

## LODGEMENT OF COURT ORDERS

Aston Resources Limited (**Aston**) (ASX: AZT) announced yesterday that the proposed scheme of arrangement between Aston and its shareholders (**Scheme**) had been approved by the Federal Court of Australia.

As foreshadowed in that announcement, Aston confirms that an office copy of the orders made by the Federal Court of Australia on 18 April 2012 approving the Scheme was today lodged with the Australian Securities and Investments Commission (**ASIC**). Accordingly, the Scheme is now legally effective.

Aston's securities will be suspended from trading with effect from the close of trading today.

A copy of the Court's orders as lodged with ASIC is attached to this announcement.

### Further information:

<b>Shareholder information</b> Melissa Swain General Counsel & Company Secretary +61 7 3235 6600	<b>Media inquiries</b> Michael Mullane Cannings Corporate Communications +61 2 8284 9993
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### ABOUT ASTON

Aston Resources currently owns 85% of the Maules Creek Project. Maules Creek is considered to be one of only few remaining "Tier-1" undeveloped coal assets in Australia. Maules Creek is located in the Gunnedah Basin of New South Wales.

Maules Creek's production mix is expected to comprise a majority of metallurgical coal and a premium, low ash, export thermal coal.

No: (P)NSD255/2012

Federal Court of Australia  
District Registry: New South Wales  
Division: General



**IN THE MATTER OF ASTON RESOURCES LTD**

**ASTON RESOURCES LTD**  
Plaintiff

**ORDER**

**JUDGE:** Justice Jacobson

**DATE OF ORDER:** 18 April 2012

**WHERE MADE:** Sydney



**THE COURT ORDERS THAT:**

1. Pursuant to subsection 411(4)(b) of the *Corporations Act 2001 (Cth)* (**Corporations Act**), the scheme of arrangement between the Plaintiff and its ordinary shareholders (other than Whitehaven Coal Limited (**Whitehaven**) or any of its associates or any person who holds shares in the Plaintiff on behalf of, or for the benefit of, Whitehaven or any of its associates) (a copy of which is annexed to these orders and marked 'A') (**Scheme**) be approved.
2. Pursuant to section 411(12) of the Corporations Act, the Plaintiff be exempted from compliance with section 411(11) of the Corporations Act in relation to the Scheme.
3. These Orders be entered forthwith.

The Court notes that Whitehaven will rely on the Court's approval of the Scheme for the purpose of qualifying for exemption from the registration requirements of the U.S. Securities Act of 1933, provided for by section 3(a)(10) of that Act, in connection with the implementation of, and provision of consideration under, the Scheme.

Date that entry is stamped: 18 APR 2012



Deputy District Registrar



## ANNEXURE A

## Scheme of arrangement

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

Between the parties

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**Aston Resources Limited** ABN 91 129 361 208 of Level 10, AMP Centre, 10 Eagle Street, Brisbane, Queensland 4000

(Aston)

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Each person registered as a holder of fully paid ordinary shares in Aston in the Share Register as at the Scheme Record Date (other than the Excluded Shareholders)

(Scheme Shareholders)

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### 1 Definitions, interpretation and scheme components

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#### 1.1 Definitions

Schedule 1 contains definitions used in this Scheme.

#### 1.2 Interpretation

Schedule 1 contains interpretation rules for this Scheme.

#### 1.3 Scheme components

This Scheme includes any schedule to it.

