

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.** If you are in any doubt about the contents of this document, you should consult a person authorised under the Financial Services and Markets Act 2000 who specialises in advising on the acquisition of shares and other securities.

This document comprises an admission document prepared in accordance with the AIM Rules. It does not constitute a prospectus for the purposes of the Financial Services and Markets Act 2000.

The Directors, whose names appear on page 3 of this document, both collectively and individually, accept responsibility for the information contained in this document and for compliance with the AIM Rules. To the best of the knowledge and belief of the Directors, having taken all reasonable care to ensure that such is the case, the information contained in this document is in accordance with the facts and does not omit anything which is likely to affect the import of such information.

Application has been made for the whole of the ordinary share capital of the Company in issue immediately following the Placing to be admitted to trading on AIM, a market operated by the London Stock Exchange. AIM is a market designed primarily for emerging or smaller companies to which a higher investment risk tends to be attached than to larger or more established companies. AIM securities are not admitted to the Official List of the UK Listing Authority. A prospective investor should be aware of the risks of investing in such companies and should make the decision to invest only after careful consideration and, if appropriate, consultation with an independent financial adviser. Neither the London Stock Exchange nor the UK Listing Authority has examined or approved the contents of this document.

An investment in the Company involves a degree of risk and may not be suitable for all recipients of this document. A prospective investor should consider carefully whether an investment in the Company is suitable for it in the light of its personal circumstances and the financial resources available to it. Investors' attentions are drawn to the section entitled 'Risk Factors' in Part II of this document.

It is expected that dealings in the Placing Shares will commence on AIM on 20 April 2006.

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# **CAP-XX LIMITED**

*(Incorporated in Australia and registered under the Corporations Act 2001 (Commonwealth of Australia)  
with Company number ACN 050 845 291)*

**Placing by Collins Stewart Limited  
NOMINATED ADVISER and BROKER**

**of 18,433,333 Ordinary Shares of no par value each  
at 93p per share  
and Admission to trading on AIM**

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Upon Admission, the Placing Shares will rank *pari passu* in all respects with the existing issued Ordinary Shares of the Company and will rank in full for all dividends or other distributions hereafter declared, made or paid on the ordinary share capital of the Company.

Collins Stewart, which is regulated by the Financial Securities Authority, is acting exclusively for the Company in connection with the Placing and will not be responsible to anyone other than the Company for providing the protections afforded to customers of Collins Stewart or for advising any such person in connection with the Placing. No representation or warranty, express or implied, is made by Collins Stewart as to the contents of this document (without limiting the statutory rights of any person to whom this document is issued).

Collins Stewart has been appointed as nominated adviser and broker to the Company. In accordance with the AIM Rules, Collins Stewart has confirmed to the London Stock Exchange that it has satisfied itself that the Directors have received advice and guidance as to the nature of their responsibilities and obligations to ensure compliance by the Company with the AIM Rules and that, in its opinion and to the best of its knowledge and belief, all relevant requirements of the AIM Rules have been complied with. No liability whatsoever is accepted by Collins Stewart for the accuracy of any information or opinions contained in this document or for the omission by any material information.

This document does not constitute an offer to sell, or the solicitation of an offer to buy, Placing Shares in any jurisdiction in which such offer is unlawful. In particular, the Placing is not being made, directly or indirectly, in or into the United States, Canada, Australia, Japan or the Republic of Ireland or their respective territories or possessions (or to any national, resident or citizen of the United States, Canada, Australia, Japan or the Republic of Ireland) and this document must not be distributed, forwarded or transmitted in or into such territories. The Placing Shares have not been and will not be registered under the United States Securities Act of 1933 (as amended) and may not be offered, sold or delivered, directly or indirectly, in or into the United States, Canada, Australia, Japan or the Republic of Ireland.

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## DIRECTORS AND ADVISERS

<b>Directors</b>	Michael Anthony Quinn ( <i>Chairman</i> ) Anthony Paul Alexander Kongats ( <i>Chief Executive</i> ) Douglas Graham Titcombe ( <i>Senior Independent Non-Executive Director</i> ) (appointment with effect from Admission) Eino Christer Olavi Harkönen ( <i>Non-Executive Director</i> ) (appointment with effect from Admission) John Coulthart Murray ( <i>Non-Executive Director</i> )
<b>Company Secretary</b>	Robert Buckingham
<b>Registered Office</b>	Level 3 685 Pittwater Road Dee Why NSW 2099 Australia
<b>Principal Place of Business</b>	Units 9 and 10 12 Mars Road Lane Cove New South Wales 2066 Australia
<b>Telephone Number</b>	+61 (0)2 9420 0690
<b>Nominated Adviser and Broker to the Company</b>	Collins Stewart Limited 9th Floor 88 Wood Street London EC2V 7QR United Kingdom
<b>Reporting Accountants to the Company</b>	Grant Thornton Corporate (NSW) Pty Ltd Level 17 383 Kent Street Sydney New South Wales 2000 Australia
<b>Auditors to the Company</b>	PricewaterhouseCoopers 201 Sussex Street Sydney New South Wales 2000 Australia
<b>Solicitors to the Company as to Australian law</b>	Dibbs Abbot Stillman Level 9, Angel Place 123 Pitt Street Sydney New South Wales 2000 Australia
<b>Solicitors to the Company as to English law</b>	Faegre & Benson LLP 7 Pilgrim Street London EC4V 6LB United Kingdom
<b>Solicitors to the Nominated Adviser and Broker</b>	Simmons & Simmons CityPoint One Ropemaker Street London EC2Y 9SS United Kingdom
<b>Registrars</b>	Computershare Investor Services Pty Ltd Yarra Falls 452 Johnston Street Abbotsford Victoria 3067 Australia
<b>Registrars to Depositary Interests</b>	Computershare Investor Services plc The Pavilions Bridgwater Road Bristol BS99 7NH United Kingdom

## EXPECTED TIMETABLE OF PRINCIPAL EVENTS

Publication of Admission Document	12 April 2006
Admission and commencement of dealings in the Ordinary Shares on AIM	20 April 2006
CREST stock accounts credited with Depositary Interests representing Placing Shares	20 April 2006
Despatch of definitive share certificates (if appropriate)	by 20 May 2006

## PLACING STATISTICS

Placing Price	93p
Number of Ordinary Shares in issue immediately following Admission	48,565,893
Expected market capitalisation of the Company at the Placing Price immediately following Admission	£45.2 million
Percentage of the Company's enlarged issued ordinary share capital being placed	38 per cent.
Gross proceeds of the Placing to be received by the Company	£17,143,000
Net proceeds of the Placing to be received by the Company (after deduction of expenses)	£15.5 million

*All dates referred to in this document are subject to change at the discretion of the Company and Collins Stewart.*

## PART I

### Information relating to the Company

#### 1. Introduction

CAP-XX is a world leader in the design and manufacture of thin-form supercapacitors and energy management systems, predominantly for portable electronic devices. The Company's products are already an established enabling technology for the current generation of wireless devices (such as PDAs and PCMCIA cards) and are being used by a number of large consumer electronics companies. The Company's supercapacitors can be found in the Sony Clie, ruggedised PDAs, used by delivery companies such as UPS and FedEx, and the wireless modems produced by Sierra Wireless and Sony Ericsson, among others. The ability to store high volumes of energy and output high power levels, in a thin package, is unique to CAP-XX's supercapacitors. The Directors believe these attributes to be critical to market acceptance of the next generation of high volume, "power hungry" portable electronic devices, including mobile phones. Given that portable devices are among the fastest growing segment of the electronics market and that supercapacitors help to increase battery runtime and enable additional device functionality which is not possible through current battery technology, the Directors have identified this market as providing the greatest opportunities for the Company's IP-protected products. CAP-XX is in discussions with leading mobile phone handset manufacturers about the commercial deployment of its technology for this purpose.

The Company, which is incorporated in Australia, has its headquarters and manufacturing facility in Sydney. Additional manufacturing capacity is provided through a manufacturing agreement with Polar Twin Advance of Malaysia which is contracted to provide the Company with high volume manufacturing services.

#### 2. History

In 1994 a company associated with Anthony Kongats, the Chief Executive of CAP-XX, entered into an agreement with CSIRO (the Commonwealth Scientific and Industrial Research Organisation), Australia's premier science and research institute, to research and commercialise supercapacitor technology. In 1997, CAP-XX became the vehicle holding the intellectual property that resulted from this partnership.

Since then the Company has been backed by some of the world's leading technology investors including Intel, Acer and Walden, as well as the Australian government. It built its pilot production plant in 1999, opened offices in the United States in 2000 and in Taiwan in 2002, subsequently improved its production facility in Sydney and in 2003 began shipping products in production volumes. The Company has supplied and is supplying customers including Sony, Sony Ericsson, IP Wireless, Option and Flextronics, with the Company's products being used in field-critical devices by leading parcel delivery companies, including FedEx and UPS.

#### 3. Requirement for supercapacitors and the market

The amount of energy that a battery can store per unit volume, its "energy density", is growing by approximately 8 per cent. per year. However, mobile-device power consumption is growing at more than three times this rate due to the introduction of features such as backlit colour screens, video capability and high-speed wireless connectivity which require ever-larger amounts of power. The limitations in battery technology, which is widely believed to be mature, and the lack of a commercially available alternative are preventing consumers from fully exploiting the capabilities of mobile technology. As a result, mobile device manufacturers are seeking enhanced battery management and the Directors believe that CAP-XX supercapacitors provide a key part of the solution.

A capacitor is an electronic component which stores energy and releases that energy over short periods of time. A supercapacitor is designed to stockpile larger amounts of energy, usually from an adjacent battery, and then release the stored energy in a burst when a high amount of energy is required, for example, when a camera flash is operated. Through levelling out high power demands on the battery ("buffering") a supercapacitor is able to increase the efficient use of the energy stored

by it, as a battery is not typically designed to be able to cope with such demands. Whilst supercapacitors can be manufactured in a variety of shapes and sizes, historically, they have been too bulky or lacked sufficient energy density to be used in portable devices.

The Directors believe that CAP-XX's supercapacitors can provide one or more of the following key benefits to mobile device manufacturers and end users, depending on the design use:

- Increasing the run-time of some batteries by over 100 per cent.
- Enabling operation in extreme temperatures. A mobile device supported by a supercapacitor is capable of operating effectively in temperatures below  $-40^{\circ}\text{C}$ .
- Increasing battery life. Batteries are damaged by transient power surges that occur in pulse power systems used in GPRS mobile phones or camera phones. Unlike a battery, a supercapacitor does not need to be replaced.
- Reducing manufacturing costs through the use of smaller power components and enabling the use of cheaper alkaline batteries rather than lithium batteries.
- Enabling reduction in device size, with the space required for a CAP-XX supercapacitor being significantly less than existing technology used by some manufacturers and enabling smaller batteries. By using a CAP-XX supercapacitor there is no longer a requirement for the inefficient practice of fitting oversize batteries to cope with sudden surges in power.
- Enabling technology that is currently impractical to implement with current battery and power technology.

In addition, CAP-XX supercapacitors do not contain any toxic metals which are often contained in batteries thereby making the transport and disposal of supercapacitors easier and more environmentally friendly than batteries.

It is estimated that the global supercapacitor market grew from approximately \$130 million in 2003 to an estimated \$190 million in 2005 and recent projections suggest this could be over \$270 million this year rising to near \$1.8 billion in 2012. In 2004, approximately 900 million portable electronic devices were sold, including over 600 million mobile phones and approximately 50 million laptops together with toys, digital cameras and MP3 players. The Directors believe that many of these would benefit from the adoption of supercapacitors.

#### **4. Target opportunities**

The Company's products are an established enabling technology in existing ruggedised PDA's and wireless modems and the Directors believe that the potential application for CAP-XX products is considerable. The Company has carried out extensive research in order to establish which particular segment of the electronics industry would be the most attractive and on which the Company should focus its sales and R&D resources. Following this, the Company concluded, given the size of the market and the clear benefits available to both manufacturers and end users, that the mobile phone market, and in particular that for phones with a digital camera, was the most attractive and immediate opportunity.

It is estimated\* that over 90 per cent. of mobile phones sold in western Europe in 2009 will incorporate a camera. As camera phones become more sophisticated, manufacturers and end users have become frustrated by the quality of photographs taken by camera phones in anything other than perfect lighting conditions. Many of these camera phones have no flash at all. Others have a "toy" flash using a low power LED to supply the light, which is very unsatisfactory from a user's point of view. Such toy flashes use low power because the batteries in the camera phones are unable to provide more power without compromising the phone's operation. If the issue of poor quality flash photography can be addressed, the Directors believe that the high-end camera phone will compete with the full versatility of a standalone digital camera.

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\*Source: The Gartner Group

As illustrated by the examples below, devices modified to incorporate a CAP-XX supercapacitor can produce dramatically enhanced image quality.



*Shot taken at 2m with an unmodified camera phone*



*Same shot taken again using same model camera phone after modification by CAP-XX*

The Company has been able to demonstrate that CAP-XX’s supercapacitors, being approximately 1mm thick where used in mobile phone applications, enable the integration of a high power flash without impeding either physical size or the reliability of the phone, attributes that are critical to market acceptance. While some manufacturers have employed an alternative high brightness solution, using a xenon flash, this requires a 330V bulk storage capacitor which is typically cylindrical and between 5mm and 10mm in diameter making the mobile phone bulkier as a result. As well as the xenon flash’s size disadvantages, concerns have been raised in relation to safety, due to the high voltages (up to 8KV) and currents required. There are currently several models of mobile phones on the market that incorporate a xenon flash but the Directors believe these do not provide acceptable quality photographs without compromising some combination of size, safety and reliability.

The Company is in discussions with world-leading mobile handset manufacturers. A number have stated that they believe that it is a question of “when” rather than “if” supercapacitors become a feature in the mobile phone flash solution and several have working groups focussing on the challenges of flash technology. The Directors believe that the CAP-XX supercapacitor is the best product available to address this market, a belief that has been supported by feedback from handset manufacturers. The Directors are working towards CAP-XX supercapacitors being shipped to handset manufacturers during 2007.

**5. Future opportunities**

Whilst the Directors intend initially to focus on the Company’s existing business and opportunities in the camera phone market, they believe that there are many other applications that would benefit from the Company’s technology. Leading players in the mobile device industry are currently attempting to redesign the power architecture of their devices based on batteries with higher energy densities. The key aim with these batteries will be to increase runtime but a side effect of this benefit will be a different voltage discharge curve, which the Directors believe will require the inclusion of supercapacitors for buffering. In short, whilst a battery with increased energy density may enable longer run-time, proper functionality of the device may be impossible without a supercapacitor. Since the Directors believe the CAP-XX supercapacitor to be the best available for this purpose, the Directors expect CAP-XX to be a prime beneficiary from developments in this area.

The Directors have noted the recent advances made in fuel cell technology and the drive for this to solve the problems caused by the limitations in battery technology. The Directors believe that fuel cells will have a part to play in the solution to battery limitations and believe that this offers a significant opportunity for the Company. Fuel cells which are designed for use in small mobile

devices operate efficiently over a narrow range of performance parameters and at elevated temperatures, rapidly becoming inefficient under high power demands. Supercapacitors can help address these issues through buffering and the Directors believe that supercapacitors will be an integral part of the fuel cell solution, with CAP-XX benefiting as a result.

In addition, the Directors have identified the following as markets that CAP-XX may target in the future:

- Digital still cameras – high-end digital still cameras require a power surge from the battery to drive the autofocus and zoom motors. Experiments by the Company with one such camera showed a 40 per cent. increase in the number of shots the camera could take when it was fitted with a CAP-XX supercapacitor.
- Automotive – when paired with fuel cells in stop-and-go mobility applications supercapacitors could provide burst power for acceleration and enhance regenerative braking.
- Medical devices – by overcoming the current limitations of the zinc-air or silver oxide batteries used in typical portable medical devices, supercapacitors could enable new applications such as small wearable and portable drug delivery systems that use high pulse currents powering lasers to measure precise drug delivery or heating drugs to hundreds of degrees C to allow drug delivery via inhalation.
- Wireless sensors – Zigbee and other wireless sensor devices could use a supercapacitor to store energy recovered from alternative power sources such as solar, thermal or piezoelectric.
- Uninterrupted power supplies – large, high energy supercapacitors can replace battery systems in UPS for power smoothing.
- Toys – next generation “instant charge” toys would benefit from the quick capability of a CAP-XX supercapacitor.
- Toll tags – very high impedance batteries would benefit from buffer devices such as the CAP-XX supercapacitor.
- Location tracking – a supercapacitor can support the battery for the peak power functions of GPS acquisition and reporting over the cell phone network.

## **6. Intellectual property**

CAP-XX has considerable intellectual property embodied in its patents that enables it to produce supercapacitors with clear performance advantages.

The patent portfolio of CAP-XX consists of 18 patent families, 8 granted US patents and 45 patent applications in a number of jurisdictions. CAP-XX’s IP strategy has been to build company value by focussing on opportunities to capture market share and to exclude competition with an IP portfolio capable of generating licensing revenue. The technology areas subject to formal protection or pending protection are broadly divided into three categories, specifically, to supercapacitive devices, techniques for manufacturing the devices and the application of the devices in electronic circuits. Comprehensive embodiments and interlocking patent groups, combined with a “quick to file, quick to abandon” policy, have in the Directors’ opinion given the Company a strong and focussed IP portfolio.

An independent intellectual property report is set out in Part III of this document.

## **7. Manufacturing, research and development**

The Company prides itself on its research and development capability and believes that its team of 11 engineers and scientists will continue to generate developments in supercapacitor performance. The Directors believe that a key factor in the Company’s competitive position is its world leading capability in the engineering of electrode, separator and electrolyte material in supercapacitor devices. The research and development team is working on projects to deliver significant improvements in capacitance, operating voltage and thickness reduction, which the Directors expect to open new markets for the Company. In the longer term, the Company expects to make further progress in development of electrode technology, electrolytes, separators and packaging which will lead to improvements in the areas of high power and high energy devices.



The Company employs 45 people across manufacturing, research, marketing, administration and general management. Lane Cove, Sydney is the location of the Company's research and manufacturing facility and achieved ISO 9000 status in 2005. In 2004 the Company entered into a contract manufacturing agreement with one of Malaysia's leading integrated circuit packaging companies, Polar Twin Advance, in preparation for large volume production of CAP-XX supercapacitors. Polar Twin Advance currently has approximately 700 employees with forecast ramp up to 1,000 by end 2006 and plans to build further manufacturing facilities to meet the anticipated demand from the Company for increased volumes of production of the CAP-XX supercapacitors. The CAP-XX production line is located in a class 20K "clean" room and has the same manufacturing process flow as the facility at Lane Cove, Sydney. The Company will retain the high value-added and IP-critical material manufacture in-house. The existing facility in Sydney has the capability of supplying this material to manufacture over 1 million of these supercapacitors per month, with some additional capital expenditure.

## 8. Routes to market

The Company has an experienced sales team and most sales to date have been achieved through a direct sales model. In addition, in order to gain broader market coverage, the Company has entered into distribution agreements with a number of well-qualified distributors. The Company expects to use distributors for the foreseeable future while maintaining direct sales to key customers.

CAP-XX undertakes selected marketing campaigns, attends trade shows and has a website, [www.cap-xx.com](http://www.cap-xx.com). Additionally, the Company has positioned itself so as to be attractive to electronic system designers through providing the following supporting materials, products and services:

- **Engineering and design services** – the Company's experienced applications team can assist customers in the selection and application of supercapacitors.
- **Evaluation kits** – a low-cost route to early experimentation and development.
- **Application briefs and notes** – specific examples and suggestions for using CAP-XX products.

## 9. Competitive position

The Directors believe the Company's products to be industry-leading as they possess the following characteristics:

- **High capacitance:** storing large amounts of energy.
- **Size and thickness:** the CAP-XX products can be less than a millimetre thick, owing to an extremely high energy density, with the result that integration in compact mobile phones can be achieved without significant redesign or any externally visible change
- **Low equivalent series resistance (ESR):** excellent performance in high peak power applications.
- **Weight:** the high energy density yields a package of only 1-2 grams.
- **Lifetime:** over 30,000 hours under normal operating conditions.
- **Low and high temperature operation:** between –40 degrees C to +85 degrees C.

However, the Directors consider there to be a number of supercapacitor manufacturers that do, or could in the future, compete in CAP-XX's chosen markets. These include, in the short term, Panasonic, Enerland Eppscore, Maxwell Technologies, Cooper Industries, AVX Corporation, NEC Tokin Corporation and NessCap.

## 10. Board of Directors and Employees

Brief biographical details of the Directors are as follows:

### *Board of Directors*

On Admission, the Board will be comprised of the following persons:

**Anthony Kongats, CEO (aged 47)**

Anthony founded the Company in 1997. Prior to CAP-XX, he was the managing director of a manufacturer of passive components before selling the business to a competitor. Anthony previously worked as a management consultant with McKinsey & Company and held various engineering positions in Australia and Europe. He has a bachelor's degree (Hons) in engineering from the University of New South Wales, a bachelor's of science degree from the University of Sydney and an MBA from the Australian Graduate School of Management (AGSM).

**Michael Quinn, Non-Executive Chairman (aged 58)**

Michael is executive Chairman of venture capital fund manager, Innovation Capital Associates Pty Ltd, and was previously co-founder of Memtec Ltd, the high technology filtration company, which was listed on the ASX, NASDAQ and then NYSE. Michael is also a director of ResMed Inc. which is listed on NYSE, and is on the board of two not-for-profit organisations. Prior to its acquisition, he was executive chairman of the listed company Phoenix Scientific Industries Ltd that manufactured and imported medical and scientific equipment. Michael has also held executive positions in the banking, transport and high-technology plastics industries and has been a director of numerous listed and unlisted companies. Michael has an MBA from Harvard.

**Graham Titcombe, Senior Independent Non-Executive Director (aged 63)**

Graham worked for Johnson Matthey plc for 42 years retiring in 2002 as Group Managing Director. He was a member of the Johnson Matthey Board for 12 years and was responsible at various times for the Johnson Matthey group's precious metals, catalysts and ceramics divisions. He was also the Johnson Matthey board member responsible for technology. Graham's outside directorships have included Ballard Power Systems, The World Fuel Cell Council, Wagon plc and Infast Group plc. He was Chairman of Infast before stepping down in July 2005. He is currently senior independent director on the board of PolyFuel Inc which listed on AIM in June 2005.

**Christer Harkönen, Non-Executive Director (aged 48)**

Christer is Senior Vice President of UPM Raflatac, responsible for Radio Frequency Identification Business. Before joining the company he held various management positions at Elcoteq, a global electronics manufacturing services company. During 2000-2004 he headed Elcoteq's largest business area, Terminal Products, and was responsible for strategic accounts. Christer has held various production, logistics and purchasing positions in the electronics industry since 1984 including with Nokia, ICL Personal Systems Oy and Espoo. He has a Masters in Engineering.

**John Murray, Non-Executive Director (aged 47)**

John has 14 years' experience in providing venture capital to technology companies in the Asia Pacific region with Bank of America, Australian Technology Group and Technology Venture Partners. He is a co-founder of Technology Venture Partners, one of the leading VC firms in Australia. He has been chairman of the Australian Venture Capital Association; a member of the Austrade ICT Export Advisory Panel; and a member of the 2002 Cooperative Research Centre Expert Review Panel. John has personally been involved in financing and assisting the development of a number of Australian companies which have successfully commercialised technology, including Security Domain, Integrated Silicon Design and ManageSoft. He has a law degree (Hons) from the University of Edinburgh and is a member of the Institute of Chartered Accountants of Scotland.

***Scientific Advisory Board***

The Scientific Advisory Board meets twice a year and provides science and engineering advice to the CEO and the Company, in particular answering specific technical questions posed by the CEO or Company in relation to the development of CAP-XX products and also advising on technological developments in the field at large. Brief details of members of the Scientific Advisory Board are set out below.

### **Calum Drummond, Chair**

Calum commenced an Australian Research Council (ARC) Federation Fellowship at CSIRO in July 2004 which is Australia's premier research fellowship in science and engineering. Prior to this, Dr Drummond was Vice President Research at CAP-XX (on secondment from CSIRO) and CSIRO's Program Leader for Specialty Chemicals and Environmental Technologies.

### **Ralph Brodd**

Ralph is President of Broddarp of Nevada, Inc. a consulting firm specialising in technology assessment, strategic planning and battery technology, production and marketing. Dr Brodd has had senior technology management positions in Eveready (now Energizer), ESB (INCO ElectroEnergy), Amoco, Gould, Bolder Technologies and Valence Technology.

### **Roel Kramer**

Mr Kramer retired from Philips Consumer Electronics in 2003 after six year as Chief Technology Officer. In his role as CTO, he was responsible for the overall technological direction throughout the Consumer Electronics group of businesses. This required a combination of market and consumer awareness, and an ability to effectively apply and draw upon the many competencies within the company and available externally via strategic partnerships.

### **Doug MacFarlane**

Doug is the current Head of Chemistry and a Professorial Fellow at Monash University. Doug's research interests include conductive media and electrochemical devices. The high quality of his R&D and teaching contributions have been recognised through the award of a number of prestigious prizes/medals and fellowships.

### **George Paul**

George is the Director of Patent Value. This is a business that he founded to assist companies to create more valuable patent portfolios. Dr Paul has extensive technical and commercial experience from the University of New South Wales and has served on the board of and lectured at the AGSM, Australia's leading graduate business school.

### ***Key Employees***

Brief details of the key employees of the Company are set out below.

#### **Chris Campbell, Chief Financial Officer (age 46)**

Chris is responsible for financial management including strategic and business planning support. Chris joined CAP-XX in 2001 with more than twenty years of international business experience in telecom, manufacturing, construction, services and sales organisations. Past positions held include chief financial officer and executive director at Lucent Technologies Australia Pty Ltd. and finance manager for the Australia/Asia Pacific group of Orica Ltd., Explosives Group (formerly ICI Australia Ltd). Chris has a bachelor's degree in commerce from University of Newcastle and is an Associate of the Institute of Chartered Accountants in Australia.

#### **George Karhan, Chief Operating Officer (age 62)**

George is responsible for manufacturing, logistics, quality assurance, and human resources. He has thirty two years of experience in manufacturing, process development, project financing and business management with Australian and international companies such as Baxter Laboratories, Inc., Citibank N.A., Tooth & Co. Ltd and APV PLC. George ran his own engineering business (Comtec Australia) which he sold prior to joining CAP-XX. George graduated from Czech Technical University in Prague with a Diplom Ingenieur (Dipl.-Ing.), holds a masters in engineering (ME) from the University of New South Wales, and an MBA from Harvard.

#### **Dan Auton, Vice President, Sales & Marketing (age 52)**

Dan is responsible for the Company's sales and marketing activities. He is a senior technical sales and marketing executive with over twenty years of experience at Intel and three successful start-ups: Cyrix, Tripath, and Parthus Technology. Dan has a bachelor's degree in electrical engineering (Hons) from North Carolina State University and has completed extensive graduate coursework in business and engineering.

**Pierre Mars, Vice President, Application Engineering (age 51)**

Pierre is responsible for developing new supercapacitor applications and solutions, working closely with partners and customers to develop applications that meet current and future customer needs. He joined CAP-XX after three years as business development leader with Honeywell. Pierre also has 16 years' experience in electrical engineering and project management. Pierre graduated with 1st class honours from the University of New South Wales with a Bachelor of Engineering (Electrical), holds a Masters in Engineering Science (Electrical) also from UNSW, and a MBA from INSEAD, Fontainebleau in France.

**Paul Khoo, Vice President, Engineering (age 49)**

Paul is responsible for engineering and contract manufacturing. He has twenty four years' experience in high-volume manufacturing and research and development, including product and process development from concept to high volume manufacture. Prior to joining CAP-XX, Paul held key positions with Memtec Limited, including managing research and development and capital works projects and leading its manufacturing scale-up program and operations area. Paul graduated with 1st class honours from University of New South Wales with a Bachelor of Engineering (Mechanical), and a MBA from the Australian Graduate School of Management.

**Phil Aitchison, Chief Material Scientist (age 37)**

Phillip is responsible for all aspects of CAP-XX's research, product & process development and intellectual property. Phillip is a materials scientist with ten years' experience with high-power energy storage technologies, six of which were spent in leading-edge technology companies, initially at Pacific Lithium Ltd., New Zealand. He has a Doctorate in Chemistry awarded jointly by the University of Montpellier, France and Victoria University of Wellington, New Zealand. Phillip has ten peer-reviewed research publications in first-class international journals, two patent applications and has given invited presentations at national and international conferences.

**Warren King, Consultant, Research and Development (age 58)**

Warren is an independent adviser on the management of R&D. Until recently, Dr King was the CSIRO Group Executive for IT Manufacturing and Services, a role that oversaw the operations of seven of CSIRO's Divisions and 2,000 staff in the physical sciences covering such areas as IT, mathematics, physics, astronomy and molecular science and engineering.

## **11. Corporate Governance**

The Directors support high standards of corporate governance and confirm that, following Admission, they intend to comply with the Combined Code as far as is practicable for a company of the size and nature of the Company and subject to Australian law. An Audit Committee and a Remuneration Committee, each consisting of at least two Non-executive Directors, have been established for this purpose. The Directors intend that the Board will be comprised of such number of Executive and Non-executive Directors as to facilitate compliance with the Combined Code and the effective operation of the committees.

The Audit Committee is responsible for ensuring that the financial performance, position and prospects of the Group are properly monitored and reported on and for meeting with the auditors and discussing their audit procedures and the Group's internal financial controls.

The Remuneration Committee reviews the performance of the Executive Directors, sets their remuneration and determines the payment of bonuses (if any). It will also consider the grant of options under the Employee Share Option Plan or any other share option scheme or other incentive scheme of the Company and, in particular, the exercise price of each option and the application of performance standards, if any, to such grants subject to the terms of the applicable option scheme. No Directors will be permitted to participate in discussions or decisions concerning their own remuneration.

The Company will hold regular board meetings at which financial and other reports will be considered and, where appropriate, voted on.

The Company has adopted a code for Directors' and key employee share dealings.

## 12. Reasons for the Placing and Admission

The net proceeds of the Placing will be approximately £15,543,000 million and will be used by the Company to:

- restructure the Company's balance sheet
- develop the Company's sales and marketing capability
- enhance the Company's research and product development function

The Directors believe that an AIM listing will enhance the Company's profile within its target markets and provide further customer confidence.

## 13. The Placing

The Company is proposing to raise approximately £15,543,000 million (net of expenses) through the placing by Collins Stewart of 18,433,333 Ordinary Shares at 93 pence per share.

Pursuant to the Placing Agreement, Collins Stewart has agreed with the Company, on and subject to the terms set out therein, to use reasonable endeavours to procure institutional investors to subscribe for the Placing Shares at the Placing Price. The Placing has been fully underwritten by Collins Stewart and is conditional, *inter alia*, on Admission. A summary of the Placing Agreement can be found in paragraph 15 of Part V of this document.

Immediately on Admission, at the Placing Price, the Company will have a market capitalisation of approximately £45.2 million.

## 14. Lock-in and Orderly Market Arrangements

Immediately following Admission, the Directors and certain major shareholders will be interested, in aggregate, in 24,519,703 Ordinary Shares representing approximately 50.5 per cent. of the enlarged issued share capital of the Company. Under the terms of a lock-in agreement, which are described more fully in paragraph 16.6 of Part V of this document, such persons have undertaken that, subject to certain exceptions, they will not sell or otherwise dispose of, or agree to dispose of, any of their respective interests in Ordinary Shares following Admission during certain periods without the consent of Collins Stewart.

