



## Wollongong Coal

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ASX Code: **WLC**

### Proposed Supreme Court of New South Wales application to acquire and cancel shares in itself

We refer to the ASX announcement dated 13 December 2016 (**December 2016 ASX Announcement**).

On 21 November 2016, Wollongong Coal Limited (WCL) and Bellpac Pty Limited (receivers and managers appointed) (in liquidation) (**Bellpac**) entered into a binding heads of agreement (**HOA**) to settle the Supreme Court of New South Wales proceeding commenced by Bellpac against WCL (**Proceeding**). In this Proceeding, Bellpac sought, among other things, damages in the amount of approximately \$9,000,000 (inclusive of interest).

The conditions of the HOA include:

- 1 WCL is to acquire all shares in itself held by Bellpac and upon acquiring the shares, take the necessary steps to cancel the shares before 13 February 2017;
- 2 if these shares are cancelled, WCL is to pay Bellpac the sum of \$6,300,000, in return for a release of liability and a discontinuance of the Proceeding; and
- 3 if these shares are not cancelled, the mutual releases between the parties will be rescinded and the Proceeding will resume.

In accordance with the HOA, WCL proposes to seek a court order pursuant to section 259A(c) of the Corporations Act 2001 (Cth) (**Corporations Act**) permitting WCL to acquire the shares held by Bellpac in WCL (the Application). If an order is made under section 259A(c) of the Corporations Act, these shares will be cancelled under the terms of section 257H(3) of the Corporations Act or upon a further order of the Court.

The Application will be filed in the Supreme Court of New South Wales and must be determined on or before **13 February 2017**.

If you wish to be heard in relation to the relief that is to be sought by WCL or if you wish to obtain copies of the court documents, please contact:

- Harold Werksman, Partner, Thomson Geer, at [hwerksman@tglaw.com.au](mailto:hwerksman@tglaw.com.au) or on (02) 8248 3495;
- Nicholas Riordan, Senior Associate, Thomson Geer, at [nriordan@tglaw.com.au](mailto:nriordan@tglaw.com.au) or on (02) 8248 5840.

A detailed background to the Application is set out in **Schedule 1** to this announcement.

## Schedule 1

### Background

On or about 5 August 2008, WCL issued to Bellpac 50 convertible bonds in each Series I, II, III and IV (i.e. in total 200 convertible bonds) with a nominal value of \$50,000 each (Bonds). The Bonds were issued in accordance with the terms of a settlement agreement which resolved a dispute between WCL and Bellpac concerning WCL's obligations under a remediation licence deed.

Each of the Bonds included the following material terms:

Securities:	<p>Australian Dollar Denomination Fixed Rate Convertible Bonds due 1 July 2028 (the "<b>Bonds</b>"). Bondholder will have the right to convert their Bonds into fully paid ordinary shares in the capital of the Issuer at "Conversion price" per share at any time during the month of July and January on or after</p> <p>01-July-2011 (50 Bonds in Series 1); 01-July-2012 (50 Bonds in Series II); 01-July-2013 (50 Bonds in Series III); and 01-July-2014 (50 Bonds in Series IV).</p>
Conversion Price:	<p>The volume weighted average sale price of the fully paid ordinary shares of [WCL] during the month of June for July conversion date, or volume weighted average sale price during the month of December for January conversion date (as the case may be) immediately preceding the conversion date, as traded on the securities exchange where [WCL]'s fully paid ordinary shares are then listed.</p>
Conversion Method:	<p>On application for conversion by way of the Notice set out below, the number of fully paid ordinary shares in [WCL] to be issued for each Bond will be the face value of the applicable Bond along with any accrued interest thereupon surrendered for conversion, divided by the conversion price. No partial conversion of a Bond is permitted and any residual amount will be paid in cash to the Bondholder.</p>
Conversion	<p>At any time during the month of July and January as nominated by the Bondholder. The</p>

date:	Bondholder can convert in one or more tranches during the months of July and January on or before the Maturity Date.
Issue of shares after conversion:	If [WCL] is unable to issue fully paid ordinary shares upon application for conversion of any Bond within 7 days from the end of the month in which that application is made, [WCL] will redeem the relevant Bond to the extent of the nominal principal value of the Bond plus accrued interest.
Listing of Shares after Conversion:	The shares issued to a Bondholder upon conversion will be escrowed for 6 months after issue. The Bondholder must obtain the consent of [WCL] prior to transfer any shares during the escrow period, such consent not to be unreasonably withheld if the transfer is an off-market transfer and the transferee of the shares agrees to be bound by the escrow terms. [WCL] will apply to list the fully paid ordinary shares of [WCL] to a Bondholder, on its conversion of a Bond, free from any restriction on transfer, on securities exchange where [WCL]'s fully paid ordinary shares are then listed, within 3 days after the expiry of the escrow period.