### 2 Preliminary matters

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- (a) Aston is a public company limited by shares, registered in Queensland, Australia and has been admitted to the official list of the ASX. Aston Shares are quoted for trading on the ASX.
- (b) As at 8 March 2012, 204,668,861 Aston Shares were on issue.
- (c) Whitehaven is a listed public company limited by shares incorporated in New South Wales, Australia. Whitehaven Acquirer is a wholly-owned subsidiary of Whitehaven, registered in New South Wales, Australia.
- (d) If this Scheme becomes Effective:
  - (1) Whitehaven will provide, or procure the provision of, the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll; and

- (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Whitehaven Acquirer and Aston will enter the name of Whitehaven Acquirer in the Share Register in respect of the Scheme Shares.
- (e) Aston and Whitehaven have agreed, by executing the Implementation Agreement, to implement this Scheme.
- (f) This Scheme attributes actions to Whitehaven and Whitehaven Acquirer but does not itself impose an obligation on them to perform those actions. Whitehaven and Whitehaven Acquirer have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including the providing, or procuring the provision of, the Scheme Consideration to the Scheme Shareholders.

### 3 Conditions

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#### 3.1 Conditions precedent

This Scheme is conditional on and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) all the conditions in clause 3.1 of the Implementation Agreement (other than the condition in the Implementation Agreement relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Agreement;
- (b) neither the Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Whitehaven and Aston;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Whitehaven and Aston; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Scheme coming into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date (or any later date Aston and Whitehaven agree in writing).

#### 3.2 Certificate

- (a) Aston and Whitehaven will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived.

## 4 Implementation of the Scheme

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### 4.1 Lodgement of Court orders with ASIC

Aston will lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving the Scheme as soon as possible and in any event by 5.00pm on the first Business Day after the day on which the Court approves the Scheme.

### 4.2 Transfer of Scheme Shares

- (a) On the Implementation Date:
- (1) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Whitehaven Acquirer, without the need for any further act by any Scheme Shareholder (other than acts performed by Aston as attorney and agent for Scheme Shareholders under clause 8.5), by:
    - (A) Aston delivering to Whitehaven Acquirer a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Aston, for registration; and
    - (B) Whitehaven Acquirer duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Aston for registration; and
  - (2) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a)(1)(B), Aston must enter, or procure the entry of, the name of Whitehaven Acquirer in the Share Register in respect of all the Scheme Shares transferred to Whitehaven Acquirer in accordance with this Scheme.
- (b) For the purposes of rule 7 of the Aston LTIP (and the terms of any grants made under the Aston LTIP), Aston waives any restrictions on dealing or transfer in relation to any Scheme Shares, and consents to the transfer of all Scheme Shares issued upon the exercise of options or vesting of performance rights granted under the Aston LTIP, in accordance with the Scheme.

## 5 Scheme Consideration

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### 5.1 Provision of Scheme Consideration

Whitehaven must, subject to clauses 5.2, 5.3 and 5.4:

- (a) on or before the Implementation Date, provide the Scheme Consideration by issuing the New Whitehaven Shares to which each Scheme Shareholder is entitled under the Scheme and procure that the name and address of each Scheme Shareholder is entered in the Whitehaven Register in respect of those New Whitehaven Shares; and
- (b) procure that on or before the date that is five Business Days after the Implementation Date, a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each Scheme Shareholder representing the number of New Whitehaven Shares issued to the Scheme Shareholder pursuant to this Scheme.

## 5.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) the New Whitehaven Shares to be issued under this Scheme must be issued to, and registered in the names of, the joint holders;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Aston Share Register as at the Scheme Record Date; and
- (c) any other document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Share Register as at the Scheme Record Date.

## 5.3 Ineligible Foreign Shareholders

- (a) Whitehaven will be under no obligation to issue any New Whitehaven Shares under this Scheme to any Ineligible Foreign Shareholder and instead:
  - (1) subject to clause 5.4, Whitehaven must, on or before the Implementation Date, issue the New Whitehaven Shares which would otherwise be required to be issued to the Ineligible Foreign Shareholders under this Scheme to the Sale Agent;
  - (2) Whitehaven must procure that as soon as reasonably practicable after the Implementation Date, the Sale Agent, in consultation with Whitehaven sells or procures the sale of all the New Whitehaven Shares issued to the Sale Agent and remits to Whitehaven the proceeds of the sale (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges) (**Proceeds**);
  - (3) promptly after receiving the Proceeds in respect of the sale of all of the New Whitehaven Shares referred to in clause 5.3(a)(1), Whitehaven must pay, or procure the payment, to each Ineligible Foreign Shareholder, of the amount 'A' calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where

