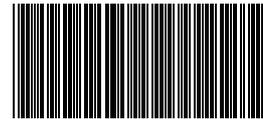




Filed: 4 March 2026 11:52 PM

Form 40
UCPR 35.1



D0002BOBPS

AFFIDAVIT OF Joseph Hayes - 4 March 2026

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2025/00300503

TITLE OF PROCEEDINGS

First Applicant	TAHMOOR COAL PTY LTD ACN 076663968
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FILING DETAILS

Filed for	TAHMOOR COAL PTY LTD, Applicant 1 TAHMOOR COAL PTY LTD, Corporation subject of the proceedings 1
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Legal representative	Roger Dobson
Legal representative reference	

Telephone	82720534
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ATTACHMENT DETAILS

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

Affidavit (UCPR 40)-Joseph Hayes-04 Mar 2026 (Affidavit of J Hayes dated 4 March 2026.pdf)

[attach.]

Form 40 (version 8)
UCPR 35.1

AFFIDAVIT OF JOSEPH HAYES DATED 4 MARCH 2026

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2025/00300503

TITLE OF PROCEEDINGS

Plaintiff	Coal Mines Insurance Pty Ltd (ACN 000 011 727)
Defendant	Tahmoor Coal Pty Ltd (ACN 076 663 968) (Administrators Appointed)

FILING DETAILS

Filed for	Applicant
Filed in relation to	Further Amended Interlocutory Process
Legal representative	Roger Dobson
Legal representative reference	N/A
Contact name and telephone	Roger Dobson, +61.2.8272.0500
Contact email	rdobson@jonesday.com

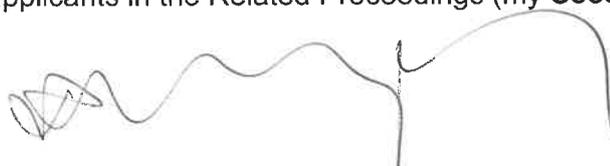


AFFIDAVIT

Name Joseph Hayes
 Address Level 17, 68 Pitt Street Sydney NSW 2000
 Occupation Insolvency Practitioner
 Date 4 March 2026

I say on oath:

- 1 I am a partner of the restructuring advisory firm Wexted Advisors in Australia (**Wexted**) and, together with Christopher Johnson of Wexted, was appointed as joint and several administrator of Tahmoor Coal Pty Ltd (Administrators Appointed) (**Tahmoor** or the **Company**) on 9 February 2026 (the **Appointment Date**).
- 2 Generative artificial intelligence was not used to generate:
 - a. this affidavit; or
 - b. the exhibit to this affidavit prepared or created to the deponent's knowledge for the purposes of these proceedings.
- 3 I am authorised to make this affidavit on behalf of Christopher Johnson and myself in our capacities as joint and several administrators of the Company (the **Administrators**). Where I depose below to the view or views of the Administrators, they are the views which I and Mr Johnson hold at the date of swearing this affidavit.
- 4 I make this affidavit in support of the Further Amended Interlocutory Process filed by the Administrators on 3 March 2026, by which we request that the hearing of the winding up application filed in these proceedings (the **Winding Up Application**) be adjourned under section 440A(2) or section 467 of the *Corporations Act 2001* (Cth) (the **Corporations Act**) for 8 weeks to a date convenient to the Court on or around 28 April 2026.
- 5 I previously swore five affidavits in these proceedings and related proceedings with case number 2026/00062876 (**Related Proceedings**), being:
 - a. my affidavit sworn on 10 February 2026, in support of the Interlocutory Process filed by the applicant on 10 February 2026 (my **First Affidavit**);
 - b. my affidavit sworn on 13 February 2026, in support of the Originating Process filed by the applicants in the Related Proceedings (my **Second Affidavit**);




- c. my affidavit sworn on 17 February 2026, in support of the Amended Interlocutory Process filed by the applicant on 17 February 2026 (my **Third Affidavit**);
- d. my affidavit sworn on 18 February 2026, in support of the Amended Interlocutory Process filed by the applicant on 17 February 2026 (my **Fourth Affidavit**); and
- e. my affidavit sworn on 3 March 2026, in support of the Further Amended Interlocutory Process filed by the applicant on 3 March 2026 (my **Fifth Affidavit**).