In the case of the Directors other than Anthony Kongats, the relevant period is 12 months from Admission. Anthony Kongats has agreed not to dispose of his interests in Ordinary Shares for a period of 24 months from Admission without the consent of Collins Stewart, provided that he and persons connected to him may dispose of up to 25 per cent. of such interests through Collins Stewart after the expiry of a fifteen month period following Admission in accordance with Collins Stewart's reasonable requirements as to orderly markets. In the case of the other shareholders who are party to the lock-in agreement, the relevant period is 12 months from Admission.

After these lock-in periods have expired, the Directors and the relevant shareholders have agreed, for a further period of two years and one year, respectively, only to dispose of their interests in Ordinary Shares through Collins Stewart (or the brokers for the time being of the Company) in accordance with its reasonable requirements as to orderly marketing.

## 15. Employee Share Option Plan

The Directors believe the incentivisation and motivation of the Group's employees to be of great importance and that key employees should be given the opportunity to take a financial interest in the Company.

The Company has adopted an Employee Share Option Plan (ESOP) under which, at the date of this document, no options have been granted, although the Company has agreed to issue options over 1,769,088 Ordinary Shares, which may or may not be issued under the ESOP, as set out in paragraph 7.2 of Part V of this document. Further details of the ESOP can be found in paragraph 6 of Part V of this document.

## 16. Dividend Policy

The Directors intend to pay dividends when the profitability of the business permits and subject to the availability of distributable reserves. It may be more prudent to retain cash to fund the expansion of the Company and as a result it is inappropriate to give an indication of the likely level or timing of any future dividends.

## **17. Admission, Settlement and CREST**

Application has been made to the London Stock Exchange for the entire issued and to be issued ordinary share capital of the Company to be admitted to trading on AIM. It is expected that Admission will be effective and that dealings in the Ordinary Shares will commence on 20 April 2006.

No application has been, or will be, made for the Ordinary Shares to be admitted to listing or to be dealt with on any other exchange.

CREST is a computerised paperless share transfer and settlement system which allows shares and other securities, including depository interests, to be held in electronic rather than paper form. The Ordinary Shares are not themselves admitted to CREST but Computershare Investor Services PLC has agreed to issue depository interests in respect of the underlying Ordinary Shares (“Depository Interests”). The Depository Interests are independent securities constituted under English law, which may be held and transferred through the CREST system. Depository Interests have the same security code (ISIN) as the underlying Ordinary Shares and do not have (or require) a separate quotation on AIM. CREST members are able to hold and transfer interests in Ordinary Shares within CREST pursuant to this depository interest arrangement established by the Company. With effect from Admission, all of the Ordinary Shares will be eligible to participate in this arrangement. CREST is a voluntary system and shareholders who wish to retain certificates will be able to do so.

## **18. City Code and Australian law**

Although the Ordinary Shares will trade on AIM, the Company will not be subject to takeover regulation in the United Kingdom and The City Code on Takeovers and Mergers will not apply. However, the Company is, and is expected to remain, subject to provisions regulating takeovers under Australian law. The Company is incorporated under Australian law which does not impose limits on the ability to issue shares, whether on a pre-emptive basis or otherwise. However, the Company has agreed that it will not issue more than 30 per cent. of its issued share capital following Admission without the approval of the Company in general meeting. In addition, the Company has agreed that within this 30 per cent. limit, it will not issue shares amounting to more than 15 per cent. in any one year of its issued share capital immediately following Admission for cash otherwise than on a pre-emptive basis, without the prior approval of the Company in general meeting.

The Corporations Act forbids the acquisition of a “relevant interest” (basically, power to vote or dispose of the share) in voting shares in a company incorporated in Australia if, as a result, the voting power of the acquirer (or any other person) would increase from 20 per cent. or below to more than 20 per cent. Similarly, the acquisition is forbidden if any person who already holds more than 20 per cent., but less than 90 per cent., of the voting power gains increased voting power in the target company.

There are several exceptions which allow acquisitions which would otherwise be prohibited from taking place. These exceptions include acquisitions: under a formal takeover offer in which all Shareholders can participate; with the approval of Shareholders given at a general meeting of the Company; and in 3 per cent. increments every six months, provided that the acquirer has had voting power of at least 19 per cent. for at least six months.

## **19. Risk Factors**

**The Group’s business is dependent on many factors and prospective investors are advised to read the whole of this document and, in particular, Part II entitled “Risk Factors”.**

## **20. Taxation**

Your attention is drawn to paragraph 10 of Part V of this document. This information is intended only as a general guide to current law and should not be relied upon.

## **21. Further Information**

The attention of prospective investors is drawn to the information contained in Parts II to V (inclusive) of this document which provide additional information on the Group and the Placing.

## PART II

### Risk Factors

An investment in the Company and the Placing Shares is subject to a number of risks. A prospective investor should consider with care whether an investment in the Company or the Placing Shares is suitable for it in the light of its personal circumstances and the financial resources available to it.

Investment in the Company should not be regarded as short-term in nature. There can be no guarantee that any appreciation in the value of the Company's investments will occur or that the investment objectives of the Company will be achieved. Investors may not get back the full amount initially invested. The prices of shares and the income derived from them can go down as well as up. Past performance is not necessarily a guide to future performance.

The Group's business, financial condition or results of operations could be materially and adversely affected by any of the risks described below. In such cases, the market price of the Ordinary Shares may decline due to any of these risks and investors may lose all or part of their investment. Additional risks and uncertainties not presently known to the Directors, or that the Directors currently deem immaterial, may also have an adverse effect on the Group. The Directors consider the following risks to be the most significant for potential investors in the Company and are not set out in any particular order of priority.

#### A. Risks Relating to the Business of the Group

##### *Dependence on key customers and contracts*

The Company expects the majority of its sales to originate from a small number of key customers. The Company's operating results are likely to continue to depend on a small number of customers, and in turn on those customers' ability to sell their own products which incorporate the Company's products to end-users. If these key customers should delay, reduce or cancel their orders with the Company, this would have an adverse affect on the Company's business.

The Company has anticipated that certain key customers will enter into contracts for the supply by the Company of certain key products. Failure to secure such key contracts will have a material adverse effect on the Company's business.

##### *Lack of visibility on forward orders*

As is standard in the electronics industry, the Company does not typically have contracts with its customers guaranteeing yearly order volumes. The Company will typically only receive orders 4-8 weeks ahead of the delivery date for such orders. Therefore there is limited visibility on forward orders which makes it more difficult for a company in this industry to predict and manage its production levels than may be the case in other industries.

##### *Limited history of sales of key products and uncertainty of consumer response*

The Company has limited historical financial data from which to predict its future sale and operating results. The application of and market acceptance of the Company's key products has not been proven and therefore limits the ability of the Company to forecast annual or quarterly sales accurately. If growth in sales does not in fact materialise this may have an adverse effect on the Company's ability to generate profits. Consumer demand for products incorporating the Company's technology may not develop and grow sufficiently. Therefore the Company cannot predict future growth rate with certainty as this depends largely on the success of its customers' products.

##### *Fluctuations in demand*

The Company operates in developing markets and therefore has little historical data about demand for its products and such demand may be difficult to forecast. Significant unanticipated fluctuations in demand may cause the Company operating problems either because the Company may have a surplus of its products or because it may not have sufficient lead time to manufacture products to

meet unanticipated demand. There is a risk that the Company will not be able to scale up production as quickly as required by customers, and therefore fail to meet orders, which may adversely affect the Company's reputation and business.

#### *Possibility of product errors and failures*

The Company's products are complicated and may contain undetected errors or failures, particularly when first introduced or integrated into customer products. Such errors and failures could result in the Company diverting engineering resources to resolve them, and in adverse customer and business relationships and reputation. Any product defects could also involve the Company in legal liability and lawsuits or claims for defective products or product recalls, and significant capital may be spent on defending such actions and replacing defective products.

#### *Incurrence of expense before profits*

Some of the products that the Company produces impose significant demands on both time and resources in their design. The Company may incur sales and marketing expenses, research and development expenses and expend management and engineering resources in developing a product before it is offered to any customers. The value to the Company of developed product depends on whether one or more of the Company's customers decides to incorporate one of the Company's products into its own products, and the success of that customer's products. If the Company fails to sell a developed product in anticipated volumes to customers, the Company's expenses in relation to the development of that product may not be recovered and this may adversely affect the profits of the Company.

#### *Dependence on future developments*

The Company's future success depends on its ability to develop new products and seek new applications for its current and future products. The development of new products and applications is however highly complex and future products may require more advanced features and technology which make those products harder to design and manufacture. In addition, there can be no guarantee that the products which the Directors believe will incorporate CAP-XX supercapacitors will be launched by expected customers. If the Company or its customers are not able to develop and introduce new products successfully, the Company's business will be adversely affected.

#### *Decline in average selling price*

The Company may experience fluctuations in future operating results from period to period due to the reduction of the average selling price of its products. Prices of new technology such as that marketed by the Company typically decline over the products' lives. If the Company is unable to offset any such reduction in price by increasing the volume of sales, then its profits may be adversely affected.

#### *Dependence on third party manufacturers*

The Company relies on third party manufacturers to manufacture most of its products. Dependence on third party manufacturers involves certain risks for the Company including: potential price increases, inability to renegotiate price decreases on volume production; capacity shortages; incapacity of such manufacturers to increase production to meet demand; misappropriation of intellectual property; labour shortages or strikes; loss of control over production and quality of products; delays in delivery; and change in the third parties' management or control which may affect their ability to deliver the products in accordance with the terms of their respective agreements with the Company.

#### *Dependence on small number of distributors*

The Company currently supplies, and expects to continue to supply, the majority of its products directly, and not through distributors, although the percentage of products supplied through distributors may rise. Whilst the Directors believe that suitable alternative distributors could be found for the Company's products, there is a risk that the few distributors which the Company uses could cancel their agreements with the Company, resulting in disruption and delay to the distribution of the Company's products, and consequent adverse effects on reputation, business relationships as well as legal claims.



### *Dependence on Senior Management and Key Employees*

The Group's performance will be dependent upon the ability of the Company to employ and retain senior management and other key personnel. The Group's performance is also dependent upon the performance of the Company's senior management and other key personnel. The loss of the services of any of the senior management or key employees could have a material adverse effect upon the Group's future.

In addition, the Company is reliant on technical staff such as engineers who represent a significant part of the Company's human capital and the origination of product development and innovation. The Company's future success depends on its ability to retain and recruit its technical staff. Such staff may be in demand by competitors. The loss of a material number of technical staff could delay the development and introduction of new products and have an adverse effect on the Company's business.

### *Expansion risk*

In order to address the potential growth in demand for the Company's products, the Company must manage the resultant expansion of the Company effectively. The successful expansion of the Company will depend on a number of factors including its ability to recruit new staff or management and update systems. In addition, there is a risk that if the Company is not able to increase its production capacity to meet demand as forecast, the Company may fail to meet sales forecasts. Although the Company does not anticipate any significant problems in relation to these areas, any delay or inability to address these factors may inhibit the Company's growth and therefore its ability to meet demand for its products.

### *Inability to protect Intellectual Property*

The Company's success depends on its ability to protect its intellectual property and to prevent any infringements of others' intellectual property. The Company cannot guarantee that the steps it has taken to protect its intellectual property will prevent unauthorised use of its technology, particularly in jurisdictions where the laws do not protect intellectual property as strongly as in other jurisdictions where intellectual property law is more advanced. The Company cannot also guarantee that any pending applications for the protection of its intellectual property will be granted or will be sufficient to protect its intellectual property. Competitors may also independently develop competing or similar technologies. There is a risk that any intellectual property rights granted to the company will be challenged, declared invalid or unenforceable.

### *Disputes regarding Intellectual Property*

There are many patents and patent applications in technology being filed in the United States and elsewhere. These patents and applications can be complex and difficult to analyse and much of the law in relation to patents is still being developed. It can therefore be difficult to determine whether any technology developed by the Company could infringe the patents and applications pursued by third parties. Any claims in relation to the infringement of such rights, whether founded or not, can be costly to investigate and defend, both financially and in terms of management time. Any unfavourable outcome would force the Company to stop selling its products or stop using such technology or to seek a licence from the third party (which may or may not be available, and which may or may not be offered on reasonable terms). The Company is not currently aware of any claims or potential infringements by the Company of third party intellectual property. The Company may be required to give customers and third parties warranties in relation to its intellectual property and any claims as a result of a breach of those warranties, or pursuant to those indemnities may have a material adverse effect on the Company's business.

### *Competition*

The market in which the Company operates is competitive and is characterised by rapid technological change. The Company's current and future competitors may be able to offer new technologies and products at lower prices, superior performance levels or with greater market acceptance than the Company, or be able to develop better financial, consumer, customer or business relationships.

### *Need for additional capital in the future*

While the Company expects to be fully funded immediately following Admission, there is a risk as with all companies that it may need to seek additional capital in the future, to meet any additional operating expenses or where sales do not reach anticipated levels.

## **B. General Risks**

### *Possible Volatility of Share Price*

Following Admission, the market price of the Ordinary Shares could be subject to significant fluctuations due to a change in sentiment in the stock market regarding the Ordinary Shares or securities similar to them or in response to various facts and events, including any regulatory changes affecting the Group's operations, variations in the Group's half yearly or yearly operating results and business developments of the Group or its competitors. Further, the trading price of the Ordinary Shares may be subject to wide fluctuations in response to many factors, including those referred to in this Part II, as well as variations in the operating results of the Group, divergence in financial results from analysts' expectations, changes in earnings estimates by stock market analysts, stock market fluctuations and general economic conditions or changes in political sentiment, each of which may adversely affect the market price of Ordinary Shares, regardless of the Group's actual performance or conditions in its key markets.

### *Liquidity of the Ordinary Shares*

It may be more difficult for an investor to realise its investment in an AIM traded company than in a company whose securities are admitted to listing on the Official List. AIM has been in existence since June 1995, but its future success and liquidity as a market for the Ordinary Shares cannot be guaranteed. In addition, the market for shares in smaller public companies is less liquid than for larger public companies. Consequently, the Company's share price may be subject to greater fluctuation than a company whose securities or shares are admitted to the Official List and the Ordinary Shares may be difficult to buy and sell. Prospective investors should be aware that the value of the Ordinary Shares could go down as well as up and that prospective investors may not recover their initial investment.

### *Currency risk*

Prices for current products are expressed and paid in United States dollars. As a result, the Company is subject to foreign currency exchange risk due to exchange movements.

### *Tax*

The Company has unused tax losses, which the Directors expect to utilise in the future. Any changes to tax regulations that prevent the Company from utilising these tax losses would require the Directors to alter their expectations for the financial performance of the Company.

**The investment described in this document may not be suitable for all those who receive this document. Before making a final decision, investors in any doubt are recommended to consult an independent financial adviser authorised under the Financial Services and Markets Act 2000 who specialises in advising on the acquisition of shares and other securities.**

## PART III

### Independent Expert's Report

#### 1. Introduction

This Patent Attorney Report has been prepared by Shelston IP, a partnership of Patent and Trade Mark Attorneys, at the request and in respect of CAP-XX Limited of Units 9 and 10, 12 Mars Road, Lane Cove, New South Wales, Australia for inclusion in the admission document relating to one admission of the ordinary shares of CAP-XX Limited to trading on AIM and the associated placing of ordinary shares in CAP-XX. This Report is addressed to CAP-XX Limited and its directors and to Collins Stewart and its directors. CAP-XX Limited was formerly known as Energy Storage Systems Limited and, prior to that, Energy Storage Systems Pty Ltd.

Shelston IP currently provides advice and resources to CAP-XX Limited to assist with the management of their intellectual property (IP) portfolio. Shelston IP and its predecessors have been involved with the management of the IP portfolio since early 1998.

Neither Shelston IP nor any of its partners has any entitlement to any securities in CAP-XX Limited or any related entity, or has any other interest in the promotion of CAP-XX Limited.

The Report contains observations about the IP portfolio of CAP-XX Limited and the development and management of that portfolio in light of interaction between personnel of CAP-XX Limited and Shelston IP. These observations are provided to assist the reader gain an insight into the IP portfolio and the commercial worth the portfolio may provide both now and in the future. This Report is not expressing a legal opinion, and any investment decision requiring a legal opinion about the IP portfolio should be supplemented outside this Report. Moreover, the commentary provided under the heading "10. Limitations, Disclaimers And Caveats" should be considered carefully by any potential investor.

#### 2. About Shelston IP

Shelston IP is a well-established Australian based firm of patent and trade mark attorneys, formerly known as Baldwin Shelston Waters (Australia). With over 110 professional and support staff, and in excess of 100 years of experience in the development of efficient and responsive case management systems and practices, Shelston IP is a leading Australasian intellectual property firm providing high quality, commercially relevant, intellectual property advice and services.

Shelston IP can and does offer a full range of professional advice in all areas of Intellectual Property law including patents, designs, trade marks, copyright and fair trading. The firm offers a wealth of technical and intellectual property expertise and experience across all disciplines, and has specialist teams practicing in the fields of chemistry and materials science and electrical and electronic engineering.

#### 3. Intellectual Property Protection – Overview

Intellectual property (IP) is a valuable intangible asset which needs to be carefully and diligently protected. It encompasses statutory and common law rights which provide protection in relation to products, processes, trade names, designs, drawings, plant breeders rights and circuit layouts in industry, science or commerce. Patents for inventions are one important type of IP which protect inventors of a product or process for a period believed sufficient for them to enjoy the returns of their investment.

Broadly, a patent is a statutory monopoly which confers on the owner of the patent the exclusive right to make, use, or sell the invention defined in the patent claims throughout the territory of the country granting the patent. The grant of a patent in one country does not confer any rights in any other country.

A patent right is obtained by filing a patent application that includes a patent specification. The role of the patent specification is both to describe the invention and, by way of a set of claims, to define the monopoly that is being sought. In Australia and the United States it is possible to file a

provisional application to establish a priority date in respect of the invention. The priority date established by the filing of an Australian or a US provisional patent application will be recognised in most industrialised countries as long as a corresponding complete application is filed within twelve months from the date of filing of the provisional application. The complete application is examined by the relevant patent office before it can proceed to grant. A patent has a fixed term, which in most countries is 20 years from the date of filing the respective patent application.

Each country has its own national patent laws and there is no such thing as a “world” patent. Generally, to obtain patent protection in a number of countries it is ultimately necessary to file separate patent applications in each jurisdiction of interest. There are, however, a number of international conventions and treaties which can be used to facilitate or defer this procedure.

International conventions enable a provisional patent application to be used as the first step in obtaining patent rights in other countries (including most industrialised countries), which claim priority from the initial provisional patent application. Most commonly a single international patent application is lodged under the provisions of the Patent Cooperation Treaty (PCT), which designates the countries in which the applicant may subsequently wish to proceed. A PCT application is subject to an international search by an International Searching Authority (ISA), and if desired, to International Preliminary Examination. If the application is to proceed it must be entered into the “national phase” in each of the desired countries. Alternatively, under another international convention (known as the Paris Convention) patent applications may be filed in individual desired countries within twelve months of the priority date. All of the major industrialised countries belong to these conventions.

Further, a single patent application may be lodged in respect of the countries of the European Patent Convention (which currently includes 30 countries). This is called a European patent application and it may also be extended to certain other countries which are not yet full signatories to the European Patent Convention. A European patent application is examined by the European Patent Office and, once granted, must be registered and maintained in each individual country in which it is desired to have a patent.

Examination of a patent application can be quite rigorous, and may require amendment or limitation of the initially filed claims. In some countries, once the application has been allowed by the Examiner, the grant of a patent may be opposed by a competing party. For example in Australia there is a pre-grant opposition and in Europe there is post-grant opposition. An opposition may result in refusal or revocation of the claims, or may result in further limitation of the claims.

Patents and patent applications are property rights which can be sold, licensed, mortgaged or otherwise dealt with. Patents and patent applications may be lodged in the name of one or more applicants. In the absence of a specific agreement to the contrary, it is generally assumed that joint applicants hold equal and undivided shares in the rights to the invention.

Trade marks are similarly tradable property rights that are increasingly important and valuable with the ongoing sale of a product or a process. Procedurally their registration is not unlike that for patents. However, functionally the role of a trade marks is quite different. A trade mark is, for example, a word or symbol used to denote the trade source of goods or services. The exclusive right of trade mark owners serves the function of consumer protection as well as protection of interests of traders in both the goodwill associated with their trade marks and the value of a registered trade mark as a property right.

#### **4. Observations of the IP Strategy**

Our overall observation of the actions of CAP-XX Limited is that IP is seen as an important part of the assets of the company. It is our experience that the relevant managers within the company work closely with inventors and patent attorneys to actively:

- document the development activities of their technical staff.
- review the documentation to identify technical advances having commercial application.
- Prepare and file a relatively small number of commercially focussed patent applications in selected jurisdictions, where the patent specifications are drafted to define the invention broadly and to offer a graded set of fallback positions.

- Establish an early priority date for the invention and minimise any reliance upon so-called “grace periods” for disclosure of inventions prior to the filing of a patent application.
- Take advantage of any delays in the processing of patent applications to gather additional market intelligence such that amendments of the patent claims, if required, can be determined in light of the additional intelligence.
- Review existing patent applications prior to grant and, in light of subsequent market intelligence, determine if additional value may be available from the earlier filing dates.

The last point includes, amongst other things, the strategy of filing continuing patent applications – such as continuation applications, continuation-in-part applications and/or divisional patent applications – that are able to take advantage of the earlier filing dates of the applications upon which they are based.

CAP-XX Limited has made use of the PCT patent system<sup>(1)</sup> not only to obtain an initial prior art search for the inventions concerned, but also as a cost deferral mechanism. That is, the filing of a PCT application allows CAP-XX Limited to reserve its right to seek protection in the countries and regions designated in the PCT application, without having to incur, for a further eighteen months, the substantive costs of having separate national patent applications filed.

The patent portfolio has changed in response to the commercial goals of the company and it is our observation that this is a result of the active management of that portfolio. This has included periods of significantly different levels of IP activity during different phases of the company’s history.

Our view is that a patent portfolio, such as the patent portfolio of CAP-XX Limited, which is actively managed offers greater flexibility in accommodating the technological and commercial developments that inevitably arise during the pendency of a patent application.

In addition to the above, it is our observation that CAP-XX Limited takes steps to prevent leakage of IP through a combination of:

- Physical security measures at their Lane Cove site.
- Confidentiality clauses in employment agreements.
- Entering into confidentiality agreements with potential collaborators prior to disclosure of detailed technical information.

## 5. Observations of the Technology

CAP-XX Limited develops and commercialises technology in the field of supercapacitors which has, and which should continue, to give rise to technical innovation in respect of the structure, composition, form and performance characteristics of the supercapacitors, as well as the methods of manufacturing the supercapacitors and in the application of the supercapacitors to electronic circuits especially in portable electronic devices. As is noted in this Report, CAP-XX Limited makes use of formalised protection through the patent systems to seek protection for selected inventions. Our observation is that, in addition to the formalised protection, CAP-XX Limited retains as confidential other commercially relevant information such as know-how. We are aware that CAP-XX Limited has also obtained a licence for patents in a complementary technology where it is perceived there are longer-term benefits in doing so<sup>(2)</sup>.

The technology areas subject to formal protection or pending protection have been broadly divided into three categories, specifically:

- Supercapactive devices *per se*.
- Techniques for manufacturing the devices.
- The application of the devices to electronic circuits.

(1) See the commentary in this Report under the heading “3. Intellectual Property Protection – Overview”.

(2) A patent licence has been obtained from Rutgers, The State University of New Jersey for technology relating to a high-energy hybrid supercapacitor electrode and the nano-material used in its manufacture. This is seen as a forward-looking opportunity for CAP-XX Limited to broaden its product range.

During our involvement with CAP-XX Limited and its predecessors there has been a focus on all three categories, although our observation is that initially the protection was sought more for the devices *per se* and their manufacture. More recently the focus for new patent applications has moved to the application of the devices, with particular but not exclusive emphasis in the field of portable electronic devices<sup>(3)</sup>.

Based upon experience it is our expectation that there will be ongoing refinements and developments in all the above categories as commercialisation of the technology continues. On the basis that the IP strategy remains to seek patent protection – particularly where an invention is reverse engineerable from the product being sold and marketed – this should allow the filing of additional patent applications.

In broad terms the technology that has been developed appears, in our view, to be good subject matter for patent protection, subject to the usual legal tests of patentability being satisfied. This view is supported by the grant of a number of patents in respect of that technology.

## 6. Observations of the Patent Portfolio

At the date of this Report the patent portfolio of CAP-XX Limited consists of eighteen Patent Families, and includes a number of granted patents and a number of patent applications in a number of jurisdictions. A summary of the Patent Families is provided in Table 1, and more detailed particulars – broken down by jurisdiction – are provided later in this Report under the heading 11. Schedule I – Details of Patent Families and heading 12 Schedule II – Technical Summary For Patent Families.

In preparing the patent specifications and the claims included within those specifications, regard has been had to not only the specific product that has been developed, but the invention *per se* as embodied by that product. That is, the intention has been to best define protection that will encompass not only for the specific product, but subsequent generations of that product and likely competing products that embody the same invention. While it is impossible to accurately predict future activities, the present strategy has resulted in some of the earlier filed applications foreshadowing protection that also encompasses more recently developed products notwithstanding little or no knowledge of these products existing at the time of preparing the patent applications. By way of example, the latest generation of supercapacitors manufactured by Cap-XX Limited and designated by product numbers HS201, GS203 and GW201 account for a substantial proportion of the total sales. The protection defined or being sought in all but two of the patent families are relevant to these three products as presently embodied. That relevance will be dependent, for example with the patent families relating to the application of devices, on how products are used. A granted patent provides CAP-XX Limited with the ability to bring patent infringement proceedings against parties who, without authorisation, make or sell in the jurisdiction in which the patent is granted the invention defined in the claims of that patent. Accordingly, the patent portfolio of CAP-XX Limited should present a barrier to competitors wishing to copy the above products.

In our experience it is largely commercially unjustifiable to seek patent protection in every available jurisdiction. Accordingly, there is a risk to be managed when determining which countries or jurisdictions protection is to be sought. Our observation is that CAP-XX Limited has managed this risk through:

- Seeking protection in jurisdictions that correspond to the major markets for their products, or the devices containing those products.
- While adopting a default set of jurisdictions, reviewing this in respect of each patent family to determine any special factors that may justify a variation from the default.
- Filing provisional applications and subsequent PCT applications to maintain for longer the option to seek protection in a larger number of jurisdictions.

Importantly, this is a risk that is managed, not eliminated.

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(3) This overview is set out in more detail in Table 1 of this Report and should be read in combination with the commentary under heading 12 Schedule II – Technical Summary for patent families which provides some additional information about the technical and practical relevance of each patent family.

**Table 1**

No.	Patent Family	Main Technology Category
1.	ESS001: An Energy Storage Device	Device <i>per se</i>
2.	ESS002: A Flexible Charge Storage Device	Device <i>per se</i> , Manufacture
3.	ESS004: A Charge Storage Device	Device <i>per se</i> , Manufacture
4.	ESS006: Charge Storage Devices with Overlapping, Folded Electrodes	Device <i>per se</i> , Manufacture
5.	ESS007: An Energy Storage Device	Device <i>per se</i>
6.	ESS009: A Charge Storage Device	Device <i>per se</i>
7.	ESS012: A Power Supply for a Pulsed Load	Device <i>per se</i> , Application
8.	ESS018: A Power Supply for an Electrical Load	Application
9.	ESS020: Laminate Package for an Energy Storage Device	Device <i>per se</i>
10.	ESS025: An Energy Storage Device	Device <i>per se</i> , Manufacture
11.	ESS029: A Connection Between a Conductive Substrate and a Laminate	Device <i>per se</i> , Manufacture
12.	ESS034: An Electrode for an Energy Storage Device	Device <i>per se</i>
13.	ESS035: A Control Circuit	Application
14.	ESS036: An Electrolyte for an Energy Storage Device	Device <i>per se</i>
15.	ESS039: A Power Supply for a Communications Module That Demands High Power During Predetermined Periods	Application
16.	ESS040: A Resistive Balance for an Energy Storage Device	Device <i>per se</i> , Manufacture
17.	ESS041: A Power Supply	Application
18.	ESS048: A Power Supply	Application

With the exception of the Patent Family referred to as ESS001, all the patents and patent applications were filed in the name of, or originally named as assignee, Energy Storage Systems Pty Ltd (ACN 050 845 291). The Patent Family referred to as ESS001 was filed jointly in the names of Energy Storage Systems Pty Ltd and Commonwealth Scientific Industrial Research Organisation. In 2003 the Commonwealth Scientific Industrial Research Organisation assigned its interest in the invention and the then pending patent applications to Energy Storage Systems Pty Ltd and this has been recorded with the relevant patent offices.

## 7. Scope of this Report

In compiling this Report regard has been had to the interactions of the personnel of CAP-XX Limited (and its predecessors and associated entities) and Shelston IP (and its predecessors), and the activities of CAP-XX Limited in developing and implementing their IP strategy.

Other specific actions undertaken include confirming the filing particulars for the patent applications and patents, ascertaining the current status of those applications and patents, and reviewing, where applicable, the patent specifications and any prior art known to us. Sources of that prior art include searching by personnel of CAP-XX Limited, *ad hoc* searching undertaken by Shelston IP, and novelty searches that have been conducted by the various patent offices and searching authorities.

Trade Mark registrations and applications are also included as part of the Report but considering the relatively straightforward nature of Trade Mark prosecution and registration, the Report will predominantly focus on patent portfolio matters.

This Report is accurate as at its date.

## 8. Patentability Observations

In preparing this Report attention was focussed on the criteria of novelty and inventive step for patentability, as set out in the Patents Act 1990 (Australia). While corresponding provisions exist in other jurisdictions there are detail differences that can give rise to quite different outcomes – either real or apparent – in different countries. Accordingly, the following observations should be taken as being indicative in so far as they relate to patentability and enforceability under the laws of other countries.

The patent portfolio of CAP-XX Limited includes a number of patent applications having respective claim sets that are to be, or which are in the process of being, examined. There are known barriers to the automatic granting of those claim sets, including prior art documents that have been

cited as anticipatory, and other more formal objections and rejections. In addition, it is anticipated that additional barriers, as yet unknown, will also arise. It is usual to enter into correspondence with the respective patent examiners prior to any claim set being finalised, and this typically involves the submission of both arguments to highlight distinctions between the invention and any cited prior art, and amendments to the patent specification. There has been, and in all likelihood will be, the need to enter into such correspondence for the claim sets contained within the patent applications of Cap-XX Limited. That said: we do not take the view that there exists insurmountable barrier to the applications supporting claims that satisfy the requirements of novelty and inventive step. Accordingly, the continued progress of the applications can be based upon a cost/benefit analysis of gaining a given scope of protection rather than whether or not the subject matter *per se* is protectable.

The portfolio also includes a number of US patents having respective claim sets that have been examined and granted by the United States Patent and Trademark Office (USPTO). That is, following a substantive review by a US patent examiner, those claims are deemed by the USPTO to be valid and enforceable in the United States. We are not aware of any other factors to believe otherwise. Particularly, we are not aware of any prior art arising subsequent to the examination of the respective applications that would cast any significant doubt upon the conclusion reached by the USPTO.

The portfolio also includes a patent application that is pending before the European Patent Office (EPO) and which has been accepted. That is the application that will shortly progress to grant following an early substantive review by a European patent examiner, that resulted in the claim set being deemed by the EPO to be valid and enforceable. We are not aware of any other factors to believe otherwise. Particularly, we are not aware of any prior art arising subsequent to the examination of the application that would cast any significant doubt upon the conclusion reached by the EPO.

