

 **Gloucester Coal Ltd**
GLOUCESTER COAL LTD
ABN 66 008 881 712



WHITEHAVEN COAL LTD
ABN 68 124 425 396

AUSTRALIAN SECURITIES EXCHANGE AND MEDIA RELEASE

GLOUCESTER AND WHITEHAVEN ANNOUNCE MERGER

Gloucester Coal Limited (“Gloucester”) and Whitehaven Coal Limited (“Whitehaven”) today announced that they have agreed to merge through an off-market scrip takeover offer (the “Offer”) by Gloucester for all the shares in Whitehaven

The combined entity will be a leading ASX listed coal company with a market capitalisation of approximately A\$900 million. Key features of the combined entity include:

- Portfolio of stable, low risk and low cost operations to support major projects in various stages of development
- Significant coal blending synergies
- Greater product diversity
- Significant cash in reserve and substantial future cash flows
- More financial flexibility
 - Capacity to raise debt for future projects and acquisitions
 - Larger corporate entity with increased liquidity
- Experienced and capable board and management team

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Transaction Highlights

Whitehaven shareholders are being offered 1 Gloucester share for every 2.45 Whitehaven shares.

Whitehaven shareholders will be entitled to receive Whitehaven’s interim dividend of up to A\$0.025 per share, but will not receive Gloucester’s interim dividend of up to A\$0.135 per share.

The Boards of Gloucester and Whitehaven believe the combined entity will be better positioned for significant growth than either company would have been individually.

The merger will combine two companies with complementary operational, development and exploration profiles and create a group with combined reserves of 190 Mt and resources of 922 Mt with saleable production of 4.5 Mt



(100% basis) in calendar year 2008. It will have seven existing mining operations, two new projects in development and a portfolio of exploration assets. It will have a net cash balance of approximately A\$102 million excluding equipment finance lease liabilities of approximately A\$51m (as at 31 December 2008) and a strong financial and operational platform from which to grow both organically and through further acquisition.

Upon completion of the merger, Mr. John Conde, Chairman of Whitehaven, will become Chairman and Mr. Andy Hogendijk, current Chairman of Gloucester, will become Deputy Chairman of the combined entity. Mr Tony Haggarty, current Managing Director of Whitehaven, will become Managing Director for a period of time after which, it is expected that the role will be transitioned to Rob Lord, the current Managing Director of Gloucester. The current directors of both companies will join the Board of the merged entity, with an intention of reducing the number of directors in due course.

The senior management team will be formed from the two companies' existing management teams. Given the lean management structure of both companies and the development pipeline of the combined group, overlap of roles is expected to be minimal.

At some stage after completion, it is likely that the combined entity will be re-named, reflecting the new and expanded business that will be created through the merger.

Directors of both companies are strongly supportive of the proposed merger and Whitehaven Directors have resolved unanimously to recommend that shareholders accept Gloucester's offer in the absence of a superior proposal. Whitehaven Directors have also indicated that they intend to accept the Gloucester offer in respect of their own shareholdings (which collectively represent 74% of Whitehaven shares) in the absence of a superior proposal.

Gloucester has also entered into Pre-Bid Acceptance Deeds in respect of 19.9% of the shares in Whitehaven, under which Gloucester can require the relevant shareholders to accept the Gloucester offer.

"We are proposing a merger that is expected to deliver significant benefits to both groups of shareholders", said Mr Conde and Mr Hogendijk in a joint statement:

"The Boards of both companies consider that relative sharemarket valuations are the appropriate measure to ensure both groups of shareholders receive equivalent value in the proposed transaction. The ratio of 1 Gloucester share for every 2.45 Whitehaven shares reflects this and is broadly consistent with the ratio implied by the volume weighted average prices of both companies over the past couple of months leading up to the announcement", the Chairmen said.



The Chairmen continued, "We believe the proposed transaction will create value for both Gloucester and Whitehaven shareholders. The two companies have complementary operating assets and development projects and the merged entity will be well positioned to deliver strong growth over the next five years."

Mr Conde added, "In addition, with both companies having highly-skilled workforces and management teams, we are confident the merged entity will continue to deliver outstanding operational performance."

