

## 2011 Notice of Annual General Meeting

*This document is important and requires your immediate attention. Please read it straight away. If you have any doubts about the action you should take, contact your stockbroker, solicitor, accountant or other professional adviser immediately.*

Dear Shareholder,

We are pleased to invite you to Australian Pacific Coal Limited's annual general meeting which will be held at 1:30pm (Brisbane time) on Wednesday, 30 November 2011 in The Stanley Room, Stamford Plaza Brisbane, Corner Edward and Margaret Streets, Brisbane, Queensland.

This Notice of Meeting describes the business that will be proposed and sets out the procedures for your participation and voting.

Your Directors are unanimously of the opinion that all the resolutions to be proposed are in the best interests of shareholders and of Australian Pacific Coal as a whole. Accordingly, they recommend that you vote in favour of the resolutions as they intend to do in respect of their own beneficial holdings.

The Board and I look forward to your participation at the annual general meeting and thank you for your continued support.

Yours faithfully



John Bovard  
Chairman  
25 October 2011

# Notice of Annual General Meeting and Explanatory Memorandum

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Australian Pacific Coal Limited ACN 089 206 986

Date of Meeting: 30 November 2011

Time of Meeting: 1:30pm (Brisbane time)

Place of Meeting: The Stanley Room

Stamford Plaza Brisbane

Corner Edward and Margaret Streets

Brisbane Qld 4000

## Notice of Annual General Meeting

Notice is given that the Annual General Meeting of shareholders of Australian Pacific Coal Limited ACN 089 206 986 (**AQC** or **Company**) will be held at The Stanley Room, Stamford Plaza Brisbane, Corner Edward and Margaret Streets, Brisbane Qld 4000, on 30 November 2011 at 1:30pm (Brisbane time).

### Agenda

#### Ordinary business

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#### Financial Reports

To receive and consider the Company's Annual Report comprising the Directors' Report and Auditors' Report, Directors' Declaration, Statement of Comprehensive Income, Statement of Financial Position, Statement of Changes in Equity, Statement of Cashflows and notes to and forming part of the accounts for the Company for the financial year ended 30 June 2011.

#### 1. Resolution 1: Remuneration Report

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To consider and, if thought fit, pass the following Advisory Resolution:

*"That, the Remuneration Report for the year ended 30 June 2011 (as set out in the Directors' Report) is adopted."*

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

The vote on this Resolution 1 is advisory only and does not bind the Directors of the Company.

#### **Voting Restriction pursuant to Section 250R(4) of the Corporations Act**

A vote on Resolution 1 must not be cast (in any capacity) by or on behalf of either of the following persons:

- (a) a member of the Key Management Personnel details of whose remuneration are included in the Remuneration Report;
- (b) a Closely Related Party of such a member.

However, the above persons may cast a vote on Resolution 1 if:

- (a) the person does so as a proxy appointed by writing that specifies how the proxy is to vote on the proposed resolution; and
- (b) the vote is not cast on behalf of a member of the Key Management Personnel details of whose remuneration are included in the Remuneration Report or a Closely Related Party of such a member.

#### **ASIC Relief**

The Company has obtained relief from ASIC allowing the Chairman to vote undirected proxies on the conditions set out in the Explanatory Memorandum.

Shareholders should be aware that any undirected proxies given to the Chairman will be cast by the Chairman and counted in favour of the resolutions the subject of this Meeting, including Resolution 1.

**2. Resolution 2: Re-election of Mr Peter Ziegler as a Director**

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To consider and, if thought fit, pass the following resolution, as an Ordinary Resolution of the Company:

*“That Peter Ziegler, who retires by rotation in accordance with Rule 18.2 of the Company’s Constitution and, being eligible, offers himself for re-election, be re-elected as a Director.”*

**3. Resolution 3: Re-election of Mr Paul Ingram as a Director**

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To consider and, if thought fit, pass the following resolution, as an Ordinary Resolution of the Company:

*“That Paul Ingram, who retires by rotation in accordance with Rule 15.4 of the Company’s Constitution and, being eligible, offers himself for re-election, be re-elected as a Director.”*

**4. Resolution 4: Authorise the issue of up to 60 million Shares**

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To consider and, if thought fit, pass the following Ordinary Resolution, with or without amendment:

*“That in accordance with the provisions of ASX Listing Rule 7.1, and for all other purposes, the Shareholders approve the issue by the Company and the Directors of the Company of up to 60 million Shares (**Placement Shares**) at an issue price per Placement Share of not less than 80% of the weighted average trading price of the Company’s shares calculated over the last five (5) days on which sales in the securities of the Company were recorded before the day on which the Placement Shares are issued, to various sophisticated or professional investors (**Investors**) that fall within one or more of the classes of exemptions specified in section 708 of the Corporations Act 2001 (Cth) on the terms and conditions contained in this Notice of Meeting and attached Explanatory Memorandum.”*

**Voting exclusion statement**

The Company will disregard any votes cast on this Resolution by:

- any Investor; and
- any associate of the Investor.

However, the Company need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with the direction on the proxy form to vote as the proxy decides.

**Important Note:**

All Shareholders who vote on this Resolution 4 and their associates will be prohibited from subscribing for any Shares under this Resolution 4.

Accordingly, all Shareholders who intend or have associates who intend to subscribe for any new Shares under this Resolution 4 should abstain from voting on this Resolution 4.

