

Australian Pacific Coal Limited ABN 49 089 206 986

Notice of Extraordinary General Meeting and Explanatory Memorandum

Date of Meeting: Friday, 11 August 2017

Time of Meeting: 9.00am Brisbane time

Place of Meeting: Level 7, Waterfront Place,
1 Eagle Street, Brisbane Qld 4000 Australia

This Notice of Extraordinary General Meeting and Explanatory Memorandum should be read in their entirety. If Shareholders are in doubt as to how they should vote, they should seek advice from their accountant, solicitor or other professional adviser without delay.

Notice of Extraordinary General Meeting

Notice is given that an Extraordinary General Meeting of Shareholders of Australian Pacific Coal Limited ABN 49 089 206 986 (**Company**) will be held at the offices of HoggoodGanim Lawyers, Level 7, Waterfront Place, 1 Eagle Street, Brisbane Qld 4000, Australia on Friday, 11 August 2017 at 9.00am Brisbane time.

Terms used in this Notice of Meeting are defined in section 3 of the accompanying Explanatory Memorandum.

The Explanatory Memorandum and the Proxy Form accompanying this Notice of Meeting are incorporated in and comprise part of this Notice of Meeting.

A copy of this Notice and the Explanatory Memorandum which accompanies this Notice has been lodged with the Australian Securities & Investments Commission (**ASIC**) in accordance with Section 260B(5) of the *Corporations Act*.

Agenda

The agenda for the meeting is as follows:

1. Opening of meeting.
2. Resolution 1 – Approval of provision of Financial Assistance.
3. Other business.
4. Close of meeting.

1. Resolution 1 – Approval of provision of Financial Assistance

To consider and, if thought fit, pass the following resolution, as a Special Resolution of the Company, with or without amendment:

“That, for the purpose of and in accordance with section 260B(2) of the Corporations Act, approval be given to any financial assistance provided by AQC Dartbrook Pty Ltd ACN 000 012 813 and AQC Dartbrook Management Pty Ltd ACN 007 377 577 in connection with the acquisition by AQC Investments 2 Pty Ltd ACN 609 954 734 of shares in AQC Dartbrook Pty Ltd ACN 000 012 813 from Anglo American Metallurgical Coal Assets Pty Ltd ACN 081 022 246 and in AQC Dartbrook Management Pty Ltd ACN 007 377 577 from Anglo American Metallurgical Coal Holdings Limited ACN 079 017 940 on the terms set out in the Explanatory Memorandum.

General business

To consider any other business as may be lawfully put forward in accordance with the Constitution of the Company.

By order of the Board



Kevin Mischewski
Company Secretary
11 July 2017

Explanatory Memorandum

Introduction

This Explanatory Memorandum is provided to shareholders of Australian Pacific Coal Limited ABN 49 089 206 986 (**Company**) in connection with the business to be considered at an Extraordinary General Meeting of Shareholders to be held at the offices of HopgoodGanim Lawyers, Level 7, Waterfront Place, 1 Eagle Street, Brisbane Qld 4000 Australia on Friday, 11 August at 9.00am Brisbane time.

The Notice of Meeting, which is also **enclosed**, sets out details of proposals concerning the Resolution to be put to Shareholders.

The Directors recommend Shareholders read the accompanying Notice of Meeting and this Explanatory Memorandum in full before making any decision in relation to the Resolution.

Unless otherwise defined, terms used in this Explanatory Memorandum are defined in Section 3.

1. Resolution 1 – Approval of provision of financial assistance

1.1 Organisational structure

The Company's wholly owned Subsidiary AQC Investments 2 Pty Ltd (**AQC #2**) recently acquired shares in AQC Dartbrook Pty Ltd (then called Anglo Coal (Dartbrook) Pty Ltd) (**ACDP**) and in AQC Dartbrook Management Pty Ltd (then called AQC (Dartbrook Management) Pty Ltd) (**ACDM**) from Anglo American Metallurgical Coal Assets Pty Ltd (**AAMCA**) and Anglo American Metallurgical Coal Holdings Limited (**AAMCH**) respectively as part of the Company's acquisition of the Dartbrook Joint Venture.

1.2 Purchase of the Dartbrook Mine

On 24 December 2015 the Company entered into a binding agreement to acquire an 83.33% interest in the Dartbrook Joint Venture under a sale and purchase agreement (**SPA**) with AAMCH and AAMCA. The Company was to acquire this interest through the transfer to AQC #2 of all of the shares on issue in the Target Companies.

The balance 16.67% interest in the Dartbrook Joint Venture was held by Marubeni Coal Pty Ltd (**Marubeni**) who had a tag along right under the terms of the Dartbrook Joint Venture, which they subsequently exercised. This meant AQC #2 would acquire 100% of the Dartbrook Joint Venture.

Completion under the SPA occurred on 29 May 2017, and all shares in the Target Companies were transferred to AQC #2 on that date.

Further details of the acquisition of the Dartbrook Joint Venture and the surrounding financing were set out in the notice of meeting for the Company's extraordinary general meeting of Shareholders held on 13 April 2017 (**April EGM**).

1.3 Existing financing

To secure funding for the acquisition of the Dartbrook Joint Venture, the Company had entered into financing arrangements (**Existing Facilities**) with Trepang Services Pty Ltd (**Trepang**), Mr John Robinson (Snr) and Mr Nicholas Paspaley (together the **Existing Financiers**). The Existing Facilities consist of convertible notes (**Convertible Notes**) issued under convertible loan deeds entered into by the Company with each of the Existing Financiers, and a secured loan deed (**Secured Loan Deed**) with Trepang. The Convertible Notes can be converted into Shares. A summary of the key terms of the Convertible Notes and the Secured Loan Deed was set out in the notice of meeting for the April EGM.

Explanatory Memorandum

All money and obligations owed by the Company to the Existing Financiers under the Existing Facilities was to be secured by the granting of security (**Existing Security**). As at the date of this Notice, the Company and its Subsidiaries have granted the following security to the Existing Financiers:

- a general security deed granted in favour of Trepong by the Company on or about 27 April 2016;
- a general security deed granted in favour of Trepong by AQC #2, Area Coal, Ipoh Pacific and Mining Investments One on or about 2 March 2017;
- general security deeds granted in favour of each of Mr John Robinson (Snr) and Mr Nicholas Paspaley by the Company, AQC #2, Area Coal, Ipoh Pacific and Mining Investments One on or about 2 March 2017;
- deeds of guarantee and indemnity granted in favour of each of the Existing Financiers by AQC #2, Area Coal and Ipoh Pacific on or about 2 March 2017; and
- mortgages of mining tenements granted in favour of each of the Existing Financiers by Area Coal and Ipoh Pacific on or about 2 March 2017.