The above commentary should be read in the light of the explanation in this Report under the heading “10. Limitations, Disclaimers And Caveats”.

## **9. Other Intellectual Property**

CAP-XX Limited at present does not have any pending or registered Designs.

CAP-XX Limited is the owner of a number of trade mark registrations, and these are set out in this Report under heading 12. Schedule II – Details of Trade Mark Registrations. Shelston IP has independently verified the existence of these registrations.

CAP-XX Limited undertakes considerable research and development activity in supplying supercapacitors to the market. Our observation is that this activity gives rise to considerable documentation, some of which provides a basis for formalised protection being sought, and other of which is retained confidentially for internal use to aid subsequent development activities.

## **10. Limitations, Disclaimers And Caveats**

### *10.1 Search Limitations*

#### *1. Limitations Due To Time Period and Geographical Coverage*

The validity searches conducted by the Australian Patent Office (in its role as an International Searching Authority), the European Patent Office (EPO) and the USPTO would have been substantially computer based. The results of those searches would have been limited in terms of the time periods and the geographical areas covered. Thus, for example, the databases used by the Australian Patent Office to undertake their searching may not include older published documents and may not cover certain jurisdictions. All searches are subject to the accuracy and scope of the records searched as well as to the indexing and classification of those records. Moreover, any search strategy will inevitably involve some compromise between scope and cost.

#### *2. Limitations Due to Unpublished Documents*

Additionally, searches cannot reveal potentially relevant patent documents which have not been officially published at the time of conducting the search. In most countries the publication of a patent applications does not occur until eighteen months from the earliest priority date and



consequently, patent searches would not normally reveal applications filed in the preceding eighteen months. The United States is an exception where certain older patent applications are not published until grant, which typically occurs between two to four years from the U.S. filing date. There may also be delays between official publication and the implementation of information onto the relevant databases.

### 3. *Limitations Due To Forms of Prior Art Other Than Patent Documents*

It should also be appreciated that no novelty search can ever be entirely conclusive because some forms of prior art such as prior public use, prior commercial exploitation and prior publication in non-patent literature, cannot be systematically searched.

### 4. *Search Results Indicative But Not Conclusive*

The searches conducted by different patent offices provide a reasonable indication of the patentability or otherwise of the inventions in the patent portfolio. However, the above and other factors make it impossible to guarantee that every conceivably relevant prior art record has been revealed. Any conclusions on validity based on these or any other searches should therefore be regarded as indicative, and not conclusive.

### 5. *Novelty Searches Provide No Guarantee of Non-Infringement*

The present searches do not provide any guarantee that the subject inventions may be commercially exploited without risk of infringement of earlier patents owned by third parties.

## 10.2 *Other Important Notes And Caveats*

### 1. *Examination Reports In One Country Not Binding In Other Countries*

In most countries patent applications undergo an independent search and examination by the local Patent Office, the results of which are not binding in other jurisdictions. Similarly, international PCT search and examination reports are not binding on national patent applications during subsequent examination in the national phase. Such reports should therefore be regarded as indicative only and not determinative of patentability. It should also be appreciated that the grant of a patent in one country provides no guarantee that patents will be granted in other jurisdictions.

### 2. *Scope of Claims May Vary during Examination*

It is more often than not necessary during the examination of a patent application to define the invention more specifically by amendment of the claims, so as to distinguish those claims from prior art believed relevant by the patent examiner. As a result there may be variations in the claims between countries reflecting in part the different examination procedures and threshold requirements for patentability according to national laws. Whilst this is relatively standard procedure such amendments may, in certain circumstances, affect the scope and hence the commercial significance of the resultant patent protection.

### 3. *Grant of Patent Provide No Guarantee of Validity*

A granted patent provides no guarantee of validity. In most jurisdictions, a patent application undergoes a substantive examination process before proceeding to grant which confers an initial presumption of validity. However, the validity of a patent may be challenged at any time after grant, by way of revocation proceedings filed in a Court of competent jurisdiction.

### 4. *Grant of Patent Provides No Guarantee of Non-Infringement*

The grant of a patent provides no guarantee that the patentee is entitled to commercially exploit the patented invention, since the working of an invention, even if validly patented, may infringe an earlier patent or other intellectual property rights.

## 11. Schedule I – Official Details for Patent Families

### *United States:*

#### *Granted Patents*

<i>Patent Family</i>	<i>US Patent Number</i>	<i>Earliest Priority Date</i>
ESS001: An Energy Storage Device	6,275,372	30 May 1997
ESS002: A Flexible Charge Storage Device	6,552,895	16 September 1998
ESS004: A Charge Storage Device	6,631,072 6,920,034	5 December 1998
ESS006: Charge Storage Devices with Overlapping, Folded Electrodes	6,740,447	15 April 1998
ESS009: A Charge Storage Device	6,944,010	30 August 1999
ESS012: A Power Supply for a Pulsed Load	6,836,097	15 May 2000
ESS018: A Power Supply for an Electrical Load	6,847,192	15 May 2000

#### *Pending Applications*

<i>Patent Family</i>	<i>Official Number</i>	<i>Earliest Priority Date</i>	<i>Status</i>
ESS004: A Charge Storage Device	11/050,762 11/228,924	5 December 1998	Under Examination Awaiting Examination
ESS007: An Energy Storage Device	10/747,980	12 July 1999	Under Examination
ESS009: A Charge Storage Device	11/141,026	30 August 1999	Under Examination
ESS012: A Power Supply for a Pulsed Load	10/968,967	15 May 2000	Under Examination
ESS018: A Power Supply for an Electrical Load	10/986,796	15 May 2000	Under Examination
ESS020: Laminate Package for an Energy Storage Device	10/724,596	10 July 2000	Awaiting Examination
ESS25: An Energy Storage Device	10/433,160	6 December 2000	Under Examination
ESS029: A Connection Between a Conductive Substrate and a Laminate	10/433,860	9 December 2000	Awaiting Examination
ESS034: An Electrode for an Energy Storage Device	10/498916	28 December 2001	Awaiting Examination
ESS035: A Control Circuit	10/499694	21 December 2001	Awaiting Examination
ESS036: An Electrolyte for an Energy Storage Device	10/508158	19 March 2002	Awaiting Examination
ESS039: A Power Supply for a Communications Module That Demands High Power During Predetermined Periods	10/525216	29 August 2002	Awaiting Examination
ESS040: A Resistive Balance for an Energy Storage Device	TBA	13 February 2003	Awaiting Examination

*Europe:*

*Pending Patent Applications*

<i>Patent Family</i>	<i>Official Number</i>	<i>Earliest Priority Date</i>	<i>Status</i>
ESS001: An Energy Storage Device	98923924.9	30 May 1997	Awaiting Examination
ESS002: A Flexible Charge Storage Device	99969174.4	16 September 1998	Awaiting Examination
ESS004: A Charge Storage Device	99960717.9	5 December 1998	Allowed; Awaiting Grant
ESS006: Charge Storage Devices with Overlapping, Folded Electrodes	99913023.0	15 April 1998	Awaiting Examination
ESS007: An Energy Storage Device	00941806.2	12 July 1999	Awaiting Examination
ESS009: A Charge Storage Device	00955963.4	30 August 1999	Awaiting Examination
ESS012: A Power Supply for a Pulsed Load	01929130.1	15 May 2000	Awaiting Examination
ESS018: A Power Supply for an Electrical Load	01929131.9	15 May 2000	Awaiting Examination
ESS020: Laminate Package for an Energy Storage Device	01951209.4	10 July 2000	Awaiting Examination
ESS25: An Energy Storage Device	01999948.1	6 December 2000	Awaiting Examination
ESS029: A Connection Between a Conductive Substrate and a Laminate	01999949.9	9 December 2000	Awaiting Examination
ESS034: An Electrode for an Energy Storage Device	02787221.7	28 December 2001	Awaiting Examination
ESS035: A Control Circuit	02787217.5	21 December 2001	Awaiting Examination
ESS036: An Electrolyte for an Energy Storage Device	03744273.8	19 March 2002	Awaiting Examination
ESS039: A Power Supply for a Communications Module That Demands High Power During Predetermined Periods	03790560.1	29 August 2002	Awaiting Examination
ESS040: A Resistive Balance for an Energy Storage Device	04710754.5	13 February 2003	Awaiting Examination

*Key to European State Codes:*

AT: Austria	EE: Estonia	IS: Iceland	PL: Poland
BE: Belgium	ES: Spain	IT: Italy	PT: Portugal
BG: Bulgaria	FI: Finland	LI: Liechtenstein	RO: Romania
CH: Switzerland	FR: France	LT: Lithuania	SE: Sweden
CY: Cyprus	GB: United Kingdom	LU: Luxembourg	SI: Slovenia
CZ: Czech Republic	GR: Hellenic Republic	LV: Latvia	SK: Slovakia
DE: Germany	HU: Hungary	MC: Monaco	TR: Turkey
DK: Denmark	IE: Ireland	NL: Netherlands	

*Japan:*

*Pending Patent Applications*

<i>Patent Family</i>	<i>Official Number</i>	<i>Earliest Priority Date</i>	<i>Status</i>
ESS001: An Energy Storage Device	1999-500021	30 May 1997	Awaiting Examination
ESS004: A Charge Storage Device	2000-587342	5 December 1998	Awaiting Examination
ESS007: An Energy Storage Device	2001-509055	12 July 1999	Awaiting Examination
ESS009: A Charge Storage Device	2001-520425	30 August 1999	Awaiting Examination
ESS012: A Power Supply for a Pulsed Load	2001-585376	15 May 2000	Awaiting Examination
ESS018: A Power Supply for an Electrical Load	2001-585373	15 May 2000	Awaiting Examination
ESS020: Laminate Package for an Energy Storage Device	2002-508817	10 July 2000	Awaiting Examination
ESS25: An Energy Storage Device	2002-548735	6 December 2000	Awaiting Examination
ESS029: A Connection Between a Conductive Substrate and a Laminate	2002-548737	9 December 2000	Awaiting Examination
ESS034: An Electrode for an Energy Storage Device	2003-557012	28 December 2001	Awaiting Examination
ESS036: An Electrolyte for an Energy Storage Device	2003-577283	19 March 2002	Awaiting Examination
ESS039: A Power Supply for a Communications Module That Demands High Power During Predetermined Periods	2004-569698	29 August 2002	Awaiting Examination
ESS040: A Resistive Balance for an Energy Storage Device	2006-501361	13 February 2003	Awaiting Examination

*Patent Cooperation Treaty:*

*Patent Applications Awaiting National Phase Entry*

<i>Patent Family</i>	<i>PCT Application Number</i>	<i>Earliest Priority Date</i>
ESS041: A Power Supply	PCT/AU03/01175	9 September 2003
ESS048: A Power Supply	PCT/AU06/000126	2 February 2005

*List of All Available PCT States:*

United Arab Emirates, Antigua & Barbuda, Albania, Armenia, African Regional Industrial Property Organisation (ARIPO), Austria, Australia, Azerbaijan, Bosnia And Herzegovina, Barbados, Bulgaria, Brazil, Botswana, Belarus, Belize, Canada, Switzerland, People's Republic of China, Colombia, Costa Rica, Cuba, Czech Republic, Germany, Denmark, Dominica, Algeria, Eurasia, Ecuador, Estonia, Egypt, Europe, Spain, Finland, United Kingdom, Grenada, Georgia, Ghana, Gambia, Croatia, Hungary, Indonesia, Israel, India, Iceland, Japan, Kenya, Kyrgyzstan, Comoros, Saint Kitts and Nevis, Democratic People's Republic of Korea, Republic of Korea, Kazakhstan, Saint Lucia, Liechtenstein, Sri Lanka, Liberia, Lesotho, Lithuania, Luxembourg, Latvia, Libyan Arab Jamahiriya, Morocco, Republic of Moldova, Madagascar, The former Yugoslav Republic of Macedonia, Mongolia, Malawi, Mexico, Mozambique, Namibia, Nigeria, Nicaragua, Norway, New Zealand, African Intellectual Property Organisation (OAPI), Oman,

Papua New Guinea, The Philippines, Poland, Portugal, Romania, Russian Federation, Seychelles, Sudan, Sweden, Singapore, Slovakia, Sierra Leone, San Marino, Syrian Arab Republic, Tajikistan, Turkmenistan, Tunisia, Turkey, Trinidad and Tobago, United Republic of Tanzania, Ukraine, Uganda, United States of America, Uzbekistan, St Vincent and the Grenadines, Viet Nam, Serbia and Montenegro, South Africa, Zambia, Zimbabwe. African Regional Industrial Property Organization (ARIPO): (designating: Botswana, Ghana, Gambia, Kenya, Lesotho, Malawi, Mozambique, Namibia, Sudan, Sierra Leone, Swaziland; United Republic of Tanzania, Uganda, Zambia and Zimbabwe). Eurasia: (designating: Armenia, Azerbaijan, Belarus, Kyrgyzstan, Kazakhstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan). Europe: (designating: Austria, Belgium, Bulgaria, Switzerland and Liechtenstein, Cyprus, Czech Republic, Germany, Denmark, Estonia, Spain, Finland, France, United Kingdom, Greece, Hungary, Ireland, Iceland, Italy, Lithuania, Luxembourg, Latvia, Monaco, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia, Slovakia, Turkey). African Intellectual Property Organization (OAPI) (designating: Burkina Faso, Benin, Central African Republic, Congo, Cote d'Ivoire, Cameroon, Gabon, Guinea, Guinea-Bissau, Equatorial Guinea, Mali, Mauritania, Niger, Senegal, Chad, Togo).

## 12. Schedule II – Technical Summary for Patent Families

<i>Patent Family</i>	<i>Technical Overview</i>	<i>Practical Overview</i>
ESS001	A cylindrical double layer capacitor and its manufacture.	A design for a cylindrical supercapacitor.
ESS002	A flexible charge storage device, its manufacture, and certain performance characteristics.	Laminate housing technology for providing thin supercapacitors, particularly useful in applications with volumetric constraints.
ESS004	A carbon-based supercapacitive device, its manufacture, and certain performance characteristics.	Directed to (amongst others) higher power-density supercapacitors, and applies to features of products HS201, GS203 and GW201, as well as products still under development.
ESS006	A charge storage device with overlapping, folded electrodes, and its manufacture.	Directed to electrode configuration, and applies to features of products HS201, GS203 and GW201, as well as products still under development.
ESS007	A supercapacitor in parallel with a battery to compensate for changes in one or more performance parameters of the battery.	A supercapacitor (preferably flexible) for combining with a battery to improve battery runtime, particularly in portable consumer electronic devices such as laptop computers, digital cameras, PDAs and cellular telephones.
ESS009	A charge storage device including a scavenging agent.	For improving supercapacitor life and reliability through sequestering one or more contaminants from within the supercapacitor.
ESS012	A supercapacitor in parallel with a battery for limiting battery current.	Limiting current to a predetermined maximum allows improve battery runtime, particularly in portable consumer electronic devices such as laptop computers, digital cameras, PDAs and cellular telephones.
ESS018	A power supply that holds a replaceable battery, the power supply including a supercapacitor for supplying temporary power whilst the battery is replaced.	Allows for battery replacement in a portable consumer device without the need to power down the device – for example runtime exchange of laptop computer batteries.

<i>Patent Family</i>	<i>Technical Overview</i>	<i>Practical Overview</i>
ESS020	A laminate package for holding a charge storage device.	Provides reliable construction, particularly for supercapacitors that operate in higher temperature environments, and contributes to lower weight and volume of the supercapacitor.
ESS025	A surface-mount supercapacitor, its manufacture, and performance based characteristics.	Automated manufacturing techniques for a stacked electrode supercapacitor.
ESS029	A method for connecting a laminate supercapacitor housing to a terminal, and devices embodying this method.	More effective and reliable supercapacitor construction.
ESS034	An electrode having a native oxide layer that is treated for providing and having a resistance that is less than the resistance of the native oxide layer, and devices including such an electrode.	For allowing supercapacitors to operate more effectively in high temperature environments.
ESS035	A control circuit for allowing a battery to transfer energy to a load and a supercapacitor.	The battery current is maintained at less than the predetermined maximum operational current to improve battery runtime, particularly in portable consumer electronic devices such as laptop computers, digital cameras, PDAs and cellular telephones.
ESS036	A non-aqueous solvent system for use in an energy storage device having particular boiling characteristics, and supercapacitive devices including such solvent systems.	For allowing supercapacitors to operate in high temperature environments.
ESS039	A power supply including a supply rail that provides a supply current of up to a defined limit current and draws a load current, and a supercapacitor for allowing the load current to temporarily exceed the defined current limit while maintaining the supply current at less than the defined current limit.	For improving battery runtime of pulsed loads in consumer electronic devices, particularly portable consumer electronic devices such as laptop computers, digital cameras, PDAs and cellular telephones.
ESS040	A resistive balance configuration for a set of supercapacitors.	For improving supercapacitor life and reliability, and also providing another form of surface mounting.
ESS041	A power supply including a supercapacitor that allows a load to be supplied a peak load current while substantially maintaining a corresponding source current at less than a defined current limit.	For improved battery runtime, particularly for applications having a PCMCIA card GPRS communications module.
ESS048	A power supply having a supercapacitor on the load side of a regulator for powering a load.	For improving battery runtime, particularly in cellular telephones that have LED camera flash.

## 12. Schedule III – Details of Trade Mark Registrations

### National Trade Mark Registrations

<i>Trade Mark</i>	<i>Jurisdiction</i>	<i>Official Number</i>	<i>Status</i>	<i>Goods</i>
CAP-XX	United States	2,683,994	In force, renewal date 4 February 2013	Electric energy storage devices, namely, capacitors
CONTAINS CAP-XX	Australia	869,526	In force, renewal date 16 March 2011	Electric energy storage devices, including electric energy storage devices for use in the following, namely: machines and machine tools, motors and engines, machines couplings and transmissions, agricultural and farm implements, hand tools, photographic, cinematographic, optical, weighing, measuring and signalling apparatus, vending machines, calculating machines, surgical, medical, dental and veterinary equipment, apparatus for lighting, heating, steam generation, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles of all kinds, powered musical instruments, powered household and kitchen utensils, computers, data carriers and terminals, pagers, power supplies, audio systems, electric steering and suspension units, domestic power sources, emergency lighting, grid load levelling equipment, hybrid equipment containing fuel cells, industrial actuators, electronic point of sale equipment, televisions, navigation aids, powered telecommunications equipment, remote area power supplies, power tools and appliances, power quality conditioning equipment, satellite communication equipment, sonar buoys, starting devices for internal combustion engines, sound equipment, uninterruptible power supplies and toys
DIGITAL POWER	Australia	870,384	In force, renewal due 23 March 2011	Electric energy storage devices

*International Trade Mark Registrations*

<i>Trade Mark</i>	<i>Designated States</i>	<i>Madrid Number</i>	<i>Status</i>	<i>Goods</i>
CONTAINS CAP-XX	France, Germany, Italy, Japan and the United Kingdom	869,526	In force, renewal due 14 August 2011	Electric energy storage devices, including electric energy storage devices for use in the following, namely: machines and machine tools, motors and engines, machines couplings and transmissions, agricultural and farm implements, hand tools, photographic, cinematographic, optical, weighing, measuring and signalling apparatus, vending machines, calculating machines, surgical, medical, dental and veterinary equipment, apparatus for lighting, heating, steam generation, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles of all kinds, powered musical instruments, powered household and kitchen utensils, computers, data carriers and terminals, pagers, power supplies, audio systems, electric steering and suspension units, domestic power sources, emergency lighting, grid load levelling equipment, hybrid equipment containing fuel cells, industrial actuators, electronic point of sale equipment, televisions, navigation aids, powered telecommunications equipment, remote area power supplies, power tools and appliances, power quality conditioning equipment, satellite communication equipment, sonar buoys, starting devices for internal combustion engines, sound equipment, uninterruptible power supplies and toys
DIGITAL POWER	France and Italy	870,384	In force, renewal due 14 August 2011	Electric energy storage devices



## PART IV

### Financial Information

- (A) Historical financial information for the three years ended 30 June 2005 and 6 months ended 31 December 2005
- (B) Accountants Report on the historical financial information for the three years ended 30 June 2005 and 6 months ended 31 December 2005
- (C) Interim unaudited consolidated financial information for the six months ended 31 December 2005
- (D) Pro forma statement of net assets at 31 December 2005
- (E) Accountants Report on pro forma statement of net assets at 31 December 2005

## PART IV (A)

### Financial Information

#### 1. Introduction

The historical consolidated financial information of the Group set out in this Part IV A has been prepared solely for the purpose of the AIM Admission Document and does not constitute audited statutory accounts within the meaning of section 292 of the Corporations Act 2001.

The financial information contained in these Parts IV have been prepared in Australian dollars save where expressly stated otherwise.

#### 2. Statutory information

The financial information presented consists of CAP-XX Inc. (the “Company”) and its subsidiaries (collectively referred to as the “Group”). CAP-XX Inc. is a company incorporated in the United States of America. Prior to admission CAP-XX Inc. will be de-merged from the Group with CAP-XX Limited becoming the head company. CAP-XX Limited is a public company incorporated in Australia. The de-merger will not impact the presentation of the consolidated financial information of the Group as set out in this Part IVA of the Admission Document.

Further detailed information in relation to the de-merger, group structure and share capital is set out in Paragraphs 3 and 4 of Part V of the Admission Document.

#### 3. Responsibility

The Directors of the Group are responsible for the historical financial information and the contents of the AIM Admission Document in which it is included

#### Income statements

		<i>6 months ended 31 December 2005</i>	<i>Year ended 30 June 2005</i>	<i>Year ended 30 June 2004</i>	<i>Year ended 30 June 2003</i>
<i>Currency: Australian Dollars</i>	<i>Notes</i>	<i>\$</i>	<i>\$</i>	<i>\$</i>	<i>\$</i>
Revenue from sale of goods		844,620	2,216,696	1,416,974	707,077
Cost of sale of goods	6	<u>(3,338,858)</u>	<u>(7,828,386)</u>	<u>(6,170,715)</u>	<u>(5,711,284)</u>
<b>Gross margin (loss) on sale of goods</b>		<u>(2,494,238)</u>	<u>(5,611,690)</u>	<u>(4,753,741)</u>	<u>(5,004,207)</u>
Other income	5	87,089	1,355,345	1,384,819	1,798,156
General and administrative expenses		(1,120,257)	(2,252,526)	(1,806,556)	(2,277,309)
Selling and marketing expenses		(855,957)	(1,706,805)	(2,038,030)	(2,719,136)
Research and development expenses		(544,665)	(1,297,564)	(1,918,235)	(3,041,518)
Finance costs	6	(1,681,543)	(2,982,672)	326,633	(3,380,125)
Impairment loss on plant and equipment	3(b)	—	(1,736,753)	—	—
Foreign exchange losses	6	(338,523)	—	(256,783)	(17,962)
<b>(Loss) before income tax</b>		<u>(6,948,094)</u>	<u>(14,232,665)</u>	<u>(9,061,893)</u>	<u>(14,642,101)</u>
Income tax benefit	7	—	—	—	—
<b>Net (loss)</b>		<u><u>(6,948,094)</u></u>	<u><u>(14,232,665)</u></u>	<u><u>(9,061,893)</u></u>	<u><u>(14,642,101)</u></u>

The above income statements should be read in conjunction with the accompanying notes.

## Balance sheets

		<i>As at</i> 31 December 2005 \$	<i>As at</i> 30 June 2005 \$	<i>As at</i> 30 June 2004 \$	<i>As at</i> 30 June 2003 \$
<i>Currency: Australian Dollars</i>	<i>Notes</i>				
<b>ASSETS</b>					
<b>Current assets</b>					
Cash and cash equivalents	8	459,932	3,012,148	1,252,602	9,116,735
Receivables	9	569,560	503,225	382,939	320,778
Inventories	10	363,661	361,570	460,427	220,648
Other	11	297,386	157,479	298,159	59,894
Total current assets		<u>1,690,539</u>	<u>4,034,422</u>	<u>2,394,127</u>	<u>9,718,055</u>
<b>Non-current assets</b>					
Property, plant and equipment	12	3,957,421	5,428,226	10,780,157	10,650,220
Other	13	156,227	156,176	156,319	156,377
Total non-current assets		<u>4,113,648</u>	<u>5,584,402</u>	<u>10,936,476</u>	<u>10,806,597</u>
<b>Total assets</b>		<u><u>5,804,187</u></u>	<u><u>9,618,824</u></u>	<u><u>13,330,603</u></u>	<u><u>20,524,652</u></u>
<b>LIABILITIES</b>					
<b>Current liabilities</b>					
Payables	14	2,874,542	1,747,274	733,562	2,852,735
Interest bearing liabilities	16	41,319,627	38,309,345	31,539,381	40,317,329
Provisions	15	512,974	481,887	382,355	388,870
Total current liabilities		<u>44,707,143</u>	<u>40,538,506</u>	<u>32,655,298</u>	<u>43,558,934</u>
<b>Non-current liabilities</b>					
Provisions	17	23,098	23,098	7,198	—
Total non-current liabilities		<u>23,098</u>	<u>23,098</u>	<u>7,198</u>	<u>—</u>
<b>Total liabilities</b>		<u><u>44,730,241</u></u>	<u><u>40,561,604</u></u>	<u><u>32,662,496</u></u>	<u><u>43,558,934</u></u>
<b>Net assets</b>		<u><u>(38,926,054)</u></u>	<u><u>(30,942,780)</u></u>	<u><u>(19,331,893)</u></u>	<u><u>(23,034,282)</u></u>
<b>EQUITY</b>					
Contributed equity	18	13,040,567	13,040,567	13,040,567	2,231,052
Reserves	19	10,861,917	11,897,097	9,275,319	7,320,552
Accumulated losses	19	(62,828,538)	(55,880,444)	(41,647,779)	(32,585,886)
<b>Total Equity</b>		<u><u>(38,926,054)</u></u>	<u><u>(30,942,780)</u></u>	<u><u>(19,331,893)</u></u>	<u><u>(23,034,282)</u></u>

The above balance sheets should be read in conjunction with the accompanying notes.

## Statements of changes in equity

		<i>As at</i> 31 December 2005 \$	<i>As at</i> 30 June 2005 \$	<i>As at</i> 30 June 2004 \$	<i>As at</i> 30 June 2003 \$
<i>Currency: Australian Dollars</i>	<i>Notes</i>				
<b>Total equity at the beginning of the financial year</b>		<u>(30,942,780)</u>	<u>(19,331,893)</u>	<u>(23,034,282)</u>	<u>(13,997,327)</u>
Exchange differences on translation of foreign operations		<u>(1,061,802)</u>	<u>2,621,778</u>	<u>1,954,767</u>	<u>5,605,146</u>
<b>Net (loss)/income recognised directly in equity (Loss) for the year/period</b>		<u>(1,061,802)</u> <u>(6,948,094)</u>	<u>2,621,778</u> <u>(14,232,665)</u>	<u>1,954,767</u> <u>(9,061,893)</u>	<u>5,605,146</u> <u>(14,642,101)</u>
<b>Total recognised income and expenses for the year</b>		<u>(8,009,896)</u>	<u>(11,610,887)</u>	<u>(7,107,126)</u>	<u>(9,036,955)</u>
Transactions with equity holders in their capacity as equity holders:					
Employee share options	28	26,622	—	—	—
Exercise of options	18	—	—	1,608	—
Mandatory conversion of preference shares to ordinary shares	18	—	—	10,807,907	—
<b>Total equity at the end of the financial year</b>		<u>(38,926,054)</u>	<u>(30,942,780)</u>	<u>(19,331,893)</u>	<u>(23,034,282)</u>

The above statements of changes in equity should be read in conjunction with the accompanying notes.

## Cash flow statements

		<i>6 months ended 31 December 2005</i>	<i>Year ended 30 June 2005</i>	<i>Year ended 30 June 2004</i>	<i>Year ended 30 June 2003</i>
<i>Currency: Australian Dollars</i>	<i>Notes</i>	<i>\$</i>	<i>\$</i>	<i>\$</i>	<i>\$</i>
<b>Cash flows from operating activities</b>					
Receipts from customers (inclusive of goods and services tax)		797,702	2,153,269	1,218,405	560,486
Payments to suppliers and employees (inclusive of goods and services tax)		(3,024,323)	(8,360,007)	(11,833,545)	(10,944,870)
		(2,226,621)	(6,206,738)	(10,615,140)	(10,384,384)
Grants received		—	786,165	1,197,090	1,240,379
Interest received		60,768	75,911	187,729	522,804
<b>Net cash (outflow) from operating activities</b>	27	<u>(2,165,853)</u>	<u>(5,344,662)</u>	<u>(9,230,321)</u>	<u>(8,621,201)</u>
<b>Cash flows from investing activities</b>					
Payments for property, plant and equipment		(511,302)	(1,199,357)	(2,412,319)	(5,879,903)
Advanced proceeds from sale of plant and equipment		—	723,304	—	—
Proceeds from sale of property, plant and equipment		26,321	583,733	—	—
<b>Net cash (outflow) inflow from investing activities</b>		<u>(484,981)</u>	<u>107,680</u>	<u>(2,412,319)</u>	<u>(5,879,903)</u>
<b>Cash flows from financing activities</b>					
Proceeds from issue of shares		—	—	1,608	—
Proceeds from issue of convertible notes		—	7,086,504	3,991,750	—
Advance proceeds from convertible note issues		126,096	—	—	—
Payments for issuance costs of convertible notes		(27,478)	(89,976)	(214,851)	—
<b>Net cash inflow from financing activities</b>		<u>98,618</u>	<u>6,996,528</u>	<u>3,778,507</u>	<u>—</u>
<b>Net (decrease) increase in cash and cash equivalents</b>		(2,552,216)	1,759,546	(7,864,133)	(14,501,104)
Cash and cash equivalents at the beginning of the financial year		3,012,148	1,252,602	9,116,735	23,617,839
<b>Cash and cash equivalents at the end of the financial year</b>	8	<u>459,932</u>	<u>3,012,148</u>	<u>1,252,602</u>	<u>9,116,735</u>
Financing arrangements	16				

The above cash flow statements should be read in conjunction with the accompanying notes.

## Notes to the financial statements

### 1. Summary of significant accounting policies

The principal accounting policies adopted in the preparation of the financial report are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

All amounts shown are in Australian Dollars unless otherwise stated.

#### (a) *Basis of preparation*

The financial report has been prepared in accordance with Australian equivalents to International Financial Reporting Standards (AIFRSs), other authoritative pronouncements of the Australian Accounting Standards Board and Urgent Issues Group Interpretations.

#### *Application of AASB 1 First time Adoption of Australian Equivalents to International Financial Reporting Standards*

These financial statements are the first Cap-XX, Inc financial statements to be prepared in accordance with AIFRSs. AASB 1 *First time Adoption of Australian Equivalents to International Financial Reporting Standards* has been applied in preparing these financial statements. Financial statements of Cap-XX, Inc were not required under US GAAP nor under previous Australian Generally Accepted Accounting Principles (AGAAP). The comparative figures reflect adjustments to ensure compliance with AIFRS.

#### *Historical cost convention*

These financial statements have been prepared under the historical cost convention, as modified by the revaluation of certain financial liabilities (including derivative instruments) at fair value through profit or loss.

#### *Critical accounting estimates*

The preparation of financial statements in conformity with AIFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgement in the process of applying the Group's accounting policies. The areas involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the financial statements, are disclosed in note 3.

