12 December 2011

Creating a Leading Independent Australian Coal Company

Highlights

- **Whitehaven and Aston announce merger of equals**
- **Aston shareholders to receive 1.89 Whitehaven shares for each Aston share, following distribution of a fully franked special dividend of $0.50 per share to existing Whitehaven shareholders**
- **Merger to be implemented via Aston Scheme of Arrangement. Aston's largest shareholder, a Tinkler Group affiliate, holding approximately 32% of Aston shares, has indicated its intention to vote in favour of the transaction in the absence of a superior proposal**
- **Whitehaven has also agreed, conditional on the Aston merger proceeding, to acquire 100% of unlisted coal explorer Boardwalk Resources**
- **Compelling rationale for the combination and significant synergies available**
- **The Board of the combined company will include the Hon. Mark Vaile as Chairman, Mr John Conde AO as Deputy Chairman and Mr Tony Haggarty as Managing Director**
- **The combined company (the "Merged Entity") will be the largest ASX listed independent coal company, with a pro forma market capitalisation of approximately A$5.1 billion[1]**

Aston / Whitehaven Merger

Aston Resources Limited (ASX:AZT) and Whitehaven Coal Limited (ASX:WHC) today announced they have entered into a Scheme Implementation Agreement ("SIA") under which they have agreed to merge via a Scheme of Arrangement.

The transaction brings together two highly complementary and growth focused groups, creating a leading independent Australian coal company.

Aston shareholders will receive 1.89 Whitehaven shares for each Aston share they hold.

[1] Market capitalisation based on undiluted shares on issue and closing prices as at 9-Dec-2011; includes value attributed to Boardwalk Resources.

Whitehaven will pay a fully franked special dividend of $0.50 per share to its shareholders immediately prior to implementation of the merger ("Whitehaven Special Dividend"). Aston and Boardwalk Resources shareholders will not be eligible to receive the Whitehaven Special Dividend.

The proposed merger has the unanimous support of both the Aston and Whitehaven Boards. The Aston Directors who do not have an interest in the Boardwalk Transaction have considered the merger and unanimously recommend Aston shareholders vote in favour of the transaction in the absence of a superior proposal and subject to the Independent Expert concluding that the transaction is in the best interests of Aston shareholders.

Mr Nathan Tinkler and Mr Philip Christensen also recommend Aston shareholders vote in favour of the transaction in the absence of a superior proposal and subject to the Independent Expert concluding that the transaction is in the best interests of Aston shareholders, although noting their interest in the Boardwalk Transaction and noting that they have therefore not participated in the decision of the other Aston Directors to recommend the merger.

Aston's largest shareholder, Tinkler Group, representing approximately 32% of Aston's total issued shares, has stated its intention to vote in favour of the merger in the absence of a superior proposal.

Boardwalk Resources Acquisition

Whitehaven has entered into separate agreements to acquire all of the shares and other issued securities in unlisted coal explorer Boardwalk Resources ("Boardwalk Transaction").

Boardwalk Resources investors, including Tinkler Group and Farallon Funds, will be issued 85.88 million Whitehaven shares as consideration for the acquisition. These shares will not be entitled to the Whitehaven Special Dividend.

Boardwalk Resources shareholders will be entitled to an additional 34.02 million Whitehaven shares upon receipt of mining leases and environmental approvals at any two of the following projects: Dingo, Ferndale, Sienna, Monto and Oaklands North (being 17.01 million shares for each approval).

The Boardwalk Transaction is conditional upon the Aston/Whitehaven merger completing and other customary completion conditions.

As part of the transaction, existing Boardwalk Resources shareholders will contribute $150 million in cash to Boardwalk Resources which will be used for the ongoing development of its assets. Boardwalk also has existing debt of US$50 million.

Merged Entity Board and Management

The Board of the Merged Entity will comprise the Hon. Mark Vaile (Chairman), Mr John Conde AO (Deputy Chairman), Mr Tony Haggarty (Managing Director), Mr Allan Davies (Executive Director), Mr Philip Christensen, Mr Paul Flynn, Mr Rick Gazzard and Mr Hans Mende. A further independent director will be nominated by Aston and Whitehaven prior to implementation of the merger. Mr Peter Kane, current interim CEO of Aston, will form part of the senior management team.

Commenting on the proposed merger, Whitehaven Chairman Mr John Conde AO said:

> "*This is a transformative and exciting transaction which maintains Whitehaven's track record of delivering growth. The Merged Entity becomes one of Australia's leading independent coal producers with a high quality portfolio of producing mines, major development projects and attractive exploration assets.*
>
> *"This asset base, combined with the positive long term outlook for Australian export coal, places the Merged Entity in an excellent position to generate ongoing value for all shareholders.*"

Aston Chairman Mr Nathan Tinkler said:

> "*This transaction is an important milestone for Aston shareholders. The merger represents the next phase in Aston's growth, providing shareholders with exposure to a larger and more diversified portfolio of coal mines, projects and exploration opportunities, while continuing to maintain exposure to the Maules Creek project.*
>
> *"I believe the Merged Entity will represent an extremely attractive investment of scale in the rapidly consolidating Australian listed coal sector and is positioned to deliver substantial synergy benefits to shareholders.*"

Mr Mark Vaile, the current Deputy Chairman of Aston and proposed Chairman of the Merged Entity, said:

> *"The Merged Entity will be a large and growing coal company providing shareholders with exposure to the best of all worlds – operating coal mines with low cost structures and strong cashflows, large-scale development projects supported by the requisite infrastructure capacity to support their commercialisation and a portfolio of exploration opportunities. I look forward to my new role as Chairman."*

Whitehaven Managing Director and proposed Managing Director of the Merged Entity Mr Tony Haggarty said:

> "*Aston and Whitehaven have complementary assets and teams that make this transaction a compelling and unique opportunity for both companies.*
>
> *"By combining these assets we can ensure the most economic and sustainable development of the combined coal resources.*

"Importantly, the merger will have no impact on the day-to-day operation of our existing mines in the region or our Gunnedah Coal Handling and Preparation Plant.

"Our commitment to working as part of the local communities in which we operate will be maintained and the management and monitoring of cumulative impacts will continue."

Transaction Rationale

The merger of Whitehaven and Aston, together with the acquisition of Boardwalk Resources, will create a leading independent Australian coal company.

- Pro forma saleable production of 6Mtpa in FY2012 (100% basis) expected to increase to 25Mtpa (100% basis) by FY2016[2]
- Combined JORC resources of 2,451Mt and JORC recoverable reserves of 842Mt (100% basis)
- Solid production and profit base from five high quality, low cost producing mines
- Substantial growth pipeline including ramp up of Narrabri, development of Maules Creek and Vickery and a suite of exploration assets
- Creates a major supplier of semi-soft coking and PCI coals, with metallurgical coal production rising to up to 60% of saleable production by FY2016
- Strategic port and rail infrastructure position which supports the Merged Entity's production growth plans
- Significant synergies resulting from the consolidation of Gunnedah Basin mining operations, coal blending and marketing opportunities, infrastructure optimisation and procurement benefits
- Highly regarded Board and management team with extensive experience and a track record of success in developing coal mines and infrastructure and enhancing shareholder value

Transaction Implementation

The proposed merger will be implemented via a Scheme of Arrangement in Aston. In addition to Aston shareholder and court approvals, the Scheme is subject to conditions including:

- no material adverse change in Whitehaven or Aston;
- relevant regulatory approvals;
- Aston shareholder approval; and
- other customary conditions.

[2] On an equity basis this equates to 5.2Mtpa in FY2012 and 20.1Mtpa in FY2016. Excludes potential production upside from the Boardwalk Resources exploration assets.

The SIA also includes customary deal protection for Whitehaven including a break fee, no talk, no shop, exclusivity and a right to match competing proposals.

A copy of the SIA is attached to this announcement.

The merger has the unanimous support of both the Aston and Whitehaven Boards.

In addition, Whitehaven has entered into a call option agreement with Tinkler Group in relation to 19.9% of Aston shares on issue. A copy of the Option Agreement will be separately lodged with ASX.

The issue of Whitehaven shares to Boardwalk Resources investors will be conditional on Whitehaven shareholder approval under ASX Listing Rule 7.1 at a general meeting of Whitehaven shareholders.

The Directors of Whitehaven unanimously recommend that Whitehaven shareholders also vote in favour of the resolution. Whitehaven shareholders (including the directors) representing approximately 43% of total Whitehaven shares on issue have indicated they intend to vote in favour of the resolution at the shareholders' meeting.

Timetable and Next Steps

The Aston Scheme Booklet is expected to be mailed to Aston shareholders in late February 2012, with shareholder meetings expected to be held in late March 2012. The Scheme is expected to be implemented in April 2012.

The Whitehaven notice of general meeting and Explanatory Memorandum for approval of the issue of shares for the Boardwalk Transaction is expected to be mailed to Whitehaven shareholders in late February 2012. The general meeting of Whitehaven shareholders is expected to be held in late March 2012.

It is expected that the Boardwalk Transaction will complete in April 2012, subject to the Aston transaction proceeding, with final consideration issued following Whitehaven Shareholder Approval and the record date of the Whitehaven Special Dividend.

Further details on timing and implementation of the merger scheme and the Boardwalk Transaction will be made available to shareholders upon release of the Aston Scheme Booklet and the Whitehaven Explanatory Memorandum.

Advisers to the Transaction

Grant Samuel Corporate Finance and Goldman Sachs Australia are acting as financial advisers to Whitehaven, and Corrs Chambers Westgarth and McCullough Robertson are acting as its legal advisers.

UBS AG, Australia Branch and Credit Suisse (Australia) Limited are acting as financial advisers to Aston and Freehills is acting as its legal adviser.

Queen Street Capital and Morgan Stanley are acting as financial advisers to Boardwalk Resources and Gilbert + Tobin is acting as its legal adviser.

Conference Call

A joint conference call to be hosted by Whitehaven and Aston will be held at 10.00am AEST on Monday 12th December to discuss the transaction and will reference the investor presentation lodged with ASX.

Participants may join the call by using the following telephone dial-in numbers:

Dial in details:

Australia Toll Free:	1800 354 715
Tolled/Other:	+ 61 2 8823 6760
Conference ID:	35354867

Webcast and Presentation

The Merged Entity presentation will be made available on the Whitehaven and Aston websites. A copy has also been released to ASX. The webcast will also be available for replay on the Whitehaven and Aston websites.

For further information on Whitehaven, please visit its website at www.whitehavencoal.com.au
For further information on Aston, please visit its website at www.astonresources.com.au

About Aston

Aston Resources owns 85%[3] 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.

About Whitehaven

Whitehaven is the largest and most established coal producer in the Gunnedah Basin and employs more than 500 people in Northwest New South Wales. Whitehaven currently operates five mines in the Gunnedah region - Narrabri (underground), Rocglen (open cut), Sunnyside (open cut), Tarrawonga (open cut) and Werris Creek (open cut).

In January 2010 Whitehaven acquired the Vickery assets from Coal & Allied Industries. Whitehaven currently plans to lodge an application for Project Approval for Vickery open cut in the first half of calendar 2012, with the aim of obtaining approval

[3] Currently 85%, will reduce to 75% post completion of the selldown of 10% to J-Power.

and being in a position to commence mine production in the second half of calendar 2013. Work is progressing to define an open cut mine plan for Vickery to produce around 4.5Mtpa ROM for more than 25 years with a stripping ratio of approximately 10:1.

Whitehaven has an 11% interest in the Newcastle Coal Infrastructure Group (NCIG) which operates the new coal export terminal at the Port of Newcastle. This is in addition to its port allocation at Port Waratah Coal Services.

About Boardwalk Resources – www.boardwalkresources.com

Boardwalk Resources is a privately owned Australian coal mining investment company with a suite of exploration and development assets across Queensland and New South Wales. The company owns majority interests in four exploration stage projects and a 19.9% interest in Coalworks Limited (ASX:CWK).

Contacts

For further information please contact:

Aston

Melissa Swain General Counsel & Company Secretary, Aston Resources Limited 0448 948 977
Tim Allerton City PR 0412 715 707

Whitehaven

Tony Haggarty Managing Director, Whitehaven Coal Limited (02) 8507 9700
Kate Kerrison Kate Kerrison + Company 0413 946 704 kate@katekerrison.com.au

Whitehaven Competent Persons Statement

The information in this release that relates to Coal Resources and Reserves is based on and accurately reflects reports prepared by the Competent Person named beside the respective information. All these persons are consultants for Whitehaven Coal Limited. Mr Colin Coxhead is a private consultant. Mr Greg Jones is a principal consultant with JB Mining Services. Mr Tom Bradbury is a full time employee of Geos Mining. Mr Chris Turvey is a private consultant. Mr Graeme Rigg is a full time employee of Runge Limited. Mr Doug Sillar is a full time employee of Runge Limited. Mr William Dean is a full time employee of UGM Australia. Named Competent Persons consent to the inclusion of material in the form and context in which it appears. The Coal Resources and Reserves tables were compiled by Mr Mark Dawson, Group Geologist, Whitehaven Coal Limited. All Competent Persons named are Members of the Australian Institute of Mining and Metallurgy and/or The Australian Institute of Geoscientists and have the relevant experience in relation to the mineralisation being reported on by them to qualify as Competent Persons as defined in the Australian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (The JORC Code, 2004 Edition).

Aston Competent Persons Statement

The information in this report that relates to Coal Reserves is based on reserve estimates compiled by Mr Doug Sillar, BE (Mining, Hons) MAusIMM. Mr Sillar is a full time employee of Runge Limited and has sufficient experience which is relevant to the style and type of deposit under consideration and to the activity undertaken to qualify him as a Competent Person as defined in the "Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (The JORC Code 2004 Edition)".

The information in this report that relates to Coal Resources is based on information compiled by Phillip Sides, a Senior Geologist and employee of JB Mining Services Pty Ltd, based on geological data provided electronically by Rio Tinto Coal Australia and more recently Aston Resources Limited. Phillip Sides is a qualified geologist with over 20 years experience in coal geology and over 15 years experience in resource evaluation. Phillip Sides is a member of The Australian Institute of Geoscientists and has the relevant experience in relation to the mineralisation being reported to qualify as a Competent Person as defined in the "Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (The JORC Code 2004 Edition)".