The Company is also required to grant the following additional security to the Existing Financiers, subject to the terms of the Intercreditor Deed:

- general security deeds granted in favour of each of the Existing Financiers by the Target Companies;
- deeds of guarantee and indemnity granted in favour of each of the Existing Financiers by the Target Companies;
- a mortgage of mining tenements granted in favour of each of the Existing Financiers by ACDP (as ACDM does not hold any mining tenements, it is not required to grant such a mortgage); and
- mortgages of land granted in favour of each of the Existing Financiers by each of the Target Companies.

Summaries of the key terms of the Existing Security were set out in the notice of meeting for the April EGM.

1.4 Vendor Loan Agreement

Prior to completion under the SPA, AAMCA (as “Lender”), the Company (as “Initial Guarantor”) and AQC #2 (as “Borrower”) entered into a vendor loan agreement (**Vendor Loan Agreement**) under which AAMCA agreed to provide \$7.7 million in vendor funding to AQC #2 (**Anglo Loan**). This funding is to be used towards meeting the costs of conducting a feasibility study into the potential for the open-cut development of the Dartbrook Mine.

Under the terms of the Vendor Loan Agreement, prior to completion of the SPA the Company and AQC #2 granted to AAMCA certain securities, including the following:

- (a) the Specific and Featherweight Security Deed, granted by the Company in favour of AAMCA; and
- (b) the AQC #2 General Security Deed, granted by AQC #2 in favour of AAMCA.

Explanatory Memorandum

In addition, the Company and AQC #2 are required to ensure that, within 90 days of completion under the SPA, the Target Companies:

- (a) accede to the Vendor Loan Agreement by entering the Accession Deed Poll;
- (b) grant to AAMCA a general security deed over all of their present and after-acquired assets (**Target Company GSD**); and
- (c) grant to AAMCA a mortgage over their real property (**Target Company Mortgages**).

As set out in section 1.3, prior to completion of the acquisition of the Dartbrook Joint Venture, the Existing Financiers had been granted certain securities by the Company, AQC #2 and other Subsidiaries of the Company. In addition, there are also further securities to be granted to the Existing Financiers by the Target Companies. The Existing Financiers, AAMCA, the Company and AQC #2 have therefore entered the Intercreditor Deed to govern the relationship between the Existing Financiers and AAMCA.

1.5 **Terms of the Vendor Loan Agreement, the Target Company GSD and the Target Company Mortgages**

The key terms of the Vendor Loan Agreement, the Target Company GSD and the Target Company Mortgage are set out in Schedule 1 and Schedule 2 to this Explanatory Memorandum.

The Vendor Loan Agreement has already been entered by the Company, AQC #2 and AAMCA. However, under the terms of the Vendor Loan Agreement the Company and AQC #2 are required to procure the Target Companies to grant the Target Company GSD and the Target Company Mortgages and to accede to the Vendor Loan Agreement within 90 days of completion of the acquisition of the Dartbrook Joint Venture by entering the Accession Deed Poll. Upon entering the Accession Deed Poll, the Target Companies will become parties to the Finance Documents as additional guarantors. The Target Companies will acquire all the rights and benefits of, and will agree to be bound by all present and future obligations of, a guarantor under the Finance Documents.

Schedule 1 includes a summary of the key terms of the Intercreditor Deed for completeness.

The Company proposes to seek Shareholder approval at a subsequent meeting to vary the maturity dates of the Existing Facilities to align them with the maturity date under the Vendor Loan Agreement. Detailed information in this regard will be included in the materials convening such meeting to be despatched to Shareholders at a later date.

1.6 **Part 2J.3 of the Corporations Act – Provision of Financial Assistance**

Section 260A(1) of the Corporations Act provides that a company may only financially assist a person to acquire shares (or units of shares) in that company or the holding company of that company if the giving of the financial assistance:

- (a) does not materially prejudice the interests of the company or its shareholders, or the company's ability to pay its creditors; or
- (b) is approved by shareholders under section 260B of the Corporations Act; or
- (c) is exempted under the Corporations Act (none of the exemptions are applicable in this case).

Under section 260B of the Corporations Act, approval by shareholders requires not only the approval of the shareholders of the company whose shares are being acquired but also, if that

Explanatory Memorandum

company would be the subsidiary of a listed domestic corporation immediately after the acquisition, by the shareholders of that listed domestic corporation via a special resolution.

As the Company is a listed domestic corporation, and the Target Companies are subsidiaries of the Company (through AQC #2) following the acquisition, approval is being sought from the Company's Shareholders for the giving of financial assistance by the Target Companies in respect of the acquisition of the shares in the Target Companies by AQC #2.

What constitutes providing 'financial assistance' to a person to acquire shares in a company is not defined in the Corporations Act. However the Corporations Act clarifies that financial assistance may be given before or after the acquisition of shares and may take the form of paying a dividend. Case authority indicates that the phrase 'financial assistance' does not have a technical meaning and must be determined by reference to the language of ordinary commerce. Given there is no legislative guidance to the contrary, it has been suggested that the term 'financial assistance' is intended to be given a wide meaning.

The Target Companies becoming a guarantor pursuant to the Vendor Loan Agreement by entering the Accession Deed Poll and granting the Target Company GSD and the Target Company Mortgages to AAMCA will amount to financial assistance for the acquisition of the shares in the Target Companies by AQC #2, and as such Shareholder approval will be required for this to occur. Accordingly, under Resolution 1 the Company is seeking the approval of Shareholders under Part 2J.3 to permit the Target Companies to give financial assistance to AQC #2, by entering the Accession Deed Poll and becoming guarantors under the Vendor Loan Agreement and by granting the Target Company GSD and the Target Company Mortgages to AAMCA.