#### (b) *Continuation as a going concern*

The Group has experienced significant recurring operating losses and negative cash flows from operating activities since its inception and had a deficit of shareholders funds of \$38,926,054 at 31 December 2005 (\$30,942,780 at 30 June 2005, \$19,331,893 at 30 June 2004 and \$23,034,282 at 30 June 2003). Disclosed as current liabilities at 31 December 2005 is \$41,319,627 of preference shares and convertible notes which mature no early than 30 June 2006 (\$38,309,345 at 30 June 2005, \$31,539,381 at 30 June 2004 and \$40,317,329 at 30 June 2003). The Group has undergone significant restructuring including rationalisation of the Group's operations and the raising of funds via the issue of convertible notes.

Significant matters considered by the directors in determining that it is appropriate for the financial report to be prepared on a going concern basis include:

- In December 2005, the Group commenced its process for a proposed listing on the Alternative Investment Market ("AIM") and is currently on track.
- On 4 January 2006, the Group completed another round of fund raising through convertible notes and subsequently raised US\$2,765,500. As at 31 December 2005, the Group received \$126,096 in advanced funds which were recorded as a liability in the balance sheet.
- On 4 January 2006, the convertible note holders agreed to extend the maturity date of the outstanding convertible notes (the "Notes") until no earlier than 30 June 2006. The Company is not obliged to repay the Notes outstanding on or after that date unless notice from at least 65 per cent. of the aggregate of all Notes outstanding (inclusive of 3 note holders who hold Series B Preferred Stock as defined) is received.

The directors acknowledge that the Group is not yet cash flow positive and is in the process of implementing the Group's revised business plan. The continuing viability of the Group and its ability to continue as a going concern and to meet its debts and commitments as and when they fall due is dependent on the Group being successful in completing its admission on AIM, implementing its business strategy and raising additional funds through the AIM listing sufficient to enable its obligations to be met.

The above matters result in there being significant uncertainty as to whether the Group will continue as a going concern and, therefore, whether it will realise its assets and settle its liabilities and commitments in the normal course of business and at the amounts stated in the financial report. However, the directors believe that the Group will be successful in the above matters and accordingly, have prepared the financial report on a going concern basis. The directors are of the opinion that no asset is likely to be realised for an amount less than the amount at which it is recorded in the financial report at 31 December 2005. Accordingly, no adjustments have been made to the financial report relating to the recoverability and classification of asset carrying amounts or the amounts and classification of liabilities that might be necessary should the Group not continue as a going concern.

(c) *Principles of Consolidation*

The consolidated financial statements incorporate the assets and liabilities of all subsidiaries of Cap-XX, Inc ("company" or "parent entity") as at 30 June 2003, 30 June 2004, 30 June 2005 and 31 December 2005 and the results of all subsidiaries for the years/period then ended. Cap-XX, Inc and its subsidiaries together are referred to in this financial report as the Group or the consolidated entity.

Subsidiaries are all those entities (including special purpose entities) over which the Group has the power to govern the financial and operating policies, generally accompanying a shareholding of more than one-half of the voting rights. The existence and effect of potential voting rights that are currently exercisable or convertible are considered when assessing whether the Group controls another entity.

Subsidiaries are fully consolidated from the date on which control is transferred to the Group. They are de-consolidated from the date that control ceases.

The purchase method of accounting is used to account for the acquisition of subsidiaries by the Group (refer to note 1(j)).

Intercompany transactions, balances and unrealised gains on transactions between Group companies are eliminated. Unrealised losses are also eliminated unless the transaction provides evidence of the impairment of the asset transferred. Accounting policies of subsidiaries have been changed where necessary to ensure consistency with the policies adopted by the Group.

(d) *Segment reporting*

A business segment is a group of assets and operations engaged in providing products or services that are subject to risks and returns that are different to those of other business segments. A geographical segment is engaged in providing products within a particular economic environment and is subject to risks and returns that are different from those of segments operating in other economic environments.

(e) *Foreign currency translation*

(i) *Functional and presentation currency*

Items included in the financial statements of each of the Group's entities are measured using the currency of the primary economic environment in which the entity operates ('the functional currency').

The functional currency of Cap-XX, Inc is US dollars. However, the consolidated financial statements are presented in Australian dollars, which is Cap-XX, Inc's presentation currency. Australian dollars have been used as the presentation currency in view of the Group's intended demerger resulting in the Group having an Australian parent entity.

(ii) *Transactions and balances*

Foreign currency transactions are translated into the functional currency using the exchange rates prevailing at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at year-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in the income statement, except when deferred in equity as qualifying cash flow hedges and qualifying net investment hedges.

Translation differences on non-monetary items, such as equities held at fair value through profit or loss, are reported as part of the fair value gain or loss. Translation differences on non-monetary items, such as equities classified as available-for-sale financial assets, are included in the fair value reserve in equity.

(iii) *Group companies*

The results and financial position of all the Group entities (none of which has the currency of a hyperinflationary economy) that have a functional currency different from the presentation currency are translated into the presentation currency as follows:

- assets and liabilities for each balance sheet presented are translated at the closing rate at the date of that balance sheet;
- income and expenses for each income statement are translated at average exchange rates (unless this is not a reasonable approximation of the cumulative effect of the rates prevailing on the transaction dates, in which case income and expenses are translated at the dates of the transactions); and
- all resulting exchange differences are recognised as a separate component of equity.

On consolidation, exchange differences arising from the translation of any net investment in foreign entities, and of borrowings and other currency instruments designated as hedges of such investments, are taken to shareholders' equity. When a foreign operation is sold or borrowings repaid, a proportionate share of such exchange differences are recognised in the income statement as part of the gain or loss on sale.

Goodwill and fair value adjustments arising on the acquisition of a foreign entity are treated as assets and liabilities of the foreign entity and translated at the closing rate.

(f) *Revenue recognition*

Revenue is measured at the fair value of the consideration received or receivable. Amounts disclosed as revenue are net of returns, trade allowances and duties and taxes paid.

A sale is recorded when goods have been despatched to a customer pursuant to a sales order and the associated risks of ownership have passed to the carrier or customer.

Interest income is recognised on a time proportion basis using the effective interest method.

(g) *Government grants*

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and the Group will comply with all attached conditions. Government grants relating to costs are deferred and recognised in the income statement over the period necessary to match them with the costs that they are intended to compensate.

(h) *Income tax*

The income tax expense or revenue for the period is the tax payable on the current period's taxable income based on the national income tax rate for each jurisdiction adjusted by changes in deferred tax assets and liabilities attributable to temporary differences between the tax bases of assets and liabilities and their carrying amounts in the financial statements, and to unused tax losses.

Deferred tax assets and liabilities are recognised for temporary differences at the tax rates expected to apply when the assets are recovered or liabilities are settled, based on those tax rates which are enacted or substantively enacted for each jurisdiction. The relevant tax rates are applied to the



cumulative amounts of deductible and taxable temporary differences to measure the deferred tax asset or liability. An exception is made for certain temporary differences arising from the initial recognition of an asset or a liability. No deferred tax asset or liability is recognised in relation to these temporary differences if they arose in a transaction, other than a business combination, that at the time of the transaction did not affect either accounting profit or taxable profit or loss.

Deferred tax assets are recognised for deductible temporary differences and unused tax losses only if it is probable that future taxable amounts will be available to utilise those temporary differences and losses.

Current and deferred tax balances attributable to amounts recognised directly in equity are also recognised directly in equity.

The wholly-owned Australian controlled entities in the Group implemented the tax consolidation legislation from 1 July 2002. The head entity in the tax consolidated group is Energy Storage Systems Pty Limited.

(i) *Leases*

Leases of property, plant and equipment where the Group has substantially all the risks and rewards of ownership are classified as finance leases. Finance leases are capitalised at the lease's inception at the lower of the fair value of the leased property and the present value of the minimum lease payments. The corresponding rental obligations, net of finance charges, are included in other long term payables. Each lease payment is allocated between the liability and finance charges so as to achieve a constant rate on the finance balance outstanding. The interest element of the finance cost is charged to the income statement over the lease period so as to produce a constant periodic rate of interest on the remaining balance of the liability for each period. The property, plant and equipment acquired under finance leases is depreciated over the shorter of the asset's useful life and the lease term.

Leases in which a significant portion of the risks and rewards of ownership are retained by the lessor are classified as operating leases (note 23). Payments made under operating leases are charged to the income statement on a straight-line basis over the period of the lease.

(j) *Acquisitions of assets*

The purchase method of accounting is used to account for all acquisitions of assets (including business combinations) regardless of whether equity instruments or other assets are acquired. Cost is measured as the fair value of the assets given, shares issued or liabilities incurred or assumed at the date of exchange plus costs directly attributable to the acquisition. Where equity instruments are issued in an acquisition, the value of the instruments is their published market price as at the date of exchange unless, in rare circumstances, it can be demonstrated that the published price at the date of exchange is an unreliable indicator of fair value and that other evidence and valuation methods provide a more reliable measure of fair value. Transaction costs arising on the issue of equity instruments are recognised directly in equity.

Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at their fair values at the acquisition date, irrespective of the extent of any minority interest. The excess of the cost of acquisition over the fair value of the Group's share of the identifiable net assets acquired is recorded as goodwill. If the cost of acquisition is less than the fair value of the net assets of the subsidiary acquired, the difference is recognised directly in the income statement, but only after a reassessment of the identification and measurement of the net assets acquired.

(k) *Impairment of assets*

Assets that have an indefinite useful life are not subject to amortisation and are tested annually for impairment. Assets that are subject to amortisation are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash flows (cash generating units).

(l) *Cash and cash equivalents*

Cash and cash equivalents includes cash on hand, deposits held at call with financial institutions, other short-term, highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.

(m) *Trade receivables*

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost, less provision for doubtful debts. Trade receivables are due for settlement no more than 30 days from the date of recognition.

Collectibility of trade receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for doubtful receivables is established when there is objective evidence that the Group will not be able to collect all amounts due according to the original terms of receivables. The amount of the provision is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the effective interest rate. The amount of the provision is recognised in the income statement.

(n) *Inventories*

Raw materials, work in progress and finished goods are stated at the lower of cost and net realisable value. Cost comprises direct materials, direct labour and an appropriate proportion of variable and fixed overhead expenditure, the latter being allocated on the basis of normal operating capacity. Costs are assigned to individual items of inventory on the basis of weighted average costs. Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Raw materials held for development purposes are also stated at the lower of cost and net realisable value, hence are generally recognised in the income statement as an expense when received.

(o) *Fair value estimation*

The fair value of financial assets and financial liabilities must be estimated for recognition and measurement or for disclosure purposes.

The fair value of financial instruments that are not traded in an active market (for example, over-the-counter derivatives) is determined using valuation techniques. The Group uses a variety of methods and makes assumptions that are based on market conditions existing at each balance date. Quoted market prices or dealer quotes for similar instruments are used for long-term debt instruments held. Other techniques, such as estimated discounted cash flows, are used to determine fair value for the remaining financial instruments.

The nominal value less estimated credit adjustments of trade receivables and payables are assumed to approximate their fair values. The fair value of financial liabilities for disclosure purposes is estimated by discounting the future contractual cash flows at the current market interest rate that is available to the Group for similar financial instruments.

(p) *Property, plant and equipment*

Property, plant and equipment is stated at historical cost less depreciation. Historical cost includes expenditure that is directly attributable to the acquisition of the items.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Group and the cost of the item can be measured reliably. All other repairs and maintenance are charged to the income statement during the financial period in which they are incurred.

Depreciation on assets is calculated using the straight line method to allocate their cost amounts, net of their residual values over their estimate useful lives as follows:

Leasehold improvements shorter of the unexpired period of the lease and the estimated useful life

Furniture and fittings	2-10 years
Plant and equipment – Manufacturing	2-10 years
Plant and equipment – Research & Development	2-10 years

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at each balance sheet date.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount (note 1(k)).

Gains and losses on disposals are determined by comparing proceeds with carrying amount. These are included in the income statement.

(q) *Intangibles*

Expenditure on research activities, undertaken with the prospect of obtaining new scientific or technical knowledge and understanding, is recognised in the income statement as an expense when it is incurred.

Expenditure on development activities, being the application of research findings or other knowledge to a plan or design for the production of new or substantially improved products or services before the start of commercial production or use, is capitalised if the product or service is technically and commercially feasible and adequate resources are available to complete development. The expenditure capitalised comprises all directly attributable costs, including costs of materials, services, direct labour and an appropriate proportion of overheads. Other development expenditure is recognised in the income statement as an expense as incurred. Capitalised development expenditure is stated at cost less accumulated amortisation. Amortisation is calculated using the straight-line method to allocate the cost over the period of the expected benefit. The directors believe the Group have not incurred development expenditure that met the conditions for capitalisation.

Expenditure on patents are capitalised when the patent is of a significant value. Otherwise, the expenditure is recognised in the income statement as an expense when it is incurred. No significant patents have been capitalised as the time between achieving technical feasibility and the general availability of the Group's product has been relatively short.

(r) *Trade and other payables*

These amounts represent liabilities for goods and services provided to the Group prior to the end of financial year which are unpaid. The amounts are unsecured and are usually paid within 55 days of recognition.

(s) *Borrowings*

Borrowings are initially recognised at fair value, net of transaction costs incurred. Borrowings are subsequently measured at amortised cost. Any difference between the proceeds (net of transaction costs) and the redemption amount is recognised in the income statement over the period of the borrowings using the effective interest method.

Preference shares where the redemption of the shares are not within the control of the Group, are classified as liabilities. The dividends on these preference shares are recognised in the income statement as interest expense.

The fair value of the liability portion of a convertible bond is determined using a market interest rate for an equivalent non-convertible bond. This amount is recorded as a liability on an amortised cost basis until extinguished on conversion or maturity of the bonds. The remainder of the proceeds is allocated to the conversion option. This is recognised and included in shareholders' equity, net of income tax effects. The directors determined that there is no remainder of proceeds which could be allocated to the conversion option.

Borrowings are classified as current liabilities unless the Group has an unconditional right to defer settlement of the liability for at least 12 months after the balance sheet date.

(t) *Borrowing costs*

Borrowing costs incurred for the construction of any qualifying asset are capitalised during the period of time that is required to complete and prepare the asset for its intended use or sale. Other borrowing costs are expensed.

(u) *Provisions*

Provisions are recognised when: the Group has a present legal or constructive obligation as a result of past events; it is more likely than not that an outflow of resources will be required to settle the obligation; and the amount has been reliably estimated. Provisions are not recognised for future operating losses.

Where there are a number of similar obligations, the likelihood that an outflow will be required in settlement is determined by considering the class of obligations as a whole. A provision is recognised even if the likelihood of an outflow with respect to any one item included in the same class of obligations may be small.

(v) *Employee benefits*

(i) *Wages and salaries and annual leave*

Liabilities for wages and salaries, including non-monetary benefits and annual leave expected to be settled within 12 months of the reporting date are recognised in other payables in respect of employees' services up to the reporting date and are measured at the amounts expected to be paid when the liabilities are settled.

(ii) *Long service leave*

The liability for long service leave is recognised in the provision for employee benefits and measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using market yields at the reporting date on national government bonds with terms to maturity and currency that match, as closely as possible, the estimated future cash outflows.

(iii) *Retirement benefit obligations*

The Group does not maintain a Group superannuation plan. The Group makes fixed percentage contributions for all Australian resident employees to complying third party superannuation funds. The Group's legal or constructive obligation is limited to these contributions.

Contributions to the complying third party superannuation funds are recognised as an expense as they become payable. Prepaid contributions are recognised as an asset to the extent that a cash refund or a reduction in the future payments is available.

(iv) *Share-based payments*

Share-based compensation benefits are provided to employees via the 2001 Stock Option Exchange Plan and the 2002 Stock Incentive Plan. Information relating to these schemes is set out in note 28.

*Shares options granted before 7 November 2002 and/or vested before 1 January 2005*

No expense is recognised in respect of these options. The shares are recognised when the options are exercised and the proceeds received allocated to share capital.

*Shares options granted after 7 November 2002 and vested after 1 January 2005*

The fair value of options granted under the 2001 Stock Option Exchange Plan and the 2002 Stock Incentive Plan is recognised as an employee benefit expense with a corresponding increase in equity. The fair value is measured at grant date and recognised over the period during which the employees become unconditionally entitled to the options.

The fair value at grant date is independently determined using a Black-Scholes option pricing model that takes into account the exercise price, the term of the option, the vesting and performance criteria, the impact of dilution, the non-tradeable nature of the option, the share price at grant date and expected price volatility of the underlying share, the expected dividend yield and the risk-free interest rate for the term of the option.

The fair value of the options granted excludes the impact of any non-market vesting conditions (for example, profitability and sales growth targets). Non-market vesting conditions are included in assumptions about the number of options that are expected to become exercisable. At each balance sheet date, the entity revises its estimate of the number of options that are expected to become exercisable. The employee benefit expense recognised each period takes into account the most recent estimate.

Upon the exercise of options, the balance of the share-based payments reserve relating to those options is transferred to share capital.

(v) *Bonus plans*

The Group recognises a liability and an expense for bonuses. The Group recognises a provision where contractually obliged or where there is a past practice that has created a constructive obligation.

(w) *Contributed equity*

Ordinary shares (or common stock) are classified as equity. Incremental costs directly attributable to the issue of new shares or options are shown in equity as a deduction, net of tax, from the proceeds.

## 2. Financial risk management

The Group's activities expose it to a variety of financial risks; market risk (including currency risk, fair value interest rate risk and price risk), credit risk, liquidity risk and cash flow interest rate risk. The Group's overall risk management program focuses on the unpredictability of financial markets and seeks to minimise potential adverse effects on the financial performance of the Group.

(a) *Market risk*

(i) *Foreign exchange risk*

Foreign exchange risk arises when future commercial transactions and recognised assets and liabilities are denominated in a currency that is not the entity's functional currency.

The Group operates internationally and is exposed to foreign exchange risk arising from currency exposures to the US dollar.

The Group has to date managed this risk by selling US dollars when foreign exchange rates have been favourable and capping exposures through foreign exchange "stop-loss" sell orders.

(ii) *Price risk*

The Group is not exposed to equity securities price risk nor to commodity price risk.

(iii) *Fair value interest rate risk*

Refer to (d) below.

(b) *Credit risk*

The Group has no significant concentrations of credit risk. The Group has policies in place to ensure that sales of products are made to customers with an appropriate credit history. The Group has no credit exposure to any financial institution.

(c) *Liquidity risk*

Prudent liquidity risk management implies maintaining sufficient cash, the availability of funding through an adequate amount of committed credit facilities and the ability to close-out market positions. The Group has experienced recurring operating losses and operating cash outflows since inception to 31 December 2005 as the Group is transitioning from a development stage. Due to the negative cashflow position the Group has not committed to any credit facilities rather relied upon equity and debt financing through private equity investors.

(d) *Cash flow and fair value interest rate risk*

As the Group has no significant interest bearing assets, the Group's income and operating cash flows are substantially independent of changes in market interest rates.

The Group's interest rate risk arises from borrowings. These borrowings have been issued at fixed rates exposing the Group to fair value interest rate risk.

### 3. Critical accounting estimates and judgements

Estimates and judgements are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

#### (a) *Critical accounting estimates and assumptions*

The Group makes estimates and assumptions concerning the future. The resulting accounting estimates will, by definition, seldom equal the related actual results. Apart from the going concern assumption as discussed in note 1(b), the estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year are discussed below.

#### (b) *Critical judgements in applying the entity's accounting policies*

##### *Impairment loss and accelerated depreciation plant and equipment*

The Group signed a contract for the outsourcing of volume assembly manufacturing with Polar Twin Advance (M) Sdn. Bhd. (PTA) on 5 October 2004. With the introduction of the outsourced volume assembly manufacturing capacity at PTA, the book value of the plant and equipment held at the Group's Sydney, Australia manufacturing facility was reviewed for impairment in accordance with the accounting policy stated in note 1(k) and 1(p). It is reasonably believed that by 1 July 2006 all volume assembly manufacturing will be outsourced to PTA and the affected plant and equipment remaining in Sydney, Australia will be used for product development and process improvement purposes only. Accordingly, assets with a written down value of \$895,704 and capital works in progress of \$132,821 were written down to nil at 30 June 2005 and other assets have been subjected to accelerated depreciation from 1 July 2004 resulting in an increase depreciation charges of \$764,216 for the half-year ended 31 December 2005 and \$1,942,236 for the year ended 30 June 2005.

As at 30 June 2005 the Group has also recognised a loss on the sale of a certain item of plant and equipment to Polar Twin Advance (M) Sdn. Bhd. (PTA). The Group was originally contracted to supply a second hand machine to PTA under the outsourced Manufacturer Agreement dated 5 October 2004. Subsequent to this date the Group elected to supply to PTA a new machine which is more technically advanced and efficient for high volume manufacturing than the proposed second hand machine. The new machine was under construction and was completed in August 2005 and the Group agreed to bear the loss. The new machine has been installed at PTA and as at 31 December 2005 was in the final stages of commissioning. PTA had previously paid for the machine and the sale proceeds are included in note 14. As at 30 June 2005 the Group wrote down the new machine to its recoverable amount, being the advanced sale proceeds, which resulted in an impairment loss of \$708,228.

In summary the Group incurred the following one-off charges:

<i>Year ended 30 June 2005</i>	\$
Impairment loss assets due to outsourcing manufacturing capacity	1,028,525
Impairment machine to its net realisable value, being its proceeds	708,228
Impairment loss	1,736,753
Accelerated depreciation plant and equipment	1,942,236
Total one-off charges	<u>3,678,989</u>
<i>Period ended 31 December 2005</i>	
Accelerated depreciation plant and equipment	764,216
Total one-off charges	<u>764,216</u>

#### *Going concern*

Refer to note 1(b) for details.

#### 4. Segment information

##### (a) Description of segments

###### *Business segments*

The consolidated entity operates in a single business segment which is the development, manufacture and sale of super capacitors.

###### *Geographical segments*

Although the consolidated entity is managed on a global basis, it operates in 3 main geographical areas being Asia, North & South America and Europe.

Consolidated revenues can be summarised as follows:

	<i>6 months ended 31 December 2005 \$</i>	<i>Year ended 30 June 2005 \$</i>	<i>Year ended 30 June 2004 \$</i>	<i>Year ended 30 June 2003 \$</i>
<b>Revenue</b>				
Asia	274,820	1,261,044	604,964	97,096
North & South America	427,543	782,634	619,388	586,845
Europe	142,257	173,018	192,622	23,136
	<u>844,620</u>	<u>2,216,696</u>	<u>1,416,974</u>	<u>707,077</u>

Consolidated assets can be summarised as follows:

###### **Carrying amount of segment assets**

	<i>As at 31 December 2005 \$</i>	<i>As at 30 June 2005 \$</i>	<i>As at 30 June 2004 \$</i>	<i>As at 30 June 2003 \$</i>
Australia	5,354,573	9,215,498	12,973,400	20,366,018
Asia	264,221	85,280	132,186	34,597
North & South America	157,868	300,253	179,028	123,194
Europe	27,525	17,793	45,989	843
	<u>5,804,187</u>	<u>9,618,824</u>	<u>13,330,603</u>	<u>20,524,652</u>

Consolidated segment assets can be summarised as follows:

###### **Acquisition of non current segment assets**

	<i>As at 31 December 2005 \$</i>	<i>As at 30 June 2005 \$</i>	<i>As at 30 June 2004 \$</i>	<i>As at 30 June 2003 \$</i>
Australia	<u>511,302</u>	<u>1,199,357</u>	<u>2,412,319</u>	<u>5,879,903</u>

##### (b) Notes to and forming part of the segment information

###### (i) Accounting policies

Segment information is prepared in conformity with the accounting policies of the entity as disclosed in note 1.

Segment revenues are those that are directly attributable to a segment and the relevant portion that can be allocated to the segment on a reasonable basis.

###### (ii) Inter-segment transfers

Segment revenues include transfers between segments. Such transfers are priced on an “arm’s-length” basis and are eliminated on consolidation and not disclosed in this note.

(iii) *Segment margins*

Gross margins are measured as revenues less cost of goods sold, being labour and related on-costs as well as direct material costs, as a percentage of revenues.

To date the Group has operated at a negative gross margin across all geographical areas.

5. **Other income**

	<i>6 months ended 31 December 2005 \$</i>	<i>Year ended 30 June 2005 \$</i>	<i>Year ended 30 June 2004 \$</i>	<i>Year ended 30 June 2003 \$</i>
Net gain on disposal of property, plant and equipment	26,321	237,397	—	—
Interest income	60,768	75,912	187,729	522,804
Foreign exchange gains (net)	—	255,871	—	—
Government grants (note (a))	—	786,165	1,197,090	1,240,379
Other	—	—	—	34,973
	<u>87,089</u>	<u>1,355,345</u>	<u>1,384,819</u>	<u>1,798,156</u>

(a) *Government grants*

Export market development grants of \$Nil (2005: \$150,000; 2004: \$168,285; 2003: \$105,979) and research and development start grants of \$Nil (2005: \$636,165; 2004: \$1,028,805; 2003: \$1,134,400) were recognised as other income by the Group during the half-year ended 31 December 2005. There are no unfulfilled conditions attaching to these grants.

The research and development start grants are subject to a limited discretionary right to “claw-back” a proportion of funding on a sliding scale for up to 5 years from the completion of the project. The research and development start grant of \$3,172,108 was completed on 30 March 2005 and no claim for “claw-back” has been made on the Group.

The Group did not benefit directly from any other forms of government assistance.



## 6. Expenses

Loss before income tax includes the following specific expenses:

	<i>6 months ended 31 December 2005 \$</i>	<i>Year ended 30 June 2005 \$</i>	<i>Year ended 30 June 2004 \$</i>	<i>Year ended 30 June 2003 \$</i>
<i>Cost of sale of goods</i>				
Direct materials and labour	898,681	2,376,636	2,731,965	2,018,343
Indirect manufacturing expenses	2,440,177	5,451,750	3,438,750	3,692,941
Total cost of sale of goods	<u>3,338,858</u>	<u>7,828,386</u>	<u>6,170,715</u>	<u>5,711,284</u>
<i>Depreciation</i>				
Plant and equipment	1,904,833	4,340,993	2,243,198	2,286,239
Furniture and fittings	1,973	3,941	3,897	5,501
Leasehold improvements	75,301	123,264	35,287	46,911
Total depreciation	<u>1,982,107</u>	<u>4,468,198</u>	<u>2,282,382</u>	<u>2,338,651</u>
<i>Finance costs – net</i>				
Convertible note issuance costs	27,478	89,976	214,851	—
Amortisation of convertible note issuance costs	84,855	207,837	—	—
Interest and finance charges payable	614,052	858,153	13,497	—
Finance charges payable on preference shares <sup>1</sup>	982,636	1,916,682	(340,130)	3,380,125
	<u>1,709,021</u>	<u>3,072,648</u>	<u>(111,782)</u>	<u>3,380,125</u>
Amount capitalised	(27,478)	(89,976)	(214,851)	—
Finance costs expensed	<u>1,681,543</u>	<u>2,982,672</u>	<u>(326,633)</u>	<u>3,380,125</u>
<i>Impairment loss on plant and equipment (refer note 3(b))</i>				
	—	1,736,753	—	—
<i>Rental expense relating to operating leases</i>				
Minimum lease payments	195,735	377,082	350,631	368,116
<i>Foreign exchange gains and losses (refer note 5 for net gains)</i>				
	338,523	—	256,783	17,962
<i>Employee benefits expense</i>	2,276,841	5,020,996	6,367,230	6,347,267

1 In the financial year ended 30 June 2004, a number of preference shares were converted to ordinary shares as a result of the mandatory conversion. As a result the accrued finance charges on these preference shares were reversed to the income statement. The accrued finance charges shall be paid only when declared by the Board of Directors of the Company and the accrued finance charges are not payable on conversion. Refer to Note 16 for further details.

## 7. Income tax benefit

	<i>6 months ended 31 December 2005 \$</i>	<i>Year ended 30 June 2005 \$</i>	<i>Year ended 30 June 2004 \$</i>	<i>Year ended 30 June 2003 \$</i>
(a) <i>Numerical reconciliation of income tax benefit to prima facie tax benefit</i>				
Loss before income tax benefit	(6,948,094)	(14,232,665)	(9,061,893)	(14,642,101)
Tax at the Australian tax rate of 30%	(2,084,428)	(4,269,800)	(2,718,568)	(4,392,630)
Tax effect of amounts which are not deductible (taxable) in calculating taxable income:				
Share based payments	7,987	—	—	—
Sundry items	10,728	14,716	9,337	13,417
	(2,065,713)	(4,255,084)	(2,709,231)	(4,379,213)
Benefit arising from temporary differences not recognised	34,505	112,200	205	43,485
Benefit arising from tax losses not recognised	2,031,208	4,142,884	2,709,026	4,335,728
	—	—	—	—
(b) <i>Tax losses</i>				
Unused tax losses for which no deferred tax asset has been recognised	53,221,749	46,427,140	32,685,218	22,804,605
Potential tax benefit @ 30%	15,966,525	13,928,142	9,805,565	6,841,382

The deferred tax assets in relation to the tax losses will only be obtained if:

- (i) the consolidated entity derives future assessable income of a nature and of an amount sufficient to enable the benefit from the deductions for the losses to be realised, and
- (ii) the consolidated entity continues to comply with the conditions for deductibility imposed by tax legislation, and
- (iii) no changes in tax legislation adversely affect the consolidated entity in realising the benefit from the deductions for the losses.

### (c) *Unrecognised temporary differences*

Temporary difference for which no deferred tax asset has been recognised	878,571	763,554	389,553	388,870
Potential tax benefit @ 30%	263,571	229,066	116,866	116,661

## 8. Current assets – Cash and cash equivalents

	<i>As at 31 December 2005 \$</i>	<i>As at 30 June 2005 \$</i>	<i>As at 30 June 2004 \$</i>	<i>As at 30 June 2003 \$</i>
Cash at bank and on hand	239,911	123,006	204,113	271,667
Cash on deposits	220,021	2,889,142	1,048,489	8,845,068
	459,932	3,012,148	1,252,602	9,116,735

(a) *Reconciliation to cash at the end of the year*

The total of the above figures reconcile to cash at the end of the financial year as shown in the cash flow statements.

(b) *Cash at bank and on hand*

These are non-interest bearing.

(c) *Deposits at call*

The deposits are bearing floating interest rates between 3 per cent. and 5.25 per cent. (2005: 1.5 per cent. and 5.25 per cent.; 2004: 1 per cent. and 5 per cent.; 2003: 1 per cent. and 4.5 per cent.). These deposits have an average maturity of 30 days.

## 9. Current assets – Receivables

	<i>As at</i> <i>31 December</i> 2005 \$	<i>As at</i> <i>30 June</i> 2005 \$	<i>As at</i> <i>30 June</i> 2004 \$	<i>As at</i> <i>30 June</i> 2003 \$
Trade receivables	467,548	420,630	357,203	158,634
Provision for doubtful receivables	(17,934)	(17,304)	—	—
	<u>449,614</u>	<u>403,326</u>	<u>357,203</u>	<u>158,634</u>
Other receivables	119,946	99,899	25,736	162,144
	<u>569,560</u>	<u>503,225</u>	<u>382,939</u>	<u>320,778</u>

(a) *Bad and doubtful trade receivables*

The Group has recognised a loss of \$630 (2005: \$17,304; 2004: \$Nil; 2003: \$Nil) in respect of bad and doubtful trade receivables during the half-year ended 31 December 2005. The loss has been included in “General and administrative expenses” in the income statement.

