

# Planning Agreement

## Narrabri Coal Operations Pty Ltd

ABN 15 129 850 139

as agent for the Narrabri Joint Venture Participants:

- Narrabri Coal Pty Ltd (ACN 107 813 963)
- Narrabri Coal Australia Pty Ltd (ACN 110 262 925)
- Upper Horn Investments (Australia) Pty Ltd (ACN 129 190 281)
- J-Power Australia Pty Ltd (ACN 002 307 682)
- POSCO International Australia Holdings Pty Ltd (ACN 139 088 958)
- KORES Narrabri Pty Limited (ACN 138 993 263)

## Whitehaven Coal Limited

ACN 124 425 396

and

## Narrabri Shire Council

ABN 95 717 801 656

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**THIS AGREEMENT** is made on

21 May 2025

**BETWEEN:**

- (1) **Narrabri Coal Operations Pty Ltd** ABN 15 129 850 139 whose registered office is at Level 28, 259 George Street, Sydney NSW 2000;
- (2) **Whitehaven Coal Limited** ACN 124 425 396 whose registered office is at Level 28, 259 George Street, Sydney NSW 2000; and
- (3) **Narrabri Shire Council** ABN 95 717 801 656 of 46–48 Maitland Street, Narrabri NSW 2390.

**RECITALS:**

- (A) In October 2020, NCOPL made a development application under the EP&A Act for the Stage 3 Project.
- (B) On 1 April 2022, the Independent Planning Commission of New South Wales granted the Development Consent under the EP&A Act for the Stage 3 Project.
- (C) The Stage 3 Project is a joint venture between the Narrabri Joint Venture Participants.
- (D) NCOPL has been appointed by each of the Narrabri Joint Venture Participants as their exclusive agent to carry out the Stage 3 Project.
- (E) Condition A18 of the Development Consent requires NCOPL to enter into a planning agreement with the Council in accordance with the terms of NCOPL's offer in Appendix 5 of the Development Consent.
- (F) The Council accepted the terms of NCOPL's offer in Appendix 5 of the Development Consent.
- (G) NCOPL and the Council have agreed to enter into this Agreement under which:
  - (1) NCOPL is required to pay monetary contributions to the Council, comprising:
    - (i) \$1,301,988, paid 12 months after the commencement of development under the Development Consent; and
    - (ii) \$1,301,988, paid 24 months after the commencement of development under the Development Consent,in satisfaction of condition A18 and Appendix 5 of the Development Consent; and
  - (2) the Council is required to use or apply these monetary contributions for or towards one or more Public Purposes, in accordance with and subject to the terms of this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

**Agreement** means this document as executed by the parties.

**Annual Report** means the Council's Annual Report published on the Council's website.

**Business Day** means

- (a) for determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

**Council** means Narrabri Shire Council.

**Error! Reference source not found.Error! Reference source not found.Development Consent** means the development consent granted under the EP&A Act for the Stage 3 Project (Application Number: SSD-10269) by the Independent Planning Commission of New South Wales on 1 April 2022.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2021* (NSW).

**GST** means the same as "GST" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Law** means the same as "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Land** means the same as "site" in the Development Consent (i.e. the land defined in Appendix 1 to the Development Consent), and includes the relevant land depicted in the appendices to the Development Consent.

**Mining Operations** means the same as "mining operations" in the Development Consent.

**Monetary Contributions** means the monetary contributions specified in clause 3.2 of this Agreement.

**Narrabri Joint Venture** means the joint venture established in respect of the Stage 3 Project as varied from time to time.

