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GLOUCESTER COAL



Notice of annual general meeting and explanatory notes

GLOUCESTER COAL LTD ACN 008 881 712

Date: Friday, 20 November 2009
Time: 3:00pm Brisbane time
(4:00pm Sydney time)
Place: Albert 2 Meeting Room, Level 5, Sebel Suites,
Corner Albert and Charlotte Streets,
Brisbane, Queensland 4000



Notice of annual general meeting

The annual general meeting of Gloucester Coal Ltd (**Gloucester**) will be held at Albert 2 Meeting Room, Level 5, **The Sebel Suites, Corner Albert and Charlotte Streets, Brisbane, Queensland 4000, at 3:00pm Brisbane time (4:00pm Sydney time) on Friday, 20 November 2009.**

Business

1. Financial statements and reports

To receive and consider:

- (a) the financial statements;
- (b) the directors' report; and
- (c) the auditor's report

of Gloucester for the year ended 30 June 2009.

2. Other business

To deal with any other business that may legally be brought before the annual general meeting in accordance with Gloucester's constitution and the *Corporations Act 2001 (Cth)* (**Corporations Act**).

Ordinary Resolutions

3. Re-election of directors

To consider and, if thought fit, to pass resolutions re-electing the following 5 directors retiring in accordance with rule 12.7(b) of Gloucester's constitution:

- (a) David Brownell;
- (b) Gregory Fletcher;
- (c) Ricardo Leiman;
- (d) James MacKenzie; and
- (e) William Randall.

4. Adoption of Remuneration Report

To consider, and if thought fit, to pass the following resolution:

'That the Remuneration Report of Gloucester for the year ended 30 June 2009 be adopted'.

Note: In accordance with section 250R(3) of the Corporations Act, the vote on this resolution will be advisory only and will not bind Gloucester or its directors.



5. Increase in maximum aggregate of non-executive directors' remuneration

To consider, and if thought fit, to pass the following resolution:

'That, with effect from 1 July 2009, the remuneration of non-executive directors of Gloucester for services provided to Gloucester be increased by \$1,000,000 per annum from an aggregate maximum sum of \$500,000 per annum to an aggregate maximum sum of \$1,500,000 per annum'.

Voting exclusion statement

Gloucester will disregard any votes cast on the resolution by any director of Gloucester and any associate of such person. However, Gloucester need not disregard a vote if:

- (a) 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 specifying how the proxy is to vote; or
- (b) it is cast by the chairman as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

6. Approval of Long Term Incentive Plan

To consider, and if thought fit, to pass the following resolution:

'That the terms of the Long Term Incentive Plan, which are summarised in the explanatory notes which accompany the notice of this meeting, be approved for all purposes, including for the purpose of ASX Listing Rule 7.1 and Exception 9 in ASX Listing Rule 7.2'.

Voting exclusion statement

Gloucester will disregard any votes cast on the resolution by any director of Gloucester (except one who is ineligible to participate in any employee incentive scheme in relation to Gloucester), and any associate of such person. However, Gloucester need not disregard a vote if:

- (a) 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 specifying how the proxy is to vote; or
- (b) it is cast by the chairman as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

7. Participation by the managing director in the Long Term Incentive Plan

To consider, and if thought fit, to pass the following resolution:

'That approval be given for all purposes, including for the purpose of ASX Listing Rule 10.14, to the issue of 1,000,000 options by Gloucester to Barry Tudor (managing director) to acquire by way of issue, a like number of shares, as part of Gloucester's Long Term Incentive Plan, on the terms of that plan and as otherwise set out in the explanatory notes which accompany the notice of this meeting'.

Voting exclusion statement

Gloucester will disregard any votes cast on the resolution by any director of Gloucester (except one who is ineligible to participate in any employee incentive scheme in relation to Gloucester), and any



associate of such person, and, if ASX has expressed an opinion under ASX Listing Rule 10.14.3 that approval is required for participation in an employee incentive scheme by anyone else, that person and any associate of such person.

However, Gloucester need not disregard a vote if:

- (a) 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 specifying how the proxy is to vote; or
- (b) it is cast by the chairman as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

8. Ratification of issue of ordinary shares in the past year

To consider, and if thought fit, to pass the following resolution:

'That the issue of 308,000 ordinary shares of Gloucester in April 2009, upon the exercise of 308,000 unlisted options, is ratified and approved for the purposes of ASX Listing Rules 7.1 and 7.4 and for all other purposes'.

Voting exclusion statement

Gloucester will disregard any votes cast on the resolution by any person who participated in this issue, and any associate of such person. However, Gloucester need not disregard a vote if:

- (a) 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 specifying how the proxy is to vote; or
- (b) it is cast by the chairman as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

Special Resolutions

9. Adoption of new Constitution

To consider, and if thought fit, to pass the following resolution which will be proposed as a special resolution:

'That the document signed by the chairperson (for the purpose of identification) and submitted to the annual general meeting is approved and adopted as the constitution of the company in substitution for, and to the exclusion of, the existing constitution, which existing constitution is repealed'.

