

# Unsecured Notes Prospectus

7 December 2018

Mackay Sugar Limited ACN 057 463 671

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## **IMPORTANT NOTICES**

### **General**

This Prospectus is dated 7 December 2018. A copy of this Prospectus was lodged with ASIC on that date. Neither ASIC nor its officers take any responsibility for the contents of this Prospectus or the merits of the investment to which this Prospectus relates. No Unsecured Notes will be allotted or transferred on the basis of this Prospectus after the expiry date, being the date which is 13 months after the date of this Prospectus. To facilitate continuity, it is intended that a new prospectus will be issued on or before the expiry date of this Prospectus and each subsequent prospectus. The Corporations Act prohibits Mackay Sugar from processing Applications in the seven day period after the date of lodgement of this Prospectus with ASIC (**Exposure Period**). The Exposure Period may be extended by ASIC by up to a further seven days. Applications for Unsecured Notes received by Mackay Sugar during the Exposure Period will not be processed until after the expiry of the Exposure Period. No preference will be conferred on Applications received during the Exposure Period.

This Prospectus provides information for you to decide if you wish to invest in Mackay Sugar. Read this document in its entirety. Examine the assumptions and the risk factors that could affect the financial performance of Mackay Sugar. Consider these factors carefully in light of your personal financial circumstances. Seek professional advice from your accountant, stockbroker, lawyer or other professional adviser before deciding whether to invest. The Offer does not take into account the investment objectives, financial situation or needs of particular investors.

### **Defined words and expressions**

Some words and expressions used in this Prospectus have defined meanings. These words and expressions are capitalised and are defined in the Glossary (section 9).

### **No representations other than in this Prospectus**

You should rely only on the information in this Prospectus. No person is authorised to provide any information or to make any representations in connection with the offer of the Unsecured Notes which is not contained in this Prospectus. Any information or representations not contained in this Prospectus may not be relied upon as having been authorised by Mackay Sugar in connection with the Unsecured Notes. Except as required by law and only to the extent that it is required by law neither Mackay Sugar nor any other person warrants the future performance of the Unsecured Notes, Mackay Sugar or any return on any investment made by you under this Prospectus. The financial information provided in this Prospectus is for information purposes only and is not a forecast of operating results to be expected in future periods.

**Any implied forecast or projected financial information contained in this Prospectus has been provided by the Directors in good faith and based on trends prevailing up to the end of the financial period ended 31 May 2018. That information is provided without any assurance as to certainty or accuracy and should be regarded as no more than presumptive guidance. Such information has been prepared having reasonable regard for assumptions, trends and possible adverse circumstances, which historically, have occurred to affect the Company's profitability over past financial years.**

### **This Prospectus does not provide investment advice.**

The information provided in this Prospectus is not investment advice or financial product advice and has been prepared without taking into account your investment objectives, financial situation or particular circumstances (including financial and taxation issues). It is important that you read this Prospectus in full before deciding whether to invest in the Unsecured Notes and consider the risk factors in section 6 that could affect the performance of the Unsecured Notes or Mackay Sugar. You should carefully consider these risk factors in light of your investment objectives, financial situation and particular circumstances (including financial and taxation issues) before deciding whether to invest in the Unsecured Notes.

### **Restrictions on foreign jurisdictions**

This Prospectus does not constitute an offer in any jurisdiction in which, or to any person to whom, it would not be lawful to make such an offer. The distribution of this Prospectus in jurisdictions outside of the Commonwealth of Australia may be restricted by law, and persons who come into possession of it should seek advice and observe any such restrictions.

### **Currency**

Monetary amounts shown in this Prospectus are expressed in Australian dollars unless otherwise stated.

### **Photos and diagrams**

Photographs used in this Prospectus without descriptions are only for illustration. The people shown are not endorsing this Prospectus or its contents. Diagrams used in this Prospectus may not be drawn to scale. The assets depicted in photographs in this Prospectus are not assets of the Company unless otherwise stated.

**THIS DOCUMENT IS IMPORTANT AND YOU SHOULD READ IT CAREFULLY AND IN ITS ENTIRETY**

# Letter from the Chairman

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7 December 2018

Dear Investor

This Prospectus is to facilitate the continued offer of Unsecured Notes invested with Mackay Sugar.

The full document provides potential investors and their advisers with the relevant information required to make an investment decision regarding Unsecured Notes in Mackay Sugar. Details of the Company's operations, financial position and future plans are included to assist with your important decision.

Those considering Unsecured Notes as an investment are urged to read the full document and seek independent financial advice. Eligible Investors may apply for Unsecured Notes by completing and lodging the application form at the back of the Prospectus.

Mackay Sugar is a major producer of raw sugar in the Australian market. Over the past five seasons, up to 2017, the Company has produced an average of approximately 852,638 tonnes of IPS raw sugar and approximately 213,213 tonnes of molasses annually. Mackay Sugar also has interests in production of refined sugar through part-ownership of refineries at Racecourse in Mackay (Queensland), Yarraville (Victoria) and Auckland (NZ).

The 2018 season saw the Company continue its agreement with MSF Sugar Ltd for that company to process approximately 300,000 tonnes of cane at their Arriga mill under a toll crushing agreement.

The Racecourse Cogeneration Plant continues to export electricity into the national grid, providing a diversified income stream for Mackay Sugar.

Mackay Sugar also has a small interest in Racecourse Projects which is a farming business in the Mackay district which has invested capital in cane land development, in particular in the Blue Mountains area. Mackay Sugar is encouraging the growth of Racecourse Projects with a preferred focus on the development of new cane land with a resulting increase in throughput for Mackay area mills.

The Company has continued to prepare for possible changes in the industry marketing arrangements following the introduction of the Sugar Industry (Real Choice in Marketing) Amendment Act 2015 (Qld), which gives Growers the ability to choose the marketing entity for the sugar in which they have an economic interest. Arrangements have been established for the 2018 season with negotiations continuing to seek to agree with the bargaining representatives and raw sugar marketers to have long term arrangements in place for the 2019 season.

This has significantly changed the landscape for QSL and supports the establishment of QCS and the current marketing arrangements with Alvean Sugar S.L.

The Board appointed Corporate Advisor, Kidder Williams in August 2016 to review the Company's strategic funding initiatives and to assist the Board and senior management to formulate a range of funding options for the Company. Mackay Sugar is continuing with its approach of seeking to recapitalise the business.

Mackay Sugar is subject to a range of risks which apply to the sugar industry, including the risk of reduced cane supply, adverse fluctuations in world sugar prices and/or exchange rates, reduced output from the Racecourse Cogeneration Plant, renewal of the existing finance facilities and the cost of alternative financing in the event of the maturity and redemption of all the Unsecured Notes. These risks and others are discussed in more detail in section 6 of this Prospectus, which I encourage you to read carefully.

As Mackay Sugar's Chairman I thank Noteholders for their support.

Yours faithfully



**Mark Day**  
Chairman

# 1 Investment summary

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## 1.1 Offer highlights

<b>Offer price per Unsecured Note</b>	\$1.00.
<b>To whom the Offer is made</b>	Eligible Investors.
<b>Investment Term</b>	The Unsecured Notes are issued for a period to be selected from the Rate Sheet.
<b>Interest rate</b>	Interest accumulates from the Date of Investment. Each Investment Term has a specific interest rate as provided in the Rate Sheet that is issued by Mackay Sugar from time to time and which forms part of this Prospectus.
<b>Minimum investment amount under the Offer</b>	There is no minimum investment amount for 7 Day Call Unsecured Notes. The minimum investment is \$1,000 for each purchase of the Selected Term Unsecured Notes or 6, 12, 24 Month and 5 Year Unsecured Notes.
<b>Maximum investment amount under the Offer</b>	There is no maximum investment amount for Unsecured Notes.

Details regarding how you can apply for Unsecured Notes under the Offer are set out in section 2.3.

## 1.2 Important dates

<b>Event</b>	<b>Date</b>
Prospectus date	7 December 2018.
Offer opens	15 December 2018.
Offer closes	6 January 2020.
Acceptance of Applications	If your Application is declined, the application money will be returned to you within 14 days.

All dates and times are subject to change and are indicative only. The Company reserves the right to vary these dates and times without prior notice. It may close the Offer early, withdraw the Offer, or accept late Applications.

## 1.3 The Business

Mackay Sugar derives approximately 85% of its revenue from the production and marketing of raw sugar (see section 3.3).

Mackay Sugar also receives revenue from the sale of molasses and electricity generation as well as from supply of services to the sugar refinery at Racecourse mill (operated by Sugar Australia), and a number of other investments in associated companies and joint ventures (see sections 3.4 and 3.5).

## 1.4 Summary financial information

Detailed financial information is contained in section 5 of this Prospectus.

The historical financial information of Mackay Sugar for the financial periods ended 31 May 2016, 31 May 2017 and 31 May 2018 as reported in the financial statements are included in section 5.1. This financial information should be read in conjunction with the policies and accounting notes, as included in the full audited financial statements and found in the relevant annual report. A copy of Mackay Sugar’s 2016, 2017 and 2018 financial reports may be obtained, free of charge upon request, until the expiry date of this Prospectus (6 January 2020). Information on the financial performance of the Company and its strategic plan are included in sections 5.2 and 5.3.

Use of the proceeds raised under this Offer is outlined in section 1.7.

No material changes to the Company’s business have occurred since the 31 May 2018 balance date, except for the outlook on the operating performance of the Company referred to in the supplementary prospectus which was lodged with ASIC on 12 July 2018, being a supplementary prospectus to the original prospectus dated 5 December 2017 (**Supplementary Prospectus**). This Prospectus incorporates, by reference, information set out in that Supplementary Prospectus in accordance with section 712 of the Corporations Act. A copy of the Supplementary Prospectus is available on the Company’s website, or interested parties may obtain a copy of the Supplementary Prospectus from the company secretary of Mackay Sugar in accordance with section 712(5) of the Corporations Act. The Company also complies with ASIC’s good practice guidance for website disclosure (see section 8.5).

**1.5 ASIC Benchmarks**

ASIC has issued *Regulatory Guide 69: Debentures – improving disclosure for retail investors (Regulatory Guide)*. This Regulatory Guide sets out guidelines for improved disclosure to people investing in notes such as Unsecured Notes, while maintaining the flexibility of fundraising processes for companies raising funds.

The Regulatory Guide sets out benchmarks that can help retail investors assess the risk and reward prospects of investing in notes (such as Unsecured Notes). The following table describes those ASIC benchmarks and addresses how Mackay Sugar satisfies them and provides an explanation where the benchmark has not been satisfied.

Description of ASIC benchmark	How does Mackay Sugar satisfy this benchmark? If the benchmark is, or is not satisfied, Mackay Sugar’s explanation as to why.
<p><b>Benchmark 1: Equity ratio</b> An issuer (other than property developers) should maintain a minimum equity ratio of 8%.</p>	<p>Complied with. The financial statements for 31 May 2018 indicate that Mackay Sugar had an equity ratio of 41.8% which exceeds ASIC’s benchmark equity ratio of a minimum of 8%. Comparatively, for the period ended 31 May 2017, and based on audited financial statements, the calculated equity ratio was 41.4%.</p>
<p><b>Benchmark 2: Liquidity</b> An issuer should: (a) have cash flow estimates for the next three months; and (b) ensure that at all times it has cash or cash equivalents sufficient to meet its projected cash needs over the next three months.</p>	<p>Complied with. The management of Mackay Sugar prepares an annual cash flow estimate for the next financial year. Based on assumptions and considerations described in section 5.6, these estimates demonstrate that Mackay Sugar has on hand sufficient cash or cash equivalents to meet its projected cash needs over the next three months and for the remainder of the financial year. In the past 12 months, over</p>

**Section 1 – Investment summary**

Description of ASIC benchmark	How does Mackay Sugar satisfy this benchmark? If the benchmark is, or is not satisfied, Mackay Sugar’s explanation as to why.
	<p>75.1% of the funds invested in the Unsecured Notes have been rolled over. Mackay Sugar expects a continuing withdrawal rate from existing Noteholders with rollovers expected to be no greater than has been experienced in the last 12 months. For the past three years to 30 June 2018, Mackay Sugar has issued Unsecured Notes for terms of maturity ranging from 7 day call to 5 Years. The average annual ‘rollover’ rate of Noteholders across this three year period has been 80.0%. While Mackay Sugar is not required by its trust deed to maintain a minimum dollar value of its assets as liquid assets, disclosure is made that in the last three years to 30 June 2018, the level of end of month liquidity (based on monthly unaudited statements) averaged \$20.276 million and varied from between \$2.905 million and \$52.734 million per month.</p> <p>Mackay Sugar does not match the maturity of assets with the maturity of liabilities. It is expected that all projected cash requirements will be met from cash on hand or on call cash advance facilities. Estimates of rollover and retention rates take into consideration historical rates as well as assumptions on the cash flow of investors and the competitiveness of terms on offer. If rollover rates during the next three months were 20% less than the past three months for note funds not held on an “at call” basis, the projected cash requirements would be approximately \$0.43 million. This would be funded from surplus cash at hand or drawn from cash advance facilities. If rollover rates during the next three months were 20% less than the past three months for note funds held on an “at call” basis, the projected cash requirements would be approximately \$0.82 million. This would be funded from surplus cash at hand or drawn from cash advance facilities.</p> <p>Cash flow is forecast over various timeframes from daily for the next week forward, to monthly, to three monthly and to one year. Assumptions used are similar to those used for budgeting and management reporting purposes and are updated with the latest information at hand. Assumptions include the amount required for investment into capital projects and assets, USD vs AUD rates, sugar swap prices, advance programs, and available facilities.</p>

Description of ASIC benchmark	How does Mackay Sugar satisfy this benchmark? If the benchmark is, or is not satisfied, Mackay Sugar’s explanation as to why.
<p><b>Benchmark 3: Rollovers</b></p> <p>An issuer should clearly disclose its approach to rollovers, including:</p> <ul style="list-style-type: none"> <li>(a) what process is followed at the end of the investment term; and</li> <li>(b) how it informs those rolling over or making further investments of any current prospectus and continuous disclosure announcements.</li> </ul>	<p>Complied with.</p> <p>Sections 2.10 and 7.3 explain Mackay Sugar’s position that Noteholders holding 7 Day Call Unsecured Notes may request their 7 Day Call Unsecured Notes to be redeemed at any time with the delivery of written notice to Mackay Sugar. Holders of Selected Term Unsecured Notes and 6, 12, 24 Month and 5 Year Unsecured Notes are to give written notice to Mackay Sugar at least ten Business Days prior to the Maturity Date for redemption, if redemption is required. Unless written notice/instructions are received by Mackay Sugar, then Maturing Money will automatically be reinvested in new Unsecured Notes for the same term as the prior investment and the interest payable on the Maturing Money will be invested in 7 Day Call Unsecured Notes. The interest rate applicable will be as listed in the then current Rate Sheet. At least 15 days before maturity, Mackay Sugar issues a maturity reminder notice advising the investor of the pending maturity of the investment and the options available, including how the investment will be treated if no instructions are given to Mackay Sugar. The maturity reminder notice also refers the investor to any current prospectus and continuous disclosure announcements. The investor also receives an Application Form (if they wish to change the term or amount of the maturing investment) as well as the latest Rate Sheet.</p>
<p><b>Benchmark 4: Debt Maturity</b></p> <p>An issuer should disclose:</p> <ul style="list-style-type: none"> <li>(a) an analysis of the maturity profile of interest-bearing liabilities (including notes on issue) by term and value; and</li> <li>(b) the interest rates, or average interest rates, applicable to its debts.</li> </ul>	<p>Complied with.</p> <p>The table below ‘Benchmark 4: Table of debt maturity’ shows this information by reference to the term of the interest bearing liabilities in place and applicable maturity dates (based on quarters) up to the end of the fourth quarter in 2023, i.e. 31 December 2023.</p>
<p><b>Benchmark 5: Loan Portfolio</b></p> <p>An issuer who directly on-lends funds, or indirectly on-lend funds through a related party, should disclose the current nature of its loan portfolio.</p>	<p>Not applicable.</p> <p>Mackay Sugar does not need to comply with this benchmark because Mackay Sugar does not on-lend funds through a related party. See also section 5.6 under the heading ‘Credit ratings’.</p>

**Section 1 – Investment summary**

<b>Description of ASIC benchmark</b>	<b>How does Mackay Sugar satisfy this benchmark? If the benchmark is, or is not satisfied, Mackay Sugar’s explanation as to why.</b>
<p><b>Benchmark 6: Related Party Transactions</b> An issuer who on-lends funds should disclose its approach to related party transactions.</p>	<p>Not applicable. Mackay Sugar does not need to comply with this benchmark because Mackay Sugar does not on-lend funds to related parties. See also section 5.6 under the heading ‘Credit ratings’.</p>
<p><b>Benchmark 7: Valuation</b> This benchmark only applies to issuers who lend money for property related activities.</p>	<p>Not applicable. Mackay Sugar does not lend money for property related activities.</p>
<p><b>Benchmark 8: Lending Principles – loan to valuation ratios</b> This benchmark only applies to issuers who on-lend, directly or indirectly through a related party, money for property related activities.</p>	<p>Not applicable. Mackay Sugar does not on-lend money in relation to property related activities.</p>

## Benchmark 4: Table of interest bearing debt maturity – as at 21 November 2018

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Term		7 Day Call		6 months		12 months		24 months		36 months		60 months		Total	
Qtr	Year	\$Amount	%p.a.	\$Amount	%p.a.	\$Amount	%p.a.	\$Amount	%p.a.	\$Amount	%p.a.	\$Amount	%p.a.	\$Amount	%p.a.
Q4	2018	3,009,748	2.41	100,000	4.25	50,000	5.00	-	-	-	-	-	-	3,159,748	2.51
Q1	2019	-	-	2,221,755	4.25	100,052,181	4.44	3,269	5.25	-	-	1,159,598	7.00	103,436,803	4.46
Q2	2019	-	-	173,360	4.25	50,622,675	7.72	-	-	-	-	-	-	50,796,036	7.70
Q3	2019	-	-	-	-	263,023	5.00	-	-	-	-	-	-	263,023	5.00
Q4	2019	-	-	-	-	266,029	5.00	-	-	-	-	120,000	7.00	386,029	5.62
Q1	2020	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Q2	2020	-	-	-	-	-	-	-	-	-	-	10,000	6.25	10,000	6.25
Q3	2020	-	-	-	-	-	-	53,574	5.25	-	-	-	-	53,574	5.25
Q4	2020	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Q1	2021	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Q2	2021	-	-	-	-	-	-	-	-	-	-	55,000	6.25	55,000	6.25
Q4	2023	-	-	-	-	-	-	-	-	-	-	5,641	6.00	5,641	6.00
<b>Total</b>		<b>3,009,748</b>	<b>2.41</b>	<b>2,495,115</b>	<b>4.25</b>	<b>151,253,908</b>	<b>5.54</b>	<b>56,843</b>	<b>5.25</b>			<b>1,350,239</b>	<b>6.96</b>	<b>158,165,853</b>	<b>5.47</b>

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1.6 Key risks and dependencies

You should consider the risks identified in section 6 when deciding whether to invest in Mackay Sugar, and particularly the following key risks:

Key risk	Comment
<b>Cane supply</b>	The four mills operated by Mackay Sugar are reliant upon the supply of sugar cane from Growers. Any reduction in the supply of sugar cane to Mackay Sugar (including for example through unseasonal weather, disease, pests and natural disasters) would reduce the amount of raw sugar, molasses and electricity produced and adversely affect the business of Mackay Sugar.
<b>Raw sugar prices</b>	Fluctuations in the balance of global supply and demand of raw sugar have the potential to negatively impact Mackay Sugar’s financial position. Mackay Sugar’s revenues rely heavily on world market raw sugar prices (which are denominated in USD) with the principal price discovery mechanism being the ICE raw sugar futures market. Mackay Sugar is exposed to fluctuations in raw sugar prices and seeks to manage its raw sugar price risk under its raw sugar price risk management policy and a variety of hedging instruments.
<b>Exchange rate fluctuation</b>	Fluctuations in the AUD/USD exchange rate may result in gains or losses which may impact Mackay Sugar’s financial performance.
<b>Racecourse Cogeneration Plant</b>	The Racecourse Cogeneration Plant may not be capable of producing the anticipated outputs or, due to regulatory change, may not be as profitable. This may negatively affect Mackay Sugar’s financial performance.
<b>Alternative financing</b>	<p>In the event of maturity and redemption of all or a significant portion of the Selected Term Unsecured Notes, the 6, 12, 24 Month or 5 Year Unsecured Notes, and the Corporate Bonds, and upon redemption of all the 7 Day Call Unsecured Notes, Mackay Sugar would need to arrange for alternative financing to meet its repayment obligations.</p> <p>The Company has seen an increase in withdrawal of USNs over the last 12 months and, with the Corporate Facilities currently due in March 2019 and the Corporate Bonds currently due in April 2019, this increases the risk of repayment default if a significant portion of the USNs become due for payment within that period.</p> <p>There are no guarantees that the Company will be able to raise additional debt or equity funding, or that such funding will be available on suitable terms. Inability to raise additional debt or equity would negatively impact the Company’s operations and in particular its ability to refinance the Corporate Facilities due in March 2019 and the Corporate Bonds due in April 2019.</p> <p>Should the Company fail to secure alternative financing, the Company may be unable to repay the face value of the Unsecured Notes on the Maturity Date and may be at risk of default.</p>
<b>Marketing</b>	The withdrawal from the QSL marketing arrangements by a number of milling companies, including recently Mackay Sugar, may impact on the future performance of QSL’s marketing, price risk management, finance and logistics activities on behalf of the sugar industry.

**Section 1 – Investment summary**

<b>Key risk</b>	<b>Comment</b>
<b>Sugar Australia</b>	<p>Mackay Sugar has a 25% interest in Sugar Australia and this investment represents risk to Mackay Sugar including the risk of low profit from refinery operations and high joint venture cash calls as set out in section 6.2 (Refining investments) impacting on Mackay Sugar’s cash flow. In the financial year ended 31 May 2018 the Company recorded an impairment to the Sugar Australia investment of \$6.9m.</p> <p>The Company expects to meet all expected joint venture cash calls for the year. However, any significant impact on Mackay Sugar’s cash flow from increased cash calls may impact on its ability to repay the face value of the Unsecured Notes on the Maturity Date.</p>
<b>Environmental</b>	<p>In the past year the Company has been exposed to number of environmental non-compliance issues and enforcement actions as set out in section 6.2. In the event that Mackay Sugar is not able to meet its environmental obligations it could be exposed to further enforcement actions including penalties.</p>
<b>Interest bearing debt maturity profile</b>	<p>In the event that the Corporate Facilities of \$100.0 million and the Corporate Bond of \$50 million are not extended beyond their current due dates of 2 March 2019 and 5 April 2019 respectively, it is unlikely that the Company will be able to repay these facilities by the current maturity date. If this were to occur Noteholders may not receive the return of the face value of the Unsecured Notes.</p> <p>Subject to the progress on the Recapitalisation Plan the Company will commence a formal process seeking an extension to the maturity date of the Corporate Facilities and the Corporate Bond. However, there is no certainty that such extension will be approved by Mackay Sugar’s senior lenders and bond holders.</p> <p>Any extension of the Corporate Bond requires 75% or more of the (\$50m face value) aggregate principal amount outstanding to vote in favour of the resolution. There is a risk that any request for the Corporate Bond holder resolution will not be passed and that the maturity date of the Corporate Facilities will not be extended.</p>
<b>Subordination</b>	<p>The Unsecured Notes shall be subordinated to Finance Debt in accordance with the terms of the Trust Deed.</p> <p>‘Finance Debt’ is defined as all amounts which Mackay Sugar may owe to a Finance Creditor under or in relation to a Finance Arrangement other than a Noteholder under the Trust Deed, whether those amounts comprise principal, interest or any other amount owing under a Finance Arrangement, and whether that amount is or becomes owing now or in the future by Mackay Sugar alone or together with one or more others or actually or contingently.</p> <p>‘Finance Arrangement’ is defined as including all of the documents and agreements which together constitute any arrangement for the borrowing or raising of moneys secured against all or any material part of the property or rights of Mackay Sugar or its subsidiaries.</p> <p>Subject to the Recapitalisation Plan, in the event of a failure by Mackay Sugar to obtain an extension to the maturity date of the Corporate Facilities and Corporate Bond or some other form of adequate alternative financing, under an administration process or insolvency event the Unsecured Notes will be subordinated to Finance Debt and Noteholders may not receive the return of the</p>

Key risk	Comment
	face value of the Unsecured Notes.
<b>Recapitalisation Plan</b>	The Company has commenced the Recapitalisation Plan to raise additional capital whilst it continues to investigate other options to improve its financial position, but at this stage there is no certainty that any transaction will proceed. Future extensions to the Corporate Facilities and Corporate Bonds may be required to provide the Company with sufficient time to implement its Recapitalisation Plan and provide the funds to repay or refinance these facilities. Should the Company be unable to secure an investor or buyer for the business, it is at continued risk of default under the Corporate Facilities, Corporate Bonds and Unsecured Notes, which could ultimately result in administration or liquidation of the Company.
<b>2018 Financial Statements – Auditor’s Opinion</b>	In their report dated 4 October 2018, the Company’s auditors drew attention to the significant deficiency in net current assets of \$157 million, and the uncertainty of whether the Company would be able to continue as a going concern without the continued support of the Company’s financiers. If the maturity date of the Corporate Facilities and Corporate Bonds are not extended beyond their current maturity dates, or the Company fails to successfully implement the Recapitalisation Plan, the Company may be required to release assets and extinguish liabilities other than in the normal course of business and at amounts different to those stated in the financial accounts.  If the Company were to cease as a going concern then it may not be able to repay the face value of the Unsecured Notes.

### 1.7 Purpose of the Offer and utilisation of funds

The Company is currently producing sufficient revenues and has bank finance facilities available to meet its operational requirements. It is the Board’s intention that the Offer proceeds will firstly be used to meet the costs of the Offer and then be used in the business of Mackay Sugar as general working capital or as the Board may determine from time to time. There is no restriction on the purposes for which Mackay Sugar may use funds advanced.

The Company does not use funds raised from the issue of Unsecured Notes for other purposes such as to on-lend funds or for loans to related parties. Further, the Company does not utilise funds for the development of property where Mackay Sugar is the mortgagee or for other purposes unless any loan or expenditure of funds is directly connected to Mackay Sugar’s business. The Company currently has sufficient working capital to carry out its objectives, detailed in this Prospectus.

### 1.8 Trust deed

The Unsecured Notes are regulated under the terms of the Trust Deed. The Trustee is acting as trustee under the Trust Deed. The Trustee has obligations and duties under the Trust Deed and the Corporations Act. Neither the Trustee nor any of its directors or officers guarantees the performance by Mackay Sugar of its obligations under the Trust Deed or the conditions of the Unsecured Notes. The Trustee’s role in relation to the preparation and the issue of this Prospectus and the Unsecured Notes is limited as further described in section 7.3.