(b) *Other receivables*

These amounts generally arise from transactions outside the usual operating activities of the Group. Collateral is not normally obtained.

(c) *Interest rate risk*

All current receivables are non-interest bearing.

(d) *Credit risk*

There is limited concentration of credit risk with respect to current receivables, as the Group’s customers are internationally dispersed.

## 10. Current assets – Inventories

	<i>As at</i> <i>31 December</i> 2005 \$	<i>As at</i> <i>30 June</i> 2005 \$	<i>As at</i> <i>30 June</i> 2004 \$	<i>As at</i> <i>30 June</i> 2003 \$
Raw materials and stores – at cost	197,845	245,413	236,296	202,366
Finished goods – at cost	165,816	116,157	100,674	18,282
Finished goods – at net realisable value	—	—	—	—
	<u>165,816</u>	<u>116,157</u>	<u>100,674</u>	<u>18,282</u>
Development materials – at net realisable value	—	—	123,457	—
	<u>363,661</u>	<u>361,570</u>	<u>460,427</u>	<u>220,648</u>

(a) *Inventory expense*

Inventories recognised as expense during the half-year ended 31 December 2005 amounted to \$90,650 (2005: \$388,257; 2004: \$678,550; 2003: \$523,304).

Write-downs of inventories to net realisable value recognised as an expense during the half-year ended 31 December 2005 amounted to \$83,300 (2005: \$238,265; 2004: \$Nil; 2003: \$Nil). The expense for finished goods has been included in 'cost of sale of goods' in the income statement. The expense for development materials has been included in 'research and development expenses' in the income statement.

**11. Current assets – Other**

	<i>As at</i> <i>31 December</i> 2005 \$	<i>As at</i> <i>30 June</i> 2005 \$	<i>As at</i> <i>30 June</i> 2004 \$	<i>As at</i> <i>30 June</i> 2003 \$
Prepayments	73,727	60,489	83,308	59,894
Deferred stock exchange listing costs	190,969	—	—	—
Convertible note issuance costs	332,305	304,827	214,851	—
Amortisation of issuance costs	(299,615)	(207,837)	—	—
	<u>32,690</u>	<u>96,990</u>	<u>214,851</u>	<u>—</u>
	<u>297,386</u>	<u>157,479</u>	<u>298,159</u>	<u>59,894</u>

## 12. Non-current assets – Property, plant and equipment

	<i>As at</i> 31 December 2005 \$	<i>As at</i> 30 June 2005 \$	<i>As at</i> 30 June 2004 \$	<i>As at</i> 30 June 2003 \$
Plant and equipment at cost	12,259,231	12,259,231	15,541,744	11,710,327
Accumulated depreciation	(9,406,784)	(7,501,951)	(5,717,980)	(3,474,782)
Net book amount	<u>2,852,447</u>	<u>4,757,280</u>	<u>9,823,764</u>	<u>8,235,545</u>
Capital works in progress	960,417	449,115	670,481	2,103,437
Furniture and fittings at cost	64,269	64,269	64,269	60,821
Accumulated depreciation	(27,590)	(25,617)	(21,676)	(17,779)
Net book amount	<u>36,679</u>	<u>38,652</u>	<u>42,593</u>	<u>43,042</u>
Leasehold improvements at cost	436,877	436,877	373,753	363,343
Accumulated depreciation	(328,999)	(253,698)	(130,434)	(95,147)
Net book amount	<u>107,878</u>	<u>183,179</u>	<u>243,319</u>	<u>268,196</u>
Total property, plant and equipment	<u>13,720,794</u>	<u>13,209,492</u>	<u>16,650,247</u>	<u>14,237,928</u>
Total accumulated depreciation	<u>(9,763,373)</u>	<u>(7,781,266)</u>	<u>(5,870,090)</u>	<u>(3,587,708)</u>
Total net book amount	<u><u>3,957,421</u></u>	<u><u>5,428,226</u></u>	<u><u>10,780,157</u></u>	<u><u>10,650,220</u></u>
<b>Movement in classes of assets:</b>				
<i>Plant and equipment</i>				
Opening net book amount	4,757,280	9,823,764	8,235,545	4,628,907
Transfers from capital works in progress	—	516,636	3,831,417	5,892,877
Disposals	—	(346,336)	—	—
Write off of assets <sup>1</sup>	—	(895,790)	—	—
Depreciation charge	(1,904,833)	(4,340,993)	(2,243,198)	(2,286,239)
Closing net book amount	<u>2,852,447</u>	<u>4,757,281</u>	<u>9,823,764</u>	<u>8,235,545</u>
<i>Capital works in progress</i>				
Opening net book amount	449,115	670,481	2,103,437	2,186,905
Additions	511,302	1,136,233	2,398,461	5,809,409
Transfers to plant and equipment	—	(516,636)	(3,831,417)	(5,892,877)
Write off of assets <sup>2</sup>	—	(840,963)	—	—
Closing net book amount	<u>960,417</u>	<u>449,115</u>	<u>670,481</u>	<u>2,103,437</u>
<i>Furniture and fittings</i>				
Opening net book amount	38,652	42,593	43,042	28,953
Additions	—	—	3,448	19,590
Depreciation charge	(1,973)	(3,941)	(3,897)	(5,501)
Closing net book amount	<u>36,679</u>	<u>38,652</u>	<u>42,593</u>	<u>43,042</u>
<i>Leasehold improvements</i>				
Opening net book amount	183,179	243,319	268,196	264,203
Additions	—	63,124	10,410	50,904
Depreciation charge	(75,301)	(123,264)	(35,287)	(46,911)
Closing net book amount	<u>107,878</u>	<u>183,179</u>	<u>243,319</u>	<u>268,196</u>
<i>Total property, plant and equipment</i>				
Opening net book amount	5,428,226	10,780,157	10,650,220	7,108,968
Additions	511,302	1,199,357	2,412,319	5,879,903
Disposals	—	(346,336)	—	—
Write off of assets <sup>1&amp;2</sup>	—	(1,736,753)	—	—
Depreciation charge	(1,982,107)	(4,468,198)	(2,282,382)	(2,338,651)
Closing net book amount	<u><u>3,957,421</u></u>	<u><u>5,428,226</u></u>	<u><u>10,780,157</u></u>	<u><u>10,650,220</u></u>

1 The write off of assets is as a result of completion of the review for impairment as described in note 3(b).

2 The write off of assets is a result of the review for impairment together with the write down of assets under construction to their net realisable value as described in note 3(b).

### 13. Non-current assets – Other

	<i>As at</i> 31 December 2005 \$	<i>As at</i> 30 June 2005 \$	<i>As at</i> 30 June 2004 \$	<i>As at</i> 30 June 2003 \$
Rental bond	153,000	153,000	153,000	153,000
Other	3,227	3,176	3,319	3,377
	<u>156,227</u>	<u>156,176</u>	<u>156,319</u>	<u>156,377</u>

### 14. Current liabilities – Payables

	<i>As at</i> 31 December 2005 \$	<i>As at</i> 30 June 2005 \$	<i>As at</i> 30 June 2004 \$	<i>As at</i> 30 June 2003 \$
Trade payables	1,761,704	826,476	211,110	1,745,020
Other creditors and accrued expenses	237,117	197,494	246,849	698,853
Advance payment on sale of plant and equipment <sup>3</sup>	749,625	723,304	—	—
Unearned grant income	—	—	275,603	408,862
Advanced proceeds from convertible note subscriptions	126,096	—	—	—
	<u>2,874,542</u>	<u>1,747,274</u>	<u>733,562</u>	<u>2,852,735</u>

3 This liability is described in note 3(b).

### 15. Current liabilities – Provisions

	<i>As at</i> 31 December 2005 \$	<i>As at</i> 30 June 2005 \$	<i>As at</i> 30 June 2004 \$	<i>As at</i> 30 June 2003 \$
Employee benefits	376,679	376,679	359,509	388,870
Product returns and warranties	136,295	105,208	22,846	—
	<u>512,974</u>	<u>481,887</u>	<u>382,355</u>	<u>388,870</u>

#### (a) *Product returns and warranties*

Provision is made for product returns and warranty claims in respect of products sold. The Group provide a one year warranty on products sold to customers. The Group has to date experienced minimal product returns and warranty claims; however management considers it prudent to maintain a provision against any future product returns and warranty claims.

(b) *Movements in provisions*

Movements in the product returns and warranties provision during the financial periods are set out below:

	<i>6 months ended 31 December 2005 \$</i>	<i>Year ended 30 June 2005 \$</i>	<i>Year ended 30 June 2004 \$</i>	<i>Year ended 30 June 2003 \$</i>
Carrying amount at start of year	105,208	22,846	—	—
Additional provisions recognised during the year	31,087	82,362	22,846	—
Carrying amount at end of year	<u>136,295</u>	<u>105,208</u>	<u>22,846</u>	<u>—</u>

**16. Current liabilities – Interest bearing liabilities**

	<i>As at 31 December 2005 \$</i>	<i>As at 30 June 2005 \$</i>	<i>As at 30 June 2004 \$</i>	<i>As at 30 June 2003 \$</i>
Unsecured				
Convertible notes	12,774,670	11,725,031	4,331,277	—
Series A preference shares	5,542,444	5,172,971	5,319,986	10,480,235
Series B preference shares	23,002,513	21,411,343	21,888,118	29,837,094
	<u>41,319,627</u>	<u>38,309,345</u>	<u>31,539,381</u>	<u>40,317,329</u>

(a) *Convertible notes*

The following convertible notes have been issued in US dollars and can be summarised as follows:

	<i>As at 31 December 2005 US\$</i>	<i>As at 30 June 2005 US\$</i>	<i>As at 30 June 2004 US\$</i>	<i>As at 30 June 2003 US\$</i>
Cap-XX, Inc A-Notes	4,196,391	4,196,391	2,055,296	—
Cap-XX, Inc B-Notes	1,291,983	1,291,983	775,190	—
Energy Storage Systems Pty Ltd A-Notes	2,782,523	2,782,523	169,514	—
	8,270,897	8,270,897	3,000,000	—
Other equity securities – value of conversion rights	—	—	—	—
Accrued interest*	1,101,664	644,602	—	—
Total convertible note liability in US dollars	<u>9,372,561</u>	<u>8,915,499</u>	<u>3,000,000</u>	<u>—</u>
	A\$	A\$	A\$	A\$
<b>Total convertible note liability in Australian dollars (using the closing rate)</b>	<u>12,774,670</u>	<u>11,725,031</u>	<u>4,331,277</u>	<u>—</u>

\* interest expense is calculated by applying the effective interest rate of 10 per cent. to the liability component.

As discussed in further detail below, the following Convertible notes were issued at the Initial Closing, the Second Closing and the Supplemental Closing:

	<i>February</i> 2005 US\$	<i>September</i> 2004 US\$	<i>April</i> 2004 US\$
Cap-XX, Inc A-Notes	770,897	1,370,198	2,055,296
Cap-XX, Inc B-Notes	—	516,793	775,190
Energy Storage Systems Pty Ltd A-Notes	2,500,000	113,009	169,514
	<u>3,270,897</u>	<u>2,000,000</u>	<u>3,000,000</u>

#### *Initial and Second Closings*

On 19 April 2004, the Group agreed to sell US\$5,000,000 of convertible notes to participating stockholders of the Group (the “Note Financing”), of which US\$3,000,000 of convertible notes were issued at an Initial Closing that occurred on 19 April 2004 and US\$2,000,000 of convertible notes were issued at the Second Closing that occurred on 17 September 2004 raising A\$3,991,750 and A\$2,879,562. At both the Initial and Second Closings, Energy Storage Systems Pty Ltd issued and sold A-Notes to two stockholders and Cap-XX, Inc issues and sold A-Notes and B-Notes to other stockholders.

All stockholders of the Company were eligible to participate in the convertible Note Financing and purchase convertible notes up to an amount equal to their pro-rata equity ownership in the Company (the “Proportionate Entitlement”). Stockholders who purchased convertible notes up to their Proportionate Entitlement were able to purchase, on a pro-rata basis, the convertible notes not purchased by the other stockholders. A-Notes and A-Warrants of the Company were issued to stockholders who purchased convertible notes up to their Proportionate Entitlement. B-Notes and B-Warrants of the Company were issued to stockholders who purchased convertible notes beyond their Proportionate Entitlement. Details about the A-Warrants and B-Warrants are discussed in further detail below.

Both the A-Notes and B-Notes were due to mature on 19 May 2005, unless otherwise accelerated upon occurrence of certain events of default. On maturity, the notes (inclusive of accrued interest of 10 per cent. per annum, compounding monthly) at the option of the noteholder may, either be due and payable or be converted into Series B Preferred Stock of the Company (the “Series B Preferred”). The noteholders agreed on 7 February 2005 to amend the maturity date until no earlier than 31 January 2006. On 4 January 2006, the noteholders agreed to extend this maturity date until no earlier than 30 June 2006. The Company is not obliged to repay the Notes outstanding on or after that date unless notice from at least 65 per cent. of the aggregate of all Notes outstanding (inclusive of 3 noteholders who hold Series B Preferred Stock as defined) is received.

All stockholders who held Common Stock of the Company and purchased convertible notes in an amount equal to no less than their Proportionate Entitlement had the opportunity to purchase five (5) additional shares of Common Stock for each share of Common Stock held by them at the Initial Closing for a consideration of US\$0.0001 per share. On 29 April 2004, the Company filed a Second Amended and Restated Certificate of Incorporation (the “Amended Certificate”) with the Delaware Secretary of State whereby, among other things, each share of Preferred Stock of the Company (the “Preferred Stock”) held by stockholders who did not purchase convertible notes in an amount equal to no less than their Proportionate Entitlement were converted into one share of Common Stock. On 30 April 2004, the Company filed an Amendment to the Amended Certificate (the “Amendment”) pursuant to which the Company completed a reverse split of the Common Stock on a 6-for-1 basis (the “Reverse Common Stock Split”).

On the Initial Closing the Company as its subsidiaries Energy Storage Systems Pty Limited and Cap-XX Pty Limited entered into a Deed of Cross Guarantee and Indemnity with the noteholders with respect to the payment of any amount that is due and payable to the noteholders.

#### *Supplemental issue*

On 7 February 2005, the Group sold a further US\$3,270,897 of convertible notes as a supplemental issue raising A\$4,206,941. A-Notes only were issued the terms of which were the



same as the previous A-Notes (as amended) and are due to mature no earlier than 31 January 2006 (now amended to 30 June 2006) unless otherwise accelerated upon occurrence of certain events of default. On maturity, the notes (inclusive of accrued interest of 10 per cent. per annum compounding monthly) at the option of the noteholder may, either be due and payable or be converted into Series B Preferred Stock of the Company (the "Series B Preferred"). The Company is not obliged to repay the notes outstanding on or after that date unless notice from at least 65 per cent. of the aggregate of all notes outstanding (inclusive of 3 noteholders who hold Series B Preferred Stock as defined) is received.

#### *Second supplemental issue*

On 4 January 2006, Energy Storage Systems Pty Ltd sold a further US\$2,765,500 (A\$3,783,174) of convertible B notes as a second supplemental issue. As at 31 December 2005, US\$92,517 (A\$126,096) of convertible note subscriptions had been received in advance of the issue. US\$1,659,300 (\$2,269,904) of convertible notes were issued at Initial Closing on 4 January 2006 and US\$1,106,200 (\$1,513,270) of convertible notes were issued at the Second Closing that occurred on 17 February 2006.

These B-Notes carry liquidation and repayment preferences that rank above the previous A & B-Notes issued by the Company and or Energy Storage Systems Pty Ltd. Otherwise the terms are the same as the previous B-Notes (as amended) and are due to mature no earlier than 30 June 2006 unless otherwise accelerated upon occurrence of certain events of default. On maturity, the notes (inclusive of accrued interest of 10 per cent. per annum compounding monthly) at the option of the noteholder may, either be due and payable or be converted into Series B Preferred Stock of the Company (the "Series B Preferred"). The Company is not obliged to repay the notes outstanding on or after that date unless notice from at least 65 per cent. of the aggregate of all notes outstanding (inclusive of 3 noteholders who hold Series B Preferred Stock as defined) is received.

#### *A-Warrants and B-Warrants*

As detailed above, the Company and/or Energy Storage Systems Pty Limited issued A-Warrants and B-Warrants in the Note Financings. The warrants are exercisable at any time after the earlier to occur of (X) the Second Closing, (Y) fifteen (15) days preceding the closing date of any liquidation event or deemed liquidation event involving the Company, or (Z) 30 November 2004, up to the earlier to occur of (i) the date of the closing of the Company's initial public offering pursuant to a registration statement under the U.S. Securities Act, (ii) ten (10) days preceding the closing date of any deemed liquidation event involving the Company, or (iii) the ten (10) year anniversary of the date of issuance of the warrants or (iv) the date of the closing of the AIM listing, such dates being the respective dates of the various Closings.

The A-Warrants entitle the holders thereof to receive upon exercise such number of shares of Series B Preferred equal to dividing (X) the product obtained by multiplying the aggregate amount of A-Notes purchased by the holder by 0.2, by (Y) the lower of the then effective conversion price for the Series B Preferred or the price per share at which the Company issues equity securities in a new equity financing (as defined) (the "Stock Purchase Price"). The B-Warrants entitle the holders thereof to receive upon exercise such number of shares of Series B Preferred equal to dividing (X) the product obtained by multiplying the aggregate amount of B-Notes purchased by the holder by 0.4, by (Y) the Stock Purchase Price.

The shares of Series B Preferred issuable pursuant to the A-Warrants and B-Warrant are exercisable at a price of US\$0.01 per share.

#### *(b) Preference shares*

On 1 July 2002, the Company had authorised capital of 1,000,000 Series A preference shares. At 31 December 2005, there were 454,991 issued shares which were fully paid.

On 1 July 2002, the Company had authorised capital of 2,100,000 Series B preference shares. On 29 April 2004, an Amended Certificate was filed whereby the authorised capital was increased to 2,800,000 Series B preference shares. On 29 December 2005, a second Amended Certificate was filed whereby the authorised capital was increased to 3,400,000 Series B preference shares. At 31 December 2005, there were 1,394,396 issued shares which were fully paid. The Company

maintains sufficient authorised capital to cover the exercise of warrants and conversion of convertible notes.

Both Series A and Series B preference shares are denominated in US dollars. The Series A and Series B preference share liability for each reporting date in US dollars was as follows:

	<i>As at</i> 31 December 2005 US\$	<i>As at</i> 30 June 2005 US\$	<i>As at</i> 30 June 2004 US\$	<i>As at</i> 30 June 2003 US\$
Series A preference shares	2,659,286	2,659,286	2,659,286	5,440,983
Add: Accrued dividend	1,407,205	1,274,241	1,008,313	1,518,941
Total Series A preference shares in US dollars	<u>4,066,491</u>	<u>3,933,527</u>	<u>3,667,599</u>	<u>6,959,924</u>
	A\$	A\$	A\$	A\$
<b>Total Series A preference shares in Australian dollars (using the closing rate)</b>	<u>5,542,444</u>	<u>5,172,971</u>	<u>5,319,986</u>	<u>10,480,235</u>
	US\$	US\$	US\$	US\$
Series B preference shares	11,915,167	11,915,167	11,915,167	16,915,163
Less: Transaction costs	(201,462)	(201,462)	(201,462)	(201,462)
Add: Accrued interest	5,163,239	4,567,481	3,375,964	3,101,113
Total Series B preference shares in US dollars	<u>16,876,944</u>	<u>16,281,186</u>	<u>15,089,669</u>	<u>19,814,814</u>
	A\$	A\$	A\$	A\$
<b>Total Series B preference shares in Australian dollars (using the closing rate)</b>	<u>23,002,513</u>	<u>21,411,343</u>	<u>21,888,118</u>	<u>29,837,094</u>

The movements in the Series A preference shares in US dollars, exclusive of the interest liability, are as follows:

<i>Date</i>	<i>Details</i>	<i>Notes</i>	<i>Number of shares</i>	<i>Issue price</i>	<i>US\$</i>
1 July 2002	Opening balance		930,926	US\$5.8447	5,440,983
29 April 2004	Mandatory conversion of Series A convertible preferred shares to common stock	(i)	(475,935)	US\$5.8447	(2,781,697)
31 December 2005	Closing Balance		<u>454,991</u>		<u>2,659,286</u>

The movements in the Series B preference shares in US dollars, exclusive of the interest liability, are as follows:

<i>Date</i>	<i>Details</i>	<i>Notes</i>	<i>Number of shares</i>	<i>Issue price</i>	<i>US\$</i>
1 July 2002	Opening balance		1,915,647	US\$8.83	16,915,163
29 April 2004	Mandatory conversion of Series B convertible preferred shares to common stock	(i)	(566,251)	US\$8.83	(4,999,996)
31 December 2005	Closing Balance		<u>1,349,396</u>		<u>11,915,167</u>

(i) Refer to Note 18(g) for further details.

The rights of the holders of Series A and Series B preference shares include the following:

*Voting Rights*

Holders of the Series A and B Preferred are entitled to vote upon any and all matters submitted to the shareholders for a vote. Each share of Series A and B Preferred shall have one vote for each full share of common stock into which the Series A and B Preferred would be convertible on the record date of the vote.

*Dividend Rights*

Holders of Series B Preferred shall be entitled to receive cumulative cash dividends at the rate of US\$0.883 per share per annum. The holders of Series A Preferred are entitled to receive, out of funds legally available, cumulative dividends at an annual rate of US\$0.58447 per share per annum only once all accrued and unpaid dividends to holders of Series B have been paid. The dividends of the preferred shares shall accrue annually but shall be paid only when declared by the Board of Directors of the Company. Notwithstanding this annual accrual, holders of preferred shares are not entitled to receive accrued dividends upon the conversion of the preferred shares.

*Liquidation preference*

In the event of any liquidation, dissolution or winding-up of the Company, the holders of the Series B Preferred are entitled to receive, prior to and in preference to the holders of Series A Preferred and common stock, an amount equal to US\$8.83 per share of Series B Preferred plus any dividends declared but unpaid on such shares. After payment to the Series B Preferred, Series A Preferred shall be entitled to receive in preference to the holders of the common stock an amount equal to US\$5.8447 per share plus any dividends declared but unpaid on such shares. Assets remaining after the initial distribution to the Series A and B Preferred shareholders shall be available for distribution rateably among the preferred and ordinary shareholders.

*Conversion*

Each share of Series A and B Preferred are convertible based upon certain events which are disclosed in the Company's Certificate of Incorporation as amended and restated on 29 and 30 April 2004 and 29 December 2005.

(c) *Financing arrangements*

Details of convertible notes and issued preference shares are noted above. The Group does not have access to any other lines of credit.

(d) *Interest rate risk exposure*

(i) *Convertible notes*

The interest rate is fixed at 10 per cent. per annum compounded monthly. Interest commenced from the date of each issue and continues on the outstanding principal amount until the note is paid or converted.

(ii) *Preference shares*

The dividend rate is fixed at 10 per cent. per annum of the initial face value of the preference shares, whereby Series A Preferred are entitled to US\$0.58447 per share per annum and Series B Preferred are entitled to US\$0.883 per share per annum.

(e) *Fair value*

The carrying amounts of convertible notes and preference shares are the same as the fair value as they are not readily traded on organized markets in standardised form.

**17. Non-current liabilities – Provisions**

	<i>As at</i> <i>31 December</i> <i>2005</i>	<i>As at</i> <i>30 June</i> <i>2005</i>	<i>As at</i> <i>30 June</i> <i>2004</i>	<i>As at</i> <i>30 June</i> <i>2003</i>
	\$	\$	\$	\$
Employee benefits	<u>23,098</u>	<u>23,098</u>	<u>7,198</u>	<u>—</u>

## 18. Contributed equity

### (a) Share capital

	<i>As at</i> 31 December 2005 \$	<i>As at</i> 30 June 2005 \$	<i>As at</i> 30 June 2004 \$	<i>As at</i> 30 June 2003 \$
Fully paid ordinary shares	<u>13,040,567</u>	<u>13,040,567</u>	<u>13,040,567</u>	<u>2,231,052</u>

### (b) Movement in ordinary shares:

<i>Date</i>	<i>Details</i>	<i>Notes</i>	<i>Number of shares</i>	<i>Issue price</i>	<i>\$</i>
1 July 2002	Opening balance		1,221,842	\$1.83	2,231,052
19 September 2003	Exercise of share options	(d)	1,000	\$1.61	1,608
29 April 2004	Issuance of shares to participating shareholders	(e)	6,067,544	\$0.00	845
29 April 2004	Reverse split of common stock	(f)	(6,075,322)	\$0.00	(845)
29 April 2004	Mandatory conversion of Series A and B convertible preferred shares to common stock	(g)	<u>1,042,186</u>	\$10.37	<u>10,807,907</u>
30 June 2004, 30 June 2005 and 31 December 2005	Closing Balance		<u>2,257,250</u>		<u>13,040,567</u>

### (c) Ordinary shares

On 1 July 2002, the Company had authorised capital of 6,100,000 common stock. On 29 April 2004, an Amended Certificate was filed whereby the authorised capital was increased to 7,000,000 common stock. On 29 December 2005, a second Amended Certificate was filed whereby the authorised capital was increased to 7,500,000 common stock.

At 31 December 2005, there were 2,257,250 issued shares which were fully paid, with a par value of US\$0.0001. Each holder of a common stock is entitled to one vote for each share held at all meetings of shareholders and will be entitled to any dividends declared by the Board of Directors subject to the preferential rights of the preferred shares. The Company maintains sufficient authorised capital to cover the exercise of any stock options.

Common stock entitle the holders to participate in the proceeds on winding up of the company in proportion to the number of and amounts paid on the shares held. This is subject to the prior entitlements of the Convertible Noteholders and Series A and Series B preference shares, which are classified as liabilities (refer to note 16).

### (d) Options

Information relating to the Stock Option Exchange Plan 2001 and Stock Incentive Plan 2002, including details of options issued, exercised and lapsed during the financial year and options outstanding at the end of the financial year, is set out in note 28.

### (e) Share issue

As described in Note 16(a), all stockholders who held common stock of the Company and purchased convertible notes in an amount equal to no less than their Proportionate Entitlement had the opportunity to purchase five (5) additional shares of Common Stock for each share of Common Stock held by them at the Initial Closing for a consideration of US\$0.0001 per share. As a result the Company issued 6,067,544 common stock on 29 April 2004.

(f) *Reverse split of common stock*

On 30 April 2004, the Company filed an Amendment to the Amended Certificate (the “Amendment”) pursuant to which the Company completed a reverse split of the Common Stock on a 6-for-1 basis (the “Reverse Common Stock Split”).

(g) *Mandatory conversion of Series A and B convertible preferred shares to common stock*

All stockholders who held Common Stock of the Company and purchased convertible notes in an amount equal to no less than their Proportionate Entitlement had the opportunity to purchase five (5) additional shares of Common Stock for each share of Common Stock held by them at the Initial Closing for a consideration of US\$0.0001 per share. On April 29, 2004, the Company filed a Second Amended and Restated Certificate of Incorporation (the “Amended Certificate”) with the Delaware Secretary of State whereby, among other things, each share of Preferred Stock of the Company (the “Preferred Stock”) held by stockholders who did not purchase convertible notes in an amount equal to no less than their Proportionate Entitlement were converted into one share of Common Stock.

The conversion resulted in an increase in ordinary share capital of US\$7,781,693 (AUD\$10,807,907) converted at the foreign exchange at the time of the conversion with a corresponding reduction in the preference shares liabilities.

**19. Reserves and accumulated losses**

	<i>As at</i> <i>31 December</i> <i>2005</i> \$	<i>As at</i> <i>30 June</i> <i>2005</i> \$	<i>As at</i> <i>30 June</i> <i>2004</i> \$	<i>As at</i> <i>30 June</i> <i>2003</i> \$
<b>(a) Reserves</b>				
Foreign currency translation reserve	10,835,295	11,897,097	9,275,319	7,320,552
Share-based payments reserve	26,622	—	—	—
	<u>10,861,917</u>	<u>11,897,097</u>	<u>9,275,319</u>	<u>7,320,552</u>
<b>Movements:</b>				
<i>Foreign currency translation reserve</i>				
Balance at beginning of period	11,897,097	9,275,319	7,320,552	1,715,406
Currency translation differences arising during the year/period	(1,061,802)	2,621,778	1,954,767	5,605,146
Balance at end of period	<u>10,835,295</u>	<u>11,897,097</u>	<u>9,275,319</u>	<u>7,320,552</u>
<i>Share-based payments reserve</i>				
Balance at beginning of period	—	—	—	—
Option expense	26,622	—	—	—
Balance at end of period	<u>26,622</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>(b) Accumulated losses</b>				
Movements in accumulated losses were as follows:				
Balance at beginning of period	(55,880,444)	(41,647,779)	(32,585,886)	(17,943,785)
Net loss for the year/period	(6,948,094)	(14,232,665)	(9,061,893)	(14,642,101)
Balance at end of period	<u>(62,828,538)</u>	<u>(55,880,444)</u>	<u>(41,647,779)</u>	<u>(32,585,886)</u>

(c) *Nature and purpose of reserves*

(i) *Foreign currency translation reserve*

Exchange differences arising on translation of the foreign controlled entity are taken to the foreign currency translation reserve, as described in note 1(e). The reserve is recognised in profit and loss when the net investment is disposed.

(iv) *Share-based payments reserve*

The share-based payments reserve is used to recognise the fair value of options issued but not exercised.

## 20. Director and executive disclosures

(a) *Directors*

The names of the directors who have held office during the period 1 July 2002 to 31 December 2005 are as follows:

Anthony Kongats	President and Chief Executive Officer
Michael Quinn	(appointed 15 April 2004)
Hock Voon Loo	(continuing in office since 2001)
John Murray	(appointed 27 July 2004)
Ingo Susing	(appointed 21 September 2004)
Andrew Bailey	(appointed 21 September 2004)
Allan Aaron	(resigned 27 July 2004)
Ian Bund	(resigned 15 April 2004)
Roger Marshall	(resigned 10 February 2004)
Marc Staal	(appointed 10 February 2004 – resigned 21 September 2004)

All of the above directors either hold a direct interest in the Group by way of equity and or convertible notes or are representatives of private equity venture capital investors who hold equity and or convertible notes.

(b) *Key management and personnel compensation*

Key management personnel compensation is set out below. The key management personnel are all the directors of the company and the five executives with the greatest authority for the strategic direction and management of the company.

	<i>6 months ended</i>	<i>Year ended</i>	<i>Year ended</i>	<i>Year ended</i>
	<i>31 December</i>	<i>30 June</i>	<i>30 June</i>	<i>30 June</i>
	<i>2005</i>	<i>2005</i>	<i>2004</i>	<i>2003</i>
	<i>\$</i>	<i>\$</i>	<i>\$</i>	<i>\$</i>
Short-term benefits	502,723	974,021	1,296,310	1,197,371
Post-employment benefits	29,025	58,500	82,299	75,196
Termination benefits	—	—	153,860	—
Share-based payments	26,622	—	—	—
Total	<u>558,370</u>	<u>1,032,521</u>	<u>1,532,469</u>	<u>1,272,567</u>

(c) *Other transactions with key management personnel or entities related to them*

Information on transactions with key management personnel or entities related to them, other than compensation, are set out below.

The Company has entered into a management incentive agreement with key management and other executives for a bonus payment if the company is successful with a trade sale of the Group before 30 June 2006.

