

ASX ANNOUNCEMENT

16 September 2019

PACIFIC ENERGY BOARD RECOMMENDS REVISED QIC OFFER

- On Friday 13 September 2019 QIC submitted a Matching Letter to Pacific Energy outlining an offer of \$1.085 per share (comprising \$1.07 per share scheme consideration and \$0.015 per share Final Dividend) ("Revised QIC Offer") thereby matching the consideration as put forward by the OPTrust/ICG Consortium Competing Proposal
 - The Revised QIC Offer provides that Pacific Energy shareholders will be entitled to additional consideration of \$0.005 per Pacific Energy share ("Contingent Consideration") if the OPTrust/ICG Consortium break fee is not paid to the OPTrust/ICG Consortium or is paid and refunded to Pacific Energy prior to implementation of the scheme of arrangement contemplated under the Revised QIC Offer
 - The Pacific Energy Board recommends all Pacific Energy Shareholders vote in favour of the Revised QIC Offer in the absence of a superior proposal and subject to the Independent Expert concluding that the Revised QIC Offer is in the best interests of Pacific Energy Shareholders
 - Given the Board's recommendation of the Revised QIC Offer, Pacific Energy will not sign the OPTrust/ICG Consortium Competing Proposal. This Competing Proposal will be withdrawn by 12 noon (WST) on Tuesday 17 September 2019 if not executed by Pacific Energy
 - A Scheme Booklet containing information relating to the Revised QIC Offer, the reasons for the Directors' recommendation, an Independent Expert's Report and details of the scheme meeting is expected to be sent to Pacific Energy Shareholders in early October 2019
 - Subject to the Independent Expert concluding that the QIC Scheme is in the best interests of Pacific Energy Shareholders, approval by Pacific Energy Shareholders and Court approvals, and satisfaction of the other conditions of the QIC Scheme, the QIC Scheme is expected to be implemented in late November 2019
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Overview

On Friday 13 September 2019 QGIF Swan Bidco Pty Ltd ("**QIC**") submitted a Matching Letter to Pacific Energy Limited ("**Pacific Energy**" or the "**Company**") outlining an offer of \$1.085 per share (comprising \$1.07 per share scheme consideration and \$0.015 per share Final Dividend) ("**Revised QIC Offer**") thereby matching the consideration put forward by the OPTrust/ICG Consortium Competing Proposal.

The Revised QIC Offer provides that Pacific Energy shareholders will be entitled to additional consideration of \$0.005 ("**Contingent Consideration**") per Pacific Energy share if the OPTrust/ICG Consortium break fee is not paid to the OPTrust/ICG Consortium or is paid and refunded to Pacific Energy prior to implementation of the scheme of arrangement contemplated under the Revised QIC Offer.

Pacific Energy Board Recommendation and Shareholder Support

The Pacific Energy Board has determined the Revised QIC Offer represents a bona fide match under the QIC SID to the Competing Proposal received from the OPTrust/ICG Consortium announced on 10 September 2019 ("**Competing Proposal**"). The Pacific Energy Board also believes that the Revised QIC Offer has the additional benefits of a shorter time frame to completion and the potential for Pacific Energy shareholders to receive the Contingent Consideration.

Accordingly, the Pacific Energy Board recommends that all Pacific Energy Shareholders vote in favour of the Revised QIC Offer in the absence of a superior proposal and subject to the Independent Expert concluding that the Revised QIC Offer is in the best interests of Pacific Energy Shareholders ("**Standard Qualifications**"). Pacific Energy has entered into a Scheme Implementation Variation Deed with QIC on this basis ("**QIC SID Variation Deed**"), a copy of which is attached.

Subject to the Standard Qualifications, Mr. Kenneth Hall, Executive Director of Pacific Energy and the founder of Kalgoorlie Power Systems, has confirmed his intention to vote in favour of the Revised QIC Offer in respect of 48.7% of Pacific Energy shares currently held or controlled by Mr. Hall.

The remaining directors of Pacific Energy have each confirmed they intend to vote all the Pacific Energy shares that they hold or control in favour of the Revised QIC Scheme, subject to the Standard Qualifications.

Takeovers Panel Application by QIC

Pacific Energy acknowledges the Media Release from the Takeovers Panel ("**Panel**") dated Friday 13 September 2019 in relation to the application from QIC. As part of Revised QIC Offer, QIC has indicated that it will pay an additional \$0.005 per share to Pacific Energy shareholders if the break fee of \$2.5m is not paid to the OPTrust/ICG Consortium or is paid and refunded to Pacific Energy prior to implementation of the scheme of arrangement contemplated under the Revised QIC Offer.

