

ASX RELEASE  
27 September 2022



## **AQC AGREES TERMS OF DEAL TO RE-COMMISSION DARTBROOK ALONGSIDE TREPANG, M RESOURCES AND TETRA RESOURCES**

Australian Pacific Coal Limited ('**AQC**' or '**Company**') (ASX: AQC) is pleased to provide the following update with respect to its proposal to re-commission the Dartbrook coal mine (**Dartbrook**) and its ongoing fully underwritten Entitlement Offer.

### **Terms agreed to re-commission Dartbrook**

Further to its recent announcements regarding its proposed alliance with M Resources Pty Ltd (**M Resources**) for the re-commissioning of Dartbrook, its ongoing discussions with its largest shareholder, Trepang Services Pty Ltd (**Trepang**) with respect to AQC's outstanding debts, and the receipt of a conditional non-binding indicative proposal from Tetra Resources Pty Ltd (**Tetra Resources**) and Javelin Private Capital Group LLC, AQC is pleased to announce that it has agreed terms and entered into a binding term sheet with each of Trepang, M Resources and Tetra Resources for a strategic partnership between all of the parties that aims to see Dartbrook re-commissioned as a coal producing mine as soon as practicable (**Strategic Partnership**).

Under the Strategic Partnership, each of M Resources and Tetra Resources will earn a 20% direct joint venture interest in Dartbrook. In addition, Trepang, if it agrees to extend the existing AQC access and compensation agreement, various easement arrangements and term transfer of water rights on mutually agreeable commercial terms to allow underground mining operations to continue at Dartbrook for the duration of mine life extension approvals, will earn a 10% free-carried direct joint venture interest, subject to AQC obtaining any required shareholder approvals. AQC will retain a 50% direct joint venture interest in Dartbrook.

If M Resources and Tetra Resources do not achieve production restart at Dartbrook within 27 months, each of M Resources and Tetra Resources will relinquish their joint venture interest and that interest will revert to AQC.

An entity jointly owned by M Resources and Tetra Resources will enter into a Mine Management Services Agreement with respect to Dartbrook. M Resources will enter into an exclusive Marketing Services Agreement to act as marketing agent of coal sales and an exclusive Logistics Services Agreement for all coal types produced at Dartbrook. Tetra Resources will be appointed as the operator of Dartbrook.

The Strategic Partnership is conditional on AQC's ongoing fully underwritten Entitlement Offer being completed successfully, AQC obtaining all required authorisations (including any shareholder approval) with respect to the Strategic Partnership within 120 days from the date of the binding term sheet, M Resources completing its sub-underwriting arrangements under the Entitlement Offer and no court order or other restraining order or injunction being in effect at the time of completion of the Entitlement Offer or the Strategic Partnership.

As a result of the Strategic Partnership, AQC has agreed that M Resources will be entitled to appoint a director to the board of AQC. AQC is also currently negotiating with Trepang to have the right to nominate up to two directors to the board of AQC for so long as Trepang maintains a relevant interest of 20% in AQC, reducing to one director for so long as Trepang holds a relevant interest of less than 20% but more than 5%. Any director appointments are subject to compliance with legal requirements.

The parties have agreed to negotiate reasonably, to restate, reflect and expand on the key terms of the Strategic Partnership as soon as possible. The material terms of the Strategic Partnership are set out in the Annexure to this announcement.

## Update on non-binding indicative proposal from Pacific Premium Coal

The Company refers to its announcement of 7 September 2022 in which it advised that it had received a non-binding indicative proposal from Pacific Premium Coal Pty Ltd (**PPC**) (an entity associated with Nathan Tinkler) (**NBIO**) to acquire AQC at an offer price of \$1.00 per share.

The NBIO contained a number of pre-conditions to proceeding with a transaction, including, critically, that AQC enter into an agreement with Trepang, John Robinson and Nicholas Paspaley (together the **Trepang Parties**) to convert the existing debt owing to the Trepang parties (**Trepang Debt**) into a direct 40% interest in Dartbrook on terms acceptable to PPC, or should such an agreement not be forthcoming from the Trepang Parties, then PPC would repay all outstanding debts to the Trepang Parties (no detail was provided as to how this would actually occur).

Following Trepang's support of the Strategic Partnership, the pre-condition to the NBIO cannot be satisfied, and the NBIO is not capable of being progressed in its current form. Shareholders need not take any action with respect to the NBIO.

### Section 249D requisition notice

Tetra has agreed that within one business day of today's date it will procure that the individuals who have consented to act as a director of AQC in accordance with the resolutions proposed by Trepang in respect of the recently called AQC shareholder meeting will withdraw those consents to act.