## 1.9 Corporate Bonds

Mackay Sugar issued on 20 March 2013 \$50 million of Corporate Bonds with a five year investment term. The term of the Corporate Bonds was extended in April 2018 for a further 12 months. The Corporate Bonds are regulated under the terms of the BNY Trust Deed. BNY Trust Company of Australia Limited is acting as trustee under the BNY Trust Deed. For further information regarding the Corporate Bond Offer see section 7.5 'Specific Terms'.

## 1.10 Directors and key management

### *Directors*

Mark Raymond Day – Executive Chairman and Chief Executive Officer – Non Grower Director

Paul Anthony Manning – Deputy Chairman – Grower Director

Andrew Shane Cappello – Grower Director

Maurice Clement Maughan – Non Grower Director

Lawrence Gerard Bugeja – Grower Director

Lee Michael Blackburn – Grower Director

Richard Maitland Findlay – Non Grower Director

Anthony Robert Bartolo – Grower Director

### *Key management*

David Said – Chief Financial Officer

Donna Rasmussen – Company Secretary

Peter Gill – General Manager Commercial and Legal

Jason Walton – Manager Cane Supply & Logistics

Carissa Mansfield – Group Manager – HR/HSE

Tony Lloyd – Group Asset Manager

Peter Flanders – Factory Manager - Farleigh

Mark Gayton – Factory Manager – Racecourse

Craig Wood – Factory Manager – Marian

Phil Miskin – Factory Manager - Mossman

Further details are set out in sections 4.2 and 4.3.

## 1.11 Related party transactions

Transactions between related parties are made on an arm's length basis both at normal market prices and on terms and conditions no more favourable than those available to other parties unless otherwise stated.

## 1.12 Summary only

This summary is not intended to provide full details of the investment opportunity. Investors must read this Prospectus in full to make an informed investment decision.

## **2 Details of the Offer**

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### **2.1 Description of the Offer**

This Prospectus has been prepared to allow Mackay Sugar to offer new Unsecured Notes. The issue price for each Unsecured Note is \$1.00.

The Unsecured Notes attract a rate of interest on the Principal Amount. The rate is determined from time to time and published in the Rate Sheet and on the Company's website, which forms part of this Prospectus.

The Investment Term of the Unsecured Notes will be at the investor's election, with a choice of a Selected Term Unsecured Note (with a duration period and interest rate specified in the Rate Sheet) or on a 7 Day Call basis or for terms of 6, 12, 24 months or 5 Years from the Date of Investment. A summary of the terms of the Unsecured Notes is set out below, and for further details see section 7.3.

### **2.2 Effect on capital structure**

As at the date of this Prospectus, the Company currently has:

- (a) 212,879,330 fully paid Investment Shares; and
- (b) 816 Voting Shares.

Currently no options to acquire Shares in the Company have been granted. The issue of Unsecured Notes under this Prospectus will not have any effect on the number of Investment Shares or Voting Shares.

As at 31 May 2018, an amount of \$10.1 million, being \$9.9 million in Unsecured Notes and \$0.2 million in the Mackay Sugar IBD Scheme, was invested with Mackay Sugar. The \$10.1 million represents a decrease of 44.4% in the amount invested compared with 31 May 2017. The Mackay Sugar IBD Scheme is no longer open for deposits.

As at 31 May 2018, an amount of \$50 million was also invested in Mackay Sugar's Corporate Bonds. For further information regarding the Corporate Bond Offer see section 7.5 'Specific Terms'.

### **2.3 Application for Unsecured Notes**

If you are an Eligible Investor, to apply for Unsecured Notes you must complete the Application accompanying this Prospectus. By lodging an Application, you acknowledge that you have received and read this Prospectus. Completed Applications and accompanying cheques or requests to apply the Existing Deposit Amounts to the Unsecured Notes may be posted to Mackay Sugar at PO Box 5720, Mackay Mail Centre, Queensland or delivered in person to any of:

- (a) Farleigh mill, Armstrong Street, Farleigh;
- (b) Racecourse mill, 26277 Peak Downs Highway, Mackay;
- (c) Marian mill, Anzac Avenue, Marian;
- (d) Pleystowe mill, Eungella Road, Pleystowe; and
- (e) Mossman mill, Mill Street, Mossman.

Applications for Unsecured Notes must be for the minimum investment amount described in section 2.4. There is no upper limit on the number of Unsecured Notes for which you may apply. You must pay the total application amount on application or request that the application amount be applied from your Existing Deposit Amount. The entry on the Register can only be made when the full application amount has been received or the Existing Deposit Amount is applied to the acquisition of the Unsecured Notes.

### **2.4 Minimum investment**

There is no minimum investment for the purchase of 7 Day Call Unsecured Notes. The minimum investment is \$1,000 for each purchase of Selected Term Unsecured Notes or 6, 12, 24 Month and 5 Year Unsecured Notes.

### **2.5 Acceptance of Applications**

Mackay Sugar has the sole discretion to issue Unsecured Notes in accordance with an Application, to decline any Application, or to issue a lesser number of Unsecured Notes than those applied for. To the extent that Applications are unsuccessful, the application money will be returned within 14 days of the date on which the Application was declined by Mackay Sugar.

### **2.6 Note Certificates**

Upon acceptance of an Application for Unsecured Notes other than 7 Day Call Unsecured Notes, Mackay Sugar will issue a Note Certificate to the Noteholder.

### **2.7 Holding statements**

Upon acceptance of an Application for a 7 Day Call Unsecured Note, a cash receipt will be issued. Noteholders will receive biannual statements showing movements and balances for all Unsecured Notes held after the calculation of interest as outlined in section 2.8.

### **2.8 Calculation and payment of interest on Unsecured Notes**

A Rate Sheet will be circulated by Mackay Sugar from time to time. The Unsecured Notes will accrue interest as listed in the Rate Sheet, and this may be different for each Investment Term.

The interest is calculated daily from the Date of Investment until the Maturity Date and, unless the Rate Sheet otherwise specifies, is paid to Noteholders at the end of each Calculation Period in arrears and/or on the Maturity Date, whichever date is first. Mackay Sugar will use its best endeavours to ensure that interest payments are made to Noteholders within 14 days and not later than 90 days after the end of each Calculation Period or the Maturity Date.

If the interest accrued is not paid to the Noteholders within 14 days of the Due Date, then the Principal Amount and any interest payable will continue to earn interest at the rate per annum set out in the Rate Sheet applicable to that Unsecured Note until the Principal Amount and any interest accrued are repaid.

### **2.9 Variation of interest rates and early redemption penalties**

Mackay Sugar reserves the right during the currency of this Prospectus to increase or decrease periodically all or any of the interest rates or early redemption penalties relating to the Unsecured Notes offered by this Prospectus. In doing so, Mackay Sugar has adopted the ASIC *Corporations (Debenture Prospectuses) Instrument 2016/75 (Instrument)* issued on 9 March 2016.

In adopting the Instrument, Mackay Sugar has declined to specify the interest rates and redemption penalties in this Prospectus and in the Applications accompanying this Prospectus on the following conditions:

- (a) details of interest rates and early redemption penalties will be determined periodically and may be obtained during business hours by contacting Mackay Sugar by telephone (07) 4953 8200, facsimile (07) 4953 8888 or e-mail [unsecurednotes@mkysugar.com.au](mailto:unsecurednotes@mkysugar.com.au). In addition, the current interest rates and early redemption penalty information will be posted on Mackay Sugar's website [www.mkysugar.com.au](http://www.mkysugar.com.au) and will accompany each copy of the Prospectus; and
- (b) for Selected Term Unsecured Notes, you must specify in the Application the investment term required and the corresponding rate of interest shown in the then current Rate Sheet. For 7 Day Call Unsecured Notes and 6, 12, 24 Month or 5 Year Unsecured Notes, you must also specify in the Application the rate of interest for the Unsecured Notes purchased as listed in the then current Rate Sheet. Mackay Sugar undertakes that if the Application specifies:
  - (i) no interest rate;
  - (ii) an interest rate which differs from the interest rate currently offered by Mackay Sugar for Unsecured Notes of that term; or
  - (iii) no chosen Investment Term for a Selected Term Unsecured Note,then Mackay Sugar will at its option:
  - (iv) return the investment moneys to the investor in full, without interest, within 14 days of lodgement; or
  - (v) do any of the following:
    - (A) if no term is specified in the Application for a Selected Term Unsecured Note, treat the Application as if one month were the specified term;
    - (B) issue Unsecured Notes to the Noteholder for the term specified in the Application at the rate which it currently offers for Unsecured Notes of that term;
    - (C) notify the Noteholder that the Unsecured Notes issued will be redeemed if the Noteholder gives notice to Mackay Sugar requiring it to be redeemed within 14 days after Mackay Sugar receives the notification; or
    - (D) on receipt of a notice requiring the Unsecured Notes to be redeemed, pay to the Noteholder an amount equal to the investment and interest at the rate applicable to the Unsecured Notes calculated from the Date of Investment.

## **2.10 Redemption of Unsecured Notes on maturity**

A request for the 7 Day Call Unsecured Notes to be redeemed may be made at any time with the delivery of written notice to Mackay Sugar. For Selected Term Unsecured Notes and for 6, 12, 24 Month and 5 Year Unsecured Notes, the Noteholder must deliver written notice to Mackay Sugar advising that they wish to redeem the Unsecured Notes at least ten Business Days prior to the Maturity Date. If no instructions are received by Mackay Sugar, then the Maturing Money will be re-invested in new Unsecured Notes for the same term as the prior investment and the interest payable on the Maturing Money will be invested in 7 Day Call Unsecured Notes. The interest rate applicable to such re-investment will be the rate that is listed in the then current Rate Sheet.

Mackay Sugar must use its best endeavours to pay to the Noteholder the Principal Amount of the Unsecured Notes due for redemption on the Due Date, together with any interest accrued to that date. Mackay Sugar must pay all funds due under this clause to the Noteholder within 90 days of the Due Date. If the Principal Amount and any interest accrued are not paid to the Noteholders within 14 days of the Due Date, then the Principal Amount and any interest payable will continue to earn interest at the rate per annum set out in the Rate Sheet applicable to that Unsecured Note until the Principal Amount and any interest accrued are repaid.

### **2.11 Redemption of Unsecured Notes prior to maturity**

Mackay Sugar will consider the early redemption of Selected Term Unsecured Notes and 6, 12, 24 Month and 5 Year Unsecured Notes under the following circumstances:

- (a) in the event of the death of a sole Noteholder, the whole or any part of the Unsecured Notes will be repaid to the legal personal representative of the Noteholder; or
- (b) where the Noteholder provides a written request outlining unforeseen or exceptional circumstances of hardship and requests repayment of their Unsecured Notes prior to maturity.

Early redemption will be subject to:

- (a) the circumstances involved and will be at the sole discretion of Mackay Sugar; and
- (b) an early redemption fee and/or a reduced interest rate to what was current at the Date of Investment.

For Selected Term Unsecured Notes and 6, 12, 24 Month and 5 Year Unsecured Notes, if Mackay Sugar chooses to permit early redemption, then such Unsecured Notes will be redeemed (taking into consideration the applicable early redemption penalties) within seven days after Mackay Sugar makes its decision to permit early redemption. Early redemption of 7 Day Call Unsecured Notes is not permitted.

Mackay Sugar may at its discretion redeem any Unsecured Note either with or without payment of a premium (including additional interest) upon giving 30 days' notice to a Noteholder.

### **2.12 Transferability of the Unsecured Notes**

There is no established secondary market for the Unsecured Notes. Noteholders may not transfer their Unsecured Notes to any other person.

### **2.13 Priority**

Interest payments will be paid to Noteholders, in any period, prior to any dividends being paid to Shareholders. In the event of a winding-up of Mackay Sugar, Noteholders will rank for payment behind secured creditors, but equally with unsecured creditors and in priority to Shareholders.

### **2.14 Taxation**

The interest on Unsecured Notes will generally constitute assessable income for income tax purposes in the hands of Noteholders when it is received. Accordingly, each interest payment received by a Noteholder over the Investment Term will be assessable during the financial year in which the payment is received.

All Eligible Investors should seek and rely on their own advice regarding the possible tax consequences of accepting or declining the Offer. Neither Mackay Sugar nor any of its Directors or officers, nor its taxation or other advisers, accepts any liability or responsibility in respect of any statement concerning taxation consequences, or in respect of the taxation consequences themselves.

**2.15 Brokerage and stamp duty**

No brokerage or stamp duty is payable by Noteholders on the issue of the Unsecured Notes.

**2.16 Entry and exit fees**

No fees are payable by Noteholders except where there is early redemption.

**2.17 Conversion of deposits in the Mackay Sugar IBD scheme to Unsecured Notes**

If you have an existing deposit in the Mackay Sugar IBD Scheme you can invest your Existing Deposit Amount in Unsecured Notes upon completion of an Application. In order to invest the Existing Deposit Amount in Unsecured Notes, you must submit an Application to Mackay Sugar. If Eligible Investors submit an Application for a lesser amount than the Existing Deposit Amount, then Mackay Sugar will return to them any part of the Existing Deposit Amount that is not invested in Unsecured Notes.

From the date of Conversion, no further deposits have been accepted in the Mackay Sugar IBD Scheme. Money that remains in the Mackay Sugar IBD Scheme following Conversion, will earn interest until such time as it is withdrawn from the Mackay Sugar IBD Scheme. The rate is determined from time to time and published in the Rate Sheet on the Company's website.

**2.18 Enquiries**

Further information about the issue of Unsecured Notes can be obtained by contacting Mackay Sugar's company secretary Donna Rasmussen on 07 4953 8241 or email to [d.rasmussen@mkysugar.com.au](mailto:d.rasmussen@mkysugar.com.au).

## **3 Mackay Sugar business**

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### **3.1 History of Mackay Sugar**

The Company today known as Mackay Sugar was initially formed as Mackay Sugar Cooperative on 1 February 1988 as a result of a merger by five Mackay district cooperatives (Marian, Racecourse, Cattle Creek, North Eton and Farleigh mills) and the acquisition of Pleystowe mill.

In 2008, Mackay Sugar converted from a cooperative and was registered as a public company known as Mackay Sugar Limited.

Mackay Sugar has established a wholly owned subsidiary QCS, to enable Mackay Sugar to pursue opportunities to achieve higher returns from its sugar pricing function, to provide better services for its Growers, to provide pricing alternatives to Growers and to position Mackay Sugar to manage the export of its raw sugar production should the current arrangements with QSL change. QCS also undertakes Mackay Sugar's raw sugar and molasses marketing activities.

### **3.2 Cane supply**

Mackay Sugar's four sugar mills rely on a supply of sugar cane from Growers. The Company's sugar production in the Mackay district currently comes from a cultivated area of approximately 82,000 hectares, of which cane was harvested from approximately 66,900 hectares in the 2017 season (which was impacted by approximately 4,100 hectares of standover cane). The Company's sugar production in the Mossman district currently comes from a cultivated area of approximately 15,800 hectares from the coastal and Tableland Growers, of which cane is harvested from approximately 12,900 hectares of land.

Over the past five seasons up to 2017, the Company has produced an average of approximately 852,638 tonnes of IPS raw sugar and approximately 213,213 tonnes of molasses annually.

Details of the Cane Supply and Processing Agreements, pursuant to which Growers deliver cane to Mackay Sugar, are summarised at section 7.7. In general, the amount of good quality agricultural land available for cane production can have an impact on tonnes of cane supplied to Mackay Sugar. The quantity and quality of cane supplied must be sufficient to ensure the continued viability of Mackay Sugar's milling operations.

To maximise the volume of cane received, Mackay Sugar has three programs, 'Secure the Future', the 'Plant Loan Scheme' and the 'Lease Facilitation Scheme'. Certain conditions must be met before Growers can participate in these schemes.

Of the approximately 1.12Mt available to the Company in the Mossman and Tableland areas, Mossman mill will process approximately 820,000 tonnes of cane in the 2018 season. In accordance with the toll crushing agreement in place with MSF for the 2016, 2017 and 2018 seasons Mackay Sugar nominated for MSF to process approximately 300,000 tonnes of cane at their Arriga mill for the 2018 season. This has the benefit of providing better crushing season outcomes for both parties.

### **3.3 Production and sales**

Mackay Sugar receives revenue from the sale of raw sugar, molasses and electricity generation as well as from the supply of services to the sugar refinery at Racecourse mill operated by Sugar Australia.

### Section 3 - Mackay Sugar - the business and opportunities

Under the terms of the Cane Supply and Processing Agreement with Growers in the Mackay district, 37.7% of revenue earned from the sale of raw sugar, molasses and electricity production (other than electricity products from the Racecourse Cogeneration Plant) is retained by Mackay Sugar. For this purpose the revenue is calculated net of all direct pricing expenses, which include marketing expenses for QSL and Mackay Sugar, storage of sugar, funding costs of the advances program and other expenses applicable to all sugar sales.

Under the terms of the Cane Supply and Processing Agreement with Growers in the Mossman district and from the Atherton Tableland, the proceeds from the sale of raw sugar produced from cane supplied by the Growers is shared, with approximately two thirds of the proceeds being paid to the Growers and one third retained by Mackay Sugar. There is no mechanism in the CSPAs for sharing of proceeds from sale of electricity and molasses with the Mossman and Tableland Growers.

Mackay Sugar also operates a sugar quality management program. Routine sampling and testing of raw sugar for a number of defined quality criteria is undertaken as part of the quality management function.

#### ***Raw sugar***

Raw sugar is sold either to the domestic or export market. Mackay Sugar also supplies raw sugar to Sugar Australia. Any raw sugar which is in excess of the Company's domestic sales is supplied for export.

QSL has, since the 2006 season, entered into RSSAs with various Queensland sugar mills under which QSL manages the export of raw sugar. Under these arrangements, sales revenue and the associated costs and risks are allocated to various pricing pools on a shared basis (between the raw sugar suppliers that have entered into an RSSA with QSL). QSL utilises a standard form RSSA that it offers to all raw sugar suppliers. These agreements are for a rolling term of three years with the term being extended by 12 months on 30 June each year.

Upon the establishment of QCS, Mackay Sugar entered into a new RSSA with QSL. Mackay Sugar novated its remaining benefits and obligations under its RSSA with QSL to QCS. The current RSSA between QCS and QSL is summarised in section 7.13. Similar RSSAs are in place between other raw sugar suppliers and QSL.

A raw sugar supplier may terminate raw sugar supply between it and QSL at any time, effective at 30 June, three years after the date of notice of termination of the agreement. Mackay Sugar provided notice to QSL on 1 December 2017 that it would not be further extending the RSSA. As a result Mackay Sugar's RSSA will now expire on 30 June 2020.

For the balance of the term of the RSSA, Mackay Sugar will continue to have access to its miller economic interest raw sugar for marketing purposes. This gives Mackay Sugar the opportunity to have direct access to markets for sale of part of its raw sugar production each year.

QCS, a subsidiary of Mackay Sugar, markets Mackay Sugar's miller economic interest sugar through an agreement with Alvean Sugar S.L.

#### ***Grower Choice Legislation***

In December 2015 the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* (Qld) was passed in the Queensland Parliament bringing in a new era for raw sugar marketing in Australia. The 2017 season saw the start of a competitive pricing and pooling environment with a focus on enabling Growers to more actively manage their pricing decisions. There is no industry consensus about the single 'best' marketing system in the new environment.

### Section 3 - Mackay Sugar - the business and opportunities

In general, the Grower Choice legislation provides as follows:

- (a) after the commencement date any grower negotiating a new supply contract with a miller can refer disputes over the terms of that contract to arbitration;
- (b) various sections of the Grower Choice legislation, dealing with terms of supply contracts and the marketing/sale of on-supply sugar first applied to Mackay Sugar's existing CSPAs for the 2017 season; and
- (c) if a grower seeks a new CSPA and the miller and grower don't agree on the terms the grower (but not the miller) can refer the disagreement to arbitration. The parties will be bound by the decision of the arbitrator.

Whilst Canegrowers and ACFA have acted as Bargaining Representatives for the Growers for many years, a number of Growers have now advised Mackay Sugar that they wish to nominate alternative Bargaining Representatives. Following consultation with the various Bargaining Representatives, Mackay Sugar has incorporated the appropriate changes into the CSPAs to address the Grower Choice requirements for the 2018 season which largely reflect the existing marketing arrangements through QCS, QSL and the supply of sugar to Sugar Australia. Consultation with the various Bargaining Representatives is currently underway as to the long term changes which are required to be made to the CSPAs for Grower Choice which are to apply for the 2019 season and beyond.

Mackay Sugar will continue to consult with the Bargaining Representatives and their nominated sugar marketers to give effect to the Grower Choice legislation.

If Growers supplying Mackay Sugar choose to market with a marketing entity:

- (a) Mackay Sugar will need to agree to payment and delivery terms with the marketing entity;
- (b) the Mackay Sugar cane pay system will need to be amended to deal with multiple marketing arrangements;
- (c) the marketing entity may not offer an advance payment program or if they do it may not be the same as offered by other marketing entities; and
- (d) the marketing entity will need to agree storage and handling arrangements for port access.

There are also potential issues with segregation of sugar at the terminals through the season where individual contracts are in place with different marketing entities.

Mackay Sugar currently supplies 375,000 - 450,000 tonnes of raw sugar to Sugar Australia. This will be at risk if Growers currently supplying to Mackay Sugar elect to have the sugar in which they have an economic interest marketed by other entities.

If the majority of Growers supplying Mackay Sugar agree to continue with their current CSPAs and choose to market in similar proportions through QCS and QSL, then little should change. This is the case for the 2018 season whereby Mackay Sugar has implemented changes to the CSPA which apply for the 2018 season and which largely reflects the existing marketing arrangements through QCS, QSL and the supply of sugar to Sugar Australia. Agreements for the 2019 season and beyond are currently being negotiated.

In addition to the Grower Choice legislation, the Federal Government legislated the Code of Conduct in April 2017 for the supply of cane or the on supply of sugar. The Code was also to ensure that supply contracts between growers and mill owners have the effect of guaranteeing a

### Section 3 - Mackay Sugar - the business and opportunities

grower's choice of the marketing entity for the grower economic interest sugar manufactured from the cane the grower supplies. The Code of Conduct does not impact to any greater extent in the Mackay region compared to growers in other sugar regions.

#### ***Raw sugar price***

Mackay Sugar, through QCS, manages its raw sugar price and foreign currency exposures under its raw sugar price risk management policy which authorises specified company officers to undertake various price and currency hedging strategies. Mackay Sugar hedges its raw sugar prices using a variety of hedging instruments including:

- (a) Short Term OTC products;
- (b) Long Term OTC products;
- (c) ICE derivatives; and
- (d) related currency hedges.

The raw sugar price is volatile and can be impacted by many factors including global sugar production and consumption volumes and general sentiment to commodity markets.

It has been a heavy transition from global shortfalls to surplus stocks over the past 12 months. Sugar prices have fallen below the cost of production for producers across the regions and remain likely to stay there in the near term.

A return to surplus stocks would suggest we will see a downturn in output for many of the producing regions. However, this is unlikely in some regions as some sugar producing regions, namely India and Pakistan have moved to support further supply, under local agricultural subsidy schemes. In the current environment of incentivised sugar production this subsidised production is severely impacting global sugar prices.

As in the previous seasons, Mackay Sugar sold 100 percent of its raw sugar for the 2017 season to QCS under the Commodity Marketing Agreement. QCS in turn sold raw sugar domestically to the Sugar Australia Joint Venture (Sugar Australia), and for export via QSL. A total of 68 percent of the sugar sourced in the Mackay region was sold to Sugar Australia and the remaining 32 percent was sold via QSL. (2016 season: 56 percent and 44 percent respectively). Sales to Sugar Australia were destined to be refined at Racecourse refinery. Of MSL's Mossman region raw sugar production, QCS sold 100 percent via QSL (2017 season: 100 percent). The sugar sold via QSL in both Mackay and Mossman regions includes MSL's miller economic interest sugar, which was physically priced and marketed by QCS in conjunction with Alvean Sugar, covering 118,287 tonnes, or 34 per cent of all sugar sold via QSL.

The average sugar price achieved in the 2017 season across both the Mackay and Mossman regions was A\$469.82 per IPS tonne. This is a weighted average price of all pricing completed by growers, QSL and QCS and represents the combined decisions of these parties during the 2017 season and previous seasons.

#### ***Molasses sales***

Molasses is sold into the domestic market under a distribution agreement with Champion Liquid Feeds. The domestic molasses price achieved by Mackay Sugar is subject to domestic supply/demand influence and is also related to the price that can be obtained from the export market. Any molasses in excess of domestic requirements is sold on the export market via a supply agreement with AMT, which sells molasses on behalf of a number of Queensland sugar

## Section 3 - Mackay Sugar - the business and opportunities

milling entities. The net export proceeds are remitted such that each supplier receives an identical average molasses price.

Domestic demand again strengthened throughout the year as a result of hotter and drier conditions in NSW and Queensland, leading to a shortage in the production of animal feed. Molasses prices internationally softened due to the large increase in the global production of sugar and the subsequent increase in supply of molasses globally. Demand in the US and Korea remained flat, while the market tightened considerably on the back of extremely dry weather for a large part of the European continent. Demand in New Zealand was up due to better milk prices and unfavourable weather.

### ***Electricity sales***

A by-product of the sugar extraction process is a fibrous material known as Bagasse. This product is used by the Company as a fuel to generate steam for a number of uses, including the production of electricity. Generally this electricity is used for internal energy requirements, for supply to the Racecourse refinery and other Racecourse site users, and for export to the electricity grid. Mackay Sugar's electricity generated using Bagasse fuel is classified as renewable energy and the Company's mill site based power stations are registered with the Clean Energy Regulator as a renewable generator. This registration enables Mackay Sugar to generate LGCs which are sold to Ergon Energy (see section 7.11). Mackay Sugar generated approximately 145,000 LGCs from the Racecourse Cogeneration Plant and 25,000 LGCs from the other Mackay Sugar sites for the 12 months ending December 2017. The generation of LGCs is dependent on a number of factors including crop size, cane fibre levels, boiler availability, season length and factory availability.

In its fifth year of operation, annual power generation from the Racecourse Cogeneration Plant for the YEM2018 period is steady at 192 GWh (2017: 194 GWh) and Cogeneration Plant availability increased to 89%. Bagasse system repairs limited renewable generation in March to May 2018. Electricity export to Ergon Energy was steady at 135 GWh (2017: 135 GWh).

### ***Services to the refinery***

One of the refineries in the business of the Sugar Australia Joint Venture is situated adjacent to Mackay Sugar's Racecourse mill. Racecourse mill provides services under an agreement to the refinery to enable the refinery facilities to achieve operational efficiencies. For terms of this agreement, refer to section 7.8.