## 5. Resolution 5: Issue of Shares to Tim Prowse

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

*“That, in accordance with the provisions of Rule 10.11 (and Rules 7.1 and 7.2 (Exception 14)) of the Official Listing Rules of the ASX and Chapter 2E of the Corporations Act and for all other purposes, the Company is authorised to issue up to 5,000,000 Shares to Tim Prowse (**Prowse**), a former Director of the Company, or his nominee, pursuant to the Company’s Employee Incentive Scheme, namely the “Australian Pacific Coal Limited Officers’, Executives, Consultants and Employee Share Plan” (**Share Plan**), on the terms and conditions set out in the Notice and accompanying Explanatory Memorandum.”*

### Voting exclusion statement

The Company will disregard any votes cast on this Resolution by:

- Tim Prowse; and
- any Associate of Tim Prowse.

However, the Company need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with the direction on the proxy form to vote as the proxy decides.

## 6. Resolution 6: Issue of Shares to Paul Ingram

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To consider and, if thought fit, pass the following Resolution, with or without amendment, as an Ordinary Resolution of the Company:

*“That, in accordance with the provisions of Rule 10.11 (and Rules 7.1 and 7.2 (Exception 14)) of the Official Listing Rules of the ASX and Chapter 2E of the Corporations Act and for all other purposes, the Company is authorised to issue 5,000,0000 Shares to Paul Ingram (**Ingram**) a Director of the Company, or his nominee, pursuant to the Company’s Share Plan, on the terms and conditions set out in the Notice and accompanying Explanatory Memorandum.”*

**Voting exclusion statement**

The Company will disregard any votes cast on this Resolution by:

- Paul Ingram; and
- any *Associate* of Paul Ingram.

However, the Company need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with the direction on the proxy form to vote as the proxy decides.

**7. Resolution 7: Issue of Shares to John Bovard**

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To consider and, if thought fit, pass the following Resolution, with or without amendment, as an Ordinary Resolution of the Company:

*“That, in accordance with the provisions of Rule 10.11 (and Rules 7.1 and 7.2 (Exception 14)) of the Official Listing Rules of the ASX and Chapter 2E of the Corporations Act and for all other purposes, the Company is authorised to issue 2,500,000 Shares to John Bovard (**Bovard**), a Director of the Company, or his nominee, pursuant to the Company’s Share Plan, on the terms and conditions set out in the Notice and accompanying Explanatory Memorandum.”*

**Voting exclusion statement**

The Company will disregard any votes cast on this Resolution by:

- John Bovard; and
- any *Associate* of John Bovard.

However, the Company need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with the direction on the proxy form to vote as the proxy decides.

**General business**

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

Notice of Annual General Meeting

**By order of the board**

A handwritten signature in black ink, appearing to read "K. Mischewski". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Kevin Mischewski  
Company Secretary  
25 October 2011

## 1. Introduction

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This Explanatory Memorandum is provided to Shareholders of Australian Pacific Coal Limited ACN 089 206 986 (**Company**) to explain the Resolutions to be put to Shareholders at the Annual General Meeting to be held at The Stanley Room, Stamford Plaza Brisbane, Corner Edward and Margaret Streets, Brisbane Qld 4000 on 30 November 2011 commencing at 1:30 pm (Brisbane time).

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

Terms used in this Explanatory Memorandum are defined in Section 2.

## 2. Consider the Company's Annual Report

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The Company's Annual Report comprising the Directors' Report and Auditors' Report, Directors' Declaration, Statement of Financial Performance, Statement of Financial Position, Statement of Cashflows and notes to and forming part of the accounts for the Company for the financial year ended 30 June 2011 were despatched to Shareholders and released to the ASX Limited on 3 October 2011. The Company's Annual Report is placed before the shareholders for discussion. No voting is required for this item.

## 3. Resolution 1 – Remuneration Report

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In accordance with section 250R of the Corporations Act, the Remuneration Report for the Company and its subsidiaries is submitted to the AGM for Shareholder approval. The Remuneration Report is set out on pages 32 to 34 of the Directors' Report section of the Annual Report.

The Remuneration Report:

- explains the Board's policy for determining the nature and amount of remuneration of executive directors and senior executives of the Company;
- explains the relationship between the Board's remuneration policy and the Company's performance;
- sets out remuneration details for each Director and the most highly remunerated senior executive of the Company; and
- details and explains any performance conditions applicable to the remuneration of executive directors and senior executives of the Company.

Note: For the purposes of calculating remuneration, salary and bonuses (including options) are included.

A reasonable opportunity will be provided for discussion of the Remuneration Report at the meeting.

This resolution shall be determined as if it were an ordinary (majority) resolution, but under Section 250R(3) of the Corporations Act, the vote on the resolution is advisory only and does not bind the Directors of the Company. However the Board will take the outcome of the vote into consideration when reviewing remuneration practices and policies.

Under Part 2G.2, Division 9 of the Corporations Act, if 25 percent or more of votes that are cast are voted against the adoption of the Remuneration Report at two consecutive AGMs, the Company will be required to put to shareholders a resolution (**Spill Resolution**) proposing an extraordinary general meeting to consider the appointment of the Directors of the Company (**Spill Meeting**). If more than 50 percent of the shareholders vote in favour of the Spill



Resolution, the Company must hold the Spill Meeting within 90 days of the second AGM at which all of the Company's directors (other than the managing director) must go up for re-election.

The Board unanimously recommends that Shareholders vote in favour of adopting the Remuneration Report. (A vote on this Resolution is advisory only and does not bind the Directors of the Company.)

**Voting restrictions on Key Management Personnel and their proxies and Closely Related Parties**

As a result of amendments to the Corporations Act which came into effect on 1 July 2011, members of the Key Management Personnel and their proxies and Closely Related Parties are restricted from voting on a resolution (**Voting Restriction**) put to Shareholders that the remuneration report of the Company be adopted. Key Management Personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.