Forward Looking Statements

This release contains forward-looking statements which are identified by words such as 'may', 'could', 'believes', 'estimates', 'targets', 'expects', or 'intends' and other similar words that involve risks and uncertainties. These statements are based on an assessment of present economic and operating conditions, and on a number of assumptions regarding future events and actions that, as at the date of this release, are expected to take place. Such forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties, assumptions and other important factors, many of which are beyond the control of Aston, Whitehaven, Boardwalk Resources and the Directors and management of each company. The Companies cannot and do not give any assurance that the results, performance or achievements expressed or implied by the forward-looking statements contained in this release will actually occur and investors are cautioned not to place undue reliance on these forward-looking statements. The Companies have no intention to update or revise forward-looking statements, or to publish prospective financial information in the future, regardless of whether new information, future events or any other factors affect the information contained in this press release, except where required by law. These forward-looking statements are subject to various risk factors that could cause actual results to differ materially from the results expressed or anticipated in these statements.

CORRS
CHAMBERS
WESTGARTH
lawyers

Whitehaven Coal Limited

Aston Resources Limited

Scheme Implementation Agreement

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Contents

Date:

Parties

Whitehaven Coal Limited ABN 68 124 425 396 of Level 28, 259 George Street, Sydney, New South Wales 2000 (**Whitehaven**)

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

Background

A. Whitehaven and Aston have agreed to merge the two companies by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.

B. At the request of Whitehaven, Aston has agreed to propose the Scheme to Aston Shareholders and the Aston Directors have agreed to recommend the Scheme to Aston Shareholders.

C. The parties have agreed to implement the Scheme in accordance with this document.

D. Whitehaven and the holders of all of the issued capital and warrants of Boardwalk have also entered into the Boardwalk Transaction Documents under which Whitehaven proposes to acquire all of issued capital and warrants of Boardwalk.

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Advisers means, in relation to an entity, its financiers, and any legal adviser, financial adviser, corporate adviser or other expert adviser or consultant who provides advisory services in a professional capacity to third parties and who has been engaged by that entity.

Announcement means the public announcement to be made by Whitehaven and Aston in the form contained in **annexure C**.

Announcement Date means:

(a) the date on which this document is executed; or

(b) if this document is executed on a day which is not a Trading Day, the first Trading Day immediately following the day of execution.

ASIC means the Australian Securities and Investments Commission.

Associate in relation to each party, has the meaning given in sections 11, 12 and 16 of the Corporations Act.

Aston Board means the board of directors of Aston (as constituted from time to time).

Aston Budget means the Aston budget attached to the Aston Disclosure Letter, and includes:

(a) the Aston Corporate Costs; and

(b) all reasonable amounts required to be committed whether by way of bonds, guarantees or other forms of security in connection with any expenditure set out in that budget.

To avoid doubt, any expenditure or commitments in accordance with paragraphs (a) or (b) above will be regarded as consistent with the Aston Budget.

Aston Committee Members means M Vaile, P Kane and M Swain or such other persons as are nominated by Aston in place of those individuals.

Aston Corporate Costs means:

(a) any fees, interest or other charges incurred in connection with any of the Aston Debt Facilities; and

(b) all fees and expenses incurred in connection with the transactions contemplated by this document,

up to a maximum amount of $35 million.

Aston Debt Facilities means any debt facility, equipment finance facility or other financial accommodation provided to Aston or any Aston Subsidiary (whether with or without others) by any bank or other lender that is fairly disclosed in the Aston Disclosure Material or the Aston Disclosure Letter, together with all associated facility, priority and other agreements and securities entered into in connection with such facilities or accommodation.

Aston Director means a director of Aston.

Aston Disclosure Material means all written information in connection with the Transaction or relating to the Aston Group's past, present or future operations, affairs, business and/or strategic plans, which has been provided to Whitehaven or its Representatives:

(a) via Aston's electronic and physical data room (a copy of the index of which as at the end of the Cut-off Date has been initialled by the parties) on or prior to Cut-off Date;

(b) via the written Q&A process associated with that data room on or prior to Cut-off Date; or

(c) in the Aston Disclosure Letter.

Aston Disclosure Letter means a letter provided by Aston to Whitehaven on or before the date of this document, and accepted by Whitehaven.

Aston Group means Aston and each of its Related Entities.

Aston Information means all information contained in the Scheme Booklet and all information provided by or on behalf of Aston to the Independent Expert to enable the Independent Expert's Report to be prepared and completed, which does not include the Boardwalk Information or the Whitehaven Information or the Independent Expert's Report.

Aston LTIP means Aston's Long Term Incentive Plan adopted by Aston on 6 August 2010.

Aston Material Adverse Change means a matter, event or circumstance that occurs, is announced or becomes known to Aston (whether or not it becomes public) where that matter, event or circumstance has, has had, or could reasonably be expected to have, individually or when aggregated with all such matters, events or circumstances, the result that:

(a) there is or would be reasonably likely to be a material adverse effect on the assets, liabilities, business, results, operations, trading or financial position or material licenses of the Aston Group; or

(b) the Aston Group is unable to carry on its business in substantially the same manner as carried on as at the date of this document, or which otherwise materially and adversely affects the prospects of the Aston Group,

other than a matter, event or circumstance:

(c) which is expressly contemplated by this document or the Scheme;

(d) which is, and to the extent that it is, fairly disclosed in the Aston Disclosure Material;

(e) which relates to interest rates, coal or other commodity prices or currency exchange rates; or

(f) which is, and to the extent that it is, a consequence of losses covered by insurance which Aston's insurers have agreed to pay.

Aston Material Transaction means, other than:

(a) as expressly contemplated by this document or the Scheme;

(b) to the extent that it is fairly disclosed in the Aston Disclosure Letter;

(c) to the extent that it consistent with the Aston Budget; or

(d) with the express consent of Whitehaven,

the occurrence of any of the following:

(e) Aston or any of its Subsidiaries issues, or agrees to issue, or grants an option to subscribe for, debentures (as defined in section 9 of the Corporations Act), other than to a Wholly-Owned Subsidiary of Aston;

(f) Aston or any Subsidiary of Aston makes any change to its constitution or other constituent documents;

(g) Aston or any Subsidiary of Aston disposes, or agrees to dispose, of shares in a Related Body Corporate of Aston;

(h) the Aston Group changes in any material respect the nature of its business;

(i) Aston or any Subsidiary of Aston incurs any financial indebtedness or issues any indebtedness or debt securities other than pursuant to advances under the Aston Debt Facilities;

(j) Aston or any Subsidiary of Aston makes any loans, advances or capital contributions to, or investments in, any other person, other than to or in Aston or any Wholly-Owned Subsidiary of Aston;

(k) Aston or any Subsidiary of Aston:

   (i) grants to any Officer of Aston or any Subsidiary of Aston any increase in severance or termination pay or superannuation entitlements; or

   (ii) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any provisions of, any contract of employment with any senior executive of Aston or of any Subsidiary of Aston;

(l) Aston or any of its material Subsidiaries ceases, or threatens to cease, to carry on business;

(m) Aston or any of its material Subsidiaries becomes subject to an Insolvency Event or is deregistered as a company or otherwise dissolved;

(n) Aston or any of its material Subsidiaries is or becomes unable to pay its debts when they fall due;

(o) Aston or any of its material Subsidiaries disposes, or agrees to dispose, of any asset (including an exploration licence) other than where the total amount involved in the relevant transactions in the period until the Second Court Date is less than $20 million;

(p) Aston or any of its material Subsidiaries acquires, or agrees to acquire, any asset (including an exploration licence) other than where the amount involved in the relevant transactions in the period until the Second Court Date is less than $20 million in total;

(q) Aston converting all or any of its shares into a larger or smaller number of shares;

(r) any member of the Aston Group resolving to reduce, or reducing, its share capital in any way, or reclassifying, redeeming, combining, splitting or repurchasing directly or indirectly any of its shares;

(s) any member of the Aston Group resolving to buy back, or buying back, any of its shares, including by:

 (i) entering into a buy-back agreement; or

 (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;

(t) any member of the Aston Group issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than:

 (i) to a Wholly-Owned Subsidiary of Aston;

 (ii) an issue of Aston Shares following the valid exercise of any Options or Performance Rights on issue at the Cut-off Date;

(u) any member of the Aston Group issuing, or agreeing to issue, securities convertible into shares or debt securities (including any performance rights or options);

(v) any member of the Aston Group making, in aggregate, capital expenditure in excess of $20 million;

(w) any member of the Aston Group:

 (i) acquiring, leasing or disposing of;

 (ii) agreeing to acquire, lease or dispose of; or

 (iii) offering, proposing or announcing a bid or tenders for,

any material business, assets or entity with a value greater than $20 million in total in the period until the Second Court Date, or enters into joint venture, partnership or similar arrangement;

(x) any member of the Aston Group:

 (i) entering into any contracts or commitments either individually or collectively involving revenue or expenditure of more than $20 million over the term of the contract or commitment;

 (ii) entering into any contracts or commitments with or in relation to Hunter Ports;

 (iii) terminating or amending in a material manner any contracts of the Aston Group's business which either individually or collectively involve expenditure or revenue of more than $20 million over the term of the contract;

 (iv) paying, discharging or satisfying any claims, liabilities or obligations under any contracts or commitments involving revenue or expenditure of more than $20 million other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms; or

(v) waiving any material claims or rights under, or waiving the benefit of any provision of, any contracts or commitments involving revenue or expenditure of more than $20 million;

(y) any member of the Aston Group entering into a contract or commitment restraining it from competing with any person or conducting activities in any market;

(z) except as provided for in an existing employment contract in place at the Cut-off Date, a copy of which has been included in the Aston Disclosure Material, any member of the Aston Group:

(i) paying any bonus to, or increasing the compensation of, any Officer of any member of the Aston Group;

(ii) accelerating the rights of any Officer of any member of the Aston Group to compensation or benefits of any kind (including under any Aston executive or employee share plan);

(iii) granting to any Officer of any member of the Aston Group any increase in severance or termination pay or superannuation entitlements or by issuing any Aston Shares or securities convertible to Aston Shares to any of those persons; or

(iv) establishing, adopting, entering into or amending in any material respect (including by taking any action to accelerate any rights or benefits due under) any enterprise bargaining agreement, Australian workplace agreement, employee benefit plan or superannuation scheme of Aston or relating to the Officers or employees of any member of the Aston Group; or

(aa) any member of the Aston Group making any change in its accounting methods, principles or practices which would materially affect the reported consolidated assets, liabilities or results of operations of any member of the Aston Group, other than as required to comply with any changes to generally accepted accounting principles, standards, guidelines or practices in the jurisdiction of the relevant entity's incorporation.

Aston Share means a fully paid ordinary share in the capital of Aston.

Aston Shareholder means each person who is registered in the Register as the holder of Aston Shares.

Aston Suspension Date means the date identified in the Timetable as the Aston Suspension Date.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.

ASX Listing Rules means the official listing rules of ASX.

ATO means the Australian Taxation Office.

Boardwalk means Boardwalk Resources Limited ABN 89 130 433 617 of Level 2, 366 Queen Street, Brisbane QLD 4000.

Boardwalk Information means such information regarding Boardwalk and its Related Entities to be provided by or on behalf of Boardwalk to Aston or the Independent Expert to enable the Scheme Booklet to be prepared and completed, and applications for the Regulatory Approvals to be made.

Boardwalk Transaction Documents means the agreements for the sale of all of the issued capital and warrants of Boardwalk to Whitehaven in consideration for the issue of Whitehaven Shares.

Break Fee means $20,578,990.00 (exclusive of GST).

Business Day means a day that is each of the following:

(a) a Business Day within meaning given in the ASX Listing Rules; and

(b) a day that banks are open for business in Sydney.

Call Option Agreement means the document titled "Call option agreement" and dated on or about the date of this document between Whitehaven and Aston Resources Investments Pty Limited as trustee for the Aston Resources Trust in relation to certain Aston shares.

Claim means demand, claim, action, or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

Coalworks means Coalworks Limited ABN 51 114 702 831.

Communications means all forms of communications, whether written, oral, in electronic format or otherwise, and whether direct or indirect via agents or Representatives.

Competing Proposal means any expression of interest, proposal, offer, transaction or arrangement (other than any transaction that may be made and implemented in accordance with this document) by or with any person pursuant to which a Third Party will, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

(a) acquire an interest (including an economic interest by way of an equity swap or any similar transaction or arrangement) in, or a Relevant Interest in, or become the holder of, 50% or more of the shares in Aston;

(b) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a substantial part of the assets or business of Aston or the Aston Group including assets with an aggregate book value representing 50% or more of the total assets of the Aston Group as set out in Aston's consolidated balance sheet as at 30 June 2011; or

(c) otherwise acquire Control of Aston or the Aston Group; or

(d) otherwise directly or indirectly acquire, merge or amalgamate with, or acquire a significant shareholding or economic interest in, Aston or the Aston Group or in all or a substantial part of their respective assets or business, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for the Aston Group or other synthetic merger or any other transaction or arrangement,

but does not include the proposed transaction with J-Power Australia Pty Ltd, as described in the Aston Disclosure Letter (or a transaction on materially the same terms with Itochu or a Third Party).

Condition Precedent means a condition precedent set out in **clause 3.1**.

Confidentiality Agreement means the confidentiality agreement dated on or around 18 November 2011 between Whitehaven and Aston.

Control has the meaning given to that term in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Court means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act agreed in writing by Aston and Whitehaven.

Cut-off Date means 9 December 2011.

Deed Poll means a deed poll in the form of **annexure B** to be executed by Whitehaven in favour of the Scheme Participants, under which Whitehaven covenants in favour of each Scheme Participant to perform its obligations under the Scheme and this document as regards the implementation of the Scheme.

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the Scheme Order, but not before an office copy of the Scheme Order is lodged with ASIC.

Effective Date means the date on which the Scheme becomes Effective.

End Date means 1 June 2012 or such later date as Whitehaven and Aston agree in writing.

Excluded Share means an Aston Share held by Whitehaven or any of its Associates or by any person on behalf of, or for the benefit of, Whitehaven or any of its Associates.

Exclusivity Period means the period commencing on the date of this document and ending on the earlier of:

(a) the date this document is terminated in accordance with its terms; and

(b) the Effective Date.

FATA has the meaning given in **clause 3.1(a)(ii)**.

First Court Date means the first day on which the application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including, for the avoidance of doubt, the Commonwealth Treasurer), ASIC, ATO, ASX, the Foreign Investment Review Board and any regulatory organisation established under statute or any stock exchange.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Aston Shareholders present and voting, either in person or by proxy.

Hunter Ports means Hunter Ports Pty Ltd ABN 35 143 166 170.

Implementation Date means the fifth Business Day following the Record Date, or such other date as ordered by the Court or agreed between Whitehaven and Aston.