6 I understand that evidence in the Related Proceedings is to be taken as evidence filed in this proceeding pursuant to an order of Black J made on 16 February 2026.

7 Unless otherwise provided, in this affidavit, I adopt the defined terms used in my Third Affidavit.

8 In this affidavit, I refer to documents contained in an electronic PDF titled "**Exhibit JH-4**" by reference to page numbers at the bottom right-hand corner of the exhibit.

9 Except where otherwise stated, the statements made in this affidavit are made on the basis of my own knowledge and belief. Where I depose to matters from information obtained from the Company's books and records, publicly available sources, or from information provided to me by others, I believe that information to be true and correct.

A. Affidavit of Shaun Fraser

10 I received the affidavit of Shaun Fraser at 6:42pm on 4 March 2026. In the limited time available to me, I make the following observations regarding that affidavit:

- a. in my 35 years of experience, I am not aware of any matter in which an insolvency practitioner has recommended liquidation as the preferred course of action for a company, which would result in a redundancy of 80% of the workforce where a voluntary administrator is in place and has funding — irrespective of any issues with such funding. Under section 558(1) of the Corporations Act, this course of action will crystallise the requirement to pay accrued employee entitlements (including redundancy, pay in lieu of notice, annual leave, long service leave and other entitlements) across the workforce of approximately \$50 million. Of that amount approximately \$32 million would not be met by the Coal Mining Industry (Long Service Leave Funding




Corporation), which is a fund to which the Company contributed pre-appointment and which is presently held by an independent body and likely available to satisfy the long service leave portion of employee entitlements that crystallise on a liquidation

- b. the liquidator's proposed funding is highly conditional. The conditions include, among other things, a condition precedent to draw of the majority of the funds entry of an order by the Court to displace the existing perfected security interests of the Company's senior creditors, including Oaktree and Clydesdale and the Government in respect of mining leases. I have not during my 35 years as an insolvency practitioner seen any such orders made;
- c. if an application for such order were made, I would anticipate that one or more of the senior creditors would appoint a receiver to preserve their position. The proposed funding requires notice to the senior creditors, including Oaktree, who as set forth in paragraph 16 below has issued written correspondence affirming its support for an administration, to the exclusion of even a funded liquidation;
- d. the proposed funding requires that the incoming lender be granted security, it is unclear to me how that would be done in circumstances where security in favour of Oaktree and Clydesdale has already been granted and perfected in respect of all the Company's material assets and where the New South Wales Government has registered a statutory charge against the mining leases;
- e. all draws under the proposed funding are contingent on there being no Event of Default outstanding and the definition of that term is not known as the Term Sheet has not been provided;
- f. all draws under the proposed funding are subject to a legal opinion from Keyview's legal adviser, which I would expect will require confirmation of Keyview's first-ranking priority position pending the entry of the order referenced in paragraph 10(d) above. It is unclear whether such an opinion could be given in circumstances where there is in excess of \$230 million prior ranking secured debt and where one or more of those secured creditors is poised to appoint a receiver in a liquidation scenario;
- g. all draws are subject to entry into definitive documentation. Mr Fraser expresses no view on when definitive documentation may be executed and when he expects to receive funding. He similarly expresses no view on what his course of action would be if there is any delay in receipt of his funds. In my experience with assets of this nature, it may be necessary for a liquidator to



disclaim mining leases to protect themselves from personal liability in respect of environmental liabilities if there is any delay or uncertainty regarding funding necessary to continue maintenance activities in a safe and environmentally responsible manner. As I have referred to in my prior affidavit, there is a reverse osmosis plant that requires ongoing maintenance (and is under active monitoring of the EPA) in order to avoid pollution to the Bargo river, which I would expect to be of concern to any liquidator without secure and certain funding;

