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Form 3A/B
Rule 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00184678

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	John Cameron Biggs
Legal representative reference	
Telephone	02 9262 6666
Your reference	JCB 221 0033 MGP

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Amended Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Amended Statement of Claim (Les & Zelda v Whitehaven - Further amended statement of claim - 14 April 2022.pdf)

[attach.]

Form 3A (version 7)
UCPR 6.2

FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS	
Court	Supreme Court of New South Wales
Division	Equity
List	General
Registry	Sydney
Case number	2019/184678
TITLE OF PROCEEDINGS	
Plaintiff	**Les & Zelda Investments Pty Ltd (ACN 148 907 573) as trustee for Les & Zelda Family Trust**
Defendant	**Whitehaven Coal Limited ABN 68 124 425 396**
FILING DETAILS	
Filed for	**Les & Zelda Investments Pty Ltd (ACN 148 907 573) as Trustee for Les & Zelda Family Trust**, plaintiff
Legal representative	John Biggs, Watson Mangioni Lawyers Pty Ltd
Legal representative reference	JCB 221 0033 MGP
Contact name and telephone	John Biggs, 02 9262 6666
Contact email	jbiggs@wmlaw.com.au
TYPE OF CLAIM	
Commercial contractual disputes, Other (Equity General List).	
RELIEF CLAIMED	

1 Damages.

2 By reason of the breaches by Whitehaven Coal Limited (**Whitehaven**) of s 254T and/or s 256B of the *Corporations Act* 2001 (Cth) (**Corporations Act**) pleaded below, pursuant to s 1324(1) of the Corporations Act, an order that Whitehaven be:

(a) restrained from enforcing the Restrictions in the Restriction Deeds (defined below) against the Plaintiff and Group Members in respect of all or, alternatively, some of the Restricted Shares;

(b) further or alternatively, required to execute a variation to the Restriction Deeds (defined below) to bring about Vesting of some or all of the Restricted Shares,

or such other order as the Court deems fit.

3 An order pursuant to s 1324(10) of the Corporations Act that, in addition to or in substitution for order 2, Whitehaven pay damages to the Plaintiff and Group Members.

4 Equitable compensation.

5 A declaration that Whitehaven is estopped from:

(a) enforcing, or otherwise relying on, the Restrictions in the Restriction Deeds (defined below) against the Plaintiff and Group Members;

(b) further or alternatively, a declaration that Whitehaven is estopped from resiling from the Promise (defined below).

6 A declaration that the affairs of Whitehaven have been and/or are being conducted in a manner that is oppressive to, unfairly prejudicial to, or unfairly discriminatory against the Plaintiff and Group Members.

7 Orders pursuant to s 233 of the Corporations Act including that:

(a) pursuant to s 233(1)(e), Whitehaven buy-back the Restricted Shares (defined below) at a price that is fair and reasonable with an appropriate reduction of its share capital;

(b) pursuant to s 233(1)(i), Whitehaven be restrained from enforcing the Restriction Deeds (defined below) against the Plaintiff and Group Members;

(c) pursuant to s 233(1)(j), Whitehaven be required to execute a variation to the Restriction Deeds (defined below) to bring about Vesting of the Restricted Shares and/or be required to take all necessary steps to achieve Vesting,

or such other order as the Court deems fit.

8 Interest pursuant to s 100 of the *Civil Procedure Act* 2005 (NSW).

9 Costs.

10 Interest on costs pursuant to s 101(4) of the *Civil Procedure Act* 2005 (NSW).

11 Such further or other order as the Court deems fit.

PLEADINGS AND PARTICULARS

INDEX

A. Nature of Proceedings

1. A Group Member to whom this proceeding relates is an individual or a corporation who:

   (a) between December 2011 and May 2012 was a shareholder of Boardwalk Resources Limited (ABN 89 130 433 617) (**Boardwalk** and the **Boardwalk Shareholders**); and who

   (b) in or about May 2012 was issued with shares and restricted shares (**Restricted Shares**) in Whitehaven Coal Limited (**Whitehaven**) as a result of Whitehaven's merger with Aston Resources Limited (ABN 91 129 361 208) (**Aston** and the **Aston Shareholders**),

   including their successors and permitted assigns (the **Group Members**).

Particulars

This proceeding was commenced in the Queensland Supreme Court on 20 December 2018 as a representative proceeding under part 13A of the Civil Proceedings Act 2011 *(Qld) and was subsequently cross-vested to the NSW Supreme Court on 7 May 2019*.

2. As at the date of commencement, there are seven or more Group Members.

3. The common questions of law or fact and same, similar or related circumstances that apply to the Plaintiff and Group Members are pleaded at **Annexure A** to this Further Amended Statement of Claim.

4. For the purposes of this Further Amended Statement of Claim, the period from 1 October 2011 until the date of this Further Amended Statement of Claim (inclusive) is referred to as the **Relevant Period**.

B. Parties

B1. The Plaintiff

5. The Plaintiff is a company duly incorporated in Australia and is the trustee of the Les & Zelda Family Trust, and entitled to sue in its corporate name and style as well as in its capacity as trustee of the Les & Zelda Family Trust.

6. Prior to 1 May 2012, the Plaintiff held 2,000,000 shares in Boardwalk Resources Limited (ACN 130 433 617) (**Boardwalk**).

7. On around 1 May 2012, the Plaintiff:

   (a) transferred all of its shares in Boardwalk to the Defendant, Whitehaven Coal Limited (ACN 124 425 396) (**Whitehaven**);

   (b) was issued with 1,075,554 fully-paid ordinary shares in Whitehaven; and

   (c) caused or permitted a Restriction Deed to be executed on its behalf in favour of Whitehaven, which provided for 305,161 of the shares issued to the Plaintiff to be Restricted Shares.

8. As at the date of this Further Amended Statement of Claim the Plaintiff is the holder of 305,161 fully paid ordinary shares in Whitehaven subject to the provisions of a Restriction Deed.

B2. The Defendant

9 Whitehaven is a duly incorporated public company capable of being sued in its own name and style.

10 At all material times, Whitehaven:

   (a) was engaged in the business of coal production and the mining and transportation of coal in Australia;

   (b) held itself out as being engaged in a business that included the development and realisation of coal assets, deposit and tenements;

(c) made coal (in its various forms) available to be sold and distributed to the Australian market and international coal market; and

(d) was a company with shares quoted on the Australian Stock Exchange (**ASX**) and traded under the stock ticker *"WHC"*.

C. Other Relevant Persons

C1. BRI

11 From around September 2011 to around 20 December 2018, Boardwalk Resources Investments Pty Ltd (ACN 146 263 685) was:

(a) a company capable of suing in its own name and style; and

(b) the trustee for the Boardwalk Resources Trust,

(and in its capacity as trustee of the Boardwalk Resources Trust is referred to as **BRI**).

12 As at around 11 December 2011, BRI held approximately 96,387,500 ordinary shares in Boardwalk.

13 On around 1 May 2012, BRI subscribed for a further 78,464,510 shares in Boardwalk by way of:

(a) a subscription for 75,786,713 ordinary shares in Boardwalk at a total subscription price of $150,000,000; and

(b) a subscription for 2,677,797 ordinary shares in Boardwalk representing a conversion of debt otherwise payable by Boardwalk to BRI.

14 Following the subscriptions referred to in paragraph 13, on or around 1 May 2012, BRI became the holder of 174,852,010 ordinary shares in Boardwalk.

15 On around 1 May 2012, BRI:

(a) transferred all of its Boardwalk shares to Whitehaven;

(b) was issued with 94,031,386 fully-paid ordinary shares in Whitehaven; and

(c) caused or permitted a Restriction Deed to be executed on its behalf in favour of Whitehaven, which provided for 26,678,979 of the shares issued to BRI to be Restricted Shares.

C2. Mr Nathan Tinkler

16 Nathan Leslie Tinkler (**Mr Tinkler**):

(a) is named in the Restriction Deed pleaded in paragraph 15(c) as the Controller in respect of BRI;

(b) is bound, by clause 2.3 of that Deed, as Controller in respect of BRI, to procure that BRI complies with its obligations under clause 2 of the Restriction Deed.

Particulars

(i) *By clause 2.3 of the Restriction Deed, each Controller must procure that their respective Vendor complies with its obligations under clause 2; and*

(ii) *Restriction Deed, Schedule 2, Clause 3.*

17 From around September 2011 until around May 2012, Mr Tinkler was:

(a) a director of BRI;

(b) the only director of BRI to remain appointed as a director of BRI throughout the whole period from around September 2011 until around May 2012;

(c) married to the sole member of BRI;

(d) an appointor under the Boardwalk Resources Trust Deed of Settlement;

(e) a person with actual or ostensible authority on behalf of BRI to make agreements on BRI's behalf;

(f) the only person proposed to be named in a Restriction Deed to be executed by BRI as Controller in respect of BRI;

(g) from at least 11 December 2011, a donee under one or more powers of attorney (**POA**) that extended to execution of the Restriction Deeds and the Share Purchase Agreement pleaded herein; and

(h) a director and the chairman of Aston Resources Limited (ACN 129 361 208) (**Aston**).

Particulars

(i) *Mr Tinkler was a director of BRI during the period from September 2011 to May 2012;*

(ii) *Mr Tinkler's signature appears on the Share Purchase Agreement (defined below) as attorney for BRI;*

(iii) *The Plaintiff refers to s 127 of the Corporations Act; and*

(iv) *That Mr Tinkler was a donee under one or more powers of attorney is to be inferred from the fact that Mr Philip Christensen and Mr Tinkler executed the Share Purchase Agreement and the Restriction Deeds (defined below) under power of attorney.*

18 At all times between 1 October 2011 and 1 May 2012, Mr Tinkler was:

(a) the agent and attorney of each of the Group Members in relation to all matters relating to the acquisition by Whitehaven of all of the shares in Boardwalk;

(b) authorised to execute any document on their behalf pertaining to the acquisition by Whitehaven of their shares in Boardwalk;

(c) authorised to make and receive representations on their behalf in relation to the acquisition by Whitehaven of all of the shares in Boardwalk; and

(d) authorised to exercise any right or power under any contract entered into with Whitehaven for the acquisition by that entity of all of the shares in Boardwalk.

C3. Mr Tony Haggarty

19 Mr Tony Haggarty (**Mr Haggarty**) was:

(a) from 3 May 2007 to 25 October 2018, a director of Whitehaven;

(b) from 17 October 2008 until March 2013, the Managing Director of Whitehaven;

(c) from 25 March 2013 until 25 October 2018, a non-executive director of Whitehaven;

(d) from 16 February 2018 to 25 October 2018, the chairman of the Whitehaven Audit & Risk Management Committee; and

(e) a person who, directly or through his associated entities, held shares with voting rights on issue in Whitehaven prior to and during the Relevant Period.

20 By virtue of holding the position of Managing Director, as pleaded at paragraph 19(b) above, Mr Haggarty was authorised by Whitehaven, and held out by Whitehaven as authorised to, *inter alia*:

(a) negotiate on behalf of Whitehaven; and

(b) make representations on behalf of Whitehaven.

Particulars

The Plaintiff refers to s 129 of the Corporations Act.

21 In respect of Whitehaven's acquisition of all of the shares in Boardwalk, as pleaded below, Whitehaven held out Mr Haggarty as:

(a) a person whom Boardwalk could contact to discuss the proposed acquisition of all of the shares in Boardwalk by Whitehaven; and

(b) a person authorised to make representations on behalf of Whitehaven in relation to the proposed acquisition of all of the shares in Boardwalk by Whitehaven.

Particulars

Confidentiality Deed between Whitehaven and Boardwalk signed on 2 November 2011.

D. The Boardwalk Projects

22 Prior to 1 May 2012, Boardwalk was:

(a) an unlisted coal exploration and development company; and

(b) the ultimate holding company of the following wholly owned subsidiaries:

(i) Boardwalk Ferndale Pty Ltd (ACN 147 745 971) (**Boardwalk Ferndale**);

(ii) Boardwalk Dingo Pty Ltd (ACN 138 139 385), previously known as Aston Dingo Pty Ltd (ACN 138 139 385) (**Boardwalk Dingo**);

(iii) Boardwalk Sienna Pty Ltd (ACN 147 871 903) (**Boardwalk Sienna**); and

(iv) Boardwalk Monto Pty Ltd (ACN 129 366 481), previously known as Boardwalk Coal 1 Pty Ltd (ACN 129 366 481) and Aston Coal 1 Pty Ltd (ACN 129 366 481) (**Boardwalk Monto**),

(collectively, the **Boardwalk Project Subsidiaries**).

23 As at 30 June 2011 (and at all material times thereafter), Boardwalk, as holding company of the Boardwalk Project Subsidiaries, had interests in four coal exploration projects, being:

(a) the Ferndale Project;

(b) the Dingo Project;

(c) the Sienna Project; and

(d) the Monto Project,

(collectively, the **Boardwalk Projects**).

24 Each of the Dingo Project, Sienna Project and the Monto Project pertained to a tenement located in the State of Queensland.

Particulars

At all material times the Dingo Project, Sienna Project and the Monto Project were comprised of a number of sub-blocks which varied across each tenement.

25 The Ferndale Project pertained to a tenement located in the State of New South Wales.

D1. The Ferndale Project

26 As at 1 May 2012, the Ferndale Project covered an area over 3,742 hectares and is geographically located approximately 6 kilometres southwest of Denman, NSW and 30 kilometres southwest of Muswellbrook near the Hunter Valley in NSW.

27 On 18 December 2009, the NSW Government granted Exploration Licence 7430 (**EL7430**) to Loyal Coal Pty Ltd (**Loyal Coal**) for a period of five years, expiring on 18 December 2014 and covering the Ferndale Project.

Particulars

(v) *Whitehaven, 23 December 2013, Annual Report for EL7430, Page 2; and*

(vi) *by EL7430, Loyal Coal had the exclusive right to explore for minerals in the permit area.*

28 On 3 December 2010, Loyal Coal signed a Heads of Agreement with Boardwalk concerning a potential joint venture in respect of the Ferndale Project and a subscription for shares in Coalworks Limited (ACN 114 702 831) (**Coalworks**).

Particulars

(i) *ASX Announcement, Coalworks, 3 December 2010, "Boardwalk Joint Venture for Ferndale"; and*

(ii) *as at 3 December 2010, Coalworks was a listed company and owned 90% of the shares in Loyal Coal.*

29 On or about 8 December 2010, Loyal Coal and Boardwalk Ferndale entered into a joint venture in respect of the Ferndale Project (**Ferndale JV**).

Particulars

(i) *ASX Announcement, Coalworks, 9 December 2010, "Boardwalk Ferndale Joint Venture signed";*

(ii) *Farm In Agreement dated 8 December 2010, Loyal Coal, Boardwalk Ferndale Pty Ltd and Boardwalk Resources Pty Ltd (**Ferndale Farm In Agreement**); and*

(iii) *Joint Venture Agreement dated 8 December 2010, Loyal Coal and Boardwalk Ferndale Pty Ltd (**Ferndale JV Agreement**).*

30 On or about 8 December 2010, Loyal Coal and Coalworks executed a Subscription Agreement pursuant to which Boardwalk acquired a 19.9% interest in Coalworks on 1 February 2011.