If Resolution 1 is not passed, the Target Companies will not be able to accede to the Vendor Loan Agreement, and the Target Company GSD and the Target Company Mortgages will not be granted. This will result in the Company and AQC #2 defaulting on a condition subsequent under the Vendor Loan Agreement. Only AAMCA has the ability to waive this condition subsequent. This means that if Resolution 1 is not passed or the Accession Deed Poll is not entered or the Target Company GSD and the Target Company Mortgages are not otherwise granted, the Company and AQC #2 will be in breach of their obligations under the Vendor Loan Agreement. If this default subsists, AAMCA may declare the Anglo Secured Money (as that term is defined in Schedule 1) immediately due and payable.

The ability for AQC #2 (a subsidiary of the Company and the parent entity of the Target Companies) to utilise the funding provided by the Vendor Loan Agreement towards meeting the costs of conducting a feasibility study into the potential for the open-cut development of the Dartbrook Mine will benefit AQC #2 (and therefore the Company and the Target Companies) as it presents immediate funding to progress this feasibility study on favourable terms. If the funding provided by the Vendor Loan Agreement is required to be repaid to AAMCA in the event that Resolution 1 is not passed, this will result in the Company having to seek alternative funding to progress the feasibility study from elsewhere and there is no guarantee that such funding could be obtained or if it can be, whether it can be obtained on favourable terms.

The Company provides the following information to Shareholders to enable them to consider the proposed financial assistance and, if thought fit, approve the financial assistance for the purposes of Part 2J.3 of the Corporations Act.

1.7 **Effects of financial assistance**

The potential adverse effects of the Target Companies providing the financial assistance by entering the Accession Deed Poll and becoming guarantors under the Vendor Loan Agreement and by granting the Target Company GSD and the Target Company Mortgages are that:

Explanatory Memorandum

- (a) the Target Company GSD and the Target Company Mortgages and the assumption of obligations under and in accordance with them as well as acceding to the Vendor Loan Agreement and becoming guarantors under that agreement may impact on the Target Companies' ability to borrow money in the future during the term of the Target Company GSD, the Target Company Mortgages and the Vendor Loan Agreement because:
 - (1) the terms of the Target Company GSD and the Target Company Mortgages prohibit the Target Companies from creating or allowing another security interest in its assets other than as permitted under the Finance Documents; and
 - (2) a financier may be deterred by the existence of the Target Company GSD, the Target Company Mortgages and the Vendor Loan Agreement from making finance available to the Target Companies,
- (b) the terms of the Target Company GSD and the Target Company Mortgages prohibit the Target Companies from undertaking certain dealings, including disposing of, or parting of possession with, any assets unless permitted by the Target Company GSD and the Target Company Mortgages;
- (c) if any amount is not paid when due under a Finance Document secured by the Target Company GSD and the Target Company Mortgages or AQC #2 fails to punctually perform any obligation under those Finance Documents, and provided such default subsists, then AAMCA may by notice to the Target Companies declare that all or any part of the Anglo Secured Money is immediately due and payable, and enforce the security interest granted by the Target Company GSD and the Target Company Mortgages to recover all amounts owing, which would ultimately have an adverse impact on the Company's financial position and assets; and
- (d) in the event of the winding up of either of the Target Companies, AAMCA will rank ahead of the members of the Target Companies with respect to the assets of the Target Companies subject to the Target Company GSD and the Target Company Mortgages and in respect of the amounts payable in connection with the facilities secured by the Target Company GSD and the Target Company Mortgages.

However, the Directors have considered appropriate information from AQC #2, including financial information relating to the Company, AQC #2 and the Target Companies and AQC's other subsidiaries, and the Directors do not consider that following completion of the acquisition of the Dartbrook Joint Venture, AQC #2 will have any cause to default in any of its payments or obligations under the facilities secured by the Target Company GSD and the Target Company Mortgages that may cause the Target Company GSD, the Target Company Mortgages or the guarantee under the Vendor Loan Agreement to be enforced against the Target Companies or for the Target Companies to otherwise be in breach of the Vendor Loan Agreement.

Accordingly, the Directors have formed the view that the giving of financial assistance, entering into the Target Company GSD and the Target Company Mortgages and the Accession Deed Poll and becoming a guarantor under the Vendor Loan Agreement will not materially prejudice the interests of the Target Companies or their members.

The Directors have also formed the view that the giving of financial assistance and entering into the Target Company GSD and the Target Company Mortgages is in the best interests, and for the corporate benefit, of the Target Companies and their members for the reasons outlined in this Explanatory Memorandum.

Explanatory Memorandum

While the Directors have formed these views, the Directors also believe it is appropriate to ask Shareholders to approve the transaction in accordance with the procedures set out in section 260B of the Corporations Act.

1.8 Statement under section 260B(4) of the Corporations Act

After due and careful consideration of the information and all of the circumstances of the proposed arrangements and, in particular, having regard to the benefits to be achieved by the acquisition and the funding provided by AAMCA and the Target Companies' current financial circumstances (as well as those of the broader group), the Directors believe the:

- (a) Target Companies giving financial assistance by entering the Accession Deed Poll and acceding to the Vendor Loan Agreement and by providing the Target Company GSD and the Target Company Mortgages in relation to the acquisition by AQC #2 of the shares in the Target Companies from AAMCA will, in all the circumstances, be in the best interests of the Target Companies;
- (b) Target Companies will directly and indirectly benefit from the transaction;
- (c) Target Companies giving the financial assistance will not materially prejudice the interests of the Target Companies or shareholders of the Target Companies or the Target Companies' ability to pay their creditors;
- (d) signing of the Accession Deed Poll, the Target Company GSD and the Target Company Mortgages will be in good faith and for the purposes of carrying on the Target Companies' business; and
- (e) this Explanatory Statements sets out all the information known to the Company that is material to the decision on how to vote on the resolution set out in Resolution 1.

1.9 Special Resolution

Resolution 1 is a special resolution and requires the approval of at least 75% of the votes cast by Shareholders in person or by proxy.

1.10 Recommendation of the directors

The Directors unanimously recommend that Shareholders vote in favour of Resolution 1.

2. Voting entitlement

For the purposes of determining voting entitlements at the Meeting, Shares will be taken to be held by the persons who are registered as holding the Shares at 7.00pm (Sydney time) on 9 August 2017. Accordingly, transactions registered after that time will be disregarded in determining entitlements to attend and vote at the Meeting.

