rights under this clause in respect of any action deemed by MSC as urgent, prior to any determination as anticipated by clause 12.

12 Dispute resolution

12.1 Failure to agree

If MSC and Mangoola are unable to reach agreement on an issue under this Agreement within 10 Business Days of attempting to resolve a dispute in good faith, a dispute is taken to have arisen which must be resolved in accordance with this clause. For the avoidance of doubt, this clause applies to all disputes regardless of whether express reference is made to this clause in other clauses of this Agreement.

12.2 Notification

A party claiming a dispute has arisen must give the other party to the dispute notice in writing setting out details of the dispute and that the matter will be referred to a suitably qualified expert for determination in accordance with clause 12.3

12.3 Choice of expert

- (a) A dispute to be determined in accordance with clause 13.1 must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement within 20 Business Days after the date of the notice under clause 13.2, appointed by the President of the NSW Bar Association (or the President's nominee) or other senior officer for the time being of the body administering or expert in the relevant field.
- (b) If the Parties fail to agree as to the relevant field within 20 Business Days after the date of the notice in clause 12.2, either party may at any time refer the matter to the President of the NSW Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.
- (c) The expert appointed to determine a dispute must:
 - (i) have technical understanding of the issues in dispute;
 - (ii) not have a significantly greater understanding of one party's business, function or operations which might allow the other side to construe this greater understanding as a bias; and
 - (iii) inform the Parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (d) The Parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

12.4 Directions to expert

- (a) In reaching a determination in respect of the dispute under this clause, the independent expert must give effect to the intent of the Parties entering into this Agreement and the purposes of this Agreement.

- (b) The expert must:
- (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner as the expert thinks fit without having to be bound by the rules of evidence;
 - (iii) convene a meeting with the Parties present to discuss the dispute;
 - (iv) not accept verbal submissions unless both Parties are present;
 - (v) on receipt of written submissions, ensure that a copy is given promptly to the other party;
 - (vi) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (vii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party 10 Business Days to make further submissions;
 - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
 - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
- (c) The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and within the time period specified by the expert.

12.5 Final determination

The Parties agree that the final determination of the expert will be final and binding upon the Parties except in the case of fraud or misfeasance by the expert.

12.6 Confidentiality

Any information or documents disclosed by a party under this clause:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the dispute.

12.7 Costs

The Parties must contribute equally to the expert's costs in making the determination.

12.8 Urgent relief

This clause does not prevent a party from seeking urgent injunctive or declaratory relief.

13 GST

13.1 Defined GST terms

Defined terms used in this clause have the meaning ascribed to them in the GST Law.

13.2 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

13.3 GST obligations to survive termination

This clause will continue to apply after expiration of termination of this Agreement.

14 Interest to accrue

14.1 Interest

- (a) Mangoola agrees to pay interest on any amount under this Agreement which is not paid on the due date for payment. Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (b) Mangoola agrees to pay interest under this clause on demand from MSC.

14.2 Rate of interest

The rate of interest applying to each daily balance is the maximum rate permitted to accrue on unpaid rates by Section 566(3) of the *Local Government Act 1993* (NSW).

15 Notices

15.1 Form of Notices

Notices given under this Agreement shall be:

- (a) in writing;
- (b) (except where transmitted by email) signed by the party giving the Notice or its Authorised Representative; and
- (c) addressed to the Notice Address of the person to whom it is to be given.

15.2 Method and address for giving Notices

Notices must be either:

- (a) delivered by hand;
- (b) posted by pre-paid security or certified mail; or
- (c) transmitted by email,

to the Notice Address of the person receiving the Notice.

15.3 Time of receipt

A Notice given to a person in accordance with this Agreement is deemed to have been given and received if:

- (a) delivered, on the day of delivery if delivered before 5:00pm on a Business Day, otherwise on the next Business Day;
- (b) posted by pre-paid security mail or certified mail, on the second day after the day on which the Notice was accepted by the post office from the party sending the Notice; or
- (c) transmitted by email, provided the sender receives no failure notice in respect of the email, on the day of transmission if the machine from which the email is sent records the time the email was sent as before 5.00pm on a Business Day, otherwise on the next Business Day.

16 Assignment

Mangoola must not transfer, assign, novate or similarly deal with ("**Dealing**") its rights or obligations under this Agreement or in the Mangoola Coal Mine or the Land unless, prior to any such transfer, assignment, or novation, Mangoola procures that the transferee, assignee or novatee executes and delivers to MSC prior to any such Dealing taking effect, a deed in favour of MSC whereby the transferee, assignee or novatee, becomes contractually bound with MSC to perform all of Mangoola's obligations (including obligations which may have arisen prior to the transfer, assignment or novation taking effect) and be bound by this Agreement, including (without limitation) this clause.

17 General undertaking by parties to cooperate

- (a) Each party must act reasonably (according to common law standards) and in good faith with respect to matters arising under this Agreement, including when required to give their satisfaction as to a particular matter.
- (b) Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement. If a party must fulfil an obligation and that party is dependent on another party for fulfilment of that obligation, then that other party must do each thing reasonably within its power to assist the first party in the performance of that obligation.