AQC will provide a further update to shareholders on this once the withdrawal of consents to act is received.

### Updates on Entitlement Offer

AQC provides the following updates with respect to the Entitlement Offer:

#### **Closing Date**

As previously announced the Entitlement Offer will close at 5.00pm this Monday, 3 October 2022. Shareholders wishing to participate in the Entitlement Offer must complete the on-line application prior to that time.

#### **Status of conditions precedent to the Underwriting Agreement**

The signing of the binding term sheet with AQC, M Resources, Trepang and Tetra Resources constitutes a binding joint venture and management services agreement between those parties. This satisfies one of the key conditions precedent to the underwriting.

Accordingly, the Company is pleased to announce that all conditions precedent to the underwriting have been satisfied, except Trepang agreeing to release all encumbrances over the assets of AQC and those that cannot be satisfied until close of the Entitlement Offer (being regulatory approval of the quotation of the offer shares; AQC providing a shortfall notice to the underwriter and AQC providing a confirmation certificate to the underwriter).

#### **Key remaining dates for the Entitlement Offer**

The key dates for the Entitlement Offer are provided in the indicative timetable below:

<b>Event</b>	<b>Date* (2022)</b>
Entitlement Offer closes ( <b>Closing Date</b> )	5.00pm on Monday, 3 October
Announcement of shortfall (if any) under the Entitlement Offer	Tuesday, 4 October
Issue and allotment of shares under the Entitlement Offer; issue Appendix 2A	Monday, 10 October
Dispatch of holding statements	Tuesday, 11 October
Commencement of trading of new shares	Monday, 11 October

*Note: All dates and times above are indicative and the Company reserves the right to amend any or all of these events, dates and times, or withdraw the Entitlement Offer, subject to the Corporations Act 2001 (Cth), ASX Listing Rules and other applicable laws. All times and dates are in reference to Brisbane time. The commencement of quotation of new shares under the Entitlement Offer is subject to confirmation from ASX.*

### **Cleansing Notice**

This announcement also constitutes a notice for the purposes of section 708AA(12) of the *Corporations Act 2001* (Cth) (as modified by *ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84*).

This announcement has been authorised for release to ASX by the Board of Directors of Australian Pacific Coal Limited.

All enquiries:  
Company Secretary  
E: cosec@aqcltd.com  
P: +61 7 3221 0679

## Annexure

### Summary of Strategic Partnership among AQC, M Resources, Tetra Resources and Trepang

Below is a summary of the key terms of the agreed Strategic Partnership among AQC, M Resources, Tetra Resources and Trepang:

<p><b>Conditions precedent</b></p>	<p>The Strategic Partnership (and each of the transactions contemplated below) are subject to:</p> <ul style="list-style-type: none"> <li>• the Entitlement Offer successfully completing;</li> <li>• AQC obtaining all necessary approvals, including any shareholder approval by the date that is 120 days from the date of the term sheet;</li> <li>• M Resources complying with its sub-underwriting arrangements; and</li> <li>• no temporary restraining order, court order or other legal restraint being in effect at the time of completion of the Entitlement Offer which prevents or restrains or could reasonably be expected to prevent or restrain the lawful consummation of any aspect of the Entitlement Offer or the Strategic Partnership.</li> </ul> <p>If AQC shareholder approval is required for any aspect of the Strategic Partnership and is not obtained, and the Entitlement Offer is completed, AQC must pay a break fee to M Resources equal to \$1 million.</p>
<p><b>Sub-underwriting commitment</b></p>	<p>M Resources, or its affiliate, has provided a sub-underwriting commitment for up to A\$10 million of any shortfall from the Entitlement Offer.</p>
<p><b>Director appointment right</b></p>	<p>M Resources will be entitled to appoint a director to the Board of AQC, subject to legal requirements and re-election in accordance with AQC's constitution and the ASX Listing Rules, provided M Resources continues to hold the shares that it acquires under its sub-underwriting commitment and M Resources continues to be the strategic partner for Dartbrook through the provision of the core mine management services agreements.</p>
<p><b>Joint Venture Farmin</b></p>	<p>Subject to the matters outlined below:</p> <ul style="list-style-type: none"> <li>• M Resources, or its affiliate, will earn a 20% direct interest in Dartbrook upon: <ul style="list-style-type: none"> <li>○ using its reasonable endeavours to procure certain restart capital expenditure, particularised further below (<b>Reasonable Endeavours Condition</b>); and</li> <li>○ Dartbrook restarting production of run of mine coal (<b>Production Restart</b>), within 27 months of the farmin agreement (<b>Farmin Agreement</b>)</li> </ul> </li> <li>• subject to Production Restart occurring within 27 months from the date of the Farmin Agreement Tetra Resources will respectively earn a 20% direct interest in Dartbrook.</li> </ul> <p>Material terms of the Farmin Agreement will include the following:</p> <ul style="list-style-type: none"> <li>• A requirement that M Resources, or its affiliate, must demonstrate to AQC, at the request of AQC, how it has satisfied the Reasonable Endeavours Condition;</li> <li>• The parties (other than Trepang) will jointly prepare or arrange a capital expenditure restart report detailing the required estimated capital expenditure for recommencing Dartbrook's operations to commercial production levels (<b>Restart Capex</b>).</li> </ul>