(d) *Equity Instruments held by Directors*

The following table sets out the details of Options granted to directors as at 31 December 2005

<i>Director</i>	<i>Grant Date</i>	<i>Number Granted</i>	<i>Exercise price US\$</i>	<i>Number outstanding</i>	<i>Maturity date</i>
Andrew Bailey	1-Jul-98	1,667	6.36	1,667	31-May-08
	29-Mar-99	2,045	25.44	2,045	29-Jan-09
	1-Jul-05	43,270	1.01	43,270	31-May-15
	1-Apr-04	3,333	33.60	3,333	30-Sep-12
	1-Apr-04	167	33.60	167	30-Sep-12
Anthony Kongats	1-Jul-98	3,333	6.36	3,333	31-May-08
	29-Mar-99	503	25.44	503	29-Jan-09
	1-Jul-05	13,089	1.01	13,089	31-May-15
	1-Jul-05	24,020	1.01	24,020	31-May-15
	1-Apr-04	167	33.60	167	30-Sep-12
John Murray <sup>(1)</sup>	1-July-05	1,000	1.01	1,000	31-May-15
	1-Apr-04	167	33.60	167	30-Sep-12
Michael Quinn <sup>(2)</sup>	1-Jul-05	335	1.01	335	31-May-15
	1-Apr-04	56	33.60	56	30-Sep-12
	1-Jul-05	665	1.01	665	31-May-15
	1-Apr-04	111	33.60	111	30-Sep-12
	1-Jul-98	3,333	6.36	3,333	31-May-08
	29-Mar-99	2,398	25.44	2,398	29-Jan-09
	01-Jul-05	34,390	1.01	34,390	31-May-15

(1) Options held by Technology Venture Partners Pty Ltd, a company represented by John Murray.

(2) Options held by Innovation Capital LLC, Innovation Capital Limited and Kaylara Pty Ltd, which are companies represented by Michael Quinn.

The following table sets out the details of Ordinary shares and Preference shares held by Directors as at 31 December 2005

<i>Director</i>	<i>Ordinary shares</i>	<i>Preference A</i>	<i>Preference B</i>
Andrew Bailey	20,000	—	—
Anthony Kongats	148,847	—	—
Anthony Kongats <sup>(1)</sup>	823,653	—	—
Hock Voon Loo <sup>(2)</sup>	56,625	—	509,627
John Murray <sup>(3)</sup>	—	264,150	192,525
Michael Quinn <sup>(4)</sup>	8,334	148,948	80,993
Ingo Susing <sup>(5)</sup>	—	—	566,251

(1) Interest held by Ducon Management Pty Ltd, a company in which Anthony Kongats has beneficial ownership.

(2) Interest held by various funds managed by Pacven Walden Ventures, an entity represented by Hock Voon Loo.

(3) Interest held by various funds managed by Technology Venture Partners Pty Ltd, a company represented by John Murray.

(4) Interest held by Innovation Capital Limited, Innovation Capital LLC and Kaylara Pty Ltd, which are entities represented by Michael Quinn.

(5) Interest held by ABN AMRO Capital (Belgium) N.V., a company represented by Ingo Susing.

(e) *Financial instruments held by Directors*

The following table sets out the details of Convertible notes and Warrants held by Directors inclusive of convertible notes issued on 4 January 2006 (refer to note 26)

<i>Director</i>	<i>A Notes</i>	<i>B Notes</i>	<i>A Warrants</i> <sup>(6)</sup>	<i>B Warrants</i> <sup>(6)</sup>
	<i>US\$</i>	<i>US\$</i>	<i>Series B Preferred Stock</i>	<i>Series B Preferred Stock</i>
Andrew Bailey	24,574	64,574	557	2,925
Anthony Kongats	194,889	5,111	4,414	232
Anthony Kongats <sup>(1)</sup>	1,000,000	—	22,650	—
Hock Voon Loo <sup>(2)</sup>	626,168	500,000	14,183	22,650
John Murray <sup>(3)</sup>	1,061,106	897,523	24,034	40,658
Michael Quinn <sup>(4)</sup>	352,763	369,360	7,990	16,750
Ingo Susing <sup>(5)</sup>	695,740	1,204,260	15,759	54,553

(1) Interest held by Ducon Management Pty Ltd, a company in which Anthony Kongats has beneficial ownership.

(2) Interest held by various funds managed by Pacven Walden Ventures, an entity represented by Hock Voon Loo.

(3) Interest held by various funds managed by Technology Venture Partners Pty Ltd, a company represented by John Murray.

(4) Interest held by Innovation Capital Limited, Innovation Capital LLC and Kaylara Pty Ltd, which are entities represented by Michael Quinn.

(5) Interest held by ABN AMRO Capital (Belgium) N.V., a company represented by Ingo Susing.

(6) Entitlement to Series B Preferred Stock based on an exercise price of US\$8.83 per share (refer to note 16(a)).

## 21. Remuneration of auditors

During the year the following fees were paid or payable for services provided by the auditor of the Group, its related practices and non-related audit firms:

	<i>6 months ended 31 December 2005</i>	<i>Year ended 30 June 2005</i>	<i>Year ended 30 June 2004</i>	<i>Year ended 30 June 2003</i>
	<i>\$</i>	<i>\$</i>	<i>\$</i>	<i>\$</i>
<i>(a) Assurance services</i>				
<i>Audit services</i>				
PricewaterhouseCoopers Australian firm				
Audit and review of financial report	60,000	68,650	90,616	58,350
Total remuneration for audit services	60,000	68,650	90,616	58,350
<i>(b) Taxation services</i>				
PricewaterhouseCoopers Australian firm				
Tax compliance services, including review of company income tax returns; International tax consulting and tax advice.				
	184,388	149,756	95,749	82,767
Related practices of PricewaterhouseCoopers Australian firm				
Tax compliance services, including review of company income tax returns; International tax consulting and tax advice				
	26,799	44,088	52,169	54,822
Total remuneration for taxation services	211,187	193,844	147,918	137,589

It is the Group's policy to employ PricewaterhouseCoopers on assignments additional to their statutory audit duties where PricewaterhouseCoopers' expertise and experience with the Group are



important. These assignments are principally tax advice, or where PricewaterhouseCoopers is awarded assignments on a competitive basis. It is the Group's policy to seek competitive tenders for all major consulting projects.

## 22. Contingencies

The Company and subsidiaries Energy Storage Systems Pty Ltd and CAP-XX Pty Ltd have entered into a Deed of Cross Guarantee and Indemnity in respect to amounts due and payable to convertible noteholders as detailed in note 16.

The Company is liable to make bonus payments to key management and other executives if the Company is successful with a trade sale of the Group before 30 June 2006.

While no claims have been made as yet, the research and development start grants are subject to a limited discretionary right of the Australian government to "claw-back" a proportion of the funding on a sliding scale for up to five years from 30 March 2005.

At the expiration of the lease of the factory space, including the office and warehouse, the Group has an obligation to make good the premises. The directors believe the Group will extend the lease of its current factory space and consequently have not accrued for any costs. The directors have determined that the value of make good costs will not be significant with the most prudent estimate being \$100,000.

## 23. Commitments

### (a) Capital commitments

Capital expenditure contracted for at reporting date but not recognised as liabilities is as follows:

	<i>As at</i> <i>31 December</i> 2005 \$	<i>As at</i> <i>30 June</i> 2005 \$	<i>As at</i> <i>30 June</i> 2004 \$	<i>As at</i> <i>30 June</i> 2003 \$
<i>Plant and equipment:</i>				
Payable:				
Within one year	20,706	506,828	740,623	2,133,049
Later than one year but not later than 5 years	—	—	—	—
Later than 5 years	—	—	—	—
	<u>20,706</u>	<u>506,828</u>	<u>740,623</u>	<u>2,133,049</u>

### (b) Lease commitments: Group company as lessee

The Group leases factory space with an office and warehouse under a non-cancellable operating lease due to expire on 3 October 2006. The Group has a renewal right option which expires 6 months before the expiration of the lease. On renewal, the terms of the lease are renegotiated.

The Group also leases office equipment and office space under cancellable operating leases. The Group is required to give 3 months notice for termination of these leases.

	<i>As at</i> <i>31 December</i> 2005 \$	<i>As at</i> <i>30 June</i> 2005 \$	<i>As at</i> <i>30 June</i> 2004 \$	<i>As at</i> <i>30 June</i> 2003 \$
Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:				
Within one year	243,668	328,034	328,694	322,647
Later than one year but not later than 5 years	—	—	328,034	649,749
Later than 5 years	—	—	—	—
	<u>243,668</u>	<u>328,034</u>	<u>656,728</u>	<u>972,396</u>

## 24. Related party transactions

### (a) Parent entity

The ultimate parent entity within the Group is Cap-XX, Inc. Cap-XX, Inc is incorporated in Delaware, United States of America. The Australian parent entity is Energy Storage Systems Pty Ltd which is 100 per cent. owned by Cap-XX, Inc.

### (b) Subsidiaries

Interests in subsidiaries are set out in note 25.

### (c) Directors and specific executives

Disclosures relating to directors and specified executives are set out in note 20.

### (d) Terms and conditions

Transactions within the Group were made on normal commercial terms and conditions and at market rates except that there are no fixed terms for the repayment of loans between entities.

## 25. Subsidiaries

The consolidated financial statements incorporate the assets, liabilities and results of the following subsidiaries and branch in accordance with the accounting policy described in note 1(c):

Name of entity	Country of incorporation	Class of shares	Equity holding*			
			31 Dec 2005 %	30 June 2005 %	30 June 2004 %	30 June 2003 %
Energy Storage Systems Pty Ltd	Australia	Ordinary	100	100	100	100
Cap-XX Pty Ltd	Australia	Ordinary	100	100	100	100
Cap-XX Research Pty Ltd	Australia	Ordinary	100	100	100	100
Cap-XX USA, Inc	United States	Ordinary	100	100	100	100
Cap-XX Pty Ltd (Taiwan Branch)	Taiwan					

\* The proportion of ownership interest is equal to the proportion of voting power held.

## 26. Events occurring after the balance sheet date

### Convertible notes

On 4 January 2006, the convertible note holders agreed to extend the maturity date of the outstanding convertible notes (the "Notes") until no earlier than 30 June 2006. The Group is not obliged to repay the Notes outstanding on or after that date unless notice from at least 65 per cent. of the aggregate of all Notes outstanding (inclusive of 3 noteholders who hold Series B Preferred Stock as defined) is received.

On 4 January 2006, the consolidated entity also agreed to issue convertible notes to the value of US\$2,765,500 to fund the working capital requirements of the Group. \$2,269,904 (US\$1,659,300) of convertible notes were issued at the Initial Closing on 4 January 2006 and \$1,513,270 (US\$1,106,200) of convertible notes were issued at the Second Closing that occurred on 17 February 2006. Details of this financing are set out in note 16(a).

**27. Reconciliation of loss after tax to net cash inflow from operating activities**

	<i>6 months ended 31 December 2005 \$</i>	<i>Year ended 30 June 2005 \$</i>	<i>Year ended 30 June 2004 \$</i>	<i>Year ended 30 June 2003 \$</i>
Net loss	(6,948,094)	(14,232,665)	(9,061,893)	(14,642,101)
Depreciation and amortisation	1,982,107	4,468,198	2,282,382	2,338,651
Profit on sale of plant and equipment	(26,321)	(237,397)	—	—
Impairment loss on plant and equipment	—	1,736,753	—	—
Non-cash employee benefit expense – share based payments	26,622	—	—	—
Accrued finance charges on convertible notes and preference shares	1,596,688	2,774,835	(340,130)	3,380,125
Net unrealised exchange gains/(loss)	351,792	(469,596)	333,106	(698,397)
Changes in assets and liabilities:				
Decrease/(increase) in other assets	(112,480)	230,799	(23,356)	(39,675)
Decrease/(increase) in receivables	(66,335)	(120,286)	(62,161)	(162,357)
Decrease/(increase) in inventories	(2,091)	98,857	(239,779)	(167,208)
(Decrease)/Increase in provisions	31,087	115,432	683	144,949
(Decrease)/Increase in payables	1,001,172	290,408	(2,119,173)	1,224,812
Net cash (outflow) from operating activities	<u>(2,165,853)</u>	<u>(5,344,662)</u>	<u>(9,230,321)</u>	<u>(8,621,201)</u>

## 28. Share-based payments

### (a) Stock Option Exchange Plan 2001

The establishment of the Stock Option Exchange Plan 2001 (the “2001 Plan”) was approved by the Company’s Board of Directors on 28 August 2001. The 2001 Plan provides for the issuance of stock options for the purchase of shares of the Company’s common stock in exchange for the surrender of options previously granted but unexercised in Energy Storage Systems Pty Limited (“ESS”). The 2001 Plan provides for the grant of stock options for the purchase shares of the Company’s common stock by officers, employees, independent contractors, consultants, advisers and directors of the Company and/or any of its subsidiaries. The Board is responsible for administration of the 2001 Plan.

Set out below are summaries of options granted under the plan:

<i>Grant Date</i>	<i>Expiry date</i>	<i>Exercise price</i> US\$	<i>Balance at start of the year</i> Number	<i>Granted during the year</i> Number	<i>Exercised during the year</i> Number	<i>Forfeited during the year</i> Number	<i>Balance at end of the year</i> Number	<i>Exercisable at end of the year</i> Number
<b>6 months ended 31 December 2005</b>								
28 August 2001	31 May 2008	6.36	9,499	—	—	—	9,499	9,499
28 August 2001	10 October 2009	19.08	170	—	—	—	170	170
28 August 2001	29 January 2009	25.44	4,500	—	—	—	4,500	4,500
1 April 2004	31 May 2008	6.36	3,333	—	—	—	3,333	3,333
1 April 2004	29 January 2009	25.44	503	—	—	—	503	503
			<u>18,005</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>18,005</u>	<u>18,005</u>
<b>Weighted Average Exercise Price</b>			US\$11.78	US\$—	US\$—	US\$—	US\$11.78	US\$11.78
<b>12 months ended 30 June 2005</b>								
28 August 2001	31 May 2008	6.36	9,499	—	—	—	9,499	9,499
28 August 2001	10 October 2009	19.08	170	—	—	—	170	170
28 August 2001	29 January 2009	25.44	4,500	—	—	—	4,500	4,500
1 April 2004	31 May 2008	6.36	3,333	—	—	—	3,333	3,333
1 April 2004	29 January 2009	25.44	503	—	—	—	503	503
			<u>18,005</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>18,005</u>	<u>18,005</u>
<b>Weighted Average Exercise Price</b>			US\$11.78	US\$—	US\$—	US\$—	US\$11.78	US\$11.78
<b>12 months ended 30 June 2004</b>								
28 August 2001	31 May 2008	6.36 (1.06) <sup>1</sup>	57,000	—	—	(47,501) <sup>1</sup>	9,499	9,499
28 August 2001	10 October 2009	19.08 (3.18) <sup>1</sup>	1,020	—	—	(850) <sup>1</sup>	170	170
28 August 2001	29 January 2009	25.44 (4.24) <sup>1</sup>	27,003	—	—	(22,504) <sup>1</sup>	4,500	4,500
1 April 2004	31 May 2008	6.36 (1.06) <sup>1</sup>	19,998	—	—	(16,665) <sup>1</sup>	3,333	3,333
1 April 2004	29 January 2009	25.44 (4.24) <sup>1</sup>	3,018	—	—	(2,515) <sup>1</sup>	503	503
			<u>108,039</u>	<u>—</u>	<u>—</u>	<u>(90,035)</u>	<u>18,005</u>	<u>18,005</u>
<b>Weighted Average Exercise Price</b>			US\$1.96	US\$—	US\$—	US\$1.96	US\$11.78	US\$11.78
<b>12 months ended 30 June 2003</b>								
28 August 2001	31 May 2008	1.06	61,994	—	(1,000)	(3,994)	57,000	57,000
28 August 2001	10 October 2009	3.18	1,020	—	—	—	1,020	1,020
28 August 2001	29 January 2009	4.24	29,846	—	—	(2,843)	27,003	27,003
1 April 2004	31 May 2008	1.06	19,998	—	—	—	19,998	19,998
1 April 2004	29 January 2009	4.24	3,018	—	—	—	3,018	3,018
			<u>115,876</u>	<u>—</u>	<u>(1,000)</u>	<u>(6,837)</u>	<u>108,039</u>	<u>108,039</u>
<b>Weighted Average Exercise Price</b>			US\$1.98	US\$—	US\$1.06	US\$2.38	US\$1.96	US\$1.96

1 As a result of the Reverse Ordinary Share Split detailed in Note 18(f), adjustments were made to the exercise price and number of shares subject to all stock options issued by the Company prior to 29 April 2004 (the “Stock Options”) under the Company’s 2001 Stock Option Exchange Plan. After the adjustments, (X) the number of Common stock for which the Stock Options are exercisable equals the number of shares for which the Stock Options were exercisable prior to the Reverse Ordinary Share Split divided by the split factor of 6, and (Y) the per share exercise price for the Common stock issuable upon exercise of the Stock Options is equal to the exercise price per share prior to the Reverse Ordinary Share Split multiplied by the split factor of 6.

Except for the adjustments to the exercise price and number of Common stock subject to the Stock Options; the Stock Options are governed by their original terms and conditions and will continue to vest pursuant to the same vesting schedule.

Apart from the Reverse Split of Stock Options no other Options were forfeited during the same year.

No Stock Options have expired during the periods covered by the above tables.

The weighted average remaining contractual life of share options outstanding at the end of the period was 2.6 years (2005: 3.1 years; 2004: 4.1 years; 2003: 5.1 years).

(b) *Stock Incentive Plan 2002*

On 16 May 2002 the Board approved the 2002 Stock Incentive Plan (the “2002 Plan”), which provides for the grant of incentive stock options and nonqualified stock options, stock awards and stock purchase rights for the purchase of shares of the Company’s Common stock by officers, employees, consultants and directors of the Company. The Board is responsible for administration of the 2002 Plan. The Board determines the term of each option, the option exercise price, and the number of shares for which each option is granted and the rate at which each option is exercisable. Incentive stock options may be granted to any officer or employee at an exercise price per share of not less than the fair value per common share on the date of the grant (not less than 110 per cent. of fair value in the case of holders of more than 10 per cent. of the Company’s voting stock) and with a term not to exceed ten years from the date of the grant (five years for incentive stock options granted to holders of more than 10 per cent. of the Company’s voting stock). Non-qualified stock options may be granted to any officer, employee, consultant or director at an exercise price per share of not less than the book value per share.

Set out below are summaries of options granted under the plan:

<i>Grant Date</i>	<i>Expiry date</i>	<i>Exercise price</i> US\$	<i>Balance at start of the year</i> Number	<i>Granted during the year</i> Number	<i>Exercised during the year</i> Number	<i>Forfeited during the year</i> Number	<i>Balance at end of the year</i> Number	<i>Exercisable at end of the year</i> Number
<b>6 months ended 31 December 2005</b>								
1 November 2002	30 September 2012	33.60	16,000	—	—	—	16,000	15,981
1 April 2004	30 September 2012	9.00	6,500	—	—	—	6,500	5,930
1 April 2004	30 September 2012	33.60	4,835	—	—	—	4,835	4,468
30 June 2004	31 May 2014	1.01	10,000	—	—	—	10,000	6,260
26 August 2004	25 July 2014	0.50	16,000	—	—	—	16,000	16,000
21 March 2005	20 February 2015	0.50	16,000	—	—	—	16,000	16,000
1 July 2005	31 May 2015	1.01	—	500,039	—	—	500,039	305,658
1 July 2005	31 May 2015	33.60	—	6,837	—	—	6,837	5,760
			<u>69,335</u>	<u>506,876</u>	<u>—</u>	<u>—</u>	<u>576,211</u>	<u>376,057</u>
<b>Weighted Average Exercise Price</b>			US\$11.32	US\$1.45	US\$—	US\$—	US\$2.64	US\$3.36
<b>12 months ended 30 June 2005</b>								
1 November 2002	30 September 2012	33.60	16,000	—	—	—	16,000	15,802
1 April 2004	30 September 2012	9.00	6,500	—	—	—	6,500	5,111
1 April 2004	30 September 2012	33.60	4,835	—	—	—	4,835	4,169
30 June 2004	31 May 2014	1.01	10,000	—	—	—	10,000	5,000
26 August 2004	25 July 2014	0.50	—	16,000	—	—	16,000	16,000
21 March 2005	20 February 2015	0.50	—	16,000	—	—	16,000	16,000
			<u>37,335</u>	<u>32,000</u>	<u>—</u>	<u>—</u>	<u>69,335</u>	<u>62,082</u>
<b>Weighted Average Exercise Price</b>			US\$20.59	US\$0.50	US\$—	US\$—	US\$11.32	US\$11.89

<i>Grant Date</i>	<i>Expiry date</i>	<i>Exercise price</i> US\$	<i>Balance at start of the year</i> Number	<i>Granted during the year</i> Number	<i>Exercised during the year</i> Number	<i>Forfeited during the year</i> Number	<i>Balance at end of the year</i> Number	<i>Exercisable at end of the year</i> Number
<b>12 months ended 30 June 2004</b>								
1 November 2002	30 September 2012	33.60 (5.60) <sup>2</sup>	110,500	—	—	(94,500) <sup>2</sup>	16,000	13,814
1 April 2004	30 September 2012	9.00 (1.50)	—	39,000	—	(32,500) <sup>2</sup>	6,500	3,486
1 April 2004	30 September 2012	33.60 (5.60) <sup>2</sup>	—	29,000	—	(24,165) <sup>2</sup>	4,835	3,081
30 June 2004	31 May 2014	\$1.01	—	10,000	—	—	10,000	2,500
			<u>110,500</u>	<u>78,000</u>	<u>—</u>	<u>(151,165)</u>	<u>37,335</u>	<u>22,881</u>
<b>Weighted Average Exercise Price</b>			US\$5.60	US\$3.50	US\$—	US\$4.84	US\$20.59	US\$26.29
<b>12 months ended 30 June 2003</b>								
1 November 2002	30 September 2012	\$5.60	—	110,500	—	—	110,500	67,625
			<u>—</u>	<u>110,500</u>	<u>—</u>	<u>—</u>	<u>110,500</u>	<u>67,625</u>
<b>Weighted Average Exercise Price</b>			US\$—	US\$5.60	US\$—	US\$—	US\$5.60	US\$5.60

2 As a result of the Reverse Ordinary Share Split detailed in Note 18(f), adjustments were made to the exercise price and number of shares subject to all stock options issued by the Company prior to April 29, 2004 (the "Stock Options") under the Company's 2001 Stock Option Exchange Plan. After the adjustments, (X) the number of Common stock for which the Stock Options are exercisable equals the number of shares for which the Stock Options were exercisable prior to the Reverse Ordinary Share Split divided by the split factor of 6, and (Y) the per share exercise price for the Common stock issuable upon exercise of the Stock Options is equal to the exercise price per share prior to the Reverse Ordinary Share Split multiplied by the split factor of 6.

Except for the adjustments to the exercise price and number of Common stock subject to the Stock Options; the Stock Options are governed by their original terms and conditions and will continue to vest pursuant to the same vesting schedule.

Apart from this Reverse Split of Stock Options an additional 39,500 Stock Options were forfeited during the same year.

No Stock Options have expired during the periods covered by the above tables. No Stock Options were exercised.

The weighted average remaining contractual life of share options outstanding at the end of the period was 9.2 years (2005: 8.5 years; 2004: 8.4 years; 2003: 9.3 years).

#### *Fair value of options granted*

The assessed fair value at grant date of options granted during the period ended 31 December 2005 was 16 cents per option. The fair value at grant date is independently determined using a Black-Scholes option pricing model that takes into account the exercise price, the term of the option, the vesting and performance criteria, the impact of dilution, the non-tradeable nature of the option, the share price at grant date and expected price volatility of the underlying share, the expected dividend yield and the risk-free interest rate for the term of the option.

The model inputs for options granted during the period ended 31 December 2005 included:

- options are granted for no consideration, have a 10 year life, and 25 per cent. vest 12 months after the Vesting Commencement Date, and 1/48 of Total Option shall vest on each monthly anniversary of the Vesting Commencement Date thereafter.
- exercise price: refer tables above
- grant date: refer tables above
- expiry date: refer tables above
- share price at grant date: US\$0.50
- expected price volatility of the company's shares: 60 per cent.
- no expected dividend yield
- risk-free interest rate: 5.5 per cent.

The expected price volatility is based on the historic volatility (based on the remaining life of the options), adjusted for any expected changes to future volatility due to publicly available information.

(c) *Expenses arising from share-based payment transactions*

Total expenses arising from share-based payment transactions recognised during the period as part of employee benefit expense were as follows:

	<i>6 months ended 31 December 2005</i>	<i>Year ended 30 June 2005</i>	<i>Year ended 30 June 2004</i>	<i>Year ended 30 June 2003</i>
	\$	\$	\$	\$
Options issued under 2001 Plan	—	—	—	—
Options issued under 2002 Plan	26,622	—	—	—
	<u>26,622</u>	<u>—</u>	<u>—</u>	<u>—</u>

**29. Economic dependency**

The Group is highly dependent upon a small number of customers and potential customers. Alternative sources of revenue are being sought to reduce future dependency on any particular entity.

The Group is also highly dependent upon the receipt of financial support from its existing share and note holders. Refer to Note 1(b) for further information.

## PART IV (B)

### Accountants' Report on the Financial Information of the Group

Grant Thornton 

The Directors  
CAP-XX Limited  
Units 9-10  
12 Mars Road  
LANE COVE NSW 2006  
Australia

12 April 2006

Dear Sirs

**CAP-XX INC. (the "Company")  
AND ITS SUBSIDIARIES (collectively the "Group")**

We report on the financial information prepared for inclusion in and set out in Part IV A of the AIM Admission Document dated 12 April 2006 of CAP-XX Limited ("the AIM Admission Document"). The financial information has been prepared on the basis of the accounting policies set out in Paragraph 4 of Part IV A. This report is required by Paragraph (a) of Schedule Two of the AIM Rules and is given for the purpose of complying with that schedule and for no other purpose.

#### **Responsibilities**

The Directors of the Group are responsible for preparing the financial information on the basis of preparation set out in Paragraph 4 to the financial information and in accordance with Australian Equivalents to International Financial Reporting Standards.

It is our responsibility to form an opinion on the financial information as to whether the financial information gives a true and fair view, for the purposes of the AIM Admission Document, and to report our opinion to you.

#### **Basis of Opinion**

We conducted our work in accordance with the Standards for Investment Reporting issued by the Auditing Practices Board in the United Kingdom. Our work included an assessment of evidence relevant to the amounts and disclosures in the financial information. It also included an assessment of the significant estimates and judgements made by those responsible for the preparation of the financial information and whether the accounting policies are appropriate to the entity's circumstances, consistently applied and adequately disclosed.

We planned and performed our work so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial information is free from material misstatement, whether caused by fraud or other irregularity or error.

#### **Opinion**

In our opinion, the financial information gives, for the purposes of the AIM Admission Document dated 12 April 2006, a true and fair view of the state of affairs of the Group as at the dates stated and of its losses, cash flows and recognised gains and losses and changes in equity for the periods then ended in accordance with the basis of preparation set out in Paragraph 4 to the financial information and in accordance with Australian Equivalents to International Financial Reporting Standards.



**Declaration**

For the purposes of Paragraph (a) of Schedule Two of the AIM rules we are responsible for this report as part of the AIM Admission Document and declare that we have taken all reasonable care to ensure that the information contained in this report is, to the best of our knowledge, in accordance with the facts and contains no omission likely to affect its inclusion in the AIM Admission Document dated 12 April 2006. This declaration is included in the AIM Admission Document in compliance with Schedule Two of the AIM Rules.

Yours faithfully

GRANT THORNTON CORPORATE (NSW) PTY LTD

## PART IV (C)

### Interim Financial Information for the six months ended 31 December 2005

#### 1. Introduction

The interim consolidated financial information of the Group set out in this Part IV C has been prepared solely for the purpose of the AIM Admission Document and does not constitute audited statutory accounts within the meaning of section 292 of the Corporations Act 2001.

This interim financial information for the six months ended 31 December 2005 has been extracted from the audited consolidated accounts of the Group as set out in Part IV A of the Admission Document. The interim financial information for the six months ended 31 December 2004 is unaudited and is included for illustrative purposes only.

#### Income statements

	<i>6 months ended 31 December 2005</i>	<i>6 months ended 31 December 2004</i>
<i>Currency: Australian Dollars</i>	<i>\$</i>	<i>\$</i>
Revenue from sale of goods	844,620	1,190,276
Cost of sale of goods	<u>(3,338,858)</u>	<u>(3,939,505)</u>
<b>Gross margin (loss) from sale of goods</b>	<b>(2,494,238)</b>	<b>(2,749,229)</b>
Other income	87,089	702,217
General and administrative expenses	(1,120,257)	(950,790)
Selling and marketing expenses	(855,957)	(724,650)
Research and development expenses	(544,665)	(592,279)
Finance costs	(1,681,543)	(1,330,560)
Foreign exchange losses	<u>(338,523)</u>	<u>—</u>
<b>(Loss) before income tax</b>	<b><u>(6,948,094)</u></b>	<b><u>(5,645,291)</u></b>
Income tax expense	—	—
<b>(Loss) attributable to members of CAP-XX Limited</b>	<b><u><u>(6,948,094)</u></u></b>	<b><u><u>(5,645,291)</u></u></b>

**Balance sheets**

	<i>As at</i> <i>31 December</i> 2005 \$	<i>As at</i> <i>31 December</i> 2004 \$
<i>Currency: Australian Dollars</i>		
<b>ASSETS</b>		
<b>Current assets</b>		
Cash and cash equivalents	459,932	1,714,668
Receivables	569,560	908,252
Inventories	363,661	532,327
Other	297,386	279,308
Total current assets	<u>1,690,539</u>	<u>3,434,555</u>
<b>Non-current assets</b>		
Property, plant and equipment	3,957,421	8,881,206
Other	156,227	156,227
Total non-current assets	<u>4,113,648</u>	<u>9,037,433</u>
<b>Total assets</b>	<u><u>5,804,187</u></u>	<u><u>12,471,988</u></u>
<b>LIABILITIES</b>		
<b>Current liabilities</b>		
Payables	2,874,542	1,518,885
Interest bearing liabilities	41,319,627	32,137,769
Provisions	512,974	391,679
Total current liabilities	<u>44,707,143</u>	<u>34,048,333</u>
<b>Non-current liabilities</b>		
Provisions	23,098	8,098
Total non-current liabilities	<u>23,098</u>	<u>8,098</u>
<b>Total liabilities</b>	<u><u>44,730,241</u></u>	<u><u>34,056,431</u></u>
<b>Net assets</b>	<u><u>(38,926,054)</u></u>	<u><u>(21,584,443)</u></u>
<b>EQUITY</b>		
Contributed equity	13,040,567	13,040,567
Accumulated losses	(62,828,538)	(47,293,070)
Reserves	10,861,917	12,668,060
<b>Total Equity</b>	<u><u>(38,926,054)</u></u>	<u><u>(21,584,443)</u></u>

## Statements of changes in equity

	<i>As at</i> <i>31 December</i> 2005 \$	<i>As at</i> <i>31 December</i> 2004 \$
<i>Currency: Australian Dollars</i>		
<b>Total equity at the beginning of the financial period</b>	<u>(30,942,780)</u>	<u>(19,331,893)</u>
Exchange differences on translation of foreign operations	<u>(1,061,802)</u>	<u>3,392,741</u>
Net (loss) recognised directly in equity	(1,061,802)	3,392,741
<b>Profit (Loss) for the period</b>	<u>(6,948,094)</u>	<u>(5,645,291)</u>
<b>Total recognised income and expenses for the period</b>	<u>(8,009,896)</u>	<u>(2,252,550)</u>
Transactions with equity holders in their capacity as equity holders:		
Employee share options	<u>26,622</u>	<u>—</u>
<b>Total equity at the end of the financial period</b>	<u><u>(38,926,054)</u></u>	<u><u>(21,584,443)</u></u>

## Cash flow statements

	<i>6 months ended 31 December 2005</i>	<i>6 months ended 31 December 2004</i>
	\$	\$
<i>Currency: Australian Dollars</i>		
<b>Cash flows from operating activities</b>		
Receipts from customers (inclusive of goods and services tax)	797,702	895,496
Payments to suppliers and employees (inclusive of goods and services tax)	<u>(3,024,323)</u>	<u>(3,156,139)</u>
	(2,226,621)	(2,260,643)
Grants received	—	163,364
Interest received	<u>60,768</u>	<u>29,289</u>
<b>Net cash (outflow) from operating activities</b>	<u><u>(2,165,853)</u></u>	<u><u>(2,067,990)</u></u>
<b>Cash flows from investing activities</b>		
Payments for property, plant and equipment	(511,302)	(338,710)
Proceeds from sale of property, plant and equipment	<u>26,321</u>	<u>—</u>
<b>Net cash (outflow) inflow from investing activities</b>	<u><u>(484,981)</u></u>	<u><u>(338,710)</u></u>
<b>Cash flows from financing activities</b>		
Proceeds from issue of convertible notes	—	2,879,562
Advance proceeds from convertible note issues	126,096	—
Payments for issuance costs of convertible notes	<u>(27,478)</u>	<u>(10,796)</u>
<b>Net cash inflow from financing activities</b>	<u><u>98,618</u></u>	<u><u>2,868,766</u></u>
<b>Net (decrease) increase in cash and cash equivalents</b>	(2,552,216)	462,066
Cash and cash equivalents at the beginning of the financial period	<u>3,012,148</u>	<u>1,252,602</u>
<b>Cash and cash equivalents at the end of the financial period</b>	<u><u>459,932</u></u>	<u><u>1,714,668</u></u>

## PART IV (D)

### Pro forma Statement of Net Assets of the Group

Set out below is the unaudited pro forma statement of net assets of the Group prepared to illustrate the effects of the Placing and Admission as if they had taken place as at 31 December 2005. This statement has been prepared on the basis set out in the notes below for illustrative purposes only. Because of its nature, this pro forma statement of net assets may not give a true picture of the position of the Group.