The Voting Restriction does not apply where the chairperson or any other member of the Key Management Personnel is appointed in writing (by a shareholder who is not a member of the Key Management Personnel) as a proxy (**Management Proxy**) with specific instructions on how to vote on a resolution to adopt the remuneration report of the Company.

It is not clear in the amendments to the Corporations Act whether the Management Proxy will be able to vote where the proxy appointment does not give specific instructions on how to vote on a resolution to adopt the remuneration report.

In order to resolve this, during 2011, the Federal Government proposes to amend the Corporations Act to make clear that a Chairperson is permitted to vote undirected proxies on remuneration report resolutions.

In order to ensure strict compliance with the relevant provisions of the Corporations Act in relation to the Voting Restrictions, the Company has obtained from the ASIC relief allowing the Chairman to vote undirected proxies. The relief applies to the casting of a vote of the Chairman in the following circumstances:

- (a) John Bovard or, in the alternative, Peter Ziegler has been elected, by either the directors or the members of the Company, to be the chair of the AGM of the Company to be held on or about 30 November 2011 and at any adjournment or postponement of that meeting;
- (b) the chair has been appointed by a member of the Company who is not a person mentioned in paragraph (a) or (b) of subsection 250R(4) as the member's proxy to attend and vote for the member at the meeting in relation to the resolution;
- (c) the appointment does not specify the way the chair is to vote on the resolution;
- (d) the appointment expressly authorises the chair to exercise the proxy in relation to the resolution even if the resolution is connected directly or indirectly with the remuneration of a member of the Key Management Personnel for the Company which includes the chair;
- (e) the notice of meeting and the proxy form which accompanies the notice of meeting contains a statement as to how the chair, if appointed as the member's proxy and the appointment does not specify the way the chair is to vote on the resolution, intends to vote on the resolution; and
- (f) the proxy form which accompanies the notice of meeting is substantially in the form of the draft proxy form provided to ASIC on 24 October 2011.

Shareholders should be aware that any undirected proxies given to the Chairman will be cast by the Chairman and counted in favour of the resolutions the subject of this Meeting, including this Resolution 1.

#### **4. Resolution 2 - Re- election of Mr Peter Ziegler as a Director**

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Article 18.2 of the Company's Constitution requires that at each Annual General Meeting, one third of the Directors in office (other than a managing Director) shall retire from office.

As there are 3 Directors of the Company (excluding the managing Director), one Director is required to retire at the 2011 Annual General Meeting in accordance with Article 18.2.

Article 18.4 specifies that the Directors to retire by rotation at each AGM are those who have been longest in office and as between Directors who have been in office an equal length of time, the Directors to retire shall be determined by agreement between them.

Peter Ziegler and John Bovard are the Directors who have been longest in office, and having held office for an equal length of time have agreed in writing that Peter Ziegler will, at the Company's 2011 Annual General Meeting, retire in accordance with Article 18 of the Company's Constitution.

Consequently Peter Ziegler retires in accordance with clause 18 of the Company's Constitution and, being eligible, offers himself for re-election as an Executive Director.

Peter Ziegler was appointed on 29 November 2005.

Mr Ziegler is an experienced company director. He was a partner of one of the major international accounting firms, specialising in taxation and corporate structuring. Mr Ziegler is currently the principal of Ziegler Asset Partners, an asset management firm specialising in investments in listed and unlisted equities and special opportunities. He is also a solicitor of the Supreme Court of Victoria. Director since 29 November 2005

The Directors (with Mr Ziegler abstaining) recommend that you vote in favour of this Ordinary Resolution.

#### **5. Resolution 3 - Re- election of Mr Paul Ingram as a Director**

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Paul Ingram was appointed by the Company's Board of Directors on 17 March 2011 in accordance with the casual vacancy provisions in Clause 15.4 of the Company's Constitution. Pursuant to Article 15.4, Mr Ingram holds office until the general meeting following his appointment and shall then be eligible for re-election.

Consequently, Mr Ingram retires in accordance with Clause 15.4 of the Company's Constitution and, being eligible, offers himself for re-election as a Non-Executive Director.

Mr Ingram is a geologist with over thirty five years' experience in mineral exploration and mine development. Paul has been involved in several startup public companies, mostly focussed in the Asian region. He has extensive experience in corporate M&A, and has been focussed on coal projects in Asia and Australia for the past eight years. Paul brings to the Board of AQC an extensive network of professional contacts, which, combined with close ties to the Chinese resource industry, will be of significant benefit to AQC as an emerging coal company in Queensland.

Mr Ingram is currently a director of Consolidated Global Investments Limited, A-Cap Resources Ltd and Impact Minerals Limited.

The Directors (with Mr Ingram abstaining) recommend that you vote in favour of this Ordinary Resolution.

## **6. Resolution 4 – Authorise the issue of up to 60 million Shares**

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### **6.1 Introduction**

Resolution 4 seeks shareholder authorisation for the Company to issue up to 60 million Shares (**Placement Shares**).

### **6.2 Impact on capital of the Company**

The Company currently has on issue 533,118,926 Shares. Upon the issue of 60 million shares, the Placement Shares will represent a total of 11.25% of the share capital of the Company.

### **6.3 ASX Listing Rule 7.1**

In accordance with Listing Rule 7.1 the Company is seeking Shareholder approval to issue the Placement Shares.

Listing Rule 7.1 prohibits a company, except in certain cases, from issuing new shares equivalent in number to more than 15% of its capital in any 12 month period (**15% Limit**) without the prior approval of its shareholders. Securities issued with shareholder approval under ASX Listing Rule 7.1 do not count towards the 15% Limit. Further, Listing Rule 7.1 can be treated as having been made with that approval if shareholders subsequently approve it.

