

Voluntary Planning Agreement

Maules Creek Coal Pty Ltd (ABN 70 140 533 875)

as agent for

Aston Coal 2 Pty Ltd (ABN 14 139 472 567);

ICRA MC Pty Ltd (ABN 77 147 657 074); and

J-Power Australia Pty Ltd (ABN 59 002 307 682)

Narrabri Shire Council

ABN 957 1780 7656

<p>RECEIVED BY NARRABRI SHIRE COUNCIL</p> <p>16 MAY 2014</p> <p>DOCUMENT ID</p>
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Agreement

Date

2 May 2014

Parties

Name Maules Creek Coal Pty Ltd
ABN 70 140 533 875
Address 121 Merton Street,
Boggabri, NSW, 2382
Fax Number 02 6749 7899
Email Address csimmons@whitehavencoal.com.au
Contact Craig Simmons

Name Narrabri Shire Council (**Council**)
ABN 957 1780 7656
Address PO Box 261, Narrabri, NSW, 2390
Fax Number 02 6799 6888
Email Address council@narrabri.nsw.gov.au
Contact Mr Pat White

Background

- A. Aston was granted Project Approval PA 10_0138 for the Maules Creek Project under Part 3A of the EP&A Act on 23 October 2012 by the Planning Assessment Commission under delegation of the NSW Minister for Planning and Infrastructure.
- B. The Maules Creek Project is owned by Maules Creek Coal (**MCC**), a joint venture between Aston (a wholly owned subsidiary of Whitehaven Coal Limited), ICRA MC Pty Ltd and J-Power Australia Pty Limited.
- C. MCC has been appointed by each of Aston, ICRA MC Pty Ltd and J-Power Australia Pty Limited as their exclusive agent to carry out operations associated with the Maules Creek Project.
- D. Condition 17 of Schedule 2 of the Project Approval requires Aston to enter into an agreement with Council in accordance with Division 6 of Part 4 of the EP&A Act and the "General Terms of Planning Agreement" contained in Appendix 3 of the Project Approval.
- E. Council accepted the "General Terms of Planning Agreement" in Appendix 3 of the Project Approval.
- F. The purpose of the Parties entering into this agreement is to satisfy condition 17 of Schedule 2 of the Project Approval.

Operative part

1. Definitions and interpretation

1.1. Definitions

In this Agreement:

Agreement means this agreement.

Anniversary Date means each twelve months from the Effective Date.

Project Approval means planning approval PA 10_0138 granted under section 75 J of the EP&A Act on 23 October 2012, as modified from time to time.

Aston means Aston Coal 2 Pty Ltd (ABN 14 139 472 567).

Aston Parent means Whitehaven Coal Limited (ACN 124 425 396).

Business Day means a day other than a Saturday, Sunday or public holiday in NSW and specifically excluding 27, 28, 29 and 31 December.

CCC means the 'community consultative committee' established and operated under the Project Approval.

Closure Period means any time during which there is for any reason no coal production pursuant to the Project Approval.

Contributions Accounts means an account within the financial records of Council separately identified for the management of Contribution Amounts.

Contribution Amount means respectively the amounts identified in the Contributions Schedule in the column headed "Amount".

Contribution Purposes means respectively the purposes identified in the Contributions Schedule in the column headed "Description".

Contributions Schedule means Schedule 1 to this Agreement so headed.

Council means Narrabri Shire Council.

CPI Index Variation means the weighted average of any percentage increase in the All Groups Consumer Price Index at each of the eight capital cities in Australia as published by the Australian Bureau of Statistics between the Effective Date and the relevant Anniversary Date.

Effective Date means the date of this Agreement.

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

EP&A Regs means the Environmental Planning and Assessment Regulation 2000 (NSW).

Explanatory Note means the explanatory note required by the EP&A Regs.

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.

Land means the land which is the subject of the Project Approval.

Maules Creek Coal (MCC) means Maules Creek Coal Pty Ltd (ABN 70 140 533 875) as agent for Aston Coal 2 Pty Ltd (ABN 14 139 472 567), ICRA MC Pty Ltd (ABN 77 147 657 074) and J-Power Australia Pty Ltd (ABN 29 002 307 682), being the owners

of the Maules Creek Project.