## **3.4 Income from associated company and joint venture**

Mackay Sugar has a 25% investment in the shares of NZSC as well as a 25% interest in the Sugar Australia Joint Venture. These businesses refine and market a range of liquid and crystal sugars and sweeteners for industrial markets, as well as branded product ranges for consumer markets. These entities have approximately 58% of the market share in Australia, approximately 80% in New Zealand and operate in several business segments including:

- (a) food and beverages – supplying sugar to food and beverage manufacturers;
- (b) food services – supplying sugar products to hotels, bakeries, service stations, hospitals, etc.;
- (c) retail – supplying products to the consumer sugar and sweetener market; and
- (d) export – various markets including Indonesia, Singapore, Hong Kong and China.

## Section 3 - Mackay Sugar - the business and opportunities

The returns from these activities are accounted for as profit from an associate and joint venture in the financial results of Mackay Sugar.

As at 30 November 2018, Mackay Sugar has also invested approximately \$2.4 million for a 5.9% shareholding in Racecourse Projects. The Black River Fund holds 93.5% and entities related to the farm manager have acquired a 0.6% interest.

Racecourse Projects established and continues to operate a significant farming business in the Mackay district with the resources to invest capital in cane land development. The investments include:

- (a) Marwood Farm and one of its neighbouring properties;
- (b) Prospect Creek; and
- (c) Hylton Park,

which will eventually supply cane to Mackay Sugar from over 1,900 hectares.

In addition Racecourse Projects has acquired land in the Sarina district which, following development, will supply cane to Wilmar's Plane Creek mill. Mackay Sugar will not be contributing any funds towards the acquisition or development of this property which will further reduce the Company's percentage shareholding interest in Racecourse Projects, but not its investment amount.

### 3.5 Racecourse Cogeneration Plant

The Racecourse Cogeneration Plant at Mackay Sugar's Racecourse mill includes:

- (a) an efficient high pressure boiler designed to supply steam to the STG, mill and adjacent businesses. The boiler has been designed for firing on Bagasse and/or coal; and
- (b) an STG designed to supply pass-out steam and electricity to the mill, the adjacent business activities and electricity to the National Electricity Grid. The average output of the generator was 27 and 20 MW during the 2017 and 2018 crushing seasons respectively.

#### ***Fuel supply***

The Cogeneration Plant is fuelled by Bagasse during the crushing season and for part of the non-crushing season. There has been a deficit of Bagasse at Racecourse mill during the 2017 and 2018 crushing seasons to operate the Cogeneration plant at design load. This deficit has been supplemented by Bagasse from other mills and coal. Depending on crop size and fibre levels, there could be sufficient Bagasse stored at the end of the crushing season to operate the Cogeneration Plant for up to four months after the end of the crushing season. The Cogeneration Plant is fuelled by coal when Bagasse supplies have been consumed. Coal is currently purchased from Clermont Coal Mines Limited.

In years of reduced crop and Bagasse make, the Cogeneration Plant is run on a peak, off-peak power production basis to extend the usage of Bagasse as far through the first quarter as possible, capturing the increased electricity rates typically available during that period. Whilst this results in less production per hour, and doesn't generate any additional green energy, it optimises sales proceeds and means the plant operates for a shorter period using coal, with the related cost savings.

### ***Power Purchase Agreement***

The Power Purchase Agreement between Mackay Sugar and Ergon Energy sets out the terms for the sale and the purchase of exported energy and LGCs from the Cogeneration Plant. The term of the agreement is for six years which commenced on 1 January 2013. For further details refer section 7.11.

### ***Benefits of the Racecourse Cogeneration Plant***

The Racecourse Cogeneration Plant is positioned in the renewable energy sector and provides a diversified revenue stream, which reduces Mackay Sugar's reliance on returns from raw sugar.

## **3.6 STL Share Transaction**

In September 2015 Mackay Sugar entered an arrangement with One Tree Agriculture Pty Ltd to monetise the income stream from its 25.1% shareholding of M class shares in STL. One Tree Agriculture Pty Ltd is a subsidiary of Black River Ag Fund 2 Investment (Australia) Pty Ltd, which owns a number of operating subsidiaries in Australia, including Racecourse Projects.

Under the arrangement, One Tree Agriculture Pty Ltd has paid Mackay Sugar a capital sum (in the amount of \$26.5m) in exchange for the rights to the income stream from Mackay Sugar's M class shares in STL for a period of 8.6 years. At the end of that period (or earlier in certain scenarios), Mackay Sugar may re-acquire the rights to the income stream for a price determined by the prevailing STL share price at the time. Mackay Sugar continues to be the registered owner of the STL shares and, as an active miller, will continue to exercise its voting rights in relation to its STL shareholding.

## **4 Directors, Management and corporate governance**

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### **4.1 Board composition**

The Constitution provides that there must be a minimum of seven Directors and a maximum number of nine Directors (not including alternate Directors).

Of those directors, there must be:

- (a) five Grower Directors elected by the Voting Shareholders of Mackay Sugar; and
- (b) at least two and up to four Non Grower Directors.

### **4.2 Directors' profiles**

#### ***Mark Day BAppSC (Mathematics) – Executive Chairman and Chief Executive Officer - Non Grower Director***

Mark was appointed to the board in May 2017 and was elected Chairman in November 2017. In January 2018 Mark was also appointed as Chief Executive Officer.

Mark recently completed three and a half years in Brazil as Operations Director for eight sugar cane factories owned by Bunge Brazil crushing 20 million tonnes of cane producing sugar, ethanol and electricity. Bunge is one of Brazil's largest cane processors.

Prior to that Mark had an extensive career with CSR/Wilmar in sugar, managing CSR's cane sugar businesses as Executive General Manager for six years and two years in Indonesia with Wilmar. At CSR he commenced as a shift supervisor in the Mackay region in 1980 and worked through several regions in the Queensland sugar industry with CSR.

He has served as a Director on the Board of STL, the Bureau of Sugar Experiment Stations, Sugar Research Institute and AMT and was also a Director and Chairman of Australian Sugar Milling Council for a period. He has a degree in Applied Mathematics and has attended Executive programs at Wharton Business School.

Mark is currently a director of Sugar Australia Pty Ltd, New Zealand Sugar Company Limited and Oriana Shipping Co. Pte. Ltd.

#### ***Paul Manning – BEng (Mech), Dip Ag. GAICD – Deputy Chairman – Grower Director***

Paul is a third generation cane farmer and was elected to the Board as a Grower Director in October 2014. Paul returned to cane farming in 2010 after working as a professional engineer for over 20 years, predominantly in the West Australian Iron Ore mining industry. During this period he worked in a variety of maintenance, major project management and engineering management roles for BHP Billiton Iron Ore and in a project role for Sinclair Knight Merz. Paul is a Graduate of the Australian Institute of Company Directors.

#### ***Andrew Cappello – MAICD - Grower Director***

Andrew has been an elected Grower Director since November 2001 and has been a cane producer for over 36 years. He acted as Chairman from February 2010 until November 2017. Andrew is also Chairman of the Pioneer Valley Water Co-operative.

## Section 4 – Directors, Management and corporate governance

He is Deputy Chairman of the Australian Sugar Milling Council, Pioneer Valley Water Mutual, and the Queensland Co-operative Federation and a Mackay Sugar representative on the Board of Mackay Area Productivity Services Pty Limited. He is also a former Director of Sugar Terminals Limited and the Australian National Committee for Irrigation and Drainage.

### ***Lee Blackburn – GAICD - Grower Director***

Lee was appointed as a Grower Director in October 2014. He has been a grower for more than 20 years and has been managing the family farm and harvesting business since 2002. Lee is the Chairman of the Eton Irrigation Scheme Pty Ltd, a Director of QCS, a former Director of Mackay Canegrowers Limited and former member of the Canegrowers Mackay Area Committee. He has been reappointed as a director of Mackay Area Productivity Services from November 2018. Lee is a Graduate of the Australian Institute of Company Directors.

### ***Lawrence Bugeja - GAICD – Grower Director***

Lawrence was appointed as a Grower Director in October 2013. He has been a cane farmer for more than 36 years and has been managing the family farm and harvesting business since 1987. He is a director of Mackay Area Productivity Services and of the Deputy Chairman of the Pioneer Valley Water Board. He is a former Director of both Mackay Canegrowers Limited and Queensland Canegrowers Organisation Limited and was also a member of the Marian Mill Suppliers Committee and the Canegrowers Mackay Area Committee. Lawrence is a Graduate of the Australian Institute of Company Directors.

### ***Anthony Robert Bartolo - BCom, DipFS, FCPA, GAICD, JP - Grower Director***

Tony is a third generation BMP accredited farmer. He was re-elected to the Board as a Grower Director in October 2018, having previously been on the Board from 2010 to 2014. He has over 30 years of accounting experience including 13 years as a Partner at DGL Accountants where he retired from Public Practice in 2013. He was granted Fellowship of CPA Australia in 2007 and in 2012 became a graduate of the Australian Institute of Company Directors. Tony is also a Director on the Board of Sugar Terminals Limited.

His previous roles include the Boards of LMA Eton Irrigation Scheme and several local not-for-profit community organisations.

### ***Maurice Maughan – FCA JP (C.dec) – Non Grower Director***

Maurice became a Non-Grower director of Mackay Sugar in June 2012. Prior to this he was a Director of Mossman Sugar Company Limited since 2007. In 2006, after 31 years, he retired from the international accounting firm KPMG as a partner. Maurice was responsible for providing advice to a number of companies including those in the Queensland sugar industry. He has extensive business experience as a result of his time with KPMG and remains actively involved as a director or advisor to several companies. Maurice is a director of QCS and was appointed Chairman of the LMA Interim Board for the Bundaberg Irrigation Scheme in June 2013.

### ***Richard Findlay – Non-Grower Director***

Richard has an extensive background in agribusiness and food manufacturing having held senior executive roles at Goodman Fielder, George Weston Foods, Manassen and Sunbeam Foods Group.

As Chief Executive Officer of the unlisted public company Sunbeam Foods Group (formerly the Mildura Co-operative Fruit Company) he was involved in its sale to private equity and became Chief Operating Officer/Director of the larger food group Manassen Foods. He is currently a Director of a private Tasmanian food group.

### **4.3 Senior management**

#### ***Donna Rasmussen – Company Secretary***

Donna was appointed Company Secretary of Mackay Sugar on 1 August 2006. Donna has worked in administrative positions for Mackay Sugar and one of its predecessor cooperatives for more than 40 years.

#### ***David Said – BBus FCPA - Chief Financial Officer***

David was appointed as Chief Financial Officer on 16 January 2017 having previously held the position of Manager, Business Services. He is responsible for Business Services, Supply and Procurement. David and his team perform the financial operations for the group ensuring statutory and contractual obligations are met. They provide the necessary financial reporting to internal and external stakeholders as well as dealing with financial institutions to manage daily transactions and borrowings, ensuring all compliance requirements are satisfied.

David has over 27 years' experience with Mackay Sugar, commencing as a Graduate Accountant at Corporate Office in 1990. He moved to Pleystowe Mill in 1993 to perform various accounting roles before transferring to the Business Service Centre at Farleigh Mill in 2001 as Senior Accountant. David is a Director of Pioneer Valley Water Co-operative Limited.

#### ***Peter Gill – BEc LLB GDipTax FCPA – General Manager Commercial and Legal***

Peter is responsible for the day to day commercial and legal matters for the business. This role includes overseeing and dealing with the Cane Supply and Processing Agreements, contracts and disputes and includes the information technology department. Peter was appointed General Manager - Commercial and Legal on 16 January 2017 having formerly acted as General Manager Commercial from 23 June 2012 and Chief Financial Officer from 1 June 2013. Peter returned to Mackay Sugar having previously acted as General Counsel and Company Secretary for Mackay Sugar Cooperative between 1999 and 2003. He is a director of Racecourse Projects Pty Ltd, M & M Molasses Limited, an alternate member of the executive committee of the Sugar Australia Joint Venture and an alternate director of New Zealand Sugar Company Limited. Peter is a qualified solicitor admitted to practice in Victoria and Queensland and is a Fellow of CPA Australia.

#### ***Jason Walton – Manager Cane Supply and Logistics***

Jason was appointed to the role of Manager – Cane Supply and Logistics in June 2018. Jason joined Mackay Sugar in October 2011 in the role of Transport and Logistics Co-ordinator. He assumed the role of Transport and Logistics Manager in April 2013, and then transferred to Cane Supply in June 2016 to take up the position of Cane Supply Operations Manager. Jason has over 15 years' experience in the supply chain and logistics industry, working for OneSteel and Toll Intermodal prior to joining Mackay Sugar.

## Section 4 – Directors, Management and corporate governance

Jason's focus is to provide leadership, management and strategic direction to the Cane Supply department centred on the safe and efficient operation of Mackay Sugar's cane transport operations. Jason's area of responsibility includes cane development, harvest management, inbound cane transport and outbound logistics of raw sugar and milling by-products such as Bagasse, molasses, mill mud and ash.

### ***Carissa Mansfield - B. Bus, MBA, Grad. Dip OH & S -Group Manager, Human Resources, Health, Safety and Environment***

Carissa was appointed Manager Human Resources, Health, Safety and Environment in 2016 having previously held the position of Manager, Health, Safety and Environment from 2014 - 2016.

Carissa provides strategic leadership and the delivery of the HR and HSE strategic plan across all business units. She manages the Human Resources function including People and Culture, Training, Learning and Development, Workforce Planning/Recruitment and Employment/Industrial Relations, as well as all facets of Health, Safety and Environment across all operations including logistics, rail, cogeneration and manufacturing.

Carissa has over 15 years' experience in the health and safety environment and has held positions with Cordukes Pty Limited, CH4 Gas Limited, Peabody Energy and BHP Billiton Mitsubishi Alliance. She is Chair of the ASMC Environmental Committee and a member of the ASMC People and Safety Committee. Carissa is also a member of the Resource Industry Network Safety Committee and the Rural Safety Working Group.

### ***Tony Lloyd - Dip Mech Eng, MEA, Dip Mtce Mgmt, Cert. App Sc - Group Asset Manager***

Tony is responsible for asset management across the Mackay Sugar group. This includes capital planning, project development and implementation, asset management systems/development, reliability, maintenance planning and compliance.

He also oversees the management of the cane rail system, rollingstock and mobile plant across the Mackay area.

Tony has over 20 years' experience in the sugar industry and has been involved in key areas of the business having previously held positions as Project Engineer, Chief Engineer and Factory Manager at both Farleigh and Marian mills.

His primary focus is to ensure the Mackay Sugar assets are effectively managed to produce maximum benefit for all stakeholders.

### ***Peter Flanders – B Eng (Mech) MBT - Factory Manager – Farleigh***

Peter is responsible for the milling operations at the Farleigh site including all production and maintenance activities. He was appointed to this position in July 2015 and has over 33 years' experience in the sugar industry in both the milling and refining sectors. Peter started his career as a mechanical engineer and has held positions leading maintenance, project and operating teams and has previously worked as a Mill Manager. He also holds the position of Deputy Chairman of the Board of Directors for the Sugar Research Institute.

### ***Mark Gayton - GDip Mtce Mgmt -Factory Manager - Racecourse***

Mark is responsible for the milling and cogeneration operations at the Racecourse site including all production and maintenance activities.

## Section 4 – Directors, Management and corporate governance

He is also responsible to ensure the effective supply of services to support Sugar Australia refinery operations on the site.

Mark has over 35 years' experience in the sugar industry in both the engineering and management areas. He has previously held positions at Mackay Sugar including Shift Engineer, Maintenance Engineer, Engineering Superintendent, Factory Manager, Milling Operations Manager prior to his appointment as General Manager Operations in 2010.

Mark commenced as Factory Manager Racecourse in March 2018.

### ***Craig Wood – BEng (Mech), GCert (Engineering Technology) - Factory Manager – Marian***

Craig was appointed Marian Factory Manager in March 2016. Craig also worked with Wilmar and CSR for 11 years in several roles including Reliability Engineer, Engineering Manager, Site Manager and Acting General Manager Operations for seven factories for a period of 12 months. Craig has more than 28 years' experience in sugar after starting an apprenticeship as a fitter and turner at Isis Central Sugar Mill in 1979. Craig also had a break from the industry in 1988 which he spent in sales and business management prior to returning to Isis Central Mill in 1999.

### ***Phillip Miskin – AssocDeg ElectEng – Factory Manager – Mossman***

Phil was appointed General Manager Mossman mill in November 2017. He has direct responsibility for all Mossman mill operations, including cane supply and transport logistics, factory operations, business improvement, capital and maintenance projects.

Phil has worked in the sugar industry for over 35 years where he has had extensive experience in a range of electrical, engineering and production management roles. Prior to joining Mackay Sugar Phil held a number of executive management roles in other North Queensland sugar mills.

## **4.4 Corporate governance**

The Board operates under a corporate governance charter which stipulates appropriate policies, guidelines and responsibilities in its relationship with Shareholders, employees, the cane growing entities and the community.

### ***Corporate governance charter***

The Board has adopted a corporate governance charter which states that its function is to:

- (a) set the strategic direction and policy, and the financial targets for the Group with the aim of increasing Shareholder value;
- (b) monitor the implementation and execution of strategy and performance against financial targets; and
- (c) appoint and oversee the performance of the CEO,

and generally to take an effective leadership role in relation to the Group. The Board is accountable to shareholders for the overall performance of the Group.

The initiatives covered under the charter are designed to institutionalise good corporate governance and a culture of best practice in Mackay Sugar's own internal practices and in its dealings with others.

## Section 4 – Directors, Management and corporate governance

### ***Continuous disclosure policy***

The Company has a continuous disclosure policy in place which requires that all material matters are appropriately disclosed in an accurate, balanced and timely manner and in accordance with the continuous disclosure requirements of the Corporations Act and ASIC. Mackay Sugar will disclose all information concerning the Company that a reasonable person would expect to have a material effect on the price or value of the Unsecured Notes issued by Mackay Sugar. As further explained in section 8.5 of this Prospectus, Mackay Sugar discloses material information to its Shareholders and Noteholders through its website in accordance with ASIC Regulatory Guide 198.

### ***Board committees***

While the below committees assist the Board in discharging its responsibilities to exercise due care, diligence and skill over the Company and its subsidiaries, they do not relieve the Board of its duty and responsibility for these matters.

All committees regularly invite relevant Mackay Sugar employees to provide information and attend committee meetings as required.

### ***Audit and Finance committee***

The role of the Audit and Finance Committee is to assist the Board to verify the integrity of the Company's statutory and financial reporting, monitor the effectiveness of external and internal audit functions, the appropriateness of the internal controls and compliance, the appropriateness of financial risks systems and compliance, the application of corporate governance principals and the tax affairs of the Company, and to provide corporate governance oversight to the Finance Department's functions.

Key activities undertaken by the Audit and Finance Committee include:

- to oversee the Company's business, financial and strategic risk management program;
- review operating and capital budgets of the Company prior to submission to the Board for approval to ensure that the expenditure proposed is justified, sufficient to support sustainable safety, environment and energy efficiency initiatives, and maintenance and capital projects, and all within the Company's ability to fund these;
- monitor the overall financial position of the Company in particular the ongoing cash and net debt position;
- monitor the risk of exposure to lending rates and interest rate hedging policies and requirements;
- monitor the pricing projections of QCS and the impact on the Company's financial reports from the activities of any subsidiaries;
- monitor compliance with facility agreements, Board policies and mandates;
- make recommendations to the Board on the appointment, reappointment or replacement of the external auditor;
- monitor the effectiveness and independence of the external auditor;
- review and approve the Company's accounting policies and practices and monitor compliance with accounting standards that relate to the preparation of the accounts;

## **Section 4 – Directors, Management and corporate governance**

- review and recommend for approval by the Board the half yearly and annual reports and Directors' report, and all other related reports which are required by any law, accounting standard or other regulatory body;
- oversee the effectiveness of the Company's internal controls;
- review and approve the Company's business continuity plans, with specific reference to IT and other essential business systems;
- assist the Board in the identification and oversight of financial risk;
- monitor and review the effectiveness of the financial risk and internal control systems implemented by management;
- consider the processes applied by management to comply with the Board approved policies for liquidity risk, funding risk, credit risk and interest rate risk;
- ensure management has appropriate controls in place for any transactions that may carry more than the usual degree of financial risk; and
- ensure that the processes for disclosure and regular reporting of significant financial risk is implemented.

### ***Health, Safety and Environment Committee***

The purpose of the Health, Safety and Environment Committee is to assist the Board in fulfilling its governance and oversight responsibilities for occupational health and safety and the environment.

The Health, Safety and Environment Committee is appointed by the Board and comprises three Directors and the Company Secretary. Meetings of the committee are held at least four times each year.

Key responsibilities of the Health, Safety and Environment Committee are to have oversight and review of:

- the Company's compliance with approved Health and Safety and Environmental policies and legislation and the impact of changes in Workplace Health and Safety legislation;
- the adequacy of the Occupational Health and Safety and Environmental Management systems in complying with statutory and regulatory obligations;
- the effectiveness of the Company's Occupational Health and Safety systems in working towards the Company's safety and environmental objectives; and
- key health, safety and environmental incidents and mitigation strategies that may have strategic business and reputational implications for the Company.

### ***Remuneration and Nominations Committee***

The role of the Remuneration and Nominations Committee is to ensure that the Company has fair and responsible remuneration policies and practices to attract and retain Directors, executives and staff who will create value for Shareholders, and to review Board composition, performance and succession planning.

## Section 4 – Directors, Management and corporate governance

The Remuneration and Nominations Committee is appointed by the Board and comprises three Directors and the Company Secretary.

Key responsibilities of the committee are:

- Review the ongoing appropriateness and relevance of the Company's remuneration policy (in accordance with MSP-HR-1449 Remuneration and Benefits procedure) with reference to market comparisons with particular reference to the 25th percentile (P25) of relevant market practice for the relevant role classification;
- approve any major changes in employee benefits structures throughout the Company including superannuation, insurance, indemnities and other benefits;
- Approve the design of any performance related pay schemes operated by Mackay Sugar Limited and any subsidiary Company, and approve the total annual payments made under such schemes;
- Determine Key Performance Indicators (KPIs) for the Chief Executive before the start of the Company's financial year, against which his/her performance will be assessed. A formal review of this performance will be held at the end of the financial year with interim reviews as required to manage performance expectations between the Remuneration and Nominations Committee and the Chief Executive and to agree modifications to the KPIs as appropriate. The Chairman of the Remuneration and Nominations Committee to report back to the Board following each assessment;
- determine the total individual remuneration package (including bonuses and incentive payments) and termination arrangements of the company's Chief Executive Officer and recommend to the Board for approval any changes prior to implementation;
- review the Board structure, size and composition and make any recommendations to the Board with regard to any changes deemed necessary;
- provide, via the Company Secretary, a tri-annual performance evaluation of the members of the Board;
- evaluate the balance of skills, knowledge and experience of the Board and, in the light of this evaluation, prepare a description of the role and capabilities required by the Board;
- recommend to the Board the appointment of Non-Grower Directors and the Chief Executive Officer;
- approve, following the recommendation of the Chief Executive Officer, the appointment of the Chief Financial Officer;
- consider succession issues relating to the Chairman, Non-Grower Directors, the Chief Executive Officer, Chief Financial Officer and Company Secretary; and
- propose to the Board the framework and quantum of remuneration for the Chairman of the Board, Deputy Chairman, Grower and Non-Grower Directors that provides appropriate, responsible and fair reward for their individual contributions to the success of Mackay Sugar.

## Section 4 – Directors, Management and corporate governance

### *Committee membership*

<b>STATUTORY BOARD COMMITTEE</b>	<b>MEMBERSHIP</b>		
Audit and Finance Committee	M. C. Maughan	R. M. Findlay	P. A. Manning
Remuneration and Nominations Committee	R. M. Findlay	P.A Manning	A. S. Cappello
Health, Safety and Environment Committee	P. A. Manning	L. G. Bugeja	A. Bartolo

## 5 Financial information

### 5.1 Historical results

Table 1 below summarises the historical financial information of Mackay Sugar for the financial periods ended 31 May 2016, 31 May 2017 and 31 May 2018 as reported in the audited financial statements. This financial information should be read in conjunction with the details, including the policies and accounting notes, as presented in the audited financial statements.

The audited financial statements have been lodged with ASIC. Reports for 31 May 2016, 31 May 2017 and 31 May 2018 can be obtained from Mackay Sugar, free of charge to any Eligible Investor upon request until the expiry of this Prospectus.

The Company's future financial performance may be impacted by the risk factors as set out in section 6 of this Prospectus. The past performance of the Company is not an indication of the future performance of the Company.

Neither the Company nor the Directors can give any assurance that any implied forecasts or any prospective statement contained in this Prospectus will be achieved. Events and outcomes might differ in quantum and timing from the assumptions with a material consequential impact on the Company.