3. Interpretation

The following terms used in the Notice of Meeting and the Explanatory Memorandum are defined as follows:

\$ means Australian dollars, unless otherwise stated.

AAMCA means Anglo American Metallurgical Coal Assets Pty Ltd ABN 59 081 022 246.

AAMCH means Anglo American Metallurgical Coal Holdings Limited ACN 079 017 940.

Explanatory Memorandum

Accession Deed Poll means a deed poll under the Vendor Loan Agreement by which an entity becomes a party to the Finance Documents as an additional guarantor.

ACDM means AQC Dartbrook Management Pty Ltd ACN 007 377 577 (formerly Anglo Coal (Dartbrook Management) Pty Ltd).

ACDP means AQC Dartbrook Pty Ltd ACN 000 012 813 (formerly Anglo Coal (Dartbrook) Pty Ltd).

Anglo Loan means the \$7.7 million in vendor funding provided by AAMCA under the Vendor Loan Agreement.

Anglo Security means the security granted or to be granted by the Company and the Company Group to AAMCA under the Vendor Loan Agreement, as described in Schedule 1.

April EGM means the Extraordinary General Meeting of the Company held on 13 April 2017.

AQC #2 means AQC Investments 2 Pty Ltd ACN 609 954 734.

AQC #2 General Security Deed means a general security deed granted in favour of AAMCA by AQC #2 dated 29 May 2017 over all of its present and future property of any kind.

Area Coal means Area Coal Pty Ltd ACN 132 643 193.

ASIC means the Australian Securities & Investments Commission.

Associates has the meaning given to that term in the Corporations Act, and **Associated** has a corresponding meaning.

ASX means ASX Limited ABN 98 008 624 691 or the Australian Securities Exchange (as applicable).

Business Day means a day on which all banks are open for business generally in Brisbane.

Chair means the person chairing the Meeting.

Company means Australian Pacific Coal Limited ABN 49 089 206 986 (ASX: AQC).

Company Group means the Company and each of its Related Bodies Corporate.

Constitution means the constitution of the Company from time to time.

Convertible Notes means together, the convertible notes issued to each of the Existing Financiers that may be converted into Shares, and each of them.

Corporations Act means the *Corporations Act* 2001 (Cth).

Dartbrook Joint Venture means joint venture between Anglo Coal (Dartbrook) Pty Ltd, a subsidiary of Anglo American Plc and Marubeni Coal in respect of the Dartbrook Coal Mine located in the Hunter Valley, New South Wales.

Directors or **Board** means the board of directors of the Company from time to time.

Existing Facilities means the Convertible Notes and the Secured Loan Deed.

Existing Financiers means Trepang, Mr John Robinson (Snr), AO, and Mr Nicholas Paspaley, AC.

Explanatory Memorandum

Existing Security means the security granted or to be granted by the Company and the Company Group to the Existing Financiers.

Explanatory Memorandum means the explanatory memorandum accompanying the Notice.

Finance Documents means:

- (a) the Vendor Loan Agreement;
- (b) the Intercreditor Deed;
- (c) each Anglo Security;
- (d) each Accession Deed Poll;
- (e) a document that AQC #2 and AAMCA agree is a 'Finance Document'; and

a document entered into for the purpose of amending or novating, any document referred to in a paragraph above.

Intercreditor Deed means the intercreditor deed between the Company, AQC Investments 2 Pty Ltd, AAMCA and the Existing Financiers dated 29 May 2017.

Ipoh Pacific means Ipoh Pacific Resources Pty Ltd ACN 104 553 504.

Listing Rules means the official listing rules of the ASX as amended from time to time.

Marubeni Coal means Marubeni Coal Pty Ltd ACN 009 932 236.

Meeting means the Extraordinary General Meeting to be held on 11 August 2017 as convened by the accompanying Notice of Meeting.

Mining Investments One means Mining Investments One Pty Ltd ACN 123 222 266.

Notice of Meeting or **Notice** means the notice of meeting giving notice to Shareholders of the Meeting, and accompanying this Explanatory Memorandum.

Obligor means AQC #2, the Company and, subject to accession to the Vendor Loan Agreement, the Target Companies.

Ordinary Resolution means a resolution passed by more than 50% of the votes at a general meeting of Shareholders.

Related Body Corporate has the meaning given to it in the Corporations Act.

Related Party has the meaning in section 228 of the Corporations Act.

Relevant Interest has the meaning given to it in sections 608 and 609 of the *Corporations Act*.

Resolution means the resolution set out in the Notice of Meeting.

Secured Loan Deed means the secured loan deed entered between the Company and Trepang Services Pty Ltd on or about 27 April 2016, as amended and restated on or about 15 June 2016, 10 October 2016 and 1 February 2017 and varied on 29 May 2017.

Securities has the meaning in section 92(1) of the *Corporations Act*.

Explanatory Memorandum

Shareholder means a holder of Shares in the Company.

Shares means fully paid ordinary shares in the Company from time to time.

SPA means the sale and purchase agreement between Anglo American Metallurgical Coal Assets Pty Ltd, Anglo American Metallurgical Coal Holdings Limited, AQC Investments 2 Pty Ltd and the Company dated 24 December 2015 (as varied) to acquire the interests of the Anglo group in the Dartbrook Joint Venture.

Specific and Featherweight Security Deed means a specific and featherweight security deed granted to AAMCA by the Company dated 29 May 2017.

Subsidiaries has the meaning given to that term in the Corporations Act.

Target Companies means ACDP and ACDM.

Target Company GSD means the general security deed to be granted by the Target Companies to AAMCA, as described in Schedule 1.

Target Company Mortgages means the mortgages to be granted by the Target Companies to AAMCA, as described in Schedule 1.

Trading Day has the meaning given to that term in the Listing Rules.

Trepang means Trepang Services Pty Ltd ACN 149 489 065 in its own capacity and as trustee for the Trepang Services Unit Trust.

Vendor Loan Agreement means the vendor loan agreement between AAMCA, AQC Investments 2 Pty Ltd and the Company dated 29 May 2017.