Independent Expert means PricewaterhouseCoopers Securities Limited.

Independent Expert's Report means the report in connection with the Scheme to be prepared by the Independent Expert in accordance with the Corporations Act, and ASIC policy and practice, for inclusion in the Scheme Booklet.

Ineligible Foreign Shareholder means a Scheme Participant whose Registered Address is in a jurisdiction other than Australia and its external territories and New Zealand, except where Whitehaven and Aston are reasonably satisfied that the issue of New Whitehaven Shares to the Scheme Participant in that jurisdiction is neither prohibited by law nor unduly onerous.

Insolvency Event means any of the following:

(a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;

(b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;

(c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;

(d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;

(e) a controller (as that term is defined in the Corporations Act) is appointed in respect of any property of a corporation;

(f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;

(g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;

(h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them; or

(i) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

Losses means all claims, actions, proceedings, liabilities, obligations, damages, loss, charges, costs, expenses and duties or other outgoings.

Material Transactions means Aston Material Transactions and Whitehaven Material Transactions.

Maules Creek Project means the Maules Creek coal development project located in the Gunnedah Basin, New South Wales, owned by the Maules Creek joint venture, the participants in which as Aston Coal 2 Pty Ltd and ICRA MC Pty Limited.

New Whitehaven Shares means the Whitehaven Shares to be issued as Scheme Consideration.

Officer means, in relation to any entity, any of its directors and officers.

Option means an option to subscribe for Aston Shares issued by Aston under the Aston LTIP.

Optionholder means a person who is registered in the Aston's register of optionholders as the holder of an Option.

Performance Right means a right to be issued Aston Shares granted by Aston under the Aston LTIP.

Record Date means 7.00 pm on the fifth Business Day following the Effective Date or such other date and time as Whitehaven and Aston agree.

Register means the register of members of Aston maintained by or on behalf of Aston in accordance with the Corporations Act.

Registered Address means in relation to an Aston Shareholder, the address shown in the Register as at the Record Date.

Regulatory Approval means:

(a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption from, by or with a Governmental Agency; or

(b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both Whitehaven and Aston which is provided to ASIC for review pursuant to section 411(2) of the Corporations Act.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Related Entity of a party means another entity which:

(a) is a Related Body Corporate of the first entity;

(b) is in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the party; or

(c) the party Controls,

provided that to avoid doubt for the purposes of this agreement Whitehaven and its Related Entities as at the date of this agreement will not be taken to be Related Entities of Aston, and Aston and its Related Entities as at the date of this agreement will not be taken to be Related Entities of Whitehaven.

Relevant Interest has the meaning given to that term in the Corporations Act.

Representative means, in relation to a party:

(a) each of the party's Related Entities; and

(b) each of the Officers, employees and Advisers of the party or of any of its Related Entities.

Representor has the meaning given in **clause 10.4**.

Sale Facility means the facility made available to Ineligible Foreign Shareholders under which New Whitehaven Shares to which those shareholders would otherwise have become entitled under the Scheme are sold, the terms of which are to be more fully described and contained in the Scheme Booklet.

Sale Facility Agent means the appropriately licensed agent appointed by Whitehaven to administer the Sale Facility.

Scheme means the proposed scheme of arrangement between Aston and the Scheme Participants under Part 5.1 of the Corporations Act substantially in the form of **annexure A** which if implemented will give effect to the merger between Whitehaven and Aston as described in **clause 4.1**, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Whitehaven and Aston.

Scheme Booklet means the information to be dispatched to Aston Shareholders and approved by the Court, including the Scheme, explanatory statement in relation to the Scheme issued pursuant to section 412 of the Corporations Act and registered with ASIC, the Independent Expert's Report, the Deed Poll, a tax opinion on the Scheme provided by Aston's taxation advisers, a summary of this document and a notice convening the Scheme Meeting (together with proxy forms).

Scheme Consideration means in respect of each Scheme Share held by a Scheme Participant, 1.89 New Whitehaven Shares, or such other number of New Whitehaven Shares as agreed between Whitehaven and Aston.

Scheme Meeting means the meeting ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme.

Scheme Order means the order of the Court made for the purposes of section 411(4)(b) of the Corporations Act in relation to the Scheme.

Scheme Participant means each holder of Scheme Shares as at the Record Date.

Scheme Shares means the Aston Shares other than the Excluded Shares.

Second Court Date means the first day on which an application made to the Court for the Scheme Order is heard or, if the application is adjourned for any reason, the first day on which the adjourned application is heard.

Share Splitting means an Aston Shareholder splitting its holding of Scheme Shares into two or more parcels, or a number of affiliated persons acquiring a number of parcels in different names or other manipulative conduct resulting in an increased number of shareholdings in Aston.

Special Dividend means the proposed dividend of $0.50 for each Whitehaven Share immediately prior to the Record Date.

Subsidiary has the meaning given to that term in the Corporations Act.

Superior Proposal means a publicly announced bona fide proposal received after the date of this document which the Aston Board determines, acting in good faith and in order to satisfy what the Aston Board considers to be its fiduciary and statutory duties (after having taken advice from its legal and financial advisers):

(a) is capable of being valued and completed, taking into account all aspects of the proposal; and

(b) would, if completed substantially in accordance with its terms, be more favourable to Aston Shareholders than the Scheme, taking into account all terms of the proposal.

Takeovers Panel means the body established under section 171 of the *Australian Securities and Investments Commission Act* 2001 (Cth) as the primary forum for resolving disputes about takeovers.

Third Party means any of the following:

(a) a person other than Whitehaven or any of its Related Bodies Corporate; or

(b) a consortium, partnership, limited partnership, syndicate or other group in which neither Whitehaven nor any of its Related Bodies Corporate has agreed in writing to be a participant.

Timetable means the indicative timetable set out in **schedule 1** or such other timetable as may be agreed in writing by the parties.

Trading Day has the meaning given in the ASX Listing Rules.

Transaction means the acquisition by Whitehaven of all of the Scheme Shares through the implementation of the Scheme as contemplated in this document.

Transaction Implementation Committee means the committee to be established under **clause 5.3**.

Treasurer means the Treasurer of the Commonwealth of Australia.

Unacceptable Circumstances has the meaning given in section 657A of the Corporations Act.

Voting Power has the meaning given in section 610 of the Corporations Act.

Whitehaven Board means the board of directors of Whitehaven.

Whitehaven Committee Members means T Haggarty, A Davies and A Perrin (with T Burt as their alternate) or such other persons as are nominated by Whitehaven in place of those individuals.

Whitehaven Corporate Costs means all fees and expenses incurred by the Whitehaven Group in connection with the transactions contemplated by this document, up to a maximum amount of $25 million.

Whitehaven Counterproposal has the meaning given to that term in **clause 9.5(b)**.

Whitehaven Disclosure Material means all written information in connection with the Transaction or relating to the Whitehaven Group's past, present or future operations, affairs, business and/or strategic plans, which has been provided to Aston or its Representatives:

(a) via Whitehaven's electronic and physical data room (a copy of the index of which as at the end of the Cut-off Date has been initialled by the parties) on or prior to Cut-off Date;

(b) via the written Q&A process associated with that data room on or prior to Cut-off Date; or

(c) in the Whitehaven Disclosure Letter.

Whitehaven Disclosure Letter means a letter provided by Whitehaven to Aston on or before the date of this document, and accepted by Aston.

Whitehaven Group means Whitehaven and each of its Related Entities.

Whitehaven Information means such information regarding Whitehaven and the Whitehaven Group (including information regarding the effect of the proposed acquisition of Boardwalk on Whitehaven) provided by or on behalf of Whitehaven to Aston or the Independent Expert to enable the Scheme Booklet to be prepared and completed, and applications for the Regulatory Approvals to be made.

Whitehaven Material Adverse Change means a matter, event or circumstance that occurs, is announced or becomes known to Whitehaven (whether or not it becomes public) where that matter, event or circumstance has, has had, or could reasonably be expected to have, individually or when aggregated with all such matters, events or circumstances, the result that:

(a) there is or would be reasonably likely to be an adverse effect on the assets, liabilities, business, results, operations, trading or financial position or material licenses of the Whitehaven Group; or

(b) the Whitehaven Group is unable to carry on its business in substantially the same manner as carried on as at the date of this document, or which otherwise materially and adversely affects the prospects of the Whitehaven Group,

other than an event, occurrence or matter:

(c) which is expressly contemplated by this document or the Scheme (including the payment by Whitehaven of the Special Dividend);

(d) which is expressly contemplated by the Boardwalk Transaction Documents;

(e) which is, and to the extent that it is, fairly disclosed in the Whitehaven Disclosure Material;

(f) which relates to interest rates, coal or other commodity prices or currency exchange rates; or

(g) which is, and to the extent that it is, a consequence of losses covered by insurance which Whitehaven's insurers have agreed to pay.

Whitehaven Material Transaction means, other than:

(a) as expressly contemplated by this document or the Scheme;

(b) to the extent that it is fairly disclosed in the Whitehaven Disclosure Letter;

(c) as expressly contemplated by the Boardwalk Transaction Documents; or

(d) with the express consent of Aston,

the occurrence of any of the following:

(e) Whitehaven or any of its Subsidiaries issues, or agrees to issue, or grants an option to subscribe for, debentures (as defined in section 9 of the Corporations Act), other than to a Wholly-Owned Subsidiary of Whitehaven;

(f) Whitehaven or any Subsidiary of Whitehaven makes any change to its constitution or other constituent documents;

(g) Whitehaven or any Subsidiary of Whitehaven disposes, or agrees to dispose, of shares in a Related Body Corporate of Whitehaven;

(h) the Whitehaven Group changes in any material respect the nature of its business;

(i) Whitehaven or any Subsidiary of Whitehaven incurs any financial indebtedness or issues any indebtedness or debt securities other than in the ordinary course of business or pursuant to advances under the Whitehaven's existing debt facilities as at the Cut-off Date;

(j) Whitehaven or any Subsidiary of Whitehaven makes any loans, advances or capital contributions to, or investments in, any other person, other than to or in Whitehaven or any Wholly-Owned Subsidiary of Whitehaven or in the ordinary course of business;

(k) Whitehaven or any Subsidiary of Whitehaven:

    (i) grants to any Officer of Whitehaven or any Subsidiary of Whitehaven any increase in severance or termination pay or superannuation entitlements; or

    (ii) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any provisions of, any contract of employment with any senior executive of Whitehaven or of any Subsidiary of Whitehaven;

(l) Whitehaven or any of its material Subsidiaries ceases, or threatens to cease, to carry on business;

(m) Whitehaven or any of its material Subsidiaries becomes subject to an Insolvency Event or is deregistered as a company or otherwise dissolved;

(n) Whitehaven or any of its material Subsidiaries is or becomes unable to pay its debts when they fall due;

(o) Whitehaven or any of its material Subsidiaries disposes, or agrees to dispose, of any asset (including an exploration licence) other than where the total amount involved in the relevant transactions in the period until the Second Court Date is less than $20 million; or

(p) Whitehaven or any of its material Subsidiaries acquires, or agrees to acquire, any asset (including an exploration licence) other than:

    (i) in the ordinary course of business; or

(ii) where the amount involved in the relevant transactions in total in the period until the Second Court Date is less than $20 million.

(q) Whitehaven converting all or any of its shares into a larger or smaller number of shares;

(r) any member of the Whitehaven Group resolving to reduce, or reducing, its share capital in any way, or reclassifying, redeeming, combining, splitting or repurchasing directly or indirectly any of its shares;

(s) any member of the Whitehaven Group resolving to buy back, or buying back, any of its shares, including by:

(i) entering into a buy-back agreement; or

(ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;

(t) any member of the Whitehaven Group issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than:

(i) to a Wholly-Owned Subsidiary of Whitehaven; or

(ii) an issue of Whitehaven Shares following the valid exercise of any Whitehaven options or Performance Rights on issue at the Cut-off Date;

(u) any member of the Whitehaven Group issuing, or agreeing to issue, securities convertible into shares or debt securities (including any performance rights or options);

(v) any member of the Whitehaven Group making, in aggregate, capital expenditure in excess of $20 million ;

(w) any member of the Whitehaven Group:

(i) acquiring, leasing or disposing of;

(ii) agreeing to acquire, lease or dispose of; or

(iii) offering, proposing or announcing a bid or tenders for,

any material business, assets (other than trading inventories and consumables in the ordinary and usual course of business) or entity with a value greater than $20 million, or enters into joint venture, partnership or similar arrangement;

(x) other than in the ordinary course of business or for the purposes of payment of the Whitehaven Corporate Costs, any member of the Whitehaven Group:

(i) entering into any contracts or commitments either individually or collectively involving revenue or expenditure of more than $20 million over the term of the contract or commitment;

(ii) terminating or amending in a material manner any contracts of the Whitehaven Group's business which either individually or collectively involve expenditure or revenue of more than $20 million over the term of the contract;

(iii) paying, discharging or satisfying any claims, liabilities or obligations under any contracts or commitments involving revenue or expenditure of more than $20 million other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms; or

(iv) waiving any material claims or rights under, or waiving the benefit of any provision of, any contracts or commitments involving revenue or expenditure of more than $20 million;

(y) any member of the Whitehaven Group entering into a contract or commitment restraining it from competing with any person or conducting activities in any market;

(z) except as provided for in an existing employment contract in place at the Cut-off Date, a copy of which has been included in the Whitehaven Disclosure Material, any member of the Whitehaven Group:

(i) paying any bonus to, or increasing the compensation of, any Officer of any member of the Whitehaven Group;

(ii) accelerating the rights of any Officer of any member of the Whitehaven Group to compensation or benefits of any kind (including under any Whitehaven executive or employee share plan);

(iii) granting to any Officer of any member of the Whitehaven Group any increase in severance or termination pay or superannuation entitlements or by issuing any Whitehaven Shares or securities convertible to Whitehaven Shares to any of those persons; or

(iv) establishing, adopting, entering into or amending in any material respect (including by taking any action to accelerate any rights or benefits due under) any enterprise bargaining agreement, Australian workplace agreement, employee benefit plan or superannuation scheme of Whitehaven or relating to the Officers or employees of any member of the Whitehaven Group; or

(aa) any member of the Whitehaven Group making any change in its accounting methods, principles or practices which would materially affect the reported consolidated assets, liabilities or results of operations of any member of the Whitehaven Group, other than as required to comply with any changes to generally accepted accounting principles, standards, guidelines or practices in the jurisdiction of the relevant entity's incorporation.