<b>Table 1: Financial information</b>	<b>31 May 2018 (\$'000)</b>	<b>31 May 2017 (\$'000)</b>	<b>31 May 2016 (\$'000)</b>
<b>Income statement</b>			
Revenue	448,851	498,833	432,904
Finance revenue	356	328	554
<b>Total revenue</b>	<b>449,207</b>	<b>499,161</b>	<b>433,458</b>
Changes in inventories of finished goods	-1,967	-227	-473
Cost of sales	-249,457	-281,087	-232,333
<b>Gross profit</b>	<b>197,783</b>	<b>217,847</b>	<b>200,652</b>
Revenue from non-operating activities	307	9	81
Maintenance expenses	-50,699	-48,383	-45,487
Operating expenses	-84,510	-90,797	-80,846
Administration expenses	-45,385	-44,456	-44,229
Distribution and marketing expenses	-8,339	-6,539	-6,353
Depreciation	-16,602	-16,986	-16,406
Finance costs	-13,301	-13,342	-15,475
Other expenses	-277	-4,066	-2,740
Loss on impairment of Sugar Australia JV	-6,900	-34,607	
Loss on impairment property plant and equipment			-3,933
Loss on revaluation of property, plant and equipment	-2,933		-21,492

Section 5 – Financial information

<b>Table 1: Financial information</b>	<b>31 May 2018 (\$'000)</b>	<b>31 May 2017 (\$'000)</b>	<b>31 May 2016 (\$'000)</b>
Share of profit of associate and joint venture	10,429	7,906	10,525
<b>Profit/(loss) before income tax</b>	<b>(20,427)</b>	<b>(33,414)</b>	<b>(26,063)</b>
Income tax expense			
<b>Profit/(loss) for the year</b>	<b>(20,427)</b>	<b>(33,414)</b>	<b>(26,063)</b>
<b>Statement of financial position</b>			
<b>Assets</b>			
<b>Current assets</b>			
Cash and cash equivalents	14,793	18,264	32,438
Trade and other receivables	21,711	33,091	27,970
Other financial assets	15,707	11,973	483
Inventories	12,981	14,687	14,543
Assets held-for-sale		66	40
Other current assets	452	865	176
<b>Total current assets</b>	<b>65,644</b>	<b>78,946</b>	<b>75,650</b>
<b>Non-current assets</b>			
Trade and other receivables	550	1,051	1,660
Other financial assets	34,796	32,406	29,585
Investments accounted for using the equity method	81,315	94,637	133,831
Property, plant and equipment	304,853	312,268	310,603
Investment properties	3,074	3,101	2,202
<b>Total non-current assets</b>	<b>424,588</b>	<b>443,463</b>	<b>477,881</b>
<b>Total assets</b>	<b>490,232</b>	<b>522,409</b>	<b>553,531</b>
<b>Liabilities</b>			
<b>Current liabilities</b>			
Trade and other payables	45,055	62,782	34,047
Interest bearing liabilities	162,671	174,680	58,504
Other liabilities	3,835	897	773
Other financial liabilities	364	4,903	12,594
Employee benefits	10,547	*10,644	4,858
<b>Total current liabilities</b>	<b>222,472</b>	<b>253,906</b>	<b>110,776</b>
<b>Non-current liabilities</b>			
Interest bearing liabilities	3,017	4,355	159,340
Other liabilities	29,529	18,293	19,002
Other financial liabilities	27,473	26,932	33,051
Employee benefits	2,752	*2,698	9,019
<b>Total non-current liabilities</b>	<b>62,771</b>	<b>52,224</b>	<b>220,412</b>
<b>Total liabilities</b>	<b>285,243</b>	<b>306,130</b>	<b>331,188</b>
<b>Net Assets</b>	<b>204,989</b>	<b>216,279</b>	<b>222,343</b>
<b>Shareholders' equity</b>			
Issued capital	16,498	16,498	16,498

## Section 5 – Financial information

<b>Table 1: Financial information</b>	<b>31 May 2018 (\$'000)</b>	<b>31 May 2017 (\$'000)</b>	<b>31 May 2016 (\$'000)</b>
Reserves	31,850	22,713	-4,637
Retained profit	156,641	177,068	210,482
<b>Total equity</b>	<b>204,989</b>	<b>216,279</b>	<b>222,343</b>

\*There was a change in accounting policy in 2018 which required a restatement of the 2017 current and non-current employee liabilities for consistency.

<b>Table 1: Financial information</b>	<b>31 May 2018 (\$'000)</b>	<b>31 May 2017 (\$'000)</b>	<b>31 May 2016 (\$'000)</b>
<b>Cash flow from operating activities</b>			
Receipts from sugar sales and other sales	500,202	541,119	457,468
Payments to cane suppliers	-284,067	-295,111	-281,330
Payments to other suppliers and employees	-205,082	-201,481	-189,147
Distributions received from associated entities	10,624	6,696	6,684
Interest received	356	328	554
Other Revenue	10,061	4,497	9,510
Finance costs	-12,098	-12,404	-14,653
<b>Net cash provided by operating activities</b>	<b>19,996</b>	<b>43,644</b>	<b>-10,914</b>
<b>Cash flow from investing activities</b>			
Purchase of financial assets – shares			-685
Distributions received / contributions made to associated entities	1,957	3,554	-8,066
Payment for purchases of property, plant and equipment	-12,281	-22,760	-28,577
Proceeds on sale of property, plant and equipment	44	9	176
Proceeds on sale of property held for sale	280		
Proceeds on sale of subsidiary	50		
<b>Net cash used in investing activities</b>	<b>-9,950</b>	<b>-19,197</b>	<b>-37,152</b>
<b>Cash flow from financing activities</b>			
Proceeds from STL share subscription			26,500
Dividends Paid			-
Proceeds from interest bearing activities	37,338	62,470	104,417
Repayment of interest bearing activities	-42,962	-92,527	-76,643
Lease Liability payments	-294	-294	-294
Increase / decrease in Growers' loans	479	839	-821
Decrease in interest bearing deposits	-30	-145	-94
Decrease in selected-term unsecured notes	8,048	-8,964	-2,661
<b>Net cash provided by financing activities</b>	<b>-13,517</b>	<b>-38,621</b>	<b>50,404</b>
Net increase / decrease in cash and cash	-3,471	-14,174	2,338

<b>Table 1: Financial information</b>	<b>31 May 2018 (\$'000)</b>	<b>31 May 2017 (\$'000)</b>	<b>31 May 2016 (\$'000)</b>
equivalents			
Cash and cash equivalents at the beginning of the year	18,264	32,438	30,100
<b>Cash and cash equivalents at the end of the year</b>	<b>14,793</b>	<b>18,264</b>	<b>32,438</b>

### Going Concern

The current economic climate continues to be challenging for the Company and its subsidiaries. The Directors consider that, until quite recently, the current raw sugar price has been near the bottom of the price cycle and therefore the short term outlook has presented challenges in terms of operating results and the generation of sufficient cash flow to improve milling performance from the current levels.

In undertaking the Recapitalisation Plan the Company is seeking to raise additional capital whilst it continues to investigate other options to improve its financial position, but at this stage there is no certainty that any transaction will proceed.

The term bank loans with Rabobank and NAB of \$100.0 million and the Corporate Bond debt of \$50 million, included in interest bearing liabilities, continue to be treated as current liabilities as at 31 May 2018 as these loans are due to expire on 2 March 2019 and 5 April 2019 respectively. Initial discussions have commenced with the financiers towards the renewal or extension of these financing facilities.

Provided those facilities are renewed, either as part of the Recapitalisation Plan or otherwise, and there are no adverse events that impact on its earnings, the Company expects that it will be able to meet its interest payments.

The Group's current ratio (measured as current assets to current liabilities) being a measure of the Group's ability to pay short term and long term obligations, is 0.30 compared to 0.32 last year. The decline in this ratio demonstrates the liquidity risk and the financial dependency on the renewal of the Company's funding facilities, and it is largely impacted by the treatment of the funding facilities as current liabilities given their term is maturing within the next 12 months.

The gearing ratio (measured as net debt to net debt plus equity) has remained stable at 0.47. The Directors continue to focus on strategies that will reduce the debt and improve this ratio, including the Recapitalisation Plan.

The debt to equity ratio (measured as total liabilities to shareholder equity) which demonstrates how much external parties have contributed to the funding of the Company, while still high, reduced from 1.42 to 1.39.

These ratios highlight the need for the Group to increase earnings as well as the need to implement strategies that will introduce capital or generate sufficient cash flow to manage the current levels of debt and support the required level of milling performance.

The Company's auditors expressed an unmodified audit opinion in their report dated 4 October 2018 but included an emphasis of matter drawing attention to the significant deficiency in net current assets of \$157 million, and the uncertainty of whether the Company would be able to continue as a going concern without the continued support of the Company's financiers. If this is the case the auditors noted the Company may be required to release assets and extinguish liabilities other than in the normal course of business and at amounts different to those stated in

the financial accounts. The auditors also noted that financial statements as at 31 May 2018 do not disclose this fact and do not include any adjustments relating to those amounts that might be necessary should the Company not continue as a going concern.

After considering the issues and uncertainties described above, and as otherwise set out in this prospectus, the Directors have a reasonable expectation that the Company will be able to continue operations in the foreseeable future.

No material changes to the Company’s business have occurred since the 31 May 2018 balance date, except for the outlook on the operating performance of the Company referred to in the supplementary prospectus which was lodged with ASIC on 12 July 2018, being a supplementary prospectus to the original prospectus dated 5 December 2017 (**Supplementary Prospectus**). This Prospectus incorporates, by reference, information set out in that Supplementary Prospectus in accordance with section 712 of the Corporations Act. A copy of the Supplementary Prospectus is available on the Company’s website, or interested parties may obtain a copy of the Supplementary Prospectus from the company secretary of Mackay Sugar in accordance with section 712(5) of the Corporations Act. The Company also complies with ASIC’s good practice guidance for website disclosure (see section 8.5).

**5.2 Total Shareholders’ equity or Net Asset value of Mackay Sugar**

Shareholders’ equity consists of the following elements:

- (a) ordinary share capital;
- (b) retained profit;
- (c) financial assets reserve;
- (d) foreign currency translation reserves; and
- (e) hedging reserves.

The raw sugar price is volatile and can be affected by many factors including global sugar production and consumption volumes and general sentiment to commodity markets. The impact of this volatility on the pricing arrangements that Mackay Sugar has already entered into, that have not yet matured as at the reporting date, is calculated in the mark-to-market calculation which is reflected in the hedging reserve. The hedging reserve therefore reflects an unrealised profit or loss at a point in time, which will be realised in the income statement at a future date when the transaction is “closed out”.

The corresponding entry is recorded in the financial statements as an asset or liability in the statement of financial position. This amount may change when accounted for on a daily basis.

The following table sets out the impact this accounting entry had on the results for the financial periods ended 31 May 2016, 31 May 2017 and 31 May 2018 as reported in the audited financial statements.

	<b>31 May 2018</b> <b>(\$'000)</b>	<b>31 May 2017</b> <b>Actual</b> <b>(\$,000)</b>	<b>31 May 2016</b> <b>Actual</b> <b>(\$,000)</b>
Net Shareholders’ equity	204,989	216,279	222,343
Hedge reserves*	22,158	12,874	-13,700
<b>Net Shareholders’ equity excluding hedging reserves</b>	<b>182,831</b>	<b>203,405</b>	<b>236,043</b>

\* Negative numbers reflect a net hedging liability (or an unrealised loss); positive numbers reflect a net hedging asset (or an unrealised gain).

### 5.3 Strategic Plan and Restructure Process

The Company had in previous years developed a strategic plan, which highlighted the Company's need to focus on its core business of sugar milling, with an ultimate objective of crushing 5.8Mt of cane in 23 weeks at 90% availability by 2021 in Mackay and 1.2Mt of cane in 26 weeks at 90% availability by 2021 in Mossman. Various funding opportunities had been investigated for the funding requirements to achieve that plan and the availability of the funding will ultimately dictate the delivery of those objectives.

#### Recapitalisation Plan

In late 2016, the Company engaged Kidder Williams, a corporate advisory firm, to review the Company's corporate and capital structure. To reduce debt and fund near term expenditure, Kidder Williams had advised that the Company should consider various asset sales and other fund raising undertakings such as the introduction of a grower contribution.

Kidder Williams presented the Company with various options under the Recapitalisation Plan, including the sale of standalone assets, recapitalisation by an equity investor or a sale of the whole business that would enable the business to continue as a going concern. The Company considered the options and determined it would simultaneously pursue all such options in order to achieve the most efficient and beneficial outcome for the Company. The Company instructed Kidder Williams to initiate a formal process pursuing such options in November 2017.

Initially, options to sell some of the Company's assets, such as the Racecourse Cogeneration Plant, were investigated. However, whilst there had been substantial interest in the cogeneration assets, the proposed offers presented long term financial commitments for the Company and/or other conditions which would not have yielded an acceptable return. Consequently, Mackay Sugar Limited concluded that the cogeneration assets were likely to be worth more to the Company as part of the ongoing business than if sold on a stand-alone basis.

The Company then decided that it would put on hold the sale of the cogeneration assets and instructed Kidder Williams to undertake a process to seek proposals to recapitalise the business. That process is ongoing.

In October 2018, the Company received a non-binding indicative offer (**NBIO**) from Nordzucker AG to subscribe for 70% of the share capital of the Company in consideration of a contribution of equity and debt funding to the Company. The NBIO has received in-principle support from the Board but remains subject to a number of conditions, including:

- a) agreement on the equity/debt contribution and share structure;
- b) Foreign Investment Review Board approval;
- c) Nordzucker supervisory board approval;
- d) consent from Mackay Sugar's financiers;
- e) approval of 75% of Mackay Sugar grower shareholders and investment shareholders;
- f) re-implementing the CCS cane payment system before the 2019 season;
- g) amendment to the Mackay Sugar constitution to allow for a majority investor and to convert the existing shares to reflect the finally agreed share structure; and

h) finalisation of the legally binding transaction documents.

Mossman mill is not part of the NBIO.

The transaction is scheduled to be completed in late March 2019 subject to binding agreement being reached between the parties and the timeliness of all necessary approvals.

Mackay Sugar has agreed to an exclusivity period until the end of December 2018 so that the parties may finalise negotiations and transaction documentation. Mackay Sugar has agreed to customary terms in relation to the exclusivity arrangement.

Mackay Sugar has also agreed to reimburse Nordzucker for certain costs if Mackay Sugar concludes a transaction with a different party during the exclusivity period.

Formal transaction documents had not been entered into between the Company and Nordzucker AG at the date of this Prospectus but negotiations remain ongoing. There is no guarantee that the parties will enter into a transaction or that the transaction will complete.

### **Sale of Mossman Mill**

As part of the Recapitalisation Plan the Company has entered into a Put and Call Option Agreement with Far Northern Milling Pty Ltd (**FNM**) (a company comprised of growers from the Mossman and Tableland mill areas) to sell the Mossman Mill. There is no guarantee that the transaction with FNM for the sale of Mossman mill will be completed. Refer to section 7.20 for further information on the terms of the Put and Call Option.

### **\$2 per tonne Deferred Cane Payment**

On 23 May 2017, the Company implemented a Grower contribution mechanism, through a deferred cane pay arrangement, which, following two separate court proceedings issued by a number of Growers, now applies to Growers supplying around 95% of the Mackay based cane supply. The grower contribution is subject to review after 2 years. Depending on annual crop size, approximately \$10million is expected to be raised per annum.

The \$2 per tonne of cane deferred cane payments are repayable upon the occurrence of certain trigger events as defined in the 23 May 2017 agreement including:

- a change in effective control of Mackay Sugar either directly or indirectly, including through acquisition or merger;
- an insolvency event of Mackay Sugar - including the winding up, appointment of a liquidator, administrator or via a scheme of arrangement with creditors. This only applies after all other secured and unsecured creditors and unsecured noteholders have been paid; or
- a capital raising by the Company – in which case Growers can request that their deferred cane payment can be subscribed towards the fundraising event where appropriate.

If a trigger event occurs, the deferred cane payment is refundable in cash or, if due to a fundraising event, through the subscription for shares, at the Grower's election. If repayable in cash, the refund is to be made at the end of the season in which the trigger event occurs, unless otherwise determined by the Board.

**5.4 Dividend policy**

The Constitution prescribes that the Directors of Mackay Sugar may determine that a dividend is payable to Shareholders. Directors also have the power to pay interim dividends. In determining the amount of any dividend, Directors may take into account:

- (a) the importance of retaining a portion of profit to repay debt, to provide funds for operations and to fund future growth; and
- (b) the appropriateness of payment of dividends to Shareholders for their investment in Mackay Sugar.

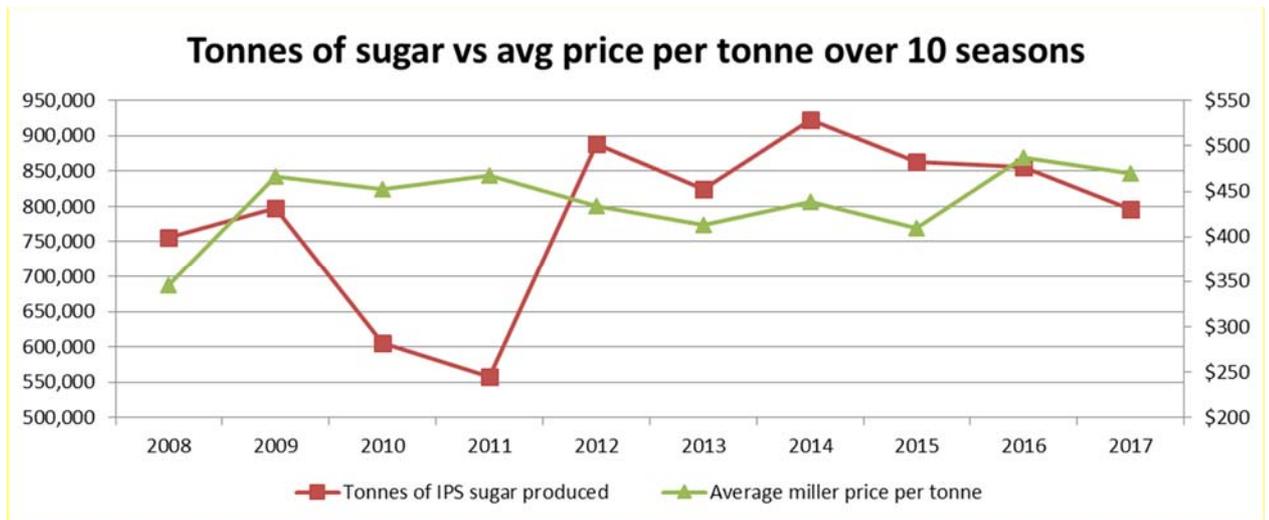
Profit retained by Mackay Sugar will be subject to income tax when all existing losses have been utilised. No undertaking regarding the future declaration and payment of dividends is given in this Prospectus. Unsecured Notes do not attract the payment of dividends.

The Directors have not declared a dividend for the previous financial year.

**5.5 General financial information**

***Mackay Sugar’s operations***

The sale of raw sugar, molasses and electricity are included in revenue shown in the financial statements, more specifically in the amount for ‘sale of goods’. Approximately 98% of its revenue is from the sale of raw sugar, molasses and electricity. The main factors impacting on this revenue are tonnes of sugar produced and the price at which the sugar is sold. The tonnes of sugar produced and price per tonne over the last ten seasons are illustrated below.



The tonnes of sugar produced over the ten year period have varied from 923,242 tonnes of IPS raw sugar in the 2014 season to 558,180 tonnes of IPS raw sugar in the 2011 season.

The average sugar price per tonne varied over the ten year period between \$487 per tonne for the 2016 season and \$346 per tonne for the 2008 season. The weighted average sugar price for the ten seasons was \$438 per tonne.

Mackay Sugar’s average annual sugar production for the 2015 to 2017 seasons (as reflected in the financial statements for 2016 to 2018) was approximately 838,439 tonnes of IPS raw sugar at a weighted average price of \$456 per tonne.

The carrying value of the property plant and equipment was considered as at 31 May 2018 and the accounts include a loss on revaluation of \$2.9m, reflecting the value of the Mossman assets.

### ***Refinery investment***

For the past three reporting periods Mackay Sugar's interests in the sugar refining businesses contributed an average profit of approximately \$9.5 million per year to the financial performance of the Company. For the same period, an average of \$7.9 million per year was distributed in cash to the Company. During the year the carrying value of the Sugar Australia assets was considered and an impairment charge of \$6.9m was made in the Mackay Sugar accounts due to the conditions currently being faced in the refined sugar market.

## **5.6 General financial information – Unsecured Notes**

### ***Equity ratio***

Based on the financial information for the financial period ended 31 May 2018, Mackay Sugar has an equity ratio of 41.8% (41.4% as at 31 May 2017). This equity ratio is calculated as follows:

$$\frac{\text{total equity}}{\text{total debt} + \text{total equity}}$$

There are no related party loans included in the calculation of total equity.

### ***Liquidity***

Before the start of each financial reporting period Mackay Sugar prepares a cash flow estimate for the next 12 months. These estimates demonstrate that, based on the assumptions and considerations set out below, Mackay Sugar has on hand cash or cash equivalents sufficient to meet its projected cash needs over that period. Mackay Sugar monitors and reviews its cash flow estimates on a regular basis.

### ***Cash flow assumptions and considerations***

Incoming cash flow from customers is calculated using estimated sales data and forecast payment terms. Outgoing cash flow for cane payments, creditors, finance costs, etc. is estimated using historical data and forecast payments. Payments for other raw materials and salaries and wages are estimated using a combination of historical records and forecast production requirements.

### ***Credit ratings***

The Unsecured Notes have not been rated for credit risk by a recognised agency. The Board believes that the Unsecured Notes are not of sufficient size and the costs relative to the benefits are too great to justify being rated by an ASIC regulated credit rating agency. Due to the eligibility criteria applying to investors as Eligible Investors, investment in the Unsecured Notes will be limited.

The Board will consider the appropriateness of this view on an ongoing basis. In deciding not to have the Unsecured Notes rated, the Board has had regard to the following factors:

- (a) based on the financial results for the financial period ended 31 May 2018, Mackay Sugar has an equity ratio of 41.8%, compared with ASIC's benchmark equity ratio minimum of 8%;

## Section 5 – Financial information

- (b) Mackay Sugar has an ongoing process of liquidity management to manage its cash flow and management prepares, at least every three months, future cash flow estimates for each successive three monthly period to ensure forthcoming liabilities can be met;
- (c) Similar to the previous year, Mackay Sugar expects a reduced level of Rollovers on its Unsecured Notes, based on its current experience in connection with funds held on behalf of investors and whilst the Recapitalisation Plan is underway; and
- (d) funds raised by the issue of Unsecured Notes are to be made available for use in the business as the Board may determine from time to time. There is no intention on the part of the Board to use funds raised from the issue of the Unsecured Notes for other purposes such as to on-lend funds or for loans to related parties. There is no intention to utilise Company funds for the development of property where Mackay Sugar is the mortgagee or for other purposes unless any loan or expenditure of funds is directly connected to Mackay Sugar's business.

## **6 Risk factors**

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### **6.1 Factors influencing success and risk**

This section identifies the areas that the Board believes to be the major risks associated with an investment in Mackay Sugar.

Mackay Sugar's business is subject to risk factors, both specific to its business activities, and risks of a general nature. Individually, or in combination, these might affect the future operating performance, and profitability, of Mackay Sugar and the value of your investment in Mackay Sugar. There can be no guarantee that Mackay Sugar will achieve its stated objectives or that any forward looking statements or forecasts will eventuate. An investment in Mackay Sugar should be considered in light of all relevant risks, both general and specific.

The factors detailed below should not be taken as an exhaustive list of the risks faced by Mackay Sugar or its investors. These factors and others not specifically referred to, may materially affect the profitability of Mackay Sugar. Similarly, actual events and results could differ significantly from those anticipated in this Prospectus.

The Board is responsible for ensuring that appropriate strategies, policies and procedures are in place to identify and monitor risks faced by the Company and that those risks are managed within a level determined by the Board to be prudent. The risks can be categorised as:

- (a) specific investment risks (those that relate directly to the Mackay Sugar business); and
- (b) general investment risks.

Before deciding to invest in Mackay Sugar, you should:

- (c) read the entire Prospectus;
- (d) consider the risk factors that could affect the financial performance of Mackay Sugar;
- (e) review these factors in light of your personal circumstances; and
- (f) seek professional advice from your accountant, stockbroker, lawyer or other professional adviser before deciding whether to invest.

### **6.2 Specific investment risks**

#### ***Cane supply risk***

Mackay Sugar operates four sugar mills that rely on a supply of sugar cane from Growers. Each Grower is required to enter into a Cane Supply and Processing Agreement with Mackay Sugar for the supply of cane to Mackay Sugar's mills. These agreements will however only be applicable if cane is being produced and therefore do not fully protect Mackay Sugar's volume of cane received. There is also a risk that some Growers may seek to dispose of their farms to parties who do not continue to supply the cane produced to the Company despite the binding Cane Supply and Processing Agreement. In those circumstances Mackay Sugar will be at risk in regard to the volume of cane received.

In the Mackay district all Growers are delivering under an agreement which continues to be a four year rolling contract. All of the Mossman and Tableland Growers supplying Mackay Sugar are delivering under a Cane Supply and Processing Agreement which is a three year rolling

contract. From the 2014 season the Tableland Growers have been supplying cane under a 5 year cane supply contract which after the third year becomes a rolling three year contract.

Following the introduction of the \$2 per tonne grower contribution by the Mackay area Growers and the litigation following that decision, as set out in section 5.3, there are now two different groups of Growers who have different provisions in the CSPAs in the Mackay district. There have also been a number of independent bargaining representatives appointed during the 2017 and 2018 calendar years. This will likely add significant complexity and administration issues in dealing with the CSPAs in future and could cause some division amongst Growers. There is also the potential risk of further litigation by disgruntled Growers.

The loss of good quality agricultural land available for cane production and increasing Grower production costs can also have an impact on tonnes of cane supplied to Mackay Sugar. There can be no guarantee that, despite Mackay Sugar having entered into Cane Supply and Processing Agreements, the quantity of cane supplied will be sufficient to ensure the continued viability of Mackay Sugar's milling operations as currently constituted.

### ***Raw sugar price***

Mackay Sugar preferentially supplies raw sugar to Sugar Australia with the balance of production predominantly directed to the export market via a supply agreement with QSL. In addition, the Company's miller economic interest sugar is marketed in conjunction with Alvean Sugar S.L. Mackay Sugar is exposed to fluctuations in raw sugar prices driven by global imbalances in raw sugar supply and demand. Demand is linked to many things, including population growth, economic conditions and customer consumption fluctuations in relevant domestic markets. The Company's revenues rely heavily on world market raw sugar prices which are denominated in USD with the principal price discovery mechanism being the ICE raw sugar futures market.

Mackay Sugar's Racecourse, Marian and Farleigh mills, a number of farms supplying these mills and raw sugar marketer QCS have been awarded Bonsucro certification. Bonsucro is the international certifying body which runs an independent program focussing on sustainability of production. The program seeks to ensure the traceability of sustainability claims along the supply chain from the farm to the end user.

Bonsucro certification provides independent verification of sustainability practices in a direct line of sight from the farm to the consumer, providing customers, and ultimately consumers, with confidence in Mackay Sugar as a proponent of sustainable practices. The Company is aware that more and more customers want suppliers to demonstrate they can meet sustainability criteria, which will potentially impact on the sale of raw sugar produced by the Company and refined sugar through Sugar Australia. Mackay Sugar's ability to continue to meet this demand will depend on the ongoing certification of the mills and for sufficient Growers to become accredited.

### ***Exchange rate fluctuation***

Mackay Sugar is subject to exchange rate risk. Fluctuations in the USD to AUD exchange rate may result in foreign exchange gains or losses which may impact Mackay Sugar's profitability. There is no guarantee that the Company's raw sugar price risk management policy and other procedures in place will be sufficient to protect Mackay Sugar's revenues in the event of foreign exchange fluctuations.

### ***Racecourse Cogeneration Plant***

The Racecourse Cogeneration Plant may not be capable of producing the designed outputs. Crop and cane fibre levels affect the amount of surplus Bagasse available for steam and electricity generation by the Cogeneration Plant. Whilst approximately 19% of the Company's output of

Bagasse is consumed in the Cogeneration Plant, small improvements in cane crops and fibre levels in Mackay should result in the outputs from the Cogeneration Plant being improved.

Poor factory milling performance can affect site Bagasse consumption and decrease the surplus available to the Racecourse Cogeneration Plant. In recent years equipment performance has led to reduced Bagasse make which has impacted on the amount of green electricity and LGCs which have been able to be generated. The performance and reliability of the Cogeneration Plant assets is also a key factor.