If Resolution 4 is approved it will have the effect of ensuring that the issue of any Placement Shares does not affect the Company's ability to issue Shares representing up to 15% of the Company's capital during a 12 month period without needing to obtain shareholder approval pursuant to Listing Rule 7.1. The Company will therefore retain a greater proportion of the 15% Limit for subsequent requirements that may arise.

For the purposes of ASX Listing Rule 7.3, the Company advises:

- The maximum number of Shares to be issued is 60 million Shares (**Placement Shares**).
- The Placement Shares will be progressively issued within three months of the date of the Meeting.
- The Company will issue the Placement Shares to sophisticated or professional investors who fall within one or more of the exemptions under section 708 of the Corporations Act and is not a related party of the Company.
- The issue price of the Placement Shares shall not be less than 80% of the Average Market Price of the Shares.
- The Placement Shares shall rank pari passu with all other existing Shares on issue in the Company.
- The total funds that will be raised from the issue of the Placement Shares will be used for tenement maintenance and exploration and general working capital.

### **6.4 Trading History**

Details of the Company's trading history of the previous 12 months is set out below:

- Highest Share Price: \$0.095.
- Lowest Share Price: \$0.018.
- VWAP for the month of September: \$0.040.

## 6.5 Important Note

All Shareholders who vote on this Resolution 4 and their associates will be prohibited from subscribing for any Shares under this Resolution 4.

Accordingly, all shareholders who intend, or have associates who intend, to subscribe for any new Shares under this Resolution 4 should abstain from voting on this Resolution 4.

## 6.6 Recommendation

The Board recommends that Shareholders vote in favour of this Ordinary Resolution.

## 7. Resolutions 5, 6 and 7: Issue of Shares to each of Tim Prowse, Paul Ingram and John Bovard

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### 7.1 Introduction

#### Share Plan Terms

The Company has in place an incentive scheme in the form of a share plan, namely the "Australian Pacific Coal Limited Officers', Executives, Consultants and Employee Share Plan" (**Share Plan**), approved by the Company's Shareholders on 30 November 2010 (**Approval Date**).

The purpose of the Company's Share Plan is to motivate and incentivise the Company's officers, executives, consultants and employees by providing them with the opportunity to participate in the growth of the Company by holding shares in the Company.

Under the terms of the Share Plan an Eligible Participant may, at the invitation of the Company, participate in a scheme for the acquisition of Shares in the Company. Tim Prowse, Paul Ingram and John Bovard are Eligible Participants under the Share Plan.

The Company will provide by way of loan, the subscription moneys required by the Eligible Participant to subscribe for the Shares under the Plan. The intention is that repayment of the Loan and any interest accrued will be effected from any proceeds from the sale of the Shares and future share dividends.

The Company's Share Plan has been implemented for and to incentivise both executive and non-executive directors.

Listing Rule 10.14 entitles a company to issue securities under certain share plans that have been approved by shareholders, i.e. where the share plan is an "Employee Incentive Scheme" which is defined as:

- (a) *a scheme for the issue or acquisition of equity securities in the entity to be held by, or for the benefit of, participating employees or **non-executive** directors of the entity or a related entity; or*
- (b) *a scheme which, in ASX's opinion, is an employee incentive scheme.*

As the Company's Share Plan applies to **executive** directors as well as non-executive directors and employees it does not fall within the Listing Rules' definition of an Employee Incentive Scheme.

The relevance of this distinction is that Shareholder approval for the issue of Shares to Tim Prowse (former director), Paul Ingram (director) and John Bovard (director) is being sought under Listing Rule 10.11 (which applies to related party transactions) rather than Listing Rule 10.14 (which applies to the issue of securities under an Employee Incentive Scheme). **Share Based Remuneration**

Mr Tim Prowse was appointed as an Executive Director of the Company on 13 December 2010 (**Prowse Appointment Date**) and retained office until 29 June 2011. In consideration of his appointment, the Company agreed, subject to shareholder approval being obtained, to issue Prowse 5,000,000 Shares in accordance with the Share Plan (**Prowse Shares**). In the letter of offer (invitation to participate) the Chairman (on behalf of the Company offered the Shares at a subscription price of \$121,500 (**Prowse Subscription Price**) calculated at an issue price of \$0.0243 per share (**Prowse Issue Price**). The Prowse Subscription Price was based on the volume weighted average trading price of the Shares on the ASX for the 5 trading day period up to and including the Prowse Appointment Date.

In the event that the shareholders do not approve the resolution for the issue of the Prowse Shares, the Company has agreed that Tim Prowse will be entitled to a one off payment calculated as follows:

- (a) 5,000,000 multiplied by the volume weighted average trading price of the shares on the ASX for the five (5) trading day period up to and including the day on which the General Meeting of Shareholders of the Company is held minus \$121,500; and
- (b) if the calculation in (a) above results in a negative amount then the amount payable will be \$Nil.

It is noted that, the Directors may subsequently agree with Tim Prowse to issue a lesser number of shares than 5,000,000 and as such the Directors are seeking Shareholder approval for the issue of up to 5,000,000 Shares to Tim Prowse.

Mr Paul Ingram was appointed as an Executive Director of the Company on 17 March 2011 (**Ingram Appointment Date**). In consideration of his appointment, the Company agreed, subject to shareholder approval being obtained, to issue Ingram 5,000,000 Shares in accordance with the Share Plan (**Ingram Shares**). In the letter of offer (invitation to participate), the Chairman (on behalf of the Company offered the Shares at a subscription price of \$264,500 (**Ingram Subscription Price**) calculated at an issue price of \$0.0529 per share (**Ingram Issue Price**), and noted that the subscription price is based on the volume weighted average trading price of the Shares on the ASX for the 5 trading day period up to and including the Ingram Appointment Date.

