

# **Guildford Coal Limited**

**ACN 143 533 537**

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## **Notice of the 2013 Annual General Meeting to be held on 28 November 2013**

### **Explanatory Memorandum for the Notice of Annual General Meeting**

**and**

### **Proxy Form**

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**NOTICE OF THE 2013 ANNUAL GENERAL MEETING**

**TO BE HELD AT THE OFFICES OF K&L GATES, LEVEL 31, 1 O'CONNELL STREET, SYDNEY**

**AT 11.00 A.M. (AEDT) ON 28 NOVEMBER 2013**

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION. IF YOU ARE IN ANY DOUBT ABOUT THE ACTION YOU SHOULD TAKE PLEASE CONSULT YOUR STOCKBROKER, SOLICITOR, ACCOUNTANT OR OTHER PROFESSIONAL ADVISER.**

**TO BE VALID, FORMS OF PROXY FOR USE AT THE ANNUAL GENERAL MEETING MUST BE COMPLETED AND RETURNED TO THE COMPANY NO LATER THAN 11.00 A.M. (AEDT) ON 26 NOVEMBER 2013**

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## Section A – Chairman’s Letter

24 October 2013

Dear Shareholder,

On behalf of the Board, I have the pleasure in inviting you to the 2013 Annual General Meeting (**AGM**) of the shareholders of Guildford Coal Limited ACN 143 533 537 (**Guildford** or **Company**) which will be held at the offices of K&L Gates, Level 31, 1 O’Connell Street, Sydney on Thursday, 28 November 2013 at 11.00 A.M. (AEDT).

The Notice of Meeting and Explanatory Memorandum is enclosed. Please read these documents carefully.

### **Business of the AGM**

The business to be considered at the AGM includes:

- the adoption of the Remuneration Report as contained in the 2013 Annual Financial Report;
- the election of Mr Kon Tsiakis, Mr Tsogt Togoo, Mr Gary Humphrys and Mr Peter Kane, and re-election of the Hon Alan Griffiths, as Directors of the Company as required under the Company’s Constitution and the Corporations Act; and
- the approval for Listing Rule 7.1 purposes of securities to be issued by the Company to Terra Holdings Limited (**Terra Holdings**) under the terms of the Restructure Agreement between the Company and Terra Holdings, as set out in the Explanatory Memorandum.

Shareholders are encouraged to read the enclosed Explanatory Memorandum in its entirety, and to attend the AGM and vote on the Resolutions. A proxy form is enclosed to enable any shareholder who is unable to attend the AGM to vote at the meeting.

Should you wish to discuss the Notice of Meeting you can contact the Company Secretary, Mr Kon Tsiakis, on (07) 3005 1533.

Once again, on behalf of the Board I would like to thank you for your continued support.

Yours faithfully,



**The Hon Alan Griffiths**  
**Acting Non-Executive Chairman**

## Section B – Glossary

### 1. Definitions

The following definitions are used in the Notice of Meeting and the Explanatory Memorandum:

**2013 Annual Financial Report** means the Company's Annual Financial Report for the financial year ended 30 June 2013 as announced to the ASX on 30 September 2013.

**AEDT** means Australian Eastern Daylight Saving Time.

**Annual General Meeting** means the annual general meeting of the Company to be held on 28 November 2013 pursuant to the Notice of Meeting.

**Associate** has the meaning given to that term in the Corporations Act.

**ASX** means ASX Limited ACN 008 624 691.

**ASX Listing Rules** means the Listing Rules of the ASX as amended from time to time.

**Board** means the board of Directors of the Company.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in New South Wales.

**Company** means Guildford Coal Limited ACN 143 533 537.

**Constitution** means the constitution of the Company, as amended from time to time.

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

**Director** means a director of the Company.

**Explanatory Memorandum** means the explanatory memorandum set out in Section D of this document.

**Financial Statements and Reports** means the financial statements and reports for the Company set out in the 2013 Annual Financial Report.

**Notice of Meeting or Notice** means the notice of annual general meeting set out in Section C of this document.

**Remuneration Report** means the remuneration report for the Company set out in the Company's 2013 Annual Financial Report.

**Resolution** means a resolution referred to in the Notice of Meeting.

**Restructure Agreement** means the agreement between the Company and Terra Holdings in relation to the restructure of Terra Energy dated 2 November 2012.