**Narrabri Joint Venture Participants** means the participants in the Narrabri Joint Venture and owners of the Stage 3 Project. As at the date of execution of the Agreement, the participants are:

- (a) Narrabri Coal Pty Ltd (ACN 107 813 963)
- (b) Narrabri Coal Australia Pty Ltd (ACN 110 262 925)
- (c) Upper Horn Investments (Australia) Pty Ltd (ACN 129 190 281)
- (d) J-Power Australia Pty Ltd (ACN 002 307 682)
- (e) POSCO International Australia Holdings Pty Ltd (ACN 139 088 958)
- (f) KORES Narrabri Pty Limited (ACN 138 993 263)

**NCOPL** means Narrabri Coal Operations Pty Ltd (ACN 129 850 139) .

**Project Percentage** means the respective percentage interest that each of the Narrabri Joint Venture Participants has in the Narrabri Joint Venture. As at the date of execution of

the Agreement, the respective percentage interest of the Narrabri Joint Venture Participants are:

- (a) Narrabri Coal Pty Ltd (ACN 107 813 963): 70%
- (b) Narrabri Coal Australia Pty Ltd (ACN 110 262 925): 7.5%
- (c) Upper Horn Investments (Australia) Pty Ltd (ACN 129 190 281): 7.5%
- (d) J-Power Australia Pty Ltd (ACN 002 307 682): 7.5%
- (e) POSCO International Australia Holdings Pty Ltd (ACN 139 088 958): 5%
- (f) KORES Narrabri Pty Limited (ACN 138 993 263): 2.5%

**Public Purpose** has the same meaning as in section 7.4(2) of the EP&A Act.

**Stage 3 Project** means the "Narrabri Underground Mine Stage 3 Extension Project" approved by the Development Consent.

## 1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation of this document. 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.
- (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.

**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 The rule about "contra proferentem"**

This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

**2. NATURE OF THIS AGREEMENT AND APPLICATION OF THE EP&A ACT**

**2.1 Voluntary planning agreement**

- (a) This Agreement is a voluntary planning agreement made in accordance with Part 7 of the EP&A Act.
- (b) This Agreement is intended to satisfy condition A18 in the Development Consent.
- (c) This Agreement relates to and applies in respect of the Stage 3 Project, the Land and the Development Consent.
- (d) Schedule 1 demonstrates how this Agreement complies with the requirements of section 7.4(3) of the EP&A Act.

**2.2 Application of sections 7.11, 7.12 or 7.24 of the EP&A Act**

- (a) This Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the EP&A Act.
- (b) The consent authority must not take into consideration the monetary benefits provided under this Agreement in determining a development contribution in respect of the Stage 3 Project under section 7.11 of the EP&A Act.

**2.3 Modifications to Development Consent**

The Council agrees that no additional monetary contributions will be sought by Council in relation to modifications of the Development Consent under the EP&A Act that would not:

- (a) materially increase the impacts of the Stage 3 Project; and
- (b) result in increased demand for public amenities and public services within the Council's local government area.

**2.4 Registration on title**

This Agreement will not be lodged for registration or registered as provided for by section 7.6 of the EP&A Act.

**2.5 No fetter**

Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law and nothing in this Agreement

shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty by the Council.

## 2.6 **Explanatory note**

The appendix contains the explanatory note relating to this deed required by section 205 of the EP&A Regulation. Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

## 3. **TERM**

### 3.1 **Term of this Agreement**

This Agreement:

- (a) commences on the date on which all parties have executed this document; and
- (b) ends on the earlier of:
  - (i) a termination date agreed in writing by the parties in accordance with clause 8; or
  - (ii) the date that is the later of:
    - (A) the date on which the Second Contribution (as defined in clause 4.1 of this Agreement) has been paid in full, and
    - (B) the date on which Mining Operations for the Stage 3 Project permanently cease.

### 3.2 **Notification of End Date**

NCOPL must give the Council at least one week's notice of the date on which Mining Operations for the Stage 3 Project permanently cease.

## 4. **MONETARY CONTRIBUTIONS**

### 4.1 **Definitions**

In this clause 4:

- (a) **CPI** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics;
- (b) **commencement of development under the Development Consent** means the "date of commencement of development" as defined in the Development Consent;
- (c) **First Contribution** means the contribution of \$1,301,988, adjusted in accordance with clause 4.5, as referred to in clause 4.3; and
- (d) **Second Contribution** means the contribution of \$1,301,988, adjusted in accordance with clause 4.5, referred to in clause 4.4.