Whitehaven Shareholder means each person who is registered in the register of members of Whitehaven maintained by or on behalf of Whitehaven in accordance with the Corporations Act as the holder of Whitehaven Shares.

Whitehaven Shares means fully paid ordinary shares in the capital of Whitehaven.

Whitehaven's Nominee means Whitehaven Coal Holdings Pty Ltd ACN 124 452 571 or any other Wholly-Owned Subsidiary of Whitehaven nominated by Whitehaven pursuant to **clause 4.4**.

Wholly-Owned Subsidiary means, in relation to a party, a body corporate, all of the issued shares of which are or will be directly or indirectly owned by that party.

1.2 Construction

Unless expressed to the contrary, in this document:

(a) words in the singular include the plural and vice versa;

(b) any gender includes the other genders;

(c) if a word or phrase is defined its other grammatical forms have corresponding meanings;

(d) "includes" means includes without limitation;

(e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

(f) a reference to:

(i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

(ii) a person includes the person's legal personal representatives, successors, permitted assigns and persons substituted by permitted novation;

(iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

(iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

(v) a right includes a benefit, remedy, discretion or power;

(vi) time is to local time in Sydney;

(vii) "$" or "dollars" is a reference to Australian currency;

(viii) this or any other document includes the document as novated, varied or replaced by agreement between the parties and despite any change in the identity of the parties;

(ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;

(x) this document includes all schedules and annexures to it; and

(xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;

(g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day;

(h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;

(i) any provision of this document that requires a statement or recommendation in relation to the Scheme to be made or maintained by:

(i) each Aston Director; or

(ii) the Aston Board acting unanimously or collectively,

is to deemed to be satisfied by such statement or recommendation being made or maintained by each Aston Director who is not precluded from making or maintaining such statement or recommendation, provided that each other Aston Director makes and maintains a statement that he or she strongly supports the Scheme and that he or she intends to vote their Aston Shares in favour of the resolution(s) to be proposed at the Scheme Meeting to approve the Scheme; and

(j) a reference to any statement, including a warranty made by a party on the basis of its knowledge, belief or awareness, is made on the basis of the actual knowledge, belief or awareness of the Officers of the party (and no other persons) as at the date of this document.

1.3 Headings

Headings do not affect the interpretation of this document.

1.4 Reasonable endeavours

Any provision of this document that requires a party to use reasonable endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs does not include any obligation:

(a) to pay any significant sum of money or to provide any significant financial compensation, valuable consideration or any other incentive to or for the benefit of any person, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency or fees to any professional advisers; or

(b) to commence any legal action or proceeding against any person, to procure that that thing is done or happens,

except where that provision expressly specifies otherwise.

2 Implementation of the Scheme

Aston must propose and the parties must implement the Scheme on the terms set out in this document. Each of the parties will use their reasonable endeavours to do so as soon as reasonably practicable and otherwise in accordance with the Timetable.

3 Conditions Precedent

3.1 Conditions precedent

The Scheme is not intended to become Effective unless, and the obligations of Whitehaven under **clauses 4.2** and **4.3** and of Aston under **clause 5.1(l)** are subject to, each of the following conditions precedent being satisfied or waived in accordance with **clause 3.4**:

(a) **Foreign investment approval**

One of the following occurs before 8.00 am on the Second Court Date:

(i) the Treasurer or his agent advises Whitehaven to the effect that there are no objections to the acquisition of up to all the Aston Shares by Whitehaven (by any means permitted by the Corporations Act) in terms of the Commonwealth Government's foreign investment policy; or

(ii) no order is made in relation to the Transaction under section 22 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) within a period of 40 days after Whitehaven has notified the Treasurer that it proposes to acquire Aston Shares in accordance with the Transaction, and no notice is given by the Treasurer to Whitehaven during that period to the effect that there are any objections to the acquisition of the Aston Shares by Whitehaven (by any means permitted by the Corporations Act) in terms of the Commonwealth Government's foreign investment policy; or

(iii) where an order is made under section 22 of the FATA, a period of 90 days has expired after the order comes into operation and no notice has been given by the Treasurer to Whitehaven during that period to the effect that there are any objections to the acquisition of the Aston Shares by Whitehaven (by any means permitted by the Corporations Act) in terms of the Commonwealth Government's foreign investment policy.

(b) **NSW Ministerial approval**

Before 8.00 am on the Second Court Date, the Minister administering the *Mining Act 1992* (NSW) gives his consent to the implementation of the Transaction, to the extent required under or in connection with Authorisation No. 346.

(c) **Other Regulatory Approvals**

Before 8.00 am on the Second Court Date, all Regulatory Approvals (other than those referred to in **clauses 3.1(a)** and **3.1(b)**) that are necessary to lawfully implement the Transaction are obtained or received by the parties and none of those Regulatory Approvals have been withdrawn, cancelled or revoked.

(d) **No regulatory actions**

Between the date of this document and 8.00 am on the Second Court Date (each inclusive):

(i) there is not in effect any preliminary or final decision, order or decree issued by a Governmental Agency;

(ii) no action or investigation is announced, commenced or threatened by any Governmental Agency; and

(iii) no application is made to any Governmental Agency,

in consequence of or in connection with the Transaction which restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, the implementation of the Transaction or any part of it or the acquisition of Aston Shares under the Scheme, or seeks to require the divestiture by Whitehaven of any Aston Shares.

(e) **Court orders**

No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition being in effect at 8.00 am on the Second Court Date which prevents the consummation of any aspect of the Transaction.

(f) **No Aston Material Transactions**

No Aston Material Transaction occurs between the date of this document and 8.00 am on the Second Court Date.

(g) **No Whitehaven Material Transactions**

No Whitehaven Material Transaction occurs between the date of this document and 8.00 am on the Second Court Date.

(h) **No Aston Material Adverse Change**

No Aston Material Adverse Change occurs or becomes apparent between the date of this document and 8.00 am on the Second Court Date.

(i) **No Whitehaven Material Adverse Change**

No Whitehaven Material Adverse Change occurs or becomes apparent between the date of this document and 8.00 am on the Second Court Date.

(j) **No Aston dividends**

Between the date of this document and 8.00 am on the Second Court Date (each inclusive), neither Aston nor any of its Related Bodies Corporate makes or declares any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).

(k) **No Whitehaven dividends other than the Special Dividend**

Between the date of this document and 8.00 am on the Second Court Date (each inclusive), neither Whitehaven nor any of its Related Bodies Corporate makes or declares any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) other than the Special Dividend.

(l) **Independent Expert Report**

The Independent Expert issues its report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change its conclusions or withdraw its report prior to 8.00 am on the Second Court Date.

(m) **Aston Shareholder approval**

Aston Shareholders (excluding any holder of Excluded Shares) approve the Scheme by the necessary majorities at the Scheme Meeting (or any adjournment or postponement thereof).

(n) **Court approval of Scheme**

The Court approves the Scheme under section 411(4)(b) of the Corporations Act and an office copy of the Scheme Order is lodged with ASIC as contemplated by section 411(10) of the Corporations Act.

3.2 Reasonable endeavours

(a) Each party must use all reasonable endeavours to procure that:

(i) each of the Conditions Precedent for which it is responsible (being the Conditions Precedent in **clauses 3.1(a)**, **3.1(g)**, **3.1(i)** and **3.1(k)** in the case of Whitehaven, the Conditions Precedent in **clauses 3.1(f)**, **3.1(h)**, **3.1(j)** and **3.1(l)** in the case of Aston, and all other Conditions Precedent in the case of both Whitehaven and Aston) is satisfied as soon as practicable after the date of this document, and continues to be satisfied at all times until the last time it is to be satisfied (as the case may require), with a view to the Effective Date occurring on or before the End Date, provided that the parties are not obliged to waive any Condition Precedent; and

(ii) there is no event or circumstance within the reasonable control or influence of that party that would prevent the Conditions Precedent being satisfied.

(b) Without limiting its obligations under **clause 3.2(a)**, each party must not do or omit to do (and must procure that its Related Bodies Corporate do not do or omit to do) anything designed, intended or expected to result in, or which may contribute to, any of the Conditions Precedent being breached or to prevent any of the Conditions Precedent being satisfied.

3.3 Regulatory Approvals

(a) Without limiting the generality of **clause 3.2** each party must:

(i) apply in a timely manner for all relevant Regulatory Approvals, providing a copy to the other party of all such applications, and take all steps it is responsible for as part of the approval process for the Scheme, including responding to requests for information at the earliest practicable time; and

(ii) use reasonable endeavours to consult with the other in advance in relation to all material Communications with any Governmental Agency relating to any Regulatory Approval and provide the other party with all information reasonably requested in connection with the application for any Regulatory Approval from a Governmental Agency.

(b) A Regulatory Approval to be obtained under **clause 3.3(a)** will be taken to have been obtained even though a condition has been attached to it if it has been granted on terms acceptable to the party in receipt of the Regulatory Approval acting reasonably.

3.4 Benefit and waiver of certain Conditions Precedent

(a) (**both parties**) Aston and Whitehaven together have the benefit of the Conditions Precedent in **clauses 3.1(b)**, **3.1(c)**, **3.1(d)** and **3.1(e)**, and any breach or non-fulfilment of those Conditions Precedent can only be waived with the consent of both parties.

(b) (**Aston**) Aston has the benefit of the Conditions Precedent in **clauses 3.1(g)**, **3.1(i)**, **3.1(k)** and **3.1(l)**, and any breach or non-fulfilment of those Conditions Precedent can only be waived with the consent of Aston.

(c) (**Whitehaven**) Whitehaven has the benefit of the Conditions Precedent in **clauses 3.1(f)**, **3.1(h)** and **3.1(j)**, and any breach or non-fulfilment of those Conditions Precedent can only be waived with the consent of Whitehaven.

(d) The Conditions Precedent in **clauses 3.1(a)**, **3.1(m)** (except in the circumstances contemplated by **clause 3.6**) and **3.1(n)** cannot be waived by either party.

(e) A party entitled to waive a Condition Precedent under this **clause 3.4** may do so in its absolute discretion.

3.5 Notification of certain events

(a) Each party must:

(i) (**keep informed**) promptly inform the other either directly or through its Advisers of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;

(ii) (**notice of satisfaction**) promptly notify the other if it becomes aware that any Condition Precedent has been satisfied;

(iii) (**notice of failure**) promptly notify the other if it becomes aware that any Condition Precedent has failed to be satisfied or has become incapable of being satisfied or is not reasonably capable of being satisfied or of any circumstances which may reasonably be expected to lead to such a state of affairs; and

(iv) (**notice of waiver**) after having given or received a notice in accordance with **clause 3.5(iii)** in relation to a Condition Precedent that it is entitled under **clause 3.4** to waive, give notice to the other party as soon as possible (and in any event no later than five Business Days or such shorter time to ensure that notice is given before 5.00 pm on the last Business Day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of the relevant Condition Precedent, specifying the Condition Precedent in question.

(b) Subject to the satisfaction and/or waiver of the Conditions Precedent, Whitehaven and Aston must each provide the Court on the Second Court Date with a certificate that all of the Conditions Precedent (other than the Condition Precedent requiring Court approval of the Scheme) are satisfied, or if not satisfied, are waived.

3.6 Scheme voted down

If the Scheme is not approved by Aston Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test, and Whitehaven or Aston considers, acting reasonably, that Share Splitting may have caused or materially contributed to the Headcount Test not having been satisfied then Aston must:

(a) seek the Scheme Order, notwithstanding that the Headcount Test has not been satisfied; and

(b) make such submissions to the Court and file such evidence as counsel engaged by Aston to represent it in all Court proceedings related to the Scheme, in consultation with Whitehaven, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test.

If the Court agrees to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test, the parties acknowledge that it will not be necessary to meet the Headcount Test in order to satisfy the Condition Precedent in **clause 3.1(m)**.

3.7 Consultation if Conditions Precedent not met

If:

(a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for its satisfaction; or

(b) there is an act, failure to act, event or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for its satisfaction (and the breach or non-fulfilment of the Condition Precedent which would otherwise occur has not already been waived),

then the parties must consult in good faith with a view to determining whether:

(c) the Transaction may proceed by way of alternative means or methods and, if so, to agree on the terms of such alternative means or methods;

(d) to extend the relevant time or date for satisfaction of the Conditions Precedent;

(e) to change the date of the application to be made to the Court for the Scheme Order or adjourning that application (as applicable) to a later date agreed by the parties (and failing agreement Aston may extend this date without Whitehaven's agreement provided that Aston believes there are reasonable prospects of satisfying the relevant Condition Precedent by the extended date and provided that the extended date may not be later than 2 weeks prior to the End Date, provided that Aston gives Whitehaven reasonable prior written notice of such extension and the reasons for its belief that there are reasonable prospects of satisfying the relevant Condition Precedent); or

(f) to extend the End Date.

3.8 Failure to agree

(a) If the parties are unable to reach agreement under **clause 3.7** within five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date), then unless that Condition Precedent is waived in accordance with **clause 3.4**, a party entitled to the benefit of that Condition Precedent may (subject to **clause 3.8(b)**) terminate this document.

(b) A party will not be entitled to terminate this document pursuant to **clause 3.8(a)** if the relevant Condition Precedent has not been satisfied as a result of:

(i) a breach of this document by that party; or

(ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that condition being satisfied.

(c) Termination of this document under **clause 3.8(a)** does not affect any accrued rights of either party arising from any breach of this document prior to termination.

4 Scheme

4.1 Scheme

Subject to the terms of this document and of the Scheme, Aston must propose the Scheme, under which on the Implementation Date:

(a) all of the Scheme Shares held by Scheme Participants will be transferred to Whitehaven; and

(b) the Scheme Participants will receive the Scheme Consideration.

4.2 Scheme Consideration

(a) Subject to the terms of the Scheme, Whitehaven covenants in favour of Aston (in its own right and separately as trustee or nominee for each of the Aston Shareholders), that in consideration for the transfer to Whitehaven of the Scheme Shares held by a Scheme Participant under the terms of the Scheme, Whitehaven will on the Implementation Date:

(i) accept that transfer; and

(ii) in accordance with the Deed Poll and this document, provide to each Scheme Participant the Scheme Consideration.

(b) Any fractional entitlement of a Scheme Participant to a New Whitehaven Share will be rounded up or down to the nearest whole number of Whitehaven Shares (subject to agreed anti-manipulation provisions).