Note: In accordance with section 136(1)(b) of the Corporations Act, in order for this resolution to be effective, it needs to be passed by a majority of at least 75% of the votes cast by shareholders present at the annual general meeting in person, by proxy or attorney and entitled to vote on the resolution.



By order of the board

Date 20 October 2009

Signed

A handwritten signature in black ink, appearing to read 'James MacKenzie'.

Name

James MacKenzie
Chairman



Voting, proxies and questions

Voting

Gloucester has determined, in accordance with regulation 7.11.37 of the *Corporations Regulations 2001* (Cth) (**Corporations Regulations**) and ASTC Settlement Rule 5.6.1, that Gloucester's shares quoted on ASX Limited at 6:00pm Brisbane time (7:00pm Sydney time) on Wednesday, 18 November 2009, will be taken, for the purposes of the annual general meeting, to be held by the persons who held them at that time.

Accordingly, those persons are entitled to attend and vote at the meeting.

Proxies

1. A shareholder who is entitled to attend and vote at the meeting may appoint up to two proxies to attend and vote on behalf of that shareholder.
2. If a shareholder appoints two proxies, the appointment of the proxies may specify the proportion or the number of that shareholder's votes that each proxy may exercise. If the appointment does not so specify, each proxy may exercise half of the votes. Fractions of votes will be disregarded.
3. Where a shareholder appoints more than one proxy, neither proxy is entitled to vote on a show of hands.
4. A proxy need not be a shareholder of Gloucester.
5. To be effective, Gloucester must receive the executed proxy form and, if the form is signed by the shareholder's attorney, the authority under which the proxy form is signed (or a certified copy of the authority) by no later than 3:00pm Brisbane time (4:00pm Sydney time) on Wednesday, 18 November 2009.
6. Proxy forms may be lodged with Computershare:
 - (a) by mail, to:

Computershare Investor Services Pty Ltd
GPO Box 242
Melbourne, Victoria 3001, or
 - (b) in person or by post at:

Computershare Investor Services Pty Ltd
Level 2, 60 Carrington Street
Sydney, New South Wales 2000, or
 - (c) by facsimile on:

1800 783 447 (within Australia); or
+61 3 9473 2555 (outside Australia), or



(d) Custodian Voting:

For Intermediary online subscribers only (custodians) please visit www.intermediaryonline.com to submit your voting intentions.

7. Alternatively, proxy forms may be lodged with Gloucester:

(a) by mail, to the attention of the Company Secretary, at:

Gloucester Coal Ltd
PO Box 137
Chatswood, New South Wales 2067, or

(b) by delivery to Gloucester's registered office, to:

Citadel Towers (Tower B)
Level 15, 799 Pacific Highway
Chatswood, New South Wales 2067, or

(c) by facsimile on:

+61 2 9413 4802.

8. A proxy appointed by a corporate shareholder must be executed in accordance with the corporate shareholder's constitution, or signed by a duly authorised officer or attorney.

9. A corporate shareholder may elect to appoint a representative to vote rather than a proxy, in accordance with the Corporations Act. Where a corporate shareholder appoints a representative, Gloucester requires written proof of the representative's appointment to be lodged with or presented to Gloucester by no later than 3:00pm Brisbane time (4:00pm Sydney time) on Wednesday, 18 November 2009. A copy of the instrument appointing a representative must also accompany the representative and be produced if requested at the meeting.

Questions

1. In accordance with the Corporations Act, a reasonable opportunity will be provided to shareholders as a whole at the annual general meeting to ask questions about, or make comments upon, the management of the company including the Remuneration Report.

2. Any questions from shareholders may be directed to Gloucester in writing at any of the contact details listed above in paragraph 7 (under the heading, 'Proxies').

3. Any shareholders who would like to submit a written question to Gloucester's auditor, KPMG (the **Auditor**), in relation to its conduct of the external audit of Gloucester's financial statements for the year ended 30 June 2009, or the content of its audit report, may complete the enclosed Question Form and return it:

(a) in the reply paid envelope by mail or delivery to:

Computershare Investor Services Pty Ltd
Level 2, 60 Carrington Street
Sydney, New South Wales 2000, or



(b) by facsimile on:

1800 783 447 (within Australia); or
+61 3 9473 2555 (outside Australia).

4. Written questions to the Auditor must be received by no later than 4:00pm Brisbane time (5:00pm Sydney time) on Friday, 13 November 2009.
5. The Auditor may answer relevant submitted questions at the annual general meeting or may table a written answer to those questions at the meeting. Any written answers tabled will be made available as soon as practicable after the annual general meeting by posting them on Gloucester's website.



Explanatory notes

1. Financial statements and reports

The Corporations Act requires the financial report (which includes the financial statements and directors' declaration), the directors' report and auditor's report to be laid before the annual general meeting. There is no requirement either in the Corporations Act or Gloucester's constitution for shareholders to approve the financial report, the directors' report or the auditor's report. Rather, the purpose of presenting the reports is to give shareholders an opportunity at the meeting to ask questions and to make comments on these reports.