Maules Creek Project means the project authorised by the Project Approval.

Maules Creek Joint Venture means the joint venture established in respect of the Maules Creek Project as varied from time to time.

Payment Date means in respect of each respective Contribution Amount the time stated in the Contributions Schedule in the column headed "Timeline for Payment" unless otherwise provided specifically in this Agreement.

Project Percentage means the respective percentage interest that each participant of the Maules Creek Joint Venture has in the joint venture from time to time. As at the date of execution of this Agreement, the respective percentages of the joint venture participants are:

- (a) Aston Coal 2 Pty Ltd: 75%;
- (b) ICRA MC Pty Ltd: 15%;
- (c) J-Power Australia Pty Ltd: 10%.

Tax Invoice means a request for payment under the GST Law.

Term means as provided in clause 3.

1.2. Interpretation

Clause specific definitions are in the respective clauses.

In this Agreement, unless the context indicates a contrary intention:

(headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement.

(Party) a reference to a Party includes that Party's administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

(singular) the singular includes the plural and vice-versa.

(gender) words importing one gender include all other genders.

(rules of construction) neither this Agreement nor any part of it is to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

(Australian currency) a reference to dollars or \$ is to Australian currency.

(day) a reference to a day is a reference to a calendar day.

(month) a reference to a month is a reference to a calendar month.

(year) a reference to a year is a reference to twelve consecutive calendar months.

(background and schedules) the Background and Schedules form part of this Agreement.

(references) a reference to the background, a clause, or a schedule is a reference to the background, a clause, or a schedule of this Agreement.

(legislation) a reference to legislation or to a legislative provision includes any statutory modification, or substitution of that legislation or legislative provisions and any subordinate legislation issued under that legislation or legislative provision.

2. Planning Agreement under the EP&A Act

- 2.1. This is a voluntary planning agreement made in accordance with Division 6 of Part 4 of the EP&A Act.
- 2.2. This Agreement is intended to satisfy Condition 17 of Schedule 2 of the Project Approval.
- 2.3. Schedule 2 demonstrates how this Agreement is in accordance with the Requirements of Division 6 of Part 4 of the EP&A Act.

3. Term

3.1. This Agreement:

- a) operates from the Effective Date;
- b) terminates on the earlier of:
 - I. mining operations no longer being authorised under Condition 5 of Schedule 2 of the Project Approval;
 - II. the Project Approval ceasing for any reason to have effect; or
 - III. when the Maules Creek Project is closed; and
- c) is suspended during any Closure Period of the Maules Creek Project.

4. Application of this Agreement

This Agreement applies to the Land.

5. Purpose

This Agreement provides for payments to the Council in accordance with the agreed "General Terms of Planning Agreement" contained in Appendix 3 of the Project Approval

6. Contributions

- 6.1. This clause applies to the each Contribution Amount except the Tonnage Amount (as that term is defined in clause 7.1.c) of this Agreement).
- 6.2. MCC must pay to the Council each Contribution Amount within twenty eight (28) days of the respective Payment Date.
- 6.3. The Contribution Amount to be applied for "Environment" projects must:
 - a) be held by the Council in a separate identified Trust Account;
 - b) be applied for the purposes and in the manner determined by the CCC; and
 - c) be released and paid by the Council as directed in writing by the chairman at the time of the CCC.
- 6.4. As to the remainder of the Contribution Amounts, the Council must:

- a) pay to and hold the separate Contribution Amounts in separately identified Contribution Accounts; and
 - b) apply the separate Contribution Amounts to the respective Contribution Purpose.
- 6.5. Council must promptly issue a Tax Invoice to MCC for each Contribution Amount prior to it becoming payable.
- 6.6. When reasonably requested by MCC, Council must, within a reasonable time of the request, provide to MCC a report on:
- a) the status, standing and position of;
 - b) the uses of money from; and
 - c) plans for expenditure from;
- each Contribution Account.