Particulars

ASX Announcement, Coalworks, 9 December 2010, "Boardwalk Ferndale Joint Venture".

31 Under the Ferndale JV Agreement, Boardwalk, through Boardwalk Ferndale, had the right to acquire a 50% stake in the Ferndale Project upon spending $25 million for the development of the Ferndale Project.

Particulars

(i) *The particulars to paragraph 29 are repeated;*

(ii) *Under the Ferndale JV, Boardwalk Ferndale Pty Ltd would obtain a 25% interest in the Ferndale Project upon spending $10 million and a further 25% interest upon spending a further $15 million; and*

(iii) *ASX Announcement, Coalworks, 1 February 2011, "Boardwalk 19.9% Placement Completed".*

32 Prior to 1 May 2012 and in furtherance of the Ferndale Project and the Ferndale JV, Boardwalk:

(a) commissioned and paid for 3 stages of exploratory drilling resulting in at least 40 drill holes within the land described in EL7430; and

(b) spent most of, or all of, approximately $8,000,000 developing the Ferndale Project with a view to obtaining:

(i) a report prepared in accordance with the *Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves* (**JORC Code**) published by the Joint Ore Reserves Committee from time to time (**JORC Report**) measuring the amount of approximate coal resource within EL7430;

(ii) a pre-feasibility study and a feasibility study; and

(iii) environmental assessments, leases, licenses and statutory approvals,

(**Ferndale Exploratory Work**).

Particulars

(i) *ASX Announcement, Coalworks, 9 December 2010, "Boardwalk Ferndale Joint Venture Signed";*

(ii) *ASX Announcement, Coalworks, 18 March 2011, "Ferndale Phase 1 Completed with Phase 2 Drilling Commenced";*

(iii) *ASX Announcement, Coalworks, 25 August 2011, "Ferndale Stage 2 Exploration Results Update";*

(iv) *ASX Announcement, Coalworks, 26 October 2011, "Ferndale Exploration Drilling Stage 2 Completed and Stage 3 Commenced"; and*

(v) *ASX Announcement, Coalworks, 17 February 2012, "743 Mts Maiden JORC Resource at Ferndale".*

33 On 22 May 2012, Boardwalk Ferndale obtained a 25% interest in the Ferndale Project pursuant to the terms of the Ferndale JV Agreement.

Particulars

(i) *ASX Announcement, Whitehaven, 22 May 2012, "First Phase of Farm-In Completed"; and*

(ii) *Whitehaven 2012 Annual Report, page 8*.

34 On or around 22 January 2013, JB Mining issued a JORC Report in respect of the Ferndale Project identifying 445 Megatonnes (**Mts**) of coal within EL7430 of which:

(a) 103.23 Mts were measured coal, 135.4 Mts were indicated coal and 207 Mts were inferred coal; and

(b) 373 Mts were amenable to opencut mining and 73 Mts were potentially amenable to underground mining.

(**Ferndale 2013 Resource Estimate**).

Particulars

(i) *JB Mining JORC Report dated 22 January 2013.*

(ii) *The terms "measured", "indicated" and "inferred" are terms of art known to persons within the coal mining industry, as explained in the JORC Code.*

35 The JB Mining JORC Report dated 22 January 2013 was obtained with the benefit of the Ferndale Exploratory Work.

D.2 The Dingo Project

36 As at 1 May 2012, the Dingo Project covered an area over 25,600 hectares and is geographically located between the townships of Dingo and Duaringa, near the south-east end of the Bowen Basin in Central Queensland.

37 From 4 May 2004 to 18 September 2007, the Queensland Government granted the following Exploration Permits for Coal (**EPCs**) to Independent Coal Pty Ltd (ACN 102 936 989) (**Independent Coal**), a wholly-owned subsidiary of Cockatoo Coal Pty Ltd (ACN 112 682 158) (**Cockatoo Coal**):

(a) EPC 862, granted on 4 May 2004 and as subsequently renewed (**Dingo North**);

(b) EPC 863, granted on 12 November 2004 and as subsequently renewed (**Middle Creek**); and

(c) EPC 1063, granted on 18 September 2007 and as subsequently renewed (**Tryphinia**).

38 Combined, Dingo North, Middle Creek and Tryphinia comprised the Dingo Project.

39 Pursuant to the *Mineral Resources Act* 1989 (Qld) (**Resources Act**), the holder of an EPC was required to relinquish sub-blocks with the EPC as directed or required under the Resources Act.

Particulars

(i) *Mineral Resources Act 1989 (Qld), s 139;*

(ii) *the EPC must be reduced by 50% of the area of the permit by the day that is 5 years after the grant of the permit; and*

(iii) *the EPC must be reduced by 50% of the area remaining after the reduction in (ii) by the day that is 10 years after the grant of the permit.*

40 In or about April to July 2009, Independent Coal and Aston (by its wholly owned subsidiaries Aston Dingo Pty Ltd (ACN 138 139 385) and Aston Coal Management Pty Ltd) entered into a joint venture in respect of the Dingo Project (**Dingo JV**).

Particulars

(i) *ASX Announcement, Cockatoo Coal, 24 April 2009, "Dingo Project Joint Venture Agreement"; and*

(ii) *Farm-in and joint venture agreement dated 16 July 2009, Independent Coal Pty Ltd, Aston Dingo Pty Ltd and Aston Coal Management Pty Ltd (**Dingo JV Agreement**).*

41 Under the Dingo JV Agreement, Aston (through Aston Dingo Pty Ltd):

(a) could acquire a 30% participating interest in the joint venture by completing the first phase of an agreed three phase exploration program or by spending $1.5 million within 9 months of the commencement date of the Dingo JV;

(b) could increase its participating interest in the Dingo JV to 51% by completing the second phase of the three phase exploration program or by the further expenditure of $2.5 million or activities to facilitate the completion of a feasibility study within 18 months of commencement of the Dingo JV; and

(c) could increase its participating interest in the Dingo JV to 70% by completing the third phase of the three phase exploration program or by further expenditure of $5.0 million on activities to facilitate the completion of a feasibility study within 27 months of the commencement of the Dingo JV.

Particulars

(i) *ASX Announcement, Cockatoo Coal, 24 April 2009, "Dingo Project Joint Venture Agreement"; and*

(ii) *Dingo JV Agreement.*

42 On or around 31 December 2009, Aston, through its wholly owned subsidiary Aston Dingo Pty Ltd, acquired a 51% interest in the Dingo Project having spent at least $4.0 million on the Dingo JV.

Particulars

ASX Announcement, Cockatoo Coal, 28 July 2010, "Quarterly Activities Report", Page 8.

43 On or around 31 March 2010, Aston sold its 51% interest in the Dingo Project to Boardwalk.

Particulars

Aston Resources, 2010 Annual Report, page 10.

44 Prior to 1 May 2012 and in furtherance of the Dingo Project and the Dingo JV, Aston and Boardwalk:

(a) commissioned and paid for 3 stages of exploratory drilling results in approximately 445 drill holes within the Dingo Project; and

(b) spent at least $4,000,000 developing the Dingo Project with a view to obtaining:

(i) a JORC Report measuring the approximate coal within the Dingo Project;

(ii) a pre-feasibility study for an open cut and underground mining project; and

(iii) environmental assessments, leases, licenses and statutory approvals,

(**Dingo Exploratory Work**).

Particulars

(i) *ASX Announcement, Cockatoo Coal, 24 April 2009, "Dingo Project Joint Venture Agreement";*

(ii) *ASX Announcement, Cockatoo Coal, 28 July 2010, "Quarterly Activities Report", page 8;*

(iii) *ASX Announcement, Cockatoo Coal, 24 September 2010, "Annual Report and Notice of AGM", page 21; and*

(iv) *ASX Announcement, Cockatoo Coal, 31 March 2012, "Quarterly Activities Report", page 4.*

45 By 1 July 2012, Boardwalk had increased its interest in the Dingo Project and the Dingo JV to 70% by completing the third phase of the Dingo JV alleged at paragraph 41(c).

Particulars

Whitehaven 2012 Annual Report, Page 18.

46 On or around 31 January 2013, JB Mining issued a JORC Report in respect of the Dingo Project identifying 52.4 Mts of indicated and inferred coal resource within part of EPC 682 known as the Pearl Creek Deposit (**Dingo 2013 Resource Estimate**).

Particulars

(i) *JB Mining Services Pty Ltd EXPLORATION PERMIT (COAL) 862 "DINGO", Raw Coal Resource Estimate for The Pearl Creek Coal Deposit within EPC862 at 30th November 2012; WHC.019.003.6048.*

(ii) *Whitehaven, ASX announcement, Coal Resources and Coal Reserves dated 26 February 2013.*

47 The Dingo 2013 Resource Estimate was obtained with the benefit of the Dingo Exploratory Work.

48 On or about 12 December 2014, the Queensland Government granted Mineral Development Licence 512 over 28 sub-blocks within EPC 862 and EPC 1063 (**MDL 512**) for a term of three years commencing on 1 January 2015.

Particulars

Whitehaven, Annual Exploration Report, Mineral Development Licence 512, Colin Coxhead, 9 January 2016, "MDL512 replaced parts of EPC 862 and EPC 1063, which were reduced to omit the area of MDL512 (page 4 of 14); WHC.100.001.1962.

49 From 6 November 2015 to 29 May 2016, Cockatoo Coal was under external administration.

Particulars

(i) *On 16 November 2015, Cockatoo Coal went into administration with PPB Partners appointed as administrators;*

(ii) *On 15 March 2016, Cockatoo Coal entered into a deed of company arrangement; and*

(iii) *On 29 May 2016, the administration of Cockatoo Coal came to an end.*

50 During the administration of Cockatoo Coal, Whitehaven did not:

(a) acquire Cockatoo Coal's interests in Independent Coal and/or the Dingo JV from its administrators; or

(b) take any steps to acquire Cockatoo Coal's interests in Independent Coal and/or the Dingo JV from its administrators.

51 On 17 November 2016, Cockatoo Coal was renamed as "Baralaba Coal Company Limited" (**Baralaba CC Limited**).

52 From 12 July 2016 to 10 September 2017, Baralaba CC Limited was under external administration.

Particulars

On 12 July 2017, Baralaba CC Limited went into administration with McGrath Nicol appointed as administrators.

53 On or about 28 August 2017, Baralaba CC Limited entered into a deed of company arrangement proposed by Liberty Metals & Mining Holdings, LLC (**Liberty Metals**), a subsidiary of Liberty Mutual Holding Company Inc, which contemplated that Liberty Metals would acquire all the subsidiaries of Baralaba CC Limited including Independent Coal.

54 In or about September 2017, Cockatiel Coal Pty Ltd (ACN 096 909 364) (subsequently known as Baralaba Coal Company Pty Ltd) became the holder of all the shares in Independent Coal and Liberty Mutual Holding Company became the ultimate holding company of Independent Coal.

55 During the administration of Baralaba CC Limited, Whitehaven did not:

(a) acquire Baralaba CC Limited's interests in Independent Coal and/or the Dingo JV from its administrators; or

(b) take any steps to acquire Baralaba CC Limited's interests in Independent Coal and/or the Dingo JV from its administrators.

56 On or about 19 September 2018, the Queensland Government renewed MDL 512 for a further term of three years commencing on 1 January 2018.

Particulars

(i) *Whitehaven, Annual Exploration Report, Mineral Development Licence 512, Colin Coxhead, 16 January 2019, "A renewal application was submitted on 20 December 2017 and approved on 19th September 2018 (MMOL Transaction No 228274)"; WHC.100.001.1993; and*

(ii) *further particulars may be provided following interlocutory steps.*

57 Subsequent to the renewal in paragraph 56, the Queensland Government renewed MDL 512 for a further term of three years commencing on 1 January 2021.

58 After 1 May 2012, Whitehaven caused or permitted (voluntarily or otherwise):

(a) 6 sub-blocks within EPC 862 to be relinquished to the Queensland Government on 20 January 2020;

(b) 6 sub-blocks within EPC 862 to be relinquished to the Queensland Government on 21 January 2020;

(c) 54 sub-blocks within EPC 863 to be relinquished to the Queensland Government on 27 November 2017;

(d) 2 sub-blocks within EPC 863 to be relinquished to the Queensland Government on 20 January 2020;

(e) 2 sub-blocks within EPC 863 to be relinquished to the Queensland Government on 21 January 2020;

(f) 5 sub-blocks within EPC 1063 to be relinquished to the Queensland Government on 21 October 2019;

(g) 6 sub-blocks within EPC 1063 to be relinquished to the Queensland Government on 20 January 2020; and

(h) 6 sub-blocks within EPC 1063 to be relinquished to the Queensland Government on 21 January 2020.

Particulars

(i) *Queensland Government, EPC 862, resource authority public report, extracted 23 September 2021;*

(ii) *Queensland Government, EPC 863, resource authority public report, extracted 23 September 2021; and*

(iii) *Queensland Government, EPC 1063, resource authority public report, extracted 23 September 2021.*

D.3 The Sienna Project

59 As at 1 May 2012, the Sienna Project covered an area over 10,800 hectares and is geographically located in the Bowen Basin in Central Queensland, approximately 200 kilometres southwest of Mackay.

60 On or about 20 March 2006 and 31 May 2011, the Queensland Government granted EPC 1033 and EPC 2089 to Norton Gold Field Pty Ltd (**Norton**).

Particulars

EPC 1033 comprises two prospective areas being "Sienna" in the South and "Electra" in the North.

61 Combined, EPC 1033 and EPC 2089 comprise the Sienna Project.

62 On or around 17 December 2010, Boardwalk Sienna purchased the Sienna Project from Norton.

Particulars

Whitehaven, 21 June 2013, Sienna Project EPC 2089 Annual Report for the period 31 May 2012 to 30 May 2013, page 3.

63 After 1 May 2012, Whitehaven caused or permitted (voluntarily or otherwise):

(a) 6 sub-blocks within EPC 1033 to be relinquished to the Queensland Government on 19 March 2013;

(b) 10 sub-blocks within EPC 1033 to be relinquished to the Queensland Government on 27 March 2017;

(c) 1 sub-block within EPC 1033 to be relinquished to the Queensland Government on 2 December 2019;

(d) 1 sub-block within EPC 2089 to be relinquished to the Queensland Government on 30 May 2013.

Particulars

(i) *Queensland Government, EPC 1033, resource authority public report, extracted 23 September 2021; and*

(ii) *Queensland Government, EPC 2089, resource authority public report, extracted 23 September 2021.*

D.4 The Monto Project

64 As at 1 May 2012, the Monto Project covered an area over 29,600 hectares and is geographically located approximately 110 kilometres from Gladstone, Queensland.

65 On 8 April 2009, the Queensland Government granted EPC1220 which comprises the area of the Monto Project.

66 On or around 31 March 2010, Boardwalk acquired the Monto Project from Aston.

Particulars

ASX Announcement, Aston, 19 October 2010, Annual Report, page 9.