In the event that the shareholders do not approve the resolution for the issue of the Ingram Shares, the Company has agreed that Paul Ingram will be entitled to a one off payment calculated as follows:

- (a) 5,000,000 multiplied by the volume weighted average trading price of the shares on the ASX for the five (5) trading day period up to and including the day on which the General Meeting of Shareholders of the Company is held minus \$264,500; and
- (b) if the calculation in (a) above results in a negative amount then the amount payable will be \$Nil.

Relevantly, section 3.3 of the Share Plan states that participation in the Share Plan is in the Board's sole discretion and section 4.1 of the Share Plan records that an invitation to participate in the Share Plan may, among other matters, be made by the Company at any time (and relate to a specified number of Shares), provide the Issue Price for the Shares and the Subscription Price payable for the Shares. Section 10.5 of the Share Plan states that the Board has an absolute and unfettered discretion in exercising any power or discretion concerning the Plan or any Shares allocated under the Plan.

Consequently, setting the Prowse Subscription Price and Ingram Subscription Price based on the market prices of the Shares at the time of the Prowse Appointment and Ingram Appointment respectively, rather than based on the Market Price at the time when the Shares will be issued, is in accordance with the Share Plan being a valid exercise of the Board's unfettered discretion to specify the Subscription and Issue Price in the invitation to participate.

## Shareholder Approval

The Directors seek Shareholder approval for the issue of up to 5,000,000 Shares to Tim Prowse, 5,000,000 Shares to Paul Ingram and 2,500,000 Shares to John Bovard (**Director Shares**) under the Share Plan.

Approval for the issue of the Directors Shares pursuant to the Share Plan is sought in accordance with Listing Rule 10.11 and Part 2E of the Corporations Act.

As noted above, the Share Plan does not fall within the technical definition of an Employee Incentive Scheme under the ASX Listing Rules and consequently Shareholder approval is being sought under Listing Rule 10.11 rather than Listing Rule 10.14.

If approval is given under Listing Rule 10.11, pursuant to Listing Rule 7.2 (Exception 14) approval will not be required under Listing Rule 7.1.

## 1.2 Regulatory Requirements

### Chapter 2E of the Corporations Act

Chapter 2E of the Corporations Act prohibits a public company from giving a financial benefit to a related party of a public company unless the benefit falls within one of the various exceptions to the general prohibition. One of the exceptions includes where the company first obtains the approval of its shareholders in general meeting in circumstances where the requirements of Chapter 2E in relation to the convening of that meeting have been met, and then gives the benefit within 15 months after the approval: Section 208(1)(a) Corporations Act.

A "related party" for the purposes of the Corporations Act is defined widely and includes a director of a public company and a person who was a director at any time within the previous 6 months.

A "financial benefit" for the purposes of the Corporations Act has a very wide meaning. It includes the public company paying money or issuing securities to the related party. In determining whether or not a financial benefit is being given, it is necessary to look to the economic and commercial substance and effect of what the public company is doing (rather than just the legal form). Any consideration which is given for the financial benefit is to be disregarded, even if it is full or adequate.

The proposed resolutions, if passed, will confer financial benefits on Tim Prowse, Paul Ingram and John Bovard or their respective nominees. The Company seeks to obtain Shareholder approval in accordance with the requirements of Chapter 2E of the Corporations Act and for this reason and for all other purposes the following information is provided to Shareholders.

#### (a) **Details of related parties (Section 219(1)(a) Corporations Act)**

The related parties to whom Resolutions 5, 6 and 7 would permit the financial benefit to be given to each of:

- Tim Prowse (or his nominee), being a person who was a director of the Company within the previous 6 months;
- Paul Ingram (or his nominee), being a director of the Company; and
- John Bovard (or his nominee), being a director of the Company.

#### (b) **Nature of the financial benefit (Section 219(1)(b) Corporations Act)**

The nature of the proposed financial benefit to be given is the issue of

- up to 5,000,000 Shares to Tim Prowse (or his nominee) (**Prowse Shares**);

## Explanatory Statement

- 5,000,000 Shares to Paul Ingram (or his nominee) (**Ingram Shares**); and
- 2,500,000 Shares to John Bovard (or his nominee) (**Bovard Shares**),

In accordance with the Share Plan Rules, as referred to in Resolutions 5, 6 and 7:

- (1) The Prowse Shares shall be issued for \$0.0243 per share (**Prowse Issue Price**) (a maximum total of \$121,500, (assuming 5,000,000 are issued)) (**Prowse Subscription Price**), a price which was determined at the volume weighted average trading price of the shares on the ASX for the 5 trading day period up to and including the Prowse Appointment Date.
  - (2) The Ingram Shares shall be issued for \$0.0529 per share (**Ingram Issue Price**) (total \$264,500) (**Ingram Subscription Price**), a price which was determined at the volume weighted average trading price of the shares on the ASX for the 5 trading day period up to and including the Ingram Appointment Date.
  - (3) The Bovard Shares shall be issued for the greater of:
    - (a) \$ 0.04 per Share (**Minimum Price**); or
    - (b) the Market Price,  
**(Bovard Issue Price)**.
- (c) **Directors' recommendation (Section 219(1)(c) Corporations Act)**

With respect to Resolution 5, the directors recommend that Shareholders vote in favour of this Resolution.

With respect to Resolution 6, John Bovard, Paul Byrne and Peter Ziegler recommend that Shareholders vote in favour of this Resolution. As Paul Ingram is interested in the outcome of Resolution 6 he accordingly makes no recommendation to Shareholders in respect of this Resolution.

With respect to Resolution 7, Paul Byrne, Peter Ziegler and Paul Ingram recommend that Shareholders vote in favour of this Resolution. As John Bovard is interested in the outcome of Resolution 7 he accordingly makes no recommendation to Shareholders in respect of this Resolution.

