



14 January 2007

NZX Regulation Decision
Pike River Coal Limited
Application for Waivers from NZSX Rules 9.2.1 and 7.10.5

Background

1. Pike River Coal Limited (PRC) is proposing to undertake a 1 for 3.5576594 pro-rata renounceable rights issue (the "Issue") of 60,000,000 ordinary shares at \$1.00 to existing shareholders and noteholders for a capital raising of \$60,000,000 (in the event of any PRC optionholders exercising their options prior to the record date, the size of the Issue would increase accordingly).
2. The proceeds of the Issue are intended to be used to fund further development of the mine to achieve steady state production from hydro-monitor mining.
3. The Issue is to be fully underwritten by McDouall Stuart Group Limited ("McDouall Stuart"), New Zealand Oil & Gas Limited ("NZOG"), Gujarat NRE Limited ("Gujarat") and Saurashtra World Holdings Private Limited ("Saurashtra") on the following basis:
 - a. McDouall Stuart is the lead underwrite and is to under-write NZ\$32,094,204 of the Issue; and
 - b. NZOG is to underwrite NZ\$17,505,699 of the Issue which represents an amount equal to NZOG's 30.62% pro-rata entitlement under the Issue in respect of its shareholding (but not in respect of its holding of Notes);
 - c. Gujarat is to underwrite \$5,621,674 of the Issue;
 - d. Saurashtra is to underwrite \$4,778,423 of the Issue, together "the Underwriters", (the "Underwrite"). The Underwrite would not extend to any increase in the size of the Issue on account of PRC optionholders exercising their options prior to the record date.
4. Gujarat holds 9.83% of the shares in PRC and Saurashtra holds 8.4% of the shares in PRC. NZOG is a Related Party of PRC under NZSX Listing Rule 9.2.2 ("Rule") as it holds more than 10% of the shares in PRC.

5. In addition to the Issue, PRC is intending to raise approximately a further US\$30,000,000 (approximately NZ \$40 million) through a US Dollar Convertible Bond Facility (“Convertible Bond Facility”) taken up by Liberty Harbor, LLC (an investment fund that is part of Goldman Sachs Asset Management).
6. The Underwrite is a Material Transaction for the purposes of Rules 9.2.2(a) and (c) respectively, since:
 - a. The amount of the Underwrite exceeds 5% of PRC’s average market capitalisation; and
 - b. The Underwrite fees payable to the Underwriters, being 2.25% of the underwritten amount (except in the case of McDouall Stuart who is being paid 2.5%), are slightly in excess of 0.5% (being 0.56%) of PRC’s average market capitalisation.

Application 1 – Rule 9.2.1

7. PRC seeks a waiver from Rule 9.2.1 to the extent that it would otherwise require PRC to obtain shareholder approval to the Underwrite on the basis that it is a Material Transaction that includes a Related Party. In support of its application PRC submits that:
 - a. Footnote 1 to Rule 9.2.1 clarifies the policy behind Rule 9.2 (and the requirement to obtain shareholder approval for a related party transaction) in that it is to protect the non-associated shareholders. A waiver in this instance would not erode this policy for the reasons set out in the following paragraphs b to h.
 - b. PRC has determined that it is in the best interests of PRC that McDouall Stuart underwrite the Issue and arranging this underwrite has been conducted on an arms length basis and on commercial terms.
 - c. McDouall Stuart, as the proposed underwriter of the Issue, would not underwrite the Issue unless PRC’s 3 major shareholders supported the Issue by taking up their entitlements. In addition, McDouall Stuart has a policy of not being a party to an underwriting unless they have a substantial amount of an issue sub-underwritten or supported by the major shareholders, especially in larger issues.
 - d. Prior to the three major shareholders agreeing to take part in the Underwrite, PRC and McDouall Stuart sought other underwriters; widely canvassing third party institutions with no existing presence on the PRC register and a wide range of existing PRC shareholders. This confirmed the position that the underwrite of the \$60 million without the major shareholders would be difficult in the current market conditions and given the timing constraints. Accordingly, McDouall Stuart has stated that in its view the success of the rights issue is significantly enhanced by the public expression of support by the major shareholders. No other shareholder is being asked to publicly

state, and bind themselves to support the Issue. All other shareholders have other options available to them such as subscribing for their rights or allowing their rights to expire in the event of unfortunate market conditions during the offer period;