B = the number of New Whitehaven Shares that would otherwise have been issued to that Ineligible Foreign Shareholder had it not been an Ineligible Foreign Shareholder and which are issued to the Sale Agent;

C = the total number of New Whitehaven Shares which would otherwise have been issued to all Ineligible Foreign Shareholders and which are issued to the Sale Agent; and

D = the Proceeds.

- (b) None of Whitehaven or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Whitehaven Shares described in clause 5.3(a).
- (c) Whitehaven must make payments to Ineligible Foreign Shareholders under clause 5.3(a) by either (in the absolute discretion of Whitehaven):
  - (1) where an Ineligible Foreign Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Aston Registry to receive dividend payments from Aston by electronic funds transfer to a bank account nominated by the Ineligible Foreign Shareholder, paying, or procuring the payment of,



- the relevant amount in Australian currency by electronic means in accordance with that election; or
- (2) otherwise, whether or not the Ineligible Foreign Shareholder has made an election referred to in clause 5.3(c)(1), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Ineligible Foreign Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Ineligible Foreign Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.2).
- (d) If Whitehaven receives professional advice that any withholding or other tax is required by law to be withheld from a payment to an Ineligible Foreign Shareholder, Whitehaven is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme including clause 5.3(a)(3)). Whitehaven must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Ineligible Foreign Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Foreign Shareholder.
- (e) Each Ineligible Foreign Shareholder appoints Whitehaven as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Shareholders under the Corporations Act.
- (f) Payment of the amount calculated in accordance with clause 5.3(a) to an Ineligible Foreign Shareholder in accordance with this clause 5.3 satisfies in full the Ineligible Foreign Shareholder's right to Scheme Consideration.
- (g) Where the issue of New Whitehaven Shares to which a Scheme Shareholder would otherwise be entitled under this Scheme would result in a breach of law:
- (1) Whitehaven will issue the maximum possible number of New Whitehaven Shares to the Scheme Shareholder without giving rise to such a breach; and
- (2) any further New Whitehaven Shares to which that Scheme Shareholder is entitled, but the issue of which to the Scheme Shareholder would give rise to such a breach, will instead be issued to the Sale Agent and dealt with under the preceding provisions in this clause 5.3, as if a reference to Ineligible Foreign Shareholders also included that Scheme Shareholder and references to that person's New Whitehaven Shares in that clause were limited to the New Whitehaven Shares issued to the Sale Agent under this clause.

#### 5.4 Fractional entitlements and splitting

- (a) Where the calculation of the number of New Whitehaven Shares to be issued to a particular Scheme Shareholder would result in the issue of a fraction of a New Whitehaven Share, the fractional entitlement will be rounded up or down to the nearest whole number of New Whitehaven Shares.
- (b) If Whitehaven and Aston agree that several Scheme Shareholders, each of which holds a holding of Aston Shares which results in a fractional entitlement to New Whitehaven Shares have, before the Scheme Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Scheme Consideration, Whitehaven may direct Aston to give written notice to those Scheme Shareholders:

- (1) setting out the names and Registered Addresses of all of them;
- (2) stating that opinion; and
- (3) attributing to one of them specifically identified in the notice the Aston Shares held by all of them,

and, after the written notice has been so given, the Scheme Shareholder specifically identified in the notice shall, for the purposes of the Scheme, be taken to hold all those Aston Shares and each of the other Scheme Shareholders whose names are set out in the notice shall, for the purposes of the Scheme, be taken to hold no Aston Shares.

## 5.5 Unclaimed monies

- (a) Whitehaven may cancel a cheque issued under this clause 5 if the cheque:
  - (1) is returned to Whitehaven; or
  - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on written request from a Scheme Shareholder, Whitehaven must reissue a cheque that was previously cancelled under this clause.