(c) Subject to the Scheme becoming Effective, Whitehaven must:

(i) allot and issue the New Whitehaven Shares on terms such that each New Whitehaven Share will rank equally in all respects with each existing Whitehaven Shares (but, to avoid doubt, the New Whitehaven Shares will not entitle their holders to receive the Special Dividend);

(ii) do everything reasonably necessary to ensure that the New Whitehaven Shares are approved for official quotation on ASX and that trading in the New Whitehaven Shares commences on a deferred delivery basis as soon as practicable after the Effective Date; and

(iii) ensure that on issue, each New Whitehaven Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

4.3 Ineligible Foreign Shareholders

If a Scheme Participant is an Ineligible Foreign Shareholder for the purposes of the issue of New Whitehaven Shares:

(a) Whitehaven has no obligation to allot and issue New Whitehaven Shares to those Ineligible Foreign Shareholders;

(b) instead Whitehaven must appoint the Sale Facility Agent and issue to the Sale Facility Agent the number of New Whitehaven Shares to which the Ineligible Foreign Shareholder would otherwise be entitled under the Scheme;

(c) the Sale Facility Agent must in accordance with the Scheme:

(i) sell those New Whitehaven Shares under the Sale Facility at such time or times, and in such manner and on such terms as the Sale Facility Agent thinks fit (at the risk of the Ineligible Foreign Shareholder); and

(ii) remit the proceeds of sale to Whitehaven (after deduction of any selling costs, taxes and charges) which Whitehaven will hold on trust for each Ineligible Foreign Shareholder; and

(d) Whitehaven must, in accordance with the Scheme, pay the proceeds received to Ineligible Foreign Shareholders in full satisfaction of the Ineligible Foreign Shareholders' rights in relation to Whitehaven Shares under the Scheme.

4.4 Appointment of nominee

(a) Whitehaven may, no later than 60 days after the date of this document by written notice to Aston, nominate Whitehaven's Nominee to acquire all of the Scheme Shares instead of Whitehaven. If any such nomination is made and unless the context otherwise requires, all references in this document with respect to Whitehaven acquiring all of the Scheme Shares are to be construed as if references to Whitehaven were replaced with references to Whitehaven's Nominee.

(b) Whitehaven irrevocably guarantees (as a principal obligation) the due and punctual performance by Whitehaven's Nominee of all of its obligations under or in connection with this document, the Scheme and the Deed Poll.

(c) If Whitehaven's Nominee commits any default or breach of this document, Whitehaven must, immediately on receipt of a written demand by Aston, perform all obligations (if any) of Whitehaven's Nominee in accordance with the provisions of this document.

4.5 Acknowledgement for the benefit of Aston Shareholders

(a) If this document is terminated due to a material breach by Whitehaven, Whitehaven's liability to Aston may not adequately reflect any loss or damage suffered by Aston Shareholders (unlike the position that would apply if the Transaction was to be implemented pursuant to a takeover bid and section 670E of the Corporations Act applied).

(b) Accordingly, subject to **clause 4.5(d)**, if Aston terminates this document in accordance with **clause 13.1(d)**, any Aston Shareholder who has:

(i) entered into a transaction relating to Aston Shares in reliance on the announcement of the Transaction; and

(ii) suffered loss or damage as a result of the Transaction not proceeding,

may recover the amount of that loss or damage from Whitehaven.

(c) Aston holds Whitehaven's obligations under this **clause 4.5** as bare trustee for each Aston Shareholder who is so entitled to recover loss or damage against Whitehaven **4.5**.

(d) Whitehaven is not liable for any loss or damage referred to in this **clause 4.5** if Whitehaven could not reasonably have been expected to proceed with implementation of the Transaction because:

(i) at the time this document was entered into, circumstances existed affecting Aston that Whitehaven did not know of and could not reasonably be expected to have known; or

(ii) after the date of this document, a change in such circumstances has occurred that was not caused, directly or indirectly, by Whitehaven.

5 Steps for implementation

5.1 Aston's obligations

Aston must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme on a basis consistent with this document, in accordance with the Timetable, and in particular Aston must

(a) (**announce recommendation of the Scheme**) make (and, subject to the qualifications in **clause 5.2(b)**, not withdraw) the Announcement on the Announcement Date, including stating that each Aston Director:

(i) recommends to Aston Shareholders that the Scheme is in the best interests of Aston and Aston Shareholders and that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme;

(ii) who holds Aston Shares intends to vote his or her Aston Shares in favour of the resolution(s) to be proposed at the Scheme Meeting to approve the Scheme, such statement of recommendation or intention to be expressed as subject only to:

(iii) the Independent Expert concluding that the Scheme is in the best interests of Aston Shareholders; and

(iv) there being no Superior Proposal;

(b) (**Scheme Booklet**):

(i) promptly prepare and, subject to approval by the Court, despatch the Scheme Booklet to the Aston Shareholders. Aston must prepare the Scheme Booklet in accordance with **clause 5.5** and attempt to ensure that the Scheme Booklet complies with the requirements of:

(A) the Corporations Act and the *Corporations Regulations 2001* (Cth);

(B) ASIC policy; and

(C) the ASX Listing Rules;

(ii) ensure that the Scheme Booklet includes:

(A) the Scheme;

(B) subject to the qualifications in **clause 5.2(b)**, a statement that that the Aston Board unanimously recommends approval of the Scheme (subject to there being no Superior Proposal); and

(C) the notice of Scheme Meeting and proxy form;

(iii) ensure that the Scheme Booklet is:

(A) as at the date the Scheme Booklet is despatched to Aston Shareholders, other than in relation to the Whitehaven Information, not misleading or deceptive in any material respect (whether by omission or otherwise); and

(B) updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Aston Information is not misleading or deceptive in any material respect (whether by omission or otherwise);

(c) (**Independent Expert**):

(i) provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the necessary report(s) for inclusion in the Scheme Booklet;

(ii) after consulting with Whitehaven, promptly appoint any other specialist expert required and provide all assistance and information reasonably requested by such other specialist expert in connection with the preparation of the necessary report(s) for inclusion in the Scheme Booklet; and

(iii) on receipt, provide Whitehaven with a copy of any draft of the Independent Expert's Report (and any other specialist report), but only for checking of factual accuracy;

(d) (**approval of Regulator's Draft**) as soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Aston Board (or a duly appointed committee of the Aston Board) is convened to approve that draft as being in a form appropriate for provision to ASIC for review;

(e) (**liaison with ASIC**) as soon as practicable after the resolution referred to in **clause 5.1(d)** is passed, provide the Regulator's Draft, to ASIC, and:

(i) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet;

(ii) promptly keep Whitehaven informed of any matters raised by ASIC in relation to the Scheme Booklet, and use all reasonable endeavours in cooperation with Whitehaven to resolve any such matters; and

(iii) at Whitehaven's request, allow Whitehaven to attend meetings and discussions with ASIC or ASX (provided that ASIC and ASX express no objection to same);

(f) (**approval of Scheme Booklet**) as soon as practicable at the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Aston Board (or a duly appointed committee of the Aston Board) is convened to approve the Scheme Booklet in the form approved by ASIC and also to approve an application to the Court for an order that the Scheme Meeting be convened;

(g) (**section 411(17)(b) statements**) apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;

(h) (**Register details**) subject to the Scheme:

(i) provide all necessary information about the Aston Shareholders to Whitehaven which Whitehaven requires in order to assist Whitehaven to identify the Aston Shareholders and to facilitate the provision of the Scheme Consideration to Scheme Participants;

(ii) direct the Aston's share registry to promptly provide any information that Whitehaven reasonably requests in relation to the Register including any sub-register and, where requested by Whitehaven, Aston must procure such information is provided to Whitehaven in such electronic form as is reasonably requested by Whitehaven; and

(iii) promptly send such notices under section 672A of the Corporations Act at such times and to such persons as Whitehaven reasonably requires, and give copies of the responses Aston receives to Whitehaven.

(i) (**Scheme Meeting**) promptly after and provided that the approvals in **clauses 5.1(f)** and **5.4(f)** have been received:

(i) apply to the Court for an order under section 411(1) of the Corporations Act directing Aston to convene the Scheme Meeting; and

(ii) take all steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Aston Shareholders and holding the Scheme Meeting;

(j) (**Court documents**) consult with Whitehaven in relation to the content of the documents required for the purpose of the First Court Date and Second Court Date (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from Whitehaven and its Representatives on those documents;

(k) (**registration of explanatory statement**) request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;

(l) (**approval and implementation of Scheme**) if the resolution submitted to the Scheme Meeting is passed by the necessary majorities and once the Conditions Precedent are satisfied or waived, promptly apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme and if that approval is obtained:

(i) promptly in accordance with the Timetable lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act;

(ii) close the Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;

(iii) execute proper instruments of transfer, and, subject to Whitehaven providing the Scheme Consideration and paying any applicable stamp duty as required by this agreement, effect and register the transfer, of the Scheme Shares in accordance with the Scheme; and

(iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;

(m) (**ASX listing**) use its reasonable endeavours to ensure that the Aston Shares continue to be quoted on the official list conducted by ASX until the Aston Suspension Date;

(n) (**legal representation**) allow and not oppose any application by Whitehaven for leave of the Court to be represented, or the separate representation of Whitehaven by counsel, at the First Court Date and the Second Court Date;

(o) (**publication of information**) as soon as they become available, publish on its website the dates fixed for any Court hearing in relation to the Scheme, including any adjournments or continuance of those hearings, the date of the Scheme Meeting, and the text of all announcements made to ASX in connection with the Transaction; and

(p) (**compliance with laws**) do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction.

Aston is to be taken to have fulfilled, in a timely manner, its obligations under this **clause 5.1** if such obligations are completed by the time scheduled for such events as set out in the Timetable.

5.2 Recommendations of Aston Directors and promotion of Transaction

(a) Prior to entering into this document, Aston has been advised by each Aston Independent Director that they intend to:

(i) recommend to Aston Shareholders that the Scheme is in the best interests of Aston and that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme; and

(ii) vote their Aston Shares in favour of the resolution(s) to be proposed at the Scheme Meeting to approve the Scheme,

subject only to:

(iii) the Independent Expert concluding that the Scheme is in the best interests of Aston Shareholders; and

(iv) there being no Superior Proposal.

(b) During the Exclusivity Period, Aston must use its reasonable endeavours to procure that, subject only to:

(i) the proper performance by the Aston Directors of their fiduciary duties;

(ii) the Independent Expert concluding that the Scheme is in the best interests of Aston Shareholders; and

(iii) there being no Superior Proposal,

each Aston Director maintains (including by statements in the Scheme Booklet) their recommendation that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme and that no Aston Director makes any public statement or any statement to brokers, analysts, journalists, Aston Shareholders or professional or institutional investors which would suggest that the Transaction is not unanimously recommended by the Aston Board.

(c) During the Exclusivity Period, Aston must procure that the chair of the Aston Board, the chief executive officer of Aston and such other senior executives of Aston or its Related Bodies Corporate as reasonably requested by Whitehaven participate in efforts reasonably required by Whitehaven to promote the merits of the Transaction, including:

(i) meeting with key Aston Shareholders if requested to do so by Whitehaven; and

(ii) communicating with Aston's employees, customers and suppliers and the employees, customers and suppliers of Aston's Related Bodies Corporate,

subject only to:

(iii) the proper performance of their fiduciary duties;

(iv) the Independent Expert concluding that the Scheme is in the best interests of Aston Shareholders; and

(v) there being no Superior Proposal.

5.3 Transaction Implementation Committee

(a) As soon as practicable after the date of this document, the parties are to establish the Transaction Implementation Committee comprising the Aston Committee Members and of the Whitehaven Committee Members and such other persons as the parties may agree.

(b) The Transaction Implementation Committee is to be a forum for consultation and planning by the parties to implement the Transaction and to consult in relation to the operation of Aston Group's business and the Whitehaven Group's business including matters relating to Material Transactions prior to the Implementation Date.

(c) The Transaction Implementation Committee is to meet at least fortnightly.

(d) If any clause of this document requires a party's consent in relation to the ongoing business operations of the other party:

(i) that party must not unreasonably withhold or delay such consent, and will be taken to have given its consent if it does not, within a period of time that is reasonable in the context of the matter to which the consent relates, notify the other party that it refuses its consent. In this **clause 5.3(d)(i)** a reasonable period of time means within two Business Days in the context of an emergency and, in any event, five Business Days after being notified by the other party of a proposed action; and

(ii) such consent is to be taken to have been given if the relevant committee members indicate their support for the matter at a properly convened meeting of the Transaction Implementation Committee.

(e) Nothing in this clause requires either party to act at the direction of the other, and each party acknowledges that:

(i) the business of each party and its Subsidiaries is intended to continue to operate independently until the Implementation Date; and

(ii) nothing in this document is intended to constitute the relationship of a partnership or similar.

5.4 Whitehaven's obligations

Whitehaven must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme on a basis consistent with this document, in accordance with the Timetable, and in particular Whitehaven must:

(a) (**Whitehaven Information**):

(i) prepare and provide to Aston the Whitehaven Information for the purposes of any Regulatory Approvals and for inclusion in the Scheme Booklet as soon as is reasonably practicable, including information on the New Whitehaven Shares, and consult with Aston in relation to the content of the Whitehaven Information;

(ii) ensure that the Whitehaven Information contains all the information that would be required under section 636(1)(g) of the Corporations Act if the Scheme Booklet were a bidder's statement offering the New Whitehaven Shares as consideration under a takeover bid, to the extent reasonably applicable;

(iii) ensure that the Whitehaven Information is not misleading or deceptive in any material respect (whether by omission or otherwise); and

(iv) provide to Aston all such further or new information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Whitehaven Information is not misleading or deceptive in any material respect (whether by omission or otherwise);

(b) (**Boardwalk Information**):

(i) ensure that a Boardwalk Transaction Document contains obligations on one or more of the vendors of Boardwalk to procure Boardwalk to:

(A) prepare and provide the Boardwalk Information to Aston;

(B) ensure that the Boardwalk Information is not misleading or deceptive in any material respect (whether by omission or otherwise); and

(C) provide to Aston all such further or new information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Boardwalk Information is not misleading or deceptive in any material respect (whether by omission or otherwise); and

(ii) take all necessary steps to enforce the obligations in the relevant Boardwalk Transaction Document referred to **clause 5.4(b)(i)** above in the event of any non-compliance;

(c) (**Independent Expert**) provide all assistance and information reasonably requested by the Independent Expert (and any other specialist expert required) in connection with the preparation of all necessary report(s) for the purposes of the Scheme Booklet;

(d) (**assistance**) provide any assistance or information reasonably requested by Aston in connection with the preparation of the Scheme Booklet and any other document to be sent to Aston Shareholders in order to facilitate satisfaction of the Condition Precedent in **clause 3.1(m)**;

(e) (**approval of draft for ASIC**) as soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Whitehaven Board (or a duly appointed committee of the Whitehaven Board) is convened to approve the Whitehaven Information in the Scheme Booklet as being in a form appropriate for provision to ASIC for review;

(f) (**approval of Scheme Booklet**) as soon as practicable at the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Whitehaven Board (or a duly appointed committee of the Whitehaven Board) is convened to approve the Whitehaven Information in the Scheme Booklet;

(g) (**legal representation**) procure that Whitehaven is represented by counsel at the First Court Date and Second Court Date, at which, through its counsel, Whitehaven must undertake (if requested by the Court) to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under the Scheme, and, to the extent that leave of the Court is required for Whitehaven to be represented at those Court hearings, apply for that leave;

(h) (**Deed Poll**) prior to the First Court Date, execute the Deed Poll;

(i) (**Scheme Consideration**) if the Scheme becomes Effective, provide the Scheme Consideration on the Implementation Date in accordance with the Deed Poll and **clause 4.2** of this document;

(j) (**Quotation of New Whitehaven Shares**) ensure that prior to the Second Court Date, application is made to ASX for the New Whitehaven Shares which are to be issued to Scheme Participants in accordance with the Scheme to be approved for official quotation by ASX on a deferred settlement basis as soon as practicable after the Effective Date and on a normal settlement basis as soon as practicable after the Implementation Date, which approval may be conditional on the issue of those shares and other conditions customarily imposed by ASX including implementation of the Scheme, and do everything reasonably within its power to obtain such approval; and

(k) (**compliance with laws**) do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction.