Any inquiries in relation to the Resolution or the Explanatory Memorandum should be directed to Kevin Mischewski (Company Secretary):

*Level 7, 10 Felix Street, Brisbane Qld 4000
+61 7 3221 0679*

Explanatory Memorandum

Schedule 1 – Summary of terms of Anglo Security

1. Overview

All money and obligations owed by AQC #2 to AAMCA under the Vendor Loan Agreement are to be secured by comprehensive securities:

- granted by AQC #2 and the Company on 29 May 2017;
- to be granted by the Target Companies as soon as legally permissible and in any event on or before 28 August 2017.

Subject to all necessary approvals and lodgements being obtained and made pursuant to section 260B of the Corporations Act, the Target Companies are to accede to the Vendor Loan Agreement as a 'Guarantor' (as defined under the Vendor Loan Agreement) and grant general security deeds (**Target Company GSD**) and mortgages (**Target Company Mortgage**) in favour of AAMCA.

The following provides a summary of:

- the Target Company GSD;
- the Target Company Mortgages;
- the AQC #2 General Security Deed;
- the Specific and Featherweight Deed; and
- the Intercreditor Deed.

A summary of the key terms and conditions of the Vendor Loan Agreement is set out in Schedule 2.

2. Target Company General Security Deed

Under the Target Company GSD, to be granted by the Target Companies in favour of AAMCA, the Target Companies grant a security interest in all of their "Collateral" to secure payment of the Anglo Secured Money. Where the Anglo Secured Money comprises indebtedness of either of the Target Companies, each of the Target Companies is jointly and severally liable to AAMCA for the payment of the Anglo Secured Money.

"Collateral" refers to any present and future property of the Target Companies of any kind, including anything in respect of which it has at any time a sufficient right, interest or power to grant a security interest. "Anglo Secured Money" refers to all money that the Target Companies or an Obligor is or may become liable to pay to AAMCA in connection with a Finance Document.

The Target Company GSD restricts the manner in which the Target Companies can deal with their Collateral. In particular, unless permitted to do so under the Target Company GSD or another Finance Document, the Company and ACDM must not:

- (a) create or allow another security interest in any of the Collateral; or
- (b) dispose of any Collateral.

Under the Target Company GSD, if a "Default" or an "Event of Default" (as defined in a Finance Document) occurs and is subsisting, AAMCA may declare that any or all of the Anglo Secured Money is immediately due and payable, while all security interests created under the Target Company GSD will become enforceable. In addition, a default under any of the Anglo Security will be considered a default under the Target Company GSD.

Notice of Extraordinary General Meeting and Explanatory Memorandum

The form of the Target Company GSD is reasonably market-standard for this type of transaction. It contains a basic range of representations and warranties and undertakings including requiring the Target Companies to keep the Collateral in good condition and protect their title in the Collateral.

If all the Anglo Secured Money has been paid in full and the Target Companies have complied with their obligations under each Finance Document in full, the Target Companies may require AAMCA to release the Collateral.

3. Target Company Mortgages

Under the Target Company Mortgages, the Target Companies agree to mortgage the Mortgaged Property and to mortgage by assignment all rents payable to the Target Companies in respect of the Mortgaged Property, to secure payment of the Anglo Secured Money.

“Mortgaged Property” refers to:

- (a) each Target Companies' estate or interest from time to time in:
 - (i) the real property described in the Target Company Mortgages, together with the benefit of any easements, paths, rights of way, mines, quarries, water, trees, timber and other benefits on or used with that real property;
 - (ii) any present or future improvements on the real property; and
 - (iii) any present or future lease of the real property or any part of it, together with any extension or renewal of that lease, and any agreement to enter into a new lease of the same property;
- (b) any other property deemed by the Target Company Mortgages to form part of the Mortgaged Property; and
- (c) any certificate, registration, title or other evidence of ownership of, or rights to, anything described in a paragraph above.

Under the Target Company Mortgages, if a “Default” or an “Event of Default” (as defined in a Finance Document) occurs and is subsisting, AAMCA may declare that any or all of the Anglo Secured Money is immediately due and payable.

The form of the Target Company Mortgages is reasonably market-standard for this type of transaction. It contains a basic range of representations and warranties and undertakings including requiring the Target Companies to keep the Mortgaged Property in good condition and protect their title in the Mortgaged Property.

If all the Anglo Secured Money has been paid in full and the Target Companies have complied with their obligations under each Finance Document in full, the Target Companies may require AAMCA to release the Mortgaged Property.

4. AQC #2 GSD

Under the general security deed granted by AQC #2 to AAMCA (executed on 29 May 2017), AQC #2 grants a security interest in all of their “Collateral” to secure payment of the Anglo Secured Money.

In relation to the AQC #2 GSD, “Collateral” refers to any present and future property of AQC #2 of any kind, including anything in respect of which it has at any time a sufficient right, interest or power to grant a security interest. “Anglo Secured Money” refers to all money that AQC #2 is or may become liable to pay to AAMCA in connection with a Finance Document.

The terms of the AQC #2 GSD are substantially similar to those of the Target Company GSD as described above.

Notice of Extraordinary General Meeting and Explanatory Memorandum

5. Specific and Featherweight Deed

Under the Specific and Featherweight Deed granted by the Company to AAMCA, the Company grants a security interest in all of their Collateral to secure payment of the Anglo Secured Money.

In relation to the Specific and Featherweight Deed, "Collateral" means:

- (a) Full Resource Collateral – all of the shares (present and future) held by the Company in AQC #2 together with all rights to acquire further marketable securities as a result of AQC holding those shares or any other proceeds arising as a result of the Company holding those shares; and
- (b) Featherweight Collateral - all of the Company's present and future property of any kind, excluding Full Recourse Collateral.

"Anglo Secured Money" refers to all money that the Company or an Obligor is or may become liable to pay to AAMCA in connection with a Finance Document.

The Specific and Featherweight Security Deed restricts the manner in which the Company can deal with its Collateral, with more stringent restrictions being imposed on Full Recourse Collateral. Unless permitted to do so under the Specific and Featherweight Security Deed or another Finance Document, the Company must not:

- (a) create or allow another security interest in any of the Full Recourse Collateral; or
- (b) transfer or dispose of any Full Recourse Collateral.