7. Tonnage Amount

- 7.1. For the purposes of this clause the following terms have the following respective meanings:
- a) **MCC Tonnage Account** means an account within the financial records of Council separately identified for management of the Tonnage Amount.
 - b) **Saleable Tonne** means the coal amount calculated per saleable tonne paid to the NSW State Government and payable monthly.
 - c) **Tonnage Amount** means \$0.075 for each Saleable Tonne of coal recovered pursuant to the Project Approval, increased each Anniversary Date by the CPI Index Variation.
 - d) **Tonnage Contribution Purpose** means the conducting of infrastructure projects (including environmental) at the discretion of the Council, provided that, when used for road works, the Tonnage Amounts must be used initially as needed in proximity to the Maules Creek Project in the Narrabri Shire Council area and then radiating outwards.
- 7.2. MCC must pay the Tonnage Amount to the Council.
- 7.3. On the tenth (10) day of each month during the Term (**Notification Date**) after the Effective Date, MCC must notify the Council of the Saleable Tonne produced by the Maules Creek Project during the previous month (**Month's Saleable Tonnes**).
- 7.4. Within tenth (10) days of the Notification Date (**Invoice Date**) Council must issue to MCC a Tax Invoice for the appropriate Tonnage Amount for the Month's Saleable Tonnes.
- 7.5. Within tenth (10) days of the Invoice Date MCC must pay the Tonnage Amount for the invoiced month to the Council (**Monthly Tonnage Amount**).
- 7.6. The Council must
- a) hold all Monthly Tonnage Amounts received by it in a separate identified MCC Tonnage Account; and
 - b) apply its reasonable endeavours to use the separate Tonnage Amounts for and in accordance with the Tonnage Contribution Purpose; and
 - c) when reasonably requested by MCC, Council must, within a reasonable time of the request, provide to MCC a report on:
 - I. the status, standing and position of;
 - II. the uses of money from; and
 - III. plans for expenditure from;
 the MCC Tonnage Account.
- 7.7. Subject to clause 7.6, the Council may apply the Tonnage Amount to any infrastructure project (including environmental) within the Narrabri Shire with the written consent of

MCC (which must not be unreasonably withheld by MCC).

8. Payments

Amounts paid by MCC to Council must be in Australian dollars (\$AUD) and be made by bank cheque or electronic funds transfer to the Council or by such other means as may be reasonably directed by Council.

9. Application of the EP&A Act

- 9.1. This Agreement does not exclude the operation of sections 94, 94A or 94EF of the EP&A Act.
- 9.2. In the event of the application of any of sections 94, 94A or 94EF of the EP&A Act at any time during the life of the Project Approval the benefits bestowed on Council must be taken into account.
- 9.3. Council must without delay comply with all of its obligations under the EP&A Act with regard to the entry of this Agreement as a voluntary 'planning agreement' under the EP&A Act

10. Registration of this Agreement

This Agreement will not be registered on the title of the Land pursuant to section 93H of the Act.

11. GST

- 11.1. Moneys paid by-under this Agreement are not GST inclusive under the GST Law.
- 11.2. The parties acknowledge that GST is not presently payable on the Contribution Amounts paid under this Agreement.
- 11.3. In the event that GST is payable by the Council under the GST Law in respect of this Agreement, any provision of any goods or services or Taxable Supply (as defined in the GST Law) by Council to MCC and the Council issues a GST invoice to MCC, then MCC must pay the amount of the GST to Council following receipt of the invoice.

12. Costs

Each of the Council and MCC must pay its own costs in relation to the negotiation, preparation and execution of this Agreement.

13. Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

14. Explanatory Note

The Explanatory Note must not be used to assist in construing this Agreement.

15. Waiver

- 15.1. A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right.
- 15.2. Delays by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

16. Guarantee by Aston Parent

16.1. For the purposes of this clause 16:

- a) **Control** means the same as in the Corporations Act 2001 (Cth).
- b) **Controller** means the entity which is in Control of Aston, being Aston Parent as at the date of this Agreement.
- Guarantee Deed** means a deed where by Aston Parent is released from Liability under the Guarantee which is assumed by the new Controller.
- c) **Liability** means the responsibility for the Guarantee arising from (then) pre-existing defaults or future defaults by Aston.

16.2. Aston Parent unconditionally and irrevocably guarantees to the Council the due and punctual performance by MCC of its obligations to Council under this Agreement to the extent of Aston's liability under this Agreement (**Guarantee**).

16.3. Aston Parent as the Controller of Aston gives the Guarantee to Council in consideration of the Council entering into this Agreement with MCC on behalf of Aston.