- h. even if the conditions precedent to funding were capable of satisfaction, the proposed funding is materially more expensive than the funding that is available to the Administrators and may reduce recoveries to creditors;
- i. the funding also requires an Approved Budget to be agreed, which may fetter the liquidator's discretion on how funds are to be applied. There is no such issue with the funding that is available to the Administrators;
- j. unlike the Administrators, I am not aware of Mr. Fraser having sought the views of management or conducted a visit to the site to ascertain the impact that liquidation will have on the business, care and maintenance operations. I am not aware that (with the exception of CMI) that he has sought the views of creditors on his proposed course of action, including secured creditors, FEG as a contingent creditor, Government or the unions all of whose views would be relevant in considering any process and who have been engaging with the Administrators in a constructive manner. Nor am I aware of whether Mr. Fraser made any assessment of how a liquidation would increase the time to restart the Tahmoor Mine and reduce the price that could be achieved for Tahmoor's assets;
- k. at paragraph 17(d) of his affidavit, Mr. Fraser refers to the fact that despite the moratorium parties may impermissibly rely on *ipso facto* clauses to terminate contracts in violation of applicable law. That has not happened. The Administrators have conducted extensive engagement with key stakeholders since their appointment and have stabilised the business; and
- l. at paragraph 17 of his affidavit, Mr. Fraser refers to the recovery actions that may be available to a liquidator. I have investigated and referred to these claims in detail in the report attached to my Third Affidavit. These claims I have investigated may be of considerable value but the Administrators believe the sale and marketing process should be undertaken before the future of the company is determined so that the range of options available to provide for



creditor recoveries are known with a degree of certainty that is not yet known to any party. As I have said in my prior evidence, once I have had further time to consider these claims, conducted a competitive bid process and assessed the range of options available for a transaction, I may well form the view that an asset sale (possibly through a DOCA) followed by liquidation and the pursuit of recovery actions provides the best outcome for creditors. If that is the case, I would pursue that course of action;

A. Further correspondence from William Buck

11 At paragraph 58 of my Fifth Affidavit I stated that as at the date of my affidavit, I had not received a response from William Buck in relation to my 25 February 2026 letter.

12 On 4 March 2026, I received a response from William Buck. Exhibited at **page 1 to 6 of Exhibit JH-4** is a copy of that letter.

13 I remain of the view that the Administrators will be able to conduct a successful sale process with the assistance of an investment bank despite any position taken by William Buck for the reasons set out in my Fifth Affidavit. William Buck did, at the meeting of committee of inspection held on 3 March 2026 referred to at paragraph 20 below, indicate in response to another creditor's question that they had put their process on hold.

B. Update on funding of the administration

14 At paragraphs 13 to 24 of my Fifth Affidavit, I provided an update on the alternative funding sought by the Administrators.

15 Since my Fifth Affidavit, I have received written expressions of interest in providing administration funding from two of the third-party credit funds unrelated to the Company (**Potential Third-Party Financiers**). Exhibited at **pages 7 to 8 of JH 4** are copies of that correspondence. Those parties have also expressed interest in providing bid financing to potential bidders, which would also create a stable environment for competitive bidding. No party that is presently under NDA in that process has said that they will be unable to provide funding or that they do not wish to continue the process of engaging with the Administrators on this matter, should the administration continue.

C. Views of Secured Creditor

16 At paragraphs 53 to 55 of my Third Affidavit I refer to the Oaktree Facility. Oaktree is the Company's senior secured lender. Oaktree supports Tahmoor continuing in administration as opposed being placed into liquidation, including a funded

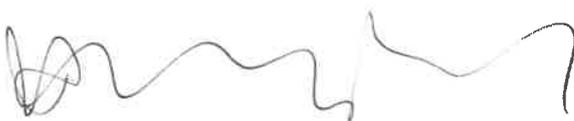



liquidation. On 4 March 2026, I received an email from Allan Wardrop (Managing Director and Restructuring Lawyer, Oaktree) confirming same, along with the reasons for Oaktree's position. Exhibited at **page 9 of JH-4** is a copy of this email.