The Company may dispose of, permit or create a security interest in, or otherwise deal with any of the Featherweight Collateral. However, if an administrator is appointed to the Company, the security interest created in respect of the Featherweight Collateral becomes immediately enforceable and as a result the Company's right to so deal with the Featherweight Collateral ends and the Company must not sell or dispose of any of the Collateral unless AAMCA first consents.

If all the Anglo Secured Money has been paid in full and the Company has performed its obligations under the Finance Documents, AAMCA must discharge the security of the Company at the Company's written request.

The form of the Specific and Featherweight Security Deed is reasonably market-standard for this type of transaction.

6. Intercreditor Deed

AQC #2, the Company, AAMCA and the Existing Financiers entered into the Intercreditor Deed, to set out the relative priorities of the securities granted (or to be granted) by the Company and its subsidiaries to AAMCA and the Existing Financiers.

Under the Intercreditor Deed, money owing to any Existing Financier (**Second Debt**) will be subordinated to and rank in priority after money owing to AAMCA under each Finance Document (**First Debt**) until either:

- (a) the First Debt is paid in full and AAMCA is satisfied that no payment will be void or voidable; or
- (b) the First Debt is transferred to the Existing Financiers (or their nominee) and AAMCA is satisfied that no payment will be void or voidable,

(the **Subordination Period**).

During the Subordination Period, none of the Second Debt is payable, except for certain permitted payments. Permitted payments include the \$1,000,000 repayment under the Trepang Secured Loan Deed on 29 May 2017, the capitalisation of interest, fees, costs or charges in respect of the Second Debt, the issue of Shares in lieu of interest payable on the Second Debt and the issue of Shares on conversion of the Convertible Notes in respect of the Second Debt. In addition, unless AAMCA

Notice of Extraordinary General Meeting and Explanatory Memorandum

otherwise first consents in writing, the Existing Financiers must not do a number of things in relation to the Second Debt or security held in respect of the Second Debt including:

- (a) demand or accept payment or discharge of any of the Second Debt other than for a permitted payment or conversion of the Second Debt into Shares;
- (b) change an Existing Financier's rights or obligations in respect of the Second Debt, other than to convert the Second Debt into Shares;
- (c) take any steps to recover or accelerate payment of any Second Debt or enforce their security interests in relation to the Second Debt; or
- (d) increase their debt, except by way of capitalisation of interest.

The Intercreditor Deed provides for AAMCA and the Existing Financiers to consent to the security granted or to be granted to each of them. Additionally, the Existing Financiers agree that the Anglo Security granted (or to be granted) in favour of AAMCA has priority over and ranks ahead of any security granted to the Existing Financiers for all amounts secured under the Existing Security.

The Intercreditor Deed contains provision for one or more of the Existing Financiers (or their nominee) to purchase the entire First Debt from AAMCA at par. In addition, if AAMCA wishes to sell all or any part of the First Debt it must first offer to sell such part of the First Debt to the Existing Financiers (or their nominees) at the same offer price.

The Company, AQC #2 and the Target Companies have waived their right to claim or exercise a right of subrogation or contribution in respect of the finance documents with AAMCA and the Existing Financiers unless the Subrogation Period has ended.

7. Deed of Accession

Under the Vendor Loan Agreement, AQC #2 must ensure that, within 90 days of drawdown of the Anglo Loan, each of the Target Companies have acceded to the Vendor Loan Agreement via a deed of accession (**Deed of Accession**), the form of which is contained in the Vendor Loan Agreement.

Under the Deed of Accession, the Target Companies each agree to become a party to the Finance Documents as a new 'Guarantor'. As a new Guarantor, the Target Companies acquire all rights and benefits of, and agree to comply with and be bound by all present and future obligations of, a Guarantor under the Finance Documents. In addition, as new Guarantors the Target Companies agree to do all things that a Guarantor is required under a Finance Document to procure or ensure are to be done by it in connection with becoming a Guarantor.

As Guarantors, the Target Companies irrevocably and unconditionally guarantee to AAMCA the payment of the Anglo Secured Money, and the performance by each Obligor of all its other obligations, under the Finance Documents.

If an Obligor does not pay any Anglo Secured Money when required, each Guarantor (including the Target Companies) must pay that money on demand as if they were the principal obligor. In addition, if any Obligor does not perform any of its other obligations under a Finance Document, each Guarantor (including the Target Companies) must perform, or procure the performance of, those obligations.

In addition, each Guarantor (including the Target Companies) indemnifies AAMCA for any loss that AAMCA suffers due to any obligation or liability of a Guarantor being or becoming unenforceable, an Obligor failing to pay any Anglo Secured Money or perform any obligations under the Finance Documents, any Anglo Secured Money not being recoverable, or an insolvency event in respect of any Obligor (but only to the extent the loss relates to the Anglo Secured Money).

AAMCA does not need to enforce its rights against any other person before enforcing its rights against the Guarantor.

There are a range of provisions which are usual and market-standard for a subsidiary guarantee of this type which restricts the ability of the Company to reduce their liability under the guarantee (for

Notice of Extraordinary General Meeting and Explanatory Memorandum

example due to an insolvency event of an Obligor, an Obligor's obligation under any Finance Document being void or voidable or the grant of a waiver to an Obligor or any other person).