Returns from various cogeneration efficiency projects are derived from electricity export sales from the Racecourse Cogeneration Plant, and LGC sales from the Racecourse Cogeneration Plant. Marian and Farleigh project outputs (namely extra surplus Bagasse) have not produced expected results due to factory milling performance, resulting in less Bagasse being stored by the end of the season. Together with Racecourse (non-Cogeneration) boiler issues, expected coal savings have not accrued to the Racecourse Cogeneration Plant.

### ***Access to the sugar terminals***

As new entrants into the Australian milling sector seek to maximise their investment and leverage the assets they have purchased for their global sugar portfolios, it is anticipated that they will seek to influence control of the bulk sugar terminals. These assets, which are located on land leased by STL and operated by QSL, afford the industry competitive fobbing cost and storage capability to maximise the returns from the export of sugar. Mackay Sugar's shareholding is more than 25% of the issued 'M' class shares in STL. This shareholding position allows the Company to control certain decisions by STL members - such as changes to the STL Constitution or a decision to dispose of material assets, both of which requires a 75% vote by both 'M' and 'G' class shareholders.

Following the withdrawal of a number of milling companies from QSL (referred to in section 3.3) the QSL lease was terminated prior to the start of the 2017 crushing season. Mackay Sugar was involved in the discussions for the arrangements for the future operation of the terminals whereby users contracted directly with STL under a principle that treats each of the users on a no more or less favourable basis. Mackay Sugar initially agreed to a one year lease with STL for the 2017 season under this new operating model and has subsequently entered a 3 year agreement which extends until the 2021 season. The agreement also contains two further one year options but either party may determine not to exercise the option.

The terminals continue to be owned and operated directly by STL and STL has subcontracted the operations to QSL. Any changes to the existing arrangements may affect the terms of access to the bulk sugar terminals and the prices paid for storage of sugar at bulk sugar terminals.

### ***Funding and debt levels***

Mackay Sugar relies on debt funding extensively and, as set out in sections 5.1 and 7.12 the existing bank term debt facilities are due to expire on 2 March 2019 and the Corporate Bonds are due for repayment on 5 April 2019. Approaches have been made to both the Corporate Bond holders and the Company's senior debt financiers, NAB and Rabobank, for a further extension of their current facilities. These facility extensions may also be required for the Company's ability to implement the Recapitalisation Plan. It is proposed that the extension will be in place prior to the expiry date for the facilities.

In order to meet the Company's future funding requirements a mix of debt and equity funding will be required. See section 5.1 dealing with Going Concern and 5.3 dealing with the Recapitalisation Plan.

Failure to secure the required debt and equity will have an impact on the ability of the Company to conduct ongoing business operations and commence future projects. Mackay Sugar relies on debt funding from banks, the Corporate Bonds, investments in Unsecured Notes and the Mackay Sugar IBD Scheme. Mackay Sugar splits its bank debt funding between Rabobank and NAB which, in addition to the Corporate Bonds, Unsecured Notes and Mackay Sugar IBD Scheme, reduces the Company's dependency on one bank. However, the Company remains exposed to changes in banks' lending policies from time to time.

Mackay Sugar is required to pay interest for the provision of debt by the banks. The interest rate is affected by general and global economic factors and is subject to change from time to time. The Company's financing facilities contain periodic performance milestones set by the banks and failure to meet those could result in a default event, under the facility agreements, which may have a negative impact on the Company. The current facility agreements require Mackay Sugar to hedge the interest rate on a portion of the debt, however to the extent that this debt is not fully hedged, the Company will be adversely affected by an increase in interest rates.

Debt financing usually restricts certain operating and investment activities. As the sugar milling and refining businesses are capital intensive activities, it is possible that the current facility agreements could restrict capital replacement within the business and therefore affect Mackay Sugar's operations and implementation of the Company's overall strategy.

In order to secure the current financing facilities Mackay Sugar's bankers hold a general security interest in all of Mackay Sugar's and QCS' present and future assets and real property mortgages over the key mill sites and the lease of the molasses bladder site. For details refer section 7.12.

Mackay Sugar uses its existing banking facilities and cash flows for its plant loan scheme and farm lease incentive plan. Mackay Sugar is exposed to risk should any of the Growers default on the plant loans, lease repayments and/or the interest payments.

### ***Grower Choice Legislation***

The Grower Choice Legislation allows any grower negotiating a new supply contract with Mackay Sugar to refer disputes over the terms of that contract to arbitration. This has the potential to divert significant management time to dealing with disputes with Growers who do not agree to the terms of the CSPAs. The Mackay Sugar cane pay system would also potentially need to be amended to deal with multiple marketing arrangements if Growers insist on Mackay Sugar using a marketing entity other than under the current arrangements. In addition there is a potential risk to the Company's ability to supply raw sugar under the Sugar Australia raw sugar supply contract if Growers currently supplying to Mackay Sugar elect to have the sugar in which they have an economic interest marketed by other entities.

### ***Ability to raise additional capital***

There are no guarantees that the Company will be able to raise additional debt or equity funding to finance future working capital or capital expenditure, or that such funding will be available on suitable terms. Inability to raise additional debt or equity would negatively impact the Company's operations and in particular its ability to refinance the senior debt facilities due in March 2019 and the Corporate Bonds due in April 2019. The Recapitalisation Plan being undertaken is seeking to address the immediate and future capital requirements for the business.

### ***Climatic and geographic conditions***

Mackay Sugar's production areas are subject to a tropical climate. The wet season in these districts is generally between November and April. The cane farms and milling operations may suffer damage and therefore reduced production due to cyclonic activity and/or flooding or

drought conditions which are impossible to predict. It is not possible to predict whether there will be any long term change in weather patterns or short or long term changes in water availability.

The production, supply and processing of sugar cane can be adversely affected by unfavourable weather and environmental conditions.

### ***Water availability***

The ability of Mackay Sugar to conduct its milling operations in an efficient manner and to expand into appropriate diversification activities will be dependent on securing sufficient water supply. Farleigh mill and Marian mill predominantly use surface water from the Pioneer River, while Racecourse mill uses bore and MRC river water.

Mackay Sugar has a surface water allocation each year. In addition Racecourse mill has previously had an annual entitlement of sub-artesian water, which is normally permitted for extraction. From September 2017, a permanent water connection was established into the MRC river water main that permits MRC to on-sell river water to Racecourse mill.

Mackay Sugar has joined with Sugar Australia to manage the use of water and implement solutions and funding arrangements for both the Racecourse mill and the refinery operations. The solutions have included increased storage and piping to facilitate using and treating river water on site.

Mackay Sugar has also implemented storage and recovery systems to recover stormwater from Racecourse site drains to supplement water requirements for the site. With the combined supply sources of bores, river water, potable water and stormwater recovery, Racecourse site has moved to a position of stability in respect to water security.

Mossman mill uses water extracted from South Mossman River for production purposes and has appropriate water licences and allocations to do so. Current allocations are sufficient to meet operating requirements; however these allocations may be influenced by tidal movements (saline) during low river flows.

### ***Concentration of resources***

Mackay Sugar derives approximately 85% of its revenue from the production and marketing of sugar. Any event or circumstance that reduces the supply or demand for sugar in Australia or overseas, or restricts Mackay Sugar's access to markets, may have a material impact on the profitability of Mackay Sugar.

### ***Disease and pests***

Cane disease and pests are risks that could lead to a significant decrease in the cane crop. The development of varieties with disease and pest resistant characteristics has led to a cane variety replacement program being implemented so as to reduce the risk from previously identified causes. Sugar Research Australia Limited, Mackay Area Productivity Services, Mossman Agricultural Services and Tableland Canegrowers Limited are monitoring the spread of pests and diseases and are providing research advice to Growers.

### ***Reliance on key contractors***

Mackay Sugar relies on a number of key contractors in its business. It is therefore vulnerable to loss of these contractors for whatever reason.

Mackay Sugar relies on independent contractors for its road transportation services in the Mackay Mossman and Tableland districts. While it is considered unlikely, there is however a risk that

those transport contractors may cease to operate or contract with Mackay Sugar which could disrupt business and adversely affect results.

### ***Counterparty risk***

The Company's business relies on the successful performance of contracts with external counterparties, including customers and service providers. There is a risk that these counterparties may not meet their responsibilities, including as a result of insolvency, financial distress or liquidation of the counterparty. This may have a negative impact on the Company's profitability.

### ***Reliance on key marketing arrangements***

The channels to market the Company's sugar are predominately through arrangements with QSL, Alvean Sugar S.L. and Sugar Australia. There is a risk that the implementation of the Grower Choice Legislation could impact on the future raw sugar supply to these parties. Any changes impacting on these relationships with Mackay Sugar may have an adverse impact on profitability.

### ***Environmental***

The operations and activities of Mackay Sugar are subject to Australian State and Federal laws and regulations regarding environmental matters. Some of the operations and activities of Mackay Sugar are environmentally sensitive and cannot be carried out without prior approval from and in compliance with the directives of all relevant environmental authorities. Any significant changes such as a tightening of emissions limits, prescribed waste classifications, or chemical regulations may have a material impact on future performance.

In response to reports that fertiliser, pesticides and sediment runoff into water courses adjoining cane farms is a contributor to coral reef damage, the Queensland Government introduced the *Great Barrier Reef Protection Amendment Act 2009*, effective from 1 January 2010. It is difficult to gauge the extent of the impact (if any) on the quantity and quality of cane produced and therefore the impact on the Company's profitability should there be a suspension of any fertilizer, herbicides or pesticides used in the production of cane.

Farleigh mill completed all of the necessary works identified in the Transitional Environmental Program (TEP) issued by the Department of Environment and Science, resulting in significant reductions in particulate concentrations released during YEM17. The three year TEP was finalised by the department on 30 November 2017, acknowledging that Mackay Sugar had satisfied all requirements of the program.

Following the issue of a Penalty Infringement Notice in December 2016, for failing to meet a condition of an existing stack emission under the TEP, the Department of Environment and Science made a forced amendment to the Mossman mill environmental authority. The amendment included conditions pertaining to nuisance dust and increased the requirement to measure particulate emissions once every crushing season, rather than every second year. Mossman mill is now within licence limits for stack emissions.

Mossman mill recorded a total of three Biochemical Oxygen Demand (**BOD**) exceedances during the 2017 crushing season. All exceedances were notified to the Department of Environment and Science as a non-compliance. Mackay Sugar was issued with a formal warning in response to the exceedances. An Environmental Evaluation required Mackay Sugar to identify the source of contamination within release waters and the final investigation report was submitted to the department on 15 February 2018. A request for further information was issued to Mackay Sugar and a further assessment was submitted on 3 September 2018, receipt of which has been acknowledged but no further correspondence has passed. There has been a report of an exceedance of BOD at Mossman mill towards the end of the 2018 season.

The department issued Mackay Sugar with a notice to conduct an Environmental Evaluation, following a history of community complaints regarding odour at the Racecourse mill effluent treatment ponds. The investigation requires Mackay Sugar to conduct a program of odour monitoring at the ponds and at nearby sensitive receptors, during crushing and non-crushing operations. The final report is due for submission before 31 January 2019 and environmental consultants have been engaged to assist with the investigation.

The Department of Environment and Science issued Racecourse mill with a Penalty Infringement Notice in October 2017 after MSL reported an accidental release of sugar milling effluent into Rocky Creek, which occurred during pipe repair maintenance. Mackay Sugar has worked to improve its contractor management processes to ensure that similar incidents can be avoided in the future.

Mackay Sugar received a notice to appear in Mackay Magistrates court, after being charged with four offences as a result of an effluent release at Sandy Creek in September 2016. On 29 June 2018 Mackay Sugar pleaded guilty to two reduced charges for contravention of the environmental licence and was subsequently fined \$160,000 with no conviction recorded.

### ***Health and safety***

Mackay Sugar was provided with a Complaint and Summons by Workplace Health and Safety Queensland in May 2016 relating to an alleged breach of the Work Health and Safety Act 2011 (Qld). The complaint relates to an incident which occurred on 25 September 2014 whilst an employee was working around the tippler at Mossman mill.

In October 2017 a Mackay Sugar employee died whilst conducting shunting operations at the Mirani West 2 cane rail siding. Investigations are still continuing to determine the cause of the fatality and Mackay Sugar continues to co-operate with the Queensland Police Service and WHSQ in relation to the incident.

The Company progressed with negotiating an Enforceable Undertaking and the document was submitted to the Office of Industrial Relations in November 2017 with the support of the Enforceable Undertaking unit, however a result is still pending.

Members of the Mackay Sugar management team met with WHSQ in February 2018 to discuss the safety performance during 2017. The Company is working with WHSQ on a safety improvement program aimed at injury prevention and improved safety outcomes. The program is called IPaM (Injury Prevention and Management) and with it comes a dedicated WHSQ Advisor to work with the business for up to two years.

This is a positive proactive program between WHSQ and MSL to reduce risk and injuries for Mackay Sugar's employees and the external parties interacting with our operations.

### ***Government action***

The economic, regulatory and taxation policies, including the Clean Energy Future legislation and other actions by the Australian Government, and other actions by governments in countries where Mackay Sugar's products are sold may influence future profitability. In particular these changes in policies continue to impact not only on the global demand for sugar but also local demand. At least 17 countries have added an additional tax on sweetened beverages and other nations are considering a similar levy.

The future financial performance of the Racecourse Cogeneration Plant, and further investment in additional cogeneration facilities, is contingent on Federal and State Government policies that support the renewable energy sector. The Federal Government's proposed National Energy

Guarantee does include the RET scheme continuing to 2030 for incumbent generators, and national renewable generation percentages are expected to increase to between 28% and 36% by 2030. Through the ASMC, the sugar industry (including Mackay Sugar) will lobby on energy policy and changes to AEMO rules that promote renewable generation.

### ***Product quality***

Agronomic factors affect the quality of cane supplied to Mackay Sugar's facilities and these, together with production efficiencies, determine the quality of raw sugar produced. Not producing sugar to the specified quality levels could negatively impact Mackay Sugar's financial results. There is also a possible increased risk to raw sugar quality due to the exit of the various mills from QSL, as some quality issues may not be as easily addressed by product blending, potentially requiring investment to address those quality issues.

### ***Refining investments***

Mackay Sugar has a 25% interest in Sugar Australia. Sugar Australia is the manager of an unincorporated joint venture between Mackay Sugar and entities related to Wilmar Sugar Australia Limited, known as the Sugar Australia Refining Joint Venture. The Sugar Australia Refining Joint Venture undertakes sugar refining and distribution. Refer section 7.8 for further information regarding activities of the joint venture. Mackay Sugar also has a 25% interest in NZSC which also undertakes sugar refining and distribution activities and Oriana Shipping which undertakes distribution activities. These investments represent risk to Mackay Sugar of a different nature to its general business risk as a sugar miller, including the risk of low profit from refinery operations and high joint venture cash calls.

With the difficult market conditions being faced by Sugar Australia in the domestic refined sugar market and the impact of reduced sales and margins on profitability, during the year the board determined that the Australian Accounting Standards required that the carrying value of the Sugar Australia assets be tested. The testing and ultimate write down was driven by the declining profits and cash flows for Sugar Australia and a detailed impairment assessment was completed. The amount of the impairment of \$6.9m was required to be treated as a loss for the year in the Profit and Loss account. The write down of investments was a book entry only and had no effect on Mackay Sugar's cash flow for the year.

Under the Sugar Australia Joint Venture, the Company may be liable for cash calls, no more than weekly, to cover expenditure incurred for the purposes of the Joint Venture. The amount of the cash call is an amount agreed to by the Joint Venture participants and the manager, Sugar Australia, from time to time. Should the Company not pay the cash call, another participant in the Joint Venture may pay it and the Company must then repay that other Joint Venture participant the amount, with interest calculated daily and payable monthly. If the Company does not pay the cash call within 30 days of the due date and another Joint Venture participant does not pay it on their behalf, the Company automatically grants put and call options to the other Joint Venture participants which may, as applicable, require them to sell their interest in the Joint Venture or otherwise purchase the other participant's interests in the Joint Venture.

### ***Industrial action***

Industrial action could, whether originating in Mackay Sugar's workforce (including during the period of negotiating a new EBA) or elsewhere in other industries, disrupt business and adversely affect results.

### ***Litigation***

Various issues are addressed in this section above under the heading 'Environmental'.

In October 2017 one of the Company's cane railway employees was fatally injured in a work place accident, which is still under investigation. The Company is continuing to work with the authorities and, depending on the outcome of the investigations, some action could potentially be taken against the Company.

Other than as set out elsewhere in this Prospectus, Mackay Sugar is not involved in any other material legal or arbitration proceedings nor, so far as it is aware, are any material proceedings pending or threatened against it. However in the ordinary course of business Mackay Sugar may become involved in litigation and the outcome of any such proceedings may affect results.

### ***Product contamination***

Adverse publicity resulting from product contamination or malicious tampering could have serious consequences for Mackay Sugar and the industry as a whole through reduced demand for sugar. Any residues of chemicals, other unnatural substances or genetically modified products in local or overseas sugar sales, could restrict the markets in which sugar could be sold. Contamination may render the sugar unacceptable to consumers in any market and could also result in a product recall at considerable cost to Mackay Sugar.

### ***Consumer perceptions and attitudes***

Australian consumers have traditionally regarded sugar as a natural, healthy food product. However, it should be recognised that there have been some changes in perceptions, lifestyles and eating habits which could affect future demand. Mackay Sugar's Bonsucro certification may assist in partially addressing this risk, through its reinforcement of sustainably acceptable practices, however there is an ongoing risk that the mills will not be able to maintain their accreditation due to, for example, environmental non-compliance, or that sufficient Growers do not undertake the necessary process to meet the accreditation requirements.

### ***Competition***

Mackay Sugar is in competition with other sugar milling and refining companies in Australia and overseas. Some of these competitors have greater financial resources than Mackay Sugar and may be in a stronger position to compete for the same business opportunities.

There is a risk that there may be a shift in comparative competitiveness due to a number of factors. These could include competitors' productivity levels not being matched by Mackay Sugar, government intervention, exchange rate fluctuations or other matters unforeseen by Mackay Sugar.

### ***Mackay Ring Road***

During the course of the Company's involvement in the Mackay Ring Road planning study various alignment options were proposed. The Company provided feedback as to the suitability of those alignments and the potential impacts that they would have on the Company's sugar milling operations, in particular around the Racecourse mill site. While Mackay Sugar continues to support the Ring Road concept, the Company has expressed strong reservations as to the suitability of the currently designated alignment. Resumption notices have been issued to the affected landholders, including the Company, and the Company will continue to work with the Department of Transport and Main Roads, MRC and other stakeholders with a view to achieving an acceptable outcome that meets the needs of all stakeholders.

As the Mackay Ring Road does not follow the Company's preferred alignment, there is greater potential in the longer term for housing and other development to encroach upon the Company's operations and land that is otherwise utilised for cane farming.

***Operational***

The operations of Mackay Sugar may be affected by a number of circumstances including:

- (a) natural disasters;
- (b) workplace accidents such as rail or mill accidents that relate to various operational aspects of the business which could involve employees, contractors and third parties;
- (c) incidents or delays involving cane rail and road dual carriageways;
- (d) difficulties in commissioning operating plant and equipment;
- (e) information systems failure and cyber security breaches;
- (f) major equipment failure or plant breakdown, and aging of the assets;
- (g) fraudulent actions;
- (h) labour shortages;
- (i) industrial diseases;
- (j) weather and fire affecting buildings and/or plant and the Bagasse stockpile;
- (k) infrastructure disruptions;
- (l) unanticipated refining or cogeneration problems;
- (m) unanticipated termination of any transportation contracts;
- (n) increase in costs or shortages/delays in obtaining spare parts, plant and equipment;
- (o) fluctuations in fuel and water prices;
- (p) fluctuations in electricity prices;
- (q) industry restructures; and
- (r) civil disobedience, sabotage, hijacking or terrorist activity.

**6.3 General investment risks**

***Note redemption***

In the event of redemption of a significant portion of the Unsecured Notes, Mackay Sugar would need to arrange for alternative financing to repay those Unsecured Notes.

***Illiquid investment – no market for Unsecured Notes***

Mackay Sugar is not required to redeem the Unsecured Notes prior to the Maturity Date. In addition, the Unsecured Notes cannot be traded as there is no established secondary market.

***General economic and business conditions***

The operating and financial performance of Mackay Sugar is influenced by a variety of general economic and business conditions including:

- (a) the level of inflation;
- (b) interest rates;
- (c) government fiscal, monetary and regulatory policies;
- (d) industrial disputes; and
- (e) fluctuations in the global economy and international exchange rates.

A prolonged deterioration in general economic conditions, including an increase in interest rates, could be expected to have a corresponding adverse impact on the operating and financial performance of Mackay Sugar.

***Global events***

Mackay Sugar's operating and financial performance may be influenced by a variety of global events including war, terrorist acts and pandemics.

***Actual events***

Actual events and circumstances may differ from those anticipated in this Prospectus, the result being that the Company will need to adapt its operations.

***Accounting standards***

Australian accounting standards are set by the Australian Accounting Standards Board (AASB) and are outside the Directors' and Mackay Sugar's control. Changes to accounting standards issued by AASB could materially adversely affect the position reported in Mackay Sugar's financial statements.

***Changes in law***

Mackay Sugar, as with all other corporations, is subject to changes in regulation relating to tax, administration, compliance and general government policies. Any such amendments may have an impact on Mackay Sugar.

## **7 Material agreements**

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### **7.1 Inspection of significant documents**

The Board is of the opinion that certain agreements and associated information are significant to this Prospectus or may be relevant to you as a potential investor in Mackay Sugar. The Directors consider that the agreements described below and elsewhere in this Prospectus are those which you would reasonably regard as material and which you and your professional advisers would need details of to enable you to make an informed assessment of the Offer. Set out in this section is a brief summary of the more important provisions of these agreements.

Copies of the following documents are available for inspection during normal office hours at the registered office of Mackay Sugar for 13 months after the date of this Prospectus:

- (a) the Constitution; and
- (b) the consents to the issue of this Prospectus.

### **7.2 Constitution**

The following is a summary of the major provisions of the Company's constitution:

#### ***Shares***

The Shares of Mackay Sugar can be issued with preferred, deferred or other special rights, obligations or restrictions in relation to dividends, voting, return of share capital, payment of calls or other matters, as determined by the Board from time to time. The issue of Shares is under the control of the Board, which may grant options on the Shares, issue option certificates, allot or dispose of the Shares on the terms and conditions and for the consideration it thinks fit. This power is subject to contract or any contrary rules in the Constitution. The Constitution permits the issue of preference shares on terms determined by the Board.

#### ***Share rights***

As at the date of this Prospectus, Mackay Sugar has Voting Shares and Investment Shares on issue. Both Voting Shares and Investment Shares are held by Growers. Investment Shares are also held by Former Growers and other Permitted Shareholders.

The holders of Voting Shares have the right to attend general meetings of Mackay Sugar and vote at those meetings.

The holders of Investment Shares have the right to attend general meetings of Mackay Sugar, receive dividends as determined from time to time by the Directors and, in a winding-up or reduction of capital, to participate equally in the distribution of the surplus assets of the Company. The holders of Investment Shares will not have any right to vote at a general meeting of Mackay Sugar unless those holders also hold Voting Shares.

#### ***Restrictions on shareholdings***

Under the Constitution only Growers can hold or be issued Voting Shares. In addition, no person must have a Relevant Interest in more than 5% of any one class of shares in Mackay Sugar. Any person who acquires Shares in breach of these restrictions will be required to dispose of those Shares to the extent necessary so that the person falls within the Shareholders' entitlement restrictions.

If a person fails to dispose of the Shares in the time determined by the Board (no less than three months or more than six months), the Board is authorised to dispose of the Shares on behalf of the person. The proceeds from the sale of the Shares less any expenses incurred by the Board in selling the Shares will be paid to the person on whose behalf the Shares were sold.

If a person who is not eligible to hold shares inherits Shares through a deceased estate similar disposal rules apply, however in those cases the person will have up to two years to dispose of the Shares.

### ***Share transfers***

Subject to the provisions of the Constitution, Shares may be transferred by an instrument in writing in the usual form or by any other form approved by the Board and subject to the requirements of the stock exchange if they are listed. The Board may request information relating to any Share transfers and may refuse to register any transfer which it believes will result in a breach of the shareholding restrictions.

### ***Rights of Shareholders***

Each Shareholder has the right to receive notices and to attend general meetings of the Company. Subject to restrictions on voting contained in the Constitution or the Corporations Act and restrictions on voting from time to time affecting the class of Shares, each Voting Shareholder present has a right to vote.

### ***Votes of Shareholders***

Prior to a Capital Raising and subject to the restrictions on voting from time to time affecting any class of Shares:

- (a) on a show of hands, each Voting Shareholder present at a meeting has one vote; and
- (b) on a poll, each Voting Shareholder present has one vote.

Following a Capital Raising and subject to the restrictions on voting from time to time affecting any class of shares:

- (a) on a show of hands, each Voting Shareholder present has one vote;
- (b) on a poll, each Voting Shareholder present has:
  - (i) one vote for each fully paid Investment Share held by the Voting Shareholder;
  - (ii) one vote if the Voting Shareholder does not hold any Investment Shares; and
  - (iii) for each Investment Share which is not fully paid, a fraction of a vote equivalent to the proportion which the amount paid up on that Investment Share bears to the total issue price for that Investment Share.

Each Shareholder can appoint one or more proxies. A proxy need not be a Shareholder. A corporation being a Shareholder and which is entitled to vote, may vote via a person authorised by the directors of the corporation or by a proxy appointed by the corporation.

### ***Variation of rights***

The rights and restrictions attaching to any class of Shares (unless provided by the terms of issue of the Shares of that class), can only be varied with the consent in writing of Shareholders with

at least 75% of the votes in that class, or with the sanction of a special resolution passed at a separate meeting of the holders of Shares of that class.

### ***Election of Directors***

The number of Directors (not including alternate Directors) is required to be the number, not being less than seven nor more than nine, which the Board may from time to time determine, provided that the Board may not reduce the number below the number of Directors in office at the time of the reduction.

The Board is to be constituted by:

- (a) five Grower Directors; and
- (b) a minimum of two and a maximum of four Non Grower Directors.

Grower Directors will be subject to retirement by rotation each three years. The period of service as a Director of Mackay Sugar will be taken into account for rotation purposes.

On the basis of the current Board composition, Grower Directors will be required to retire by rotation on a two Grower Director, two Grower Director and one Grower Director basis respectively at successive annual general meetings. The Grower Directors will retire in order of length of service, with the longest serving Grower Directors being required to retire first. The election process for Directors will take place by way of postal ballot with the outcome of the ballot being advised at the annual general meeting.