The reasons for the above recommendations include:

- (1) the issue of the Prowse Shares will provide Tim Prowse with adequate compensation for the services he rendered as a director of the Company;
- (2) the issue of the Ingram Shares will bind Paul Ingram to the performance of the Company in that it will incentivise Paul Ingram to act and exercise his duties and powers as directors to further progress the Company;
- (3) the issue of the Bovard Shares will provide John Bovard with reward and incentive for services he has provided to the Company to date and will continue to provide to the Company to further the progress of the Company;
- (4) provide a means in which to retain funds for use in the Company's operations while adequately compensating Messers Prowse, Ingram and Bovard for their services as current or former directors; and
- (5) the Directors Shares are not intended as a substitute for salary or wages.

(c) **Recipients' interest and other remuneration (Section 219(1)(d) Corporations Act)**

**Resolution 5 – Tim Prowse**

Tim Prowse has a material personal interest in the outcome of Resolution 5, as it is proposed that up to 5,000,000 Shares be issued to him (or his nominee) as set out in Resolution 5.

Excluding the 5,000,000 Shares (or such lesser number of Shares agreed to by the Company and Tim Prowse), Tim Prowse (and entities associated with him) hold 225,000 Shares and Nil Options.

Other than the 5,000,000 Shares (or such lesser number of Shares agreed to by the Company and Tim Prowse) to be issued to Tim Prowse (or his nominee) pursuant to Resolution 5. As Tim Prowse is a former director, he currently receives no director's remuneration or superannuation. Tim Prowse held office as a director of the Company until 29 June 2011 and in the year ending 30 June 2011, was provided with remuneration of \$99,700.00.

**Resolution 6 – Paul Ingram**

Paul Ingram has a material personal interest in the outcome of Resolution 6, as it is proposed that the 5,000,000 Shares be issued to him (or his nominee) as set out in Resolution 6.

Excluding the 5,000,000 Shares to be issued, Paul Ingram (and entities associated with him) holds Nil Shares and Nil options to subscribe for Shares.

Other than the 5,000,000 Shares to be issued to Paul Ingram (or his nominee) pursuant to Resolution 6, Paul Ingram currently receives director's remuneration of \$36,000.00 (including statutory superannuation) per annum for his services as a non-executive director of the Company. Paul Ingram is entitled to receive additional remuneration from the Company at an arms-length daily rate for specific contracted services provided. These services are not included within the scope of his duties as a director and are billed to the Company as and when incurred.

**Resolution 7 – John Bovard**

John Bovard has a material personal interest in the outcome of Resolution 7, as it is proposed that the 2,500,000 Shares be issued to him (or his nominee) as set out in Resolution 7.

Excluding the 2,500,000 Shares to be issued, John Bovard (and entities associated with him) holds 2,500,000 Shares and Nil options to subscribe for Shares.

Other than the 2,500,000 Shares to be issued to John Bovard (or his nominee) pursuant to Resolution 7, John Bovard currently receives director's remuneration of \$60,000.00 (including statutory superannuation) per annum for his services as a non-executive Chairman of the Company. John Bovard is entitled to receive additional remuneration from the Company at no greater than an arms-length daily rate for specific contracted services provided. These services are not included within the scope of his duties as a director and are billed to the Company as and when incurred.

(d) **Directors' Interests in Shares**

If all of the Directors Shares are issued it will have the following effect on their holdings in the Company and the dilutionary impact on current Shareholders of the Company:



Shareholder	Current Share Holding	% of Total Share Capital Shares on issue)	Number of Director Shares	Shares held Upon issue of Directors Shares	% of Total Share Capital (Shares on issue) <sup>1</sup>
Current Shareholders (other than the relevant Directors )	530,393,926	99.49%	0	530,393,926	97.21%
Tim Prowse (and entities associated with him)	225,000	0.04%	5,000,000	5,225,000	0.96%
Paul Ingram (and entities associated with him)	0	0.00%	5,000,000	5,000,000	0.92%
John Bovard (and entities associated with him)	2,500,000	0.47%	2,500,000	5,000,000	0.92%
<b>Total</b>	<b>533,118,926</b>	<b>100.00%</b>	<b>12,500,000</b>	<b>545,618,926</b>	<b>100.00%</b>

Notes:

1. Assuming that no other Shares are issued and that the full 5,000,000 Shares are issued to Tim Prowse.

(e) **Valuation**

As noted above, the Company intends to issue the Director Shares to each of Tim Prowse, Paul Ingram and John Bovard pursuant to the Company's Share Plan.

In accordance with the terms of the Share Plan, as specified above, the issue price of the Prowse Shares, Ingram Shares and Bovard Shares would be the Market Price of the Shares as determined by the volume weighted average trading price of Shares on ASX for the five (5) trading day period up to and including the day on which the relevant Issue Price is to be determined.

The Company in assessing the value of any "benefit" accruing to the recipient has not commissioned an independent valuation report as:

1. the financial benefit is not difficult to value - the Director Shares will be issued at the Market Price for the Shares prior to the Prowse Appointment Date (date of invitation/offer) in respect of the Prowse Shares, the Ingram Appointment Date (date of invitation/offer) in respect of the Ingram Shares and the date of issue in respect of the Bovard Shares;
2. the issue of the Director Shares does not represent a transaction or transactions which are significant from the point of view of the Company;
3. the non-interested directors have sufficient expertise to provide independent advice to members about the value of the financial benefit;
4. a valuation from an independent expert is not specified as being required to be included under Chapter 10 of the Listing Rules;
5. the issue of the Director Shares is not a control transaction.