### 4.2 **Notification of commencement of development under the Development Consent**

NCOPL must give the Council written notice of the commencement of development under the Development Consent within two weeks after the commencement of development under the Development Consent.



The written notice given by NCOPL to the Council under this clause 4.2 must state the date on which development commenced, pursuant to the Development Consent, and the last date on which the First Contribution and Second Contribution are due and payable by NCOPL (being 12 and 24 months after the date on which development commenced pursuant to the Development Consent respectively).

**4.3 First contribution**

NCOPL must pay the First Contribution to the Council no later than 12 months after the date on which development commenced, pursuant to the Development Consent, as notified in the written notice given by NCOPL under clause 4.2 of this Agreement.

**4.4 Second contribution**

NCOPL must pay the Second Contribution to the Council no later than 24 months after date on which development commenced, pursuant to the Development Consent, as notified in the written notice given by NCOPL under clause 4.2 of this Agreement.

**4.5 CPI**

- (a) Each payment made to the Council under this clause 4 must be indexed in accordance with the percentage change to the CPI last published for the quarter prior to the date the payment is made from the CPI last published for the quarter prior to the commencement of development under the Development Consent.

**4.6 How payments must be made**

- (a) The Council may at any time during the term of this Agreement give NCOPL directions for the payment of the First Contribution and/or the Second Contribution.
- (b) As soon as possible after the execution of this Agreement by the parties, the Council is to give NCOPL a direction for the payment of the First Contribution.
- (c) NCOPL must make each payment to the Council under this Agreement by electronic funds transfer to the account that the Council nominates, or by such other means as may be reasonably directed by Council.

**4.7 Currency of payments**

NCOPL must pay each amount required to be paid by it under this Agreement in Australian dollars.

**4.8 Demand for payment not required**

NCOPL must make payment of the First Contribution and the Second Contribution, in accordance with and within the time specified in clause 4.3 and 4.4 respectively, regardless of whether the Council makes a demand for payment of those contributions.

**5. USE OF MONETARY CONTRIBUTIONS**

**5.1 Use of Monetary Contributions by the Council**

- (a) The Council must use or apply the Monetary Contributions for or towards Public Purposes, as reasonably determined by the Council in accordance with its community strategic plan, resourcing strategy, delivery program, operational plan and other documents that it considers to be relevant.
- (b) The Council must apply the Monetary Contributions within a reasonable period of time.

- (c) Whenever the Council applies the Monetary Contributions towards funding a particular community initiative or project, the Council will publicly acknowledge the use of the Monetary Contributions paid to it by NCOPL under this Agreement (after consulting with NCOPL as to the appropriate way of doing so).

## 5.2 Reporting on the use of Monetary Contributions

- (a) The Council must keep records regarding its use or application of the Monetary Contributions and, within 30 days of the end of each financial year, give NCOPL a report setting out and evidencing the purposes for or towards which any amount of the Monetary Contributions has been or is proposed to be used or applied.
- (b) The Council will acknowledge the Monetary Contributions from NCOPL and the purposes to which the contributions under this Agreement are applied, in its Annual Report.

## 6. GUARANTEE

### 6.1 Definitions

For the purposes of this clause 6:

- (a) **Control** means the same as in the *Corporations Act 2001* (Cth).
- (b) **Controller** means the entity which is in Control of Narrabri Coal Pty Ltd and Narrabri Coal Australia Pty Ltd (being the Narrabri Coal Parent as at the date of this Agreement).
- (c) **Guarantee Deed** means a deed whereby the Narrabri Coal Parent is released from Liability under the Guarantee which is assumed by the new Controller.
- (d) **Liability** means the responsibility for the Guarantee arising from pre-existing defaults or future defaults by Narrabri Coal Pty Ltd or Narrabri Coal Australia Pty Ltd.
- (e) **Narrabri Coal Parent** means Whitehaven Coal Limited (ACN 124 425 396).