- M Resources will and will procure Evolution Capital Pty Ltd to use reasonable endeavours to provide or procure the Restart Capex (or such lesser amount ultimately determined to be necessary to achieve Production Restart), which may be arranged in any reasonable and customary form including (without limitation) pre-payment arrangements, debt, equity, contractor vendor capital, bank guarantees or any other capital contribution that is accounted to Restart Capex (as reasonably determined by M Resources, provided such agreements are not with related or affiliated entities). For the avoidance of doubt, the joint venture (other than Trepang) is intended to ultimately be responsible for the repayment of any debt or similar arrangements used to fund the Restart Capex. M Resources, Tetra Resources, Trepang and AQC acknowledge that they will (subject to the parties agreeing terms (such agreement not to be unreasonably withheld)) grant security interests over their JV interest, should the financier providing the Restart Capex require security over the entirety of the JV assets, provided it is clear there is no recourse to assets of a JV participant beyond the secured JV interest.
- M Resources and Evolution are responsible to have secured restart capital binding term sheet within 90 days of long form documents being executed. If that is not to occur then mine Restart Capital responsibility reverts back to the Joint Venture Committee.
- M Resources will earn a 20% interest in Dartbrook (**M Resources' JV Interest**) in exchange for using reasonable endeavours to procure the:
  - the Restart Capex (which for the purposes of this provision will be treated as AUD\$100 million); or
  - such lesser amount ultimately necessary to achieve Production Restart within 27 months of the Farmin Agreement, (**Farmin Amount**).
- M Resource's 20% interest will be transferred back if:
  - it fails to use reasonable endeavours to procure the Farmin Amount; and/or
  - Production Restart is not achieved within 27 months of the Farmin Agreement.
- Tetra Resources' 20% interest will be transferred back if the Dartbrook mine fails to produce run of mine coal within 27 months (**Tetra Resources' JV Interest**) from the entry into the Farmin Agreement and cannot be reduced without their written consent.
- All interests in Dartbrook will be at an asset level unless the parties agree otherwise (eg through holding shares in AQC Investments 2 Pty Ltd) following legal, accounting, financial and tax advice.
- Subject to the satisfaction of the conditions precedent set out above and otherwise in the term sheet generally, M Resources' and Tetra Resources' JV Interests will be transferred immediately upon formation of these documents (subject to re-transfer if M Resources and Tetra do not comply with their farm-in obligations such retransfer at the cost of M Resources and Tetra).
- AQC will have the right to appoint three members of the operating committee or other joint venture decision making body and M Resources, Tetra and Trepang will each have the right to appoint one member of the operating committee or joint venture decision making body. M Resources will be entitled to appoint the chairman of the operating committee (who will have the same voting rights as other members of the committee and will not have a casting vote).
- Trepang and AQC are continuing to negotiate that, subject to AQC obtaining the required approvals, including shareholder approval, it will agree to amend the existing AQC access and compensation agreement, various easement arrangements and term transfer of water rights on mutually agreeable commercial terms to allow underground mining operations to continue at the Dartbrook coal project for the duration of mine life extension approvals of the existing underground Dartbrook