18 General

18.1 Amendments

This Agreement may not be modified, amended, added to or otherwise varied except by a document in writing signed by all Parties.

18.2 No Merger

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this document.

18.3 Further Assurances

Each of the Parties agree that they will execute and deliver such further documents as they may reasonably be requested by the other party to properly and fully effect the purpose of this document.

18.4 Entire Agreement

This Agreement constitutes the entire agreement of the Parties in relation to its subject matter and supersedes all prior agreements, understandings and negotiations between the Parties. No other covenants or provisions are implied or arise between the Parties by way of collateral or

other agreement. No party was induced to enter into this Agreement by any promise, representation, warranty or undertaking given or made by the other party (or any of its employees, contractors or agents). The existence of any such implication or collateral or other agreement is expressly negative.

18.5 Prior agreement superseded

- (a) This Agreement wholly replaces and excludes all prior agreements, correspondence, negotiations, representations, explanations and statements between the Parties covering or in connection with the matters covered by this Agreement whether such matters occurred before or after this Agreement.
- (b) Any monetary payment made by Mangoola to MSC pursuant to the terms covered by this Agreement which operated prior to the commencement of this Agreement and covered any of the items in the Contribution Schedule is taken to be a payment (or part payment as the case may be) of that respective Development Contribution under this Agreement and a discharge of the obligation for Mangoola to make such payment under this Agreement.

18.6 Further agreement relating to this Agreement

The Parties may, at any time and from time to time, enter into agreements relating to the subject matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

18.7 Governing Law and Jurisdiction

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales Courts and Courts competent to hear appeals from those Courts.

18.8 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together will constitute the same instrument. A party can execute this Agreement by signing any counterpart. Counterparts can be exchanged electronically by way of email.

18.9 Costs

Each party shall bear its own legal costs and disbursements in relation to the negotiation, preparation and execution of this Agreement.

18.10 Severability

This Agreement shall, so far as possible, be interpreted or construed so as not to be invalid, illegal or unenforceable in any respect but if any provision on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

18.11 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

19 Position of MSC

19.1 Consent authority

The parties acknowledge that for the purposes of this Agreement, MSC is a consent authority with statutory rights and obligations under relevant Law.

19.2 Agreement does not fetter discretion

This Agreement is not intended to operate to fetter, in any unlawful manner the:

- (a) power of MSC to make any Law; or
- (b) exercise by MSC of any statutory power or discretion.

19.3 Severance of provisions

No provision of this is intended to, or does, constitute any unlawful fetter on any discretion. If, contrary to the operation of this clause, any provision of this Deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 19 is substantially satisfied; and
- (b) in the event that clause 19.3(a) cannot be achieved without giving rise to an unlawful fetter on a discretion, the relevant provision is to be severed and the remainder of this Deed has full force and effect.

Where the Law permits MSC to contract out of a provision of that Law or gives MSC power to exercise a discretion, and if MSC has in this Agreement contracted out of a provision or exercised a discretion under this Agreement, then to that extent this Agreement is not to be taken to be inconsistent with the Law.


Schedule 1 – Contribution Schedule

Subject to the terms of this Agreement, Mangoola must make the following Development Contributions:

Funding Area Column 1	Project Column 2	Initial Contribution Column 3	Funding Timeframe Column 4
Roads	Wybong Road maintenance	\$58,887.00 per year during mining operations until 12 months after the End of Mining Operations.	Annually and subject to CPI indexation
	General mine affected road maintenance	\$253,467.00 per year during mining operations and until 12 months after the End of Mining Operations.	Annually and subject to CPI indexation
Local Environmental management	MSC Environmental Management and Monitoring	\$22,948.00 per year during mining operations and until 12 months after the End of Mining Operations.	Annually and subject to CPI indexation
Local Employment	Local Apprenticeships	Use reasonable endeavors to engage 6 apprentices a year sourced from residents within the Muswellbrook Shire and Aberdeen during mining operations and until 12 months after the End of Mining Operations	
Additional Environmental and Community Projects	Miscellaneous	\$379,697.00 a year during mining operations and until 12 months after the End of Mining Operations.	Annually and subject to CPI indexation

EXECUTED as an Agreement

EXECUTED by **Muswellbrook Shire Council**)
ABN 86 864 180 944 by its authorised delegate)
pursuant to Section 377 of the *Local*)
Government Act 1993 (NSW), in the presence
of:



Signature of Witness

ALEXANDRA HATHWAY

Name of Witness (Print)




General Manager

FIONA PLESMAN

Name of General Manager

EXECUTED by **Mangoola Coal Operations**)
Pty Limited ABN 54 127 535 755 in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth):



Signature of Director/~~Secretary~~

Ashley McLeod

Name of Director/~~Secretary~~ (Print)



Signature of Director

Ian Gough

Name of Director (Print)