To provide Shareholders with some guidance as to the likely Market Price of the Bovard Shares, and the value of the Prowse Shares and Ingram Shares based on the

current Market Price, set out below is a table based on the Company's trading history (as set out in Section 8.2 (h) below) which provided the indicative value of the Directors Share based on the following range:

Directors Name	Value based on Lowest Share Price during 12 months prior to 25 October 2011	Value based on Highest Share Price during 12 months prior to 25 October 2011	Value based on September VWAP
Tim Prowse (5,000,000 Shares)	\$90,000.00	\$475,000	\$200,000.00
Paul Ingram (5,000,000 Shares)	\$90,000.00	\$475,000	\$200,000.00
John Bovard (2,500,000 Shares)	\$45,000.00	\$237,500	\$100,000.00

(f) **Any other information that is reasonably required by Shareholders to make a decision and that is known to the Company or any of its Directors (Section 219(1)(e),(2) Corporations Act)**

There is no other information known to the Company or any of its Directors that is reasonably required by Shareholders to make a decision with respect to the Resolutions save and except as follows:

**Market Price Movement**

The Directors Share value ranges noted above assume market prices of the Shares based respectively on the lowest share price for the last 12 months (\$0.018), the highest share price for the last twelve months (\$0.095) and the volume weighted average price for the month of September (\$0.040). The most recent market price of the Shares prior to the date of this report is \$0.035. There is a possibility that the market price of the Shares on the date of issue of the Directors Shares will be different to this and that the market price of the Shares will change up to the date of the Meeting.

**Opportunity Costs**

The opportunity costs and benefits foregone by the Company issuing the Directors Shares to each of Tim Prowse, Paul Ingram and John Bovard or their respective nominees, is the potential dilutionary impact on the issued share capital of the Company. To the extent that the dilutionary impact caused by the issue of Directors Shares will be detrimental to the Company or its Shareholders, this is believed to be more than offset by the advantages accruing from the Company securing the services of experienced and skilled Directors on appropriate incentive terms.

Increase in the value of the Director Shares is dependent upon a concomitant increase in the value of the Company generally.

**Taxation Consequences**

No stamp duty will be payable in respect of the issue of the Director Shares. No GST will be payable by the Company in respect of the issue of the Director Shares (or if it is then it will be recoverable as an input credit).

AASB 2 "Share Based Payments" requires that these payments shall be measured at the more readily determinable fair value of the equity instrument. Under the accounting standards this amount will be expensed in the statement of comprehensive income. Where the issue date and the vesting date are different the total expenditure calculated will be allocated between the two dates taking into account the terms and conditions attached to the instruments and the counterparties as well as

management's assumptions about probabilities of payments and compliance with and attainment of the set out terms and conditions.

Save as set out in this Explanatory Memorandum, the Directors are not aware of any other information that will be reasonably required by Shareholders to make a decision in relation to benefits contemplated by Resolutions 5, 6 and 7.

(g) **Trading history**

Details of the Company's trading history of the previous 12 months is set out below:

Highest Share Price: \$0.095

Lowest Share Price: \$0.018

VWAP for the month of September: \$0.040

**Listing Rule 10.11**

As noted above, the Share Plan does not fall within the technical definition of an Employee Incentive Scheme under the Listing Rules and consequently Shareholder approval is being sought under Listing Rule 10.11 rather than Listing Rule 10.14.

Listing Rule 10.11 requires an entity to obtain the approval of Shareholders to an issue of securities to a related party unless one of the exceptions in Listing Rule 10.12 applies.

Each of Tim Prowse, Paul Ingram and John Bovard, each being a Director of the Company, is a related party of the Company.

For the purposes of Listing Rule 10.13, which specifies the requirements for the notice of meeting under rule 10.11, the Company advises as follows:

- (a) the securities will be issued to the following persons:
  - (1) Tim Prowse (being a person who was a director of the Company during the previous 6 months) (or his nominee),
  - (2) Paul Ingram (being a director of the Company) (or his nominee); and
  - (3) John Bovard (being a director of the Company) (or his nominee).
- (b) the maximum total number of Director Shares to be issued to all persons for whom approval is required is 12,500,000 Shares, comprising:
  - (1) up to 5,000,000 Shares to Tim Prowse (or his nominee);
  - (2) 5,000,000 Shares to Paul Ingram (or his nominee); and
  - (3) 2,500,000 Shares to John Bovard (or his nominee);
- (c) Subject to Shareholder approval being obtained, Directors Shares are intended to be issued as soon as possible following the Meeting, but in any event, no later than one (1) month after the date of the Meeting.
- (d) In accordance with the Share Plan:
  - (1) the Prowse Shares shall be issued by the Company for \$0.0243 per share (**Prowse Issue Price**) (maximum total of \$121,500 assuming the full 5,000,000 Shares are issued) (**Prowse Subscription Price**), a price which was determined at the volume weighted average trading price of the shares on the

## Explanatory Statement

ASX for the 5 trading day period up to and including the Prowse Appointment Date;

- (2) the Ingram Shares shall be issued by the Company for \$0.0529 per share (**Ingram Issue Price**) (total \$264,500) (**Ingram Subscription Price**), a price which was determined at the volume weighted average trading price of the shares on the ASX for the 5 trading day period up to and including the Ingram Appointment Date;
- (3) the Bovard Shares shall be issued by the Company for the greater of:
  - (a) \$ 0.04 per Share (**Minimum Price**); or
  - (b) the Market Price,  
**(Bovard Issue Price)**.

funded by a loan from the Company for their issue price. This loan is of a limited recourse nature and is secured by the Director Shares acquired by the Directors and Share dividends.

- (e) No funds will be directly raised from the issue of the Directors Shares.

## 2. Interpretation

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**ASIC** means the Australian Securities and Investments Commission.