As per the Panel release on 13 September 2019, no decision has been made by the Panel whether to conduct proceedings. Pacific Energy will update the market as appropriate in accordance with its continuous disclosure obligations.

Effect on the OPTrust/ICG Competing Proposal

As announced on 10 September 2019, OPTrust/ICG Consortium has advised Pacific Energy that if the OPTrust/ICG Consortium and Pacific Energy do not enter into the OPTrust/ICG Consortium SID by 12 noon (WST) on Tuesday 17 September 2019, the Competing Proposal will be automatically withdrawn and will no longer be capable of acceptance. Given the Board's recommendation of the Revised QIC Offer, Pacific Energy will not sign the scheme implementation deed with the OPTrust/ICG Consortium.

Special Dividend

Consistent with the Company's announcement on 6 September 2019, Pacific Energy may pay a special dividend ("**Special Dividend**") on or shortly before the implementation date of the QIC Scheme of \$0.065 per share. The total cash payments of \$1.09 per share (including the Contingent Consideration if paid) will be reduced by the amount of the Final Dividend and the amount of any Special Dividend so that the total cash to be received by Pacific Energy Shareholders who receive both the Final Dividend and the Special Dividend and continue to hold their shares until the QIC Scheme record date will equal \$1.09 per share (including the Contingent Consideration if paid).

Implementation and Timetable

Pacific Energy shareholders do not need to take any action at the present time.

Under the Revised QIC Offer, the timetable for the QIC Scheme has been amended, with the Pacific Energy Board expecting that Pacific Energy Shareholders will be given the opportunity to vote on the QIC Scheme at a meeting expected to be held in early November 2019. Subject to the Independent Expert concluding that the QIC Scheme is in the best interests of Pacific Energy Shareholders, approval by Pacific Energy Shareholders and Court approvals, and satisfaction of the other conditions of the QIC Scheme, the QIC Scheme is expected to be implemented in late November 2019. The proposed timetable for the QIC Scheme is detailed in the QIC SID Variation Deed, a copy of which is attached.

A Scheme Booklet containing information relating to the Revised QIC Offer, the reasons for the Directors' recommendation, an Independent Expert's Report and details of the QIC Scheme meeting is expected to be sent to Pacific Energy Shareholders in early October 2019.

Set out below is the revised indicative timetable for the QIC Scheme.

Event	Expected date
Final dividend record date	19 September 2019
First court hearing	Week commencing 30 September
Despatch of Scheme Booklet	Week commencing 7 October
Scheme Meeting	Week commencing 4 November
Second court hearing	Week commencing 11 November
Effective Date	Week commencing 11 November
Scheme Record Date	Week commencing 18 November
Implementation Date	Week commencing 25 November

General / Investor / Media Enquiries

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-ENDS-

About Pacific Energy

Pacific Energy is an ASX listed (ASX: PEA) power generation project developer and owner. Headquartered in Perth, Western Australia, Pacific Energy is focused on the development, ownership and maintenance of mine site and renewable energy power stations.

Kalgoorlie Power Systems, a wholly owned subsidiary of Pacific Energy Limited, is a leading provider of power generation infrastructure to the mining and resources sector in Australia. The business operates a build, own, maintain execution model with approximately 277MW of contracted capacity at 23 mine site locations across Australia.

Contract Power, a wholly owned subsidiary of Pacific Energy Limited, is a specialist provider to the remote power generation sector, with over 25 years' experience in the Australian build, own, operate ("BOO") market as well as in the EPC market, having completed projects in Australia, Africa and Asia.

Pacific Energy Victorian Hydro, a wholly owned subsidiary of Pacific Energy Limited, owns and operates 6MW of hydro power generation capacity located approximately 70 kilometres east of Melbourne, Victoria. The company's hydro assets commenced operation in 1992 and comprise two separate power stations located at the Cardinia Reservoir and Blue Rock Dam.

NovaPower, a wholly owned subsidiary of Pacific Energy Limited, owns and operates the 10MW Nova gas-fired power generation plant in Traralgon, Victoria. Nova is a high-efficiency/low emissions gas-fired power station which generates in quick response to electricity demand in peak periods.



