

# BOOM LOGISTICS LTD

ACN 095 466 961

(Company)

## NOTICE OF ANNUAL GENERAL MEETING

**NOTICE is given** that the annual general meeting of Boom Logistics Ltd ACN 095 466 961 (**Company**) will be held at 10am at The Somerset Botanic Gardens, 348 St Kilda Road, Melbourne on 15 October 2004 for the following purposes.

### Ordinary Business

#### Item 1: Financial Statements and Reports

To receive and consider the Financial Report for the year ended 30 June 2004 and the Directors' Report and the Auditor's Report on the Financial Report.

#### Item 2: Re-election of Directors

To consider and, if thought fit, pass the following resolution:

“That Terrance A. Hebiton, a director retiring from office by rotation in accordance with Clause 5.1 of the Constitution, being eligible, is re-elected as a director of the Company.”

### Special Business

#### Item 3: Directors' Remuneration

To consider and, if thought fit, pass the following resolution:

“That, for the purposes of clause 42 of the Company's Constitution and ASX Listing Rule 10.17, the maximum aggregate amount of directors' remuneration payable by the Company to the directors be increased from \$250,000 per annum to a maximum of \$400,000 per annum.”

#### Item 4: Placement of shares

To consider and, if thought fit, pass the following resolution:

“That, for the purposes of ASX Listing Rule 7.1, the members approve the issue and allotment of up to 13 million fully paid ordinary shares in the Company to the persons specified in the Explanatory Notes which accompany this Notice of Meeting.”

#### Item 5: Issue of Shares to Singleton Transport & Industrial Service Co. Pty Ltd

To consider and, if thought fit, pass the following resolution:

“That, for the purposes of ASX Listing Rule 7.1 and subject to the passing of the resolution in Item 4, the members approve the issue and allotment of 2,439,025 fully paid ordinary shares in the Company to Singleton Transport & Industrial Service Co. Pty Ltd at Completion under the Asset Sale Agreement.”

## **Item 6: Issue of shares to Rod Harmon under the Employee Share Trust**

To consider and, if thought fit, pass the following resolution:

“That the members approve the issue of fully paid ordinary shares for the benefit of Rod Harmon under the Boom Logistics Limited Employee Share Trust on the terms of the Explanatory Notes which accompany this Notice of Meeting.”



Company Secretary

Date: 10<sup>th</sup> September 2004

## **Voting exclusion statement**

In accordance with ASX Listing Rule 14.11, the Company makes the following statements:

*In relation to the resolution in Item 3*

The Company will disregard any votes cast in respect of resolution 3 by:

- the directors of the Company; and
- an associate of that person (or those persons).

*In relation to the resolution in Item 4*

The Company will disregard any votes cast in respect of resolution 4 by:

- institutional investors who may or have participated in the proposed placement of shares in the Company;
- any person who might obtain a benefit, except for a benefit solely in the capacity of a shareholder, if resolution 4 is passed; and
- an associate of that person (or those persons).

*In relation to the resolution in Item 5*

The Company will disregard any votes cast in respect of the resolution in Item 5 by:

- Singleton Transport & Industrial Service Co. Pty Ltd and any proposed recipient of shares under the Asset Sale Agreement;
- any person who might obtain a benefit, except for a benefit solely in the capacity of a shareholder, if the resolution in Item 5 is passed; and
- an associate of that person (or those persons).

*In relation to the resolution in Item 6*

The Company will disregard any votes cast in respect of that resolution by:

- Rod Harmon; and

- any associate of his.

### *General*

However, the Company need not disregard a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- 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.

## **Appointment of proxy**

A proxy form is enclosed for your use if required. Please note the following:

If a member is entitled to attend and vote at this meeting:

- the member may appoint any person as his or her proxy to attend and vote for the member at the meeting;
- and is entitled to cast 2 or more votes at the meeting, the member may appoint 2 proxies to attend on the same occasion. If 2 proxies are appointed and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the member's votes; and
- the appointment may specify the proportion or number of votes that the proxy may exercise.

A proxy need not be a member of the Company.

If a proxy is given by a corporation, a form of proxy must be executed in writing under the common seal of the corporation or otherwise in accordance with section 127 of the *Corporations Act 2001* or signed by an attorney.

If a proxy is given by a natural person, a form of proxy must be executed under the hand of that person or that person's attorney.

For a proxy appointment to be effective, the Company must receive the following documents no later than 48 hours before the scheduled time for the meeting, that is by 10am on 13 October 2004:

- the proxy's appointment;
- if the appointment is signed by the appointor's attorney - the authority under which the appointment was signed or a certified copy of the authority.

