



Black Mountain Energy Ltd (Company)
Black Mountain Canning LLC - Nominee Director
Conflict Protocol

Rev	Issued	Description	Prepared	Approved Board
1.0	28/10/2021	Initial	Legal	28/10/2021
Current	16/12/2024	Annual Review	Donovan	25/04/2025

1. Background

- 1.1 This protocol has been adopted by a written resolution of the board of directors of the Company (**Board**) on 28 October 2021 (**Adoption Date**) on the basis that it is in the best interests of both the Company and any nominee director (**Nominee**) of Black Mountain Canning LLC (**Appointer**).
- 1.2 As at the Adoption Date, the Appointor:
 - (a) together with its associates, in aggregate holds approximately 74.8% of the total issued shares in the Company on a fully diluted basis; and
 - (b) Rhett Bennett is the Nominee of the Appointer.

2. Purpose

- 2.1 The purpose of this protocol is to set out procedures for the Board, and its committees, to manage conflicts that may arise for a Nominee.
- 2.2 This protocol aims to:
 - (a) protect the interests of the Company while recognising the commercial reality of a Nominee's position with respect to both the Company and the Appointor; and
 - (b) assist a Nominee by ensuring that any conflicts between the Nominee's duties to the Company and their duties to the Appointor are managed in an effective, open and transparent manner.

3. Corporate Governance Framework

- 3.1 In broad terms, the duties of the Company's directors are to direct and control the business and administration of the Company and to act in the interests of the Company.
- 3.2 Directors have an individual responsibility to ensure that the Board is undertaking its responsibilities as further detailed in Section 3 of the Company's Corporate Governance Plan and Board Charter.
- 3.3 As a general rule, directors owe a fiduciary duty to the Company, not the shareholders or creditors of the Company. The fiduciary nature of the position means that directors must:
 - (a) maintain the confidentiality of information obtained in the course of the directorship; and
 - (b) not allow their own interests and responsibilities to conflict with those of the Company.
- 3.4 A Nominee owes the same duties to the Company as other directors of the Company. In performing their duties, a Nominee is permitted to pursue the Appointor's interests provided that, in doing so, they are also acting in the best interests of the Company.
- 3.5 If an actual conflict arises between the interests of the Appointor and the interests of the Company, then a Nominee should take him or herself out of the position of conflict. This extends to obtaining information relating to the matter giving rise to the conflict.

- 3.6 In addition to the above, section 195 of the *Corporations Act 2001* (Cth) (**Corporations Act**) applies where a director has a "material personal interest" in a matter being discussed at a Board meeting (including Board committee meetings). Where this section applies, the director is required to withdraw himself or herself from the meeting while the matter is being considered, and abstain from voting, except where the other directors resolve to waive that exclusion or where a prescribed exception applies. Where a Nominee is an employee of the Appointor, or otherwise derives a substantial proportion of their income from the Appointor, the Nominee could, in some circumstances, have a material personal interest in a matter in which the Appointor has a material interest.

4. Fiduciary Override

Nothing in this protocol:

- (a) limits the duties and requirements of a director under the Corporations Act and the general law; or
- (b) requires the Company or a director (including a Nominee) to do anything, or refrain from doing anything, where to do so would constitute a breach of the statutory and fiduciary duties of a director.

5. Status of this Protocol

- 5.1 The Board has agreed to comply with this protocol. The Board agrees to procure that any person appointed as a director after the Adoption Date is made aware of this protocol and agrees to comply with it, including any Nominee of the Appointor, before becoming a director.
- 5.2 To avoid any doubt, and without limiting section 5.1 above, this protocol:
- (a) contemplates that the person who is a Nominee for the Appointor may change from time to time;
 - (b) applies to the current Nominee and any future Nominees; and
 - (c) any future Nominees will only be appointed to the Board if they agree to comply with this protocol.
- 5.3 The Board agrees that, to the extent of any inconsistency, this protocol prevails over:
- (a) any deed of indemnity, access and insurance between the Company and a director;
 - (b) the Board Charter adopted by the Board from time to time; and
 - (c) any other documentation which relates to the subject matter of this protocol.