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

**Shareholder** means a holder of a Share.

**Terra Energy** means Terra Energy Limited.

**Terra Holdings** means Terra Holdings Limited, a company incorporated in the British West Indies.

## 2. Interpretation

For the purposes of interpreting the Explanatory Memorandum and the Notice of Meeting:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) reference to any statute, ordinance, regulation, rule or other law includes all regulations and other instruments and all considerations, amendments, re-enactments or replacements for the time being in force;
- (d) all headings, bold typing and italics (if any) have been inserted for convenience of reference only and do not define, limit or affect the meaning or interpretation of the Explanatory Memorandum and the Notice of Meeting;
- (e) reference to persons includes bodies corporate and government authorities and in each and every case, includes a reference to the person's executors, administrators, successors and substitutes (including without limitation persons taking by novation and assignment); and
- (f) reference to **\$, A\$, Australian Dollars** or **dollars** is a reference to the lawful tender for the time being and from time to time of the Commonwealth of Australia.

## Section C – Notice of 2013 Annual General Meeting

NOTICE IS HEREBY GIVEN that the Annual General Meeting of Shareholders of Guildford Coal Limited ACN 143 533 537 will be held at the offices of K&L Gates, Level 31, 1 O'Connell Street, Sydney on 28 November 2013 at 11.00 A.M. (AEDT).

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### BUSINESS

#### 1. Consideration of Reports

To receive and consider the Financial Report, the Directors' Report and the Independent Audit Report of the Company for the period 1 July 2012 to 30 June 2013.

#### 2. Resolution 1: Remuneration Report

Shareholders are asked to consider, and if thought fit, to pass the following ordinary resolution:

*"That for the purposes of sections 250R(2) and 250SA of the Corporations Act and for all other purposes, the Remuneration Report for the Company and its controlled entities for the period 1 July 2012 to 30 June 2013 be adopted."*

#### 3. Resolution 2: Election of Directors

As this is the first annual general meeting of the Company since the appointments of Mr Kon Tsiakis, Mr Tsogt Togoo, Mr Gary Humphrys and Mr Peter Kane to the Board, Mr Tsiakis, Mr Togoo, Mr Humphrys and Mr Kane are subject to election by the Company's Shareholders. In addition, the Hon Alan Griffiths is retiring by rotation and standing for re-election in accordance with rule 15.3 of the Company's constitution. Each of the following resolutions will be considered as a separate ordinary resolution at the general meeting.

- (a) **Kon Tsiakis** - To consider and if thought fit, to pass the following as an ordinary resolution:

*"That pursuant to rule 15.1 of the Company's constitution and for all other purposes the Company elects Kon Tsiakis as a director of the Company."*

- (b) **Alan Griffiths** - To consider and if thought fit, to pass the following as an ordinary resolution:

*"That pursuant to rule 15.3 of the Company's constitution, ASX Listing Rule 14.4 and for all other purposes the Company re-elects Alan Griffiths as a director of the Company."*

- (c) **Tsogt Togoo** - To consider and if thought fit, to pass the following as an ordinary resolution:

*"That pursuant to rule 15.1 of the Company's constitution and for all other purposes the Company elects Tsogt Togoo as a director of the Company."*

- (d) **Gary Humphrys** - To consider and if thought fit, to pass the following as an ordinary resolution:

*"That pursuant to rule 15.1 of the Company's constitution and for all other purposes the Company elects Gary Humphrys as a director of the Company."*

- (e) **Peter Kane** - To consider and if thought fit, to pass the following as an ordinary resolution:

*"That pursuant to rule 15.1 of the Company's constitution and for all other purposes the Company elects Peter Kane as a director of the Company."*

**4. Resolution 3: Approval of the issue of Shares to Terra Holdings**

Shareholders are asked to consider, and if thought fit, to pass the following ordinary resolution:

*“That for the purposes of ASX Listing Rule 7.1 and for all other purposes, the Shareholders approve the issue and allotment of up to 20,000,000 Shares (with a minimum issue price of \$0.75 per Share) in the Company to Terra Holdings on the terms and conditions set out in the Explanatory Memorandum accompanying this Notice of Meeting.”*

**5. Update to Shareholders regarding the Company’s business**

**By order of the Board**

A handwritten signature in black ink, appearing to read 'Kon Tsiakis', written over a horizontal line.