If the Shares are quoted on a stock exchange in the future, the voting for Grower Directors will be required to change from a postal ballot process to a vote by show of hands or ballot at each annual general meeting.

### ***Indemnities***

Mackay Sugar must indemnify each Director, secretary and executive officer against any liability incurred by them by virtue of their holding office, other than a liability owed to Mackay Sugar or a related body corporate of Mackay Sugar, a liability for a pecuniary penalty order or compensation order under the Corporations Act, or a liability that does not arise out of conduct in good faith. Mackay Sugar may indemnify employees in some limited circumstances. Mackay Sugar may indemnify each Director, secretary and executive officer for legal costs incurred by them in their position as an officeholder. Mackay Sugar may also indemnify an employee for their legal costs.

### ***Insurance***

Mackay Sugar may pay insurance premiums for officers and employees in certain designated circumstances, however these policies will not apply where the liability arises as a result of a wilful breach of duty in relation to Mackay Sugar or the improper use of position or inside information, as prohibited by the Corporations Act.

## **7.3 Terms of Unsecured Notes**

### **The Trustee**

The Trustee is an authorised statutory trustee company in all mainland Australian states and territories and is part of IOOF Holdings Ltd (**IOOF**), a leading provider of wealth management products and services in Australia, which is listed on the Australian Securities Exchange. The IOOF group also includes Bridges Financial Planning Services Pty Limited and Select Managed

Funds Limited. The Trustee has over 130 years of experience as a specialist provider of trustee services and acts as trustee for a number of retail and wholesale note issues.

The Trustee has obligations and duties under the Trust Deed and the Corporations Act. The Trustee has agreed to undertake those obligations and perform those duties. Neither the Trustee nor any of its directors or officers guarantees performance by Mackay Sugar of its obligations under the Trust Deed or the conditions of the Unsecured Notes (including, without limitation, the obligation to make interest payments).

The Trustee has not authorised or caused the issue of this Prospectus and takes no responsibility for any part of this Prospectus. The Trustee does not make any representations as to the truth or accuracy of the contents of this Prospectus other than the parts which refer directly to the Trustee. The Trustee does not make any representation regarding or accepting any responsibility for any statements or omissions in or from any other parts of this Prospectus.

The Trustee is not involved in the promotion or the issue of the Unsecured Notes and gives no express or implied recommendation or other statement in respect of the issue of the Unsecured Notes or as to whether or not the Unsecured Notes are a suitable investment for any person.

The Trustee acting as trustee under the Trust Deed is not to be read or construed as an endorsement of the Unsecured Notes or any investment represented by the Unsecured Notes. Each applicant for an Unsecured Note must:

- (a) make their own assessment as to whether or not an investment in the Unsecured Notes is a suitable form of investment for them having regard to their personal, financial, taxation and other relevant circumstances and taking into account any other proposed terms and conditions of the Unsecured Note;
- (b) seek their own financial, taxation and other relevant advice in determining whether or not to make an investment in the Unsecured Notes taking into account any other proposed terms and conditions of the Unsecured Note; and
- (c) make their own decision whether or not to invest in Unsecured Notes taking into account any other proposed terms and conditions of the Unsecured Note and without reliance on any recommendation, statement, opinion, forecast or other representation (whether positive or by omission) by or on behalf of the Trustee.

Other than the parts of this Prospectus that refer directly to the Trustee or to the provisions of the Trust Deed, the Trustee has relied upon Mackay Sugar for the accuracy of the content of this Prospectus. The Trustee does not make any representations as to the performance of the issue, the maintenance of capital or any particular rate of return.

### **The Trust Deed**

#### ***General***

Mackay Sugar and the Trustee are parties to the Trust Deed. The Trust Deed governs the terms and conditions on which the Unsecured Notes are issued. The Unsecured Notes rank for payment in the event of the winding-up of Mackay Sugar equally with all other unsecured creditors of Mackay Sugar. The fact that the Trust Deed is in place does not enhance the security or recoverability of money owed to Noteholders. The Unsecured Notes are issued subject to the conditions in Schedule 1 of the Trust Deed. A summary of those conditions is set out in this section.

### ***Terms***

The Unsecured Notes shall each:

- (a) have a face value of \$1;
- (b) be paid for in full on application; and
- (c) bear interest calculated on the Principal Amount and payable in accordance with the Prospectus and the Trust Deed.

The Investment Term of the Unsecured Notes will be, at the investor's election for Selected Term Unsecured Notes, or on a 7 Day Call basis or for terms of 6, 12, 24 months or 5 years from the Date of Investment. Each Unsecured Note accrues a different rate of interest as listed in the Rate Sheet which will be circulated by Mackay Sugar from time to time and which forms a part of this Prospectus.

Interest is calculated daily from the Date of Investment until the Maturity Date and paid to Noteholders after every Calculation Period or on the Maturity Date, whichever date is first, unless the Rate Sheet otherwise specifies. Mackay Sugar will use its best endeavours to ensure that interest payments are made within 14 days and no later than 90 days after the end of each Calculation Period or the Maturity Date. If the interest payable on the Unsecured Notes is not paid within 14 days of the end of the Calculation Period or the Maturity Date (**Interest Payment Period**), then the interest payable on the Unsecured Notes will continue to accrue on the Principal Amount in addition to any interest that was due and payable during the Interest Payment Period and was not paid during the Interest Payment Period at the rate per annum set out in the Rate Sheet applicable to that Unsecured Note.

In any case where interest is to be paid in respect of a period of less than a full year, the interest payable is to be calculated on the basis of a year of 365 days and the actual number of days elapsed.

Unless otherwise designated on the Application, all periodic interest payments on the Unsecured Notes will be invested in 7 Day Call Unsecured Notes.

### ***Indemnity***

To the extent permitted by section 283DB of the Corporations Act, Mackay Sugar indemnifies and agrees to keep indemnified the Trustee in respect of the Trustee expenses set out in the Trust Deed. This indemnity is in addition to any indemnity allowed by law, but does not extend to costs, charges, liabilities or expenses arising from the Trustee's own fraud, negligence or wilful default or that of any attorney, employee, agent or person appointed by it under the Trust Deed.

### ***Limitation of liability***

The liability of the Trustee is limited by clause 12 of the Trust Deed. The Trustee is not liable to Mackay Sugar or any other person in any capacity other than as trustee of the Trust.

Subject to any liability that arises out of the Trustee's own fraud, negligence or wilful default, and section 283DB of the Corporations Act:

- (a) a liability to Mackay Sugar arising out of or in connection with the Trust Deed is limited to and can only be enforced by Mackay Sugar out of any property held by the Trustee out of which the Trustee is actually indemnified for the liability;

- (b) Mackay Sugar may not sue the Trustee in any capacity other than as trustee of the Trust; and
- (c) Mackay Sugar waives its rights and releases the Trustee from any personal liability in respect of any loss or damage which Mackay Sugar may suffer as a consequence of a failure of the Trustee to perform its obligations under the Trust Deed, which cannot be paid or satisfied out of any property held by the Trustee.

Where the Trustee appoints a delegate in accordance with the Trust Deed, the delegate has no authority to act on behalf of the Trustee in any way which exposes the Trustee to personal liability, and no such act or omission will be considered fraud, negligence or wilful default of the Trustee.

***Events of default***

Each of the following events is an event of default:

- (a) (default in payment) if Mackay Sugar defaults in the payment of any Moneys Owing in respect of the Unsecured Notes and that default is not remedied by Mackay Sugar within seven days after demand for those moneys is made by the Trustee or any Noteholder;
- (b) (material breach) if Mackay Sugar commits a material breach of any other covenant, condition or obligation imposed on it by the Trust Deed and that breach has not been remedied within 30 days of receiving notice of the breach from the Trustee requiring that breach to be remedied;
- (c) (winding-up) if an order is made or a resolution is effectively passed for the winding-up of Mackay Sugar, except for the purposes of a reconstruction or amalgamation with the prior written consent of the Trustee (such consent not to be unreasonably withheld);
- (d) (insolvency) if Mackay Sugar is unable to pay its debts within the meaning of the Corporations Act; and
- (e) (liquidation) if Mackay Sugar enters into liquidation.

***Trustee's powers upon an event of default***

Upon receiving notice from Mackay Sugar or a Noteholder of the occurrence of an event of default, the Trustee must convene a meeting of Noteholders and must, if resolved by Extraordinary Resolution at that meeting:

- (a) commence proceedings for the winding-up of Mackay Sugar; or
- (b) take other action relating to the enforcement of payment of Moneys Owing to Noteholders (including without limitation issuing redemption notices requiring Mackay Sugar to redeem Unsecured Notes); and
- (c) prove in any liquidation for Mackay Sugar.

***Trustee's discretion***

Subject to the Corporations Act, the Trustee has, as regards all the powers and authorities and discretions vested in it by the Trust Deed, absolute and uncontrolled discretion as to the exercise of that discretion in all respects and, in the absence of fraud, negligence or breach of trust, the Trustee will not, to the extent permitted by the Corporations Act, be in any way responsible for any loss, damage, cost or expense that may result from the exercise or non-exercise of that discretion.

***Amendments to Trust Deed***

The Trustee and Mackay Sugar, without the authority of the Noteholders, may by deed make any amendment or addition to the Trust Deed if (in the opinion of the Trustee) such amendment is:

- (a) made to correct a manifest error or is of a formal or technical nature only;
- (b) necessary or expedient to enable the Unsecured Notes to be listed or remain listed for quotation on any stock exchange or to be offered for subscription or sale under the laws for the time being in force in any place; or
- (c) considered by the Trustee not to be or not likely to be materially prejudicial to the interests of the Noteholders and two Directors of Mackay Sugar have so certified to the Trustee.

Otherwise the Trust Deed may be altered or modified with the approval of an Extraordinary Resolution of Noteholders.

***Subordination***

The Unsecured Notes shall be subordinated to Finance Debt in accordance with the terms of the Trust Deed.

'Finance Debt' is defined as all amounts which Mackay Sugar may owe to a Finance Creditor under or in relation to a Finance Arrangement other than a Noteholder under the Trust Deed, whether those amounts comprise principal, interest or any other amount owing under a Finance Arrangement, and whether that amount is or becomes owing now or in the future by Mackay Sugar alone or together with one or more others or actually or contingently.

'Finance Creditor' is defined as excluding the Unsecured Notes and including:

- (a) each creditor of Mackay Sugar which becomes a party to or a beneficiary of a Finance Arrangement as a creditor or agent or trustee of that creditor for so long as it remains a creditor under that Finance Arrangement;
- (b) each creditor of Mackay Sugar which becomes a party to or a beneficiary of a Finance Arrangement on a refinancing (in whole or in part) of a Finance Arrangement as a creditor or agent or trustee of that creditor for so long as it remains a creditor under that first mentioned Finance Arrangement; and
- (c) any other person declared to be a Finance Creditor by Mackay Sugar by notice in writing to the Trustee.

'Finance Arrangement' is defined as all of the documents and agreements:

- (a) which together constitute any arrangement for borrowing or raising moneys secured against all or any material part of the property or rights of Mackay Sugar or its subsidiaries, or any document or agreement relating to, or issued under, such arrangement; and
- (b) any other documents or agreements which Mackay Sugar declares to be a Finance Arrangement by notice in writing to the Trustee.

***Entry in Register***

Mackay Sugar must ensure that each Noteholder's details are entered in the Register.

***Maturity and repayment***

On the Maturity Date, Mackay Sugar is obliged to repay to the Noteholders the Principal Amount.

A request for the 7 Day Call Unsecured Notes to be redeemed may be made at any time with the delivery of written notice to Mackay Sugar. For Selected Term Unsecured Notes and for 6, 12, 24 Month and 5 Year Unsecured Notes, the Noteholder must deliver written notice to Mackay Sugar advising that they wish to redeem the Unsecured Notes at least 10 Business Days prior to the Maturity Date. If no instructions are received by Mackay Sugar, then the Maturing Money will be re-invested in new Unsecured Notes for the same term as the prior investment and the interest payable on the Maturing Money will be re-invested in 7 Day Call Unsecured Notes. The interest rate applicable to such re-investment will be the rate that is listed on the then current Rate Sheet.

Mackay Sugar must use its best endeavours to pay to the Noteholder the Principal Amount of the Unsecured Notes due for redemption on the Due Date, together with any interest accrued to that date. Mackay Sugar must pay all funds due under this clause to the Noteholder within 90 days of the Due Date. If the Principal Amount and any interest accrued is not paid to the Noteholders within 14 days of the Due Date, then the Principal Amount and any interest payable will continue to earn interest at the rate per annum set out in the Rate Sheet applicable to that Unsecured Note until the Principal Amount and any interest accrued are repaid.

Mackay Sugar will consider the early redemption of Selected Term Unsecured Notes and for 6, 12, 24 Month and 5 Year Unsecured Notes under the following circumstances:

- (a) in the event of the death of a sole Noteholder, the whole or any part of the Unsecured Notes will be repaid to the legal personal representative of the Noteholder; or
- (b) if the Noteholder provides a written request outlining unforeseen or exceptional circumstances of hardship and requests repayment of their Unsecured Notes prior to maturity.

Early repayment will be subject to:

- (a) the circumstances involved and will be at the sole discretion of Mackay Sugar; and
- (b) an early redemption fee and/or a reduced interest rate as provided in the Rate Sheet that was current at the time of investment.

For Selected Term Unsecured Notes and for 6, 12, 24 Month and 5 Year Unsecured Notes, if Mackay Sugar chooses to permit early redemption, then such Unsecured Notes will be redeemed (taking into consideration the applicable early redemption penalties) within seven days after Mackay Sugar makes its decision to permit early redemption.

Early redemption of 7 Day Call Unsecured Notes is not permitted.

Mackay Sugar may, at its discretion from time to time, redeem the Principal Amount of all the Unsecured Notes, or some of the Unsecured Notes together with all interest then due (if any) either with or without payment of a premium (including additional interest) upon giving 30 days' notice to a Noteholder.

***Foreign holders***

Where Unsecured Notes are held by or on behalf of a person resident outside Australia, then despite any other terms or conditions applicable to such Unsecured Notes, it shall be a condition precedent to the right of the Noteholder to receive payment of any amount payable under

Schedule 1 of the Trust Deed, that the requirements of all applicable laws of the Commonwealth of Australia or any of its States or Territories and of the country of residence of the Noteholder in respect of such payment are satisfied so that such payment will not result in a breach of any such applicable law by Mackay Sugar.

### ***Noteholder to provide certain information***

If requested by the Company, each Noteholder agrees, and it is a condition of the issue of the Unsecured Notes, to provide certain information required by it or the Trustee in order to comply with any applicable law, including the United States *Foreign Account Tax Compliance Act*.

### ***Secondary market***

There is no established secondary market for the Unsecured Notes. Noteholders may not transfer their Unsecured Notes to any other person.

### ***Inspection of Trust Deed***

Mackay Sugar will provide a copy of the Trust Deed free of charge to any Eligible Investor who requests it during the life of this Prospectus.

## **7.4 Terms of Corporate Bonds**

### **The trustee**

Mackay Sugar has engaged BNY as trustee for the Corporate Bonds. BNY has obligations and duties under the BNY Trust Deed and the Corporations Act. Under the BNY Trust Deed, BNY has agreed to exercise its rights and comply with its obligations under the Information Memorandum having regard to the interests of the Corporate Bond holders and its fiduciary obligations as trustee.

BNY is not involved in the promotion or the issue of the Unsecured Notes. The Trustee is the trustee for the Unsecured Notes. BNY's rights and obligations are in relation to the Corporate Bonds only. BNY's arrangement with Mackay Sugar is independent of the offer of Unsecured Notes under this Prospectus.

### **The BNY Trust Deed**

Mackay Sugar and BNY are parties to the BNY Trust Deed. The BNY Trust Deed governs the terms and conditions on which the Corporate Bonds are issued. The Corporate Bonds rank equally among themselves and at least equally with all other direct, unsubordinated and unsecured obligations of Mackay Sugar, except for liabilities mandatorily preferred by law. A summary of the conditions under which the Corporate Bonds are issued is set out in this section.

### ***Terms***

The Corporate Bonds are unconditional debt obligations of Mackay Sugar constituted by, and owing under, the BNY Trust Deed and issued under the Information Memorandum. Mackay Sugar has undertaken to BNY, and to each Corporate Bond holder, to pay the amounts due and payable in respect of that Corporate Bond.

Each Corporate Bond bears interest on its outstanding principal amount from (and including) the date of issue to its maturity date at the rate set out in the Pricing Supplement. Interest is payable regularly in arrears and on redemption of the Corporate Bond.

The Corporate Bonds are not 'finance debt' to which the Unsecured Notes will be subordinated. The Corporate Bonds and the Unsecured Notes will rank equally behind any secured obligations of Mackay Sugar.

***Indemnity***

Mackay Sugar indemnifies BNY on demand in respect of all costs, losses, liabilities, expenses, demands, actions or claims suffered or properly incurred by BNY in the execution of the BNY Trust Deed. This indemnity does not extend to any such costs, losses, liabilities, expenses, demands or claims to the extent arising from BNY's own fraud, gross negligence or wilful misconduct.

***Limitation of liability***

The liability of BNY is limited by the BNY Trust Deed. BNY is not liable to Mackay Sugar or any other person in any capacity other than as trustee of the BNY Trust Deed.

***Default event***

The Corporate Bonds contain a list of events which will constitute an event of default by Mackay Sugar which are customary for a document of its nature.

If an event of default occurs and continues unremedied in relation to the Corporate Bonds, then a Corporate Bond holder or BNY may declare by notice to Mackay Sugar that each Corporate Bond is to be redeemed by Mackay Sugar by paying the applicable redemption amount.

**7.5 Specific Terms**

Specific terms of the Corporate Bonds are as follows:

<b>Ratings</b>	The Corporate Bonds are not rated.
<b>Redemption</b>	Mackay Sugar must redeem the Corporate Bonds on the maturity date (being six years after the date of issue, following the redemption date being extended by one year in April 2018). The Company is working with the Trustee for the Noteholders to seek a further extension of the maturity date. See section 5.1 and 6.2
<b>Change of control</b>	Upon a change of control of Mackay Sugar, the holder of Corporate Bonds may require Mackay Sugar to redeem all or some of the Corporate Bonds at 100% of par plus accrued interest.
<b>Interest rate</b>	The Corporate Bonds bear the interest rate as set out in the Pricing Supplement.
<b>Covenants (given by Mackay Sugar to holders of Corporate Bonds)</b>	<ol style="list-style-type: none"> <li>1 Mackay Sugar will not create or permit to subsist any security interest over its present or future assets or revenues other than as permitted under the Information Memorandum.</li> <li>2 Mackay Sugar will not incur or permit to subsist any new financial indebtedness after the issue of the Corporate Bonds, unless that debt is incurred in the usual course of business and the total of all financial indebtedness to total tangible assets is not more than 75% and from 5 April 2018 may not incur additional</li> </ol>

	financial indebtedness of more than \$10m.
	<p>3 Mackay Sugar (or any wholly owned subsidiaries) will not effect a distribution or capital reduction except where the recipient of the proceeds of such reduction or buyback is Mackay Sugar or a wholly owned subsidiary.</p> <p>4 Mackay Sugar will not deal with its assets, other than disposals, partings with possession and interests created:</p> <p>(a) in the ordinary course of business at arm’s length and on arm’s length commercial terms;</p> <p>(b) where the assets are waste, obsolete and are not required for the efficient operation of its business;</p> <p>(c) in exchange for other assets comparable or superior as to type, value and quality; or</p> <p>(d) between Mackay Sugar and a wholly owned subsidiary.</p> <p>5 Mackay Sugar will do everything necessary to maintain its corporate existence.</p> <p>6 Mackay Sugar will comply with all laws binding on it where a failure to comply would have a material adverse effect on the ability of Mackay Sugar to comply with its obligations under the Corporate Bonds.</p>
<b>Issue restriction</b>	Notes were only issued if the minimum aggregate consideration payable was at least \$500,000 or disclosure to investors was not required under Part 6D.2 or Chapter 7 of the Corporations Act, but were subsequently able to be traded on a retail basis 12 months after issue.
<b>Governing law</b>	Queensland law governs the Corporate Bonds.

**7.6 Deeds of access, insurance and indemnity**

The Company has entered into standard deeds of access, insurance and indemnity with the Directors and certain senior executives.

The Company has undertaken, consistent with the Corporations Act, to indemnify each Director and the senior executives in certain circumstances and to maintain Directors’ and officers’ insurance cover in favour of each Director and senior executive for seven years after the Director or senior executive has ceased to be a Director or senior executive.

The Company has further undertaken, in respect of each Director, to maintain a complete set of the Company’s board papers and to make them available to each Director for seven years after the date that they ceased to be a Director and, in respect of each senior executive, to maintain any document that the senior executive would have prepared or had access to during the course of his or her employment.

**7.7 Cane Supply and Processing Agreements**

***Mackay***

Mackay Sugar has a Cane Supply and Processing Agreement with Growers for the supply of cane to Mackay Sugar's mills in the Mackay district. This Cane Supply and Processing Agreement has a four year term and originally covered the 2007 – 2010 crushing seasons. It is automatically extended each year so that it is a continuous four year agreement unless Mackay Sugar or 50% of the Growers in the Mackay district determine not to extend their Cane Supply and Processing Agreement. In that case the Cane Supply and Processing Agreement would terminate at the end of the crushing season, being three years after the notice is given.

A cane payment formula has been developed to determine the price of cane which Mackay Sugar pays to Growers in the Mackay district. The formula has been developed to facilitate a division of the revenue generated from sugar, molasses and certain electricity production, other than electricity products from the Racecourse Cogeneration Plant, between Mackay Sugar and the Growers in the Mackay district. The payment made to these Growers is affected by factors such as sugar price, sugar content, electricity price, fibre content, molasses price and molasses content produced from the cane supplied. The amount payable to a Grower will be calculated for each delivery and the payments made to the Growers will be the sum of the values of the individual deliveries. Cane payments are made weekly to Growers for cane supplied during the crushing season and monthly during the non-crushing season.

***Mossman***

Mackay Sugar has a Cane Supply and Processing Agreement with Growers for the supply of cane to Mackay Sugar's mill in the Mossman district. This Cane Supply and Processing Agreement has a three year term and covers the 2012 – 2014 crushing seasons. It is automatically extended each year so that it is a continuous three year agreement until such time as the first of any of the following events occurs:

- (a) the parties enter into a new contract in substitution for the current Cane Supply and Processing Agreement;
- (b) the parties mutually agree to terminate the Cane Supply and Processing Agreement; or
- (c) this Cane Supply and Processing Agreement is terminated as a consequence of the Grower or the mill giving to the other notice in writing of its intention to terminate in which event such termination shall be effective on the next 31 March following expiration of three years after the giving of such notice.

A cane payment formula determines the price of cane which Mackay Sugar pays to Growers in the Mossman district. The formula facilitates a division of the revenue generated from raw sugar sales (but does not incorporate molasses and electricity production) between Mackay Sugar and the Growers in the Mossman district. The payment made to these Growers is affected by factors such as sugar price and sugar content, produced from the cane supplied. The amount payable to a Grower will be calculated for each delivery and the payments made to the Growers will be the sum of the values of the individual deliveries. Cane payments are made every two weeks to Growers for cane supplied during the crushing season and monthly during the non-crushing season.

***Tableland***

A Cane Supply and Processing Agreement has been entered into with Tableland Growers and Tableland Canegrowers Limited ACN 114 759 376 for the supply of cane to Mossman mill from the 2014 season. The Cane Supply and Processing Agreement has an initial 5 year term covering the 2014 – 2018 crushing seasons. After the end of the third crushing season the agreement is automatically extended each year so that it is a continuous three year agreement until such time as the first of any of the following events occurs:

- (a) the parties enter into a new Cane Supply and Processing Agreement in substitution for the current contract;
- (b) the parties mutually agree to terminate the Cane Supply and Processing Agreement; or
- (c) the Cane Supply and Processing Agreement is terminated as a consequence of the Grower or Mackay Sugar giving to the other notice in writing of its intention to terminate in which event such termination shall be effective on the next 31 March following expiration of three years after the giving of such notice.

The earliest date the Cane Supply and Processing Agreement could have been terminated is after the 2018 season if either party gives notice to terminate at the end of the 2016 crushing season. A number of Growers who are parties to the Tableland Cane Supply and Processing Agreement have provided notice confirming that they will not be extending the term of the agreement. Subject to other cane land expansion, this amounted to an expected reduction of assigned area from approximately 8,500 hectares in the 2018 season to approximately 7,500 for the 2019 season and approximately 7,100 for the 2020 season.

During the year it was agreed that the period for providing notice for the 2020 season was extended to 31 December 2018. If a grower has already secured pricing for the 2020 season and wishes to give notice as of 31 December, 2018, it will only be allowed if separate arrangements are made to address any forward pricing.

The cane payment formula is on a basis similar to the Mossman formula and does not incorporate molasses and existing electricity production. It also has different provisions dealing with harvesting and transport logistics.

### ***General***

Any sugar cane grown for crushing by a Grower in the Mossman and Tableland districts or the Mackay district must be supplied to Mackay Sugar under their respective Cane Supply and Processing Agreements. Mackay Sugar must use all reasonable endeavours to process the cane supplied by Growers during the crushing season.

The Cane Supply and Processing Agreements also set out terms relating to the harvesting, weighing, analysis and auditing of cane and the calculation of the pricing pools for sugar (and, where relevant, molasses and existing fibre revenue).

## **7.8 Sugar Australia Joint Venture and related arrangements**

Mackay Sugar is a party to the Sugar Australia Joint Venture. The Joint Venture agreement was amended in March 2006 following the acquisition of ED&F Man Australia Pty Limited by Wilmar Sugar Australia Limited related entities.

The Joint Venture undertakes sugar refining activities and extends for a period of 75 years, (commencing 27 February 1998). Mackay Sugar has granted a lease of part of the Racecourse mill site upon which the Racecourse refinery has been constructed. The Joint Venture has also constructed a storage silo at the Mackay port and operates a refinery in Yarraville, Victoria and various other distribution facilities.

Oriana Shipping (of which Mackay Sugar owns 25%) operates a 'BIBO' refined sugar transport vessel. This vessel is used to ship refined sugar to domestic and export destinations.

The Joint Venture documents contain the usual features of commercial joint venture arrangements including pre-emptive rights and restrictions on transfers of Joint Venture interests and non-compete clauses.

***Mackay refinery supply agreement***

The Mackay refinery supply agreement (Supply Agreement) was entered into with Sugar Australia in February 1998 as part of the establishment of the Sugar Australia Joint Venture and (as amended and extended) covered the supply of services until 30 June 2017. The parties have agreed in principle to extend the agreement on the same terms, with indexed prices, until 30 June 2018. The Company has continued to supply under similar terms for the 2018 season, with negotiations ongoing at present to extend the current agreement for a further five years. Sugar Australia is the manager of the Racecourse refinery and the Supply Agreement governs the arrangements for the supply of services by Mackay Sugar from Racecourse mill to the Racecourse refinery.