6. Nominee

6.1 Conflicts

- (a) Before any matter is considered by the Board, the Chairman must determine whether the consideration of that matter by a Nominee may give rise to a conflict of interest or potential conflict of interest in relation to the Nominee (a conflict) (each such matter being a **Sensitive Matter**).
- (b) If the Chairman considers it appropriate, he or she may establish a committee comprising of the Directors other than the Nominee for the purposes of determining whether a conflict exists (**Sub-committee**).
- (c) If the Nominee disputes that a conflict exists, the Nominee may contact the Chairman and the Chairman must establish a Sub-committee to determine whether a conflict exists, which decision will be final.
- (d) A Sub-committee established under section 6.1(c) must allow the Nominee a reasonable opportunity to explain the potential conflict and the steps taken to mitigate it.
- (e) The Chairman, or a Sub-Committee established under section 6.1(c), may, for the purposes of determining whether a conflict exists, request further information from the Nominee and/or seek advice from the Company's legal or other advisers.
- (f) A Nominee has an obligation to raise any potential conflict with the Chairman as soon as the Nominee becomes aware of it.
- (g) In the event the Chairman is a Nominee, an Independent Director will be responsible for performing the duties contained in clauses 6.1(a) to 6.1(f) immediately above and section 6.4.

6.2 Participation in Board and committee deliberations

- (a) The Board agrees that, as a result of the conflict for a Nominee relating to a Sensitive Matter, the Nominee:
 - (i) will not be present at the relevant part of a Board meeting or committee meeting when a Sensitive Matter is being considered; and
 - (ii) will not vote on a Sensitive Matter, except to the extent:
 - (A) the full Board: is required by law to determine a particular matter (for example, a proposed resolution considered by the full Board to approve the issue of a target's statement under section 639(1) of the Corporations Act); or
 - (B) the full Board (other than the Nominee) determines otherwise.
- (b) Without limiting section 6.2(a) above, the Board agrees that no Nominee will be a member of, or be present in any meetings of, the Sub-committee.
- (c) Sections 6.2(a) and 6.2(b) above do not prevent a Nominee from:

- (i) providing any assistance or advice to the Board in relation to a Sensitive Matter upon request of the Board; or
- (ii) drawing the Board's attention to a material issue that the Nominee is aware of and should be considered by the Board in dealing with a Sensitive Matter.

6.3 Access to information

Subject to sections 6.3(b) and 6.3(c) below, the Board agrees that, as a result of the conflict for a Nominee relating to a Sensitive Matter the Nominee will not be provided with:

- (a) any sensitive information relating to a Sensitive Matter (**Sensitive Information**), including, but not limited to:
 - (i) sections of Board minutes that record the consideration of a Sensitive Matter; and
 - (ii) sections of minutes of Board Committees where consideration of Sensitive Matters has occurred;
- (b) portions of draft documentation prepared by the Company in relation to a Sensitive Matter that directly relate to the Sensitive Matter (for example, a draft target's statement in relation to a takeover bid);
- (c) any legal or financial advice provided to the Board or the Sub-committee (or any other committee) in relation to a Sensitive Matter to the extent such advice directly relates to the Sensitive Matter; and
- (d) such other internal or external information which in the opinion of the majority of the Board may be directly relevant to a Sensitive Matter; and
- (e) the company secretary will ensure that all Sensitive Information is removed from the Nominee's board pack before board packs are distributed to directors.

6.4 The following exceptions apply to section 6.3 above:

- (a) the full Board is required by law to determine a Sensitive Matter, in which case, at the time the full Board must be convened for that purpose, the company secretary must provide to each Nominee all Sensitive Information that is required to enable the Nominee to comply with their duties as directors of the Company; or
- (b) the full Board (other than the Nominee) determines otherwise.

6.5 A Nominee is entitled to receive ongoing progress reports from the Chairman of the Board in respect of a Sensitive Matter (or in the event the Chairman is also a Nominee, an Independent Director) with any Sensitive Information removed, to the extent required to enable the Nominee to comply with his or her duties as a director of the Company.

6.6 Access after a conflict has ceased

If the Chairman of the Board (or in the event the Chairman is also a Nominee, an Independent Director) forms the view that a Sensitive Matter has ceased to give rise to a conflict for a Nominee and Sensitive Information relating to that matter was not provided to the Nominee because of this protocol, then that information must be provided to the Nominee as soon as practicable.

7. Changes To This Protocol

This protocol may be amended, qualified or withdrawn by a further resolution of the full Board.

Dated this 26 day of May 2023.

EXECUTED by the parties as a deed.

EXECUTED by **Black Mountain Energy Ltd**)
ACN 652 281 868 in accordance with section)
127 of the *Corporations Act 2001* (Cth):)
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Signature of director

Signature of director/company secretary

Name of director

Name of director/company secretary

Signed, sealed and delivered by **Rhett Bennett** in the presence of:

Signature of witness

Signature of **Rhett Bennett**

Full name of witness (print)

Address of witness (print)