**ASX** means the ASX Limited ACN 008 624 691.

**Average Market Price** means the average of the closing price of the Shares on SEATS, excluding special crossings, overnight sales and exchange traded option exercises, where the average is calculated over the last five (5) days on which sales in the Shares are recorded before the day on which the Average Market Price is to be determined.

**Board** means the board of directors of the Company.

**Bovard Shares** has the meaning ascribed in Section 7.1;

**Company** means Australian Pacific Coal Limited ACN 089 206 896.

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

**Director** means director of the Company;

**Director Shares** means the Ingram Shares, the Prowse Shares and the Bovard Shares.

**Ingram Shares** has the meaning ascribed in Section 7.1;

**Listing Rules** means the listing rules of the ASX.

**Market Price** (of Shares) means the volume weighted average trading price of Shares on ASX for the five (5) trading day period up to and including the day on which the Market Price is to be determined.

**Meeting** means the Annual General Meeting of the Company to be held on 30 November 2011.

**Notice** means this notice of meeting.

**Prowse Shares** has the meaning ascribed in Section 7.1;

**Resolution** means a resolution to be proposed at the Meeting.

**Shareholder** means a person who holds Shares.

**Shares** means fully paid ordinary shares in the Company.

**Share Plan** means the Company's officer, executives, consultants and employees share plan.

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

Level 7, 10 Felix Street, Brisbane Qld 4000

+61 7 3221 0679

## Proxy, representative and voting entitlement instructions

### 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**, 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  
PO Box 16330, City East, Qld 4001

Telephone Phone: +61 7 3221 0679

Facsimile No: +61 7 3229 9323

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 (Sydney time) 29 November 2011. 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.

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.

Proxy Form

I / We

of

being shareholder(s) of Australian Pacific Coal Limited (**Company**)

hereby appoint:

of:

or failing him/her:

of:

or failing him/her the Chairman as my/our proxy to vote for me/us and on my/our behalf at the annual general meeting of the Company to be held at Quay West Suites Brisbane, 132 Alice Street Brisbane Queensland, on 30 November 2011 at 1:30pm and at any adjournment thereof in respect of all of my/our shares in the Company unless otherwise specified below.

IF YOU APPOINT THE CHAIRMAN AS YOUR PROXY, OR HE BECOMES YOUR PROXY BY DEFAULT, IT IS IMPORTANT THAT YOU READ THE "NOTE TO SHAREHOLDERS" BELOW.

**Use of Proxy**

**Direction on how to vote**

If you wish to direct the Proxy how to vote, ***please place a mark in the appropriate boxes below.***

I/we direct my/our proxy to vote as indicated below:

<b>Resolution</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>
1. Remuneration Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Re-election of Peter Ziegler	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Re-election of Paul Ingram	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Authorise the issue of 60 million shares	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Issue of Shares to Mr Tim Prowse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Issue of Shares to Mr Paul Ingram	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Issue of Shares to Mr John Bovard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**NOTE TO SHAREHOLDERS: No direction on how to vote - Chairman as Proxy**

**RESOLUTIONS 1, 6 and 7:**

The Chairman of the Meeting intends to vote undirected proxies in favour of each item of business. If the Chairman of the Meeting is your proxy (or becomes your proxy by default), you authorise the Chairman to exercise your proxy on Resolution 1 (the Remuneration Report), 6 and 7 (subject to the "Resolution 7" text below) even though the items are connected directly or indirectly with the remuneration of a member of key management personnel, which includes the Chairman.

If you do not wish to authorise the Chairman to vote in this way, you should direct your vote in the boxes above under "Direction on how to vote".

**RESOLUTION 7:**

If the Chair of the meeting is appointed as your proxy, or may be appointed by default, and you do **NOT** wish to direct your proxy how to vote as your proxy in respect of the resolution/s, ***please place a mark in the box opposite.***

By marking this box, you acknowledge that the Chair of the meeting may exercise your proxy even if he has an interest in the outcome of Resolution 7 (**Relevant Resolution**) and that votes cast by the Chair of the meeting for the Relevant Resolution other than as proxy holder will be disregarded because of that interest.

If the Chair of the meeting is your proxy and you do not mark this box or direct the Chair of the meeting how to vote above, the Chair of the meeting will not cast your votes on the Relevant Resolution and your votes will not be counted in calculating the required majority if a poll is called on the Relevant Resolution/s.

The Chair intends on voting all undirected proxies in favour of all Relevant Resolution.

**No Direction on how to vote - General**

If you do **not** direct your proxy on how to vote as your proxy in respect of the resolution/s, the Proxy may cast your vote as the Proxy thinks fit or may abstain from voting. By signing this appointment you acknowledge that, subject to the *Corporations Act 2001* (Cth), the Proxy may exercise your proxy even if he/she has an interest in the outcome of the resolution/s and even if votes cast by him/her other than as proxy holder will be disregarded because of that interest (subject to the section above in relation to voting on resolutions by the Chair of the meeting).

**Apportionment - Multiple Proxies**

If two proxies are appointed, the proportion of voting rights this proxy is authorised to exercise is ..... % . (An additional proxy form will be supplied by the Company on request)

**Apportionment – Multiple Shares**

If you wish to appoint the proxy to exercise voting power over only some of your shares, the number of shares in respect of which this proxy is to operate is ..... shares. (Note: proxy will be over all shares if left blank)

**Individual or Security holder 1**

**Sole Director and  
Sole Company Secretary (If appointed)**

**Security holder 2**

**Director**

**Security holder 3**

**Director/Company Secretary**

\_\_\_\_\_ **Contact Name**

\_\_\_\_\_ **Contact Daytime Telephone**

\_\_\_\_\_ **Date**