As at January 2016, Bellpac retained 160 of the 200 Bonds it had been issued.

On 19 January 2016, Bellpac issued to WCL notices of conversion under all 160 of the Bonds it held.

On 5 February 2016, WCL issued 1,019,726,268 fully paid shares to Bellpac. This equated to a conversion of 41.25% of the bonds.

Also on that day, WCL made an announcement to the ASX in relation to this issue of shares (**February 2016 ASX Announcement**). That announcement recorded in part:

...The issue of the New Ordinary Shares to [Bellpac] will occur in 2 tranches, as follows:

- (i) 1,019,726,268 ordinary shares are to be issued immediately, equating to 14.79% of the current ordinary issued capital of the Company (to ensure compliance with ASX Listing Rule 7.1; and
- (ii) 1,452,337,412 ordinary shares immediately following a general meeting of shareholders approving the issue of 1,452,337,412 ordinary shares, (being the balance of the total number of shares to which [Bellpac] is entitled pursuant to its application to

convert), (to ensure compliance with Section 611 (item 7) of the Corporations Act which allows a company to issue shares which would result in a shareholder holding more than 20% of the ordinary issued share capital of a company if shareholder approval to such issue is obtained by ordinary resolution).

Shareholders will be provided with a Notice of Meeting in connection with the above within the next 60 days.

On 30 March 2016, WCL gave notice of the meeting of shareholders it had foreshadowed in the February 2016 ASX Announcement.

On 19 April 2016, Bellpac commenced the Proceeding against WCL in the Supreme Court of New South Wales by way of Summons and served an affidavit of Anthony John Warner sworn on 19 April 2016.

In the Summons, Bellpac sought declarations that WCL was required to redeem the Bonds for their nominal face value plus interest and pay this amount to Bellpac. The cumulative nominal face value of the Bonds was \$8,000,000. Bellpac's claim was later refined as the sum of the following:

- the cumulative face value of those Bonds which were not converted on 5 February 2016, namely \$4,700,000 (equating to 58.75% of \$8,000,000);
- accrued interest on those Bonds, namely \$3,883,315.86; and
- pre-judgment interest calculated in accordance with rule 36.7 of the Uniform Civil Procedure Rules 2005 (NSW), namely \$1,876.13 per day.

A further meeting of shareholders of WCL took place on 5 May 2016. At this meeting, the shareholders resolved to approve the issue of the second tranche of shares to Bellpac, which increased Bellpac's cumulative shareholding in WCL to 2,472,063,680 shares.

Prior to the Court making directions for WCL to file and serve a defence, Bellpac and WCL entered into the HOA on 21 November 2016. As set out in the December ASX Announcement, the key terms of the HOA were:

- 1 WCL is to pay Bellpac a settlement sum of \$6,300,000 (Settlement Sum) in return for Bellpac, Anthony John Warner and WCL providing a release in relation to all claims including all orders made as to costs in to the proceedings.
- 2 Bellpac is to return to WCL or its nominee 2,472,063,680 shares in WCL (Shares) or otherwise consent to the cancellation of the Shares on receipt of the Settlement Sum. The intention is that Bellpac will no longer hold shares in WCL as part of the settlement.

- 3 The Settlement Sum is to be paid on the latter of the conditions precedent set out in item 4 being satisfied and 28 days from the date the settlement deed is signed.
- 4 The conditions precedent to the settlement deed are:
  - (a) Bellpac obtaining approval under section 477(2A) of the Corporations Act to enter into the proposed arrangement; and
  - (b) WCL (at its cost) obtaining all necessary approvals to buy-back or cancel the Shares as the case may be.
- 5 The HOA is also conditional on the conditions precedent being satisfied by 13 February 2017.
- 6 Within 7 days of receipt of the Settlement Sum, Bellpac must file a notice of discontinuance, with the consent and co-operation of WCL, discontinuing the proceedings. This will include no order as to costs.

As at the date of the HOA, Bellpac's claim, inclusive of interest, was for the amount of \$9,120,828.43.

### **The Application**

WCL is required to pursue the Application to satisfy its obligations under the terms of the HOA.

The majority shareholder of WCL, Jindal Steel & Power Mauritius Limited, has confirmed its approval of the relief sought by WCL in the Application.

It is anticipated that the Application will be filed in January 2017 in the Corporations List. A final hearing will be sought on a date prior to the week beginning 13 February 2017.

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