67 After 1 May 2012, Whitehaven caused or permitted (voluntarily or otherwise):

(a) 47 sub-blocks within EPC 1220 to be relinquished to the Queensland Government on 7 April 2013;

(b) 37 sub-blocks within EPC 1220 to be relinquished to the Queensland Government on 7 April 2014;

(c) 60 sub-blocks within EPC 1220 to be relinquished to the Queensland Government on 21 June 2019; and

(d) 45 sub-blocks within EPC 1220 to be relinquished to the Queensland Government on 24 June 2019.

Particulars

Queensland Government, EPC 1220, resource authority public report, extracted 23 September 2021.

D.5 Boardwalk's Control of the Boardwalk Projects

68 At all material times prior to 1 May 2012, Boardwalk;

(a) had a direct interest, via its holdings in the Boardwalk Project Subsidiaries, in each of the Boardwalk Projects;

(b) had the ability, via its holdings in the Boardwalk Project Subsidiaries, to engage in the development of each of the Boardwalk Projects; and

(c) had the ability, via its holdings in the Boardwalk Project Subsidiaries, to direct and influence the development of each of the Boardwalk Projects.

Particulars

(i) *Boardwalk had interests in each of the Boardwalk Project Subsidiaries as pleaded in paragraphs 29, 43, 62 and 66;*

(ii) *The Plaintiff refers to the Joint Venture and Farm-In Agreements for the Ferndale JV and the Dingo JV; and*

(iii) *Each of the Boardwalk Project Subsidiaries were a wholly owned subsidiary of Boardwalk, as alleged in paragraph 22.*

69 Prior to 1 May 2012, Boardwalk:

(a) invested in the Boardwalk Project Subsidiaries;

(b) developed the Boardwalk Projects; and

(c) did each of the above with a view to developing the Boardwalk Projects into operational coal mines so as to extract and sell coal on the open market.

Particulars

(i) *The Plaintiff refers to the Ferndale JV, Ferndale Exploratory Work, Ferndale Resource Estimate, Dingo JV, Dingo Exploratory Work, Dingo 2013 Resource Estimate, acquisition of Sienna and acquisition of Monto as pleaded in paragraphs 29, 32, 34, 40, 44, 46, 62 and 66; and*

(ii) *further particulars may be provided following the completion of interlocutory steps.*

D.5 The Oaklands North Project

70 On and before 1 May 2012:

(a) Coalworks had a 100% interest in a coal exploration project located near Coorobin, NSW and comprising Exploration Licence 6831 (**Oaklands North Project**); and

(b) By reason of Boardwalk's 17% to 19.9% interest as a shareholder in Coalworks, Boardwalk had an indirect interest in the Oaklands North Project.

E. The Whitehaven Deal

E.1 Planned Boardwalk IPO

71 From around July 2011 to around October 2011, Boardwalk undertook steps to raise $150 million in capital by way of an initial public offering of shares and listing of shares on the ASX (**Planned Boardwalk IPO**).

Particulars

(i) *The steps were undertaken by engaging:*

(a) Queen Street Capital, pursuant to a letter of engagement dated 12 April 2011, to act as its corporate and financial advisor;

(b) Morgan Stanley, as lead manager to value and broker the sale of shares under the Planned Boardwalk IPO, including valuation of the

Boardwalk Projects and drafting a prospectus for the issue of shares to be quoted on the ASX; and

(c) *Ernst & Young (**EY**) pursuant to a letter of engagement dated 31 August 2011, as the reporting person to undertake due diligence and review the historical and pro forma financial information of Boardwalk for inclusion in the anticipated prospectus; and*

(ii) *A draft prospectus dated 31 October 2011 was prepared in respect of Boardwalk which implied the value of the company at $600 million (**Draft Prospectus**).*

72 The monies to be raised pursuant to the Planned Boardwalk IPO were to be used by Boardwalk to:

(a) meet exploration and development costs in relation to the Boardwalk Projects to the end of the financial year ending 30 June 2013, projected at $47.7m;

(b) repay existing debt, including interest, projected at $55.8m;

(c) providing working capital for the operations of Boardwalk, projected at $24.5m;

(d) meet deferred expenses in relation to the Sienna Project of $15.0m; and

(e) meet transaction costs associated with the Planned Boardwalk IPO, estimated at $7.0m.

Particulars

Draft Prospectus, section 1.7.2.

E.2 Project Trifecta

73 In or around October 2011:

(a) Whitehaven was in negotiations to merge with Aston; and

(b) Boardwalk was approached by Whitehaven and Aston with a potential deal, called **Project Trifecta**, for all of the shares in Boardwalk to be acquired as part of the merger of Whitehaven and Aston.

Particulars

*An initial term sheet was in writing dated 28 October 2011 titled "Project Trifecta Indicative Term Sheet" (**Indicative Term Sheet**).*

74 At this time:

(a) Boardwalk ceased taking steps in pursuance of the Planned Boardwalk IPO; and

(b) commenced working towards achieving Project Trifecta.

75 On 2 November 2011, Whitehaven signed a confidentiality deed with Boardwalk to allow for the exchange of confidential information for the purpose of considering Project Trifecta (**Confidentiality Deed**).

Particulars

(i) *The Confidentiality Deed was in writing and signed by Whitehaven on 2 November 2011; and*

(ii) *the Confidentiality Deed referred to Mr Haggarty and Mr Andy Plummer, as directors of Whitehaven, as persons whom Boardwalk could contact to discuss the Proposal (as defined therein), or any similar or related transaction involving Whitehaven, without breach of the Confidentiality Deed.*

76 Following the execution of the Confidentiality Deed, Whitehaven was granted access to a data room (**Data Room**) which contained written information relating to Boardwalk's operations and plans including its plans to develop the Boardwalk Projects and the Draft Prospectus and Whitehaven undertook due diligence concerning a potential acquisition of Boardwalk (**Due Diligence**).

77 In undertaking the Due Diligence, Whitehaven gained access to and reviewed the documents and information including the following:

(a) the Draft Prospectus;

(b) detailed budgets for each of the Boardwalk Projects provided by Boardwalk's management team; and

(c) other Boardwalk financial and operational documents.

Particulars

(i) *Copy of the Draft Prospectus sent from Tim Burt (Whitehaven General Counsel) to Kate Kerrison on 18 November 2011; WHC.005.001.0317;*

(ii) *due diligence report prepared by KPMG for Whitehaven dated 5 December 2011 (**KPMG Due Diligence Report**);*

(iii) *the documents referred to in Schedule 5 of the Share Purchase Agreement (defined below) and the definition of Disclosure Materials, Data Room and Cut-off date therein;*

(iv) *various meeting minutes of the Whitehaven Project Trifecta Due Diligence Committee; and.*

(v) *further particulars may be provided after the completion of interlocutory steps.*

78 As a result of undertaking the Due Diligence, Whitehaven knew:

(a) that Boardwalk anticipated and forecast that mining leases could be obtained from the relevant State Governments by the following dates:

Expected development decision dates

Project	Expected date
Ferndale	mid 2013
Dingo	late 2013
Sienna	early 2014
Monto	early 2018

Particulars

KPMG Due Diligence Report, page 46.

(b) that Boardwalk's budgeted exploration costs in respect of the Boardwalk Projects over the period from around November 2011 to around June 2013 were as set out in the following table:

Budgeted exploration costs from Nov 11 - Jun 13

$m	Ferndale	Dingo	Sienna	Monto	Total
Per the draft prospectus					
Drilling	13.0	8.1	8.5	4.2	**33.8**
Project Management	2.8	1.1	0.9	0.3	**5.0**
Concept/feasibility	1.6	1.2	1.0	0.0	**3.8**
Cost type	1.6	1.4	0.7	0.0	**3.7**
Environmental studies and approvals	0.3	0.3	0.3	0.4	**1.2**
Geological modelling	0.1	0.1	0.1	0.0	**0.3**
Total per prospectus	**19.4**	**12.2**	**11.5**	**4.9**	**47.9**
Per project budgets	**19.3**	**12.1**	**11.3**	**4.9**	**47.6**
Variance[(1)]	**0.1**	**0.1**	**0.2**	-	**0.3**

Particulars

KPMG Due Diligence Report, page 46.

(c) that if the exploration costs particularised in sub-paragraph (b) above were expended in the timeframe identified therein, it was forecast and anticipated by Boardwalk that:

(i) a mining lease could be obtained in respect of the Ferndale Project by mid-2013;

(ii) a mining lease in respect of the Dingo Project by late-2013;

(iii) a mining lease could be obtained in respect of the Sienna Project by early 2014; and

(iv) a mining lease could be obtained in respect of the Monto Project by early 2018; and

(d) that Boardwalk's overall funding requirements, taking into account the budgeted exploration costs in respect of the exploration of the Boardwalk Projects, were approximately $150,000,000 as set out in the following table:

Indicative analysis on future funding requirements	
$m	
Committed cash flows	
Repayment of Farrallon loan	50.0
Interest on Farrallon loan (to 31 December 2011)	6.0
Deferred payments on Sienna purchase	15.0
Exploration permit commitments (to Apr 2016)	3.6
Trade creditor and accruals (ex. IPO costs)	3.1
IPO payables	1.7
Bank guarantee for Brisbane property lease	0.7
Indicative funding requirements	**80.0**
Other non-committed cash out flows	
Nov 11- Jun 13 exploration costs (less committed)	44.1
Planned land purchase	7.2
Corporate costs Nov 11- Jun 13 (based on run rate)	7.4
Infrastructure costs	9.9
Funding requirements inc. non committed	**148.7**

Particulars

KPMG Due Diligence Report, page 43.

E.3 Sydney Meetings

79 In around November and December 2011, prior to the entry into the Agreements (as defined in paragraph 89 below) Whitehaven represented to Mr Tinkler, as agent for Boardwalk and each of the Group Members, that:

(a) if Whitehaven was to acquire all of the shares in Boardwalk, Mr Tinkler, and/or entities associated with him, would need to inject, by way of equity, $150m into Boardwalk and

(b) after Whitehaven had acquired all of the shares in Boardwalk, the $150m injected into Boardwalk by Mr Tinkler, and/or entities associated with him, would be used as follows:

(i) to repay existing indebtedness of Boardwalk to certain creditors of approximately US$50m; and

(ii) the balance to develop the Boardwalk Projects and meet existing and ongoing costs associated with those projects so that the proposed restricted shares to be issued as part of the acquisition would become unrestricted,

(**Use of Funds Representation**).

Particulars

(i) *The Use of Funds Representation was express.*

(ii) *It was made orally by Mr Haggarty to Mr Tinkler at two meetings in the Sydney CBD in or around November 2011.*

(iii) *It was also made in writing in:*

A. *Draft ASX Announcement 9 December 2011; WHC.001.005.7133, which was reviewed by Mr Tinkler, which stated:*

Boardwalk shareholders, including Tinkler Group and Farallon, will be issued 84.84 million Whitehaven shares as consideration for the acquisition. These shares will not be entitled to the Whitehaven Special Dividend.

Boardwalk shareholders will be entitled to an additional 34.02 million Whitehaven shares upon receipt of mining and environmental approval at any two of Dingo, Ferndale, Sienna, Monto and Oaklands North (being 17.01 million shares for each approval).

The Boardwalk Transaction is conditional upon the Whitehaven – Aston merger completing, and other customary conditions including various regulatory approvals in relation to the transfer of ownership of exploration assets.

Boardwalk's assets currently include a 100% interest in the Sienna Project, a 51% interest in the Dingo Project (earning up to 70%), a 100% interest in the Monto Project, a right to earn in to a 50% interest in the Ferndale Project and 19.9% interest in listed coal company Coalworks Limited.

As part of the transaction, existing Boardwalk shareholders will contribute $150 million in cash to Boardwalk which will be used for the ongoing development of its assets, the repayment of existing debt of

US$50m and deferred payments of A$15 million relating to the acquisition of the Sienna Project.

B. *Draft ASX Announcement 10 December 2011; WHC.001.010.0844, which was also reviewed by Mr Tinkler.*

(iv) *The Use of Funds Representation was also made in and/or confirmed in and by:*

A. *Whitehaven, ASX Announcement, 12 December 2011, Merger Announcement, page 2;*

B. *Whitehaven, ASX Announcement, 12 December 2011, Merger Presentation, page 3;*

C. *Project Trifecta, Potential Investor Questions, 12 December 2011, received by Mr Haggarty; WHC.001.006.8090, page 9 (confirming the prior representations) which, in answer to the question "Why is Tinkler Group injecting $150m of cash into Boardwalk as part of the transaction?" stated:*

"

- *The cash injection was agreed between Whitehaven and Tinkler Group as part of the negotiations to acquire Boardwalk*
- *The cash will be used to help fund the exploration and development of the Boardwalk assets*
- *Tinkler Group's willingness to subscribe these funds and increase its investment in the Merged Entity evidences its belief in the growth prospects of the Boardwalk portfolio and the merger of Aston and Whitehaven";*

D. *Memo from Mr Haggarty to all Whitehaven employees dated 12 December 2011 referring to the ASX Announcement in (ii) and (iii) above; WHC.001.007.0448;*

E. *Draft letter to Whitehaven Shareholders, 13 December 2011 (confirming the prior representations); WHC.016.004.8279;*

F. *Whitehaven quarterly report for the period ending 31 December 2011 (confirming the prior representations), page 9; WHC.001.008.8024;*

G. *Independent Expert's Report prepared by PricewaterhouseCoopers (**PWC**), 6 March 2012 (confirming the prior representations), page 4; PWCS.0001.0004.6219;*

H. *March 2012, ASX Announcement, Whitehaven Investor Presentation, page 10*.

80 At the time the Use of Funds Representation was made:

(a) Mr Haggarty was the Managing Director of Whitehaven;

(b) pursuant to the Confidentiality Deed, Mr Haggarty had been designated and held out by Whitehaven as a person whom Boardwalk could contact to discuss the proposed acquisition by Whitehaven or the shares in Boardwalk;

(c) by reason of the foregoing matters in sub-paragraphs (a) and/or (b) above, Mr Haggarty was authorised by Whitehaven to make the Use of Funds Representation; and

(d) by reason of the foregoing matters in sub-paragraphs (a) and/or (b) above, Mr Tinkler (as agent for Boardwalk and each of the Group Members) relied on the aforementioned matters and believed that Mr Haggarty was authorised to make the Use of Funds Representation.

81 Further or in the alternative to paragraph 80, by reason of Mr Tinkler being the appointed agent and attorney of each of the Group Members, as pleaded at paragraphs 17 to 18 above, the Use of Funds Representation was made to each of the Group Members.

82 The Use of Funds Representation was repeated to Mr Tinkler, the Plaintiff and Group Members including:

(a) on 12 December 2011, Whitehaven released an announcement to the ASX on the letterhead of Aston and Whitehaven repeating the Use of Funds Representation;

(b) on 12 December 2011, Whitehaven released a further announcement to the ASX on the letterhead of Aston and Whitehaven repeating the Use of Funds Representation; and

(c) on 3 March 2012, Whitehaven released a further announcement to the ASX entitled "Scheme Booklet" repeating the Use of Funds Representation.