## 5.6 Orders of a court

If written notice is given to Aston (or the Aston Registry) of an order made by a court of competent jurisdiction that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder by Whitehaven in accordance with this clause 5, then Aston shall be entitled to procure that Whitehaven make the payment in accordance with that order; or
- (b) prevents the making a payment to any particular Scheme Shareholder in accordance with clause 5, or such payment is otherwise prohibited by applicable law, Whitehaven shall be entitled to retain an amount, in Australian dollars, equal to the amount 'A' calculated in accordance with the formula set out in clause 5.3(a)(3) until such time as payment in accordance with this clause 5 is permitted by that order or otherwise by law.

## 5.7 Status of New Whitehaven Shares

Subject to this Scheme becoming Effective, Whitehaven must:

- (a) issue the New Whitehaven Shares required to be issued by it under this Scheme on terms such that each such New Whitehaven Share will rank equally in all respects with each existing Whitehaven Share (except that the New Whitehaven Shares will not entitle their holders to receive the Special Dividend);
- (b) ensure that each such New Whitehaven Share is duly and validly issued in accordance with all applicable laws and Whitehaven's constitution, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under Whitehaven's constitution); and
- (c) use all reasonable endeavours to ensure that such New Whitehaven Shares are, from the Business Day following the date the Scheme becomes Effective (or such later date as ASX requires), quoted for trading on the ASX initially on a deferred settlement basis and thereafter on an ordinary settlement basis.

## 6 Dealings in Aston Shares

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### 6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Aston Shares or other alterations to the Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Share Register as the holder of the relevant Aston Shares on or before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Scheme Record Date at the place where the Share Register is kept,

and Aston will not accept for registration, nor recognise for any purpose (except a transfer to Whitehaven pursuant to the Scheme and any subsequent transfer by Whitehaven or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### 6.2 Register

- (a) Aston must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) on or before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Aston to register a transfer that would result in an Aston Shareholder holding a parcel of Aston Shares that is less than a 'marketable parcel' (as defined in the Operating Rules of the ASX).
- (b) If the Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Aston shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Aston must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Aston Shares (other than statements of holding in favour of Whitehaven Acquirer or any Excluded Shareholders) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries on the Share Register in respect of Whitehaven Acquirer or any Excluded Shareholder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Aston Shares relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date, and in any event within one Business Day after the Scheme Record Date, Aston will ensure that details of the names, Registered Addresses and holdings of Aston Shares for each Scheme Shareholder as shown in the Share Register are available to Whitehaven in the form Whitehaven reasonably requires.

## 7 Quotation of Aston Shares

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- (a) Aston will apply to ASX to suspend trading on the ASX in Aston Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Whitehaven, Aston will apply:
  - (1) for termination of the official quotation of Aston Shares on the ASX; and
  - (2) to have itself removed from the official list of the ASX.

## 8 General Scheme provisions

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### 8.1 Consent to amendments to the Scheme

If the Court proposes to approve the Scheme subject to any alterations or conditions:

- (a) Aston may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Whitehaven has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which counsel for Aston has consented to.

### 8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
  - (1) agrees to the transfer of their Aston Shares together with all rights and entitlements attaching to those Aston Shares in accordance with the Scheme;
  - (2) agrees to the variation, cancellation or modification of the rights attached to their Aston Shares constituted by or resulting from the Scheme;
  - (3) agrees to become a shareholder in Whitehaven and to be bound by the constitution of Whitehaven; and
  - (4) acknowledges that the Scheme binds Aston and all Scheme Shareholders (including those who do not attend the Scheme Meeting or those who do not vote, or vote against the Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to Aston and Whitehaven Acquirer, and appointed and authorised Aston as its attorney and agent to warrant to Whitehaven Acquirer, that all their Aston Shares (including any rights and entitlements attaching to those shares) which are transferred under the Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Aston Shares to Whitehaven Acquirer together with any rights attaching to those shares. Aston undertakes that it will provide such warranty to Whitehaven Acquirer as agent and attorney of each Scheme Shareholder.