Explanatory Memorandum

Schedule 2 – Summary of terms of Vendor Loan Agreement

Total Principal Amount	\$7.7 million
Purpose	An amount equal to the Total Principal Amount is to be applied towards meeting the costs of conducting a feasibility study into the potential for the open-cut development of the Dartbrook Mine as soon as practicable after Financial Close.
Commencement Date	The date the Anglo Loan is provided ('Financial Close'), which occurred simultaneously with completion of the Company's acquisition of the Dartbrook Mine (i.e. 29 May 2017).
Conditions Subsequent	Subsequent to the Commencement Date, AQC #2 and the Company are required to ensure that: <ul style="list-style-type: none"> • within 90 days of Financial Close the Target Companies have acceded to this Vendor Loan Agreement (as set out in the summary of the Accession Deed in Schedule 1); and • an amount equal to the Total Principal Amount is applied towards a study for the feasibility of conducting an open-cut development of the Dartbrook Coal Mine as soon as practicable after Financial Close.
Interest Rate	10% per annum (increasing to 16% per annum if the Target Companies have not acceded and all Security referred to below has not been granted and registered within 90 days after Financial Close, dropping back to 10% once the Target Companies have acceded and all Security referred to below has been granted and registered). All interest will be capitalised monthly and will be payable at maturity.
Loan Maturity Date	The date which is 36 months from the date of Financial Close, unless repayable earlier in accordance with the mandatory repayment regime below.
Prepayment and mandatory repayment	<p>AQC #2 may prepay all or part of the outstanding amount at any time.</p> <p>If AQC #2 (or any other Obligor) raises any new equity, obtains any new debt (other than certain permitted debt) or disposes of certain key assets, then it must first apply the proceeds to the repayment of the Anglo Loan, except where, in the case of new equity or debt, the funds have been raised for working capital purposes (provided no more than \$10 million has been raised for working capital purposes since the date of the Anglo Loan (which is to be a lower amount of \$2 million until the Target Companies have acceded and the full suite of Securities set out below are granted and registered).</p> <p>The Company will seek shareholder approval for an extension to its existing finance facilities that were approved by shareholders at the Company's recent extraordinary general meeting on 13 April 2017 ('Existing Facilities') to align their maturity with the term of the Anglo Loan, as these facilities currently expire before the term of the Anglo Loan. If the Company is unable to extend these facilities, then AQC #2 (or any other Obligor) may have to repay the Anglo Loan as early as 1 February 2018 (when the Company may be required to pay out some of the Existing Facilities at the election of the Existing Financiers).</p> <p>AQC #2 (or any other Obligor) may also be required to repay the Anglo Loan if AQC #2 does not grant or procure the granting of the full suite of Securities set out below within 90 days after Financial Close.</p>
Security	The following first ranking security was granted in favour of AAMCA at Financial Close:

Notice of Extraordinary General Meeting and Explanatory Memorandum

	<ul style="list-style-type: none"> • the Specific and Featherweight Security Deed; and • the AQC #2 General Security Deed. <p>In addition, the following first ranking security is to be granted in favour of AAMCA subject to all necessary approvals and lodgements being obtained and made pursuant to section 260B of the Corporations Act:</p> <ul style="list-style-type: none"> • the Target Company GSD; • the Target Company Mortgages. <p>Details of the Security are set out in Schedule 1 above.</p>
<p>Events of Default</p>	<p>If a Default (as set out below) occurs and subsists, AAMCA may by notice to AQC #2 declare that the Anglo Secured Money is immediately due and payable.</p> <p>A Default includes, but is not limited to, any of the following occurring:</p> <ul style="list-style-type: none"> • an Obligor fails to pay any of the Anglo Secured Money payable by it when due, or to comply with an obligation under a Finance Document and does not remedy this failure within 10 business days; • a statement, representation or warranty made in a Finance Document is incorrect or misleading; • a Finance Document is terminated, or a provision of a Finance Document becomes void or impossible to perform; • a debt of an Obligor or the Target Companies (for an amount exceeding \$500,000) becomes payable before its maturity, or is not paid when due; • an Insolvency Event occurs in respect of an Obligor; • any judgement is obtained against an Obligor or a Target Company for an amount exceeding \$500,000; • an Anglo Security ceases to have the priority ranking contemplated in it; • the Company ceases to hold all shares in AQC #2, or AQC #2 ceases to hold all shares in the Target Companies without AAMCA's prior approval; • There is a change in the persons who control, or one or more persons acquire control of, AQC #2 or the Target Companies.

Explanatory Memorandum

Proxies and representatives

Shareholders are entitled to appoint a proxy to attend and vote on their behalf. Where a Shareholder is entitled to cast two or more votes at the meeting, they may appoint two proxies. Where more than one proxy is appointed, each proxy may be appointed to represent a specific proportion or number of votes the Shareholder may exercise. If the appointment does not specify the proportion or number of votes each proxy may exercise, each proxy may exercise half of the votes. The proxy may, but need not, be a Shareholder of the Company.

Shareholders who are a body corporate are able to appoint representatives to attend and vote at the meeting under section 250D of the *Corporations Act 2001* (Cth).

The proxy form must be signed by the Shareholder or his/her attorney duly authorised in writing or, if the Shareholder is a corporation, in a manner permitted by the *Corporations Act*.

The proxy form (and the power of attorney or other authority, if any, under which the proxy form is signed) or a copy or facsimile which appears on its face to be an authentic copy of the proxy form (and the power of attorney or other authority) must be **deposited at, posted to, or sent by facsimile transmission to the address listed below, or by hand to the Share Registry, Link Market Services Limited, 1A Homebush Bay Drive, Rhodes NSW 2138** not less than 48 hours before the time for holding the meeting, or adjourned meeting as the case may be, at which the individual named in the proxy form proposes to vote.

Australian Pacific Coal Limited
C/- Link Market Services Limited
Locked Bag A14
Sydney South NSW 1235 Australia
Telephone Phone: 1300 554 474 (Overseas: +61 1300 554 474)
Facsimile No: +61 2 9287 0309

If a representative of the corporation is to attend the meeting the appropriate "Certificate of Appointment of Corporate Representative" should be produced prior to admission. A form of the certificate may be obtained from the Company's share registry.

A proxy form is **attached** to this Notice.

Voting entitlement

For the purposes of determining voting entitlements at the Meeting, Shares will be taken to be held by the persons who are registered as holding the Shares at 7.00pm on 9 August 2017. Accordingly, transactions registered after that time will be disregarded in determining entitlements to attend and vote at the Meeting.

Signing instructions

You must sign the proxy form as follows in the spaces provided:

- Individual: Where the holding is in one name, the Holder must sign.
- Joint Holding: Where the holding is in more than one name, all of the security holders should sign.
- Power of Attorney: To sign under Power of Attorney, you must have already lodged this document with the registry. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.
- Companies: Where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone.

Notice of Extraordinary General Meeting and Explanatory Memorandum

Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary.

Please indicate the office held by signing in the appropriate place.



