

**NZX Market Supervision Decision  
Pike River Coal Limited  
Application for waiver from NZSX Listing Rule 9.2.1**

**Background**

1. Pike River Coal Limited (“PRC”) is listed on the NZSX Market.
2. NZSX Listing Rule (“Rule”) 9.2.1 provides that an Issuer may not enter into a Material Transaction with a Related Party, unless approved by an Ordinary Resolution of the shareholders of that Issuer.
3. PRC is party to a Coal Offtake Agreement with Saurashtra Fuels Private Limited (“SFP”) (the “Coal Offtake Agreement”).
4. The Coal Offtake Agreement is a Material Transaction under Rule 9.2.2(a) because the price payable under the Coal Offtake Agreement over its expected life is likely to have an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of PRC.
5. Prior to PRC’s IPO, SFP entered into a subscription agreement with New Zealand Oil and Gas Limited (“NZOG”) and PRC, as part of which SFP and NZOG gave each other a first right of refusal to buy the others shares in PRC should they ever sell those shares. As a result, SFP has a Relevant Interest in NZOG’s shares in PRC, who is a holder of 10% or more of a Class of Equity Securities of PRC carrying Votes, and is accordingly a Related Party of PRC under Rule 9.2.3(b).
6. Prices payable, and volumes to be supplied, under the Coal Offtake Agreement will be negotiated periodically based on the benchmark price for the relevant period, on the basis that those prices then apply for the relevant period. Such negotiations are expected to occur annually and/ or quarterly, although this could shift to more frequent negotiations.

**Application**

7. PRC has applied to NZX Market Supervision (“NZXMS”) for a waiver from Rule 9.2.1 for a period of five years, to the extent that that Rule requires shareholder approval of prices payable under the Coal Offtake Agreement following price negotiations.
8. In support of its application PRC makes the following submissions:
  - (a) The price negotiations between PRC and SFP will be a two stage process:
    - (i) first, a benchmark price is set that is the price set by suppliers (by agreement with their counterparties) of Queensland hard coking coal that is similar to the coal produced by PRC; and
    - (ii) secondly, the independent directors of PRC will negotiate with SFP on an arm’s length basis, based on the benchmark price, and will not be affected

by the relationship between the parties, and the outcome will be commercial arm's length prices.

- (b) Details of the Coal Offtake Agreement were disclosed at pages 148 and 154 of PRC's initial offering document ("Offering Document"). Consequently, investors invested in PRC with full knowledge of the relevant contractual arrangements and their related party nature, including, in particular, the provision (and intended process) for the annual negotiation of prices payable under the Coal Offtake Agreement.
- (c) Accordingly, given such disclosure and compliance with the process described in the Offer Document, it is not envisaged that any shareholders of PRC will be prejudiced by the grant of the waiver that is the subject of this application.
- (d) The price negotiations will involve intense and complex commercial negotiations, the outcome of which are matters of commercial sensitivity and confidence to PRC. Therefore, PRC considers that the process of such negotiations should not be made public other than in the general terms outlined in any disclosure document. The overall outcome of the coal price negotiations will, however, be disclosed to the market pursuant to the continuous disclosure requirements of the NZSX and the ASX Listing Rules, and in PRC's financial statements which are made available to shareholders and the market.
- (e) In the opinion of PRC, it is not practical to have annual price negotiations, let alone quarterly (or more frequent) price negotiations, approved by PRC shareholders (because this would involve annual, quarterly or more frequent meetings and the information to be provided to shareholders would necessarily need to be limited so as to avoid commercial prejudice to PRC when PRC's competitors obtain the same information).
- (f) PRC considers that the expense and inconvenience of convening special meetings of shareholders annually, quarterly or more frequently, to seek approval would be unduly onerous and costly to PRC.
- (g) In the opinion of PRC, this application fits into the policy set out in footnote 2 to Rule 9.2.1, and the waivers granted to Oyster Bay Vineyards Limited on 8 May 2006 and PRC on 19 August 2009 and 20 April 2010 represent similar waivers.
- (h) An independent report from an independent appropriately qualified person appointed by PRC's Independent Directors and approved by NZX would be provided to NZXMS each year no later than 10 working days after:
  - (i) agreement has been reached on the coal prices for:
    - (A) each contract year (in relation to annual pricing); or
    - (B) the final quarter of each contract year (in relation to quarterly pricing); and

(ii) the end of the contract year (where pricing has been negotiated more frequently than quarterly);

stating that the agreed prices for each price negotiation are considered to be commercial arm's length prices.