	31 December 2005 (Note 1) \$	Adjustments (Note 2) \$	Adjustments (Note 3) \$	31 December 2005 (Notes 1 to 3) \$
<b>Current assets</b>				
Cash and cash equivalents	459,932	(12,774,670)	36,698,500	24,383,762
Receivables	569,560			569,560
Inventories	363,661			363,661
Other	297,386			297,386
<b>Total current assets</b>	<u>1,690,539</u>			<u>25,614,369</u>
<b>Non-current assets</b>				
Property, plant and equipment	3,957,421			3,957,421
Other	156,227			156,227
<b>Total non-current assets</b>	<u>4,113,648</u>			<u>4,113,648</u>
<b>Total assets</b>	<u>5,804,187</u>			<u>29,728,017</u>
<b>Current liabilities</b>				
Payables	2,874,542			2,874,542
Interest bearing liabilities	41,319,627	(41,319,627)		—
Provisions	512,974			512,974
<b>Total current liabilities</b>	<u>44,707,143</u>			<u>3,387,516</u>
<b>Non-current liabilities</b>				
Provisions	23,098			23,098
<b>Total non-current liabilities</b>	<u>23,098</u>			<u>23,098</u>
<b>Total liabilities</b>	<u>44,730,241</u>			<u>3,410,614</u>
<b>Net assets</b>	<u>(38,926,054)</u>			<u>26,317,403</u>

**Notes:**

1. Represents the audited consolidated statement of net assets of the Group as at 31 December 2005.
  2. The adjustment represents a payment to convertible note holders of approximately A\$12.8 million as set out in Part IV paragraph 16 and conversion of Series A and Series B Preference shares to common stock as set out in Part IV paragraph 16.
  3. The adjustment represents the cash proceeds from the Placing amounting to A\$40.4 million (£17.1) in relation to a subscription of 18,433,333 fully paid ordinary shares at an issue price of £0.93 per Ordinary Share as set out in Part 1 of the Admission Document less expenses of the Placing of A\$3.7 million (£1.6 million).
  4. The pro forma net assets of the Group has assumed an exchange rate of £1.00 to A\$2.36.
- All of the above transactions are reflected in the pro forma statement of net assets.

## PART IV (E)

### Accountants Report on the Pro Forma Statement of Net Assets of the Group

Grant Thornton 

The Directors  
CAP-XX Limited  
Units 9-10  
12 Mars Road  
LANE COVE NSW 2006  
Australia

12 April 2006

Dear Sirs

#### PRO FORMA STATEMENT OF NET ASSETS

We report on the pro forma statement of net assets of the Group set out in Part IV D of the AIM Admission Document dated 12 April 2006, which has been prepared on the basis of accounting policies adopted by the Group and for illustrative purposes only to provide information about how the Placing and Admission might have affected the financial information presented on the Group as at 31 December 2005 (as set out in Part IV A of the AIM Admission Document).

#### Responsibilities

It is the responsibility of the Directors of the Group to prepare the pro forma statement of net assets as though it had been prepared in accordance with paragraph 20.2 of Annex I of the Prospectus Regulation attached to the AIM Rules.

It is our responsibility to form an opinion as though it had been required by paragraph 7 of Annex II of the PD Regulation attached to the AIM Rules as to the proper compilation of the pro forma statement of net assets and to report that opinion to you.

In providing this opinion we are not updating or refreshing any reports previously given by us on any financial information used in the compilation of the pro forma statement of net assets, nor do we accept responsibility for such report or opinions beyond that owed to those to whom the reports were addressed by us at the dates of their issue.

#### Basis of opinion

We conducted our work in accordance with the Standards for Investment Reporting issued by the Auditing Practices Board in the United Kingdom. The work that we performed for the purpose of making this report, which involved no independent examination of any of the underlying financial information, consisted primarily of comparing the unadjusted financial information with the source documents, considering the evidence supporting the adjustments and discussing the pro forma statement of net assets with the directors of the Group.

We planned and performed our work so as to obtain all the information and explanations which we considered necessary in order to provide us with reasonable assurance that the pro forma statement of net assets has been properly compiled on the basis stated and that such basis is consistent with the accounting policies of the Group.

#### Opinion

In our opinion:

- (a) the pro forma statement of net assets has been properly compiled on the basis stated; and
- (b) such basis is consistent with the accounting policies of the Group.

**Declaration**

For the purposes of Paragraph (a) of Schedule Two of the AIM Rules we are responsible for this report as part of the AIM Admission Document and declare that we have taken all reasonable care to ensure that the information contained in this report is, to the best of our knowledge, in accordance with the facts and contains no omission likely to affect its inclusion in the AIM Admission Document dated 12 April 2006. This declaration is included in the AIM Admission Document in compliance with Paragraph (a) of Schedule Two of the AIM Rules.

Yours faithfully

GRANT THORNTON CORPORATE (NSW) PTY LTD



## PART V

### Additional Information

#### 1. Responsibility

The Directors, whose names appear on page 3 of this document, both collectively and individually, accept responsibility for the information contained in this document and for compliance with the AIM Rules. To the best of the knowledge and belief of the Directors, having taken all reasonable care to ensure that such is the case, the information contained in this document is in accordance with the facts and does not omit anything which is likely to affect the import of such information.

#### 2. Incorporation

- 2.1 The Company was incorporated as a proprietary company in New South Wales under the Corporations Act on 6 November 1990 with the name Spurjoe Pty Limited and ACN 050 845 291. On 21 January 1991 the Company's name was changed to Plessey Hydraulics Pty Limited and on 3 July 1996 its name was changed again to Energy Storage Systems Pty Limited.
- 2.2 On 20 January 2006 the Company changed its status from a proprietary company limited by shares to a public company limited by shares and on 5 April 2006 it changed its name to CAP-XX Limited.
- 2.3 The principal legislation under which the Company operates is the Corporations Act (in accordance with which the Ordinary Shares were created) and applicable regulations made thereunder. The liability of the members of the Company is limited.

#### 3. Subsidiary undertakings and Group structure

- 3.1 The Company has three wholly-owned subsidiaries, CAP-XX (Australia) Pty Limited, CAP-XX Research Pty Limited and CAP-XX USA, Inc.

##### *CAP-XX (Australia) Pty Limited*

CAP-XX (Australia) Pty Limited was incorporated as a proprietary company in New South Wales on 14 January 1997 with ACN 077 060 872 and under the name CAP-XX Pty Limited. On 5 April 2006 the company changed its name to CAP-XX (Australia) Pty Limited.

The issued share capital of CAP-XX (Australia) Pty Limited is 100 ordinary shares of no par value. This company has been a wholly-owned subsidiary of CAP-XX since its incorporation.

CAP-XX (Australia) Pty Limited has no subsidiaries.

- 3.2 *CAP-XX Research Pty Limited*

CAP-XX Research Pty Limited was incorporated as a proprietary company in New South Wales on 24 September 2002 with ACN 102 293 498.

The issued share capital of CAP-XX Research Pty Limited is 100 ordinary shares of no par value. This company has been a wholly-owned subsidiary of CAP-XX since its incorporation.

CAP-XX Research Pty Limited has no subsidiaries.

- 3.3 *CAP-XX USA, Inc.*

CAP-XX USA, Inc. was incorporated in the State of Delaware, USA, on 20 June 2002.

The authorised share capital of CAP-XX USA Inc. is 1,000,000 shares of common stock, each with a par value of US\$0.01. The issued and outstanding share capital of CAP-XX USA, Inc. is 100,000 shares of common stock. This company was a wholly-owned subsidiary of CAP-XX Inc. from the date of its incorporation until 5 April 2006 when it was transferred to CAP-XX pursuant to the demerger summarised in paragraph 4 of this Part V.

CAP-XX USA Inc. has no subsidiaries.

#### 4. Demerger from CAP-XX Inc.

Prior to 5 April 2006, the Company was a wholly-owned subsidiary of CAP-XX Inc., a Delaware company incorporated in the United States of America. Following tax advice and in anticipation of the proposed listing of CAP-XX on AIM, it was resolved that a demerger from CAP-XX Inc. be approved.

On 5 April 2006 CAP-XX Inc. approved the consolidation of all the issued shares of CAP-XX into a single Ordinary Share, which was subsequently transferred to Anthony Kongats at market value, upon which CAP-XX issued further Ordinary Shares, Series A Preferred Shares and Series B Preferred Shares to the shareholders of CAP-XX, Inc., pro rata to their shareholdings in that company. The 1,364,973 Series A Preferred Shares and 4,048,188 Series B Preferred Shares in issue at the date of this document will convert automatically to Ordinary Shares immediately prior to Admission.

To facilitate the demerger process, amongst other things, CAP-XX adopted a new constitution and issued the holders of CAP-XX Inc. convertible notes with new notes giving them a right to receive shares in CAP-XX, rather than shares in CAP-XX Inc., on conversion.

The Company has issued convertible notes with a total face value of US\$11,952,192. These notes bear interest at a rate of 10 per cent. per annum, compounding monthly and are due to mature on 30 June 2006, but are not convertible before 31 May 2006. Immediately prior to Admission, all the notes will cease to be convertible and will fall due for repayment. Within 7 days of Admission the Company must pay to the holders of such notes a total of US\$12,454,956, representing principal and interest.

As part of the demerger process, the holders of options over 589,696 shares in CAP-XX Inc. agreed to surrender those options in return for the issue of matching options over Ordinary Shares, as further detailed in paragraph 7.2 of this Part V.

#### 5. Share capital

5.1 There is no limit on the number of shares comprising the share capital of the Company and the issue of shares in the capital of the Company is at the entire discretion of the Board and, following Admission, no pre-emption rights will apply to the issue of new Ordinary Shares.

It has, however, been resolved by the Board that, following Admission, the Company shall not issue more than 30 per cent. of its issued share capital following Admission without the approval of the Company in general meeting. In addition, the Company has agreed that within this 30 per cent. limit, it will not issue shares amounting to more than 15 per cent. in any one year of its issued share capital immediately following Admission for cash otherwise than on a pre-emptive basis, without the prior approval of the Company in general meeting.

5.2 As at 1 January 2005 the Company had an issued share capital of 3,394,169 Ordinary Shares. On 4 February 2005 these Ordinary Shares were consolidated to 3,017,039 Ordinary Shares. On 5 April 2006 the Company bought back 932,761 Ordinary Shares held by CAP-XX, Inc. for an amount of US\$1,875,202. The consideration for the buy-back was the release of an intercompany loan. No further shares in the Company were issued until the demerger referred to at paragraph 4 above.

The issued share capital of the Company (i) as at the date of this document and (ii) following the Placing and Admission is and will be as follows:

<i>Class of share</i>	<i>Existing Number in issue</i>	<i>Following Admission and the Placing (all Ordinary Shares)</i>
Ordinary Shares	6,785,315	48,565,893
Series A Preferred Shares	1,364,973	nil
Series B Preferred Shares	4,048,188	nil

5.3 The Ordinary Shares in issue following Admission will rank *pari passu* in all respects with the existing Ordinary Shares including the right to receive all dividends and other distributions declared, made or paid after Admission on the Ordinary Share capital.

- 5.4 Save as disclosed in this document or in connection with the Placing, no share or loan capital of the Company is proposed to be issued or is under option or agreed, conditionally or unconditionally, to be put under option.
- 5.5 There are no shares in the capital of the Company currently in issue with a fixed date on which entitlement to a dividend arises and there are no arrangements in force whereby future dividends are waived or agreed to be waived.
- 5.6 Save as disclosed in this document, there are no outstanding convertible securities issued by the Company.
- 5.7 The International Security Identification Number for the Ordinary Shares is AU0000XINAS1.
- 5.8 At the date of this document, more than 10 per cent. of the issued share capital of the Company has been paid up in consideration other than cash. Please refer to paragraph 4 of this Part V for details of the demerger pursuant to which 6,785,314 Ordinary Shares, 1,364,973 Series A Preferred Shares and 4,048,188 Series B Preferred Shares were issued to the shareholders of CAP-XX Inc.

## **6. Memorandum and articles of association**

### **6.1 *Powers of the Company***

The Company, being incorporated, or taken to have been incorporated, under the Corporations Act, does not have a memorandum of association and has the legal capacity and powers of an individual both in and outside Australia. The Company also has all the powers of a body corporate, including the power to:

- (a) issue and cancel shares in the Company;
- (b) issue debentures (despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of the period, however long);
- (c) grant options over unissued shares in the Company;
- (d) distribute any of the Company's property among the Shareholders, in kind or otherwise;
- (e) give security by charging uncalled capital;
- (f) grant a floating charge over the Company's property;
- (g) arrange for the Company to be registered or recognised as a body corporate in any place outside Australia; and
- (h) do anything that it is authorised to do by any other law (including the law of a foreign country).

### **6.2 *Powers of the Directors***

The business of the Company is managed by, or under the direction of, the Board, which may exercise all powers of the Company that the Constitution or the Corporations Act do not require to be exercised by the Company in general meeting. The powers of the Board include, without limitation, all of the powers of the Company to:

- (i) borrow money;
- (ii) charge any property or business of the Company or all or any of its uncalled capital;
- (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or any other person; and
- (iv) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

The directors may delegate any of their powers, other than those which by law must be dealt with by the directors as a board, to a committee or committees.

At the close of each annual general meeting of the Company one-third (rounded down to the nearest whole number) of the Directors (except the Managing Director, who is currently Anthony Kongats) must retire, provided that a Director (except the Managing Director, who is currently Anthony Kongats) must retire from office at the conclusion of the third annual general meeting or 3 years after the director was last elected or appointed even if his or her retirement results in more than one-third of all Directors retiring from office. Any retiring Director is eligible for re-election at the meeting.

A director cannot be removed from office by a resolution of the Board or any request or notice from any or all of the directors.

A member may give not less than two months' written notice of an intention to propose a resolution to remove a director at the next general meeting of the Company. In such circumstances, there is no requirement on the Company to call a general meeting or to include the proposed removal resolution in the notice of the next general meeting unless the procedure for requisitioning a general meeting discussed in paragraph 6.3.4 below is followed.

### 6.3 *Rights attaching to share capital*

#### 6.3.1 *General*

The Ordinary Shares are the only class of share in issue in the capital of the Company. The rights attaching to the Ordinary Shares arise from a combination of the Constitution of the Company, statute (including the Corporations Act) and general law in force in Australia and resolutions of the board of Directors of the Company. A summary of the principal rights attaching to the Ordinary Shares is set out below. The following summary is provided for information purposes only and does not purport to be complete.

#### 6.3.2 *Voting*

Subject to any special rights attaching to any class of shares, at a meeting of members of the Company, every member who is a registered holder of an Ordinary Share at a time prescribed for this purpose in the notice of meeting whether present in person or by proxy, representative or attorney has one vote on a show of hands and one vote per share on a poll. However any shares that are not fully paid, on a poll will carry only that fraction of one vote which the amount paid on that Ordinary Share bears to the total amounts paid and payable on that Ordinary Share.

#### 6.3.3 *Major Shareholders*

Nothing in the Constitution confers on major Shareholders in the company any voting rights which are different to those conferred on the holders of Ordinary Shares as described in paragraph 6.3.2 above.

#### 6.3.4 *Meetings of Members*

Each Shareholder is entitled to receive notice of and, except in certain circumstances, to attend and vote at meetings of members of the Company. Each Shareholder is entitled to receive all financial reports, notices and other documents required to be sent to Shareholders under the Company's Constitution or the general law in force in Australia.

A requisition for a general meeting may be lodged by not less than 100 Shareholders or by Shareholders holding at least 5 per cent. of the voting share capital of the Company. Such requisition may:

- (i) require specified resolutions to be put to the next general meeting held at least 2 months after the request is given to the Company; or
- (ii) require the Company to call a general meeting within 21 days, such meeting to be held within 2 months of the request, and specify the resolutions to be put to that meeting.

In addition, Shareholders holding at least 5 per cent. of the voting share capital of the Company may also, without any prior request to the directors of the Company, themselves call and arrange a general meeting of the Company, subject only to the usual notice requirements for general meetings.

#### 6.3.5 *Dividends*

Subject to any special terms and conditions of issue, the profits of the Company which the Directors from time to time determine to distribute by way of dividends are divisible amongst the holders of Ordinary Shares in proportion to the amount paid up on the Ordinary Shares held by them.

#### 6.3.6 *Issue of further Shares*

The Directors may, subject to any restrictions imposed by the Company's Constitution, the general law in Australia and the AIM Rules, allot, issue, grant options over, or otherwise dispose of, further shares on such terms and conditions as they see fit.

#### 6.3.7 *Alteration of Constitution*

The Constitution can only be amended by a special resolution passed by at least three-quarters of Shareholders present and voting at the general meeting. At least 28 days' written notice specifying the intention to propose the resolution as a special resolution must be given.

#### 6.3.8 *Variation of Rights*

The rights attaching to Ordinary Shares may not be varied without the consent in writing of the holders of 75 per cent. of the issued Ordinary Shares or by a special resolution passed by at least three-quarters of Shareholders present and voting at the general meeting.

#### 6.3.9 *Transfers of Shares*

Holders of Ordinary Shares may transfer them by a proper transfer or in any form approved by the Directors and as otherwise permitted by the general law of Australia.

The Company may apply a holding lock to prevent a proper transfer, or may refuse to register a transfer, where permitted to do so under the Corporations Act. If the Directors request a holding lock or refuse to register a transfer, the Company must give the relevant parties notice of the request or the refusal and the reasons for it within five business days.

#### 6.3.10 *Winding Up*

Subject to the Company's Constitution and to any special rights attaching to any class of shares, holders of Ordinary Shares will be entitled in a winding up to share in any surplus assets of the Company in proportion to the amounts paid up (or credited as paid up) on the Ordinary Shares held by them.

#### 6.3.11 *Redemption*

None of the shares in the issued capital of the Company are redeemable.

#### 6.3.12 *Buy Back Authorisation*

The Company's Constitution contains provisions authorising the Company to buy back shares, subject to restrictions contained in the Corporations Act.

### 6.4 *Takeovers*

The Company is incorporated in Australia, has its registered office and principal place of business in Australia and is resident in Australia. Transactions in the Ordinary Shares are governed by the Corporations Act and the Constitution and regulated by ASIC and the Takeovers Panel (established under Part 10 of the Australian Securities and Investments Commission Act, 2001 of the Commonwealth of Australia).

The Constitution contains provisions requiring Shareholder approval in relation to any proportional takeover scheme. The provisions will lapse unless renewed by a special resolution of Shareholders in general meeting three years from the date of its adoption.

## **7. Employee Share Option Plan**

7.1 The Company adopted an Employee Share Option Plan (ESOP) on 12 April 2006.

Under the terms of the ESOP, the Remuneration Committee may determine the executives and eligible employees who are entitled to participate in the ESOP. Options granted under the ESOP will expire on any of the following events:

- the expiry date determined by the Remuneration Committee;
- the eligible employee is dismissed with cause or has breached a material provision contained in its employment contract;
- the eligible employee commits an act of fraud or misconduct in relation to the affairs of the Group; or
- the eligible employee ceases to be an employee of the Group and the options have not already vested.

The ESOP provides the Remuneration Committee with the ability to determine the exercise price of the options, the periods within which the options may be exercised and any performance conditions to be satisfied before the option can be exercised.

The ESOP provides for adjustments if there is a capital reconstruction, a rights issue or a bonus issue.

7.2 Following Admission, the Company will grant options over 1,769,088 Ordinary Shares to former option holders in CAP-XX Inc. as part of the demerger process referred to in paragraph 4 of this Part V. These options are to be granted in exchange for the surrender of the recipients' options in CAP-XX Inc. The grant of the options by the Company is in exchange for the surrender of matching options in CAP-XX, Inc. as part of the demerger. The grant of such options will require the publication of a prospectus in Australia, which is expected to be published shortly after Admission, but does not require Shareholder approval. The Ordinary Shares to be put under option pursuant to these arrangements will represent approximately 3.5 per cent. of the issued share capital of the Company on Admission, as enlarged by the Placing.

The Company has granted to Collins Stewart, conditional on Admission, an option over Ordinary Shares equal to one per cent. of the enlarged share capital of the Company on Admission, under the terms of the Option Deed referred to in paragraph 16.7 of this Part V.

7.3 The total number of Ordinary Shares which may be put under option by the Company under the ESOP or otherwise when combined with all other options issued by the Company (other than the option granted to Collins Stewart referred to in 7.2 above) shall not exceed 10 per cent. of the diluted Ordinary Share capital (diluted on the basis of all convertible securities, including options, warrants and convertible notes being converted to Ordinary Shares) of the Company, from time to time.

7.4 Save as set out above, the Company has no arrangements in place for involving the employees in its share capital.

## 8. Directors' and other interests

8.1 Save as set out in paragraph 8.2 below, the interests of the Directors, all of which are, unless otherwise stated, beneficial, in the issued share capital of the Company as at the date of this document and immediately following the Placing and Admission (such interests being those which would be required to be notified by each Director to the Company under the provisions of section 324 or 328 of the Act or which would be required to be entered in the register of interests maintained pursuant to section 325 of the Act, if the Company were subject to the Act, or which are interests of persons connected with the Director within the meaning of section 346 of the Act), the existence of which is known or which could, with reasonable diligence, be ascertained by a director are, and will be, as follows:

<i>Director</i>	<i>Number of Series B Preferred Shares*</i>	<i>Existing</i>		<i>Percentage of issued share capital (%)</i>
		<i>Number of Series A Preferred Shares*</i>	<i>Number of Ordinary Shares*</i>	
Michael Quinn <sup>1</sup>	242,979	446,844	25,002	5.9
Anthony Kongats <sup>2</sup>	NIL	NIL	2,917,500	23.9
Graham Titcombe	NIL	NIL	NIL	NIL
Christer Harkonen	NIL	NIL	NIL	NIL
John Murray <sup>3</sup>	577,575	792,450	NIL	11.2

\* Excluding number of Series B Preferred Shares subject to warrants held by the Director or persons connected with the Director and excluding number of Series B Preferred Shares which would be issuable on conversion of any convertible note (which in any event cannot be converted before 31 May 2006)

1. Includes shares held by Innovation Capital Limited, Innovation Capital LLC and Kaylara Pty Limited

2. Includes shares held by Ducon Management Pty Limited

3. Includes shares held by TVP No 2 Fund Nominees Pty Limited and TVP No 3 Fund Nominees Pty Limited

<i>Director</i>	<i>Following Placing and Admission</i>		<i>Percentage of issued ordinary share capital (%)</i>
	<i>Subject to variation as set out in paragraph 8.5 below</i>		
	<i>Number of Ordinary Shares</i>		
Michael Quinn <sup>1</sup>	2,522,998		5.2
Anthony Kongats <sup>2</sup>	3,231,028		6.7
Graham Titcombe	NIL		NIL
Christer Harkonen	NIL		NIL
John Murray <sup>3</sup>	5,230,700		10.8

1. Includes shares held by Innovation Capital Limited, Innovation Capital LLC and Kaylara Pty Limited

2. Includes shares held by Ducon Management Pty Limited

3. Includes shares held by TVP No 2 Fund Nominees Pty Limited and TVP No 3 Fund Nominees Pty Limited

8.2 Following Admission, options over 123,336 Ordinary Shares are to be granted to Anthony Kongats, as outlined in paragraph 7.2 of this Part V, as part of the demerger process. These options will be exercisable at a weighted average price of US\$0.62 (35 pence) per share before 31 May 2015.

Following Admission, options over 123,864 Ordinary Shares are to be granted to Michael Quinn as outlined in paragraph 7.2 of this Part V, as part of the demerger process. These options will be exercisable at a weighted average price of US\$1 (57 pence) per share before 31 May 2015.

Following Admission, options over 3,501 Ordinary Shares are to be granted to John Murray as outlined in paragraph 7.2 of this Part V, as part of the demerger process. These options will be exercisable at a weighted average price of US\$1.89 (108 pence) per share before 31 May 2015.

8.3 Save as set out in paragraphs 8.1 and 8.2 above, following the Placing and Admission, no Director will, and no person connected with a Director is expected to, have any interest in the share capital of the Company.

8.4 The interests set out below have been determined by reference to the Act. It should be noted, however, that the Company, as a company incorporated in Australia, is not subject to the Act.

As at 11 April 2006 (being the latest practicable date prior to publication of this document) insofar as is known to the Company, no person or persons, other than as set out in paragraphs 8.1 and 8.2 above and in this paragraph 8.3, are or will, immediately following the Placing and Admission, be interested, directly or indirectly, in 3 per cent. or more of the capital of the Company.

<i>Name</i>	<i>Number of Series A preferred Shares</i>	<i>Existing*</i>		<i>Percentage of existing issued share capital (%)</i>
		<i>Number of Series B preferred Shares</i>	<i>Number of Ordinary Shares</i>	
ABN AMRO Capital (Belgium) N.V.	NIL	1,698,753	NIL	13.9
Ducon Management Pty Limited & Anthony Kongats	NIL	NIL	2,917,500	23.9
Innovation Capital Limited & Innovation Capital LLC	446,844	242,979	25,002	5.9
Pacven Walden Entities	NIL	1,528,881	NIL	12.5
TVP Entities	792,450	577,575	NIL	11.2

\*Excludes warrants and convertible notes.

<i>Name</i>	<i>Following the Placing and Admission</i>	
	<i>Number of Ordinary Shares</i>	<i>Percentage of issued ordinary share capital (%)</i>
ABN AMRO Capital (Belgium) N.V.	7,311,741	15.1
Ducon Management Pty Limited & Anthony Kongats	3,231,028	6.7
Innovation Capital Limited and Innovation Capital LLC	2,522,998	5.2
Pacven Walden Entities	6,276,794	12.9
TVP Entities	5,230,700	10.8

8.5 Pursuant to the terms of a Call Option Deed entered into between certain Shareholders of the Company, a mechanism has been agreed whereby a transfer of shares between such Shareholders may, in certain circumstances, be effected by way of a call option. This option may only be exercised on the earlier of the first anniversary of Admission or the date on which an unconditional cash takeover bid for the Company which values the Company as at Admission at greater than US\$139 million becomes capable of acceptance. In the event that the call option is exercised, the number of shares held by the Shareholders who are party to the Call Option Deed will change and this will, potentially, impact on the number of shares held by persons interested in 3 per cent. or more of the capital of the Company.

Under the terms of the Call Option Deed, the maximum aggregate number of shares in which the Directors and persons connected to them might become interested is as follows:

<i>Name</i>	<i>Number of Ordinary Shares</i>
Anthony Kongats	6,538,674
Michael Quinn	2,522,998
John Murray	5,230,700

The call option will lapse and cease to become exercisable on the date 13 months after Admission.



8.6 As at 11 April 2006 (being the latest practicable date prior to publication of this document) save as disclosed in this paragraph 8, the Company is not aware of any person or persons who, directly or indirectly, jointly or severally, at the date of this document, or following the Placing and Admission, own or control the Company nor is the Company aware of any arrangements that may at a subsequent date result in a change of control of the Company.

## 9. Additional Information on the Directors

9.1 Other than directorships in the Company, the directorships and partnerships currently held by the Directors and held by them over the five years preceding the date of this document are as follows:

<i>Director</i>	<i>Current Directorships</i>	<i>Past Directorships</i>
Anthony Kongats	CAP-XX (Australia) Pty Ltd CAP-XX Research Pty Ltd	Spurjet Pty Ltd ACN 000 781 573 Pty Limited
<i>Director</i>	<i>Current Directorships</i>	<i>Past Directorships</i>
Anthony Kongats <i>continued</i>	CAP-XX USA, Inc. CAP-XX Inc. Ducon Industries Pty Ltd Ducon Management Pty Ltd Management Matters (Australia) Pty Ltd	
Michael Quinn	CAP-XX (Australia) Pty Limited CAP-XX USA, Inc. CAP-XX Inc. Innovation Capital Limited Innovation Capital Associates Pty Ltd Innovation Capital Fund II Pty Ltd Innovation Capital Management Partnership II Pty Ltd Innovation Capital Fund II LLP QRxPharma Pty Ltd Jurien Bay Pastoral Co. Pty Ltd Kaylara Pty Ltd NSW Entrepreneurship Centre Ltd RESMED, Inc. Enterix, Inc. ActiveSky, Inc.	ActiveSky Pty Ltd Heggies Bulkhaul Ltd Bedminster Bioconversion Australia Ltd Bedminster Resources Pty Limited Cairns Waste Management Group Pty Limited Port Stephens Waste Management Group Pty Limited Port Stephens Waste Management Leasing Pty Limited Canningvale Waste Pty Limited EWT Pty Limited Ourbizcard.com Pty Limited
Christer Harkönen	Fibox Oy Ab	Modines Ltd
John Murray	CAP-XX (Australia) Pty Ltd CAP-XX, Inc. CAP-XX USA, Inc. Managesoft Holdings Inc. Nanjop Pty Ltd Technology Venture Partners Pty Ltd Technology Venture Partners, Inc. Viator, Inc. Australian Venture Capital Association Ltd (as alternate of Allan Aaron) Emotiv Systems Inc.	Australian Venture Capital Association Ltd Inter-touch Holdings Pty Ltd Inter-touch (BVI) Limited Inter-touch Pty Ltd Managesoft Corporation Ltd Viator Systems Pty Ltd

<i>Director</i>	<i>Current Directorships</i>	<i>Past Directorships</i>
Graham Titcombe	Brufield Consultants Ltd Polyfuel Inc.	Infast Group plc Johnson Matthey Plc Wagon Group Plc Nanotecture Ltd

9.2 Anthony Kongats was a director of Spurjet Pty Limited which was placed into members' voluntary liquidation on 28 June 2002 with no loss to creditors. Mr Kongats resigned as a director of this company on 7 June 2003.