	<p>mine. In consideration for the amendment and extension of the land access agreements and water rights, and subject to AQC obtaining the required approvals, including shareholder approval, AQC will grant Trepang a life of mine 10% free carry (including no obligation to pay cash calls, or any other JV cost or liability (despite any other provision)) joint venture interest in Dartbrook from AQC's joint venture interest. For the avoidance of doubt AQC (and not M Resources or Tetra Resources) will be solely liable to pay cash calls, or any other JV cost or liability in respect of Trepang's 10% JV interest.</p> <ul style="list-style-type: none"> <li>• If an agreement can be reached between AQC and Trepang and subject to the satisfaction of certain conditions precedent, the following additional terms will apply: <ul style="list-style-type: none"> <li>○ In addition to the interest being free carried the Trepang interest may not be capable of being diluted.</li> <li>○ Trepang and AQC will identify and agree an area or areas within the Trepang properties (being the properties which are the subject of the extended land access and water rights agreements), to be used by AQC to allow underground mining operations to continue at the Dartbrook Mine (<b>Relevant Area</b>). Provided Trepang's 10% interest has been approved, Trepang and AQC will agree (or in the absence of agreement, and independent valuer will determine) a minimum payment of interest or royalty for the rent of the properties and lease of water rights within the Relevant Area (<b>Minimum Return</b>).</li> <li>○ If the income derived from Trepang's Project Interest for a financial year is less than the Minimum Return, then a payment must be made to Trepang (<b>Top Up Payment</b>) to ensure that the Minimum Return is achieved for that financial year.</li> <li>○ The Minimum Return and the Top Up Payment are to be costs borne and paid by the JV.</li> </ul> </li> <li>• For the avoidance of doubt, in consideration for the Production Restart (and provided Tetra Resources remains operator of the mine), Tetra Resources will be granted a 20% interest in Dartbrook (and if it does not achieve Production Restart within 27 months of the Farmin Agreement, each of Tetra Resources and M Resources will not acquire their interests and they shall be required to transfer their interests back to AQC).</li> <li>• Assuming the funds are raised, all necessary approvals are obtained and Production Restart commences in the timeframe required, the overall joint venture equity ownership interest will be: <ul style="list-style-type: none"> <li>○ AQC: 50%;</li> <li>○ M Resources: 20%;</li> <li>○ Tetra: 20%; and</li> <li>○ Trepang: 10%.</li> </ul> </li> </ul> <p>If shareholder approval is required for the granting of Trepang's 10% JV interest and not obtained, the parties agree that AQC's joint venture interest will be 60% (and Trepang will have no obligation to agree land and water arrangements).</p>
<b>Term</b>	<p>The management services agreements described below commence from the date of satisfaction of the conditions precedent noted above and the entry into binding agreements to give effect to the provision of the JV equity amounts, and all Fees as set out below apply from that date. Except as noted below, the Term is for the term of the life of mine at Dartbrook, which shall include the current mining licence/consent/permit for Dartbrook and any such extended mining licence/consent/permit (including by way of renewal or replacement).</p>
<b>Mine Management Services Agreement</b>	<p>MRT and Tetra will form a 50:50 jointly owned management company which shall be appointed as the manager of Dartbrook (subject to the supervision and direction of the joint venture management committee) (<b>Mine Management JV Co</b>).</p> <p>The following fees will be paid to the Mine Management JV Co:</p>

	<ul style="list-style-type: none"> <li>• Pre-production phase A\$5,000,000 per annum</li> <li>• Post-production phase – an EBIT Fee representing 5.0% of annual earnings before interest and tax (EBIT) from the Dartbrook project (for the avoidance of doubt, EBIT reflects net earnings after deduction of costs from revenue for the Dartbrook JV), subject to this being a minimum of A\$5,000,000 per annum.</li> <li>• Fees to be paid monthly in arrears, on a proportional basis.</li> <li>• The Mine Management Service Fees are to be costs of the JV.</li> </ul> <p>Tetra Resources and M Resources indemnify and hold harmless AQC in respect of any loss suffered by AQC as a result of a breach by the Mine Management JV Co of the Mine management services agreement.</p>
<b>Logistics Services Agreement</b>	<p>M Resources to be appointed as the exclusive logistics agent for all coal types produced by AQC at Dartbrook.</p> <p>Minimum retainer Fee: US\$25,000/ calendar month during production. Major Infrastructure Management Fee (including renegotiations of infrastructure agreements) US\$500/hr the amount of which is deducted from the retainer Fee.</p> <p>The Logistics Services fees are costs of the JV.</p>
<b>Marketing Services Agreement</b>	<p>M Resources will be the exclusive marketing agent for all coal types produced by AQC at Dartbrook.</p> <p>Base Fee post-production: 2.0% of the FOB / CFR contract price for all shipments performed during the term of the appointment.</p> <p>The Marketing Services fees are costs of the JV.</p>
<b>Mine Operation and Maintenance</b>	<p>Tetra Resources will be appointed as the operator of Dartbrook.</p> <p>Tetra will be compensated for the direct and indirect costs reasonably and properly incurred in the development, operation and maintenance of the mine (<b>Mine Operation and Maintenance Costs</b>), including onsite and offsite supporting costs attributable to the Dartbrook business. For clarity this shall include all activities required in the Pre-Production phase, the Production phase, and the mine closure/rehabilitation phase of the project.</p> <p>The Mine Operation and Maintenance Costs are costs of the JV.</p>