Australian Pacific Coal

ABN 49 089 206 986

LODGE YOUR VOTE

ONLINE
www.linkmarketservices.com.au

BY MAIL
Australian Pacific Coal Limited
C/- Link Market Services Limited
Locked Bag A14
Sydney South NSW 1235 Australia

BY FAX
+61 2 9287 0309

BY HAND
Link Market Services Limited
1A Homebush Bay Drive, Rhodes NSW 2138

ALL ENQUIRIES TO
Telephone: 1300 554 474 Overseas: +61 1300 554 474



X99999999999

PROXY FORM

I/We being a member(s) of Australian Pacific Coal Limited and entitled to attend and vote hereby appoint:

APPOINT A PROXY

the Chairman of the Meeting (mark box)

OR if you are NOT appointing the Chairman of the Meeting as your proxy, please write the name of the person or body corporate you are appointing as your proxy

STEP 1

or failing the person or body corporate named, or if no person or body corporate is named, the Chairman of the Meeting, as my/our proxy to act on my/our behalf (including to vote in accordance with the following directions or, if no directions have been given and to the extent permitted by the law, as the proxy sees fit) at the Extraordinary General Meeting of the Company to be held at **9:00am on Friday, 11 August 2017 at the offices of HopgoodGanim Lawyers, Level 7, Waterfront Place, 1 Eagle Street, Brisbane Qld 4000** (the Meeting) and at any postponement or adjournment of the Meeting.

The Chairman of the Meeting intends to vote undirected proxies in favour of each item of business, to the extent permitted by law.

VOTING DIRECTIONS

Proxies will only be valid and accepted by the Company if they are signed and received no later than 48 hours before the Meeting. Please read the voting instructions overleaf before marking any boxes with an

Resolutions

For Against Abstain*

1 Approval of provision of Financial Assistance

STEP 2

i * If you mark the Abstain box for a particular Item, you are directing your proxy not to vote on your behalf on a show of hands or on a poll and your votes will not be counted in computing the required majority on a poll.

SIGNATURE OF SHAREHOLDERS – THIS MUST BE COMPLETED

Shareholder 1 (Individual)

Joint Shareholder 2 (Individual)

Joint Shareholder 3 (Individual)

Sole Director and Sole Company Secretary

Director/Company Secretary (Delete one)

Director

This form should be signed by the shareholder. If a joint holding, both shareholders must sign. If signed by the shareholder's attorney, the power of attorney must have been previously noted by the registry or a certified copy attached to this form. If executed by a company, the form must be executed in accordance with the company's constitution and the Corporations Act 2001 (Cth).

STEP 3

AQC PRX1702A



HOW TO COMPLETE THIS SHAREHOLDER PROXY FORM

YOUR NAME AND ADDRESS

This is your name and address as it appears on the Company's share register. If this information is incorrect, please make the correction on the form. Shareholders sponsored by a broker should advise their broker of any changes. **Please note: you cannot change ownership of your shares using this form.**

APPOINTMENT OF PROXY

If you wish to appoint the Chairman of the Meeting as your proxy, mark the box in Step 1. If you wish to appoint someone other than the Chairman of the Meeting as your proxy, please write the name of that individual or body corporate in Step 1. A proxy need not be a shareholder of the Company.

DEFAULT TO CHAIRMAN OF THE MEETING

Any directed proxies that are not voted on a poll at the Meeting will default to the Chairman of the Meeting, who is required to vote those proxies as directed. Any undirected proxies that default to the Chairman of the Meeting will be voted according to the instructions set out in this Proxy Form.

VOTES ON ITEMS OF BUSINESS – PROXY APPOINTMENT

You may direct your proxy how to vote by placing a mark in one of the boxes opposite each item of business. All your shares will be voted in accordance with such a direction unless you indicate only a portion of voting rights are to be voted on any item by inserting the percentage or number of shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on the items of business, your proxy may vote as he or she chooses. If you mark more than one box on an item your vote on that item will be invalid.

APPOINTMENT OF A SECOND PROXY

You are entitled to appoint up to two persons as proxies to attend the Meeting and vote on a poll. If you wish to appoint a second proxy, an additional Proxy Form may be obtained by telephoning the Company's share registry or you may copy this form and return them both together.

To appoint a second proxy you must:

- (a) on each of the first Proxy Form and the second Proxy Form state the percentage of your voting rights or number of shares applicable to that form. If the appointments do not specify the percentage or number of votes that each proxy may exercise, each proxy may exercise half your votes. Fractions of votes will be disregarded; and
- (b) return both forms together.

SIGNING INSTRUCTIONS

You must sign this form as follows in the spaces provided:

Individual: where the holding is in one name, the holder must sign.

Joint Holding: where the holding is in more than one name, both shareholders must sign.

Power of Attorney: to sign under Power of Attorney, you must lodge the Power of Attorney with the registry. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.

Companies: where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please indicate the office held by signing in the appropriate place.

CORPORATE REPRESENTATIVES

If a representative of the corporation is to attend the Meeting the appropriate "Certificate of Appointment of Corporate Representative" should be produced prior to admission in accordance with the Notice of Meeting. A form of the certificate may be obtained from the Company's share registry or online at www.linkmarketservices.com.au.

LODGEMENT OF A PROXY FORM

This Proxy Form (and any Power of Attorney under which it is signed) must be received at an address given below by **9:00am on Wednesday, 9 August 2017**, being not later than 48 hours before the commencement of the Meeting. Any Proxy Form received after that time will not be valid for the scheduled Meeting.

Proxy Forms may be lodged using the reply paid envelope or:



ONLINE

www.linkmarketservices.com.au

Login to the Link website using the holding details as shown on the Proxy Form. Select 'Voting' and follow the prompts to lodge your vote. To use the online lodgement facility, shareholders will need their "Holder Identifier" (Securityholder Reference Number (SRN) or Holder Identification Number (HIN) as shown on the front of the Proxy Form).



BY MAIL

Australian Pacific Coal Limited
C/- Link Market Services Limited
Locked Bag A14
Sydney South NSW 1235
Australia



BY FAX

+61 2 9287 0309



BY HAND

delivering it to Link Market Services Limited*
1A Homebush Bay Drive
Rhodes NSW 2138

* During business hours (Monday to Friday, 9:00am–5:00pm)

**IF YOU WOULD LIKE TO ATTEND AND VOTE AT THE EXTRAORDINARY GENERAL MEETING, PLEASE BRING THIS FORM WITH YOU.
THIS WILL ASSIST IN REGISTERING YOUR ATTENDANCE.**