DEED OF VARIATION - SCHEME IMPLEMENTATION DEED

Pacific Energy Limited

QGIF Swan Bidco Pty Ltd

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DETAILS

Date 15 September 2019

Parties	Target	
	Name	Pacific Energy Limited
	ABN	22 009 191 744
	Address	338 Gnangara Rd, Landsdale, WA 6065
	Fax	+61 8 9303 8899
	Email	michael.kenyon@pacificenergy.com.au
	Attention	Michael Kenyon
	Bidder	
	Name	QGIF Swan Bidco Pty Ltd
	ABN/ACN	634 920 773
	Address	Level 5, 66 Eagle Street, Brisbane QLD 4000
	Email	A.Jennings@qic.com
	Attention	Andrew Jennings

BACKGROUND

- A The parties are party to a scheme implementation deed dated 23 July 2019 (**Scheme Implementation Deed**).
- B The parties have agreed to vary the terms of the Scheme Implementation Deed according to the terms set out in this Deed.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalised terms in this Deed have the meaning given in the Scheme Implementation Deed.

1.2 Interpretation

This Deed is supplemental to the Scheme Implementation Deed and the principles of interpretation contained in section 1 (Defined Terms and Interpretation) of the Scheme Implementation Deed apply, with any necessary changes, to this Deed.

2 AMENDMENT

2.1 Amendment of Agreement

On and from the date of this Deed, the Scheme Implementation Deed is varied as follows:

2.1.1 the following definitions are included in clause 1.1:

"APC means APC BidCo Pty Ltd ACN 634 981 409.

APC Break Fee means a break fee of up to \$2,500,000 (exclusive of GST).

Contingent Consideration means \$0.005 per Scheme Share."

- 2.1.1 in the definition of 'End Date' in clause 1.1 at the end of paragraph (a) the words "*of this deed*" are deleted and replaced with the words "*this deed is amended*";
- 2.1.2 in the definition of 'Implementation Date' in clause 1.1 the word "*third*" is deleted and replaced with the word "*fifth*";
- 2.1.3 in the definition of 'Material Adverse Change' in clause 1.1 paragraph (e) is deleted and replaced with the following:

"(e) to the extent that the event, matter or circumstance was actually known to Bidder prior to the date this deed is amended;";
- 2.1.4 in the definition of 'Prescribed Occurrence' in clause 1.1 paragraphs (u) and (v) are deleted and replaced with the following:

"(u) any matter Fairly Disclosed in writing to Bidder prior to the date this deed is amended;

(v) any matter Fairly Disclosed in filings of Target with the ASX or ASIC in each case during the period commencing 3 years prior to the date of this deed and ending on the Business Day prior to the date this deed is amended; or

(w) any matter the undertaking of which Bidder has approved in writing.";
- 2.1.5 in the definition of 'Proposed Transaction' in clause 1.1 the words "*Target Shares*" are deleted and replaced with the word "*Scheme Shares*";
- 2.1.6 the defined term "**Scheme Amount per Share**" in clause 1.1 is deleted and replace with the following:

*"**Scheme Amount per Share** means the consideration to be provided by Bidder in consideration for the transfer of the Target Shares held by a Scheme Shareholder to Bidder, being, in respect of each Scheme Share, \$1.07 cash (subject to adjustment under clause 4.4 for the payment of any Permitted Dividend or clause 4.7 for the payment of any Contingent Consideration)."*;
- 2.1.7 in the definition of 'Scheme Shareholder' in clause 1.1 the words "*(other than a member of the Bidder Group)*" are deleted, and the words "*Scheme Shares*" are deleted and replaced with the word "*Target Shares*";
- 2.1.8 the following clause is included as a new clause 4.7:

"4.7 The Scheme Amount per Share will be increased by the amount of the Contingent Consideration if on or before the Implementation Date:

(a) the APC Break Fee has not been paid by Target to APC or any of its Related Bodies Corporate; or

(b) if the APC Break Fee has been paid by Target to APC or any of its Related Bodies Corporate, an amount equal to the APC Break Fee has been repaid or otherwise refunded to the Target by APC or any of its Related Bodies Corporate.";
- 2.1.9 in clause 11.6 the words "\$4,100,000.00" are deleted and replaced with the words "\$4,700,000";

2.1.10 the following clauses are included as a new clauses 15.30 to 15.32:

"Foreign resident capital gains withholding

- 15.30 *Subject to clause 15.31, if Bidder is required by Subdivision 14-D of Schedule 1 of the Taxation Administration Act 1953 (Cth) (Subdivision 14-D) to pay amounts to the Australian Taxation Office (ATO) in respect of the acquisition of Scheme Shares from certain Scheme Shareholders, Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Amount per Share to those Scheme Shareholders and remit such amounts to the ATO. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.*
- 15.31 *If a Scheme Shareholder that passes the non-portfolio interest test in respect of its interest in the Target provides the Bidder with a relevant written declaration prior to the implementation of the scheme confirming that they are an Australian resident or that their interest in the Target is not an indirect Australian real property interest, then the Bidder shall not deduct any amount from the payment of the Scheme Amount per Share to that Scheme Shareholder pursuant to Subdivision 14-D.*
- 15.32 *The parties agree to consult in good faith as to the application of Subdivision 14-D. The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to the Transaction Documents to ensure that relevant representations or declarations are obtained from Scheme Shareholders."*

2.1.11 the table in schedule 1 is deleted and replaced with the following:

Event	Date
Lodge Scheme Booklet with ASIC for review and comment	Week commencing 26 August
First Court Date	Week commencing 30 September
Scheme Booklet registered with ASIC	Week commencing 30 September
Despatch Scheme Booklet to Target Shareholders	Week commencing 7 October
Scheme Meeting	Week commencing 4 November
Second Court Date	Week commencing 11 November
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	Week commencing 11 November

Event	Date
Record Date	Week commencing 18 November
Implementation Date	Week commencing 25 November

- 2.1.12 clause 5 (Scheme Amount Per Share) in schedule 3 is deleted and replaced with the following:

"5 SCHEME AMOUNT PER SHARE AND CONTINGENT CONSIDERATION

5.1 The Scheme Amount per Share to be provided to each Scheme Shareholder will be the payment by Bidder to that Scheme Shareholder of \$1.07 cash for each Scheme Share held by that Scheme Shareholder, subject to adjustment under clause 4.4 or clause 4.7 of the Scheme Implementation Deed."; and

- 2.1.13 the following clauses are included as a new clauses 4.13 and 4.14 in schedule 3 after clause 4.12:

"Withholding

4.13 The Target or Bidder may deduct and withhold from any consideration which would otherwise be payable to a Scheme Shareholder in accordance with this Scheme any amount which the Target or Bidder determine is required to be deducted and withheld from that consideration under any applicable law, including any order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority.

4.14 To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under this Scheme, the Deed Poll and the Scheme Implementation Deed as having been paid to the person in respect of which such deduction or withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate Regulatory Authority."

2.2 Amendments not to affect validity, rights, obligations

- 2.2.1 Nothing in this Deed affects any right or obligation arising under the Scheme Implementation Deed prior to the date of this Deed.
- 2.2.2 The amendments to the Scheme Implementation Deed contained in section 2.1 do not affect the validity or enforceability of the Scheme Implementation Deed.

3 AFFIRMATION

- 3.1 The parties ratify and confirm the Scheme Implementation Deed as varied by this Deed and confirm that the Scheme Implementation Deed is in full force and effect
- 3.2 Bidder acknowledges and agrees that, as at the date of this Deed, it has no right to terminate the Scheme Implementation Deed.

4 GENERAL

Counterparts

- 4.1 This Deed may be executed in more than one counterpart, each of which when executed by all the parties and delivered is deemed to be an original.

Entire Agreement

- 4.2 This Deed, together with the Scheme Implementation Deed, is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

Further assurances

- 4.3 Except as expressly provided in this Deed, each party must, at its own expense, do all things reasonably necessary to give full effect to this deed and the matters contemplated by it.

Variation

- 4.4 No variation of this Deed is effective unless made in writing and signed by each party.

Governing Law

- 4.5 This Deed is governed by the law of Western Australia and the parties submit to the jurisdiction of that State's courts in relation to disputes concerning this Deed.

EXECUTION

Executed and delivered as a Deed.

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Pacific Energy Limited:**

(Executed)

(Executed)

Director Signature

~~Director~~/Secretary Signature

James Cullen

Michael Kenyon

Print Name

Print Name

EXECUTION

Executed and delivered as a Deed.

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **QGIF Swan Bidco Pty Ltd:**

(Executed)

Director Signature

Matthew Hall

Print Name

(Executed)

Director/Secretary Signature

Andrew Jennings

Print Name