Whitehaven will be taken to have fulfilled, in a timely manner, its obligations under this **clause 5.4** if such obligations are completed by the time scheduled for such event as set out in the Timetable.

5.5 Preparation of the Scheme Booklet

(a) (**Drafts**) Aston must:

(i) make available to Whitehaven such drafts of the Scheme Booklet as are reasonably requested by Whitehaven (including all drafts of the Independent Expert's Report and any other specialist report received by Aston, for factual accuracy checking only);

(ii) provide to Whitehaven a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised to enable Whitehaven to review the Regulator's Draft at least three Business Days before its submission to ASIC;

(iii) consult with Whitehaven in relation to the content of those drafts (including the inclusion of any Whitehaven Information);

(iv) consider in good faith, for the purpose of amending those drafts, comments from Whitehaven and its Representatives on those drafts; and

(v) obtain the written consent from Whitehaven for the form and context in which any Whitehaven Information appears in the Scheme Booklet.

Whitehaven must comply with the requirements in paragraphs (i) to (iv) inclusive above (but as though references to Aston and Whitehaven were reversed, references to the Scheme Booklet were to the Whitehaven Information and references to the Independent

Expert's Report and other specialist reports were removed) in relation to the Whitehaven Information.

(b) (**Verification**) Whitehaven must verify all statements forming part of the Whitehaven Information, and any statements directly derived from Whitehaven Information, contained in the Scheme Booklet. Whitehaven will provide such documentation to evidence its verification that Aston may reasonably request, including a verification certificate signed by Representatives of Whitehaven responsible for verification.

(c) (**Dispute**) If there is a dispute on any part of the Scheme Booklet (including the Whitehaven Information), the parties must refer the matter to the Transaction Implementation Committee for resolution. The Transaction Implementation Committee must use its reasonable endeavours to resolve the dispute within two Business Days from the date of referral of the matter.

5.6 Compliance with obligations

Aston and Whitehaven must use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external Advisers) to comply with their respective obligations in this **clause 5** and to produce the Scheme Booklet in accordance with the Timetable.

5.7 Court proceedings

(a) If the Court refuses to make an order convening the Scheme Meeting or approving the Scheme, at Whitehaven's request Aston must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Senior Counsel indicates that, in their view, an appeal would have a less than 50% prospect of success, in which case either party may terminate this document).

(b) Each of Whitehaven and Aston must vigorously defend, or must cause to be vigorously defended, any lawsuits or other claims or proceedings (including any Takeovers Panel proceedings) brought against it (or any member of the Whitehaven Group or Aston Group) challenging this document or the completion of the Transaction. Neither Whitehaven nor Aston may settle or compromise (or permit any member of the Whitehaven Group or Aston Group to settle or compromise) any claim brought in connection with this document without the prior written consent of the other, such consent not to be unreasonably withheld.

(c) Any costs incurred as a result of the operation of this clause are to be borne equally by Whitehaven and Aston.

5.8 Aston Board and management changes

As soon as practicable on the Implementation Date, Aston must:

(a) cause the appointment as directors of Aston of such number of persons nominated by Whitehaven as would constitute those nominees (acting together) as a majority of the directors on the Aston Board; and

(b) use its reasonable endeavours to ensure that such members of the Aston Board as nominated by Whitehaven resign from the Aston Board, and that each such director provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Aston.

5.9 Whitehaven Board and management changes

As soon as practicable on the Implementation Date, Whitehaven must:

(a) ensure that its Board comprises T Haggarty, A Davies, H Mende, P Christensen, P Flynn, R Gazzard, M Vaile (who will also be Chairman of the Whitehaven Board), J

Conde (who will also be Deputy Chairman of the Whitehaven Board) and a further independent director to be agreed between Aston and Whitehaven;

(b) use its reasonable endeavours to ensure that A Plummer, N Chatfield and A Krueger resign from the Whitehaven Board, and that each such director provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Whitehaven; and

(c) ensure that Peter Kane is employed as part of the senior management team of Whitehaven.

6 Options and Performance Rights

6.1 Proposed treatment of Options

(a) Whitehaven and Aston must use their reasonable endeavours to procure that the Options are transferred to Whitehaven or cancelled prior to the Record Date.

(b) Aston will to seek a waiver from the ASX in relation to the requirements of Listing Rule 6.23 in order to allow the cancellation of the Options without a meeting of Aston Shareholders.

(c) Aston will prepare a deed to give effect to the transfer or cancellation of the Options, which is intended to be entered into by Whitehaven, Aston and each Optionholder as at the date immediately before the Record Date, which will provide for the transfer or cancellation of the Options in consideration for the issue of or grant to Optionholders of:

(i) New Whitehaven Shares, on a basis that values the relevant Options consistent with the basis on which the Scheme Consideration values Aston Shares; or

(ii) options to acquire Whitehaven Shares with the same economic value and tenor as the relevant Options,

subject to there being no requirement to provide a disclosure document under the Corporations Act (or an offering document required for the purposes of any other applicable securities law).

6.2 Proposed treatment of Performance Rights

Whitehaven acknowledges and agrees that it is the intention of the Aston Board to give notice to the holders of the Performance Rights as at a date on or after Scheme Meeting that their Performance Rights have become vested (on such terms and conditions as the Aston Board may determine, after obtaining Whitehaven's consent, such consent not to be unreasonably withheld), and issue Aston Shares to those holders by no later than the Record Date.

7 Conduct of business and requests for access

7.1 Conduct of Aston business

During the Exclusivity Period, Aston must:

(a) procure that the Aston Group conducts its business and operations in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the period prior to the date of this document and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals;

(b) to the extent consistent with that obligation, use its reasonable endeavours to preserve intact the Aston Group's current business organisation, to keep available the services of the current Officers of it and its Related Bodies Corporate and to preserve the Aston

Group's relationship with Governmental Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having business dealings with it, and

(c) without limiting **clauses 7.1(a)** and **7.1(b)**, procure that the Aston Group's business and operations are conducted in accordance with the Aston Budget,

except to the extent required to be done or procured by Aston pursuant to, or which is otherwise expressly permitted by, this document, or the undertaking of which Whitehaven has approved in writing, such approval not to be unreasonably withheld or delayed.

7.2 Conduct of Whitehaven business

During the Exclusivity Period, Whitehaven must:

(a) procure that the Whitehaven Group conducts its business and operations in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the period prior to the date of this document and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals;

(b) to the extent consistent with that obligation, use its reasonable endeavours to preserve intact the Whitehaven Group's current business organisation, to keep available the services of the current Officers of it and its Related Bodies Corporate and to preserve the Whitehaven Group's relationship with Governmental Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having business dealings with it,

except to the extent required to be done or procured by Whitehaven pursuant to, or which is otherwise expressly permitted by, this document, or the undertaking of which Aston has approved in writing, such approval not to be unreasonably withheld or delayed.

7.3 Special Dividend and Boardwalk transaction

Nothing in this document (including **clause 7.2**) will prevent Whitehaven or the Whitehaven Group from:

(a) paying the Special Dividend; or

(b) entering into, and taking all steps required or desirable to complete the transactions contemplated by the Boardwalk Transaction Documents.

7.4 Access to information

(a) During the Exclusivity Period, and for so long as the Aston Board considers the Transaction to be in the best interests of Aston Shareholders and recommend that Aston Shareholders and that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme in accordance with **clause 5.1(a)**, each party (in this clause a **Discloser**) must, and must procure each of its Subsidiaries to, respond to reasonable requests from the other party (in this clause a **Recipient**) and its Representatives (including in response to requests for information from the stock exchanges on which and the regulatory bodies in jurisdictions where the securities of Whitehaven are listed) for information concerning the Discloser's Group's businesses and operations, and give the Recipient and its Representatives reasonable access to its Officers and records, and otherwise provide reasonable co-operation to the Recipient and its Representatives, in each case for the purposes of:

(i) the implementation of the Transaction;

(ii) the integration of the Aston Group and the Whitehaven Group following the completion of the Transaction;

(iii) information required for the purposes of the Scheme Booklet; or

(iv) any other purpose which is agreed in writing between the parties, subject to the proper performance by the directors and Officers of Aston and Whitehaven and their Subsidiaries of their fiduciary duties.

(b) Without limiting **clause 7.4(a)**, during the Exclusivity Period and for so long as the Aston Board considers the Transaction to be in the best interests of Aston Shareholders and recommend that Aston Shareholders and that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme in accordance with **clause 5.1(a)**, each party must consult with the other in relation to the conduct of material aspects of its Group's businesses and operations, and consider in good faith the other party's views in relation to the same, and:

(i) consult with the other party in relation to any proposed extension, renewal, replacement, revocation, amendment or surrender of any Regulatory Approval of a type referred to in paragraph (a) of the definition of Regulatory Approval that is material to the business or operations of the first party or any of its Related Bodies Corporate, and promptly take, or refrain from taking, such action in relation to that proposal as may be reasonably requested by the other party (such reasonableness to be determined having regard to the interests of the first party's Group); and

(ii) consult with the other party in relation to any material dealings with any Governmental Agency in connection with the business or operations of the first party or any of its Related Bodies Corporate.

(c) The obligations in **clauses 7.4(a)** and **7.4(b)** do not require a party to:

(i) provide information to the other party concerning the its Directors' and management's consideration of the Transaction;

(ii) provide any commercially sensitive or competitive information; or

(iii) breach an obligation of confidentiality to any person,

and nothing in those clauses entitles either party to terminate this document or to claim damages for breach of contract in the event that they are not satisfied.

(d) The parties acknowledge that all information which is provided pursuant to this **clause 7.4** will be provided subject to the terms of the Confidentiality Agreement.

8 Break fee

8.1 Payment of costs

(a) Aston believes that the Transaction will provide benefits to Aston and Aston Shareholders and acknowledges that if Aston and Whitehaven enter into this document and the Transaction is subsequently not implemented, Whitehaven will incur significant costs.

(b) In the circumstances referred to in **clause 8.1(a)**:

(i) Whitehaven requested that provision be made for the payments referred to in **clause 8.2**, without which Whitehaven would not have entered into this document; and

(ii) the Aston Board believe that it is appropriate for both parties to agree to the payments referred to in **clause 8.2** in order to secure Whitehaven's participation.

(c) Aston and Whitehaven acknowledge that the Break Fee represents a reasonable amount to compensate Whitehaven for the following:

(i) advisory costs (including costs of its Advisers);

(ii) costs of management and directors' time;

(iii) out of pocket expenses; and

(iv) reasonable opportunity costs in pursuing the Transaction or not pursuing other alternative acquisitions or strategic initiatives.

(d) If an amount is paid to Whitehaven under **clause 8.2** that amount is received in complete settlement of any Claims which Whitehaven may have against Aston in respect of the Transaction, except to the extent that any such Claims relate to:

(i) a wilful breach by Aston of its obligations under this document or any deliberate misrepresentations made or given by Aston in this document; or

(ii) any action or omission of an Officer or employee of Aston or of any of its Related Bodies Corporate where such person has not acted in good faith or has engaged in wilful misconduct.

8.2 Break Fee

(a) Subject to **clauses 8.2(b)** and **8.3(a)**, Aston must pay Whitehaven the Break Fee in accordance with **clause 8.4(a)**, without withholding or set off, if:

(i) at any time during the Exclusivity Period, any of the following occur:

(A) any Aston Director fails to state (in the terms and subject to the qualifications envisaged in **clause 5.2(a)**) that they recommend to Aston Shareholders that the Scheme is in the best interests of Aston and Aston Shareholders and that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme, or publicly changes (including by attaching qualifications not envisaged in **clause 5.2(a)**) or withdraws that statement of support or recommendation, other than where that Aston Director does any of these things as a result of the Independent Expert concluding in the Independent Expert's Report that the Scheme is not in the best interests of Aston Shareholders (except in circumstances where the reason for the Independent Expert reaching that conclusion is the existence of a Competing Proposal which is publicly recommended, promoted or otherwise endorsed by a majority of the Aston Directors); or

(B) a Competing Proposal is announced or made and is publicly recommended, promoted or otherwise endorsed by any Aston Director;

(ii) a Competing Proposal is announced or made before the expiry of the Exclusivity Period, and is completed at any time prior to the first anniversary of the date of this document and, as a result, a Third Party acquires a Relevant Interest and/or economic interest in at least 50% of the Aston Shares; or

(iii) Whitehaven terminates this document in accordance with **clause 13.1(d)**.

(b) Despite any other term of this document, the Break Fee is only payable once and will not be payable to Whitehaven if Aston is entitled to terminate this document under **clause 13.1(d)**.