**Kon Tsiakis**  
Company Secretary

**Dated: 24 October 2013**

## NOTES

### 1. Determination of membership and voting entitlement

For the purpose of determining a person's entitlement to vote at the Annual General Meeting, a person will be recognised as a member of the Company and the holder of Shares if that person is registered as a holder of those Shares at 7.00pm (AEDT) on 26 November 2013, being the second Business Day prior to the date of the Annual General Meeting.

### 2. Votes of members

On a show of hands, each member present in person or by proxy or, in the case of a body corporate, by a corporate representative at the Annual General Meeting shall have one vote.

On a poll, every member present in person or by attorney or by proxy or, in the case of a body corporate, by a representative shall have one vote for each Share held by him, her or it provided that all Shares are fully paid.

### 3. Proxies

Please note that:

- (a) a member entitled to attend and vote at the Annual General Meeting is entitled to appoint no more than two proxies;
- (b) an instrument appointing a proxy must be in the form of the proxy form attached to this Notice of Meeting;
- (c) where more than one proxy is appointed, each proxy must be appointed to represent a specified proportion of the member's voting rights. If a member appoints two proxies, and the appointment does not specify the proportion of the member's voting rights, each proxy may exercise one-half of the voting rights;
- (d) a proxy need not be a member of the Company;
- (e) a proxy form may specify the manner in which the proxy is to vote in respect of a particular Resolution and, where the proxy form so provides, the proxy is not entitled to vote on the Resolution except as specified in the proxy form;
- (f) a proxy has the authority to vote on the member's behalf as he or she thinks fit, on any motion to adjourn the Annual General Meeting, or any other procedural motion, unless the member gives a direction to the contrary;
- (g) a valid proxy form will be deemed to confer authority to demand or join in demanding a poll;
- (h) to be valid, a proxy form must be signed by the member or the member's attorney or, if the member is a corporation, executed in accordance with the corporation's constitution and the Corporations Act (and may be signed on behalf of the corporation by its attorney); and
- (i) to be valid, a proxy form and the power of attorney or other authority (if any) under which it is signed (or an attested copy of it) must be received by no later than 11.00 A.M. **(AEDT) on 26 November 2013:**

by the Company:

- in person: Guildford Coal Limited  
C/- Link Market Services Limited  
Level 12  
680 George Street  
SYDNEY NSW 2000  
Australia

- by mail: Guildford Coal Limited  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235  
Australia

- by facsimile: + 61 2 9287 0309

A form of proxy accompanies this Notice of Meeting.

## Section D - Explanatory Memorandum

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### Introduction

This Explanatory Memorandum has been prepared to assist Shareholders of the Company in understanding the business to be put to Shareholders for their consideration at the forthcoming Annual General Meeting on 28 November 2013.

The following section of this Explanatory Memorandum sets out the background to the Resolutions.

### Background to the Resolutions

#### 1. Receipt and Consideration of Financial Statements and Reports

This agenda item is self-explanatory. It is intended to provide Shareholders with the opportunity to raise questions on the Financial Statements and Reports, and on the performance of the Company generally.

Shareholders should note that the Financial Statements and Reports will be received in the form presented. It is not the purpose and there is no requirement either in the Corporations Act or in the Constitution of the Company for Shareholders to approve the financial report, the directors' report or the auditor's report of the meeting or that the Financial Statements and Reports be accepted, rejected or modified in any way.

#### 2. Resolution 1 - Remuneration Report (Advisory Resolution)

Resolution 1 provides Shareholders with the opportunity to vote on the Company's Remuneration Report. Under Section 250R(2) of the Corporations Act, the Company must put the adoption of its Remuneration Report to the vote at the Annual General Meeting and, under section 250SA of the Corporations Act, the Chairman must allow the Shareholders a reasonable opportunity to ask questions about, or make comments on, the Remuneration Report.

The Remuneration Report:

- (a) explains the Board's policies in respect of the nature and level of remuneration paid to Directors and senior management of the Company;
- (b) discusses the link between the Board's policies and the Company's performance;
- (c) explains why the performance conditions were chosen and how performance is measured against them;
- (d) sets out the remuneration details for each Director and each member of the Company's senior management team; and
- (e) makes clear that the basis for remunerating non-executive Directors is distinct from the basis for remunerating executives and executive Directors.