**8.3 Title to and rights in Scheme Shares**

- (a) To the extent permitted by law, the Scheme Shares transferred under the Scheme will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) On and from the Effective Date, Whitehaven Acquirer will be beneficially entitled to the Scheme Shares to be transferred to it under the Scheme pending registration by Aston of Whitehaven Acquirer in the Share Register as the holder of the Scheme Shares.

**8.4 Appointment of sole proxy**

On the Implementation Date, and until Aston registers Whitehaven Acquirer as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Whitehaven Acquirer as attorney and agent (and directed Whitehaven Acquirer in each such capacity) to appoint any director, officer, secretary or agent nominated by Whitehaven Acquirer as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution;
- (b) no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Whitehaven Acquirer reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.4(a), Whitehaven Acquirer and any director, officer, secretary or agent nominated by Whitehaven Acquirer under clause 8.4(a) may act in the best interests of Whitehaven Acquirer as the intended registered holder of the Scheme Shares.

**8.5 Authority given to Aston**

Each Scheme Shareholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints Aston and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against Whitehaven and Whitehaven Acquirer, and Aston undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Whitehaven and Whitehaven Acquirer on behalf of and as agent and attorney for Scheme Shareholders; and
- (b) on the Implementation Date, irrevocably appoints Aston and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and Aston accepts each such appointment. Aston as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

## 8.6 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Government Agency), all instructions, notifications or elections by a Scheme Shareholder to Aston binding or deemed binding between the Scheme Shareholder and Aston relating to Aston or Aston Shares (including any email addresses, instructions relating to communications from Aston, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from Aston) will be deemed from the Implementation Date (except to the extent determined otherwise by Whitehaven in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to Whitehaven and to be a binding instruction, notification or election to, and accepted by, Whitehaven in respect of the New Whitehaven Shares issued to that Scheme Shareholder until that instruction, notification or election is revoked or amended in writing addressed to Whitehaven at its registry.

## 8.7 Binding effect of Scheme

This Scheme binds Aston and all of the Scheme Shareholders (including those who did not attend the meeting of Aston Shareholders to vote on this Scheme, did not vote at that meeting, or voted against this Scheme at that meeting) and, to the extent of any inconsistency, overrides the constitution of Aston.

# 9 General

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## 9.1 Stamp duty

Whitehaven will:

- (a) pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under, or in connection with, this Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

## 9.2 Consent

Each of the Scheme Shareholders consents to Aston doing all things necessary or incidental to the implementation of this Scheme.

## 9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Aston, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Aston registered office or at the office of the Aston Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by an Aston shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

**9.4 Governing law**

- (a) The Scheme is governed by the laws in force in New South Wales, Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**9.5 Further action**

Aston must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

**9.6 No liability when acting in good faith**

Neither Aston nor Whitehaven nor any director, officer or secretary of any of those companies will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

Definitions and interpretation

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1 Definitions

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The meanings of the terms used in this Scheme are set out below.

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
Aston	Aston Resources Limited ABN 91 129 351 208.
Aston LTIP	Aston's Long Term Incentive Plan adopted by Aston on 6 August 2010.
Aston Registry	Computershare Investor Services Pty Ltd.
Aston Share	a fully paid ordinary share in the capital of Aston.
Aston Shareholder	a person who is registered in the Share Register as the holder of an Aston Share.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Business Day	a day in Sydney that is not a Saturday, Sunday, public holiday or bank holiday and on which banks and ASX are open for trading.
CHESS	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Court	the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Aston and Whitehaven.