16.4. This Guarantee is a continuing guarantee and remains in full force and effect for so long as:

- a) MCC on behalf of Aston has any obligations to the Council under this Agreement; and
- b) Aston Parent is the Controller of Aston.

16.5. On any change of Control of Aston, Aston Parent must cause the new Controller of Aston to provide the Guarantee to Council.

16.6. If required by the Council, the Council and MCC and the new Controller of Aston must, at the cost to MCC, enter into a Guarantee Deed to effectively implement the Guarantee for the benefit of the Council.

17. Novation

17.1. For the purposes of this clause 17:

- a) **New Owner** means a party that becomes the owner of the Maules Creek Project.
- b) **Novation Deed** means a 'deed' whereby the New Owner is substituted for MCC 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 MCC both past and future provided in this Agreement.
- e) **Obligations** means as to MCC all of the duties, functions and responsibilities of MCC both past and future provided in this Agreement.

17.2. MCC must novate its position under this Agreement to any New Owner.

17.3. When required by MCC, the Council, MCC and the New Owner must, at the cost of

MCC, enter into a Novation Deed.

17.4. 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

17.5. From the Novation Date the:

- a) New Owner stands in the position of MCC under this Agreement as to its Rights and its Obligations; and
- b) Council releases and discharges MCC from all Obligations.

18. Disputes under this Agreement

18.1. Not Commence

A party must not commence any court proceedings relating to a dispute of any matter under this Agreement (**Dispute**) unless it complies with this clause 18.

18.2. 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.

18.3. 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.

18.4. 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 all steps in those procedures; and
- c) the selection of the independent person required for such technique;

the parties must mediate the dispute (Mediation) in accordance with the Mediation Rules 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.

18.5. Court Proceedings

If the Dispute is not resolved within forty two (42) days after the Dispute Notice then any party which has complied with the Mediation provisions of

this clause may in writing terminate the Mediation and may then commence court proceedings in relation to the Dispute.

18.6. 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.

18.7. No Prejudice

This provision with regard to Mediation does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

19. Notices

19.1. Any notice, demand, consent or other communication given or made under this Agreement must be:

- a) in writing;
- b) signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
- c) left at the address or sent by pre-paid security post to the address or to the fax number of the recipient.

19.2. A party may change its address or fax number for the purpose of service by giving notice of that change to the other party.

19.3. Any communication will be taken to be received by the recipient:

- a) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
- b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the fax number of the recipient; and
- c) if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at the commencement of the next Business Day.

20. General

20.1. Counterparts

This Agreement may be executed in any number of counterparts.

20.2. Entire Agreement

The contents of this Agreement constitute the entire Agreement between the parties with regard to the Project Approval.

20.3. Variation

This Agreement can only be varied by a later written document executed by or on behalf of all parties.

20.4. Liability

The liability of each of the participants in the Maules Creek Joint Venture to the Council under this Agreement is several and not joint and several and is limited to their respective Project Percentage.

SCHEDULE 1

Contribution Schedule

AMOUNT	TIMELINE FOR PAYMENT	DESCRIPTION
\$6,000,000	<p>\$3,000,000 3 months after receipt of all necessary approvals to commence construction of the mine. \$1,500,000 12 months after the first payment \$1,500,000 24 months after the first payment</p> <p>*Note: Maules Creek Coal will commit funds out of the first \$3,000,000 to the upgrade of Therribri Road.</p>	Funds to be utilised on the upgrade of infrastructure and road including Therribri Road and Tarrioro Bridge.
\$5,000,000	<p>\$1,000,000 3 months after receipt of all necessary approvals to commence construction of the mine. Each 12 months thereafter \$1,000,000</p>	Funds to be utilised on the upgrade of the Narrabri Airport.
\$800,000	To be distributed in consultation with Narrabri Shire Council (NSC) and the Boggabri Community. The funds will be where possible equally distributed over a 3 year period commencing 3 months after receipt of all necessary approvals to commence construction of the mine.	Funds to be utilised on various projects within the township of Boggabri and its surrounds.
\$275,000	To be distributed in consultation with Narrabri Shire Council (NSC) and the Maules Creek Community. The funds will be where possible equally distributed over a 3 year period commencing 3 months after receipt of all necessary approvals to commence construction of the mine.	Funds to be contributed to the Maules Creek Community.
\$1,250,000	<p>\$250,000 3 months after receipt of all necessary approvals to commence construction of the mine. \$500,000 12 Months after the first payment \$500,000 24 Months after the first payment</p>	Funds to be utilised on CBD upgrades in the Narrabri Shire