(i) The independent Directors of PRC would certify to NZXMS no later than 10 working days after:

(i) agreement has been reached on the coal prices for each contract year (in relation to annual pricing) or for the final quarter of each contract year (in relation to quarterly pricing); or

(ii) the end of the contract year (where pricing is more frequent than quarterly); and

(iii) the independent appropriately qualified person has provided his/her report;

that the agreed prices for each price negotiation are considered to be commercial arm's length prices.

(j) Details of the Coal Offtake Agreement would be disclosed in any Offering Document, or Prospectus, PRC issues during the period it seeks to rely on the waiver.

(k) PRC would disclose details of the Coal Offtake Agreement, and the terms of the waiver, in each of its annual reports for the period it seeks to rely on the waiver.

(l) Granting a waiver in relation to the Coal Offtake Agreement for a period of five years retains the same safeguards for shareholders for each annual and/ or quarterly price determination as an annual waiver would, but avoids the cost to PRC and NZXMS of completing the application process on an annual basis.

### **Rule 9.2.1**

9. Rule 9.2.1 provides:

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.

10. Footnote 2 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 in respect of the annual or other renewal or renegotiation of transactions which have been approved by a resolution under Rule 9.2.1, if the Issuer produces a report from a suitable independent person as to the fairness of the terms of the renewal or renegotiation.

**Decision**

11. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants PRC a waiver from Rule 9.2.1 in respect of the negotiation of the price payable under the Coal Offtake Agreement for a period of five years from the date of this decision, on the following conditions:

- (a) An independent report from an appropriately qualified person appointed by PRC's independent Directors is provided to NZXMS, and the market, within 10 Business Days of:

- (i) agreement being reached on the coal prices for:
- (A) each contract year (in relation to annual pricing); or
  - (B) the final quarter of each contract year (in relation to quarterly pricing); or
- (ii) the end of the contract year (where pricing has been negotiated more frequent than quarterly);

stating that, in the writer's opinion, the negotiated prices:

- (i) represent commercial arm's length prices;
  - (ii) are fair and reasonable to all contract parties; and
  - (iii) reflect typical levels for contract prices settled at arms-length between major parties to internationally traded premium grade hard coking coal.
- (b) PRC's Independent Directors certify to NZXMS no later than 10 Business Days after:
- (i) agreement has been reached on the coal prices for each contract year (in relation to annual pricing), or for the final quarter of each contract year (in relation to quarterly pricing); or
  - (ii) the end of the contract year (where pricing has been negotiated more frequent than quarterly); and
  - (iii) the independent appropriately qualified person has provided his/her report;

that the agreed prices are considered to be commercial arm's length prices.



- (c) Details of the Coal Offtake Agreement are disclosed in any Offering Document, or Prospectus, that PRC issues during the period it seeks to rely on this waiver.
- (d) PRC disclose details of the Coal Offtake Agreement, and the terms of this waiver, in each of its annual reports for the period it seeks to rely on the waiver.

## Reasons

12. In coming to this decision, NZXMS has considered the following:

- (a) Details of the Coal Offtake Agreement were disclosed in the Offering Document, including the fact that the price payable under the Coal Offtake Agreement is to be negotiated annually, and that the price payable would be subject to the Independent Directors of PRC confirming that the price negotiated represents a commercial and arms' length price. Therefore shareholders have invested in PRC with full knowledge of the contractual arrangements and their related party nature.
- (b) PRC will provide NZXMS with certification from the independent directors of PRC that the negotiated prices under the Coal Offtake Agreements represent commercial and arm's length prices and PRC will obtain a report from an independent and appropriately qualified expert certifying that the price payable under the Coal Offtake Agreement are fair and reasonable to all contract parties, and reflect typical levels for contract prices settled at arms-length between major parties for internationally traded premium grade hard coking coal.
- (c) While it is expected that pricing negotiations will be undertaken annually and/ or quarterly, it is appropriate that a waiver be granted to facilitate more frequent negotiations during should such arrangements transpire.
- (d) It is appropriate that this waiver be granted for a longer finite period of time, so as to reduce the compliance cost of PRC having to obtain waivers annually, while ensuring that NZXMS has an opportunity to reconsider the appropriateness of the waiver again in five years time.
- (e) The application fits into the policy set out in Footnote 2 to Rule 9.2.1.
- (f) Similar waivers were granted by NZXMS to Oyster Bay Marlborough Vineyards Limited ("OBV") in 2004, 2005 and 2006 and to Speirs Group Limited on 13 August 2004.