Particulars

(i) *Whitehaven, ASX Announcement, 12 December 2011, Merger Announcement, page 2;*

(ii) *Whitehaven, ASX Announcement, 12 December 2011, Merger Presentation, page 3;*

(iii) *Whitehaven, ASX Announcement, 9 March 2012, pages 67, 92, 117 and 134;*

(iv) *Whitehaven, Project Trifecta, Key investor meeting schedule, 12 December 2011.*

E.4 Project Trifecta – Final Term Sheet & Due Diligence

83 On 25 November 2011, Boardwalk, Aston, and Whitehaven executed a non-binding term sheet titled "Project Trifecta" (**Final Term Sheet**).

Particulars

The Final Term Sheet is in writing and executed on behalf of Aston, Boardwalk and Whitehaven.

84 The Final Term Sheet contained a series of terms for a proposed merger of Aston, Whitehaven, and Boardwalk, including, inter alia:

(a) the entities associated with Mr Tinkler would inject $150 million in cash into Boardwalk via equity subscription (**$150m Capital Injection**);

(b) Whitehaven would acquire all of the shares in Boardwalk;

(c) Whitehaven would issue 85.88m shares to Boardwalk shareholders;

(d) of the 85.88m shares to be issued to Boardwalk shareholders, 34.02m shares would be subject to restrictions pertaining to, inter alia, the right to vote and receive dividends;

(e) upon receipt of mining and environmental approvals at any of Dingo, Ferndale, Sienna, Monto or Oaklands North, the restrictions imposed on 17.01m Whitehaven shares issued to Boardwalk shareholders would be lifted, with the restrictions on the remaining 17.01m Whitehaven shares lifted when mining and environmental approvals were received in respect of a second project; and

(f) data rooms would be available to all parties, including the provision of financial models.

F. Purchase Agreements and Restriction Deeds

F1. Express Terms of the Purchase Agreements

85 On 11 December 2011, the Plaintiff, BRI and 14 other persons (collectively, **Boardwalk Shareholders**) entered into an agreement with Whitehaven for the sale of all their shares in Boardwalk as part of an acquisition by Whitehaven of all the shares and other equity interests in Boardwalk (**Share Purchase Agreement**).

Particulars

(i) *The Share Purchase Agreement was in writing as set out in a document titled Share Purchase Agreement for shares in Boardwalk Resources Ltd between Whitehaven and the Boardwalk Shareholders dated 11 December 2011;*

(ii) *the Share Purchase Agreement contained express and implied terms; and*

(iii) *the Share Purchase Agreement was executed by or on behalf of each of the Plaintiff and Boardwalk Shareholders.*

86 On 11 December 2011, Farallon Capital Institutional Partners II, L.P., Noonday Special Situation Partners, L.P. and 7 other corporations (**Farallon/Noonday Lenders**) entered into an agreement with Whitehaven whereby Whitehaven agreed to purchase all of their Share Warrants as part of an acquisition by Whitehaven of all the shares and other equity interests in Boardwalk (**Warrant Purchase Agreement**).

Particulars

(i) *The Warrant Purchase Agreement is in writing as set out in a document titled Warrant Purchase Agreement between the Farallon/Noonday Lenders and Whitehaven dated 11 December 2011; and*

(ii) *the Warrant Purchase Agreement contained express and implied terms.*

87 On 11 December 2011, Burlingham International Limited and HPRY Holdings Ltd (**Minority Lenders**) entered into an agreement with Whitehaven whereby Whitehaven agreed to purchase all their shares in Boardwalk as part of an acquisition by Whitehaven of all the shares and other equity interests in Boardwalk (**Minority Lenders Purchase Agreement**).

Particulars

(i) *The Minority Lenders Purchase Agreement is in writing as set out in a document titled Share Purchase Agreement between the Minority Lenders and Whitehaven dated 11 December 2011; and*

(ii) *the Minority Lenders Purchase Agreement contained express and implied terms.*

88 At all material times up until completion on 1 May 2012, the Boardwalk Shareholders, the Farallon/Noonday Lenders and the Minority Lenders (collectively, **Boardwalk Vendors**) between them held, either directly or through their respective subsidiaries, all the shares and other equity interests in Boardwalk.

89 The Share Purchase Agreement, the Warrant Purchase Agreement and the Minority Lenders Purchase Agreement (**Agreements**) contained the following express terms:

(a) subject to certain terms and conditions, the Boardwalk Vendors would sell all their shares and other equity interests in Boardwalk to Whitehaven;

Particulars

Share Purchase Agreement cl 2.1; Warrant Purchase Agreement cl 2.1; Minority Lenders Purchase Agreement cl 2.1.

(b) the consideration payable from Whitehaven to the Boardwalk Vendors would consist of:

(i) ordinary fully-paid shares in Whitehaven to be issued to the Boardwalk Vendors; and

(ii) Milestone Shares (as defined in Schedule 1 of each Agreement) in Whitehaven (**Milestone Shares**), being ordinary fully-paid shares but which were subject to terms of the Restriction Deeds;

Particulars

Share Purchase Agreement cl 2.2; Warrant Purchase Agreement cl 2.2; Minority Lenders Purchase Agreement cl 2.2.

(c) BRI or a nominee of BRI would provide a $150m Capital Injection to Boardwalk in consideration for 75,786,713 ordinary fully-paid shares in Whitehaven either as an express term of the Agreements or as a condition precedent to completion;

Particulars

Share Purchase Agreement cl 4.9; Warrant Purchase Agreement cl 3.2(g); Minority Lenders Purchase Agreement cl 3.2(g).

(d) the shares issued to the Boardwalk Vendors in accordance with subparagraph (b) had the same rights as set out in Whitehaven's constitution and would rank equally

with all other ordinary shares in Whitehaven subject to the exclusion of a Special Dividend (as defined);

Particulars

Share Purchase Agreement cl 5.5(a); Warrant Purchase Agreement cl 5.3(a); Minority Lenders Purchase Agreement cl 5.3(a).

(e) subject to the satisfaction of certain conditions precedent, some of which are pleaded below, the time and day for completion of the Agreements was 11:00am on the business day following the day on which the Whitehaven and Aston scheme of arrangement came into effect pursuant to s 411(10) of the Corporations Act;

Particulars

Share Purchase Agreement cl 5.1; Warrant Purchase Agreement cl 5.1; Minority Lenders Purchase Agreement cl 5.1.

(f) at completion of the sale, the Boardwalk Vendors would deliver to Whitehaven executed Deeds substantially in the form of the draft Restriction Deeds annexed to each of the Agreements;

Particulars

Share Purchase Agreement cl 5.5(f); Warrant Purchase Agreement cl 5.3(f); Minority Lenders Purchase Agreement cl 5.3(f).

(g) that the Milestone Shares issued subject to the Restriction Deed (as defined therein) would be held subject to the terms of the Restriction Deeds (as pleaded below); and

Particulars

Share Purchase Agreement cl 2.4; Warrant Purchase Agreement cl 2.4; Minority Lenders Purchase Agreement cl 2.4.

(h) each party was required to do (at its own expense), everything reasonably necessary (including executing documents) to give full effect to the Agreements and any transactions contemplated by the Agreements (**Further Action Clause**).

Particulars

Share Purchase Agreement cl 15.12; Warrant Purchase Agreement cl 13.11; Minority Lenders Purchase Agreement cl 13.11.

F.2 Express Terms of the Restriction Deeds

90 It was a term of the Restriction Deed between Whitehaven and the Boardwalk Shareholders that the obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, each Boardwalk Shareholder which was the trustee of a trust under or in respect of the Restriction Deed are incurred by the applicable Boardwalk Shareholder solely in its capacity as trustee of, and for the benefit and proper purposes of, the applicable trust.

Particulars

Restriction Deed between Whitehaven and the Boardwalk Shareholders, cl 8(b).

91 By the Restriction Deeds annexed to the Agreements, the Boardwalk Vendors were to covenant that they must not dispose, transfer ownership of, exercise any voting rights, receive any dividends or participate in any rights issues in respect of the Restricted Shares (as defined therein) during the Restriction Period (**Restrictions**).

Particulars

(i) *Restriction Deeds, cl 2.2;*

(ii) *Restricted Shares are defined to mean the Milestone Shares and any further securities or other equity interests issued to the Boardwalk Vendors as a result of holding the Milestone Shares, including pursuant to any bonus issue.*

92 It was a term of the Restriction Deeds that half of the Restricted Shares would be released from the Restrictions (**Vesting**) upon all of the applicable Trigger Events (as defined therein) having occurred (**Approval**) in respect of any one of the Projects.

Particulars

Restriction Deeds, cls 3.1 & 3.2.

93 By Clause 3.2 of the Restriction Deeds, a Trigger Event constituted:

(a) the grant of a Mining Lease in respect of a Project;

(b) with respect to a Project located in New South Wales, the grant of a planning approval under the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA NSW**);

(c) with respect to a Project located in Queensland, the grant of environmental authority under the *Environmental Protection Act 1994* (Qld) (**EPA QLD**);

(d) if required for any Project, the grant of an approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPC Act**);

(e) subject to paragraph (f), with respect to any of the events set out in paragraphs (a) to (d), the expiry of any applicable statutory time period within which merit appeal or judicial review proceedings must be commenced without such proceedings having been commenced or, if such proceedings have commenced, those proceedings being discontinued or dismissed; and

(f) if no statutory time period within which merit appeal or judicial review proceedings must be commenced is prescribed for any of the events set out in paragraphs (a) to (d), the expiry of a period of three months without such proceedings having commenced, or, if such proceedings have commenced, those proceedings being discontinued or dismissed.

94 It was a term of the Restriction Deeds that Vesting would occur in relation to all further Restricted Shares remaining subject to the Restrictions upon Approval in respect of any other of the Projects.

Particulars

Restriction Deeds, cl 3.3.

95 The Restriction Deeds defined Projects to mean the:

(a) Ferndale Project;

(b) Dingo Project;

(c) Sienna Project;

(d) Monto Project; and

(e) Oaklands North Project,

(collectively, the **Milestone Projects**).

Particulars

Restriction Deeds, Sch 1.

96 Under the Restriction Deeds, Approval of a Milestone Project could occur where the Relevant Milestone Project was effectively controlled as at the time of Approval either:

(a) by Whitehaven (a **Whitehaven-controlled Approval**); or

(b) by a party other than Whitehaven (a **Non-Whitehaven-controlled Approval**).

Particulars

(i) *Restriction Deed, cl 3.3; and*

(ii) *under the Restriction Deed, the Trigger Events and Vesting are not confined to a Whitehaven-controlled Approval*.

97 It was a term of the Restriction Deeds that each party must do all things and execute all further documents required to give full effect to the Restriction Deeds (**Full Effect Term**).

Particulars

Restriction Deeds, cl 9.5.

98 The Plaintiff, the Boardwalk Vendors and Whitehaven executed the Restriction Deeds on or around 1 May 2012.

F.3 Implied Terms

99 The Agreements contained the following implied terms:

(a) Each party would do all such things as were necessary on its part to enable the other party to have the benefit of the Agreements and not to hinder or prevent the purpose of the express promises made in the Agreements (**Duty of Cooperation**);

Particulars

This term was:

(i) *implied by law; and*

(ii) *a continuing obligation.*

(b) each party would, in the performance of their obligations, and in the exercise of any discretion or power conferred under the Agreements, act and so exercise that discretion or power in good faith, with fidelity to the bargain embodied in the Agreements and with fair dealing having regard to the interests of the parties and to the provisions, aims and purposes of the Agreements (**Good Faith Term**); and

Particulars

(i) *The Good Faith Term was implied by law; or*

(ii) *alternatively, the Good Faith Term was implied in fact because:*

(A) *it is reasonable and equitable to do so;*

(B) *it is necessary to give business efficacy to the Agreements;*

(C) *it is so obvious that it goes without saying;*

(D) *it is capable of clear expression; and*

(E) *it does not contradict any express term of the Agreements; and*

(iii) *the Good Faith Term was a continuing obligation.*

(c) after payment of Boardwalk's debts on completion and making allowance for other committed cashflows, Whitehaven would use the remaining amount of the $150m Capital Injection provided by BRI or its nominee to develop the Milestone Projects with a view to obtaining two Approvals(**Use of Funds Term**);

Particulars

(i) *The Use of Funds Term was implied in fact because:*

(A) *it is reasonable and equitable to do so;*

(B) *it is necessary to give business efficacy to the Agreements;*

(C) *it is so obvious that it goes without saying;*

(D) *it is capable of clear expression; and*

(E) *it does not contradict any express term of the Agreements;*

(ii) *the Plaintiff refers to the particulars to paragraph 78(d); and*

(iii) *the Use of Funds Term was a continuing obligation.*

100 The Restriction Deeds contained the following implied terms:

(a) each party would do all such things as were necessary on its part to enable the other party to have the benefit of the contract and not to hinder or prevent the purpose of the express promises made in the Restriction Deeds (**Deed Duty of Cooperation**);

Particulars

The term was:

(i) *implied by law; and*

(ii) *a continuing obligation.*

(b) each party would, in the performance of their obligations, and in the exercise of any discretion or power conferred under the Restriction Deeds, act and so exercise that discretion or power in good faith, with fidelity to the bargain embodied in the Restriction Deeds and with fair dealing having regard to the

interests of the parties and to the provisions, aims and purposes of the Restriction Deeds (**Deed Good Faith Term**); and

Particulars

(i) *The Deed Good Faith Term was implied by law; or*

(ii) *alternatively, the Deed Good Faith Term was implied in fact because:*

(A) *it is reasonable and equitable to do so;*

(B) *it is necessary to give business efficacy to the Agreements;*

(C) *it is so obvious that it goes without saying;*

(D) *it is capable of clear expression; and*

(E) *it does not contradict any express term of the Agreements; and*

(iii) *the Deed Good Faith Term was a continuing obligation.*

(c) after the date of completion, Whitehaven would use its reasonable endeavours to achieve Approval of two of the Milestone Projects (**Reasonable Endeavours Term**).

Particulars

(i) *The Reasonable Endeavours Term was implied in fact because:*

(A) *it is reasonable and equitable to do so;*

(B) *it is necessary to give business efficacy to the Agreements;*

(C) *it is so obvious that it goes without saying;*

(D) *it is capable of clear expression; and*

(E) *it does not contradict any express term of the Agreements; and*

(ii) *the Reasonable Endeavours Term was a continuing obligation.*

101 Further or alternatively to paragraph 99(c), the Use of Funds Term was an implied term of the Restriction Deeds.

Particulars

The Plaintiff refers to the particulars to paragraph 99(c).

102 Further or alternatively to paragraph 100(c), the Reasonable Endeavours Term was an implied term of the Agreements.

Particulars

The Plaintiff refers to the particulars to paragraph 100(c).