2. Other business

Time will be allocated in the annual general meeting to deal with any business that may legally be brought before the annual general meeting in accordance with Gloucester's constitution and the Corporations Act.

3. Re-election of directors

BACKGROUND

3.1 In June 2009, following the Noble Group's takeover offer proceeding on an unconditional basis, and in accordance with rule 12.7(a) of Gloucester's constitution, the following 6 directors were appointed to Gloucester's board of directors (**Board**):

- (a) David Brownell;
- (b) Gregory Fletcher;
- (c) Ricardo Leiman;
- (d) James MacKenzie;
- (e) William Randall; and
- (f) Barry Tudor.

3.2 Pursuant to rule 12.7(b) of Gloucester's constitution, a director appointed by the Board under rule 12.7(a) must retire at the next annual general meeting, and will then be eligible for re-election. However, this rule does not apply to Barry Tudor, as he is the managing director of Gloucester.

3.3 Accordingly, the following 5 directors seek re-election as directors of Gloucester:

- (a) David Brownell;
- (b) Gregory Fletcher;
- (c) Ricardo Leiman;
- (d) James MacKenzie; and
- (e) William Randall.



PROFILES

- 3.4 **David Brownell** is an organisation and strategy consultant. He was formerly Senior Vice President of the Boston Consulting Group in Melbourne and leader of the firm's Organisation Practice in Asia. Mr. Brownell was previously a director of Hunter Valley colliery, Donaldson Coal. He began his consulting career in the London office of McKinsey and Co and was a Partner in the Australian consultancy that merged with BCG in 1990.
- 3.5 **Gregory Fletcher** has been a partner of Deloitte for the past 16 years specialising in external and internal audits, and risk management. He retired from Deloitte at the end of May 2009 to take on board and consulting roles. Mr Fletcher is on the board of Railcorp, is the chair of the Railcorp Board Audit Committee and member of the Board Risk Committee and is chair of the City of Sydney Council Audit, Risk and Compliance Committee.
- 3.6 **Ricardo Leiman** is the Noble Group chief operating officer (**COO**) and holds MBAs from the University of Rochester NY, U.S.A. and the University of Nyenrode, the Netherlands as well as an Economics degree from the University of Sao Paulo, Brazil. He started his career with Credit Lyonnais Bank in Brazil followed by management positions with Louis Dreyfus in Brazil, Eximcoop in the Netherlands and Trader Classified Media in London and Paris. In 2002, Mr Leiman rejoined Louis Dreyfus as COO of North America, EMEA (Europe, Middle East, Africa) and Asia, later becoming COO of Soft Commodities. Mr Leiman is a Nominee of Noble Group Limited.
- 3.7 **James MacKenzie** was appointed chairman of Gloucester in June 2009. Mr MacKenzie led the transformation of the Victorian Government's Personal Injury Schemes as chairman of the TAC and Victorian WorkCover Authority from 2000 to 2007. Previously, he held senior executive positions with ANZ Banking Group, Norwich Union and Standard Chartered Bank. Mr MacKenzie is also currently chairman of the Mirvac Group Board and of Pacific Brands Limited, a director of Melco Crown Entertainment Limited and was recently a director of Hunter-based Donaldson Coal. He is a Chartered Accountant and was a partner in both the Melbourne and Hong Kong offices of an international accounting firm which is now part of Deloitte. In 2003, Mr MacKenzie was awarded the Centenary Medal for services to public administration.
- 3.8 **William Randall** is Noble Group's head of the Coal & Coke division. Mr Randall holds a Bachelors degree in Business, with a major in International Marketing. He started his career at Noble in Australia, transferring to Asia in 1999 where he established Noble's coal operations, mining and supply chain management businesses. Following his appointment as director of Noble Energy Inc in 2001, Mr Randall continued to build the global coal and coke marketing network and asset pipeline. He was appointed global head of Coal & Coke in 2006 and became a member of the Noble Group Executive Board in 2008. Mr Randall is a Nominee of Noble Group Limited.

RECOMMENDATION

- 3.9 The directors (except for Barry Tudor) make no recommendation on these resolutions. Mr Tudor recommends that shareholders vote in favour of these resolutions.

4. Adoption of Remuneration Report

- 4.1 The Remuneration Report is set out on pages 28 to 39 of the 2009 Annual Financial Report which is available at <http://www.gloucestercoal.com.au> and www.asx.com.au, and which has been sent to those shareholders who have requested the Annual Report in hard copy form.