Term	Meaning
Deed Poll	the deed poll substantially in the form of Attachment 1 under which Whitehaven and Whitehaven Acquirer each covenants in favour of the Scheme Shareholders to perform its obligations under this Scheme.
Effective	when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) of the Corporations Act in relation to this Scheme.
Effective Date	the date on which this Scheme becomes Effective.
End Date	1 June 2012 or such later date as Whitehaven and Aston agree in writing.
Excluded Shareholder	any Aston Shareholder who is a member of the Whitehaven Group or any Aston Shareholder who holds any Aston Shares on behalf of, or for the benefit of, any member of the Whitehaven Group.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian.
Implementation Agreement	the scheme implementation agreement dated 11 December 2011 between Aston and Whitehaven relating to the implementation of this Scheme.
Implementation Date	the third Business Day after the Scheme Record Date, or such other day as ordered by the Court or as Aston and Whitehaven agree.
Ineligible Foreign Shareholder	a Scheme Shareholder whose address shown in the Aston Share Register is a place outside Australia and its external territories, New Zealand, the United States of America and Singapore, except where Whitehaven and Aston are reasonably satisfied that the issue of New Whitehaven Shares to Scheme Shareholder in that jurisdiction is neither prohibited by law nor unduly onerous.
New Whitehaven Share	a fully paid ordinary share in the capital of Whitehaven to be issued to Scheme Shareholders under this Scheme.
Proceeds	has the meaning given in clause 5.3(a)(2).

<b>Term</b>	<b>Meaning</b>
<b>Registered Address</b>	in relation to a Aston Shareholder, the address shown in the Share Register as at the Scheme Record Date.
<b>Sale Agent</b>	the appropriately licensed entity appointed by Whitehaven: a) to which New Whitehaven Shares which would otherwise be issued to Ineligible Foreign Shareholders will be issued; and b) which will sell or procure the sale of those New Whitehaven Shares, in accordance with clause 5.3(a) of this Scheme.
<b>Scheme</b>	this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Aston and Whitehaven.
<b>Scheme Consideration</b>	for each Aston Share held by a Scheme Shareholder as at the Scheme Record Date, an amount of 1.89 New Whitehaven Shares, subject to the terms of this Scheme.
<b>Scheme Record Date</b>	7.00pm on the fifth Business Day after the Effective Date.
<b>Scheme Shares</b>	all Aston Shares held by the Scheme Shareholders as at the Scheme Record Date.
<b>Scheme Shareholder</b>	a holder of Aston Shares recorded in the Share Register as at the Scheme Record Date (other than an Excluded Shareholder).
<b>Scheme Transfer</b>	a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Whitehaven Acquirer, which may be a master transfer of all or part of the Scheme Shares.
<b>Second Court Date</b>	the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard,
<b>subsidiary</b>	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
<b>Share Register</b>	the register of members of Aston maintained in accordance with the Corporations Act.

Term	Meaning
Special Dividend	the proposed dividend of \$0.50 for each fully paid ordinary share in the capital of Whitehaven immediately prior to the Scheme Record Date.
Whitehaven	Whitehaven Coal Limited ABN 68 124 425 396 of Level 28, 259 George Street, Sydney, New South Wales 2000.
Whitehaven Acquirer	Whitehaven Coal Holdings Pty Ltd ACN 124 452 571 or such other wholly owned subsidiary of Whitehaven nominated by Whitehaven pursuant to clause 4.4 of the Implementation Agreement.
Whitehaven Group	Whitehaven and each of its subsidiaries and a reference to a "Whitehaven Group Member" or a "member of the Whitehaven Group" is to Whitehaven and any of its subsidiaries.
Whitehaven Register	the register of shareholders maintained by Whitehaven or its agent.

## 2 Interpretation

In this Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re enactments of any of them;
- (h) a reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;

- (j) a reference to any time is a reference to that time in Brisbane;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (p) a reference to a body, other than a party to this Scheme (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### 3 Interpretation of inclusive expressions

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Specifying anything in this Scheme after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### 4 Business Day

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Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.