Merger rationale

- **Coal blending synergies** – the merger is expected to generate significant synergies associated with blending Gloucester's high sulphur, high ash thermal coal with Whitehaven's low sulphur, low ash thermal coal.
- **Quality portfolio of operating coal assets** – stable, low risk and low cost operations in NSW, exporting thermal and metallurgical coal via the Port of Newcastle to major long term customers, primarily in North Asia. Operating mines owned by the merged entity will be the Canyon, Sunnyside, Tarrawonga, Rocglen, Werris Creek, Stratford and Duralie mines.
- **Major growth projects** - the merged entity will own high quality open cut and underground coal assets spanning early exploration, development and production. Assets in the development stage include Narrabri in the Gunnedah Basin and Clareval (at Duralie) in the Gloucester Basin.
- **Product and mine type diversification** – the merged entity provides both groups of shareholders with increased diversity of operations. Port and rail diversification will also enhance the flexibility of the merged entity to diversify risk and optimise production and sales.
- **Strong balance sheet** – the merged entity will have significant balance sheet strength with a proforma net cash position as at 31 December 2008 of approximately A\$102 million excluding equipment finance lease liabilities of approximately A\$51m. Cashflow for the combined entity should allow ongoing dividend payments and funding of the planned capital investment program.
- **Increased market capitalisation and liquidity** – the merged entity will have an equity market value of approximately A\$900 million, placing it within the top 100 of the ASX listed companies. This enhanced scale is likely to provide greater liquidity for investors and provide the combined entity with greater flexibility to pursue a wider range of growth initiatives.



Transaction details

A Merger Implementation Agreement has been signed by both parties, under which they have agreed to proceed with a merger by way of an off-market takeover offer by Gloucester for all of Whitehaven's outstanding shares.

Under the terms of the Offer, Whitehaven shareholders will receive 1 Gloucester share for every 2.45 Whitehaven shares they hold. Gloucester shareholders will continue to hold their existing ordinary shares.

The Offer is subject to a number of conditions including 80% acceptance by Whitehaven shareholders and FIRB approval.

The full terms of the conditions to the offer are set out in Attachment 1.

Holders of options in Whitehaven will be offered options in Gloucester that replicate their existing position in Whitehaven.

The Merger Implementation Agreement also includes a commitment by Whitehaven not to solicit alternative transactions to the merger. Whitehaven has agreed to pay a break fee to Gloucester of A\$4.5m under certain circumstances. Further details regarding the key terms of the Merger Implementation Agreement in relation to these matters are set out in Attachment 2.

The Bidder's and Target's Statements are planned to be dispatched in early March 2009.

Advisers

UBS Investment Bank is acting as financial adviser to Gloucester and Freehills is Gloucester's legal adviser.

Grant Samuel and Wilson HTM are acting as financial advisers to Whitehaven and McCullough Robertson is Whitehaven's legal adviser.



Presentation details

The Managing Directors of Gloucester and Whitehaven will conduct a conference call at 11am on Friday, 20 February 2009. Dial in details will be provided on the Companies' respective websites.

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Attachment 1 – Conditions

(a) **Foreign Investment Review Board approval**

One of the following occurring:

- (1) the Treasurer of the Commonwealth of Australia (**Treasurer**) advising Gloucester before the end of the Offer Period to the effect that there are no objections to the Takeover Bid constituted by the dispatch of the Offer in terms of the Federal Government's foreign investment policy; or
- (2) no order being made in relation to the Takeover Bid constituted by the dispatch of the Offer under section 22 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) within a period of 40 days after Gloucester has notified the Treasurer that it proposes to acquire Shares under that Takeover Bid, and no notice being given by the Treasurer to Gloucester during that period to the effect that there are any such objections; or
- (3) where an order is made under section 22 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth), a period of 90 days having expired after the order comes into operation and no notice having been given by the Treasurer to Gloucester during that period to the effect that there are any such objections.

(b) **Other regulatory approvals**

Before the end of the Offer Period, all approvals or consents that are required by law, or by any public authority, as are necessary to permit:

- (1) the Offer to be lawfully made to and accepted by Whitehaven shareholders; and
- (2) the transactions contemplated by the Bidder's Statement to be completed (including, without limitation, full, lawful and effectual implementation of the intentions set out in the Bidder's Statement),

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same.