- 4.2 The Remuneration Report contains information relating to:
- (a) the remuneration philosophy, policies and practices with particular emphasis on linking and alignment of remuneration to corporate and individual objectives and performance;
 - (b) the structure of remuneration for directors and executives, including, for executives only (including executive directors), short and long-term performance based remuneration;
 - (c) the information on equity schemes within the Gloucester group; and
 - (d) the details of remuneration for directors and executives for the year ended 30 June 2009.
- 4.3 Shareholders will be asked to vote at the annual general meeting on a resolution to adopt the Remuneration Report. The vote is advisory only and will not bind the directors of Gloucester. However, directors may take into account the outcome of the vote when considering relevant remuneration matters in the future.

RECOMMENDATION

- 4.4 The directors unanimously recommend that shareholders vote in favour of this resolution.

5. Increase in maximum aggregate of non-executive directors' remuneration

- 5.1 Shareholder approval is sought to increase the maximum aggregate of non-executive directors' remuneration by \$1,000,000 from \$500,000 per annum to \$1,500,000 per annum. Approval for this resolution is sought for the purpose of rule 13.1 of Gloucester's constitution and ASX Listing Rule 10.17.
- 5.2 Details of non-executive directors' remuneration for the year ended 30 June 2009 are set out in the Remuneration Report on pages 32 to 33 of Gloucester's 2009 Annual Report.
- 5.3 The last remuneration determination was at the annual general meeting held in November 2007 when shareholders approved an aggregate remuneration cap of \$500,000 per year.
- 5.4 Increased expectations of the community, governments and the courts, in relation to the role of public company directors, has meant that directors need to commit an ever increasing amount of time and resources to their roles.
- 5.5 Directors do not currently intend to utilise the whole of the remuneration cap. Rather, the increase in remuneration is sought to provide the Board with flexibility to ensure that Gloucester continues to have the resources available to attract and retain the highest quality candidates for Board positions. It is intended that this will ensure the requisite balance of skills and experience continue to be maintained on the Board.

RECOMMENDATION

- 5.6 The directors make no recommendation on this resolution. Shareholders should judge for themselves whether or not the increase should be approved.



6. Approval of Long Term Incentive Plan

- 6.1 Shareholder approval of the Long Term Incentive Plan (**LTI Plan**) is sought so that securities can be issued under the LTI Plan and not counted towards the ability of Gloucester to issue securities under ASX Listing Rule 7.1.
- 6.2 In order to take advantage of the employee incentive scheme exception to ASX Listing Rule 7.1, contained in Exception 9 in Listing Rule 7.2, employee incentive schemes need to be approved by shareholders every three years.
- 6.3 308,000 securities were previously issued to the persons listed in paragraph 8.6(d) below, under the 'Employee Share Option Plan', which was approved by the Board in March 2009, and which has been updated and renamed as the LTI Plan.
- 6.4 A summary of the terms of the LTI Plan follows.

SUMMARY OF THE LTI PLAN

Entitlements that can be offered under the LTI Plan

- 6.5 Under the terms of the draft Gloucester Coal Ltd LTI Plan Rules (**Rules**), Gloucester has the flexibility to make offers to Eligible Persons (see 6.6 below) of:
 - (a) Options, which are entitlements to shares in Gloucester subject to the satisfaction of any performance conditions that Gloucester may set and the payment of the applicable exercise price;
 - (b) Performance Rights, which are entitlements to shares in Gloucester subject to the satisfaction of any performance conditions; and/or
 - (c) Deferred Shares, which are shares in Gloucester that are subject to certain restrictions (most importantly, restrictions on trading),

(collectively, **Entitlements**).

Eligible participants

- 6.6 The Board may, in its absolute discretion, make offers from time to time under the Rules to employees of Gloucester and the Gloucester group (including a director employed in an executive capacity) or any other person declared by the Board to be eligible (**Eligible Persons**). Eligible Persons who accept such offers will become participants in the LTI Plan (**Participants**).

Holding of Entitlements prior to vesting

- 6.7 Until the Entitlements granted to a Participant under the LTI Plan vest or become unrestricted, the Rules provide that they may be held on trust on behalf of the Participant, under the Gloucester Coal Ltd Employee Share Trust (**Trust**). If that occurs, the Participant will be allocated share units in the Trust that are referable to the relevant Entitlements that have been granted to the Participant under the LTI Plan. The Rules also allow Entitlements to be held directly by the Participant.



Payment by Participants

- 6.8 While the Rules provide the Board with the flexibility to determine what, if any, amount must be paid by a Participant for an Entitlement grant:
- (a) it is intended that a Participant will pay an amount equal to the value attributable to the relevant Entitlements (as determined under AASB2) in accordance with the terms of the Trust deed;
 - (b) the Participant will pay this amount using a non-recourse, interest free loan provided by the Trust to acquire Entitlements offered to the Participant under the LTI Plan and Gloucester will provide the Trust with the necessary funds to purchase the Participant's Entitlements; and
 - (c) the loan will be repaid by the Participant when he or she sells or withdraws his or her shares from the Trust following the vesting of, or lifting of restrictions from, the Entitlements.

Treatment of Options and Performance Rights granted under the LTI Plan in the event of a rights issue or bonus issue

- 6.9 The Rules contain a non-dilution adjustment mechanism for the benefit of Participants in the event of a rights issue or bonus issue.