G. Estoppel

Conventional Estoppel

103 Mr Tinkler (as agent for the Plaintiff and the Group Members) and Whitehaven, adopted an assumption that Whitehaven was obliged to use the remaining amount of the $150m Capital Injection provided by BRI or its nominee (after payment of Boardwalk's debts on completion and making allowance for other committed cashflows) to develop the Milestone Projects with a view to obtaining two Approvals (**Assumption**).

Particulars

The Plaintiff refers to:

(i) *the Use of Funds Representation;*

(ii) *the draft ASX announcements referred to at paragraph 79;*

(iii) *the review and receipt of the draft ASX announcements referred to in paragraph 79 by Mr Tinkler and Mr Haggarty;*

(iv) *the ASX announcements referred to in paragraph 82;*

(v) *the review and receipt of the Draft Prospectus by Whitehaven;*

(vi) *12 December 2011, Project Trifecta, Key Investor Meeting Schedule;*

(vii) *March 2012, ASX Announcement, Whitehaven Investor Presentation, page 10;*

(viii) *Whitehaven, ASX Announcement, 9 March 2012, pages 67, 92, 117 and 134; and*

(ix) *further particulars may be provided at the completion of interlocutory steps.*

104 The Plaintiff, the Group Members and Whitehaven have conducted their relationship on the basis of the Assumption.

Particulars

(i) *The entities associated with Mr Tinkler made the $150m Capital Injection;*

(ii) *the Plaintiff and Group Members agreed to receive the Restricted Shares and enter into the Restriction Deeds;*

(iii) *Whitehaven issued the Restricted Shares and received Boardwalk's interest in the Boardwalk Projects; and*

(iv) *the Plaintiff and Group Members agreed to transfer their shares in Boardwalk to Whitehaven.*

105 Whitehaven knew or intended that the Plaintiff and Group Members would act on the basis of the Assumption.

Particulars

The Plaintiff refers to the particulars to paragraphs 79 to 82.

106 The Plaintiff and Group Members relied on the Assumption.

Particulars

(i) *The Plaintiff and the Group Members, relied on the Assumption in entering into and performing their obligations under the Agreements and the Restriction Deeds; and*

(ii) *the Plaintiff refers to paragraph 18 above.*

107 Whitehaven has departed from the Assumption.

Particulars

Whitehaven has departed from the Assumption by reason of the matters alleged at paragraph 158 below.

108 The Plaintiff and Group Members have suffered detriment by reason of Whitehaven's unfair and/or unjust departure from the Assumption.

Particulars

(i) *By reason of Whitehaven's departure from the Assumption, the Plaintiff and Group Members have lost a valuable commercial opportunity to receive the Restricted Shares free from the Restrictions;*

(ii) *further or alternatively, the Plaintiff and Group Members suffered detriment by:*

(a) *agreeing to sell their interests in Boardwalk;*

(b) *further or alternatively, selling their interests in Boardwalk;*

(c) *further or alternatively, agreeing to receive the Milestone Shares with the Restrictions and/or as consideration under the Agreements;*

(d) *further or alternatively, receiving the Milestone Shares with the Restrictions and/or as consideration under the Agreements;*

(e) *further or alternatively, losing the opportunity to benefit from an ongoing interest in Boardwalk;*

(f) *further or alternatively, losing the opportunity to participate in Boardwalk's development of the Milestone Projects;*

(g) *further or alternatively, losing the opportunity to benefit from a $150m capital injection in Boardwalk;*

(h) *further or alternatively, losing the opportunity to enter, or attempt to enter, into the Agreements on different terms and/or to negotiate, or attempt to negotiate, different terms;*

(i) *further or alternatively, losing the opportunity to pursue, or attempt to pursue, an alternative transaction and/or to negotiate an alternative transaction.*

(iii) *further or alternatively, BRI made the $150m Capital Injection; and*

(iv) *further particulars may be provided following interlocutory steps.*

109 In the premises of paragraphs 103 to 108 above, Whitehaven is estopped from denying the Use of Funds Term.

110 Further or alternatively to paragraph 109, Whitehaven is estopped from enforcing, or otherwise relying on the Restrictions in the Restriction Deeds.

Promissory Estoppel

111 Whitehaven created or encouraged in the Plaintiff and Group Members an expectation or assumption that Whitehaven would use the remainder of the $150m Capital Injection to develop the Boardwalk Projects (**Promise**).

Particulars

(i) *The Plaintiff refers to paragraphs 79 to 82 (including the particulars to those paragraphs).*

(ii) *the Plaintiff refers to the matters alleged in paragraph 103 (including the particulars to those paragraphs); and*

(iii) *further particulars may be provided following interlocutory steps.*

112 Whitehaven knew or intended that the Plaintiff and Group Members would act on the basis of the Promise.

Particulars

The Plaintiff refers to the particulars to paragraphs 79 to 82 above.

113 The Plaintiff and the Group Members relied on the Promise.

Particulars

(i) *The Plaintiff and the Group Members relied on the Promise in entering into and performing their obligations under the Agreements and the Restriction Deeds; and*

(ii) *the Plaintiff refers to paragraph 18 above.*

114 In breach of the Promise, Whitehaven has not used the remainder of the $150m Capital Injection to develop the Boardwalk Projects.

Particulars

The Plaintiff refers to the particulars to paragraphs 158 below.

115 It would be unconscionable for Whitehaven to resile from the Promise.

Particulars

It would be unconscionable for Whitehaven to resile from the Promise in circumstances including some or all of the following:

(i) *it has received the benefit of the $150m Capital Injection and/or the remainder of it (after payment of Boardwalk's debts on completion and making allowance for other committed cashflows);*

(ii) *the Plaintiff and Group Members cannot obtain the Milestone Shares free from the Restrictions without Whitehaven fulfilling the Promise;*

(iii) *the Plaintiff and Group Members relied on the Promise in entering into and performing their obligations under the Agreements and the Restriction Deeds;*

(iv) *Whitehaven paid the 2017 Capital Reduction, 2017 Dividend, 2018 First Dividend, 2018 Second Dividend, 2019 First Dividend, 2019 Second Dividend, 2020 Dividend, 2022 Dividend and 2022 Share Buyback.*

116 By reason of paragraphs 111 to 115, Whitehaven is estopped from denying that it is bound by the Promise.

117 Further or alternatively to paragraph 116, Whitehaven is estopped from enforcing the Restrictions in the Restriction Deeds.

H. Whitehaven-Aston Scheme

118 On or around 12 December 2011, Whitehaven and Aston entered into a scheme implementation agreement setting out their respective rights and obligations in bringing about a proposed merger between Whitehaven, Boardwalk (by way of the Agreements) and Aston (Scheme Implementation Agreement).

Particulars

ASX Announcement, Whitehaven, 12 December 2011, "creating a leading independent coal company".

119 As part of the compromise or arrangement between Aston and its members (**Scheme**), PWC prepared an Independent Expert's Report to form part of the scheme booklet to be sent to the members of Aston once approved by the Court (**Independent Expert's Report**).

120 In early February 2012, Whitehaven provided information to PWC for inclusion in the Independent Expert's Report including probability estimates of one, or more than one, Approval being obtained in respect of the Milestone Projects, in which Whitehaven estimated there to be, and it was a fact that there was:

(a) an 80% probability of one Approval by 30 June 2014;

(b) a 90% probability of one Approval by 31 December 2014;

(c) a 95% probability of one Approval by 30 June 2017;

(d) a 5% probability that there would not be at least one Approval by 30 June 2017;

(e) a 30% probability of two or more Approvals by 30 June 2014;

(f) a 55% probability of two or more Approvals by 31 December 2014;

(g) a 73% probability that there would, by 30 June 2017, be two or more Approvals.

Particulars

(i) *Email from Goldman Sachs (Tim Slattery) sent 5 February 2012 at 13:01; WHC.016.006.9163;*

(ii) *pro-Forma Balance Sheet attached to that email, specifically, the accompanying worksheet titled Contingent Consideration; WHC.016.006.9165; and*

(iii) *email from Goldman Sachs (Nikolas Pojenzny) to Whitehaven Management (and others) sent 9.07pm on 25 January 2012 attributing the figures referred to in subparagraphs (a) to (g) to Mr Haggarty; WHC.016.011.7825.*

121 On 9 March 2012, the Federal Court of Australia approved a draft of the scheme booklet which was subsequently sent to the members of Aston and the ASX for publication, including the Independent Expert's Report (**Scheme Booklet**).

Particulars

(i) *Whitehaven, ASX Announcement, 9 March 2013, Scheme Booklet; and*

(ii) *the Scheme Booklet was also available via Whitehaven's website.*

122 On 16 April 2012, the members of Aston attended a meeting and voted in favour of the Scheme by the requisite majority (**Scheme Meeting**).

123 On 18 April 2012, the Federal Court of Australia made orders approving the Scheme under s 411(4)(b) of the Corporations Act, and the Scheme subsequently became binding on Aston and its members (**Scheme Court Approval**).

I. Completion of the Agreements

124 On or around 1 May 2012, the sale of the Boardwalk Vendor's shares and equity interests in Boardwalk to Whitehaven was completed (**Completion**) upon or after:

(a) each of the Boardwalk Vendors delivering to Whitehaven an executed Restriction Deed;

(b) each of the Boardwalk Vendors delivering duly executed and completed instruments of transfer to Whitehaven in respect of all their shares and other equity interests in Boardwalk;

(c) Whitehaven issuing ordinary shares to the Boardwalk Vendors and entering their details on Whitehaven's register of members; and

(d) Whitehaven causing some of the shares issued and registered to the Boardwalk Vendors to be quoted on the ASX.

125 At or immediately following Completion and after the Scheme became binding:

(a) BRI made the $150m Capital Injection;

(b) the Boardwalk Vendors transferred all their shares and other equity interests in Boardwalk to Whitehaven;

(c) the Restricted Shares were issued to the Boardwalk Vendors, subject to the Restriction Deeds.

(d) Whitehaven became the holder of all shares and other equity interests in Boardwalk; and

(e) Whitehaven as the ultimate holding company of Boardwalk and the Boardwalk Project Subsidiaries gained control of:

(i) the Boardwalk Projects; and

(ii) $84,990,698.33 transferred by or at BRI's direction to a bank account of Boardwalk, representing the balance of the $150m Capital Injection after the discharge of various debts of Boardwalk.

126 On or around 2 May 2012, the Scheme was implemented with the result, inter alia, that having acquired all the shares and equity interests in Boardwalk, Whitehaven also acquired all the shares in Aston.

127 From around 2 May 2012, Whitehaven carried on a business in which it was inter alia the ultimate holding company of both Aston and Boardwalk.

128 On 7 May 2012, Whitehaven announced that it proposed to make an offer to acquire of all the shares in Coalworks through an off-market takeover bid (**Coalworks Transaction**).

129 Whitehaven determined that it would make the Coalworks Transaction prior to Completion.

Particulars

(i) *Whitehaven, 5 April 2012, potential follow on acquisition, WHC.0001.004.2507;*

(ii) *Goldman Sachs, 15 April 2012, Project Cotton – Agenda, WHC.016.003.3350;*

(iii) *Goldman Sachs, 20 April 2012, Project Cotton Funding Review, WHC.001.006.0121; and*

(iv) *by 15 April 2012, Goldman Sachs had prepared a draft takeover bid announcement to the ASX on instructions from Whitehaven.*

130 The Coalworks Transaction:

(a) was not disclosed to the Boardwalk Vendors prior to Completion;

(b) was not disclosed in the Scheme Booklet;

(c) was not disclosed in a cleansing notice published on the ASX on 1 May 2012;

(d) was not disclosed to the Federal Court of Australia at the Scheme Court Approval; and

(e) was completed on 21 August 2012.

131 On 22 April 2013, the Jingella Group contacted Whitehaven and conveyed a proposal to acquire the Dingo Project (**Jingella Proposal**).

Particulars

(i) *The Plaintiff refers to WHC.004.003.7287; WHC.004.007.1230; WHC.004.004.8290; WHC.004.016.5830; and*

(ii) *Under the terms of the Jingella Proposal, the Jingella Group would place an option over the Dingo Project with an exercise price of $22.5m and undertook to complete a work program of the Dingo Project including additional drilling and exploration work at its cost.*

132 On or about 1 December 2014, Whitehaven lodged an application to renew EL7430 with the NSW Government and provided a proposed work program and expenditure for 2014 to 2019 showing a forecast expenditure of $2,129,600 in respect of the Ferndale Project (**Ferndale Renewal Application**).

133 Following the lodgement of the Ferndale Renewal Application, no adequate steps were taken by Whitehaven in the period from 1 December 2014 to the date of this Further Amended Statement of Claim to obtain a renewal from the NSW Government in relation to EL7430.

134 During the year ending 30 June 2015, Whitehaven impaired its exploration assets (including the Boardwalk Projects) by $355m (**First Impairment**).

Particulars

(i) *Whitehaven, 2015 Annual Report, page 80; and*

(ii) *the First Impairment related primarily to the carrying value of the Boardwalk Projects.*

135 On or around the date of the First Impairment, Whitehaven stated that:

(a) the Boardwalk Projects were acquired by Whitehaven when the market price for thermal coal was higher than as at 30 June 2015;

(b) the coal was still present and that at the appropriate time in the cycle, the assets would have greater value again; and

(c) in the absence of a higher coal price environment, it was prudent to adjust the value of the Boardwalk Projects downwards.

Particulars

(i) *Whitehaven Coal, July 2015, Impairment Assessment; WHC.004.012.8466;*

(ii) *Whitehaven, 2015 Results Presentation; WHC.004.004.5795 which stated:*

The second and more important issue is the view the company has taken on the development prospects for the exploration assets, Monto, Sienna, Dingo West and Ferndale.

The transaction that brought these assets into the group happened when the benchmark thermal coal was US$103/t and SSCC was $147/t. Today it is US$60/t. The timeline for the further evaluation and ultimate development of these assets has already extended significantly. With the Chinese market being oversupplied, we have concluded that there is no immediate incentive to accelerate their evaluation.

It is important to note that the coal is still there, the tenements are being kept in good standing and, at the appropriate time in the cycle, these assets will have greater value again. But in the absence of a price environment supportive of their development, we believe it is prudent to adjust their value to a level more consistent with contemporary early stage exploration asset valuations.

136 In the period from August to December 2017:

(a) the Australian benchmark thermal coal price (6,300 kcal/kg) was in the range of US$95 to US$100 per Mte;

(b) the Australian semi-soft coking coal price traded in the range of US$110 to US$120 per Mte; and

(c) the Australian low volatility PCI (Pulverised Coal Injection) coal price was in the range of US$120 to US$130 per Mte.

137 Despite the statements referred to in paragraph 135 above and coal price pleaded in paragraph 136 above, in August to November 2017, Whitehaven:

(a) paid the 2017 Dividend and an amount of the 2017 Capital Reduction (as alleged in paragraphs 186 and 188 below, including on the basis that the capital returned was surplus to requirements); and

(b) failed to take any or adequate steps to obtain the Approvals.