AMOUNT	TIMELINE FOR PAYMENT	DESCRIPTION
\$100,000	At Aston's discretion.	<p>Funds to be held in trust for "Environment" projects and to be administered by the Community Consultative Committee (CCC)</p> <p>The aim is to set up a "pool of funds" with all current and future mines being compelled to contribute \$100,000 as a once only upfront fee to commence the fund.</p> <p>The Council through gaining a Consumer Price Index (CPI) increase on the tonnes produced will allocate 1.5% of the increase each and every year to supplement the fund.</p> <p>The Council and MCC will work through the CCC to administer the funds with the criteria to support a grant application to be completed by the 30th June 2013. The first round of applications will be called in the financial year 2013/14.</p>
\$0.075 per saleable tonne + CPI		<p>The cents per saleable tonne to mirror the calculation per saleable tonne paid to the NSW State Government and payable monthly.</p> <p>The cents per saleable tonne to commence from</p>

AMOUNT	TIMELINE FOR PAYMENT	DESCRIPTION
		<p>the start of production and to be utilised on infrastructure projects (including environmental) at Council's discretion.</p> <p>The Consumer Price Index is to be calculated as follows:</p> <p>Price Indexes published by the Australian Bureau of Statistics (ABS)</p> <p>CPI to be based upon the weighted average of eight capital cities for the previous 12 months and to commence from the start of production.</p> <p>The first review to be undertaken and applied in the first instance and based on the prior 12 months CPI.</p>

SCHEDULE 2

Table detailing how this Agreement fulfils section 93F(3) EP&A Act requirements for Planning Agreement contents

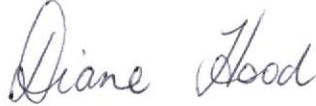
SUBSECTION	REQUIREMENT	AGREEMENT CLAUSE
93F(3)(a)	a description of the land to which the agreement applies	Clause 4 – "Application of this Agreement" Definitions – "Land"
93F(3)(b)(i)	the change to the environmental planning instrument to which the agreement applies	NOT RELEVANT
93F(3)(b)(ii)	a description of the development to which the agreement applies	Definitions – "Maules Creek Project"
93F(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 6 – "Contributions" Clause 7 – "Tonnage Amount" Clause 8 – "Payments"
93F(3)(d)	whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development	Clause 9 – "Application of the EP&A Act"
93F(3)(e)	if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94	Clause 9 – "Application of the EP&A Act"
93F(3)(f)	a mechanism for the resolution of disputes under the agreement	Clause 18 – "Disputes under this Agreement"
93F(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 16 – "Guarantee by Aston Parent"

Executed as an agreement.

Executed for the **Narrabri Shire Council** by
the General Manager in the presence of:



Signature of Witness



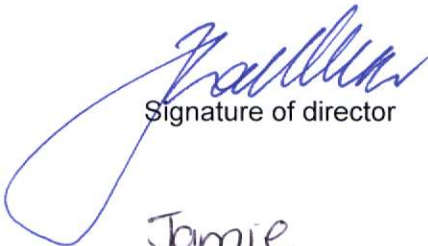
Signature of General Manager

13/4/14

Elizabeth Lantz

Name of Witness

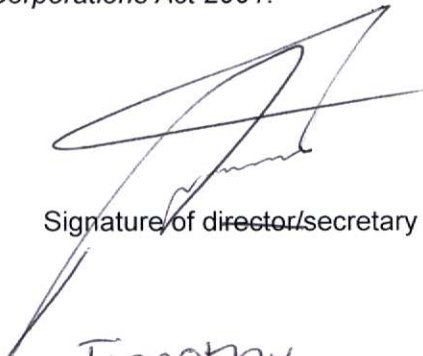
Executed by **Maules Creek Coal Pty Ltd**
pursuant to s 127 of the *Corporations Act 2001*:



Signature of director

Jamie
Frankcombe

Name of director



Signature of director/secretary

Timothy
Burt

Name of signatory