Cessation of a Participant's employment

- 6.10 The Board has a discretion to determine that Entitlements either vest, lapse or are forfeited on cessation of a Participant's employment.
- 6.11 Entitlements will lapse or be forfeited where the Participant has acted fraudulently, dishonestly or in breach of his or her obligations to Gloucester.

RECOMMENDATION

- 6.12 Directors (other than Barry Tudor) recommend that shareholders vote in favour of this resolution. Mr Tudor makes no recommendation.

7. Participation by the managing director in the Long Term Incentive Plan

- 7.1 Under ASX Listing Rule 10.14, no director can acquire securities under an employee incentive scheme without shareholder approval.
- 7.2 This resolution is put to shareholders for the purpose of approving the participation by Barry Tudor (managing director) in Gloucester's LTI Plan for this financial year ending 30 June 2010.
- 7.3 The Board believes that the issue of options under the LTI Plan is an important part of the managing director's overall remuneration package and of Gloucester's retention plan. The options are designed to provide a long term incentive to pursue the growth and success of Gloucester. The LTI Plan is focused on individuals whose roles and contributions are identified as critical to the continued growth and success of Gloucester.
- 7.4 In summary, the terms under which the proposed award of options is to be made to Mr Tudor are as follows:
- (a) The options will be issued to the trustee (**Trustee**) of the Trust. The Trustee will hold the options for the benefit of Barry Tudor (**Participating Director**);
 - (b) The maximum number of options to be granted is 1,000,000;



- (c) The options will be granted as incentive options and will be issued for consideration equal to their valuation determined under the Black & Scholes model in accordance with Accounting Standard AASB2. The exercise price of the options will be \$5.65 per share. The trading history of the Company's shares on the ASX in the last twelve months is as follows:

	Price	Date
Highest price	\$7.01	21 May 2009
Lowest Price	\$2.60	19 December 2008
Latest Price	\$6.12	9 October 2009

The Volume-Weighted Average Price of Gloucester's shares since the date Mr Tudor commenced employment with Gloucester is \$5.67;

- (d) Of the 1,000,000 options, 500,000 vest on 17 June 2012 and the remaining 500,000 vest on 17 June 2014;
- (e) The options will be issued to the Trustee for the benefit of the Participating Director for consideration equal to their valuation determined under the Black & Scholes model in accordance with Accounting Standard AASB2.

Based on the assumptions set out below, Gloucester estimates the value of the options vesting on 17 June 2012 to be \$1.3971 per option and the value of the options vesting on 17 June 2014 to be \$1.3444 per option:

- (i) a risk free rate of return of 3.5%;
 - (ii) an estimated share price of \$6.17;
 - (iii) estimated volatility of 28.74%;
 - (iv) an option exercise price of \$5.65 per option;
 - (v) the expected life of the options being 5 years; and
 - (vi) a dividend yield of 4.37%;
- (f) No person referred to in ASX Listing Rule 10.14 (which includes all directors of Gloucester) has received securities under the LTI Plan since the adoption of the LTI Plan;
- (g) The name of the only person referred to in ASX Listing Rule 10.14 who is currently entitled to participate in the LTI Plan is Barry Tudor, though the Board may declare that other persons are eligible;
- (h) No loan is granted by Gloucester in relation to the acquisition of options. The Trustee will provide an interest free loan to Barry Tudor equivalent to the value of the options to enable Barry Tudor to subscribe for share units in the Trust. The share units in the Trust will be issued for a consideration equal to the value of the options to be issued for the benefit of Barry Tudor; and
- (i) The options will be issued no later than 31 December 2009.

RECOMMENDATION

- 7.5 The directors (other than Barry Tudor) recommend that shareholders vote in favour of this resolution. Mr Tudor makes no recommendation.



8. Ratification of issue of ordinary shares in the past year

- 8.1 In April 2009, Gloucester issued 308,000 unlisted options over ordinary shares, which was advised to ASX at the time of issue. The options were subsequently exercised and 308,000 ordinary shares were allotted on 22 May 2009.
- 8.2 ASX Listing Rule 7.1 imposes a limit on the number of securities that a company can issue or agree to issue in a 12 month period without shareholder approval. Generally a company may not, without shareholder approval, issue in any 12 month period, more than 15 per cent of the number of securities on issue 12 months before the date of issue.
- 8.3 ASX Listing Rule 7.4 provides that an issue of securities made without shareholder approval under ASX Listing Rule 7.1 may be treated as having been made with approval for the purpose of ASX Listing Rule 7.1, if each of the following apply:
- (a) the issue did not breach ASX Listing Rule 7.1; and
 - (b) holders of ordinary securities subsequently approve the issue.
- 8.4 Accordingly, shareholders are requested to subsequently approve this issue of shares in accordance with ASX Listing Rule 7.1.
- 8.5 It is noted that if shareholders approve this resolution, any future equity raisings by Gloucester would remain subject to the 15 per cent limit set out in ASX Listing Rule 7.1.
- 8.6 The details of the issue are as follows:
- (a) Number of securities allotted: 308,000;
 - (b) Price at which the securities were issued: Nil;
 - (c) The terms of the securities: These securities ranked pari passu (equally in all respects) with existing issued Gloucester ordinary shares upon their allotment on 22 May 2009 and subsequent quotation by ASX;
 - (d) The names of the allottees: The securities were issued to Graham Colliss, Peter Scott, Ian Keast, Todd Hutchings, Anthony James and Craig Boyd; and
 - (e) The use (or intended use) of the funds raised: There were no funds raised as these securities were issued as the result of the exercise of zero-exercise priced options.
- 8.7 The directors consider that the approval of the issue of the securities described above is in Gloucester's best interests. It provides flexibility to issue up to the maximum number of securities permitted under ASX Listing Rule 7.1 in the next 12 months (without shareholder approval), should it be required.