8.3 Compliance with law

(a) If a court or the Takeovers Panel determines that any part of the Break Fee:

(i) constitutes or would, if performed, constitute:

(A) a breach of the fiduciary or statutory duties of the Aston Board; or

(B) unacceptable circumstances within the meaning of the Corporations Act; or

(ii) is unenforceable or would, if paid, be unlawful for any reason,

then Aston will not be obliged to pay such part of the Break Fee and, if such fee has already been paid, then Whitehaven must within 5 Business Days after receiving written demand from Aston refund that part of the Break Fee to Aston.

(b) If in Takeovers Panel proceedings described in **clause 8.3(a)**, the Takeovers Panel indicates to Aston and Whitehaven or either of them that in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) it will make a declaration of Unacceptable Circumstances, each of Whitehaven and Aston (as the case may be) may give that undertaking on their own behalf and must give reasonable consideration to giving that undertaking if requested by the other party. Where such undertakings are given, this **clause 8** will operate in a manner consistent with the terms of such undertakings.

8.4 Time for payment

(a) Aston must pay Whitehaven the Break Fee, if it is payable pursuant to **clause 8.2(a)**, within five Business Days after receiving a written notice from Whitehaven setting out the relevant circumstances and requiring payment of the Break Fee.

(b) A written notice requiring payment of the Break Fee may only be made after this document is terminated in accordance with its terms.

9 Exclusivity

9.1 Termination of existing discussions

At the date of this document, Aston represents and warrants that:

(a) it has terminated all other negotiations or discussions in respect of any Competing Proposal with any other person; and

(b) it has requested that any Aston confidential information held by any party who has previously made or approached Aston in relation to a Competing Proposal be returned or destroyed in accordance with the terms of any confidentiality agreement Aston has with that person.

9.2 No shop restriction

During the Exclusivity Period, Aston must not, and must use all reasonable endeavours to ensure that each of its Representatives does not, except with the prior written consent of Whitehaven, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or which may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

9.3 No talk restriction

During the Exclusivity Period Aston must not, and must use all reasonable endeavours to ensure that each of its Representatives do not, except with the prior written consent of Whitehaven, enter into, facilitate, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or which may reasonably be expected to lead to a Competing Proposal, even if:

(a) the Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by Aston or any of its Representatives; or

(b) the Competing Proposal has been publicly announced, unless the Aston Board, acting in good faith and in order to satisfy what the Aston Board reasonably considers to be its fiduciary or statutory duties, determines that, where there is a Competing Proposal, the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal but only if that Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by Aston or any of its Representatives in a manner that would breach its obligations under this **clause 9.3** or **clauses 9.2** or **9.4**.

9.4 No due diligence

Without limiting the general nature of **clause 9.3**, during the Exclusivity Period, Aston must not, and must use all reasonable endeavours to ensure that each of its Representatives do not, except with the prior written consent of Whitehaven, make available to any Third Party (other than to Whitehaven or any of its Representatives) or permit any such Third Party to receive any non-public information relating to Aston or any of its Related Bodies Corporate in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, unless:

(a) the Aston Board, acting in good faith and in order to satisfy what the Aston Board reasonably considers to be its fiduciary or statutory duties, determines that, where there is a Competing Proposal, the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal but only if that Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by Aston or any of its Representatives in a manner that would breach its obligations under this **clause 9.4** or **clauses 9.2** or **9.3**; and

(b) if Aston proposes to provide any confidential information to a Third Party, before Aston provides such information to the Third Party, the Third Party has entered into a written agreement in favour of Aston regarding the use and disclosure of the confidential information by the person and which restricts the Third Party's ability to solicit the employees of the Aston Group and that information has been provided to Whitehaven (to the extent that it has not already been provided it but not including any confidential information provided by the Third Party to Aston or any confidential information relating to the potential Competing Proposal).

9.5 Notification by Aston

(a) During the Exclusivity Period, Aston must promptly notify Whitehaven if:

(i) it is approached by any Third Party to take any action of a kind that would breach its obligations under **clauses 9.3** or **9.4** (or that would breach its obligations under **clauses 9.3** or **9.4** if it were not for the provisos to the relevant clause); or

(ii) it proposes to take any action of a kind that would breach its obligations under **clauses 9.3** or **9.4** (or that would breach its obligations under **clauses 9.3** or **9.4** if it were not for the provisos to the relevant clause);

(iii) any Aston Director proposes to publicly change or withdraw their:

(A) statement that it considers the Transaction to be in the best interests of Aston Shareholders; or

(B) recommendation that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme; or

(iv) Aston proposes to enter into any arrangement or understanding with respect to either a Superior Proposal or Competing Proposal,

and in the case of the matters or circumstances referred to in this **clause 9.5(a)(ii)** to **(iv)** Aston must also:

(v) give Whitehaven three clear Business Days notice (such notice to be in writing) of its intention (or the relevant Aston Director's intention) in relation to such matter; and

(vi) provide to Whitehaven all material information relating to such matters or circumstances, including (where applicable) details of the proposed price or implied value (including details of the consideration if not simply cash), conditions, timing, break fee (if any) and the identity of the person who has made the applicable approach to Aston.

Any information provided pursuant to this **clause 9.5(a)(iii)** will be provided subject to the terms of the Confidentiality Agreement.

(b) During the period of three clear Business Days referred to in **clause 9.5(a)(iii)**, Whitehaven has the right to make a new proposal or propose a revision to the Transaction (a **Whitehaven Counterproposal**).

(c) The Aston Board must consider any such Whitehaven Counterproposal and if the Aston Board, acting in good faith, determines that:

(i) the Whitehaven Counterproposal would provide a superior outcome for the Aston Shareholders than the applicable Competing Proposal (it being acknowledged that the price or value implied by the Whitehaven Counterproposal does have to be above, but does not have to be materially above, the price or value implied by the applicable Competing Proposal for the Aston Board (or the Independent Directors Committee) to consider the Whitehaven Counterproposal in relation to price to be superior); and

(ii) the other terms of the Whitehaven Counterproposal taken as a whole are not less favourable than those in the applicable Competing Proposal,

then Whitehaven must publicly announce and take all reasonable steps to effect the new proposal or variations of the Transaction (as applicable) that are necessary to reflect the Whitehaven Counterproposal (including any amendments to the amount of the Scheme Consideration), enter into any necessary agreements to give effect to those variations, and implement the Whitehaven Counterproposal, in each case as soon as reasonably practicable.

(d) The obligations of Aston under **clause 9.5(a)(vi)** do not apply to the extent that the Aston Board, acting in good faith and in order to satisfy what the Aston Board reasonably considers to be its fiduciary or statutory duties, determines that compliance with those obligations would not be consistent with its fiduciary or statutory duties where there is a Competing Proposal and the Competing Proposal may reasonably be expected to lead to a Superior Proposal (but only if that Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by Aston or any of its Representatives in a manner that would breach its obligations under **clauses 9.2**, **9.3** or **9.4**).

9.6 Revisions to a Competing Proposal

Any material modification to any Competing Proposal (which will include any modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which Aston must comply with its obligations under this **clause 9**.

10 Representations and warranties

10.1 Preliminary

Each of the representations and warranties of Whitehaven and Aston in **clauses 10.2** and **10.3** respectively are subject to and qualified by any matter fairly disclosed in the Aston Disclosure Letter or the Whitehaven Disclosure Letter.

10.2 Whitehaven representations and warranties

Whitehaven represents and warrants to Aston that, except as consented to in writing by Aston:

(a) on each date from the date of this document until (and including) 8.00 am on the Second Court Date:

(i) Whitehaven is a corporation validly existing under the laws of its place of incorporation;

(ii) Whitehaven has the power to enter into and perform its obligations under this document, including carrying out the transactions contemplated by this document;

(iii) Whitehaven has taken all necessary corporate actions to authorise the entry into this document and have taken and will take all necessary corporate action to authorise the performance of this document and of their obligations in relation to the Transaction;

(iv) Whitehaven will apply for all necessary Regulatory Approvals in order for Whitehaven to enter into this document and to carry out the transactions contemplated by this document and will use its reasonable endeavours to progress those applications in accordance with its obligations under this document;

(v) this document constitutes valid and binding obligations on Whitehaven and is enforceable in accordance with its terms;

(vi) the execution and performance by Whitehaven of this document and each transaction contemplated by this document did not and will not violate in any respect a provision of:

(A) a law or treaty or a judgment, ruling, order or decree binding on it;

(B) its constitution; or

(C) any other material document or agreement which is binding on it or its assets, or any of its Related Bodies Corporate or their assets;

(b) the Whitehaven Information:

(i) will be provided in good faith and on the understanding that Aston and each of the Officers of Aston will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme, and that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and

(ii) will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant policy statements, practice notes and other guidelines and requirements of ASIC;

(c) the Whitehaven Information included or incorporated by reference in the Scheme Booklet in the form consented to by Whitehaven will not, as at the date of dispatch of the Scheme Booklet to the Aston Shareholders, contain any statement which is misleading or deceptive in any material respect (by omission or otherwise);

(d) as at the date of this document, the total securities of Whitehaven on issue are as follows:

  (i) 494,615,082 Whitehaven Shares; and

  (ii) 33,334 options with an exercise price of $1.00, expiring 30 June 2012;

  (iii) 2,920,000 options with an exercise price of $2.50, expiring 22 October 2012;

  (iv) 33,333 options with an exercise price of $1.00, expiring 26 October 2012;

  (v) 33,334 options with an exercise price of $1.00, expiring 26 October 2013;

  (vi) 5,000,000 options with an exercise price of $1.70, expiring 31 October 2013;

  (vii) 33,334 options with an exercise price of $1.00, expiring 2 November 2013; and

  (viii) 1,323,321 performance rights,

  and neither Whitehaven nor any of its Related Bodies Corporate has issued (or is actually or contingently required to issue) any other Whitehaven securities (other than securities required to be issued under the terms of the options and performance rights referred to above) or any other securities or instruments which are still outstanding (or may become outstanding) and which may convert into Whitehaven securities;

(e) on each date from the date of this document until (and including) 8.00 am on the Second Court Date:

  (i) it has materially complied with its obligations under chapter 3 of the ASX Listing Rules and the information disclosed to ASX (as updated by all ASX disclosures on the relevant subject) is true and correct in all material respects;

  (ii) it is not withholding any information from Aston that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A; and

  (iii) the Whitehaven Disclosure Material has been disclosed in good faith, and Whitehaven has used all reasonable endeavours to ensure that the Whitehaven Disclosure Material taken as a whole is not materially misleading and that there is no other material information, and is not aware of any other material information, that has not been disclosed to Aston and is objectively necessary for Aston to make an informed decision as to whether to proceed with the Transaction;

(f) as at the date of this document, Whitehaven's Voting Power and economic interests in Aston, including in any of Aston's securities or any right, warrant or option to acquire any of the foregoing or any other economic interest in any such securities (including any interest arising under a derivative or swap arrangement), other than under or as a result of the Call Option Agreement, is nil; and

(g) a maximum of 119,905,183 Whitehaven Shares are to be issued by Whitehaven as consideration to the vendors under the Boardwalk Transaction Documents.

10.3 Aston representations and warranties

Aston represents and warrants to Whitehaven that, except as consented to in writing by Whitehaven:

(a) on each date from the date of this document until (and including) 8.00 am on the Second Court Date:

  (i) Aston is a corporation validly existing under the laws of its place of incorporation;

  (ii) Aston has the power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;

(iii) Aston has taken all necessary corporate action to authorise the entry into this document and has taken or will take all necessary corporate action to authorise the performance of this document;

(iv) this document constitutes valid and binding obligations on Aston and is enforceable in accordance with its terms; and

(v) the execution and performance by Aston of this document and each transaction contemplated by this document did not and will not violate in any respect a provision of:

(A) a law or treaty or a judgment, ruling, order or decree binding on it or any of its Related Bodies Corporate;

(B) its constitution; or

(C) any other document or agreement which is binding on it or its assets, or any of its Related Bodies Corporate or their assets;

(b) the Aston Information included in the Scheme Booklet:

(i) will be included in good faith and on the understanding that Whitehaven and each of the Officers of Whitehaven will rely on that information for the purposes of considering and approving the Whitehaven Information in the Scheme Booklet and approving the entry by Whitehaven into the Deed Poll, and that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and

(ii) will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all relevant policy statements, practice notes and other guidelines and requirements of ASIC;

(c) the Aston Information included or incorporated by reference in the Scheme Booklet will not, as at the date of despatch of the Scheme Booklet to the Aston Shareholders, contain any statement which is misleading or deceptive in any material respect (by omission or otherwise);

(d) as at the date of this document, the total securities of Aston on issue are as follows:

(i) 204,668,861 Aston Shares;

(ii) 5,285,464 Options with an exercise price of \$5.96, expiring on 17 August 2015;

(iii) 104,575 Options with an exercise price of \$6.29, expiring on 10 November 2015;

(iv) 4,360,464 Options with an exercise price of \$8.94, expiring on 17 August 2016;

(v) 215,292 Performance Rights expiring 16 November 2014; and

(vi) 450,000 Performance Rights expiring 17 August 2015,

and neither Aston nor any of its Related Bodies Corporate has issued (or is actually or contingently required to issue) any other Aston securities (other than securities required to be issued under the terms of the Options and Performance rights referred to above) or any other securities or instruments which are still outstanding (or may become outstanding) and which may convert into Aston securities;

(e) on each date from the date of this document until (and including) 8.00 am on the Second Court Date:

(i) it has materially complied with its obligations under chapter 3 of the ASX Listing Rules and the information disclosed to ASX (as updated by all ASX disclosures on the relevant subject) is true and correct in all material respects;

(ii) it is not withholding any information from Whitehaven that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A; and

(iii) the Aston Disclosure Material has been disclosed in good faith, and Aston has used all reasonable endeavours to ensure that the Aston Disclosure Material taken as a whole is not materially misleading and that there is no other material information, and is not aware of any other material information, that has not been disclosed to Whitehaven and is objectively necessary for Whitehaven to make an informed decision as to whether to proceed with the Transaction;

(f) as at the date of this document, Aston's Voting Power and economic interests in Whitehaven, including in any of Whitehaven's securities or any right, warrant or option to acquire any of the foregoing or any other economic interest in any such securities (including any interest arising under a derivative or swap arrangement) is nil;

(g) on each date from the date of this document until (and including) 8.00 am on the Second Court Date, Aston's Voting Power and economic interests in Coalworks, including in any of Coalworks' securities or any right, warrant or option to acquire any of the foregoing or any other economic interest in any such securities (including any interest arising under a derivative or swap arrangement), is nil; and

(h) as at the date of this document, except as fairly disclosed in the Aston Disclosure Material,

(i) no member of the Aston Group has entered into any contracts or commitments in relation to contract mining in relation to the Maules Creek Project; and

(ii) no member of the Aston Group has entered into any contracts or commitments in relation to port or rail access arrangements; and

(iii) no member of the Aston Group has entered into any contracts or commitments with or in relation to Hunter Ports.