- e. Apart from, as set out below, the terms of the Underwrite have been negotiated by McDouall Stuart and PRC for all Underwriters. NZOG (as the Related Party Underwriter) has not had, nor will it have, any involvement in these negotiations, the underwriting processes or determining the underwriting allocations. NZOG's only negotiations with PRC have been as to the amount of the underwriting commitment that NZOG is prepared to assume and the necessity for each Underwriter's Underwrite to be inter-dependent.
- f. PRC does not wish to make the Issue unless it has confidence that it will be fully subscribed, since the majority of the Issue proceeds are earmarked for specific expenditure in the short term. In addition, the Convertible Bond Facility is conditional on the Issue being fully subscribed. PRC therefore has a strong commercial imperative to ensure that the Issue is fully subscribed and has put in place the Underwrite).
- g. The Underwriting Fee of 2.5% for McDouall Stuart and 2.25% for the Underwriters are commercial terms. For example, comparable underwriting fees are:

A2 Corporation	Capital raising of \$5 million	2.50% fee
Goodman Property Trust	Capital raising of \$275 million	3.00% fee

In addition, underwrite fees in Australia are typically much higher than in New Zealand. Approximately 15 – 20% of the issue is expected to be sub-underwritten in Australia.

- k. The Related Party to the Underwrite is getting an Underwriting Fee of 2.25% as compared to a fee of 2.5% for McDouall Stuart. McDouall Stuart has noted that the fee also takes into consideration some difficulty of attracting interest to the Underwrite due to the generally unfavourable market conditions and the timing of the offer (being that the offer period is protracted to approximately 2 months).

Application 1 – Rules

- 8. Rule 9.2.1 provides:

*“9.2.1 **Restriction:** An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:*

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or*

(b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.”

9. Footnote 1 to Rule 9.2.1 provides

“NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 if it is satisfied that the personal connections with, or involvement or personal interest of a Related Party are immaterial or plainly unlikely to have influenced the promotion of the proposal to enter into the transaction or its terms and conditions.”

Application 1 – Decision

10. On the basis that the information provided to NZX Regulation (“NZXR”) is full and accurate in all material respects, NZXR grants PRC a waiver from Rule 9.2.1 to the extent that it would otherwise require PRC to obtain shareholder approval for the Underwrite on the basis that it is a Material Transaction that includes a Related Party subject to the conditions that:

- a. The Independent Directors of PRC certify that the:
 - (i) terms of the Underwriting Agreement with McDouall Stuart and NZOG were negotiated on an arms’ length and commercial basis;
 - (ii) terms of the Underwriting Agreement with McDouall Stuart and NZOG are fair and in the best interests of PRC shareholders that are not associated with NZOG; and
 - (iii) directors of PRC associated with NZOG did not influence the promotion of the proposal to enter into the Underwriting Agreements or the setting of the terms of the Issue, the terms of the Underwriting Agreement or any allocation decisions.
- b. A solicitors’ opinion is provided to NZX confirming that in the opinion of the solicitor the terms of the Underwriting Agreement with NZOG (other than the fees) are consistent with the terms of an arm’s length underwriting transaction.
- c. An independent broker certifies to NZX that the Underwriting Fee to the Issue is fair and reasonable.