Under the Supply Agreement, both Mackay Sugar and Sugar Australia acknowledge and agree that the Racecourse refinery and the Racecourse mill will be operated in conjunction with each other on a fully integrated basis as far as possible. Both parties agree to use their best endeavours to ensure the supply of services in this way but if there is an insufficient supply of services to allow both the Racecourse refinery and Racecourse mill to operate, preference may be given to the supply of services to the Racecourse mill during the crushing season.

The services covered by the Supply Agreement include the provision of steam, water, electricity, compressed air, cooling water, syrup processing, effluent treatment and administration and support services. Charges for the supply of the services are set out in the Supply Agreement.

***Raw sugar supply contract***

Mackay Sugar continues to supply raw sugar to Sugar Australia in accordance with the joint venture arrangements and the 2018 raw sugar supply agreement which is expected to be signed by both parties by December 2018. The agreement outlines the principles under which Mackay Sugar is obliged to deliver, and Sugar Australia will be supplied with, 380,000 tonnes of sugar produced by Mackay Sugar in the 2018 season. The raw sugar is for delivery to Sugar Australia's Racecourse refinery, which is annexed to Racecourse mill.

The raw sugar supplied is to be used in Sugar Australia's refining operations and is not to be exported as raw sugar unless it has been refined or repackaged.

The sale contract price is denominated in USD and is determined by the price at which Mackay Sugar hedges its sugar production in ICE#11 sugar futures and related currency hedges. Mackay Sugar manages its USD currency exposure resulting from its sugar price hedging under its raw sugar price risk management policy. Mackay Sugar invoices Sugar Australia weekly for raw sugar as it is supplied and Sugar Australia is able to make payments to Mackay Sugar in either USD or AUD.

**7.9 Racecourse Projects ownership structure**

Mackay Sugar holds 5.9% of Racecourse Projects. Interests associated with the farm manager hold a 0.6% interest and Black River Fund is the other shareholder in Racecourse Projects with 93.5%. The Black River Fund is an investment vehicle for a fund managed by Proterra, a global alternative asset management firm.

The Black River Fund received preferred shares in Racecourse Projects (which give the Black River Fund preferential rights to dividends and to the proceeds of the sale of assets upon a winding up) representing their interest in Racecourse Projects. The preferred shares must be converted by Racecourse Projects upon request by the Black River Fund or on the tenth anniversary of the effective date, where an agreed internal rate of return hurdle has been satisfied.

The Shareholders Agreement for Racecourse Projects Pty Ltd contains a number of provisions dealing with a change in control of a shareholder and these provisions will need to be addressed with any bidder as part of the Recapitalisation Plan.

### 7.10 New Zealand sugar refining arrangements

Mackay Sugar acquired shares in NZSC in February 1998 as part of the establishment of the Sugar Australia Joint Venture and is a party to the shareholders' agreement for that company.

The shareholders' agreement provides for NZSC to undertake sugar refining activities and extends for a period of 75 years. NZSC owns and operates a refinery in Auckland and distributes refined sugar under the 'Chelsea' brand.

The shareholders' agreement for NZSC contains similar terms to the Sugar Australia Joint Venture agreement including the usual features of commercial joint venture arrangements including pre-emptive rights and restrictions on transfers of shares and non-compete clauses.

### 7.11 Racecourse Cogeneration Plant contracts

The information disclosed in this section is subject to a confidentiality agreement.

#### ***Power Purchase Agreement***

A Power Purchase Agreement between Mackay Sugar and Ergon Energy was entered into on 30 January 2010, and commenced on commissioning of the plant, on 1 January 2013, and will end on 31 December 2018.

This agreement sets out the terms for the sale and the purchase of exported energy from Mackay Sugar's cogeneration plant.

Under this agreement Ergon Energy will buy:

- (a) the energy generated from Mackay Sugar's generator together with the green rights, for the energy charge; and
- (b) LGCs or NGACs for the LGC price or NGAC price, as the case may be.

The energy charge is determined by reference to the nominated quarterly peak period energy price or the off peak period energy price (as relevant).

The only fuels that may be used in the generator are coal or Bagasse or alternate renewable fuels which are acceptable under the Australian government's Green Power Program. Ergon Energy will acquire all LGCs from the generator other than those created using wood waste and those LGCs that are retained by Mackay Sugar in order to comply with any legislative requirements and authorisations relating to operation of the generator and its business at the Racecourse mill site (including discharging its own renewable energy and greenhouse gas emission obligations or liabilities whether under an emissions trading scheme or otherwise).

If the LGC scheme is repealed or terminated, all future obligations in relation to the transfer and payment of LGCs will cease. If the parties are unable to reach an agreement on a new methodology for calculation of the energy charge within 180 days of the date of repeal or termination of the LGC Act, then either party has the right to immediately terminate the agreement by written notice to the other party. Apart from the circumstances noted above, the agreement can only be terminated for default.

Neither party has any liability to the other for consequential loss, loss of profit or other indirect loss. The parties have however acknowledged that failure by Mackay Sugar to deliver the minimum LGC volume each year will cause Ergon Energy direct loss, such loss being equal to the number of LGCs that Mackay Sugar fails to transfer multiplied by the difference between the market value of the LGCs and the LGC price at the time (if the market value of LGCs is greater than the LGC price at the time).

Mackay Sugar can assign or otherwise dispose of its rights under the agreement to a technically and financially capable party provided that the assignee executes an appropriate deed in favour of Ergon Energy pursuant to which it undertakes to perform the obligations and to meet the liabilities of Mackay Sugar under the agreement.

Alternative arrangements are currently under consideration to determine the most appropriate electricity pricing for the Company beyond 31 December 2018.

### ***Tripartite consent deed – Power Purchase Agreement***

The tripartite consent deed is a tripartite deed between Ergon Energy, Mackay Sugar and Mackay Sugar's financiers. Pursuant to this deed:

- (a) Ergon Energy consents to the creation of the financiers' security and acknowledges that the creation of the security will not be a default under the Power Purchase Agreement;
- (b) Ergon Energy will provide the financiers with copies of any notices given to Mackay Sugar under the Power Purchase Agreement relating to termination, suspension and remedy of a default; and
- (c) the financiers have certain rights to step in and cure the default of Mackay Sugar upon becoming aware of the default.

### ***Generator connection agreement and consent deed***

Mackay Sugar has entered into an agreement with EECL relating to:

- (a) undertaking the works required to connect Racecourse mill's power station to the EECL distribution network so that it can import and export energy into that network; and
- (b) the provision of network connection services (connection and import and export of electricity) by EECL to Racecourse mill power station. This agreement does not relate to the actual sale and purchase of electricity.

The agreement will end on 8 November 2042.

Technical requirements have been put in place to ensure the safe and continued operation of the generating system. Authorised export demand will be 37MW per half hour and authorised import demand will be 5MW per half hour. Only limited changes may be made to this during the term of the agreement.

Mackay Sugar initially provided \$5m security for the duration of this agreement which reduces linearly to zero by 2042.

EECL's liability under this agreement is limited. Neither party is liable to the other for indirect or consequential loss or similar. Mackay Sugar can terminate the agreement at any time by giving at least three months prior notice, however it is obliged to make an early termination payment should it terminate the agreement prior to the end of the term. Either party can terminate the agreement for default, however the relevant party must first be given an opportunity to remedy

the default. EECL has limited rights to terminate if it is unable to obtain all necessary authorisations, land access and tenure rights concerning the connection works.

**Government initiatives**

The federal government is currently reviewing the national energy policy, after the National Energy Guarantee policy failed to gain broad support in Federal parliament. It is likely that there will be a reliability criteria placed on the Racecourse mill generator, though the measurement form is uncertain. The Company is continuing to monitor developments in this area.

**7.12 Finance facilities**

Mackay Sugar's finance facilities are structured as follows:

- (a) NAB and Rabobank each supply 50% of the Corporate Facilities; and
- (b) NAB supplies 100% of the cogeneration letter of credit facility funding, business card and lease facilities.

The Corporate Facilities secure funding to the levels required to facilitate uninterrupted operational activities. This includes seasonal facilities that will be utilised for the payment for cane supplied by the Growers, until such time that enough sugar has been delivered and payment received from the sale and marketing processes to recover the outflow of funds. The terms and conditions of these facilities are deemed appropriate considering the global economic conditions as well as the risk inherent to Mackay Sugar. These financing facilities were renegotiated with effect from 2 March 2018 and the term debt facility expires on 2 March 2019. The other facilities are renewed annually on or around 30 November each year.

***Events of default and Review Events***

Usual events of default and review events (including events relating to a change in control, net profit after tax, interest cover ratios, breach of total liabilities to total tangible assets ratios etc.) apply and are materially consistent with previous financing arrangements which Mackay Sugar has entered into. The financial covenants include:

- (a) total liabilities to be a maximum agreed percentage of total tangible assets;
- (b) minimum requirements for net tangible assets (excluding hedging assets and liabilities);
- (c) seasonal working capital facility being subject to minimum borrowing base requirements; and
- (d) senior debt service cover ratio (SDSCR) requirements.

Mackay Sugar breached certain bank covenants as part of its annual reporting but these covenant breaches were waived and no action was taken by the banks. In particular:

- the May 2018 annual accounts breached the minimum requirements for total liabilities/total tangible assets, minimum net tangible worth and SDSCR requirements; and
- these breaches were waived by the banks, as disclosed in the 2018 annual report.

An event of default which is not remedied in the rectification period allowed under the finance documents will give the banks the option of terminating the facilities.

Upon the occurrence of a review event the parties must agree to a rectification or other cure of the review event, to the satisfaction of the banks, within 30 days. If no agreement can be

reached, the parties must negotiate in good faith to agree what action is to be taken by Mackay Sugar (including the possible disposal of assets) or to agree to amend the finance documents to remedy the review event. If a satisfactory outcome is not or cannot be achieved, the banks may treat the review event as an event of default.

### ***Security***

The banks have been provided with a general security interest in all of Mackay Sugar's present and future assets and real property mortgages over the key mill sites.

#### **7.13 Raw sugar supply agreement – QSL**

QCS entered into a raw sugar supply agreement with QSL in December 2013 under which QCS will sell raw sugar produced by Mackay Sugar to QSL for marketing and sale for export. The term of the agreement was to continue until either QCS or QSL gave at least three years notice to terminate. QCS subsequently decided it would not be extending the RSSA for a further season and QCS notified QSL of that decision on 1 December 2017. As a result the RSSA now terminates for Mackay Sugar/QCS on 30 June 2020, being the end of the 2019 crushing season. See section 3.3 dealing with Grower Choice legislation which applies for the future marketing of raw sugar.

In order to support the QSL RSSA, QCS and Mackay Sugar have entered agreements whereby Mackay Sugar agrees to supply raw sugar to QCS in order to allow QCS to meet its obligations under the RSSA. The benefits received by QCS under the RSSA are held by QCS for the benefit of Mackay Sugar and its Growers in accordance with the Cane Supply and Processing Agreements.

QSL manages the export of raw sugar under arrangements where sales revenue and the associated costs and risks are allocated to various pools on a shared basis between the raw sugar suppliers that have entered into a raw sugar supply agreement with QSL.

Each year QCS supplies its raw sugar that is not otherwise committed for domestic market sales to QSL. Mackay Sugar/QCS supplied 45.4% of this production to QSL in the 2017 season (2016 season: 54.2%).

In 2013 Mackay Sugar gained access to its miller economic interest raw sugar for export marketing purposes. This provides Mackay Sugar with the discretion to access markets directly for the sale of part of its raw sugar production each year. QCS extended its existing agreement for a further year with Alvean Sugar S.L. to market Mackay Sugar's miller economic interest export raw sugar for the 2018 season.

#### **7.14 Arrangements with QCS**

In establishing QCS as a wholly owned subsidiary, and as part of the consolidated group arrangements for accounting and tax purposes, a number of agreements were entered into.

Mackay Sugar also has a Commodity Marketing Agreement with QCS addressing the arrangements for the supply, pricing and marketing of raw sugar.

#### **7.15 Raw sugar cartage**

Raw sugar is transported from the mills to the Mackay and Cairns port bulk sugar terminals and also to Sugar Australia's Racecourse refinery. In both the Mackay district and for the Mossman mill, the transport is undertaken by independent transport contractors on commercial arm's length terms.

### 7.16 Molasses supply agreement

Molasses is sold via two mechanisms. The first is via a distribution arrangement for domestic sales through Champion Liquid Feeds. Mackay Sugar sells approximately 90,000 tonnes of molasses to Champion Liquid Feeds each year under an agreement which is considered for renewal by the parties on an annual basis. The amount can be varied by agreement between the parties or reduced if Mackay Sugar's molasses production fails to meet certain thresholds. The parties agree on the pricing for the sales each season.

Secondly, molasses is sold through a sale agreement to AMT which provides services to milling companies for the export of molasses. Under the contractual arrangements with AMT, Mackay Sugar can, on an annual basis, elect to sell some or all of its molasses to AMT. This level of commitment to AMT will depend on the molasses production each year and domestic demand from Mackay Sugar's domestic molasses customers. Once a commitment is made to AMT, if Mackay Sugar does not supply the molasses to meet the export commitments, it may be subject to penalties.

#### *Molasses bladder*

The Company has a molasses bladder situated in the Mackay Harbour precinct. Following the restructure of the arrangements between QSL and STL, the molasses bladder is supported by a number of agreements including:

- (a) a lease between Sugar Terminals Limited and the Company – which provides the Company with a direct sublease from Sugar Terminals Limited following the termination of the previous sublease from QSL to the Company;
- (b) a maintenance and operating agreement between the Company and QSL – which provides for the operation and maintenance of the facilities to be conducted by QSL; and
- (c) a land lease and licence to use facilities between North Queensland Bulk Ports Corporation Limited – for use of the land adjoining the molasses bladder and the pipeline to the wharf area and facilities at Mackay Harbour.

### 7.17 Cane transport

Mackay Sugar is responsible for the delivery of cane from sidings within its rail network to its sugar mills. This occurs by rail using Mackay Sugar's fleet of locomotives. In addition road transport is used to move cane to the rail sidings from areas that are remote or have no rail network.

The road transport of cane in the Mackay, Mossman and Tableland districts is currently undertaken by independent contractors, with each providing a fleet of trucks to move a combination of different cane bin types around the cane growing districts to ensure cane is delivered to mills through the rail network.

### 7.18 Mud and ash transport

By-products of the milling process include mill mud and boiler ash. These products are produced in large quantities from all mills. The mud and ash must be removed from each mill site during the crushing season and is sold to Growers and transported by trucks back on to cane farms. Mackay Sugar schedules and invoices local Growers for mud and ash distribution throughout the crushing season. Mackay Sugar has engaged independent transport contractors to transport this mud and ash through transport agreements.

In the Mossman district mud and ash are transported by an independent contractor through a transport agreement which extends to 2020.

### 7.19 Certified agreements

#### *Mackay*

The Mackay mills EBA was endorsed by a valid majority of employees on 11 March 2016. The agreement was approved by the Fair Work Commission on 10 May 2016 and has a nominal expiry date of 28 February 2019.

#### *Mossman*

The Mossman mill EBA was endorsed by a valid majority of employees on 13 August 2015. The agreement was approved by the Fair Work Commission on 10 May 2016 and had a nominal expiry date of 31 July 2018. A new EBA has been negotiated between the parties with a nominal expiry date of 31 July 2021. The new EBA was voted up by a valid majority of employees on 8 August 2018 and the new agreement was filed in the Fair Work Commission for approval on 22 August 2018.

### 7.20 Mossman Put and Call Option

The Company entered into a put and call option agreement (**Option Agreement**) with FNM on 19 July 2018 to facilitate a sale of the Mossman mill.

The Option Agreement is subject to a number of conditions precedent including FNM completing satisfactory due diligence and obtaining finance for the acquisition. The Option Agreement allows either the Company or FNM to exercise the option and require the sale of the Mossman Mill subject to satisfaction of these conditions.

Along with the Mossman mill assets FNM will also assume all employee entitlements and other historical obligations relating to the Mossman mill in return for payment of nominal monetary consideration to the Company.

### 7.21 QSL Raw Sugar inventory financing

Prior to the 2018 season, as part of the raw sugar sales contract, Sugar Australia provided prepayment for the sugar delivered for refining being:

- (a) 100% of the value of the sugar delivered directly to the refinery; and
- (b) 80% of the value of the sugar delivered to the Mackay Bulk Sugar Terminal (MBST) and the balance of 20% on delivery back to the refinery.

Under the 2018 raw sugar supply agreement Sugar Australia only pays for 100% of the raw sugar once it is delivered to the refinery.

An agreement was negotiated with QSL to provide the domestic inventory funding to meet the Company's cash flow requirements given the new arrangements with Sugar Australia. This is similar to arrangements the Company has had with QSL in the past. The agreement operates as a 'sale and buy back' of the raw sugar, with QSL taking title to the raw sugar at the MBST upon paying Mackay Sugar up to 85% of the sugar value. Mackay Sugar then buys back the sugar (including a financing cost) just prior to its supply to Sugar Australia for use in the refinery.

## **8 Additional information**

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### **8.1 Consents and disclaimers of responsibility**

None of the parties referred to below have made any statement that is included in this Prospectus or any statement on which a statement made in this Prospectus is based, except as specified below. Each of the parties referred to below, to the maximum extent permitted by law expressly disclaims and takes no responsibility for any part of this Prospectus, other than the reference to its name and a statement included in this Prospectus with the consent of that party, as specified below.

Bennett Partners has given its written consent to being named as auditor to Mackay Sugar and has not, prior to lodgement of this Prospectus, withdrawn its consent.

McCullough Robertson has given its written consent to being named as lawyers to Mackay Sugar and has not, prior to lodgement of this Prospectus, withdrawn its consent.

The Trustee:

- (a) to the maximum extent permitted by law, expressly disclaims all liability in respect of, makes no representation or any statement regarding, and takes no responsibility for, any part of this Prospectus, or any statements in, or omissions from this Prospectus, other than the references to its name and the statement(s) and/or report(s) (if any) specified in (b) below and included in this Prospectus with its written consent; and
- (b) has given, and has not, before the lodgement of this Prospectus with ASIC withdrawn, its written consent to be named in this Prospectus in the form and context in which it is named.

### **8.2 Interests of experts and advisers**

Except as set out in this Prospectus, no person named in this Prospectus as performing a function in a professional advisory or other capacity in connection with the preparation or distribution of this Prospectus:

- (a) has any interest or has had any interest during the last two years, in the formation or promotion of Mackay Sugar, or in property acquired or proposed to be acquired by Mackay Sugar in connection with its formation or promotion, or the Offer; and
- (b) no amount has been paid or agreed to be paid and no benefit has been given or agreed to be given, to any such person in connection with the services provided by the person in connection with the formation or promotion of Mackay Sugar, or the Offer.

McCullough Robertson has acted as lawyers to Mackay Sugar and undertaken due diligence enquiries and provided legal advice in relation to the Offer. Mackay Sugar has agreed to pay up to \$20,000 (exclusive of GST) to McCullough Robertson in respect of these services.

### **8.3 Interests of Directors**

Other than as set out below or elsewhere in this Prospectus:

- (a) no Director or proposed Director of Mackay Sugar and no firm in which a Director or proposed Director of Mackay Sugar is or was at the relevant time, or has, or has had in the two years before the date of this Prospectus, any interest in the promotion of, or in any property proposed to be acquired by Mackay Sugar; and

## Section 8 – Additional information

- (b) no amounts, whether in cash or shares or otherwise, have been paid or agreed to be paid to any Directors or proposed Directors of Mackay Sugar (or to any firm in which he/she is or was a partner) either to induce them to become, or to qualify them as a Director, or otherwise for services rendered by them or by the firm in connection with the promotion or formation of Mackay Sugar.

As at the date of the Prospectus, the Directors of Mackay Sugar or their associates had a Relevant Interest in the following securities:

### As at 5 November 2018

Director	Unsecured Notes	Voting Shares	Number of Investment Shares	% of total issued Investment Shares
Andrew Cappello	4,479	2 <sup>2</sup>	517,897	0.243
Lee Blackburn	Nil	2 <sup>6</sup>	179,787 <sup>3</sup>	0.08
Lawrence Bugeja	544,527 <sup>1</sup>	1	347,924	0.163
Mark Day	Nil	Nil	Nil	Nil
Richard Findlay	Nil	Nil	Nil	Nil
Anthony Bartolo		1 <sup>7</sup>	409,435 <sup>4</sup>	0.192
Paul Manning	Nil	1	100,000 <sup>5</sup>	0.05
Maurice Maughan	Nil	Nil	Nil	Nil

Note 1: Lawrence Bugeja is a trustee of a superannuation fund which holds Investment Shares.

Note 2: Andrew Cappello has an interest in a partnership, which holds a Voting Share.

Note 3: Lee Blackburn has an interest in a partnership which holds Investment Shares.

Note 4: Anthony Bartolo has an interest in a trust which holds Investment Shares.

Note 5: Paul Manning has an interest in a partnership which holds Investment Shares.

Note 6: Lee Blackburn has an interest in a company which holds a Voting Share.

Note 7: Anthony Bartolo has an interest in a trust which holds a Voting Share.

*None of the Directors has an interest in the Mackay Sugar IBD Scheme.*

### **Directors' benefits**

Directors Cappello, Blackburn, Bugeja, Bartolo and Manning are each parties to Cane Supply and Processing Agreements. The terms of those agreements are the same as the Cane Supply and Processing Agreements which applies to the majority of other Growers in the Mackay District and have been negotiated on an arm's length basis.

The current level of Directors' remuneration, including payments to committee members is up to \$608,400 per year.

***Transactions with related parties***

Mackay Sugar has a:

- (a) 25% shareholding in NZSC;
- (b) 5.9% shareholding in Racecourse Projects;
- (c) 25% M class shareholding in STL;
- (d) 40% shareholding in M & M Molasses Pty Ltd; and
- (e) 25% shareholding in Oriana Shipping.

There were no transactions between the Company and these entities which were conducted other than on an arms length basis during the year ended 31 May 2018.

At the year ended 31 May 2018, Mackay Sugar has interests in joint ventures as follows:

- (a) Sugar Australia Pty Limited – 25%; and
- (b) Sugar Australia Joint Venture – 25%.

A refinery owned by the Sugar Australia joint venture is situated on the Racecourse mill site and uses Mackay Sugar’s resources to operate the refinery. Expenses incurred by Mackay Sugar in relation to the refinery are reimbursed by the joint venture and services are charged on a fee for service basis. Sugar Australia Pty Limited manages the operations of the Sugar Australia Joint Venture on behalf of the participants in the joint venture.

**8.4 Annual reports – incorporation by reference**

In accordance with section 712 Corporations Act, “Prospectus content”, Mackay Sugar wishes to identify documents that it has lodged with ASIC containing important information for investors, professional analysts and advisers. Such information is taken to be included in this Prospectus under section 712(3) Corporations Act.

The Directors rely upon section 712(3) Corporations Act with the inclusion by reference to the material referred to below for full disclosure of relevant information to potential investors. The documents that are incorporated into this Prospectus by reference are:

<b>Date</b>	<b>Description of the document</b>
2016-2018	2015/2016, 2016/2017 and 2017/2018 financial reports
21.03.13	BNY Trust Deed

The 2016, 2017 and 2018 financial reports contain statutory and financial information about Mackay Sugar and information about its performance for the financial periods ended 31 May 2016, 31 May 2017 and 31 May 2018.

These documents can be accessed via Mackay Sugar’s website at [www.mkysugar.com.au](http://www.mkysugar.com.au). In addition, copies of these documents have been lodged with ASIC and may be obtained from, or inspected at, an ASIC office.

Mackay Sugar will provide you with copies of the annual reports free of charge if you request them during the life of this Prospectus.

## 8.5 Continuous disclosure obligations

Mackay Sugar considers that the most effective method of communicating with investors is through direct disclosure on its website. It has elected to follow ASIC's good practice guidance for website disclosure as set out in Section C of Regulatory Guide 198 – Unlisted disclosing entities: continuous disclosure obligations (Good Practice Guidance). As a result, Mackay Sugar will no longer be required to lodge continuous disclosure information with ASIC under section 675 Corporations Act.

Material information will be published on Mackay Sugar's website (which can be accessed at [www.mkysugar.com.au](http://www.mkysugar.com.au)) as soon as practicable after Mackay Sugar first becomes aware of the information. Material information will include information which a reasonable person would expect to have a material effect on the price or value of the Unsecured Notes and may include:

- (a) this Prospectus and any supplementary or replacement prospectus;
- (b) financial statements and reports;
- (c) material changes to financial forecasts, valuations or ratings;
- (d) material changes to the status or terms of Mackay Sugar's debt funding;
- (e) the appointment of any external administrator;
- (f) changes in key management personnel and the Board; and
- (g) information about corporate actions that are likely to affect the value of the Unsecured Notes.

In accordance with ASIC's Good Practice Guidance for website disclosure, Mackay Sugar will clearly indicate on its website the date each item of material information is first published, keep material information on the website for as long as it is material to a reasonable person's determination of the price or value of the Unsecured Notes and keep a record of all website disclosures in accordance with its normal record keeping practices.

Investors will also be given the opportunity to elect to receive email alerts when material information is updated on Mackay Sugar's website. Please email your details to Donna Rasmussen at [d.rasmussen@mkysugar.com.au](mailto:d.rasmussen@mkysugar.com.au) if you would like to receive email notifications when material information is updated on Mackay Sugar's website.

## 8.6 Expenses of the Prospectus

Estimated expenses of this Prospectus including ASIC fees, printing costs and other miscellaneous expenses, but excluding fees detailed in section 8.2, are approximately \$10,500.

## 8.7 Electronic Prospectus

This Prospectus is available in electronic form at [www.mkysugar.com.au](http://www.mkysugar.com.au). Any person receiving this Prospectus electronically will on request, be sent a paper copy of the Prospectus by Mackay Sugar, free of charge during the period of the Offer.

Mackay Sugar will not accept Applications electronically. Applications must be made by completing a paper copy of the Application.

An Application may only be distributed when accompanying a complete and unaltered copy of the Prospectus. Mackay Sugar will not accept a completed Application if it has reason to believe that

the investor has not received a complete paper copy or electronic copy of the Prospectus or if it has reason to believe that the Application or electronic copy of the Prospectus has been altered or tampered with in any way.

While Mackay Sugar believes that it is extremely unlikely that during the period of the Offer the electronic version of the Prospectus will be tampered with or altered in any way, Mackay Sugar cannot give any absolute assurance that this will not occur. Any investor in doubt concerning the validity or integrity of an electronic copy of the Prospectus should immediately request a paper copy of the Prospectus directly from Mackay Sugar or a financial adviser.