RECOMMENDATION

- 8.8 The directors unanimously recommend that shareholders vote in favour of this resolution.

9. Adoption of new Constitution

BACKGROUND

- 9.1 A company's constitution is the core source of the rules governing its internal management, administration and corporate governance.



- 9.2 Gloucester's existing constitution was adopted on 19 October 2005 (**Existing Constitution**). Since that time, there have been a number of significant amendments to Australian corporations legislation and to the ASX Listing Rules. As a result of these changes, parts of Gloucester's Existing Constitution are inconsistent with the current requirements of the Corporations Act or the ASX Listing Rules, and some of its provisions have become redundant or outdated. There have also been many developments in corporate governance principles and general corporate practice since 2005, which have been usefully incorporated into an updated draft constitution.
- 9.3 Rather than making a large number of small amendments to the Existing Constitution to incorporate these developments, the Board recommends that a new constitution be adopted.
- 9.4 Accordingly, the Board proposes that Gloucester adopt the proposed new constitution (**New Constitution**).
- 9.5 If this special resolution is passed, in accordance with section 136(5) of the Corporations Act, Gloucester will lodge a copy of this special resolution and the New Constitution with ASIC within 14 days.
- 9.6 Although many changes are proposed, the structure and effect of the New Constitution are not materially different from that of the Existing Constitution, except as indicated in the summary set out below. In many respects, the New Constitution simply restates and clarifies provisions of the Existing Constitution. The information provided below is intended to summarise the material differences between the effect of the New Constitution and that of the Existing Constitution. Accordingly, it is not a summary of all provisions of the New Constitution and does not refer to all of the differences between the New Constitution and the Existing Constitution.
- 9.7 A copy of the New Constitution and the Existing Constitution is available on Gloucester's website at <http://www.gloucestercoal.com.au> and one or both can be obtained at any time prior to the meeting by contacting Gloucester's Company Secretary on +61 2 9413 2028. A copy of the New Constitution will also be available for inspection at the annual general meeting.

MATERIAL DIFFERENCES BETWEEN NEW CONSTITUTION AND EXISTING CONSTITUTION

Notices of meeting

- 9.8 The New Constitution provides that where a general meeting is adjourned for more than 30 days, notice of the adjourned meeting must be given as if it were an original general meeting. This is consistent with the current provisions of the Corporations Act.

Proxies, representatives and voting rights

- 9.9 The Corporations Act now:
- (a) provides that a member entitled to cast more than one vote at a meeting may appoint two proxies and where the member fails to specify the proportion of votes that each proxy may exercise, each proxy may exercise half of the votes (disregarding any fractions of votes). The New Constitution reflects this rule;
 - (b) prohibits directors from stipulating what constitutes a valid form of proxy and does not require proxy appointments to be in writing. Instead, a form of proxy will be valid if it contains the information prescribed by section 250A of the Corporations Act. The New Constitution does not require that proxy appointments be in writing;



- (c) deems Gloucester to have received a proxy appointment when the appointment is received at a fax number at Gloucester's registered office (or any other fax number specified in the notice of meeting); and
- (d) enables a company to allow proxy appointments to be authenticated by the appointing member in a way permitted by the Corporations Regulations and to be lodged by electronic means made available by Gloucester. The Corporations Regulations specify requirements for the authentication of proxy appointments by electronic means (such as email or through an online facility). The New Constitution reflects the current position under the Corporations Act.

9.10 In line with developments in corporate practice, in relation to proxy appointments, the New Constitution also differs from the Existing Constitution in the following respects:

- (a) where a member lodges a proxy appointment that does not name the proxy in whose favour it is given, the New Constitution allows the chairperson to act as proxy or to complete the proxy appointment by inserting the name of a director or a secretary to act as proxy; and
- (b) unless otherwise provided in the instrument appointing the proxy or attorney, the New Constitution has the effect that the appointment of a proxy or attorney will be taken to confer authority to vote on motions moved at the meeting but not referred to in the notice of meeting (including, for example, a motion for amendment of a proposed resolution or that a proposed resolution not be put, and any procedural motion, such as a motion for adjournment of the meeting).