### 6.2 Guarantee by Narrabri Coal Parent

- (a) The Narrabri Coal Parent unconditionally and irrevocably guarantees to the Council the due and punctual performance by NCOPL of its obligations to the Council under this Agreement (**Guarantee**).
- (b) The Narrabri Coal Parent as the Controller gives the Guarantee to the Council in consideration of the Council entering into this Agreement with NCOPL on behalf of Narrabri Coal Pty Ltd and Narrabri Coal Australia Pty Ltd.
- (c) This Guarantee is a continuing guarantee and remains in full force and effect unless and until the parties enter into a Guarantee Deed to alter the guarantee, or until NCOPL discharges all of its obligations to the Council under this Agreement.
- (d) On any change of Control of Narrabri Coal Pty Ltd and Narrabri Coal Australia Pty Ltd, the Narrabri Coal Parent must cause the new Controller to provide the Guarantee to the Council.
- (e) If required by the Council, the Council and NCOPL and the new Controller must, at the expense of NCOPL, enter into a Guarantee Deed to replicate the terms of this clause 6.2, or to provide such guarantee as may be required by the Council acting reasonably.

## 7. **AMENDMENT AND ASSIGNMENT**

### 7.1 **Amendment**

This document can only be amended or replaced by another document executed by the parties and in accordance with the EPA Act.

### 7.2 **Assignment**

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this Agreement with the written consent of the other party.

## 8. **TERMINATION**

The parties may, by agreement in writing, terminate this document with effect from the date agreed by the parties.

## 9. **NOVATION**

### 9.1 **Definitions**

For the purposes of this clause 9:

- (a) **New Owner** means a party that replaces NCOPL as the owner of the Stage 3 Project.
- (b) **Novation Deed** means a deed whereby the New Owner is substituted for NCOPL in this Agreement as to all Rights and Obligations.
- (c) **Novation Date** means the effective date of the Novation Deed.
- (d) **Rights** means all of the powers and entitlements of NCOPL both past and future provided in this Agreement.
- (e) **Obligations** means all of the duties, functions and responsibilities of NCOPL both past and future provided in this Agreement.

### 9.2 **Novation**

- (a) NCOPL must novate its position under this Agreement to any New Owner.
- (b) When required by NCOPL, the Council, NCOPL, Whitehaven Coal Limited, and the New Owner must, at the cost of NCOPL, enter into a Novation Deed.
- (c) The Novation Deed must provide for the enforcement of this Agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of this Agreement by the New Owner.
- (d) From the Novation Date the:
  - (i) New Owner stands in the position of NCOPL under this Agreement as to its Rights and its Obligations; and
  - (ii) the Council releases and discharges NCOPL and Whitehaven Coal Limited from all Obligations.

10. **DISPUTE RESOLUTION**

10.1 **Not Commence**

A party must not commence any court proceedings relating to a dispute of any matter under this Agreement (**Dispute**) unless it first complies with this clause 10.

10.2 **Written Notice of Dispute**

A party claiming that a Dispute has arisen under or in relation to this Agreement must give notice (**Dispute Notice**) to the other parties specifying the nature of the Dispute.

10.3 **Attempt to Resolve**

On receipt of a Dispute Notice, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

10.4 **Mediation**

If the parties do not agree within fourteen (14) days of the Dispute Notice (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for the conduct of those procedures; and
- (c) the selection of any independent person required for such procedure;

the parties must mediate the dispute (**Mediation**) in accordance with the Mediation Program of the Law Society of New South Wales (or any replacement). The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's reference and remuneration.

10.5 **Court Proceedings**

If the Dispute is not resolved at Mediation, then either party may commence court proceedings in relation to the Dispute.

10.6 **Not Use Information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement in the Mediation is to attempt to settle the Dispute. No party may use any information or documents obtained through the Mediation for any purpose other than the Mediation.

10.7 **Continuance of performance**

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement.

10.8 **Summary or urgent relief**

Nothing in this clause 10 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

10.9 **Survive termination**

This clause 10 survives the expiry or termination of this document.

11. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
  - (i) if it is delivered, when it has been left at the addressee's address;
  - (ii) if it is sent by mail, three Business Days after it is posted;
  - (iii) if it is sent in electronic form when the sender receives confirmation on its server that the message has been transmitted
- (A) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
- (B) if it is transmitted after 5.00 pm (Sydney time) on the Business Day, or on a day that is not a Business Day – on the next Business Day.
- (c) The parties addresses are those set out below, or as one party otherwise notifies the other:

**NCOPL**

Address: Level 28, 259 George St, Sydney NSW 2000  
Email address: [companysecretary@whitehavencoal.com.au](mailto:companysecretary@whitehavencoal.com.au)  
Attention: Company Secretary

**Whitehaven Coal Limited**

Address: Level 28, 259 George St, Sydney NSW 2000  
Email address: [companysecretary@whitehavencoal.com.au](mailto:companysecretary@whitehavencoal.com.au)  
Attention: Company Secretary

**The Council**

Address: PO Box 261, Narrabri, NSW, 2390  
Email address: [council@narrabri.nsw.gov.au](mailto:council@narrabri.nsw.gov.au)  
Attention: The General Manager

12. **GOODS AND SERVICES TAX**

- (a) Moneys paid under this Agreement are not GST inclusive under the GST Law.
- (b) The parties acknowledge that GST is not payable on the Monetary Contributions paid under this Agreement under the GST Law.

13. **LIABILITY**

The liability of each of the Narrabri Joint Venture Participants to the Council under this Agreement is several (and not joint and several) and is limited to their respective Project Percentage.

14. **GENERAL**

14.1 **Governing law**

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of the State of New South Wales.

- (b) Each party submits to the exclusive jurisdiction of the courts of that State and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document.

#### 14.2 **Operation of this Agreement**

- (a) This Agreement 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 agreement and has no further effect.
- (b) 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.

#### 14.3 **Costs**

Each party is to bear its own costs of negotiating, preparing and entering into this Agreement.

#### 14.4 **Counterparts**

This document may be executed in counterparts. Delivery of a counterpart of this document by email attachment constitutes an effective mode of delivery.

## SCHEDULE 1

### Compliance of this Agreement with the requirements of section 7.4(3) of the EP&A Act

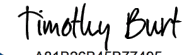
	Section	Requirement	Clause of this Agreement
1	7.4(3)(a)	A description of the land to which the agreement applies	Clause 1.1 (definition of "Land" and "Development Consent") Clause 2.1(c)
2	7.4(3)(b)(i)	The change to the environmental planning instrument to which the agreement applies	Not applicable
3	7.4(3)(b)(ii)	A description of the development to which the agreement applies	Clause 1.1 (definition of "Stage 3 Project" and "Development Consent"). Clause 2.1(c)
4	7.4(3)(c)	The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made	Clause 4
5	7.4(3)(d)	In the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development	Clause 2.2
6	7.4(3)(e)	If the agreement does not exclude the application of section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11	Clause 2.2
7	7.4(3)(f)	A mechanism for the resolution of disputes under the agreement	Clause 10
8	7.4(3)(g)	The enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer	Clause 6

**EXECUTED** as an Agreement.

**EXECUTED** by **NARRABRI COAL OPERATIONS PTY LTD:**

DocuSigned by:  
  
59BBA25E8A0B435...  
Signature of director

Ian Humphris  
Name

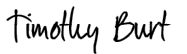
DocuSigned by:  
  
A81B26B45B77495...  
Signature of director/secretary

Timothy Burt  
Name

**EXECUTED** by **WHITEHAVEN COAL LIMITED:**

Signed by:  
  
80CBADA10D13464...  
Signature of director

Paul Flynn  
Name

DocuSigned by:  
  
A81B26B45B77495...  
Signature of director/secretary

Timothy Burt  
Name

**EXECUTED** by **NARRABRI SHIRE COUNCIL** in accordance with a resolution passed at a duly convened meeting held on 16 April 2025.

in the presence of the General Manager:

  
Signature of General Manager

Eloise Chaplain  
Name