**8.8 Privacy**

When applying for Unsecured Notes, you will be asked to provide personal information to Mackay Sugar, such as name, address, telephone and fax numbers, email address, tax file number and account details. Mackay Sugar collects, holds and uses that personal information to assess your application, provide facilities and services to you and undertake administration. Access to information may be disclosed by Mackay Sugar to its agents and service providers on the basis that they deal with such information under the *Privacy Act 1988* (Clth). Incomplete applications may not be processed.

Information provided to the Trustee is primarily used for the purpose of providing trustee services to the Company and for ancillary purposes detailed in the Trustee’s Privacy Policy. The Trustee may disclose your personal information, such as, your name and contact details, along with your account information to its related bodies corporate, the Company, professional advisers, and/or as otherwise instructed by the Company. The Trustee is not likely to disclose your personal information to overseas recipients. Your personal information will be used in accordance with the Trustee’s Privacy Policy. The Privacy Policy contains information about how you may access or correct your personal information held by the Trustee and how you may complain about a breach of the Australian Privacy Principles. You may obtain a copy of the Trustee’s Privacy Policy at [www.aetlimited.com.au/privacy](http://www.aetlimited.com.au/privacy).

**8.9 Authorisation**

This Prospectus is issued by Mackay Sugar. Each Director has consented to the lodgement of the Prospectus with ASIC.

Dated 7 December 2018



**Mark Day**  
Chairman

## 9 Glossary

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<b>Term</b>	<b>Definition</b>
<b>\$ or AUD</b>	Australian dollars unless otherwise stated.
<b>7 Day Call Unsecured Note</b>	an Unsecured Note which is redeemable upon seven days' notice and bearing an interest rate per annum as set out in the Rate Sheet.
<b>6 Month Unsecured Note</b>	an Unsecured Note with an Investment Term of approximately six months (maturing six months from the Date of Investment) and bearing an interest rate per annum as set out in the Rate Sheet.
<b>12 Month Unsecured Note</b>	an Unsecured Note with an Investment Term of approximately 12 months (maturing 12 months from the Date of Investment) and bearing an interest rate per annum as set out in the Rate Sheet.
<b>24 Month Unsecured Note</b>	an Unsecured Note with an Investment Term of approximately 24 months (maturing 24 months from the Date of Investment) and bearing an interest rate per annum as set out in the Rate Sheet.
<b>5 Year Unsecured Note</b>	an Unsecured Note with an Investment Term of approximately five years (maturing five years from the Date of Investment) and bearing an interest rate per annum as set out in the Rate Sheet.
<b>AEMO</b>	Australian Energy Market Operator.
<b>ACFA</b>	Australian Cane Farmers Association Limited ABN 68 009 657 765.
<b>AMT</b>	Australian Molasses Trading Pty Ltd ACN 059 904 317.
<b>Alvean Sugar S.L.</b>	a 50/50 sugar trading joint venture between Cargill and Copersucar.
<b>Application or Application Form</b>	an application for Unsecured Notes accompanying and forming part of this Prospectus.
<b>ASIC</b>	Australian Securities and Investments Commission.
<b>ASMC</b>	Australian Sugar Milling Council.
<b>Bagasse</b>	residual fibre by-product from cane.
<b>Bargaining Representative</b>	a self-represented Grower or a person appointed by written authority under the <i>Sugar Industry Act 1997</i> (Qld) to represent one or more Growers.
<b>Black River</b>	Black River Asset Management LLC.
<b>Black River Fund</b>	Black River Ag Fund 2 Investment (Australia) Pty Ltd ACN 162 500 281, an investment vehicle for a fund managed by Proterra.
<b>Board</b>	the board of Directors of the Company.
<b>Bonsucro</b>	an internationally recognised program dealing with the sustainability of sugar production.
<b>BNY</b>	BNY Trust Company of Australia Limited ABN 49 050 294 052, the trustee for the Corporate Bond Offer under the terms of the BNY Trust Deed.
<b>BNY Trust Deed</b>	the document entitled Note Trust Deed executed by Mackay Sugar and BNY under which the Corporate Bonds are issued.
<b>Business Day</b>	a day that is not a Saturday, Sunday or public holiday in Queensland.

<b>Term</b>	<b>Definition</b>
<b>Calculation Period</b>	a six month period ending on 30 June and 31 December each year.
<b>Canegrowers</b>	Mackay Canegrowers Limited ABN 24 111 817 559.
<b>Cane Supply and Processing Agreements or CSPAs</b>	the agreements between Mackay Sugar and one or more Growers for the supply of sugar cane for processing.
<b>Capital Raising</b>	any capital raising undertaken by the Company which raises at least \$15 million in equity. The consequences of such a capital raising are summarised in section 7.2.
<b>Cargill</b>	Cargill, Incorporated, an American privately held, multinational corporation based in Minnesota, USA.
<b>Champion Liquid Feeds</b>	Champion Liquid Feeds Pty Limited ACN 090 621 613.
<b>Code of Conduct</b>	Schedule 1 to the <i>Competition and Consumer (Industry Code—Sugar) Regulations 2018</i> (Cth).
<b>Constitution</b>	the constitution of the Company.
<b>Conversion</b>	the process by which Mackay Sugar ceased to be a cooperative and became registered as a company with ASIC on 17 July 2008.
<b>Cooperatives Act</b>	<i>Cooperatives Act 1997</i> (Qld).
<b>Copersucar</b>	Copersucar S.A., Brazilian sugar and ethanol trader integrated to production.
<b>Corporate Bond Offer</b>	the offer of Corporate Bonds arranged by FIIG and made by Mackay Sugar pursuant to the Information Memorandum to Qualified Investors in 2013.
<b>Corporate Bonds</b>	a bond with an investment term of approximately 6 years (maturing 5 April 2019) and bearing an interest rate per annum as set out in the Pricing Supplement.
<b>Corporate Facilities</b>	(a) a corporate term debt facility of AUD\$100million; (b) a seasonal cash facility of AUD\$35million; (c) a margin call facility of USD\$25million; (d) business card facility of AUD\$220,000; and (e) revolving lease limit of AUD\$2,000,000;
<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth).
<b>CSR Limited</b>	CSR Limited ACN 000 001 276.
<b>CSR Refining Investments</b>	CSR Refining Investments Pty Limited ACN 054 982 071 (now Wilmar Sugar Refining Investments Pty Ltd).
<b>Date of Investment</b>	the date on which the Unsecured Notes are issued to the Unsecured Noteholders as recorded on the Note Certificate.
<b>Directors</b>	the directors of the Company.
<b>Due Date</b>	the date when the Unsecured Notes become due to be redeemed.
<b>EBA</b>	an enterprise bargaining agreement.
<b>EECL</b>	Ergon Energy Corporation Limited.

<b>Term</b>	<b>Definition</b>
<b>Eligible Investor</b>	a person or entity (including a partnership) which is eligible to purchase Unsecured Notes being: <ul style="list-style-type: none"> <li>(a) all account holders who had a deposit in a Mackay Sugar IBD Scheme account immediately before the date of Conversion;</li> <li>(b) Growers, as named in their Cane Supply and Processing Agreement or where a Grower is comprised of more than one person, each of those persons individually;</li> <li>(c) current employees of Mackay Sugar or employees of other entities approved by Mackay Sugar; or</li> <li>(d) any Shareholder or any person eligible to be a Shareholder.</li> </ul>
<b>Ergon Energy</b>	Ergon Energy Queensland Pty Ltd ACN 121 177 802.
<b>Existing Deposit Amount</b>	the existing deposit amount held by an Eligible Investor in the Mackay Sugar IBD Scheme.
<b>Extraordinary Resolution</b>	a resolution passed at a meeting of Noteholders and carried by not less than 75% in value of the Principal Amount of all Unsecured Notes held by the Noteholders who are present at the meeting in person, by proxy or representative.
<b>FIIG</b>	FIIG Securities Limited ABN 68 085 661 632 was the lead manager for the Corporate Bond Offer.
<b>Far Northern Milling or FNM</b>	means Far Northern Milling Pty Ltd ACN 627 502 158.
<b>Former Grower</b>	a person who is not a Grower but who has previously been a Grower and is entitled to hold Investment Shares.
<b>Grower</b>	a person who supplies the Minimum Tonnage of sugar cane to Mackay Sugar under a current Cane Supply and Processing Agreement.
<b>Grower Choice legislation</b>	the <i>Sugar Industry (Real Choice in Marketing) Amendment Act 2015</i> (Qld).
<b>Grower Directors</b>	the Directors of Mackay Sugar who are also Representative Growers.
<b>GST</b>	any goods and services tax imposed by any Australian Act which imposes GST.
<b>GWh</b>	Gigawatt hours.
<b>ICE</b>	Intercontinental Exchange, Inc. is an operator of regulated global futures exchanges and OTC markets.
<b>ICE#11</b>	ICE Sugar no. 11.
<b>Information Memorandum</b>	the information memorandum issued in 2013 in regard to the offer of Corporate Bonds to Qualified Investors as amended on 23 January 2018.
<b>Investment Shares</b>	the shares that are held by Investment Share Shareholders. These shares do not entitle the holder to vote in regard to shareholders' matters.
<b>Investment Share Shareholder</b>	a person who holds Investment Shares.

<b>Term</b>	<b>Definition</b>
<b>Investment Term</b>	<p>the term of any investment namely:</p> <ul style="list-style-type: none"> <li>(a) in the case of a 7 Day Call Unsecured Note, seven days after a request is made to redeem the Unsecured Note;</li> <li>(b) in the case of a 6 Month Unsecured Note, six months from the Date of Investment;</li> <li>(c) in the case of a 12 Month Unsecured Note, 12 months from the Date of Investment;</li> <li>(d) in the case of a 24 Month Unsecured Note, 24 months from the Date of Investment;</li> <li>(e) in the case of a 5 Year Unsecured Note, 5 years from the Date of Investment; and</li> <li>(f) in the case of a Selected Term Unsecured Note, the period from and including the Date of Investment to and including the Maturity Date of the Selected Term Unsecured Note.</li> </ul>
<b>IPS (International Pol Scale)</b>	the international pol premium scale is a price adjustment scale, described in the Rules of the Sugar Association of London. It defines incremental price premiums applied to sugar of 96 degrees polarisation.
<b>Kidder Williams</b>	Kidder Williams Limited ACN 117 667 204, the corporate advisers appointed by Mackay Sugar.
<b>LGC</b>	Large-Scale Generation Certificates.
<b>Long Term OTC</b>	long term OTC products refers to AUD and USD per metric tonne sugar swaps utilised in the long-term pool, being pricing pools subsequent to the current season pool.
<b>Mackay Sugar Cooperative</b>	Mackay Sugar Cooperative Association Limited ABN 12 057 463 671 prior to Conversion.
<b>Mackay Sugar IBD Scheme</b>	the deposit taking fund operated by Mackay Sugar Cooperative under the Cooperatives Act prior to Conversion.
<b>Mackay Sugar or the Company</b>	Mackay Sugar Limited ACN 057 463 671 and, as the context requires, its subsidiaries.
<b>Maturity Date</b>	<p>the date of maturity of the Unsecured Notes, being the earlier of:</p> <ul style="list-style-type: none"> <li>(a) the date of maturity of the Unsecured Notes as recorded on the Note Certificate unless otherwise noted in the Prospectus; or</li> <li>(b) the date on which an order is made or an effective resolution is passed for the winding-up of Mackay Sugar in accordance with the Corporations Act.</li> </ul>
<b>Maturing Money</b>	the money invested in the Unsecured Notes on the Date of Investment.
<b>Members</b>	members of the Mackay Sugar Cooperative prior to Conversion.

<b>Term</b>	<b>Definition</b>
<b>Minimum Tonnage</b>	the supply of at least 500 tonnes of sugar cane to Mackay Sugar each year (or in the case of Shareholders admitted after 30 November 2007, or new Growers, the supply of at least 1,500 tonnes of sugar cane to Mackay Sugar each year) from a farm comprising at least 20 hectares, or such other quantity as the Board determines.
<b>Moneys Owing</b>	the Principal Amount and any interest payable on the Unsecured Notes and any other moneys payable to the Trustee or the Noteholders (including damages) under or in respect of the Trust Deed or the Unsecured Notes and, in relation to a Noteholder, means that portion of those moneys which is owing to that Noteholder.
<b>MRC</b>	Mackay Regional Council.
<b>MSF</b>	MSF Sugar Limited ACN 009 658 708.
<b>Mt</b>	million tonnes.
<b>MW</b>	megawatt.
<b>NAB</b>	National Australia Bank Limited ACN 004 044 937.
<b>NGAC</b>	New South Wales Greenhouse Gas Abatement Certificate.
<b>Non Grower Directors</b>	the Directors of Mackay Sugar from time to time who are independent and not Representative Growers.
<b>Nordzucker</b>	Nordzucker AG, a sugar manufacturing company based in Braunschweig, Germany.
<b>Note Certificate</b>	a certificate or holding statement issued by Mackay Sugar evidencing that the person named in the certificate or holding statement is the holder of the Principal Amount of the Unsecured Note referred to in the certificate or holding statement.
<b>Noteholder</b>	the person entered in the Register as the holder of an Unsecured Note.
<b>NZSC</b>	New Zealand Sugar Company Limited AK 91943.
<b>Offer</b>	the offer of Unsecured Notes to Eligible Investors made by Mackay Sugar pursuant to this Prospectus.
<b>OTA</b>	One Tree Agriculture Pty Ltd ACN 168 726 592.
<b>Oriana Shipping</b>	Oriana Shipping Co. Pte Ltd.
<b>OTC</b>	over the counter financial products.

<b>Term</b>	<b>Definition</b>
<b>Permitted Shareholder</b>	any of the following persons or entities: <ul style="list-style-type: none"> <li>(a) Growers;</li> <li>(b) a person who is collectively with another or others, a Grower;</li> <li>(c) a shareholder of a corporation which is a Grower;</li> <li>(d) a shareholder of a corporation which collectively with another or others is a Grower;</li> <li>(e) a primary or default beneficiary of any discretionary trust which is a Grower;</li> <li>(f) a primary or default beneficiary of any discretionary trust which collectively with another or others is a Grower;</li> <li>(g) a unitholder of any unit trust which is a Grower;</li> <li>(h) a unitholder of any unit trust which collectively with another or others is a Grower;</li> <li>(i) a Former Grower; and</li> <li>(j) a Self Managed Superannuation Fund of which a Permitted Shareholder is a member, so far as it is permitted by law,</li> </ul> who are entitled to hold Investment Shares.
<b>Power Purchase Agreement</b>	the Power Purchase Agreement dated on or about 30 January 2010 between Ergon Energy and the Company.
<b>Pricing Supplement</b>	the pricing supplement applicable to the Corporate Bonds as amended from time to time.
<b>Principal Amount</b>	in relation to an Unsecured Note, the face value of the Unsecured Note, being \$1.
<b>Prospectus</b>	this prospectus.
<b>Proterra</b>	Proterra Investment Partners LP, an employee owned, natural resources-focused private equity firm, which is the advisor for the Black River Fund.
<b>QCS</b>	Queensland Commodity Services Pty Ltd ACN 163 077 601.
<b>QSL</b>	Queensland Sugar Limited ACN 090 152 211.
<b>Qualified Investors</b>	investors under the Corporate Bond Offer.
<b>Rabobank</b>	Coöperatieve Rabobank U.A. Australia Branch (formerly Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. Australia Branch).
<b>Racecourse Cogeneration Plant, or Cogeneration Plant</b>	Mackay Sugar cogeneration plant, consisting of the 37MW cogeneration plant developed by the Company at the Racecourse mill, and the sale of capacity rights together with incidental activities. A full description of the cogeneration plant is outlined at section 3.5 of this Prospectus.
<b>Racecourse Projects</b>	Racecourse Projects Pty Ltd ACN 162 510 438.
<b>Rate Sheet</b>	the most current list of terms relating to the Unsecured Notes made available by Mackay Sugar to Noteholders from time to time which forms part of this Prospectus and which includes, but is not limited to, information regarding the term, interest rate and early redemption penalty for each Unsecured Note on issue.
<b>Raw Sugar</b>	raw sugar measured in International Pol Scale (IPS) tonnes.

<b>Term</b>	<b>Definition</b>
<b>Recapitalisation Plan</b>	The process whereby Kidder Williams and the Company are working towards the recapitalisation of the Company as set out in section 5.3.
<b>Register</b>	a register of holders of Unsecured Notes established and maintained under the Trust Deed.
<b>Relevant Interest</b>	has the meaning in sections 608 and 609 Corporations Act and includes a person (or other entity) that holds or controls a relevant interest in Mackay Sugar. For this purpose a person controls a relevant interest if they have power to exercise or control the exercise of a right to vote attached to the Voting Shares, or power to dispose, or to exercise a right to dispose, of Investment Shares.
<b>Representative Grower</b>	for the purposes of determining persons who are qualified to be appointed as Grower Directors, means a person who is: <ul style="list-style-type: none"> <li>(a) a Grower;</li> <li>(b) collectively with another or others a Grower;</li> <li>(c) a representative of a corporation which is a Grower; or</li> <li>(d) a representative of a corporation which collectively with another or others is a Grower.</li> </ul>
<b>Rollover</b>	the reinvestment of funds in Unsecured Notes on maturity in accordance with the Trust Deed in the absence of a request for redemption of the Unsecured Notes by a Noteholder.
<b>RSSA</b>	a Raw Sugar Supply Agreement entered into by various milling companies with QSL.
<b>Selected Term Unsecured Note</b>	an Unsecured Note which is neither: <ul style="list-style-type: none"> <li>(a) a 7 Day Call Unsecured Note;</li> <li>(b) a 6 Month Unsecured Note;</li> <li>(c) a 12 Month Unsecured Note;</li> <li>(d) a 24 Month Unsecured Note; or</li> <li>(e) a 5 Year Unsecured Note,</li> </ul> which may be specified and issued by Mackay Sugar under the Trust Deed where the Selected Investment Term may be chosen by an Eligible Investor having regard to a specified Maturity Date or specified Investment Term and bearing an interest rate per annum as set out in the Rate Sheet.
<b>Selected Investment Term</b>	a period ending on a specific Maturity Date for the investment of money in an Unsecured Note where Mackay Sugar will provide for and stipulate investment periods with a corresponding interest rate per annum for that investment period from which Eligible Investors can choose, as set out in the Rate Sheet.
<b>Self Managed Superannuation Fund</b>	has the meaning given to that term in the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
<b>Shareholder</b>	holders of Shares in the Company.
<b>Shares</b>	the shares issued by Mackay Sugar.
<b>Short Term OTC</b>	short term OTC products refer to OTC pricing products covering sugar and futures and options utilised in the short term pricing pool, being the pricing pool for the current season.

<b>Term</b>	<b>Definition</b>
<b>SIRA</b>	SIRA Pty Ltd ACN 163 988 690.
<b>STG</b>	steam turbine generator.
<b>STL</b>	Sugar Terminals Limited ACN 084 059 601.
<b>STL Share Transaction</b>	the transaction described in section 3.6.
<b>Sugar Australia</b>	Sugar Australia Pty Limited ACN 081 245 169.
<b>Sugar Australia Joint Venture or Joint Venture</b>	the unincorporated joint venture formed under the joint venture agreement dated 27 February 1998 between Mackay Sugar, CSR Refining Investments (now Wilmar Sugar Refining Investments), CSR Limited (subsequently transferred to Wilmar Sugar Refining Investments) and Sugar Australia.
<b>TEP</b>	Transitional Environmental Program.
<b>Tonnes or t</b>	unless referred to in this prospectus as 'tonnes of IPS raw sugar, means metric or 'actual' tonnes.
<b>Trust Deed</b>	the Trust Deed dated 18 July 2008 between the Trustee and Mackay Sugar, as amended by the Amending Trust Deed dated 13 August 2009, the Second Amending Trust Deed dated on or around 3 September 2010, the Third Amending Trust Deed dated 8 December 2011 and the Fourth Amending Trust Deed dated 19 March 2013.
<b>Trustee</b>	Australian Executor Trustees Limited ABN 84 007 869 794 (AFSL 240023).
<b>Unsecured Notes</b>	a note issued by Mackay Sugar to Noteholders pursuant to the Prospectus and described as an Unsecured Note under section 283BH Corporations Act, other than the Corporate Bonds.
<b>USD</b>	US dollar.
<b>Voting Shares</b>	the shares held by Voting Shareholders which entitle the Shareholder to one vote per Voting Share, which were issued by Mackay Sugar to Members in the course of the Conversion or which are issued by Mackay Sugar to Growers on the basis of one Voting Share per Member or Grower.
<b>Voting Shareholder</b>	a person who is registered on the Mackay Sugar share register as a holder of a Voting Share.
<b>Wilmar Sugar Australia Limited</b>	Wilmar Sugar Australia Limited ACN 098 999 985 (formerly Sucrogen Limited).
<b>Workplace Health and Safety Queensland or WHSQ</b>	The office of Workplace Health and Safety Queensland
<b>you</b>	an Eligible Investor.

# Corporate directory

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## **Company**

Mackay Sugar Limited  
ACN 057 463 671

## **Registered office**

Racecourse mill  
26277 Peak Downs Highway  
Racecourse via Mackay  
MACKAY QLD 4740

Telephone: 07 4953 8200  
Facsimile: 07 4953 8888  
*www.mkysugar.com.au*

## **Postal address**

PO Box 5720  
MACKAY QLD 4741

## **Directors**

Mark Day – Chairman and CEO  
Paul Manning – Deputy Chairman  
Andrew Cappello  
Lee Blackburn  
Lawrence Bugeja  
Richard Findlay  
Anthony Bartolo  
Maurice Maughan

## **Secretary**

Donna Rasmussen

## **Lawyers**

McCullough Robertson  
Level 11  
Central Plaza Two  
66 Eagle Street  
BRISBANE QLD 4000

## **Trustee**

Australian Executor Trustees Limited  
ABN 84 007 869 794  
Level 3  
30 Hickson Road  
MILLERS POINT NSW 2000

## **Auditors**

Bennett Partners  
First Floor  
122 Wood Street  
MACKAY QLD 4740

## **Applications**

Applications can be posted to Mackay Sugar Limited at:

PO Box 5720  
Mackay Mail Centre  
MACKAY QLD 4741

or delivered in person at any of:

Farleigh mill, Armstrong Street, Farleigh

Racecourse mill, 26277 Peak Downs Highway,  
Mackay

Marian mill, Anzac Avenue, Marian

Pleystowe mill, Eungella Road, Pleystowe

Mossman mill, Mill Street, Mossman

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# Unsecured Notes Prospectus 2018 – application form

## Mackay Sugar Limited

### (A) Details of Applicant(s)

Name(s): ..... Tax File No.: .....  
 Tax File No.: .....  
 Street Address: .....  
 Town/Suburb: ..... State: ..... Postcode: .....  
 Phone: (H)..... (W).....

wish to invest in Unsecured Notes offered by Mackay Sugar Limited subject to the conditions contained in the prospectus that I/we received with this Application. Unless otherwise indicated, terms used in this Application have the same meaning as in the prospectus.

### (B) Category of Eligible Investor

Shareholder/Grower  Staff/Employee Relation  
 Shareholder/Grower Relation  Permitted Shareholder .....  
 Staff/Employee  Other (please specify) .....

### (C) Term

<u>Term</u>	<u>Interest Rate</u>	<u>Number of Notes Applied for</u>	<u>Application Money (no. of notes multiplied by \$1)</u>
<input type="checkbox"/> 7 Day Call Unsecured Note	..... %	.....(No minimum)	\$ .....
<input type="checkbox"/> 6 Month Unsecured Note	..... %	.....(\$1,000 minimum)	\$ .....
<input type="checkbox"/> 12 Month Unsecured Note	..... %	.....(\$1,000 minimum)	\$ .....
<input type="checkbox"/> 24 Month Unsecured Note	..... %	.....(\$1,000 minimum)	\$ .....
<input type="checkbox"/> [ month ] Selected Term Unsecured Note	..... %	.....(\$1,000 minimum)	\$ .....
<input type="checkbox"/> 5 Year Unsecured Note	..... %	.....(\$1,000 minimum)	\$ .....

### (D) Application Money

The application money in support of this application is:

attached  
 to be rolled over from Mackay Sugar IBD Scheme Account (Account No. .... )  
 to be rolled over from Unsecured Notes (Account No. .... )

### (E) Interest

Re-invest into 7 Day Call Unsecured Notes  
 Electronic Funds Transfer (EFT) to the Nominated Bank Account in part (F)

*(NOTE: If you do not make an interest payment election in this part (E) then all interest payments will be re-invested in 7 Day Call Unsecured Notes.)*

### (F) Nominated Bank Account

Bank: ..... Account Number: .....  
 BSB No: ..... Account Name: .....

### (G) Declarations and Confirmations

#### Citizens or Persons of the United States of America

I/We declare that:

- I am/we are not a United States (US) person; and
- I am/we are not investing on account of, or for the benefit of, a US person.

In making an investment in Unsecured Notes I/we agree that:

- if my/our investment becomes a US Account for the purposes of the US *Foreign Account Tax Compliance Act (FATCA)*, I/we will promptly notify the Company and the Trustee; and
- I/we will provide the Company and the Trustee with any information requested to assist them and their agents to comply with FATCA.

You are considered to be a US person if you are an individual who is a US citizen or US resident alien, a partnership, corporation, company, or association created or organised in the United States or under the laws of the United States, a US estate or a US trust (as defined in Regulations section 301 7701-7).

**Privacy**

I/We confirm that I/we have read and understood the privacy section contained in the prospectus.

Information provided to the Trustee is primarily used for the purpose of providing trustee services to the Company and for ancillary purposes detailed in the Trustee’s Privacy Policy. The Trustee may disclose your personal information, such as your name and contact details, along with your account information to its related bodies corporate, the Company, professional advisers, and/or as otherwise instructed by the Company. The Trustee is not likely to disclose your personal information to overseas recipients. Your personal information will be used in accordance with the Trustee’s Privacy Policy. The Privacy Policy contains information about how you may access or correct your personal information held by the Trustee and how you may complain about a breach of the Australian Privacy Principles. You may obtain a copy of the Trustee’s Privacy Policy at [www.aetlimited.com.au/privacy](http://www.aetlimited.com.au/privacy).

(H) **Signature of Applicant(s)**

Signature: ..... Date: .....

Print Name: .....

Signature: ..... Date: .....

Print Name: .....

**LOGGING YOUR FORM** – Cheques should be crossed, marked “Not Negotiable”, and made payable to Mackay Sugar Limited attached to an Application Form and mailed to PO Box 5720, Mackay Mail Centre, QLD 4741 or delivered in person to the Farleigh mill, Armstrong Street, Farleigh; Racecourse mill, 26277 Peak Downs Highway, Mackay; Marian mill, Anzac Avenue, Marian; Pleystowe mill, Eungella Road, Pleystowe; or Mossman mill, Mill Street, Mossman

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