10.4 Reliance by parties

Each party (**Representor**) acknowledges that in entering into this document the other party has relied on the representations and warranties provided by the Representor under this **clause 10**.

10.5 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this **clause 10**.

10.6 Status of representations and warranties

Each representation and warranty in this **clause 10**:

(a) is severable;

(b) will survive the termination of this document; and

(c) is given with the intent that liability under it will not be confined to breaches which are discovered prior to the date of termination of this document.

10.7 Aston Officers and employees

(a) Whitehaven releases its respective rights, and agrees with Aston that it will not make a claim, against any Officer or employee of Aston or of any of its Related Bodies Corporate as at the date of this document in connection with:

(i) any breach of any representations or warranties made or given by Aston in this document; or

(ii) any disclosures containing any statement which is false or misleading whether in content or by omission,

except where the Officer has not acted in good faith or has engaged in wilful misconduct. For the avoidance of doubt, nothing in this clause limits Whitehaven's termination rights (if any).

(b) **Clause 10.7(a)** is subject to any Corporations Act restriction and will be read down accordingly. Aston receives and holds the benefit of **clause 10.7(a)** to the extent it relates to each Officer or employee as trustee for each of them.

10.8 Whitehaven Officers and employees

(a) Aston releases its respective rights, and agrees with Whitehaven that it will not make a claim, against any Officer or employee of Whitehaven or of any of its Related Bodies Corporate as at the date of this document in connection with:

(i) any breach of any representations, covenants and warranties of Whitehaven in this document; or

(ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

except where the Officer has not acted in good faith or has engaged in wilful misconduct. For the avoidance of doubt, nothing in this clause limits Aston's termination rights (if any).

(b) **Clause 10.8(a)** is subject to any Corporations Act restriction and will be read down accordingly. Whitehaven receives and holds the benefit of **clause 10.8(a)** to the extent it relates to each Officer and employee as trustee for each of them.

11 Confidentiality

11.1 Confidentiality Agreement

Except as set out in **clause 11.2**, the parties acknowledge that:

(a) Whitehaven accedes to the Confidentiality Agreement;

(b) the parties to the Confidentiality Agreement continue to be bound by the Confidentiality Agreement after the date of this document; and

(c) the rights and obligations of the parties under the Confidentiality Agreement and Whitehaven under **clause 11.1(a)** survive termination of this document.

11.2 Disclosure on termination of this document

If this document is terminated under **clause 13**, either party may disclose by way of announcement to ASX or any stock exchange on which securities of Whitehaven are listed the fact that this document has been terminated, where such disclosure is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed, and provided, where reasonably practicable, that party consults with the other party as to (and gives the other party a reasonable opportunity to comment on) the form and content of the announcement prior to its disclosure.

12 Public announcements and Communications

12.1 Public announcements

(a) On the Announcement Date, Aston must release the Announcement.

(b) Subject to any deadlines imposed by law or applicable stock exchange requirement and **clause 12.3**, any public announcements made in connection with the Transaction must be made outside the trading hours of ASX.

(c) Subject to **clauses 12.1(d), 11.2** and **12.3**, prior to making any other public announcement or disclosure in connection with the Transaction or any major public announcement regarding its business (in any such case in this clause a **Disclosure**), each party must use its reasonable endeavours to consult with the other party as to, and seek to agree with the other party (each party acting reasonably and in good faith), the form and content of that announcement or disclosure.

(d) Subject to **clauses 11.2** and **12.3**, where a party is required by applicable law or regulation, the ASX Listing Rules or any other applicable stock exchange regulation to make any Disclosure, it may do so only after it has given the other party as much notice as is reasonably practicable in the context of any deadlines imposed by law or applicable requirement, but in any event prior notice, and has, to the extent reasonably practicable in the context of such deadlines, consulted with the other party as to (and has given the other party a reasonable opportunity to comment on) the form and content of that Disclosure.

12.2 Agreement on Communications

Except in relation to Communications regulated by **clause 12.1** and to the extent permitted by applicable law, and subject to **clause 12.3**:

(a) Whitehaven and Aston must in good faith consult with each other and agree in advance on all aspects (including the timing, form, content and manner) of:

(i) any Communications with any Governmental Agency; and

(ii) any press release,

in relation to the conduct of the Transaction, whether or not such Communications are for the purposes of satisfying a Condition Precedent;

(b) each of Whitehaven and Aston must ensure that any other Communications with third parties in relation to the Transaction (such as with employees, shareholders, contract counterparties or with the media other than by way of press release) must be in accordance with the communication protocols and messages agreed between the parties (and if branded with the name or logo of the other party, must be consented to by that party);

(c) each party must provide copies to the other party of any written Communications sent to or received from a person referred to in **clause 12.2(b)** promptly upon despatch or receipt (as the case may be); and

(d) each party will have the right to be present and make submissions at or in relation to any proposed meeting with any Governmental Agency in relation to the Transaction.

12.3 Announcements and Communications when there is a Competing Proposal

The requirements of **clauses 12.1(b)**, **12.1(c)**, **12.1(d)** and **12.2** do not apply to either party if a Competing Proposal or a Superior Proposal has been announced and publicly recommended, promoted or otherwise endorsed by any Aston Directors and has not been publicly withdrawn.

13 Termination

13.1 Termination by either party

A party (**terminating party**) may terminate this document with immediate effect by giving notice to the other parties:

(a) (**resolution voted down**) if the resolution to approve the Scheme submitted to the Scheme Meeting is not approved by the requisite majorities of Aston Shareholders (except in the circumstances contemplated by **clause 3.6**);

(b) (**End Date**) if the Effective Date for the Scheme has not occurred on or before the End Date;

(c) (**Independent Expert**) if the Independent Expert concludes that the Scheme is not in the best interests of Aston Shareholders;

(d) (**material breach**) if the other party is in material breach of any clause of this document (including **clause 9**), which breach is material in the context of the Transaction, provided that (except where Whitehaven is the terminating party, in the case of a material breach by Aston of **clause 5.2** or **clause 9**) the terminating party has given notice to the other party setting out the relevant circumstances and stating an intention to terminate this document, and the relevant circumstances have continued to exist for five Business Days from the time such notice is given (or such shorter period ending at 5.00pm on the last Business Day before the Second Court Hearing);

(e) (**no Court orders**) if the party is entitled to terminate the document in accordance with **clause 5.7**;

(f) (**restraint**) subject to prior compliance with **clause 5.7,** if any court, the Takeovers Panel or Governmental Agency has issued any order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the Scheme, or has refused to do anything necessary to permit the Scheme, and the parties fail to agree on conducting on appeal within 5 Business Days;

(g) (**Conditions Precedent**) in the circumstances permitted in **clause 3.8**; or

(h) (**insolvency**) if an Insolvency Event has occurred in relation to Aston or any member of the Aston Group (in which case Whitehaven may terminate) or Whitehaven or any material member of Whitehaven Group (in which case Aston may terminate).

13.2 Termination by Whitehaven

Whitehaven may terminate this document at any time before the End Date by notice in writing to Aston if at any time during the Exclusivity Period any of the following occur:

(a) any Aston Director fails to state (in the terms and subject to the qualifications envisaged in **clause 5.2(a)**) that they recommend to Aston Shareholders that the Scheme is in the best interests of Aston and Aston Shareholders and that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme, or publicly changes (including by attaching qualifications not envisaged in **clause 5.2(a)** to) or withdraws that statement or recommendation; or

(b) a Competing Proposal is announced or made and is publicly recommended, promoted or otherwise endorsed by a majority of the Aston Directors.

13.3 Termination by Aston

Aston may terminate this document at any time before the End Date by notice in writing to Whitehaven if any time during the Exclusivity Period the majority of the Aston Board:

(i) publicly changes (including by attaching qualifications not envisaged in **clause 5.2(a)** to); or

(ii) withdraws its statement (in the terms and subject to the qualifications envisaged in **clause 5.2(a)**) that it considers that the Scheme is in the best interests of Aston and Aston Shareholders or its recommendation (in the terms and subject to the qualifications envisaged in **clause 5.2(a)**) that Aston Shareholders vote in favour of all resolution(s) to be proposed at the Scheme Meeting to approve the Scheme; or

(iii) publicly recommends, promotes or otherwise endorses a Superior Proposal,

and if Aston is required to do so, Aston has paid Whitehaven the Break Fee.

13.4 Effect of termination

In the event of termination of this document by either Whitehaven or Aston pursuant to **clause 13.1, 13.2** or**13.3,** this document will have no further force or effect and the parties will have no further obligations under this document, provided that:

(a) this **clause 13** and **clauses 1**, **8**, **11**, **15** and **16** will survive termination; and

(b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this document.

14 GST

14.1 Construction

In this **clause 14**:

(a) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law;

(b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*; and

(c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

14.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

14.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this document, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

14.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 14.3** in addition to and at the same time that the consideration for the supply is to be provided under this document.

14.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 14.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

14.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this document, the amount payable by the recipient under **clause 14.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

14.7 Reimbursements

Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

(a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

(b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

14.8 No merger

This **clause 14** does not merge in the completion or termination of this document or on the transfer of the property supplied under this document.

15 Notices

15.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

15.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

(a) personally delivered;

(b) left at the party's current address for notices;

(c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or

(d) sent by fax to the party's current fax number for notices.

The parties will use all reasonable endeavours to provide a copy of any communication provided under this clause by email to the email address of the other party set out in **clause 15.3**. To avoid doubt, such email communication is provided as support for the official communication provided in accordance with **paragraphs (a)** to **(d)** of this clause and does not supersede or replace any obligation on a party to provide that communication in accordance with **paragraphs (a)** to **(d)** of this clause or derogate from the other provisions of this **clause 15**.

15.3 Particulars for delivery of notices

(a) The particulars for delivery of notices are initially:

Whitehaven

Address:	Level 28, 259 George Street Sydney NSW 2000
Fax:	+61 2 8507 9701
Attention:	Company Secretary

copy to

Andrew Lumsden
Corrs Chambers Westgarth
GPO Box 9925
Sydney NSW 2001

+61 2 9210 6611

Aston

Address:	Level 10, AMP Centre, 10 Eagle Street Brisbane QLD 4000
Fax:	+61 7 3235 6699
Attention:	General Counsel and Company Secretary

copy to

Philippa Stone
Freehills
MLC Centre, Martin Place
Sydney NSW 2000
+61 2 9322 4000

(b) Each party may change its particulars for delivery of notices by notice to each other party.

15.4 Communications by post

Subject to **clause 15.6**, a communication is given if posted:

(a) within Australia to an Australian address, three Business Days after posting; or

(b) in any other case, ten Business Days after posting.

15.5 Communications by fax

Subject to **clause 15.6**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

15.6 After hours communications

If a communication is given:

(a) after 5.00 pm in the place of receipt; or

(b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

15.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 15** or in accordance with any applicable law.

16 General

16.1 Duty

(a) Whitehaven as between the parties is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by the other party) on or relating to this document, the Scheme, the Deed Poll, any document executed under any of these, or any dutiable transaction evidenced or effected by any of these.

(b) If a party other than Whitehaven pays any duty (including any fine, interest or penalty) on or relating to this document, the Scheme, the Deed Poll, any document executed under any of these, or any dutiable transaction evidenced or effected by any of these, Whitehaven must pay that amount to the paying party on demand.

16.2 Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

16.3 Amendment

This document may only be varied or replaced by a document executed by the parties.

16.4 Waiver and exercise of rights

(a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

(b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

16.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

16.6 Consents

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

16.7 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

16.8 Governing law and jurisdiction

(a) This document is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.

(b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and of the Commonwealth of Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

(c) To the extent that Whitehaven is or may become entitled to, or have attributed to it, any right of immunity on the grounds of sovereignty or otherwise in relation to or in respect of any Claim in relation to this document, Whitehaven waives all such rights, and agree not to plead or claim any such rights

16.9 Assignment

(a) A party must not assign or deal with any right under this document without the prior written consent of the other parties.

(b) Any purported dealing in breach of this clause is of no effect.

16.10 Liability

An obligation of two or more persons binds them separately and together.

16.11 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

16.12 Entire understanding

(a) This document and the Confidentiality Agreement contains the entire understanding between the parties as to the subject matter of this document.

(b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.

(c) No oral explanation or information provided by any party to another:

(i) affects the meaning or interpretation of this document; or

(ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

16.13 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

16.14 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this document. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

16.15 Specific performance

The parties acknowledge that damages will not be an adequate remedy for breaches of obligations under this document and that it would be appropriate for a Court to grant specific performance of those obligations.

Schedule 1

Timetable

Action	Date
Announcement date for finalisation of terms of merger including SIA and Boardwalk transaction	12 December 2011
Draft Scheme Booklet lodged with ASIC	30 January 2012
Deed Poll executed by Whitehaven	17 February 2012
First Court Date	17 February 2012
Scheme Booklet registered by ASIC and released on ASX	17 February 2012
Scheme Booklet dispatched to Aston Shareholders	24 February 2012
Scheme Meeting (and meeting of Whitehaven shareholders in relation to Boardwalk acquisition)	26 March 2012
Second Court Date	27 March 2012
Effective Date: office copy of Court order approving the Scheme lodged with ASIC	28 March 2012
Aston Suspension Date	10.00 am 28 March 2012
Record Date	3 April 2012
Payment of proposed Special Dividend	3 April 2012
Completion of Boardwalk transaction and allotment of Whitehaven Shares to Boardwalk vendors	4 April 2012
Implementation Date	10 April 2012

Executed as an agreement.

Executed by **Aston Resources Limited**)
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....
Company Secretary/Director

MELISSA SWAIN
Name of Company Secretary/Director (print)

....
Director

MARK A. VAILE
Name of Director (print)

Executed by **Whitehaven Coal Limited**)
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....
Company Secretary/Director

....
Name of Company Secretary/Director (print)

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Director

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Name of Director (print)

Executed as an agreement.

Executed by **Aston Resources Limited**)
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Company Secretary/Director

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Director

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Name of Company Secretary/Director (print)

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Name of Director (print)

Executed by **Whitehaven Coal Limited**)
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~~Company Secretary~~/Director

J.C. Conde
....
Director

ANTHONY J HAGGARTY
....
Name of ~~Company Secretary~~/Director (print)

J. C. CONDE
....
Name of Director (print)