Application 1 - Reasons

11. In granting a waiver from Rule 9.2.1, NZXR considered that:

- a. The policy of Rule 9.2.1 is to regulate transactions whereby a Related Party to the transaction may gain favourable consideration due to their relationship with the issuer. However, NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 if it is satisfied that the involvement of a Related Party to the transaction was unlikely to have influenced the promotion to enter the transaction.
- b. PRC was entering into an underwriting agreement with McDouall Stuart, this was not promoted by the Related Party. The Related Party became involved at the request of McDouall Stuart after McDouall Stuart canvassed a wide range of institutions and shareholders in the course of the Underwrite negotiations confirming the need for the major shareholders to publicly state their support and commitment to the issue due to market conditions and the timing of the Issue. McDouall Stuart has a policy of not being a party to underwriting unless a substantial amount of an issue is sub-underwritten or supported by major shareholders. Accordingly, due to the size of this Issue, the commitment of the three major shareholders to Underwriting is a major endorsement for the issue and will ensure a higher level of success for the Issue.
- c. The terms and conditions of the Underwriting Agreement have been set on an arms length and commercial basis, between McDouall Stuart and PRC. NZOG has not been involved in these negotiations except as set out in paragraph b.
- d. The underwriting fee payable to the three major shareholders is slightly less than that payable to McDouall Stuart and is consistent with market rates.
- e. There are other unrelated parties who are sub-underwriting the Issue on the same terms as NZOG.
- f. Accordingly, the policy set out in Footnote 1 to Rule 9.2.1 as to when NZXR will waive the requirement to obtain shareholder approval of a Related Party transaction is satisfied.

Application 2 – Rule 7.10.5

12. PRC seeks a waiver from Rule 7.10.5 to the extent necessary to enable entitled persons to make applications in excess of their entitlements to the extent of any shortfall in the Issue. In support of their application, PRC submits:
 - a. There are only three large shareholders of PRC, being NZOG which holds in excess of 10% of shares, and Gujarat who holds 9.83 and Saurashtra who holds 8.4%.
 - b. PRC considers this assists the Underwriters, by potentially reducing the call on their commitments but without risk of any shareholder materially increasing its ability to exercise effective control of PRC.

- c. Rule 7.5 will not be breached by the issues of the shares since:
 - (i) The Takeovers Code prohibits NZOG from taking up any shares other than its pro rata entitlement in reliance on the relevant exemption in the Takeovers Code; and
 - (ii) No other person or group of persons is regarded by the Board of PRC as likely to increase its measure of effective control of PRC by virtue of the Underwrite.
13. PRC submits that the following conditions are appropriate to the granting of this waiver:
- a. Shares allocated to satisfy applications in excess of entitlements are divided up between those who apply in direct proportion to the number of shares held by the applicants as at the record date for entitlements; and
 - b. Rule 7.5 is not breached; and
 - c. The Offer documents for the Issue record that a waiver from Rule 7.10.5 has been granted by NZXR and details the conditions.

Application 2 – Rules

14. Rule 7.10.5 provides:

“7.10.5 ENTITLEMENT: A Renounceable Right shall not entitle the holder of the Right to apply for more than the entitlement of Securities except to enable acquisition of the number of Securities needed to give that holder a Minimum Holding.”

Application 2 – Decision

15. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants PRC a waiver from Rule 7.10.5 to the extent necessary to enable entitled persons to make applications in excess of their entitlements to the extent of any shortfall in the Issue.
16. The granting of a waiver in paragraph 16 above is subject to the conditions that:
- a. Shares allocated to satisfy applications in excess of entitlements are divided up between those who apply in direct proportion to the number of shares held by the applicants as at the record date for entitlements; and
 - b. Rule 7.5 is not breached;
 - c. Rule 9.2.1 is not breached; and
 - d. The Offer documents for the Issue record that a waiver from Rule 7.10.5 has been granted by NZXR and details the conditions.

Application 2 - Reasons

17. In granting a waiver from Rule 7.10.5, NZXR considered that:
 - a. There is precedent for the granting of a waiver from Rule 7.10.5 in decisions made to WDT on 11 November 2005 and ICP BIO Technology Limited on 3 July 2007.
 - b. It is a condition of the waiver that shares are divided up in direct proportion to the number of shares held by the applicants as at the record date for their entitlements. In addition it is a condition that Rules 7.5 and 9.2.1 are not breached. Accordingly there are unlikely to be any control changes occurring as a result of the issue. .

Publication

18. PRC has applied for the decision in respect of the application to remain confidential until PRC announces the proposed Issue to the market. NZXR agrees that it is reasonable for the matter to remain confidential as requested and accordingly NZXR grants confidentiality in relation to the application and NZXR's decision in respect of the application, until PRC announces the proposed Issue to the market at which time this determination will be published in the usual manner.

ENDS.