(c) **No regulatory action**

Between the Announcement Date and the end of the Offer Period (each inclusive):

- (1) there is not in effect any preliminary or final decision, order or decree issued by any Public Authority;
- (2) no action or investigation is announced, commenced or threatened by any Public Authority; and
- (3) no application is made to any Public Authority (other than by Gloucester or any associate of Gloucester),

in consequence of or in connection with the Offer (other than an application to, or a decision or order of, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, or materially impact upon, the making of the Offers and the completion of any transaction contemplated by the Bidder's Statement (including, without limitation, full, lawful, timely and effectual implementation of the intentions set out in the Bidder's Statement) or which requires the divestiture by Gloucester of any Shares or any material assets of Whitehaven or any subsidiary of Whitehaven.

(d) **Minimum acceptance**

At the end of the Offer Period, Gloucester has relevant interests in at least 80% of the Shares.

(e) **No material adverse change**

Between the Announcement Date and the end of the Offer Period (each inclusive):

- (1) any matter, event or circumstance which occurs, is announced or becomes known to Gloucester (individually or when aggregated with all such matters, events or circumstances) has resulted in or is likely to result in:
 - (A) the value of consolidated net assets of the Whitehaven Group being reduced by at least \$25 million against what they would reasonably have been expected to have been but for the matters, events or circumstances; or
 - (B) the consolidated annual net profit after tax of the Whitehaven Group in respect of either the financial year ending 30 June 2009 or the financial year ending 30 June 2010 being reduced by at least \$10 million against what it would reasonably have been expected to have been but for the matters, events, or circumstances; or
- (2) an event takes place or is reasonably likely to take place which would prevent Whitehaven from operating its existing mines or completing its development activities and such the event is sufficiently adverse to the financial position, profitability or prospects of Whitehaven so as to affect the commercial viability of the Takeover Bid in a material respect,

but does not include:

- (3) any matter, event or circumstance arising from changes in economic or business conditions (including changes in coal prices or currency exchange rates) which impacts on Whitehaven and its competitors in a similar manner;
- (4) shipping delays;
- (5) any change in taxation rates or the law relating to taxation, interest rates or general economic conditions which impacts on Whitehaven and its competitors in a similar manner; or
- (6) any change in accounting policy required by law which impacts on Whitehaven and its competitors in a similar manner.

(f) **No persons entitled to exercise or exercising rights under certain agreements or instruments**

Between the Announcement Date and the end of the Offer Period (each inclusive), there is no person entitled to exercise, exercising or purporting to exercise, stating an intention to exercise (whether or not that intention is stated to be a final or determined decision of that person), or asserting a right to exercise, any rights under any provision of any agreement or other instrument to which Whitehaven or any Subsidiary of Whitehaven is a party, or by or to which Whitehaven or any Subsidiary of Whitehaven or any of its assets or businesses may be bound or be subject, which results, or could result, to an extent to which is material in the context of Whitehaven Group taken as a whole, in:

- (1) any moneys borrowed by Whitehaven or any Subsidiary of Whitehaven being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (2) any such agreement or other such instrument being terminated or modified or any action being taken or arising thereunder;
- (3) the interest of Whitehaven or any Subsidiary of Whitehaven in any firm, joint venture, trust corporation or other entity (or any arrangements relating to such interest) being terminated or modified;
- (4) the assets of Whitehaven or any Subsidiary of Whitehaven being sold transferred or offered for sale or transfer, or the assets or shares in companies, joint ventures or other entities in which Whitehaven or a Subsidiary of Whitehaven owns or has an interest being put to Whitehaven or a Subsidiary of Whitehaven, including under any pre-emptive rights or similar provisions; or
- (5) the business of Whitehaven or any Subsidiary of Whitehaven with any other person being adversely affected.

