

Voluntary Planning Agreement

Tarrawonga Coal Pty Ltd (ABN 73 100 742 185)

as agent for

Whitehaven Coal Mining Limited (ABN 65 086 426 253); and

Boggabri Coal Pty Ltd (ABN 77 122 087 398)

**Narrabri Shire Council
ABN 957 1780 7656**

Agreement

Date

Parties

Name	Tarrawonga Coal Pty Limited (TWC)
ABN	73 100 742 185
Address	PO Box 600 Gunnedah NSW 2380
Fax Number	02 6742 3607
Email Address	medmondson@whitehavencoal.com.au
Contact	Mr Mark Edmondson

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	Paul Wearne

Background

- A. TWC was granted Project Approval PA 11_0047 for the Tarrawonga Coal Project under Part 3A of the EP&A Act on 22 January 2013 by the Planning Assessment Commission under delegation of the NSW Minister for Planning and Infrastructure.
- B. The Tarrawonga Coal Project is owned by Whitehaven Coal Mining Limited and Boggabri Coal Pty Ltd.
- C. TWC has been appointed by each of Whitehaven Coal Mining Limited and Boggabri Coal Pty Ltd as their agent to carry out operations associated with the Tarrawonga Coal Project.
- D. Condition 21 of Schedule 2 of the Project Approval requires Tarrawonga Coal 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 21 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 11_0047 granted under section 75 J of the EP&A Act on 22 January 2013, as modified from time to time.

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 or NSC means Narrabri Shire Council.

CPI Index Variation CPI adjustment to be based on the index published by the Australian Bureau of Statistics (ABS). The CPI will be the figure presented by the ABS as the annual CPI rate for the previous Calendar Year as the Weighted Median figure as presented on ABS Publication 6401.0 (or equivalent)

Effective Date means 1 July 2014.

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.

Tarrawonga Coal or TWC means Tarrawonga Coal Pty Ltd (ABN 73 100 742 185) as agent for WCML and Boggabri Coal Pty Ltd (ABN 77 122 087 398).

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

Tarrawonga Project means the project authorised by the Project Approval

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 Tarrawonga 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) WCML: 70%;
- (b) Boggabri Coal Pty Limited: 30%;

WCML means Whitehaven Coal Mining Limited (ABN 65 086 426 253).

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 21 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 Tarrawonga Project is closed; and
- c) is suspended during any Closure Period of the Tarrawonga 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 each Contribution Amount except the Tonnage Amount (as that term is defined in clause 7.1.c) of this Agreement.
- 6.2. TWC 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 TWC for each Contribution Amount prior to it becoming payable.
- 6.6. When reasonably requested by TWC, Council must, within a reasonable time of the request, provide to TWC 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) **TWC Tonnage Account** means an account within the financial records of Council separately identified for management of the Tonnage Amount.
 - b) **Sold Tonnes** means the 'quantity of coal' amount reported monthly to the NSW State Government in the NSW State royalty return for the Tarrawonga Mine.
 - c) **Tonnage Amount** means \$0.075 as at the Project Approval Date for each Sold Tonne of coal in excess of 2mpta in a financial year recovered pursuant to the Project Approval, increased each Anniversary Date by the CPI Index Variation, and calculated in accordance with the methodology in Schedule 1
 - 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 Tarrawonga Coal Project in the Narrabri Shire Council area and then radiating outwards.
- 7.2. TWC must pay the Tonnage Amount to the Council.
- 7.3. On the twenty-first (21) day of each month during the Term (**Notification Date**) after the Effective Date, TWC must notify the Council of the Sold Tonnes produced by the Tarrawonga Project during the previous month (**Month's Sold Tonnes**).
- 7.4. Within ten (10) days of the Notification Date (**Invoice Date**) Council must issue to TWC a Tax Invoice for the appropriate Tonnage Amount for the Month's Sold Tonnes where the cumulative of the Month's Sold Tonnes in that financial year exceed 2mpta.
- 7.5. Within ten (10) days of the Invoice Date TWC 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 TWC Tonnage Account; and
 - b) apply its best endeavours to use the separate Tonnage Amounts for and in accordance with the Tonnage Contribution Purpose; and
 - c) when reasonably requested by TWC, Council must, within a reasonable time of the request, provide to TWC a report on:
 - I. the status, standing and position of;
 - II. the uses of money from; and
 - III. plans for expenditure from;

the TWC 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.

8. Payments

Amounts paid by TWC 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.

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 TWC and the Council issues a GST invoice to TWC, then TWC must pay the amount of the GST to Council following receipt of the invoice.

12. Costs

Each of the Council and TWC 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 Whitehaven Coal Limited

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 WCML, being Whitehaven Coal Limited as at the date of this Agreement.

Guarantee Deed means a deed whereby Whitehaven Coal Limited 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 WCML.