9.3 Anthony Kongats was a director of ACN 000 781 573 Pty Limited (formerly, Plessey Components Pty Limited). In January 1999 all assets of the business of the company ("Assets") were sold, with the intention of winding up the company by way of a members' voluntary liquidation. The purchaser of the Assets defaulted on payment of deferred consideration payable to Plessey Components Pty Limited. Ultimately, the costs of pursuing a claim for the unpaid consideration made it uneconomic to do so and the company was placed into creditors' voluntary liquidation on 18 July 2000. Mr Kongats resigned as a director of this company on 16 January 2002.

9.4 Save as disclosed above, none of the Directors has:

- (a) any unspent convictions in relation to indictable offences;
- (b) had a bankruptcy order made against him or made an individual voluntary arrangement;
- (c) been a director of a company which has been placed in receivership, compulsory liquidation, creditors voluntary arrangement or made any composition or arrangement with its creditors generally or of any class of its creditors whilst he was a director of that company or within 12 months after he ceased to be a director of that company;
- (d) been a partner in a partnership which has been placed in compulsory liquidation, administration or made a partnership voluntary arrangement whilst he was a partner in that partnership or within 12 months after he ceased to be a partner in that partnership;
- (e) had any asset placed in receivership or any asset of a partnership in which he was a partner placed in receivership whilst he was a partner in that partnership or within 12 months after he ceased to be a partner in that partnership; or
- (f) been publicly criticised by any statutory or regulatory authority (including recognised professional bodies) or disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company.

9.5 Save as disclosed in this document, Director has, or has had, any interest (whether direct or indirect) in any transaction which is or was of an unusual nature, contains or contained unusual terms or is or was effected during the current or immediately preceding financial year, or which was effected during any earlier financial year and remains in any respect outstanding or unperformed.

9.6 No loans or guarantees have been granted or provided to or for the benefit of the Directors by the Company.

9.7 No Director or member of a Director's Family has a Related Financial Product referenced to Ordinary Shares.

## 10. Directors' service agreements, letters of appointment and emoluments

The Directors have entered into service or consultancy agreements with the Company as follows:

10.1 Anthony Kongats is employed by CAP-XX (Australia) Pty Limited under the terms of a service agreement dated 14 September 2000 which is terminable by either party on 6 months' notice. Mr Kongats's salary is AUS\$165,000 per annum. Additionally, the Company contributes 9 per cent. of his salary to a superannuation scheme. With effect from 1 May 2006 Mr Kongats will be employed by CAP-XX Limited under the terms of a service

agreement dated 26 March 2006 which is terminable by either party on twelve months notice. Mr Kongats's total annual remuneration package (including contributions to a superannuation scheme) will be AUS\$315,000 and he is also eligible at the discretion of the Board to receive a bonus. Mr Kongats's current and future service agreements contain no other provisions relating to compensation on termination (other than payment in lieu of notice).

- 10.2 Michael Quinn was appointed as a non-executive director of CAP-XX Limited on 12 November 1998 and serves under the terms of a letter of appointment dated 12 April 2006. The terms of his appointment provide that he is entitled to a fee of £40,000 and options over 10,000 Ordinary Shares per annum together with the reimbursement of all reasonable travelling and other out-of-pocket expenses.
- 10.3 John Murray was appointed as a non-executive director of CAP-XX Limited on 18 September 2000 and serves under the terms of a letter of appointment dated 12 April 2006. The terms of his appointment provide that he is entitled to a fee of £30,000 and options over 10,000 Ordinary Shares per annum together with the reimbursement of all reasonable travelling and other out-of-pocket expenses.
- 10.4 Graham Titcombe was appointed, conditional on Admission, as a non-executive director of CAP-XX Limited under the terms of a letter of appointment dated 12 April 2006. The terms of his appointment provide that he is entitled to a fee of £40,000 per annum together with the reimbursement of all reasonable travelling and other out-of-pocket expenses.
- 10.5 Christer Harkönen was appointed, conditional on Admission, as a non-executive director of CAP-XX Limited under the terms of a letter of appointment dated 12 April 2006. The terms of his appointment provide that he is entitled to a fee of £30,000 and options over 10,000 Ordinary Shares per annum together with the reimbursement of all reasonable travelling and other out-of-pocket expenses.
- 10.6 Save as provided in paragraphs 10.2 to 10.5 above, there are no existing or proposed service agreements or terms of engagement between any of the Directors and any member of the Group.
- 10.7 It is estimated that under arrangements currently in force, the aggregate remuneration and benefits in kind to be paid to the Directors for the financial period ending 30 June 2006 is not expected to exceed Australian \$400,000.
- 10.8 The Company has entered into a Deed with each of the Directors under which the Company agrees to maintain a Directors and Officers insurance policy for each Director and indemnify each Director for liability incurred as a Director, together with rights of access to board papers and related records of the Company.

## 11. Taxation

### *Summary of Taxation Implications*

The following comments are intended to provide a general summary of the Australian and UK taxation implications that may arise for certain Shareholders in respect of holding and disposing of Ordinary Shares.

As taxation laws are complex, the following comments are intended as a general guide to the Australian and UK tax implications only. Shareholders should not rely on these comments as advice in relation to their own affairs but should consult their own tax adviser applicable to their own needs and circumstances.

The comments are based on the law and understanding of the practice of the tax authorities in the UK and Australia at the date of this document.

### *Australian Taxation*

The following comments are based on the provisions of the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997.

Investors should be aware that the taxation laws of Australia are complex and hence the comments provided in this report are, of necessity, general in nature. Investors should also be cognisant that any changes to the legislation or judicial interpretation of the legislation may affect their

investment. Investors should therefore not rely on this opinion, but should seek independent taxation advice in relation to their personal circumstances. You should also note that taxation is only one of the matters that you need to consider when making a decision on a financial product.

### *Taxation of Future Share Disposals*

#### *Australian Resident Shareholders*

The taxation treatment on the disposal of Ordinary Shares will depend upon whether the shares are held on revenue or capital account.

Australian resident Shareholders who trade in Ordinary Shares as part of the ordinary course of their business would hold their shares on revenue account. These Shareholders will be required to include the profit arising from the disposal of their Ordinary Shares in their assessable income. Conversely, a loss arising from the disposal of Ordinary Shares on revenue account would be allowed as a deduction from assessable income.

Generally, all other Australian Resident Shareholders will hold their Ordinary Shares on capital account. These Australian resident Shareholders must consider the impact of Australian capital gains tax rules on the disposal of their Ordinary Shares.

An Australian resident Shareholder will derive a capital gain where the proceeds received on disposal exceed the cost base of the Ordinary Share for capital gains tax purposes. Any net capital gain (after recoupment of capital losses) is included in the Shareholder's assessable income.

Similarly, a Shareholder will make a capital loss on the disposal of an Ordinary Share where the disposal proceeds received are less than the reduced cost base of the Ordinary Share for capital gains tax purposes. Capital losses can only be used to offset current year capital gains or carried forward to offset future capital gains.

A capital gains discount may apply to reduce the amount of net capital gains that might otherwise be included in a Shareholder's assessable income.

For Shareholders that are individuals and trustees (other than trustees of complying superannuation funds) a 50 per cent. capital gains tax discount is available if the shares are held for at least 12 months. This concession will result in only 50 per cent. of the capital gain (after recoupment of capital losses) being assessable.

For complying superannuation funds a 33 $\frac{1}{3}$  per cent. capital gains discount is available if the Ordinary Shares are held for at least 12 months. This concession will result in only 66 $\frac{2}{3}$  per cent. of the capital gain (after recoupment of capital losses) being assessable.

#### *Non-Australian Resident Shareholders*

Where Non-Australian resident Shareholders hold Ordinary Shares on revenue account, the profits on sale of the Ordinary Shares may be required to be included in the Shareholder's assessable income. This is subject to the application of any double tax treaty relief which may exclude such profits from Australian taxation.

For Non-Australian resident Shareholders who do not hold Ordinary Shares on revenue account the capital gains tax rules apply where the non-resident Shareholder together with their associates, beneficially held at least 10 per cent. of the Ordinary Shares on issue at any time during the five year period prior to disposal. Where the capital gains tax rules apply, relief from Australian tax may nevertheless be available under an applicable double tax treaty in certain circumstances. Where double tax treaty relief is not available, the assessable net capital gain is calculated in the same manner as applicable to Australian resident shareholders, including the discount available based on the type of shareholder.

#### *Dividends*

Broadly, dividends paid on Ordinary Shares may be "franked" or "unfranked". Franked dividends have franking credits attached. These credits represent underlying Australian corporate tax that has been paid on the profits distributed. To the extent a dividend is "unfranked" no franking credits are attached.

Depending on the residency status of the Shareholder and whether a dividend is franked or unfranked will have different income tax implications as set out below.

### *Australian Resident Shareholders*

Australian resident Shareholders will include dividends together with any attached franking credits in their assessable income. A tax offset will be allowed equal to the amount of franking credits attached to the dividend.

Generally, to be eligible for the franking credit and tax offset, Shareholders must have held the shares at risk for 45 days.

Individual Shareholders and Complying Superannuation Funds may receive a tax refund if the franking credits attached to the dividend exceed their tax liability for the income year.

Where the Shareholder is a corporate entity, the Shareholder will not be entitled to a refund for any franking credits that exceed their tax liability for the income year but may be entitled to a tax loss based upon the excess franking credits. The receipt of a franked dividend will also generally give rise to a credit in the corporate entity's franking account to the extent the dividend is franked.

### *Non-Australian Resident Shareholders*

Fully franked dividends, and dividends to the extent they are credited with foreign dividend account credits, paid to Non-Australian Resident Shareholders are generally not subject to withholding tax.

Unfranked dividends paid to Non-Australian Resident Shareholders will be subject to withholding tax at a rate of 30 per cent. on the unfranked component of the dividend paid. The withholding tax rate is generally reduced to 15 per cent. (lower for certain other countries) where there is an applicable double tax treaty. Where a withholding tax applies the Company will be required to deduct the appropriate amount of withholding tax prior to making the dividend payment.

### *Australian Stamp Duty*

No Australian stamp duty should arise on the issue of shares by the Company. Further, no Australian stamp duty should arise on any future dealings in the Ordinary Shares of the Company provided the Company is quoted on the Australian Stock Exchange or another recognised stock exchange.

### *Other Matters*

Australian Resident Shareholders will generally be required to notify the Company of their tax file number (or Australian Business Number if carrying on an enterprise) in respect of Ordinary Shares held. Failure to do so may result in the Company being required to withhold tax at the top marginal individual rate including Medicare levy (currently 48.5 per cent.). The Shareholder will however be entitled to a credit or refund in their tax returns to the extent of the tax withheld.

### *UK Taxation of UK Resident Shareholders*

The following paragraphs broadly outline the taxation position of UK Shareholders who are resident or ordinarily resident in the UK for tax purposes and who are holding Ordinary Shares beneficially as investments. The following paragraphs provide general advice only and may not apply to certain classes of investor who may be subject to special rules (such as dealers in securities, insurance companies, charities, collective investment schemes or pension providers). Each Shareholder's specific circumstances will impact on their taxation position. All Shareholders are recommended to obtain their own taxation advice. In particular, all Shareholders, including UK tax resident Shareholders are advised to consider the potential impact of any relevant double tax agreements on their shareholding.

### *Taxation of Chargeable Gains*

#### *UK Resident Individual Shareholders*

A disposal of Ordinary Shares by a Shareholder who is (at any time in the relevant UK tax year) resident or ordinarily resident in the UK or (where the circumstances apply) who resumes UK tax residence without achieving the appropriate number of intervening years of non residence, may give rise to a chargeable gain or allowable loss for the purpose of UK taxation of chargeable gains. Depending on the period of ownership and other factors, individuals may be entitled to taper relief which will serve to reduce the chargeable gain.

We note that gains on the disposal of Ordinary Shares may be subject to Australian capital gains tax in certain circumstances (refer to section regarding “Taxation of Future Disposals: non-Australian Resident Shareholders”). Individual shareholders should obtain their own advice on whether this Australian tax can be set against the liability that will arise in the UK.

#### *Non-UK Resident Individual Shareholders*

A Shareholder who is not resident in the UK for tax purposes but who carried on a trade, profession or vocation in the UK through a branch or agency and has used, held or acquired the Ordinary Shares for the purpose of such trade, profession or vocation may also be subject to UK taxation on chargeable gains on a disposal of shares if the shares are deemed to be situated in the UK.

Special rules may apply to tax gains on disposals made by individuals at a time when they are temporarily not resident nor ordinarily resident in the UK.

#### *Resident but Non domiciled individual shareholders*

Special rules apply for individuals who are resident but non domiciled for UK purposes and these individuals should seek further advice.

#### *UK resident Company shareholders*

Corporate shareholders would, on first principles, be taxable to corporation tax on a gain made on the sale of shares. There are a number of issues for corporate investors to consider in respect of this, in particular the availability of Substantial Shareholdings Exemption which, if it applies, can exempt the gain from charge. Further advice should be sought on these issues.

Companies are not entitled to taper relief but are due indexation allowance which may also reduce the chargeable gain.

#### *Dividends*

##### *UK Resident Individual Shareholders*

The Company will not be required to withhold UK tax from dividends paid on the Ordinary Shares. The dividend may be subject to Australian dividend withholding tax (“WHT”). The terms of the UK-Australian Tax Treaty may reduce the withholding tax rate to a range of between 0 per cent. and 15 per cent. depending on the status of the UK resident shareholder, and various conditions being met. The amount of the dividend received plus the WHT will be included in the assessable income of the UK Shareholder and will be subject to UK tax on such amount. In these circumstances the Shareholder should be entitled to credit the WHT against any liability to UK tax. The credit would be limited to the lesser of the WHT or the UK tax payable on the combined amount of the dividend plus WHT. If the WHT exceeds the UK tax payable on the dividend, the excess is neither creditable nor repayable.

The amount of tax payable by a UK resident individual will depend on the extent of their other income during the relevant UK tax year.

The UK tax treatment of any holder of Ordinary Shares who is resident in the UK, and carries on a trade, profession or vocation in the UK to which the Ordinary Shares are attributable may be different from that described above and such Shareholder should seek his own tax advice.

As noted above separate advice should be obtained by anyone who is UK resident but non UK domiciled.

##### *UK Resident Company Shareholder*

Dividends paid to a UK resident corporate shareholder will be assessable income of the shareholder. UK resident corporate shareholders may be able to obtain credit for the withholding tax and the underlying tax paid by the company, subject to certain conditions. The UK has complex double tax relief rules and rules relating to controlled foreign companies and UK resident corporate shareholders should seek further advice on these issues.

#### *Inheritance Tax*

If any individual Shareholder is regarded as domiciled in the UK for inheritance tax purposes, inheritance tax may be payable in respect of the Ordinary Shares on the death of the Shareholder or on any gift of the Ordinary Shares during their lifetime which qualifies as a chargeable lifetime transfer.

In the case of a Shareholder who is not regarded as domiciled in the UK for these purposes, no such UK inheritance tax will be payable if the Ordinary Shares are not situated in the UK for inheritance tax purposes.

### ***UK Stamp Duty and Stamp Duty Reserve Tax***

#### ***UK***

No stamp duty or stamp duty reserve tax is payable on the issue of Ordinary Shares by the Company, whether issued in certified form or in uncertificated form through CREST, unless they are issued into depositary or clearance arrangements and at the time of issue the Shareholders Register is maintained in the UK.

Provided the Shareholders register continues to be maintained outside the UK, no stamp duty reserve tax is payable on any agreement to transfer the Ordinary Shares not held in depositary or clearance arrangements. The purchaser may be liable to stamp duty reserve tax at 0.5 per cent. of the consideration on any agreement to transfer Ordinary Shares held in depositary or clearance arrangements.

However, a liability to stamp duty at 0.5 per cent. of the consideration paid (rounded to the next £5 above) may arise on any document of transfer. Any liability will normally be collected by a stockbroker or other intermediary member of the London Stock Exchange acting in the transaction. Reliefs may be available to remove these charges to stamp duty or stamp duty reserve tax if appropriate conditions are satisfied.

### **12. Working capital**

The Directors are of the opinion, having made due and careful enquiry and taking into account the net proceeds of the Placing, that the working capital available to the Company and the Group will be sufficient for its present requirements, that is for at least twelve months from the date of Admission.

### **13. Significant change**

Save as disclosed in this document, there has been no significant change in the trading or financial position of the Company, nor any significant acquisitions or disposals of assets since 31 December 2005.

### **14. Litigation**

There are no governmental, litigation or arbitration proceedings, active, pending or threatened against, or being brought by, any member of the Group which may have, or have had in the recent past, a significant effect on the Group or its financial position.

### **15. Placing Agreement**

On 12 April 2006, Collins Stewart, the Directors and the Company entered into the Placing Agreement, pursuant to which Collins Stewart agreed, as agent for the Company, to use its reasonable endeavours to procure subscribers for the Placing Shares at the Placing Price and, to the extent that such subscribers are not found, itself, as principal, to subscribe for any unplaced Placing Shares.

The Placing Agreement is conditional, amongst other things, upon Admission becoming effective by not later than 8.00 a.m. on 20 April 2006, or such later date as Collins Stewart and the Company may agree, being not later than 3.00 p.m. on 4 May 2006.

Under the terms of the Placing Agreement, the Company has agreed to pay to Collins Stewart a corporate finance fee and a broking fee of 4 per cent. of the total number of Placing Shares placed with places procured by Collins Stewart (or with Collins Stewart itself) multiplied by the Placing Price. In addition, pursuant to the terms of the Option Deed referred to in paragraph 16.7 below, the Company has agreed to issue to Collins Stewart, conditional on Admission, an option to subscribe for such number of Ordinary Shares as is equal to one per cent. of the issued share capital of the Company on Admission, as enlarged by the Placing.

The Placing Agreement contains warranties given by the Company and the Directors to Collins Stewart as to the accuracy of information contained in this document and certain other matters relating to the Group and its business. It also contains certain indemnities given by the Company

which are customary for inclusion in an agreement of such a kind. The terms of the Placing Agreement provide for termination of the agreement by Collins Stewart in certain circumstances prior to Admission, including circumstances where any of the warranties is found to be untrue, inaccurate or misleading in any respect which is material in the context of the Placing and Admission.

The liability of the Directors for breach of warranty is limited.

## 16. Material contracts

In addition to the Placing Agreement, details of which are set out in paragraph 15 of this Part V, the following contracts (not being contracts entered into in the ordinary course of business) have been entered into by members of the Group during the two years immediately preceding the date of this document and are, or may be, material:

- 16.1 A distribution agreement between CAP-XX (Australia) Pty Limited and Tecstar Company (“Tecstar”) dated 9 April 2003, pursuant to which Tecstar is granted a non-exclusive right to distribute and sell certain CAP-XX products in Japan. The agreement is terminable in April each year by either party giving not less than six months’ prior written notice to the other, failing which it will automatically renew for a further one year period. CAP-XX (Australia) Pty Limited may terminate the distribution agreement on 30 days’ notice if Tecstar fails to meet two consecutive quarterly purchase targets.

Under the terms of the Tecstar distribution agreement, CAP-XX (Australia) Pty Limited is required to provide certain assistance to Tecstar, including provision of a reasonable quantity of sales materials, assisting with technical problems and coordinating training seminars.

- 16.2 A distribution agreement between CAP-XX (Australia) Pty Limited and King Horn Enterprises Ltd (“King Horn”) dated 15 July 2005, pursuant to which King Horn is granted non-exclusive distribution rights for sale of certain CAP-XX products within Hong Kong and China. Upon expiry of the initial term in July 2007, the agreement will renew automatically every two years unless terminated by at least one month’s prior notice from either party.

Under the terms of the King Horn distribution agreement, CAP-XX (Australia) Pty Limited is required to provide certain assistance to King Horn, including provision of sales materials, assisting with technical problems, coordinating training seminars and provision of a current price list and list of products on a monthly basis.

- 16.3 A manufacturing agreement between CAP-XX (Australia) Pty Limited, Polar Twin Advance (M) Sdn.Bhd. (“Polar Twin Advance”) and Twin Advance (M) Sdn.Bhd dated 5 October 2004 for an initial term of two years. Unless otherwise agreed, on the day after expiry of the initial term, the agreement will be automatically renewed for a further two years.

Under the terms of this manufacturing agreement, Polar Twin Advance is engaged to provide certain manufacturing services, assist CAP-XX (Australia) Pty Limited in procuring materials to be used in its manufacturing operations and provide such other services related to the manufacture of CAP-XX products as CAP-XX (Australia) Pty Limited may request. CAP-XX provides specifications for each product range, technical assistance and primary raw materials and consigns to Polar Twin Advance certain equipment to use in the provision of services under the agreement.

- 16.4 A manufacturing agreement between CAP-XX (Australia) Pty Limited, Polar Twin Advance and AT Engineering Solution Sdn.Bhd (“AT Engineering”) dated 23 December 2005 pursuant to which CAP-XX (Australia) Pty Limited has granted to AT Engineering a non-exclusive, non-transferable license to manufacture reels of supercapacitor cell using such materials as Polar Twin Advance may, at its expense, supply to AT Engineering from time to time. Under the terms of this agreement, AT Engineering agrees to manufacture the V1.1MT Cell Machine for Polar Twin Advance. The machine is to be used by Polar Twin Advance in provision of manufacturing services under the agreement described above. The agreement will terminate on the date of acceptance by Polar Twin Advance of the machine as confirmed by Polar Twin Advance in writing or otherwise within 90 days of delivery.



16.5 A licence agreement between CAP-XX (Australia) Pty Limited and The State University of New Jersey (“Rutgers”) dated 1 February 2006, which will expire on the date of last expiry of the patents licensed under the agreement. Under the terms of this agreement, Rutgers has granted an exclusive licence to CAP-XX (Australia) Pty Limited in relation to certain of the Group’s patents for the commercial development, manufacture, use and sale of products, systems and services and with the right to grant sub-licenses. Rutgers is granted a non-exclusive, worldwide, perpetual, irrevocable, paid-up licence to make and use all improvements to inventions for educational, research and other non-business purposes and to publish the results thereof.

16.6 *Lock-in agreement*

A lock-in agreement dated 12 April 2006 and made between the Company (1), the Directors (2) and certain major shareholders in the Company, as listed in a schedule to the agreement (“Major Shareholders”) (3), pursuant to which each Director other than Anthony Kongats has agreed, for so long as he remains a director of the Company, not to dispose of any interest in Ordinary Shares for a period of twelve months from the date of Admission (the “Directors’ Lock-up Period”) without the prior written consent of Collins Stewart. Anthony Kongats has agreed not to dispose of any interest in Ordinary Shares for a period of twenty four months from Admission without the prior written consent of Collins Stewart, provided that he and his connected persons may dispose of up to 25 per cent. of their interests without such consent after the expiry of a fifteen month period following Admission. Additionally, each Major Shareholder has agreed not to dispose of any interest in Ordinary Shares which he or it may have at Admission for a period of 12 months from the date of Admission (the “Major Shareholders’ Lock-up Period”) without the prior written consent of Collins Stewart. In each case, these restrictions are subject to certain limited exceptions, including disposals by way of acceptance of a recommended takeover offer for the entire issued share capital of the Company.

Furthermore, each Director has agreed not to dispose of any interest in Ordinary Shares for a further period of twenty four months or, in the case of Michael Quinn, and John Murray, twelve months, following expiry of the Directors’ Lock-up Period, and each Major Shareholder has agreed not to dispose of any interest in Ordinary Shares for a period of twelve months following expiry of the Major Shareholders’ Lock-up Period without first having consulted with Collins Stewart so as to maintain an orderly market in the Ordinary Shares.

16.7 *Option Deed*

An option deed dated 12 April 2006 made between the Company (1) and Collins Stewart (2) pursuant to which the Company has agreed to issue to Collins Stewart, conditional on Admission, an option to subscribe for such number of Ordinary Shares as is equal to one per cent. of the issued share capital of the Company on Admission, as enlarged by the Placing.

This option may be exercised, at whole or in part, at any time, from time to time, up until the third anniversary of Admission.

16.8 *Letter of comfort*

A letter of comfort dated 5 April 2006 was provided by the Company to CAP-XX, Inc. as part of the demerger described in paragraph 4 of this Part V.

Pursuant to the letter of comfort, the Company undertakes to support the financial commitments of CAP-XX, Inc. The undertaking is limited for 12 months from the date of the letter and is capped at US\$100,000.

The Directors believe that CAP-XX, Inc. will be able to meet its financial commitments and do not expect the letter of comfort to be called on by CAP-XX, Inc.

**17. General**

17.1 The expenses of or incidental to the Placing and Admission are payable by the Company and are estimated to amount to £1.6 million (excluding value added tax).

- 17.2 The accounting reference date of the Company is 30 June.
- 17.3 Other than the intended application for Admission, the existing Ordinary Shares and the Placing Shares have not been admitted to dealings on any recognised investment exchange nor has any application for such admission been made, nor are there intended to be any other arrangements for dealings in the Company's shares.
- 17.4 Collins Stewart has given and not withdrawn its written consent to the inclusion in this document of references to its name and the form and context in which it appears.
- 17.5 Shelston IP has given and not withdrawn its consent to the inclusion in this document of its report in Part III and references to its name and the forms and contexts in which they appear.
- 17.6 Grant Thornton Corporate (NSW) Pty Ltd, who is a member firm of the Institute of Chartered Accountants in Australia, has given and has not withdrawn its written consent to the inclusion of its reports in Parts IV B and IV E of this Admission Document, the references thereto and to its name in the context in which they appear.
- 17.7 PricewaterhouseCoopers, the Company's auditors, is a member firm of the Institute of Chartered Accountants in Australia.
- 17.8 The Directors are unaware of any exceptional factors, which have influenced the Group's activities or of any recent trend concerning the development of the business of the Group.
- 17.9 In the opinion of the Directors, and save as disclosed in this document, there are no patents or licences, industrial, commercial or financial contracts or manufacturing processes which are of fundamental importance to the Group's business.
- 17.10 Monies received from applicants pursuant to the Placing will be held by Collins Stewart until such time as the Placing Agreement becomes unconditional in all respects. If the Placing Agreement does not become unconditional in all respects by 3 p.m. on 4 May 2006 (or such later date as the Company and Collins Stewart may agree) application monies will be returned to applicants at their risk without interest.
- 17.11 The Company has no investments currently in progress and the Board has made no firm commitments on any future investments.
- 17.12 As at 31 December 2005 (and as at the date of this document), the Group had 45 employees as follows:
- Sydney: 8 casual employees (7 from Operations and 1 from Applications Engineering); 33 full-time permanent employees (3 from Administration, 21 from Operations, 4 from Applications Engineering, and 5 from Research and Development); and 1 part-time permanent employee (from Administration);
- USA: 2 full-time permanent employees (both from Sales); and
- Taiwan: 1 full-time permanent employee (from Sales).
- 17.13 No person, other than professional advisers otherwise disclosed in this document and trade suppliers, has received, directly or indirectly, from the Company within the twelve months preceding the date of this document (or entered into contractual arrangements not otherwise disclosed in this document to receive, directly or indirectly, from the Company on or after completion of the Placing and Admission) any of the following:
- (i) fees totalling £10,000 or more;
  - (ii) securities in the Company with a value of £10,000 or more calculated by reference to the issue price; or
  - (iii) any other benefit with a value of £10,000 or more at the date of completion of the Placing and Admission.

## 18. Availability of Admission Document

Copies of this document are available during normal business hours on any weekday (except Saturdays, Sundays and public holidays) free of charge from the Company's registered office and at the offices of Collins Stewart and shall remain so available for at least one month after Admission.

12 April 2006

## PART VI

### Definitions

The following definitions apply throughout this document, unless the context otherwise requires:

“Admission”	the admission of the entire issued ordinary share capital of the Company, issued and to be issued pursuant to the Placing, to trading on AIM becoming effective in accordance with AIM Rules
“AIM”	AIM, a market operated by the London Stock Exchange
“AIM Rules”	the AIM Rules for companies published by the London Stock Exchange, as amended
“Articles”	the articles of association of the Company
“ASIC”	Australian Securities and Investments Commission
“Board”	the directors of the Company from time to time
“CAP-XX”	the Company
“City Code”	the City Code on Takeovers and Mergers
“Collins Stewart”	Collins Stewart Limited, regulated by the Financial Services Authority, and acting as nominated adviser and broker to the Company
“certificated” or “in certificated form”	not in uncertificated form (that is, not in CREST)
“Combined Code”	the Combined Code on Corporate Governance maintained by the Financial Reporting Council
“Companies Act” or “the Act”	the Companies Act 1985, as amended
“Company”	CAP-XX Limited (formerly known as Energy Storage Systems Ltd or Energy Storage Systems Pty Ltd)
“Constitution”	the constitution of the Company
“Corporations Act”	the Corporations Act, 2001 (Commonwealth of Australia)
“CREST”	the computerised settlement system operated by CRESTCo which facilitates the transfer of shares
“CRESTCo”	CrestCo Limited
“CREST Regulations”	the Uncertificated Securities Regulations 2001 (SI 2001/3755)
“Directors”	the directors of the Company, whose names are set out on page 3 of this document
“Family”	in relation to any person, his or her spouse and any child where such child is under the age of eighteen years including any trust in which such individuals are trustees or beneficiaries and any company over which they have control or more than 20 per cent. of its equity or voting rights (excluding treasury shares) in a general meeting, but excluding any employee share or pension scheme where such individuals are beneficiaries rather than trustees
“FSA”	the Financial Services Authority
“Group”	the Company and its subsidiary undertakings

“London Stock Exchange”	London Stock Exchange plc
“Official List”	the Official List of the UK Listing Authority
“Ordinary Shares”	ordinary shares of no par value each in the capital of the Company
“Placing”	the placing by Collins Stewart of the Placing Shares on the terms set out herein and in the Placing Agreement
“Placing Agreement”	the conditional agreement dated 12 April 2006 between the Company, the Directors and Collins Stewart, relating to the Placing, further details of which are set out in paragraph 15 of Part V of this document
“Placing Price”	93p per Ordinary Share
“Placing Shares”	18,433,333 Ordinary Shares being offered pursuant to the Placing
“Related Financial Product”	any financial product whose value in whole or in part is determined directly or indirectly by reference to the price of AIM securities or securities being admitted, including a contract for difference or a fixed odds bet
“Shareholder”	the holder of an Ordinary Share
“UK Listing Authority”	the FSA, acting in its capacity as the competent authority for the purposes of Part V of the FSA
“uncertificated” or “in uncertificated form”	recorded on the relevant register of Ordinary Shares as being held in uncertificated form in CREST and title to which, by virtue of the CREST Regulations, may be transferred by means of CREST
“United Kingdom” or “UK”	the United Kingdom of Great Britain and Northern Ireland
“United States” or “US”	the United States of America, its territories and possessions, any state of the United States and the District of Columbia

## GLOSSARY

GPRS	General Packet Radio Service
GSM	Global System for Mobile Communications
Edge	Enhanced Data Rates for GSM evolution
PDA	Personal Digital Assistant
PCMCIA	Personal computer memory card association
UMTS	Universal Mobile Telecommunications System