(g) **Acquisitions, disposals and expenditures**

Between the Announcement Date and the end of the Offer Period (each inclusive), neither Whitehaven nor any of its Subsidiaries, without the prior written consent of Gloucester, acquires or disposes of, or enters into or announces any agreement for the acquisition or disposal of, any asset or business, or enters into any corporate transaction, which would or would be likely to involve a material change in:

- (1) the manner in which Whitehaven conducts its business;
- (2) the nature (including balance sheet classification), extent or value of the assets of Whitehaven; or
- (3) the nature (including balance sheet classification), extent or value of the liabilities of Whitehaven,

including, without limitation, any transaction which would or (subject to one or more conditions) may involve Whitehaven or any Subsidiary of Whitehaven:

- (4) acquiring, or agreeing to acquire, one or more companies, businesses or assets for an amount in aggregate greater than \$7.5 million;

- (5) disposing, or agreeing to dispose of, one or more companies, businesses or assets (or any interest therein) for an amount in aggregate greater than \$7.5 million;
- (6) entering into any contract or commitment requiring payments by Whitehaven and its Subsidiaries in excess of \$7.5 million or any other contract or commitment that cannot be terminated on less than 12 months' notice without penalty;
- (7) providing financial accommodation other than to members of the Whitehaven Group in excess of \$7.5 million;
- (8) entering into any agreement or arrangement with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges made in the ordinary course of business and in accordance with existing policy as at the date of this agreement; or
- (9) incurring or agreeing to incur an amount of capital expenditure in excess of \$7.5 million other than capital expenditure that has been announced by Whitehaven before the Announcement Date as intended to be incurred or committed or capital expenditure in the day to day operating activities of the business of Whitehaven and its subsidiaries conducted in the same manner as before the Announcement Date.

(h) **No section 652C prescribed occurrences**

Between the Announcement Date and the date 3 business days after the end of the Offer Period (each inclusive), none of the following prescribed occurrences (being the occurrences listed in section 652C of the Corporations Act) happen:

- (1) Whitehaven converting all or any of the Shares into a larger or smaller number of shares under section 254H of the Corporations Act;
- (2) Whitehaven or a Subsidiary of Whitehaven resolving to reduce its share capital in any way;
- (3) Whitehaven or a Subsidiary of Whitehaven entering into a buyback agreement or resolving to approve the terms of a buyback agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (4) Whitehaven or a Subsidiary of Whitehaven making an issue of Shares (other than Shares issued as a result of the exercise of Options into Shares) or granting an option over the Shares or agreeing to make such an issue or grant such an option;
- (5) Whitehaven or a Subsidiary of Whitehaven issuing, or agreeing to issue, convertible notes;
- (6) Whitehaven or a Subsidiary of Whitehaven disposing or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (7) Whitehaven or a Subsidiary of Whitehaven charging, or agreeing to charge, the whole, or a substantial part, of its business or property;
- (8) Whitehaven or a Subsidiary of Whitehaven resolving that it be wound up;

- (9) the appointment of a liquidator or provisional liquidator of Whitehaven or of a Subsidiary of Whitehaven;
- (10) the making of an order by a court for the winding up of Whitehaven or of a Subsidiary of Whitehaven;
- (11) an administrator of Whitehaven or of a subsidiary of Whitehaven being appointed under section 436A, 436B or 436C of the Corporations Act;
- (12) Whitehaven or a Subsidiary of Whitehaven executing a deed of company arrangement; or
- (13) the appointment of a receiver, receiver and manager, other controller (as defined in the Corporations Act) or similar official in relation to the whole, or a substantial part, of the property of Whitehaven or of a Subsidiary of Whitehaven.

(i) **No distributions**

Between the Announcement Date and the end of the Offer Period (each inclusive), Whitehaven does not announce, make, declare or pay any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than the Whitehaven Permitted Dividend.

Attachment 2 – Merger Implementation Agreement

1 Break Fee

1.1 Payment of costs incurred by Gloucester

Subject to clause 1.2, Whitehaven must pay the Break Fee to Gloucester, without set-off or withholding, if:

- (a) a Third Party Proposal in relation to Whitehaven or a Subsidiary of Whitehaven is announced (whether or not such proposal is stated to be subject to any pre-conditions) or is open for acceptance, before the end of the Offer Period, or at any time within 2 months after the end of the Offer Period; or
- (b) a Third Party who at the date of this agreement does not have at least 5% Voting Power in Whitehaven acquires such Voting Power, or has entered into swaps or similar arrangements giving economic exposure to at least 5% of the Shares during the Offer Period,

and in each case the Third Party (or any Associate of the Third Party) acquires control (within the meaning of section 50AA of the Corporations Act) of Whitehaven, or acquires at least 30% Voting Power in Whitehaven, or otherwise completes a transaction within paragraphs 1, 4 or 5 of the definition of Third Party Proposal, on or before the date which is 12 months after the date of this agreement; or