The documents will be received by the Company when it is received at any of the following:

- the Company's registered office at Level 12, 390 St Kilda Road, Melbourne 3004; or
- the fax number at the Company's registered office: 03 9864 0222; or
- as otherwise provided for on the proxy form itself.

## **Persons entitled to vote**

Under regulation 7.11.37 of the *Corporations Regulations* 2001 (Cth), the Directors have determined that the shareholding of each member for the purposes of ascertaining their voting entitlements at the annual general meeting will be as it appears in the share register at 10 am on 13 October 2004.

## **Corporate Representatives**

A body corporate, which is a member, may appoint an individual (by certificate executed in accordance with section 127 of the *Corporations Act* 2001 or in another manner satisfactory to the chair) as a representative to exercise all or any of the powers the body corporate may exercise at the meeting. The appointment may be standing.

## **Necessary information**

Information relevant to each resolution is set out in the attached explanatory notes which form part of this notice to members.

# BOOM LOGISTICS LTD

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## EXPLANATORY NOTES TO NOTICE OF ANNUAL GENERAL MEETING

**NOTICE is given** that the annual general meeting of Boom Logistics Ltd ACN 095 466 961 (**Company**) will be held at 10am at The Somerset Botanic Gardens, 348 St Kilda Road, Melbourne on 15 October, 2004 for the following purposes.

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### Information specific to each resolution

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Shareholder approval of resolutions is required for the purposes of the *Corporations Act* 2001. The following information has been prepared to provide you with material information to enable you to make an informed decision in relation to the business to be conducted at the annual general meeting of the Company.

#### Ordinary Business

##### Item 2: Re-election of Director

ASX Listing Rule 14.4 provides that a director (other than the Managing Director) must retire and offer himself or herself for re-election at the third annual general meeting following his or her election. Further, Clause 5.1 of the Company's Constitution provides that at each annual general meeting, one third of directors, or if their number is not a multiple of three then the number nearest to but not exceeding one third, retire from office and may submit themselves for re-election.

Terrance A. Hebiton is required to retire at this annual general meeting, and seek re-election in accordance with ASX Listing Rule 14.4 and Clause 5.1 of the Constitution.

Further information in relation to the director is as follows:

**Terrance A. Hebiton** Age: 53. Member of the Audit & Compliance Committee and the Occupational Health, Safety Environment and Quality Committee.

Mr Hebiton commenced his commercial career in the rural sector. In 1989, he acquired various business interests associated with land and property rental developments. In the late 1990s, Mr Hebiton was Managing Director of Hazdon Holdings Pty Ltd. He is currently a director of a number of private companies, was a principal of Alpha Crane Hire and is one of the driving forces behind the formation of BOOM. He has been a director of the Company since 22 December 2000.

#### Special Business

##### Item 3: Directors' Remuneration

Under clause 42 of the Company's Constitution and ASX Listing Rule 10.17, the Company must not increase the total amount of directors' remuneration payable by the Company without the approval of the members by ordinary resolution at a general meeting.

The increase in the maximum aggregate amount of remuneration payable by the Company to the directors from \$250,000 per annum to \$400,000 per annum is being sought because:

- (a) the Board wishes to appoint an additional independent director in the current year to allow the Company to meet ASX Corporate Governance Council guidelines which recommended that, as a principle of good corporate governance, a majority of the Board of listed companies should be independent directors;
- (b) the Board wishes to provide flexibility to increase the size of the Board if and when appropriate to allow for succession planning; and
- (c) the Board wishes to allow scope for a future increase in fees to maintain market competitiveness. It should be noted that no increase in fees is planned for the current year.

#### **Item 4: Placement of Shares**

##### **Asset Sale Agreement**

As previously announced to the market, the Company has entered into an Asset Sale Agreement with Singleton Transport & Industrial Service Co. Pty Ltd trading as Bower's Heavy Haulage & Crane Service (Bower's). Under the Asset Sale Agreement, the Company will acquire the Bower's business as a going concern which comprises assets located at Singleton, Mt Thorley and Muswellbrook in New South Wales.

Bower's, a family-owned business, was established in 1946 and is a leading provider of crane access and heavy haulage services to the Hunter Valley. The proposed acquisition of Bower's provides Boom with access to the region's coal mining industry and adds support to its existing business at Port Kembla in Southern NSW.

Bower's annualised sales revenue of \$17.3 million for 2003/04 was generated from a well maintained fleet of 44 cranes up to 300T, a haulage fleet ranging from utilities to the 180T capacity transporters, and ancillary equipment including mobile lighting and access equipment.