138 During the year ending 30 June 2017, Whitehaven further impaired its exploration assets (including the Boardwalk Projects) by $55 million (**Second Impairment**).

Particulars

(i) *Whitehaven, 2017 Annual Report, page 5; and*

(ii) *the Second Impairment related primarily to the carrying value of the Boardwalk Projects.*

139 On or around the date of the Second Impairment, the market price for coal was significantly higher than it was at the date of Completion.

140 As at the date of this Further Amended Statement of Claim, no Approval has been achieved in respect of any of the Milestone Projects and the Restricted Shares remain subject to the Restrictions.

141 Whitehaven has ceased taking steps to obtain an Approval with respect to any of the Milestone Projects and has limited its work on the Milestone Projects to the minimum necessary to keep them in good standing with the relevant government authority.

Particulars

(i) *Whitehaven, ASX Announcement, 23 September 2016, Annual Report, page 32;*

(ii) *Whitehaven, ASX Announcement, 22 September 2017, Annual Report, page 65.*

142 Whitehaven has not sold or marketed for sale any of the Milestone Projects to enable a Non-Whitehaven-controlled Approval to occur.

Particulars

(i) *The Plaintiff refers to the Jingella Proposal alleged at paragraph 131 above; and*

(ii) *further particulars may be provided following the completion of interlocutory steps.*

143 Further or alternatively to paragraphs 141 and 142 above, Whitehaven has abandoned any intention to seek to obtain Approvals with respect to any two of the Milestone Projects.

J. The Contraventions

J1. Breach of Contract – Further Action Clause

144 In breach of the Further Action Clause, Whitehaven has not done everything reasonably necessary to give full effect to the Agreements and any transactions contemplated by the Agreements.

Particulars

(i) *Whitehaven has not used the remainder of the $150m Capital Injection to develop the Milestone Projects with a view to obtaining two Approvals. The Plaintiff refers to the particulars to paragraph 158 below;*

(ii) *further, or alternatively, Whitehaven has not used reasonable endeavours to achieve Approval of two of the Milestone Projects;*

(iii) *further, or alternatively, the Plaintiff refers to paragraphs 164, 167, 170, 173 and 176 below;*

(iv) *further, or alternatively, Whitehaven has ceased taking steps to obtain an Approval with respect to any of the Milestone Projects and has limited its work on the Milestone Projects to the minimum necessary to keep them in good standing with the relevant government authority;*

(v) *further, or alternatively, Whitehaven has not sold or marketed for sale any of the Milestone Projects to enable a Non-Whitehaven-controlled Approval to occur;*

(vi) *further, or alternatively, Whitehaven has abandoned any intention to seek to obtain Approvals with respect to any two of the Milestone Projects;*

(vii) *further, or alternatively, Whitehaven has received the benefit of the $150m Capital Injection but has not applied the remainder of it (after payment of Boardwalk's debts on completion and making allowance for other committed cashflows) to develop the Milestone Projects; and*

(viii) *further, or alternatively, Whitehaven has not spent sums of money on the Milestone Projects beyond that necessary to keep the Milestone Projects in good order and standing with the relevant government authority.*

145 The breach referred to in paragraph 144 is continuing.

146 The Plaintiff and Group Members have suffered loss and damage by reason of each of the breaches referred to in paragraph 144 and 145 above.

Particulars

(i) *The Plaintiff and Group Members have lost a valuable commercial opportunity to receive the Restricted Shares free from the Restrictions; and*

(ii) *further particulars of loss and damage may be provided following the completion of interlocutory steps.*

J2. Breach of Deed – Full Effect Term

147 In breach of the Full Effect Term, Whitehaven has not done all things required to give full effect to the Restriction Deeds.

Particulars

The Plaintiff refers to the particulars to paragraph 144 above.

148 The breach referred to in paragraph 147 is continuing.

149 The Plaintiff and Group Members have suffered loss and damage by reason of each of the breaches referred to in paragraph 147 and 148 above.

Particulars

(i) *The Plaintiff and Group Members have lost a valuable commercial opportunity to receive the Restricted Shares free from the Restrictions; and*

(ii) *further particulars of loss and damage may be provided following the completion of interlocutory steps.*

J2. Breach of Contract and/or Deed – Duty of Cooperation

150 In breach of the Duty of Cooperation, Whitehaven has not done all such things as were necessary on its part to enable the Plaintiff and Group Members to have the benefit of the Restricted Shares.

Particulars

The Plaintiff refers to the particulars to paragraph 144 above.

151 Further or alternatively to paragraph 150, in breach of the Deed Duty of Cooperation, Whitehaven has not done all such things as were necessary on its part to enable the Plaintiff and Group Members to have the benefit of the Restricted Shares.

Particulars

The Plaintiff refers to the particulars to paragraph 144 above.

152 The breaches referred to in paragraph 150 and 151 are continuing.

153 The Plaintiff and Group Members have suffered loss and damage by reason of each of the breaches referred to in paragraphs 150, 151 and 152.

Particulars

(i) *The Plaintiff and Group Members have lost a valuable commercial opportunity to receive the Restricted Shares free from the Restrictions; and*

(ii) *further particulars of loss and damage may be provided following the completion of interlocutory steps.*

J3. Breach of Contract and/or Deed – Good Faith Term

154 In breach of the Good Faith Term, Whitehaven has not exercised its powers conferred under the Agreements in good faith, with fidelity to the bargain embodied in the Agreements and with fair dealing, having regard to the interests of the Plaintiff and Group Members and to the provisions, aims and purposes of the Agreements.

Particulars

The particulars to paragraph 144 are repeated.

155 Further or alternatively to paragraph 154, in breach of the Deed Good Faith Term, Whitehaven has not exercised its powers conferred under the Restriction Deeds in good faith, with fidelity to the bargain embodied in the Restriction Deeds and with fair dealing, having regard to the interests of the Plaintiff and Group Members and to the provisions, aims and purposes of the Restriction Deeds.

Particulars

The particulars to paragraph 144 are repeated.

156 The breaches referred to in paragraphs 154 and 155 are continuing.

157 The Plaintiff and Group Members have suffered loss and damage by reason of each of the breaches referred to in paragraphs 154, 155 and 156.

Particulars

(i) *The Plaintiff and Group Members have lost a valuable commercial opportunity to receive the Restricted Shares free from the Restrictions; and*

(ii) *further particulars of loss and damage may be provided following the completion of interlocutory steps.*

J4. Breach of Contract and/or Deed – Use of Funds Term

158 Whitehaven has not used the remainder of the $150m Capital Injection to develop the Milestone Projects with a view to obtaining two Approvals.

Particulars

(i) *The remainder of the $150m Capital Injection after Completion was $84,490,698.33 as alleged in paragraph 125(f)(ii) above;*

(ii) *From the date of Completion until the commencement of these proceedings Whitehaven has not spent the sum of $84,490,698.33 on the development of the Milestone Projects.*

159 In the premises of paragraph 158, Whitehaven breached the Use of Funds Term in the Agreements.

160 Further or alternatively to paragraph 159, in breach of the Use of Funds Term in the Restriction Deeds, Whitehaven has not used the remainder of the $150m Capital Injection to develop the Milestone Projects with a view to obtaining two Approvals.

Particulars

The Plaintiff refers to the particulars to paragraph 158 above.

161 In the premises of paragraphs 141 to 159 above, Approval cannot be obtained in respect of any of the Milestone Projects unless:

(a) funds are spent by Whitehaven on developing one or more of the Milestone Projects; or

(b) Whitehaven sells one or more of the Milestone Projects to obtain a Non-Whitehaven-Controlled Approval.

162 The breaches referred to in paragraphs 158 or 159 or 160 are continuing.

163 The Plaintiff and Group Members have suffered loss and damage by reason of each of the breaches alleged in paragraphs 158, 159, 160 and 162 above.

Particulars

(i) *The Plaintiff and Group Members have lost a valuable commercial opportunity to receive the Restricted Shares free from the Restrictions; and*

(ii) *further particulars of loss and damage may be provided following the completion of interlocutory steps.*

I2. Breach of Contract – Reasonable Endeavours Term

Reasonable Endeavours Term – Ferndale

164 As at the date of this Further Amended Statement of Claim:

(a) Whitehaven has not:

(i) applied for, obtained or taken adequate steps to obtain a mining lease in respect of the Ferndale Project;

(ii) taken adequate steps to obtain, or be able to obtain, planning approval under the EPA NSW in relation to the Ferndale Project;

(iii) taken adequate steps to obtain, or be able to obtain, approval under the EPC Act;

(b) Whitehaven has not sold or marketed for sale the Ferndale Project so as to bring about a Non-Whitehaven-Controlled Approval;

(c) From 1 January 2013 until at least 18 December 2019, Whitehaven has not spent any material amount on employees or contractors in relation to the Ferndale Project;

(d) From the date of Completion until on or around December 2018, Whitehaven has only spent approximately $228,365 on the Ferndale Project;

(e) Of the $228,365 referred to in sub-paragraph (d), only $4,000 was spent in the period from 19 December 2014 to 18 December 2018;

(f) From 18 December 2018 until the date of this Further Amended Statement of Claim, Whitehaven has not spent any material amount on developing the Ferndale Project;

(g) Whitehaven did not carry out the program of works forecast in the Ferndale JV Budget for FY12-FY13 as referred to in the Data Room;

(h) Despite the Ferndale 2013 Resource Estimate, Whitehaven has not forecast, budgeted or approved any program of works necessary to obtain one or more of the matters alleged in sub-paragraph (a);

(i) Whitehaven has not taken any of the steps forecast in the Ferndale Renewal Budget;

(j) Whitehaven has not entered into or considered entering into any joint venture or other arrangement to consider developing the Ferndale Project.

165 Whitehaven breached the Reasonable Endeavours Term in the Restriction Deeds by not using reasonable endeavours to achieve Approval of the Ferndale Project.

Particulars

The Plaintiff refers to paragraph 164 above.

166 Further or alternatively to paragraph 165, Whitehaven breached the Reasonable Endeavours term in the Agreements by not using reasonable endeavours to achieve Approval of the Ferndale Project.

Particulars

The Plaintiff refers to paragraph 164 above.

Reasonable Endeavours Term – Dingo

167 As at the date of this Further Amended Statement of Claim:

(a) Whitehaven has not

(i) applied for, obtained or taken adequate steps to obtain a mining lease in respect of the Dingo Project;

(ii) taken adequate steps to obtain, or be able to obtain, planning approval under the EPA QLD in respect of the Dingo Project;

(iii) taken adequate steps to obtain, or be able to obtain, approval under the EPC Act;

(b) despite the Jingella Proposal, Whitehaven has not sold, or marketed for sale, the Dingo Project so as to bring about a Non-Whitehaven-Controlled Approval;

(c) from 4 May 2013 until the date of this pleading, no drilling activities have been undertaken at the Dingo Project other than drill-site rehabilitation;

(d) from 4 May 2013 until May 2018, Whitehaven only spent $107,718 on the Dingo Project;

(e) from May 2018 until the date of this pleading, Whitehaven has not spent any material amount on developing the Dingo Project;

(f) Whitehaven has not taken adequate steps to require its joint venture partner in the Dingo JV to fulfill its obligations under the Dingo JV;

(g) Whitehaven has not entered into or considered entering into a joint venture or other arrangement to develop the Dingo Project beyond the Dingo JV;

(h) in the circumstances of the Cockatoo Coal administration, Whitehaven did not take adequate steps to buy out or otherwise acquire Cockatoo Coal's interest in Independent Coal or its 30% interest in the Dingo JV; and

(i) in the circumstances of the Baralaba CC Limited administration, Whitehaven did not take adequate steps to buy out or otherwise acquire Baralaba CC Limited's interest in Independent Coal or its 30% interest in the Dingo JV.

168 Whitehaven breached the Reasonable Endeavours Term in the Restriction Deeds by not using reasonable endeavours to achieve Approval of the Dingo Project.

Particulars

The Plaintiff refers to paragraph 167 above.

169 Further or alternatively to paragraph 168, Whitehaven breached the Reasonable Endeavours Term in the Agreements by not using reasonable endeavours to achieve Approval of the Dingo Project.

Particulars

The Plaintiff refers to paragraph 167 above.

Reasonable Endeavours Term – Sienna

170 As at the date of this Further Amended Statement of Claim:

(a) Whitehaven has not applied for, obtained or taken adequate steps to obtain a mining lease in respect of the Sienna Project;

(b) Whitehaven has not taken adequate steps to obtain, or be able to obtain, planning approval under the EPA QLD in respect of the Sienna Project;

(c) Whitehaven has not taken adequate steps to obtain, or be able to obtain, approval under the EPC Act;

(d) from 20 March 2013 until 30 May 2018, Whitehaven only spent $488,827.50 on the Sienna Project;

(e) of the $488,827.50 referred to in sub-paragraph (d) only $3,000 was spent in the period from 30 May 2014 to 30 May 2018;

(f) from 18 December 2018 until the date of this Further Amended Statement of Claim, Whitehaven has not spent any material amount on developing the Sienna Project;

(g) since the date of Completion, Whitehaven has not forecast, budgeted or approved any program of works necessary to obtain one or more of the matters referred to in subparagraphs (a) to (c);

(h) Whitehaven has not sold or marketed for sale the Sienna Project to enable a Non-Whitehaven-controlled Approval; and

(i) Whitehaven has not entered into or considered entering into a joint venture or other arrangement to develop the Sienna Project.

171 Whitehaven breached the Reasonable Endeavours Term in the Restriction Deeds by not using reasonable endeavours to achieve Approval of the Sienna Project.

Particulars

The Plaintiff refers to paragraph 170 above.

172 Further or alternatively to paragraph 171, Whitehaven breached the Reasonable Endeavours Term in the Agreements by not using reasonable endeavours to achieve Approval of the Sienna Project.

Particulars

The Plaintiff refers to paragraph 170 above.

Reasonable Endeavours Term – Monto

173 As at the date of this Further Amended Statement of Claim:

(a) Whitehaven has not applied for, obtained or taken adequate steps to obtain a mining lease in respect of the Monto Project;

(b) Whitehaven has not taken adequate steps to obtain, or be able to obtain, planning approval under the EPA QLD in respect of the Monto Project;

(c) Whitehaven has not taken adequate steps to obtain, or be able to obtain, approval under the EPC Act;

(d) from April 2013 to April 2018, Whitehaven only spent $302,775 on the Monto Project;

(e) of the $302,775 referred to in sub-paragraph (d), only $15,100 was spent in the period from April 2015 to April 2018;

(f) since the date of Completion, Whitehaven has not forecast, budgeted or approved any program of works necessary to obtain one or more of the matters referred to in subparagraphs (a) to (c);

(g) Whitehaven has not sold or marketed for sale the Monto Project to enable a Non-Whitehaven-controlled Approval; and

(h) Whitehaven has not entered into or considered entering into a joint venture or other arrangement to develop the Monto Project.

174 Whitehaven breached the Reasonable Endeavours Term in the Restriction Deeds by not using reasonable endeavours to achieve Approval of the Monto Project.