- (c) (in the absence of a Gloucester entitlement event, Gloucester MAC, Gloucester transaction or Gloucester prescribed occurrence) any Director fails to recommend that Shareholders accept the Offers in the absence of a superior proposal or, having made such a recommendation, withdraws, revises or qualifies that recommendation; or
- (d) (in the absence of a Gloucester entitlement event, Gloucester MAC, Gloucester transaction or Gloucester prescribed occurrence) if any Director recommends that Shareholders accept, vote in favour of or otherwise support a Third Party Proposal in relation to or involving Whitehaven or a Subsidiary of Whitehaven which is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Offer Period or within 2 months after the end of the Offer Period.

1.2 No payment if agreement terminated or Takeover Bid successful

The Break Fee is not payable under clause 1.1 if:

- (a) prior to an event referred to in any one of the paragraphs of that clause occurring, this agreement has already been validly terminated by Whitehaven; or

- (b) the Offer is made and 3 Business Days after the end of the Offer Period all conditions have been satisfied or waived by Gloucester, despite the occurrence of any event under clause 1.1.

1.3 Compliance with law

This clause 1 does not impose an obligation on Whitehaven to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee:

- (a) is declared by the Takeovers Panel to constitute Unacceptable Circumstances; or
- (b) is determined to be unenforceable as determined by a court,

after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted. The parties must take all reasonable steps to ensure that any such declaration determination applies to the minimum extent possible.

2 Exclusivity

2.1 No-talk

Subject to clause 2.3 from the date of this agreement until the end of the Offer Period (each date inclusive), each party must not, and must procure that none of its respective Representatives or Subsidiaries (or any Representative of a Subsidiary):

- (a) directly or indirectly participates in or continues any discussions or negotiations;
- (b) provides or makes available any information (including by way of providing information and access to perform due diligence on the relevant party);
- (c) enters into any agreement, arrangement or understanding; or
- (d) communicates any intention or agreement to do any of the things referred to in clauses 2.1(a), 2.1(b) or 2.1(c),

in relation to a Third Party Proposal, or which would reasonably be expected to lead to a Third Party Proposal being announced (whether or not such Third Party Proposal is subject to any pre-conditions) or occurring, or which would reasonably be expected to result in a condition to the Offers being triggered or becoming incapable of being fulfilled or lead to the Takeover Bid not completing.

2.2 No-shop

From the date of this agreement until the end of the Offer Period (each date inclusive), each party must not, and must ensure that none of its Representatives or Subsidiaries (or any Representative of any Subsidiary):

- (a) solicit, (including by way of providing information concerning the relevant party to any person), invite, directly or indirectly, enquiries, discussions or proposals in relation to, or which would reasonably be expected to lead to, a Third Party Proposal; or

- (b) communicate to any person an intention or agreement to do any of the things referred to in clause 2.2(a).

2.3 Limitation to No-talk

Subject to clause 2.7, each party, its Representatives, its Subsidiaries (and any Representative of any Subsidiary) may undertake any action that would otherwise be prohibited by clause 2.1, in relation to a bona fide Third Party Proposal which was not solicited by it and was not otherwise brought about (directly or indirectly) as a result of any breach by it of its obligations under clause 2.2 where the board of the relevant party, acting in good faith, determines after taking written advice from its external lawyers, that not undertaking that act would reasonably be likely to involve a breach of the fiduciary duties owed by any director or would otherwise be unlawful.