The purchase price of \$16.3 million is based on a 3.6 times EBITDA multiple. The proposed net consideration payable, after adjustment for estimated transferring employee entitlements of \$0.8million and an assignment of \$1.4million of debt, comprises of \$10.1 million cash consideration and an equity issue of \$4 million

Bower's recent projects include the Bayswater power station and Redbank power stations, civil engineering contracts involving roads and rail bridges from Moree to Sydney's Eastern Distributor Main Road tunnel and a transport dragline from Vickery Coal Mine (Gunnedah, NSW) to the Newcastle wharf for shipping to South Africa.

#### **Item 4**

The resolution in Item 4 seeks the approval of members to issue 13 million fully paid ordinary shares to institutional investors under a placement to raise \$19.5 million in cash. The funds raised under the placement will be used to finance the cash component of the purchase price consideration for the acquisition of assets from Singleton Transport & Industrial Service Co. Pty Ltd. It will also be used for other acquisition opportunities as they arise and for the Company's general working capital requirements. The approval of the members of the Company is required under ASX Listing Rule 7.1.

## **ASX Listing Rule 7.1**

ASX Listing Rule 7.1 prohibits a listed company from issuing or agreeing to issue equity securities if the result is that the amount of capital issued within the previous 12 months is greater than 15% of the total issued equity securities of the Company, unless member approval is obtained. The proposed issue of shares under the placement together with the proposed issue of shares to Singleton Transport & Industrial Service Co. Pty Ltd under the resolution in Item 5 will exceed the 15% limit referred to in ASX Listing Rule 7.1.

### **Details of the proposed placement**

To enable the members to approve the proposed placement of shares, the Directors provide the following information in accordance with ASX Listing Rule 7.3:

*The number of securities to be allotted:*

13 million fully paid ordinary shares in the Company

*The price at which the securities will be issued:*

\$1.50

*The terms of the securities:*

All of the shares will be fully paid ordinary shares in the Company that rank pari passu and form one class with all other ordinary shares of the Company.

*The names of the allottees or the basis on which allottees will be determined:*

As previously announced to the market, the Company has initiated a fully underwritten placement to raise not less than \$19.5 million. The Company, with the assistance of Wilson HTM Limited and Bell Potter Securities Limited has finalised the subscription lists for the placement. Participants in the placement will be advised that neither they nor their associates will be entitled to vote in relation to this resolution.

*The use (or intended use) of the funds raised:*

The Board intends to use the funds raised to finance the cash component of the purchase price consideration for the acquisition of assets from Singleton Transport & Industrial Service Co. Pty Ltd. The Board intends to also use the funds raised for other acquisition opportunities as they arise and for the Company's general working capital requirements.

*The date on which the allotment will occur:*

It is anticipated that the issue and allotment of the ordinary shares will take place on or about 20 October 2004, subject to the resolution approving the placement being passed. In any event, any ordinary shares issued with the benefit of this approval will be issued within three months after the date of the meeting.

## **Item 5: Issue of Shares to Singleton Transport & Industrial Service Co. Pty Ltd**

### **Conditions under Asset Sale Agreement**

The completion of the acquisition under the Asset Sale Agreement is conditional upon the following occurring:

- the passing of the resolution in Item 4 by the members of the Company approving the issue shares to institutional investors under the placement to raise not less than \$15 million or such other amount as notified to the Seller before the effective date;
- the passing of this resolution by the members of the Company.

The resolution in Item 5 seeks the approval of members to issue and allot 2,439,025 fully paid ordinary shares in the Company to Singleton Transport & Industrial Service Co. Pty Ltd as part of the purchase price consideration for the acquisition of the assets in accordance with the Asset Sale Agreement. Approval of the members of the Company is required under Listing Rule 7.1.

### **Details of issue of shares**

To enable the members to approve the proposed issue, the Directors provide the following information in accordance with ASX Listing Rule 7.3:

*The number of securities to be allotted:*

2,439,025 fully paid ordinary shares in the Company

*The price at which the securities will be issued:*

The price at which these shares will be issued is \$1.64 being the average volume weighted market price for the shares in the Company calculated over the last 5 days on which sales in the shares were recorded before the public announcement by the Company of the Asset Sale Agreement.

*The terms of the securities:*

All of the shares will be fully paid ordinary shares in the Company and will rank pari passu and form one class with all other ordinary shares of the Company.

*The names of the allottees or the basis on which allottees will be determined:*

The Company will allot shares to Singleton Transport & Industrial Service Co. Pty Ltd.

*The use (or intended use) of the funds raised:*

The shares will be issued as a component of the purchase price for the acquisition of the assets from Singleton Transport & Industrial Service Co. Pty Ltd under the Asset Sale Agreement.

*The date on which the shares will be issued and allotted:*

The shares will be issued and allotted on completion of the Asset Sale Agreement. Completion is subject to the satisfaction or waiver of the conditions in the Asset Sale Agreement as summarised above in this Explanatory Note. If the conditions are satisfied or waived and the members of the Company approve the resolutions in items 4 and 5, the shares will be issued and allotted by no later than 31 December 2004.