The Company's Remuneration Report is set out on pages 11 to 15 of the Company's 2013 Annual Financial Report.

The vote to adopt the Remuneration Report is advisory only and does not bind the Directors or the Company, but it will still be put to members at the Annual General Meeting.

As a result of changes to the Corporations Act which became effective on 1 July 2011:

- (a) members of the key management personnel whose remuneration details are included in the remuneration report (and any closely related party of those members) are not permitted to vote on a resolution to approve the Remuneration Report, and
- (b) if the vote to approve the Remuneration Report receives a "no" vote by at least 25% of the votes cast, this will constitute a "first strike".

Where a "first strike" occurs at this 2013 Annual General Meeting:

- (a) the Company's subsequent remuneration report (in other words, the Company's remuneration report to be included in the 2014 Annual Financial Report) must include an explanation of the Board's proposed action in response to the "no vote" or an explanation of why no action has been taken, and
- (b) if the Company's subsequent remuneration report also receives a "no vote" at the 2014 Annual General Meeting of at least 25% of the votes cast, then Shareholders at the 2014 Annual General Meeting will be asked (at that 2014 Annual General Meeting) to vote on whether or not the Company is to hold another general shareholder's meeting (within the following 90 days) to vote upon a "spill resolution" under section 250V of the Corporations Act.

Due to the changes to the Corporations Act described above, the Board abstains from making a recommendation in relation to Resolution 1.

### **Voting Prohibition Statement**

A vote on Resolution 1 must not be cast (in any capacity) by or on behalf of any of the following persons:

- (a) a member of the key management personnel, details of whose remuneration are included in the Remuneration Report; or
- (b) a closely related party of such a member.

However, a person described above may cast a vote on Resolution 1 if:

- (a) either:
  - (i) the person does so as a proxy appointed by writing that specifies how the proxy is to vote on the proposed resolution; or
  - (ii) the vote is cast by the Chairman of the meeting as proxy for a person entitled to vote in accordance with an express authority to vote undirected proxies as the Chairman of the meeting sees fit; and
- (b) the vote is not cast on behalf of a person described in subparagraphs (a) or (b) above.

### **What this means for Shareholders**

If you intend to appoint a member of the key management personnel (such as one of the Directors) as your proxy, please ensure that you direct them how to vote on Resolution 1. If you intend to appoint the Chairman of the meeting as your proxy, you can direct him how to vote by marking the boxes for Resolution 1 (for example, if you wish to vote for, against or abstain from voting), or you cannot mark any of the boxes for Resolution 1, and give the Chairman your express authority to vote your undirected proxy (in which case the Chairman will vote in favour of this item of business).

### 3. Resolution 2: Election of directors of the Company

Rule 15.1(c) of the Constitution provides that any director appointed to the Board may only hold office until the next annual general meeting and is then eligible for election at that meeting. As Mr Kon Tsiakis, Mr Tsogt Togoo, Mr Gary Humphrys and Mr Peter Kane were appointed pursuant to Rule 15.1 of the Constitution, they are due to retire at this Annual General Meeting and have submitted for election.

Rule 15.3 of the Constitution provides that no Director, other than any Managing Director appointed by the Company, may hold office for a period in excess of 3 years or beyond the third annual general meeting following their election, whichever is the longer, without submitting themselves for re-election.

In addition, rule 15.3 provides that one-third of the previously elected Directors, and if the number is not a multiple of 3, then the number nearest to but not exceeding one-third, must retire from office and are eligible for re-election. The Directors to retire every year are the Directors longest in office since last elected.

The Hon Alan Griffiths is the longest serving Director, having been appointed on 17 December 2010 and elected at the Company's 2011 Annual General Meeting. As a result, he is the Director eligible for re-election at this Annual General Meeting.

A profile of each of the Directors may be found in the 2013 Annual Report.