16.2. Whitehaven Coal Limited unconditionally and irrevocably guarantees to the Council the due and punctual performance by TWC of its obligations to Council under this Agreement to the extent of WCML's liability under this Agreement (**Guarantee**).

16.3. Whitehaven Coal Limited as the Controller of WCML gives the Guarantee to Council in consideration of the Council entering into this Agreement with TWC on behalf of WCML.

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

- a) TWC on behalf of WCML has any obligations to the Council under this Agreement; and
- b) Whitehaven Coal Limited is the Controller of WCML.

16.5. On any change of Control of WCML, Whitehaven Coal Limited must cause the new Controller of WCML to provide the Guarantee to Council.

16.6. If required by the Council, the Council and TWC and the new Controller of WCML must, at the cost to TWC, 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 manager of the Tarrawonga Project.
- b) **Novation Deed** means a 'deed' whereby the New Owner is substituted for TWC 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 TWC both past and future provided in this Agreement.
- e) **Obligations** means as to TWC all of the duties, functions and responsibilities of TWC both past and future provided in this Agreement.

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

17.3. When required by TWC, the Council, TWC and the New Owner must, at the cost of TWC, 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 TWC under this Agreement as to its Rights and its Obligations; and
- b) Council releases and discharges TWC 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 Tarrawonga 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
\$1,400,000	<p>\$1,000,000 to be made available on approval of the Extension Project, being January 22 2013</p> <p>\$400,000 to be made available on the first anniversary of the Approval of the Extension Project, being January 22 2014</p>	<p>Funds to be utilised for the construction of sealed roads around the Tarrawonga mine site with an emphasis on sealing Manilla Road for the benefit of local residents. Unallocated funds to be spent at the discretion of NSC.</p> <p>Areas to be improved could include, but are not exclusive to: Manilla Road, Rangari Road, Goonbri Road, Blair Athol Lane, Dripping Rock Road and Barbers Lagoon Road. Council engineering staff will make the assessment based on where there is the most need.</p> <p>Tarrawonga Coal will make available to NSC the opportunity for these road works, to the value of the Amount, to be undertaken by Tarrawonga Mine (where the Council is unable to undertake) to Council's specification with preliminary works to commence at the time of grant of the Development Consent.</p>
\$100,000	Payable on the formation of an Environmental Trust associated with the Leard Forest Mining Industry Cluster but not before approval of the Extension Project.	<p>Funds to be held in trust for Environmental Projects to be administered by NSC with expenditure recommended by the Community Consultative Committee (CCC) in consultation with similar funds set up by mines within the Leard Forest Mining Industry Cluster.</p> <p>NSC will administer the fund with expenditure on projects agreed between NSC, Tarrawonga Coal and the other members of the CCC The Council and Tarrawonga Coal will work through the CCC to administer the funds with the criteria to support a grant application to be completed by the 30th June 2015. The first round of applications will be called in the financial year 2015/16.</p>
\$0.075 per Sold Tonne	Payable monthly on those Sold Tonnes which are in excess of 2mpta in a financial year. Payment to commence when cumulative Monthly Sold Tonnes for a financial year exceed 2mpta.	<p>The payment per tonne to be paid only on tonnes sold from the Tarrawonga Mine and will mirror the calculation made in relation to Royalties to the NSW State Government.</p> <p>CPI adjustment to be based on the index published by the Australian Bureau of Statistics (ABS). The CPI will be the figure presented by the ABS as the annual CPI rate for the previous Calendar Year as the Weighted Median figure as</p>

Amount	Timeline for Payment	Description
	<p>In any financial year where Sold Tonnes are less than 2mpta, no Tonnage Amount will be payable.</p> <p>For example, if in the financial year 1 July 2015 to 30 June 2016, cumulative Monthly Sold Tonnes exceed 2mpta in December 2015 by 200,000 Sold Tonnes, the royalty would be payable from December 2015 for that financial year. The Tonnage Amount payable for December 2015 would be calculated as follows:</p> <p>200,000 x \$0.075 = \$15,000</p> <p>All further Sold Tonnes from 1 January 2016 to 30 June 2016 would then be subject to payment of the Tonnage Amount.</p> <p>In addition in the event Tarrawonga Coal is moved through the Boggabri CHPP, the charge will apply to all tonnes moved through the Boggabri CHPP</p>	<p>presented on ABS Publication 6401.0 (or equivalent)</p> <p>The first CPI adjustment will occur on 22 January 2014 and then on each Anniversary Date thereafter.</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 – "Tarrawonga Coal 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 Whitehaven Coal Limited"

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

Kristy Faris

Name of Witness

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



Signature of director



Signature of director/secretary

JAMIE FRANKLOW

Name of director

NIGEL WOOD

Name of signatory