Conduct of meetings

9.11 In light of common corporate practice and legislative developments, the New Constitution also includes various provisions relating to the conduct of meetings of members that are not contained in, or that differ from, the Existing Constitution but are now considered appropriate. In particular, the New Constitution:

- (a) reinforces the voting exclusion requirements of the Corporations Act or the ASX Listing Rules (which, in broad terms, apply where a member has a personal interest in, or is an associate of a person who has a personal interest in, the outcome of a particular resolution), and provides that a member is not entitled to vote on a resolution where the Corporations Act or ASX Listing Rules have the effect that the member's vote on that resolution must be disregarded and that any vote purportedly cast by a member contrary to these requirements will be invalid;
- (b) confirms that the chairperson may elect to vacate the chair for any part of a general meeting in favour of any person nominated by the chairperson, and provides that the nominee will have all the powers of the chairperson for the relevant part of the meeting;
- (c) provides that a decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so;
- (d) extends the chairperson's power to ask a person to leave, and not return to, a meeting to cover any circumstance where that person causes disruption to the meeting. It also gives the chairperson the power to delegate his or her powers to refuse a person admission to, or to ask a person to leave, a meeting to any person the chairperson thinks fit; and
- (e) permits Gloucester to enable shareholders in the future to vote directly on resolutions considered at a general meeting by submitting their votes to Gloucester. This provides Gloucester with the flexibility to expand the ways in which shareholders can exercise their voting rights in the future if this is considered desirable and beneficial.



Directors' remuneration

- 9.12 The New Constitution ensures that Gloucester may provide remuneration to the non-executive directors in any non-cash form (including, for example, by provision of shares under a share plan introduced by Gloucester), provided that the total value of their remuneration in aggregate must not exceed the cap approved by shareholders from time to time.
- 9.13 The New Constitution also provides for additional remuneration to be provided to non-executive directors, for extra services or special exertions for the benefit of Gloucester, which will not form part of the aggregate non-executive director remuneration cap.

Delegation

- 9.14 Consistent with the Corporations Act, the New Constitution provides that the directors may delegate any of their powers to a director, an employee of the company or any other person.

Indemnities

- 9.15 The directors consider it appropriate for Gloucester to change the scope of the indemnities currently given to officers so as to reflect the maximum extent of indemnification now permitted by the Corporations Act. Accordingly, via the New Constitution, Gloucester indemnifies the current and former directors and company secretaries of Gloucester, to the extent permitted by law, against any liability (other than for legal costs) incurred in their capacity as an officer of Gloucester, and against reasonable legal costs incurred in defending an action for a liability allegedly incurred by that person as an officer of Gloucester (including for liabilities and legal costs, respectively incurred by the officer as an officer of a subsidiary of Gloucester where Gloucester requested the officer to accept that appointment).
- 9.16 The New Constitution also provides that Gloucester may advance amounts to current or former officers to assist them to fund their legal costs in defending proceedings brought against them in their capacity as current or former officers, before the outcome of the proceedings (and their entitlement to indemnification) is known. Once the outcome is known, amounts advanced to the officers will be repayable if the officers would not be entitled to indemnification for the relevant legal costs.
- 9.17 The New Constitution also permits Gloucester to enter into a deed with any person to give effect to the rights conferred by the New Constitution on such terms as the directors think fit, provided they are not more favourable to the person than permitted under the New Constitution.

Dividends

- 9.18 The New Constitution also enables the directors to rescind a decision to pay a dividend, before the date scheduled for payment, where Gloucester's financial position no longer justifies the payment, as now permitted by the Corporations Act.
- 9.19 The New Constitution includes provisions reflecting the position under the Corporations Act that a person is not entitled to a dividend on a share if a call has been made on the share and is due and unpaid.

Miscellaneous

- 9.20 The New Constitution includes 'boilerplate' interpretation provisions of a kind commonly included in company constitutions.
- 9.21 To the extent permitted by law, the New Constitution will displace the 'replaceable rules' under the Corporations Act in their entirety.



- 9.22 The New Constitution contains an Appendix 15A rule. The effect of this rule is that the ASX Listing Rules (as amended) prevail over the rules contained in the New Constitution to the extent that any inconsistency between them arises.
- 9.23 The terminology in the New Constitution reflects current terminology in the Corporations Act and ASX Listing Rules, and references in the Existing Constitution to superseded provisions of the law or ASX Listing Rules have been updated to refer to the currently applicable provisions.

RECOMMENDATION

- 9.24 The directors unanimously recommend that shareholders vote in favour of this resolution.