Particulars

The Plaintiff refers to paragraph 173 above.

175 Further or alternatively to paragraph 174, Whitehaven breached the Reasonable Endeavours Term in the Agreements by not using reasonable endeavours to achieve Approval of the Monto Project.

Particulars

The Plaintiff refers to paragraph 173 above.

Reasonable Endeavours Term – Oaklands North

176 As at the date of this Further Amended Statement of Claim:

(a) Whitehaven has not applied for, obtained or taken adequate steps to obtain a mining lease in respect of the Oaklands North Project;

(b) Whitehaven has not taken adequate steps to obtain, or be able to obtain, planning approval under the EPA QLD in respect of the Oaklands North Project;

(c) Whitehaven has not taken adequate steps to obtain, or be able to obtain, approval under the EPC Act;

(d) since the date of Completion, Whitehaven has not forecast, budgeted or approved any program of works necessary to obtain one or more of the matters referred to in subparagraphs (a) to (c);

(e) Whitehaven has not sold or marketed for sale the Oaklands North Project to enable a Non-Whitehaven-controlled Approval; and

(f) Whitehaven has not entered into or considered entering into a joint venture or other arrangement to develop the Oaklands North Project.

177 Whitehaven breached the Reasonable Endeavours Term in the Restriction Deeds by not using reasonable endeavours to achieve Approval of the Oaklands North Project.

Particulars

The Plaintiff refers to paragraph 176 above.

178 Further or alternatively to paragraph 177, Whitehaven breached the Reasonable Endeavours Term in the Agreements by not using reasonable endeavours to achieve Approval of the Oaklands North Project.

Particulars

The Plaintiff refers to paragraph 176 above.

Reasonable Endeavours Term – General

179 Further or alternatively to paragraphs 165, 168, 171, 174 and 177, Whitehaven breached the Reasonable Endeavours Term in the Restriction Deeds by not using reasonable endeavours to achieve Approval of two of the Milestone Projects.

Particulars

The Plaintiff refers to the particulars to paragraphs 165, 168, 171, 174 and 177 above.

180 Further or alternatively to paragraphs 166, 169, 172, 175 and 178, Whitehaven breached the Reasonable Endeavours Term in the Agreements by not using reasonable endeavours to achieve Approval of two of the Milestone Projects.

Particulars

The Plaintiff refers to the particulars to paragraphs 166, 169, 172, 175 and 178 above.

181 The breaches referred to in paragraphs 165, 166, 168, 169, 171, 172, 174, 175, 177, 178 179 and 180 are continuing.

182 By reason of the breaches alleged in each of paragraphs 165, 166, 168, 169, 171, 172, 174, 175, 177, 178, 179, 180 and 181 above, the Plaintiff and Group Members have suffered loss and damage.

Particulars

(i) *The Plaintiff and Group Members have lost a valuable commercial opportunity to receive the Restricted Shares free from the Restrictions; and*

(ii) *further particulars of loss and damage may be provided following the completion of interlocutory steps.*

J4. Distributions to Shareholders

183 At all material times, Whitehaven was prohibited from declaring a dividend to its shareholders unless the payment of the dividend was fair and reasonable to the Whitehaven's shareholders as a whole.

Particulars

Section 254T of the Corporations Act.

184 At all material times, Whitehaven was prohibited from reducing its share capital unless the reduction in share capital:

(a) was fair and reasonable to Whitehaven's shareholders as a whole;

(b) did not materially prejudice Whitehaven's ability to pay its creditors; and

(c) was approved by shareholders under section 256C of the Corporations Act.

Particulars

Section 256B of the Corporations Act.

2017 Dividend and 2017 Capital Reduction

185 On 17 August 2017, Whitehaven announced a proposed $0.20 per share distribution to shareholders subject to approval at Whitehaven's Annual General Meeting.

Particulars

(i) *The $0.20 per share distribution was structured to be a $0.14 per share reduction of capital and a $0.06 per share unfranked dividend; and*

(ii) *Whitehaven, ASX Announcement, 17 August 2017, "record profit and distribution to shareholders".*

186 At the Whitehaven Annual General Meeting on 25 October 2017, some of the shareholders of Whitehaven voted to approve a $0.14 per share capital return by way of an equal capital reduction valued at approximately $140m (**2017 Capital Reduction**).

Particulars

Whitehaven, ASX Announcement, 3 November 2018, "distribution to shareholders – update".

187 The 2017 Capital Reduction was proposed purportedly on the basis that:

(a) Whitehaven had surplus capital at that time; and

(b) the 2017 Capital Reduction would not adversely affect Whitehaven's capacity to fund or pursue existing business and growth opportunities.

Particulars

Whitehaven, Notice of Annual General Meeting, page 9, paragraphs 74 and 78.

188 On or around 28 November 2017, Whitehaven paid the 2017 Capital Reduction and a $0.064 per share dividend (**2017 Dividend**) to Whitehaven shareholders for an aggregate payment of approximately $198 million.

Particulars

Whitehaven, ASX Announcement, 28 November 2017, "payment of $0.20 distribution to shareholders".

189 The payments on account of the 2017 Dividend and the 2017 Capital Reduction were made to some of the Whitehaven shareholders in circumstances where, as holders of Restricted Shares:

(a) the Plaintiff and Group Members were not entitled to vote at the Annual General Meeting referred to in paragraph 186;

(b) the Plaintiff and Group Members could not receive a dividend by reason of the Restriction Deeds; and

(c) the Plaintiff and Group Members could not receive a payment in return for a reduction in Whitehaven's share capital by reason of the Restriction Deeds.

190 Further, at the time the payments on account of the 2017 Dividend and the 2017 Capital Reduction were made:

(a) the Australian benchmark thermal coal price (6,300 kcal/kg) was in the range of US$95 to US$100 per Mte;

(b) the Australian semi-soft coking coal price traded in the range of US$110 to US$120 per Mte; and

(c) the Australian low volatility PCI (Pulverised Coal Injection) coal price was in the range of US$120 to US$130 per Mte.

191 By reason of the matters alleged in paragraphs 183 to 189, and further or alternatively, by reason of the matters alleged in paragraphs 183 to 190, the payments made on account of the 2017 Dividend and further or alternatively the 2017 Capital Reduction were not fair and reasonable to Whitehaven's shareholders as a whole.

Particulars

The payments were not fair and reasonable to the Plaintiff and Group Members as:

(i) *the Plaintiff and Group Members were not eligible to receive these payments;*

(ii) *the Plaintiff and Group Members were expressly excluded from voting to approve these payments or the 2017 Capital Reduction;*

(iii) *the payments were made despite the matters particularised in paragraph 144; and*

(iv) *the 2017 Capital Reduction was made purportedly on the basis that the money was surplus to requirements despite the matters pleaded in paragraphs 32, 34, 44, 46, 79, 82, 103, 104, 105, 106, 111, 112, 113, 120, 135 and/or 136 (and the particulars to each of those paragraphs).*

192 In the premises of paragraph 191, Whitehaven breached ss 254T and 256B of the Corporations Act.

193 By reason of the breaches of ss 254T and 256B of the Corporations Act referred to in paragraph 192, the Plaintiff seeks orders that:

(a) Whitehaven be restrained from enforcing, or relying on, the Restrictions in the Restriction Deeds against the Plaintiff and Group Members in respect of all or, alternatively, some of the Restricted Shares;

(b) Further or alternatively, Whitehaven be required to execute a variation to the Restriction Deeds to bring about Vesting of some or all of the Restricted Shares;

(c) Whitehaven be ordered to pay damages to the Plaintiff and Group Members (in addition to or in substitution for (a) and (b) above).

2018 First Dividend

194 On 16 February 2018, Whitehaven announced that it had resolved to pay a $0.13 per share unfranked dividend to shareholders.

Particulars

(i) *Whitehaven, ASX Announcement, 16 February 2018, "Notification of dividend / distribution".*

(ii) *Whitehaven, ASX Announcement, 16 February 2018, "HALF YEAR RESULT 2018".*

195 On or around 2 March 2018, Whitehaven paid the $0.13 per share dividend (**2018 First Dividend**) to Whitehaven shareholders for an aggregate payment of approximately $129 million.

Particulars

(i) *Whitehaven, ASX Announcement, 16 February 2018, "Notification of dividend / distribution".*

(ii) *Whitehaven, ASX Announcement, 17 April 2018, "Quarterly Report".*

196 The payments on account of the 2018 First Dividend were made to some of the Whitehaven shareholders in circumstances where, as holders of Restricted Shares, the Plaintiff and Group Members could not receive a dividend by reason of the Restriction Deeds.

197 By reason of the matters alleged in paragraphs 194 to 196, the payments made on account of the 2018 First Dividend were not fair and reasonable to Whitehaven's shareholders as a whole.

Particulars

The payments were not fair and reasonable to the Plaintiff and Group Members as:

(i) *the Plaintiff and Group Members were not eligible to receive these payments;*

(ii) *the payments were made despite the matters particularised in paragraph 144.*

198 In the premises of paragraph 197, Whitehaven breached s 254T of the Corporations Act.

199 By reason of the breach of ss 254T of the Corporations Act referred to in paragraph 198, the Plaintiff seeks orders that:

(a) Whitehaven be restrained from enforcing, or relying on, the Restrictions in the Restriction Deeds against the Plaintiff and Group Members in respect of all or, alternatively, some of the Restricted Shares;

(b) further or alternatively, Whitehaven be required to execute a variation to the Restriction Deeds to bring about Vesting of some or all of the Restricted Shares;

(c) Whitehaven be ordered to pay damages to the Plaintiff and Group Members (in addition to or in substitution for (a) and (b) above).

2018 Second Dividend

200 On 14 August 2018, Whitehaven announced that it had resolved to pay a $0.27 per share unfranked dividend to shareholders, comprised of a final dividend of $0.14 per share and a special dividend of $0.13 per share.

Particulars

(i) *Whitehaven, ASX Announcement, 14 August 2018, "Notification of dividend / distribution".*

(ii) *Whitehaven, Annual Financial Report for the year ended 30 June 2018.*

201 On or around 13 September 2018, Whitehaven paid the $0.27 per share dividend (**2018 Second Dividend**) to Whitehaven shareholders for an aggregate payment of approximately $268 million.

Particulars

(i) *Whitehaven, ASX Announcement, 14 August 2018, "Notification of dividend / distribution".*

(ii) *Whitehaven, ASX Announcement, 16 October 2018, "September Quarter Production Report".*

202 The payments on account of the 2018 Second Dividend were made to some of the Whitehaven shareholders in circumstances where, as holders of Restricted Shares, the Plaintiff and Group Members could not receive a dividend by reason of the Restriction Deeds.

203 By reason of the matters alleged in paragraphs 200 to 202, the payments made on account of the 2018 Second Dividend were not fair and reasonable to Whitehaven's shareholders as a whole.

Particulars

The payments were not fair and reasonable to the Plaintiff and Group Members as:

(i) *the Plaintiff and Group Members were not eligible to receive these payments;*

(ii) *the payments were made despite the matters particularised in paragraph 144.*

204 In the premises of paragraph 203, Whitehaven breached s 254T of the Corporations Act.

205 By reason of the breach of s 254T of the Corporations Act referred to in paragraph 204, the Plaintiff seeks orders that:

(a) Whitehaven be restrained from enforcing, or relying on, the Restrictions in the Restriction Deeds against the Plaintiff and Group Members in respect of all or, alternatively, some of the Restricted Shares;

(b) further or alternatively, Whitehaven be required to execute a variation to the Restriction Deeds to bring about Vesting of some or all of the Restricted Shares;

(c) Whitehaven be ordered to pay damages to the Plaintiff and Group Members (in addition to or in substitution for (a) and (b) above).

2019 First Dividend

206 On 15 February 2019, Whitehaven announced that it had resolved to pay a $0.20 per share unfranked dividend to shareholders, comprised of an interim dividend of $0.15 per share and a special dividend of $0.05 per share.

Particulars

(i) *Whitehaven, ASX Announcement, 15 February 2019, "Notification of dividend / distribution".*

(ii) *Whitehaven, ASX Announcement, 15 February 2019, "HALF YEAR RESULT 2019".*

207 On or around 6 March 2019, Whitehaven paid the $0.20 per share dividend (**2019 First Dividend**) to Whitehaven shareholders for an aggregate payment of approximately $198 million.

Particulars

(i) *Whitehaven, ASX Announcement, 15 February 2019, "Notification of dividend / distribution".*

(ii) *Whitehaven, Annual Financial Report 2019.*

208 The payments on account of the 2019 First Dividend were made to some of the Whitehaven shareholders in circumstances where, as holders of Restricted Shares, the Plaintiff and Group Members could not receive a dividend by reason of the Restriction Deeds.

209 By reason of the matters alleged in paragraphs 206 to 208, the payments made on account of the 2019 First Dividend were not fair and reasonable to Whitehaven's shareholders as a whole.

Particulars

The payments were not fair and reasonable to the Plaintiff and Group Members as:

(i) *the Plaintiff and Group Members were not eligible to receive these payments;*

(ii) *the payments were made despite the matters particularised in paragraph 144.*

210 In the premises of paragraph 209, Whitehaven breached s 254T of the Corporations Act.

211 By reason of the breach of s 254T of the Corporations Act referred to in paragraph 210, the Plaintiff seeks orders that:

(a) Whitehaven be restrained from enforcing, or relying on, the Restrictions in the Restriction Deeds against the Plaintiff and Group Members in respect of all or, alternatively, some of the Restricted Shares;

(b) further or alternatively, Whitehaven be required to execute a variation to the Restriction Deeds to bring about Vesting of some or all of the Restricted Shares;

(c) Whitehaven be ordered to pay damages to the Plaintiff and Group Members (in addition to or in substitution for (a) and (b) above).

2019 Second Dividend

212 On 15 August 2019, Whitehaven announced that it had resolved to pay a $0.30 per share dividend to shareholders, comprised of a dividend of $0.13 per share, franked to 50%, and a special dividend of $0.17 per share, unfranked.

Particulars

(i) *Whitehaven, ASX Announcement, 15 August 2019, "Notification of dividend / distribution".*

(ii) *Whitehaven, Annual Financial Report 2019.*

213 On or around 19 September 2019, Whitehaven paid the $0.30 per share dividend (**2019 Second Dividend**) to Whitehaven shareholders for an aggregate payment of approximately $298 million.

Particulars

(i) *Whitehaven, Annual Financial Report 2019.*

(ii) *ASX Announcement, 20 February 2020, "Appendix 4D – Half Year Report".*

214 The payments on account of the 2019 Second Dividend were made to some of the Whitehaven shareholders in circumstances where, as holders of Restricted Shares, the Plaintiff and Group Members could not receive a dividend by reason of the Restriction Deeds.

215 By reason of the matters alleged in paragraphs 212 to 214, the payments made on account of the 2019 Second Dividend were not fair and reasonable to Whitehaven's shareholders as a whole.