## **Item 6: Issue of Shares to Mr Roderick Harmon under the Employee Share Trust ('EST')**

### **Details of Employee Share Trust**

ASX Listing Rule 10.14 prevents the Company from issuing shares to directors and their associates under the Boom Logistics Limited Employee Share Trust ('EST') unless approved by the members of the Company. To enable the members to approve the resolution in Item 6, the following information is provided in compliance with ASX Listing Rule 10.15:

The EST provides the Long Term Incentive component of "at risk" remuneration for senior executives of the Company and is subject to an assessment of continuous performance over a rolling three year period. To enable the members to approve the resolution in Item 6, the terms of the Boom Logistics Limited Employee Share Trust are summarised below.

- The Company has established the Boom Logistics Limited Employee Share Trust. The Trustee is Boom Logistics Employee Share Plan Pty Ltd. The beneficial interest in the Trust Fund is divided into Share Units.
- The Company makes contributions of shares or advances money in lieu of shares to the Trust. Application moneys received and accepted by the Trustee must be used to exclusively acquire shares in the company and allocate those to Share Units in the Trust.
- The Company has discretion to determine which employees are invited to apply to the Trustee for Share Units ('Eligible Employee'). Employees who may be invited to participate in the EST are those who are in permanent employment with the Company or Associated Company and includes any director holding salaried employment. The Company has absolute discretion to determine the number of Share Units to be issued to an Eligible Employee.
- The number of Share Unit Holders under the Trust must never exceed 20.
- In the case of an offer of Share Units with respect to unissued shares in the Company, the number of shares when aggregated with the number of shares in the same class issued during the previous 5 years pursuant to the EST or any other employee share plan of the Company must not exceed 5% of the total number of issued shares in that class of the Company as at the time of the offer.
- If members approve resolution 6, the Company will issue ordinary shares to the Trustee of the EST for the benefit of Mr Harmon in accordance with the following determination.

Each financial year while he is employed by the Company, an amount equivalent to 25% of his base salary will be paid to the Trustee of the EST. It will apply the proceeds to subscribe for ordinary shares in the Company at an issue price equal to the five day VWAP of the Company's shares immediately prior to the date of issue of these shares. The issue of shares will be made two weeks after the announcement of the Company's annual financial results to the ASX.

For the purposes of the current financial year, an amount of \$80,000 will be paid to the trustee of the EST if shareholders pass this resolution. The issue price per share will be \$1.69 each and the number of shares issued will be 47,337.

- All shares will rank pari passu in all respects with the other ordinary shares of the Company from the date of issue.
- The vesting of Share Units granted under the terms of the EST occur at the end of each rolling three year period, subject to the Company achieving a minimum Total Shareholder Return (TSR) of 9% per annum averaged over the three years. TSR comprises a combination of dividends and capital growth as reflected in share price movement.

More specifically, it is calculated using the following formula: (Share price at end of the financial year less the share price at the beginning of the financial year ) + dividends / Share price at the beginning of the financial year =TSR. Dividends include not only dividends declared but also any other cash payment to shareholders such as under share buybacks.

- Vesting also requires that the grantee remains in full time employment with the Company over the three year period.
- At the time Participating Employees wish to redeem or encash their holding, Bonus Share Units are issued by the Trustee to enable full share value to be received including any growth over the holding period. The Company's contribution is limited to the annual issue of ordinary Boom Logistics shares.
- The Share Units provide to Unitholders substantially the same rights in respect of the shares which are allocated to the Share Units as if the Unitholders were the legal owners of the shares, including the rights to:
  - direct the Trustee how the voting rights attached to the shares shall be exercised; and
  - receive the income derived from the shares including dividends declared in respect of the shares.

It is expected that the Trustee will subscribe for the first tranche of shares for the benefit of Mr Harmon or (if permitted) an associate of his within 30 days of obtaining member approval of the resolution in Item 6. In any event, any tranches of ordinary shares issued with the benefit of this approval will be issued before 15 October, 2007.

It is intended that shares will be issued under the EST for the benefit of Mr Harmon personally or his associate, Harmon Consulting Pty Ltd. They are the only persons referred to in ASX Listing Rule 10.14 who are entitled to participate in the EST and no loan will be made to facilitate their participation.

The members of the Company have not previously approved the EST and no other person has received any securities under it.

Details of any securities issued under the EST will be published in each annual report of the Company relating to a period in which securities have been issued, and that approval for the issue of securities was obtained under ASX Listing Rule 10.14.

Any additional persons who become entitled to participate in the EST after the resolution is approved and who are not named in this Notice of Annual General Meeting will not participate until approval is obtained under ASX Listing Rule 10.14.