D. Updated Estimated Outcome Statement

17 At paragraph 66 of my Fifth Affidavit I refer to the updated estimated outcome statement that I prepared. Since 3 March 2026, I have further updated the Administrators' estimated outcome statement, a copy of which is exhibited at **pages 10 to 11 of Exhibit JH-4**. I have made these changes as my views have continued to be further refined with the benefit of additional time. The changes are summarised as follows:

- a. I have increased the estimated trading costs under forced liquidation, reflecting the level of funding received to date to support ongoing payroll obligations;
- b. I have updated the secured creditor payments in the forced liquidation and administration scenarios to more accurately reflect the revised net proceeds from non-circulating assets and revised secured creditor shortfall calculations to include an adjustment for net proceeds not otherwise allocated from non-circulating assets across all scenarios;
- c. I have aligned recovery action outcomes across all scenarios.
- d. In the 3 March 2026 EOS, I have reduced the value of the insolvent trading claim to \$20M. I have since reflected on this approach and consider that it is more appropriate to adopt equivalent assumed outcomes across all scenarios, including in the administration scenario.
- e. This is because, as set out in my prior affidavits, administration and liquidation are not mutually exclusive. Once I have conducted a competitive bid process and assessed the range of options available for a transaction, I may form the view that an asset sale followed by liquidation and the pursuit of recovery actions provides the best outcome for creditors and if that is the case, would pursue that course of action;
- f. I have updated employee entitlements to explicitly include these in the low forced liquidation scenario (with a nil return still assumed). This inclusion is for completeness and to highlight that, in practice, any employee entitlement recoveries would rely on potential recovery actions;



- g. I have adjusted employee entitlements for the administration and planned liquidation scenarios to reflect (i) a reduction in long service leave transferred via the Coal LSL Board and; (ii) an increase for personal leave, which is likely payable under the relevant enterprise agreements for the majority of staff. These adjustments better reflect the entitlements profile expected in a going concern sale; and
- h. I have clarified that the payment to Government in respect of unpaid royalties would be payable in a forced liquidation scenario.

18 I note that investment bank fees for a sale have been allowed for in the trading costs of the administration period and are based on the proposals I have received from the investment banks referenced in my prior affidavit.

19 Whilst there are some changes to the estimated returns in each of the three scenarios, as set out in **page 11 of Exhibit JH-4**, as compared to **pages 997 to 1025 of Exhibit JH-2** referred to in my Third Affidavit, it remains clear that a funded Administration provides a superior outcome to unsecured creditors compared to a funded or unfunded liquidation. As I have said in my prior evidence, estimated returns set forth for Administration are based only on the offer presently known to me. I would expect recoveries in the Administration scenario to be materially higher following a properly conducted competitive bid process supported by one of the reputable investment banks that I propose to engage. As I have said, I will not comment on the potential high end of the range as that could have the effect of chilling bids in respect of the sale process that I seek to preserve.

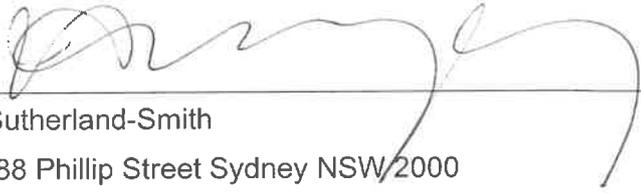
E. Committee of inspection meeting

20 At paragraph 12(j) of my Fifth Affidavit I refer to the second meeting of the committee of inspection that was to be held on 3 March 2026. Exhibited at **pages 12 to 19 of JH-4** is a copy of the minutes of meeting.



F. Clydesdale accounts

21 At paragraph 34 of my Fifth Affidavit, I refer to the historical annual financial statements filed by Clydesdale with Company's House, which date back to March 2016. The statements for the financial years ending 31 March 2021 and 31 March 2023 were omitted from Exhibit JH-3 by error. Exhibited at **pages 20 to 79 of JH-4** is a copy of these accounts.

SWORN at	Sydney	
Signature of deponent		_____
Name of witness	Kathryn Sutherland-Smith	
Address of witness	Level 41 88 Phillip Street Sydney NSW 2000	
Capacity of witness	Solicitor	

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

22 I saw the face of the deponent.
~~I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.~~

23 I have known the deponent for at least 12 months.
~~I have confirmed the deponent's identity using the following identification document:~~

	Identification document relied on (may be original or certified copy)
Signature of witness	