GLOUCESTER COAL
ABN 66 008 881 712

Gloucester Coal Ltd

Lodge your vote:



By Mail:

Computershare Investor Services Pty Limited
GPO Box 242 Melbourne
Victoria 3001 Australia

Alternatively you can fax your form to
(within Australia) 1800 783 447
(outside Australia) +61 3 9473 2555

For Intermediary Online subscribers only
(custodians) www.intermediaryonline.com

For all enquiries call:

(within Australia) 1300 855 080
(outside Australia) +61 3 9415 4000



Proxy Form

For your vote to be effective it must be received by 3:00pm Brisbane time (4:00pm Sydney time) on Wednesday 18 November 2009

How to Vote on Items of Business

All your securities will be voted in accordance with your directions.

Appointment of Proxy

Voting 100% of your holding: Direct your proxy how to vote by marking one of the boxes opposite each item of business. If you do not mark a box your proxy may vote as they choose. If you mark more than one box on an item your vote will be invalid on that item.

Voting a portion of your holding: Indicate a portion of your voting rights by inserting the percentage or number of securities you wish to vote in the For, Against or Abstain box or boxes. The sum of the votes cast must not exceed your voting entitlement or 100%.

Appointing a second proxy: You are entitled to appoint up to two proxies to attend the meeting and vote on a poll. If you appoint two proxies you must specify the percentage of votes or number of securities for each proxy, otherwise each proxy may exercise half of the votes. When appointing a second proxy write both names and the percentage of votes or number of securities for each in Step 1 overleaf.

A proxy need not be a securityholder of Gloucester Coal Ltd.

Signing Instructions

Individual: Where the holding is in one name, the securityholder must sign.

Joint Holding: Where the holding is in more than one name, all of the securityholders should sign.

Power of Attorney: If you have not already lodged the Power of Attorney with the registry, 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 sign in the appropriate place to indicate the office held.

Attending the Meeting

Bring this form to assist registration. If a representative of a corporate securityholder or proxy is to attend the meeting you will need to provide the appropriate "Certificate of Appointment of Corporate Representative" prior to admission. A form of the certificate may be obtained from Computershare or online at www.computershare.com.

Comments & Questions: If you have any comments or questions for the company, please write them on a separate sheet of paper and return with this form.

Turn over to complete the form →



View your securityholder information, 24 hours a day, 7 days a week go to: www.investorcentre.com

To view the online Annual Report visit: www.gloucestercoal.com.au

- Review your securityholding
- Update your securityholding

Your secure access information is:



PLEASE NOTE: For security reasons it is important that you keep your SRN/HIN confidential.

Change of address. If incorrect, mark this box and make the correction in the space to the left. Securityholders sponsored by a broker (reference number commences with 'X') should advise your broker of any changes.

Proxy Form

Please mark to indicate your directions

STEP 1 Appoint a Proxy to Vote on Your Behalf

I/We being a member/s of Gloucester Coal Ltd hereby appoint

the Chairman of the Meeting **OR**

PLEASE NOTE: Leave this box blank if you have selected the Chairman of the Meeting. Do not insert your own name(s).

or failing the individual or body corporate named, or if no individual or body corporate is named, the Chairman of the Meeting, as my/our proxy to act generally at the meeting on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, as the proxy sees fit) at the Annual General Meeting of Gloucester Coal Ltd to be held at the Albert 2 Meeting Room, Level 5, The Sebel Suites Brisbane, Cnr Albert and Charlotte Streets Brisbane QLD 4000 on Friday, 20 November 2009 at 3:00pm (Brisbane time) and at any adjournment of that meeting.

Important for Items 5, 6 & 7: If the Chairman of the Meeting is your proxy and you have not directed him/her how to vote on Items 5, 6 & 7 below, please mark the box in this section. If you do not mark this box and you have not directed your proxy how to vote, the Chairman of the Meeting will not cast your votes on Items 5, 6 & 7 and your votes will not be counted in computing the required majority if a poll is called on these Items. The Chairman of the Meeting intends to vote undirected proxies in favour of Items 5, 6 & 7 of business.

I/We acknowledge that the Chairman of the Meeting may exercise my proxy even if he/she has an interest in the outcome of that Item and that votes cast by him/her, other than as proxy holder, would be disregarded because of that interest.

STEP 2 Items of Business

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

Ordinary Business

	For	Against	Abstain
3(a) Re-election of David Brownell as a director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3(b) Re-election of Gregory Fletcher as a director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3(c) Re-election of Ricardo Leiman as a director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3(d) Re-election of James MacKenzie as a director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3(e) Re-election of William Randall as a director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 Adoption of Remuneration Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Increase in maximum aggregate of non-executive directors' remuneration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Approval of Long Term Incentive Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Participation by the managing director in the Long Term Incentive Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	For	Against	Abstain
8 Ratification of issue of ordinary shares in the past year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Special Business

9 Adoption of new Constitution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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The Chairman of the Meeting intends to vote undirected proxies in favour of each item of business.

SIGN Signature of Securityholder(s) *This section must be completed.*

Individual or Securityholder 1

Sole Director and Sole Company Secretary

Securityholder 2

Director

Securityholder 3

Director/Company Secretary

Contact Name _____

Contact Daytime Telephone _____

Date ____/____/____