Particulars

The payments were not fair and reasonable to the Plaintiff and Group Members as:

(i) *the Plaintiff and Group Members were not eligible to receive these payments;*

(ii) *the payments were made despite the matters particularised in paragraph 144.*

216 In the premises of paragraph 215, Whitehaven breached s 254T of the Corporations Act.

217 By reason of the breach of s 254T of the Corporations Act referred to in paragraph 216, the Plaintiff seeks orders that:

(a) Whitehaven be restrained from enforcing, or relying on, the Restrictions in the Restriction Deeds against the Plaintiff and Group Members in respect of all or, alternatively, some of the Restricted Shares;

(b) further or alternatively, Whitehaven be required to execute a variation to the Restriction Deeds to bring about Vesting of some or all of the Restricted Shares;

(c) Whitehaven be ordered to pay damages to the Plaintiff and Group Members (in addition to or in substitution for (a) and (b) above).

2020 Dividend

218 On 20 February 2020, Whitehaven announced that it had resolved to pay a $0.015 per share unfranked interim dividend to shareholders.

Particulars

Whitehaven, ASX Announcement, 20 February 2020, "Notification of dividend / distribution".

219 On or around 6 March 2020, Whitehaven paid the $0.015 per share dividend (**2020 Dividend**) to Whitehaven shareholders for an aggregate payment of approximately $14.9 million.

Particulars

(i) *Whitehaven, ASX Announcement, 20 February 2020, "Notification of dividend / distribution".*

(ii) *Whitehaven, Annual Financial Report 2020.*

220 The payments on account of the 2020 Dividend were made to some of the Whitehaven shareholders in circumstances where, as holders of Restricted Shares, the Plaintiff and Group Members could not receive a dividend by reason of the Restriction Deeds.

221 By reason of the matters alleged in paragraphs 218 to 220, the payments made on account of the 2020 Dividend were not fair and reasonable to Whitehaven's shareholders as a whole.

Particulars

The payments were not fair and reasonable to the Plaintiff and Group Members as:

(i) *the Plaintiff and Group Members were not eligible to receive these payments;*

(ii) *the payments were made despite the matters particularised in paragraph 144.*

222 In the premises of paragraph 221, Whitehaven breached s 254T of the Corporations Act.

223 By reason of the breach of s 254T of the Corporations Act referred to in paragraph 222, the Plaintiff seeks orders that:

(a) Whitehaven be restrained from enforcing, or relying on, the Restrictions in the Restriction Deeds against the Plaintiff and Group Members in respect of all or, alternatively, some of the Restricted Shares;

(b) further or alternatively, Whitehaven be required to execute a variation to the Restriction Deeds to bring about Vesting of some or all of the Restricted Shares;

(c) Whitehaven be ordered to pay damages to the Plaintiff and Group Members (in addition to or in substitution for (a) and (b) above).

2022 Dividend and 2022 Share Buy-back

224 On 17 February 2022, Whitehaven announced that it had resolved to pay a $0.08 per share unfranked dividend to shareholders.

Particulars

(i) *Whitehaven, ASX Announcement,* 17 February 2022*, "Notification of dividend / distribution".*

(ii) *Whitehaven, ASX Announcement,* 17 February 2022*, "HALF YEAR RESULTS FY22".*

225 On 17 February 2022, Whitehaven announced that it intended to undertake an on-market share buyback program of up to 10% of its issued shares, and capped at $400 million in total (**2022 Share Buy-back**).

Particulars

(i) *Whitehaven, ASX Announcement, 17 February 2022, "HALF YEAR RESULTS FY22".*

(ii) *Whitehaven, ASX Announcement, 17 February 2022, "Notification of buy-back".*

226 On or around 11 March 2022, Whitehaven paid the $0.08 per share dividend (**2022 Dividend**) to Whitehaven shareholders for an aggregate payment of approximately $79 million.

Particulars

The payment of the 2022 Dividend to Whitehaven shareholders is implied from:

(i) *Whitehaven, ASX Announcement, 17 February 2022, "Notification of buy-back".*

(ii) *The absence of a notification by Whitehaven that it did not pay the 2022 Dividend in accordance with the announcement in (i) above.*

227 On 16 March 2022, Whitehaven announced that, in furtherance of the 2022 Share Buy-back, it had bought back 10,366,598 of its shares from Whitehaven shareholders for an aggregate payment of $41,556,268.96 comprised of:

(a) in period up to and including 14 March 2022, it had bought back 8,450,984 of its shares for an aggregate payment of $33,958,061.23; and

(b) on 15 March 2022, it had bought back 1,914,614 of its shares for an aggregate payment of $7,610,207.73.

Particulars

Whitehaven, ASX Announcement, 16 March 2022, "Notification of buy-back".

228 The payments on account of the 2022 Dividend and the 2022 Share Buy-back were made to some of the Whitehaven shareholders in circumstances where, as holders of Restricted Shares:

(a) the Plaintiff and Group Members could not receive a dividend by reason of the Restriction Deeds; and

(b) the Plaintiff and Group Members could not participate in the 2022 Share Buy-back by reason of the Restriction Deeds.

229 By reason of the matters alleged in paragraphs 224 to 228, the payments made on account of the 2022 Dividend were not fair and reasonable to Whitehaven's shareholders as a whole.

Particulars

The payments were not fair and reasonable to the Plaintiff and Group Members as:

(i) *the Plaintiff and Group Members were not eligible to receive these payments;*

(ii) *the payments were made despite the matters particularised in paragraph 144.*

230 In the premises of paragraph 229, Whitehaven breached s 254T of the Corporations Act.

231 By reason of the breach of s 254T of the Corporations Act referred to in paragraph 230, the Plaintiff seeks orders that:

(a) Whitehaven be restrained from enforcing, or relying on, the Restrictions in the Restriction Deeds against the Plaintiff and Group Members in respect of all or, alternatively, some of the Restricted Shares;

(b) further or alternatively, Whitehaven be required to execute a variation to the Restriction Deeds to bring about Vesting of some or all of the Restricted Shares;

(c) Whitehaven be ordered to pay damages to the Plaintiff and Group Members (in addition to or in substitution for (a) and (b) above).

J5. Oppression

232 During the Relevant Period, the conduct of Whitehaven's affairs and the acts or omissions by or on behalf of Whitehaven as pleaded in each of paragraphs 50, 55, 58, 63, 67, 106 to 108, 114, 133, 137, 141, 142, 143, 158, 161, 164, 167, 170, 173, 176, 185, 188, 189, 190, 191, 192, 194 to 198, 200 to 204, 206 to 210, 212 to 216, 218 to 222 and 224 to 230:

(a) were oppressive to, unfairly prejudicial to, and unfairly discriminatory against the Plaintiff and Group Members, in their capacity as holders of the Restricted Shares and otherwise; and

(b) give rise to an entitlement on the part of the Plaintiff and Group Members to seek the relief sought in these proceedings.

233 Further to paragraph 232, the following acts or omissions were oppressive to, unfairly prejudicial to, and unfairly discriminatory against the Plaintiff and Group Members, in their capacity as holders of the Restricted Shares:

(a) Whitehaven, during the Relevant Period paying the 2017 Dividend, making the 2017 Capital Reduction, paying the 2018 First Dividend, paying the 2018 Second Dividend, paying the 2019 First Dividend, paying the 2019 Second Dividend, paying the 2020 Dividend, paying the 2022 Dividend and implementing the 2022 Share Buy-back in circumstances where the Plaintiff and Group Members had no right to receive any distribution, nor vote, nor participate in any buy-back, by reason of the Restriction Deeds and contrary to ss 254T and 256B of the Corporations Act;

(b) Further or alternatively, Whitehaven, during the Relevant Period, receiving the benefit of the $150M Capital Injection without taking any adequate steps to achieve two Approvals in the premises of paragraphs 164 to 180; and

(c) Whitehaven, during the Relevant Period, ceasing to take steps to obtain an Approval with respect to any of the Milestone Projects, limiting its work on the Milestone Projects to the minimum necessary to keep them in good standing with the relevant government authority, failing to pursue a sale process in relation to any of the Milestone Projects so as to enable a Non-Whitehaven-controlled Approval to occur and abandoning the Milestone Projects as alleged in paragraph 143 above.

Annexure A – Common Questions of Law or Fact and Related Circumstances

Defined terms in this annexure have the same meaning as in the balance of this Further Amended Statement of Claim. The questions of law or fact and same, similar or related circumstances that are common to the claims of Group Members are:

Circumstances

1. By virtue of the Agreements the Plaintiff and Group Members entered into an agreement to sell their shares in Boardwalk to Whitehaven on certain terms and conditions (**Boardwalk Transaction**).

2. The Boardwalk Transaction was conditional on a merger between Aston and Whitehaven proceeding and being approved by the Federal Court of Australia (**Merger**).

3. If the Boardwalk Transaction and the Merger proceeded the Plaintiff and Group Members who held shares in Boardwalk would receive the Restricted Shares in Whitehaven that would trigger and become fully paid up shares in Whitehaven upon one or more of the Milestone Projects being approved.

4. Restricted Shares are shares in Whitehaven that become fully paid up shares upon 2 of the 4 Milestone Projects identified in the Boardwalk Transaction being approved.

5. Whitehaven represented that, if the Boardwalk Transaction and the Merger proceeded, it would invest monies paid to Boardwalk by BRI into Boardwalk's operations and thereby trigger the Restricted Shares.

6. Whitehaven and Aston recommended to their respective shareholders that they proceed with the Boardwalk Transaction and the Merger.

7. The Boardwalk Transaction was approved by Whitehaven shareholders in extraordinary general meeting and Aston shareholders approved the Merger in extraordinary general meeting.

8. On 18 April 2012, the Federal Court of Australia approved the Merger.

9. On or about 2 May 2012 the Merger was implemented and the Boardwalk Transaction was completed.

10. The Plaintiff and Group Members were issued with Whitehaven shares and Restricted Shares. On and from a date after 31 December 2012, Whitehaven and Boardwalk have failed to proceed with the Milestone Projects and because of this

have failed to trigger the Restricted Shares such that all of the Restricted Shares held by the Plaintiff and Group Members remain restricted.

Common Questions

1. Are the Group Members the holders, or entitled to be the holders, of fully paid ordinary shares in Whitehaven subject to the provisions of a Restriction Deed?

2. Did the Group Members appoint Mr Tinkler as their agent and attorney in relation to all matters relating to the acquisition by Whitehaven of all of the shares in Boardwalk?

3. Did Whitehaven make the Use of Funds Representation to the Group Members?

4. Did Whitehaven repeat the Use of Funds Representation to the Group Members?

5. Did the Group Members enter into one or more Share Purchase Agreements, Warrant Purchase Agreements or Minority Lenders Purchase Agreements?

6. If the answer to question (5) is yes, did the Agreements contain the express terms alleged at FASOC 89?

7. If the answer to question (5) is yes, did the Agreements contain the Duty of Cooperation, Good Faith Term, Use of Funds Term and/or Reasonable Endeavours Term?

8. Did the Group Members enter into one or more Restriction Deeds?

9. If the answer to question (8) is yes, did the Restriction Deeds contain the express terms alleged at FASOC 90 to 98?

10. If the answer to question (8) is yes, did the Restriction Deeds contain the Deed Duty of Cooperation, Deed Good Faith Term, Reasonable Endeavours Term and/or Use of Funds Term?

11. Did Whitehaven, Mr Tinkler, and the Group Members adopt the Assumption?

12. Have the Group Members occasioned detriment by reason of Whitehaven's departure from the Assumption?

13. Did Whitehaven create or encourage in the Group Members the Promise?

14. Did the Group Members rely on the Promise and/or the Assumption?

15. Did the Group Members transfer all their shares and other equity interests in Boardwalk to Whitehaven on the terms set out in the Agreements and the Restriction Deeds?

16. Did Whitehaven pay the 2017 Dividend and the 2017 Capital Reduction to shareholders in Whitehaven to the exclusion of the Group Members?

17. Did Whitehaven breach the Full Effect Term in the Restriction Deeds and, if so, have the Group Members suffered loss and damage?

18. Did Whitehaven breach the Duty of Cooperation and/or the Deed Duty of Cooperation and, if so, have the Group Members suffered loss and damage?

19. Did Whitehaven breach the Good Faith Term and/or the Deed Good Faith Term and, if so, have the Group Members suffered loss and damage?

20. Did Whitehaven breach the Use of Funds Term in the Agreements and/or the Restriction Deeds. If so, have the Group Members suffered loss and damage?

21. Did Whitehaven breach the Reasonable Endeavours Term in the Agreements and/or the Restriction Deeds. If so, have the Group Members suffered loss and damage?

22. Did Whitehaven breach ss 254T and 256B of the Corporations Act by declaring the 2017 Dividend and/or making the 2017 Capital Reduction?

23. Were Whitehaven's acts or omissions pleaded in FASOC 194 and/or FASOC 195 oppressive to, unfairly prejudicial to, and unfairly discriminatory against the Group Members?

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act* 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature	
Capacity	Solicitor
Date of signature	14 April 2022

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

1 **If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.

2 **If money is claimed, and you believe you owe the money claimed,** by:

- Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
- Filing an acknowledgement of the claim.
- Applying to the court for further time to pay the claim.

3 **If money is claimed, and you believe you owe part of the money claimed**, by:

- Paying the plaintiff that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS	
Street address	Law Courts Building, 184 Phillip Street, Sydney NSW
Postal address	Supreme Court of NSW, GPO Box 3, NSW 2001, Australia
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name	Leslie Norman Tinkler
Address	338 Blackbutt Road, Herons Creek NSW 2443
Occupation	Director
Date	FOURTEEN. April 2022

I affirm:

1 I am the sole director and secretary of the plaintiff, and am authorised to swear this affidavit on its behalf.

2 I believe that the allegations of fact in the statement of claim are true.

AFFIRMED at	HERONS CREEK
Signature of deponent	L Tinkler
Name of witness	John Cameron Biggs
Address of witness	Level 23, 85 Castlereagh Street, Sydney
Capacity of witness	Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1 I saw the face of the deponent.

2 I have confirmed the deponent's identity using the following identification document:

NSW Heavy Vehicle Driver Licence

Identification document relied on (may be original or certified copy)

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

I, John Cameron Biggs, attest that this document was signed in counterpart and witnessed by me by audio-visual link in accordance with section 14G of the *Electronic Transactions Act* 2000 (NSW).

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name	Les & Zelda Investments Pty Ltd (ACN 148 907 573) as trustee for Les & Zelda Family Trust
Address	C/- Level 22, Riverside 123 Eagle Street Brisbane QLD 4000

Legal representative for plaintiff

Name	John Biggs
Practising certificate number	30692
Firm	Watson Mangioni Lawyers Pty Ltd
Address	Level 23, 85 Castlereagh Street Sydney NSW 2000
Telephone	02 9262 6666
Email	jbiggs@wmlaw.com.au
Electronic service address	jbiggs@wmlaw.com.au

DETAILS ABOUT DEFENDANT

Defendant

Name	Whitehaven Coal Limited ABN 68 124 425 396
Address	Level 28, 259 George Street Sydney NSW 2000