A profile of Mr Peter Charles Kane who was appointed on 9 October 2013 is as follows:

#### **Mr Peter Kane**

Qualifications	Bachelor of Engineering (Mining) Graduate of The Australian Institute of Company Directors Member of the Australasian Institute of Mining & Metallurgy
Experience	<p>Peter is a Mining Engineer with 25 years' experience in the mining industry throughout Australia and New Zealand. Recently, Peter held Chief Executive Officer roles at both Boardwalk Resources and Aston Resources before being appointed Chief Operating Officer – Projects with Whitehaven Coal following the merger of Whitehaven with Aston.</p> <p>Previously, Peter spent 3 years as Chief Operating Officer with Macarthur Coal, leading the Company's mines and project developments in Queensland prior to the purchase of Macarthur by Peabody. During his tenure at Macarthur Coal and Aston, Peter also covered the role of Joint Venture Chair on multiple operations with numerous JV partners.</p> <p>Prior to that, Peter spent 10 years with Leighton (contractors) in various roles including General Manager of the Australian mining contractor business. His earlier career included 10 years with BHP in their iron ore and coal divisions.</p>

The Chairman in his capacity as proxy holder intends to vote undirected proxies in favour of approving each of Resolutions 2(a), 2(c), 2(d), 2(e) and 2(f).

#### 4. **Resolution 3: Approval of issue of Shares to Terra Holdings**

Subject to Shareholder approval, the Company is proposing to issue a maximum of 20,000,000 Shares to Terra Holdings under the terms of the Restructure Agreement.

Listing Rule 7.1 provides that a listed company may not issue equity securities in any 12 month period which exceeds 15% of the number of issued securities of the company held at the beginning of the 12 month period, except with the prior approval of shareholders of the company in general meeting unless another exception to Listing Rule 7.1 applies.

Resolution 3 seeks shareholder approval for the purposes of ASX Listing Rule 7.1 to the issue of up to 20,000,000 Shares (at a minimum issue price of \$0.75 per Share and aggregate value of \$15,000,000) in the Company as the final deferred consideration amount due no later than 21 December 2013 under the Restructure Agreement (**Deferred Consideration Shares**).

Under the terms of the Restructure Agreement, the Company has acquired the remaining 25% of the issued capital of Terra Energy from Terra Holdings for a total consideration of \$50,000,000. The consideration was paid/is payable as follows:

- a deposit of \$3,000,000 (already paid);
- a cash payment of \$2,000,000 paid on completion of the transaction (already paid);
- the issue of the Consideration Shares to Terra Holdings which in aggregate equalled \$30,000,000 in value with an issue price of \$0.75 per share (issued on 24 December 2012); and
- \$15,000,000 which may be met either through a cash payment or through the issue of Shares at the Company's election (to be paid one year after completion of the transaction). The Company has elected to issue Shares and is seeking shareholder approval under this Resolution 3 to the issue of the Deferred Consideration Shares as satisfaction of the final deferred consideration amount due under the Restructure Agreement.

As a result of this acquisition, the Company now holds (in total) 100% of Terra Energy's issued shares.

For the purposes of Listing Rule 7.3, the Company provides the following information to Shareholders.

The maximum number of Deferred Consideration Shares that will be issued by the Company to Terra Holdings will be 20,000,000 Shares. The minimum issue price of the Deferred Consideration Shares is \$0.75 per Share.

The Deferred Consideration Shares will have the same terms as the Company's existing fully paid ordinary shares, ranking equally with the Company's existing Shares. The Company will apply for the Deferred Consideration Shares to be quoted on the ASX.

Subject to Shareholders approving Resolution 3, the issue date of the Deferred Consideration Shares will be no later than 21 December 2013. The aggregate value of the Deferred Consideration Shares is \$15,000,000. No funds will be raised by the issue of the Deferred Consideration Shares however the Company will satisfy its obligation under the Restructure Agreement to make a final deferred consideration payment of \$15,000,000.

**Effect of passing of resolution 3**

The effect of Resolution 3, if passed, will be that the issue of the Deferred Consideration Shares will be exempt from the 15% limit under Listing Rule 7.1. This will allow the Company to issue the Deferred Consideration Shares and provide flexibility during the next 12 month period to issue further equity securities to raise capital if required.

The Board recommends that Shareholders vote in favour of Resolution 3.

**Voting Exclusion**

Pursuant to ASX Listing Rule 7.5.6 the Company will disregard any votes cast on Resolution 3 by:

- (a) Terra Holdings; and
- (b) an Associate of Terra Holdings.

However, the Company need not disregard a vote if:

- (a) it is cast by a person as a proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- (b) it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.