2.4 Notification of approaches

Subject to clause 2.5, from the date of this agreement until the end of the Offer Period, each party must notify the other as soon as possible in writing if it, its Representatives or any of its Subsidiary (or any Representative of any Subsidiary) or any of their Representatives becomes aware of any:

- (a) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any expression of interest, offer or proposal of a kind referred to in clause 2.1 or 2.2, and shall include in such written notification details of the party making the expression of interest, offer or proposal, their terms and conditions and any updates to the expression of interest, offer or proposal;
- (b) proposal whether written or otherwise made to that party, its Representatives or any of its Subsidiary (or any Representative of any Subsidiary) in connection with, or in respect of, any exploration or consummation of, a Third Party Proposal or a proposed or potential Third Party Proposal, whether unsolicited or otherwise, and shall include in such written information details of the party making the proposal, the terms and conditions of the proposal and any updates to the proposal;
- (c) provision by either party, its Representatives, its Subsidiary (or any Representative of any Subsidiary) of any information relating to either party or any of its Subsidiary or any of their businesses or operations to any person in connection with or for the purposes of a current or future Third Party Proposal; and
- (d) action by either party, in reliance on clause 2.3,

in each case prior to undertaking the relevant act (which acts are only permitted to be undertaken pursuant to clause 2.3).

2.5 Limitations on obligation to notify

The obligation imposed on any Financial Advisers and their Representatives under clause 2.4 only applies to the extent that:

- (a) a Financial Adviser has become aware in its capacity as a financial adviser to a party; or

- (b) a Financial Adviser's Representative has become aware in its capacity as a member of the Financial Adviser's corporate advisory team acting for that party,
in relation to the Takeover Bid.

2.6 Provision of information

- (a) Whitehaven must, and must cause each of its Subsidiaries to, within 2 Business Days provide Gloucester with any information or due diligence materials (including responses to requests for further information) provided to any Third Party who is or may be considering a Third Party Proposal (other than identical copies of documents that have previously been provided to Gloucester).
- (b) Gloucester must, and must cause each of its Subsidiaries to, within 2 Business Days provide Whitehaven with any information or due diligence materials (including responses to requests for further information) provided to any Third Party who is or may be considering a Third Party Proposal (other than identical copies of documents that have previously been provided to Whitehaven).
- (c) Such provision of information of materials under clause 2.6 is only permitted to be undertaken pursuant to clause 2.3.

2.7 Response to a Third Party Proposal

- (a) Whitehaven must not:
 - (1) enter into any legally binding agreement, arrangement or understanding in relation to a Third Party Proposal; or
 - (2) change its recommendation in favour of the Takeover Bid or publicly recommend a Third Party Proposal,unless Whitehaven has provided Gloucester with at least 3 Business Days to match the terms of the Third Party Proposal.
- (b) Gloucester must not:
 - (1) enter into any legally binding agreement, arrangement or understanding in relation to a Third Party Proposal; or
 - (2) publicly recommend a Third Party Proposal,unless Gloucester has provided Whitehaven with at least 3 Business Days to match the terms of the Third Party Proposal.

2.8 Confirmation of no discussions

Each party represents and warrants to the other that, as at the date of this agreement, there will be no agreement and there are no continuing discussions in relation to any expression of interest, offer or proposal of the kind referred to in clause 2.1 or clause 2.2.

2.9 Compliance with law

- (a) If it is finally determined by the court, or the Takeovers Panel, that the agreement by the parties under this clause 1.3 or any part of it:
- (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Board or the Gloucester Board; or
 - (2) constituted, or constitutes, or would constitute, Unacceptable Circumstances; or
 - (3) was, or is, or would be, unlawful for any other reason,
- then, to that extent (and only to that extent) that party will not be obliged to comply with that provision of clause 1.3.
- (b) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination of a kind referred to in clause 2.9(a).

3 Definitions

The meanings of the terms used in this Attachment 2 are set out below.

Term	Meaning
Break Fee	the amount of \$4,500,000.
Third Party	a party other than Whitehaven and any Subsidiary of Whitehaven and Gloucester and any Subsidiary of Gloucester.
Third Party Proposal	<p>a transaction or arrangement pursuant to which a Third Party will, if the transaction or arrangement is entered into or completed:</p> <ol style="list-style-type: none">1 acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in all or a substantial part of the business of that party;2 acquire a relevant interest in, become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in 20% or more of that party's voting shares;3 acquire control (as determined in accordance with section 50AA of the Corporations Act) of that party;4 otherwise acquire or merge with that party; or5 enter into any agreement, arrangement or understanding requiring Whitehaven to abandon, or otherwise fail to proceed with, the Takeover Bid, <p>whether by way of takeover offer, scheme of arrangement, merger, shareholder approved acquisition, capital reduction or buy back, sale or purchase of shares or other securities or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement.</p>