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**DEED relating to BODY RECOVERY  
AT THE PIKE RIVER COAL MINE**

**17 July 2012**

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**Minister of Energy and Resources**

**and**

**Solid Energy New Zealand Limited**

**and**

**Pike River Mine (2012) Limited**

## PARTIES

- (1) **Hon Phil Heatley** Minister of Energy and Resources by and on behalf of the Crown in right of New Zealand (the **Crown**)
- (2) **Solid Energy New Zealand Limited**
- (3) **Pike River Mine (2012) Limited**

## INTRODUCTION

- A. During November 2010 a series of explosions at the Pike River Coal Mine (**Mine**) resulted in the deaths of 29 men working in the mine.
- B. The Government's expectation following the disaster has been that any incoming commercial operator of the mine would be committed to undertaking recovery of the remains of the men (**Recovery**) provided that can be achieved safely, is technically feasible and is financially credible.
- C. On 10 May 2012 Pike River Coal Limited (in Receivership) (**PRC**), Solid Energy New Zealand Limited and its subsidiary Pike River Mine (2012) Limited (together, jointly and severally, **Solid Energy**) executed a conditional Sale and Purchase Agreement in relation to PRC's assets (**SPA**).
- D. On 10 May 2012 the Crown and Solid Energy New Zealand Limited entered into a preliminary agreement by letter in relation to body recovery, which required them to enter into a deed that records those arrangements, including further detail and process requirements as appropriate (**Letter Agreement**).
- E. The purpose of this deed is to formally record those arrangements, which will apply if and when the SPA becomes unconditional.
- F. In addition, following the events in November 2010 the New Zealand Police (**Police**) and PRC entered into an agreement for the handover of mine stabilisation operations at the Pike River Mine that included terms requiring PRC to reimburse Police for certain out-of-pocket costs paid by Police to third parties in connection with the attempted rescue, recovery, stabilization and related activities at Pike River (**Reimbursement Obligation**) and to transfer that obligation with the coal mining permit for the Mine.
- G. Solid Energy New Zealand Limited has offered to make a one-off payment of \$750,000 to Police in full and final settlement of the Reimbursement Obligation. In order to secure early and certain repayment, and to ensure that the Reimbursement Obligation is not an obstacle to Solid Energy agreeing to enter into this deed, Police wish to accept that offer in accordance with the terms of a Reimbursement Deed that is intended to be executed at or about the same time as this Deed.

## DEED

### 1 Definitions and Interpretation

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#### 1.1 Definitions

In this Deed, unless the context otherwise requires:

- (a) Capitalised terms have the meaning ascribed to them in the Introduction to and clauses of this Deed; and
- (b) **Business Day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Wellington.

#### 1.2 General construction

In this Deed, unless the context otherwise requires:

- (a) a reference to a clause, schedule or annexure is a reference to a clause of, schedule to, or annexure to, this Deed;
- (b) references to the singular include the plural and vice versa; and
- (c) references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it.

#### 1.3 Interpretation

No term or condition of this Deed is to be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or that provision.

#### 1.4 Headings and table of contents

In this Deed, the table of contents, headings and words in bold are inserted for convenience and do not affect the interpretation of this Deed.

### 2 Term

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- 2.1 The provisions of this deed come into effect if and when the SPA becomes unconditional.
- 2.2 This deed continues until the expiry of the Pike River coal mining permit MP41453 and any successor permit (**Mining Permit**) unless the parties agree to a different termination date in writing.

### 3 Solid Energy's obligation

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- 3.1 Solid Energy will, in conjunction with commercial mining operations it undertakes within the Mining Permit, take all reasonable steps to recover the remains of the men in the Mine, provided that it reasonably considers Recovery can be achieved safely, is technically feasible and is financially credible.
- 3.2 The commitment in clause 3.1 above applies regardless of where Solid Energy ultimately decides to carry out mining operations within the Mining Permit area.

#### **4 Crown acknowledgement**

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- 4.1 The Crown acknowledges that if commercial mining operations do not proceed, whether for safety, technical feasibility or commercial reasons, it is highly unlikely the mens' remains will be recovered.

#### **5 Preparation of Recovery Plan**

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- 5.1 Following its completion of the purchase of the Mine, Solid Energy will develop options for the commercial reopening of the Mine. The parties note that commercial reopening of the Mine may not occur for several or more years. Solid Energy must consider whether Recovery can be achieved safely, is technically feasible and is financially credible in conjunction with each option it develops.
- 5.2 In assessing whether Recovery is financially credible, Solid Energy will discuss with the Crown what level of funding the Crown is prepared to contribute.
- 5.3 Any option that is developed into a detailed mining plan must include a plan for Recovery (**Recovery Plan**) where Solid Energy reasonably considers Recovery can be achieved safely, is technically feasible and is financially credible, in the context of that option.
- 5.4 If Solid Energy develops a Recovery Plan, it will notify the Crown of the plan and the estimated timing and cost of the Recovery process, and will provide a copy of the plan to the Crown.
- 5.5 If, on the other hand, Solid Energy considers, in relation to an option that is developed into a detailed mining plan, that Recovery cannot be achieved safely, is not technically feasible and/or is not financially credible, it will notify the Crown in writing of that and set out the reasons for that view.

#### **6 Establishment of trust or appointment of independent reviewer**

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- 6.1 The Crown may establish a trust or appoint an independent person(s) or body (**Independent Reviewer**) to:
- (a) peer review:
    - (i) Solid Energy's Recovery Plan (if any) and report to the Crown on whether the plan is safe and technically feasible and whether the estimated timing and costs are reasonable (if clause 5.4 above applies); or
    - (ii) any decision by Solid Energy that Recovery cannot be achieved (if clause 5.5 above applies) and report to the Crown on whether that decision is reasonable; and
  - (b) hold funds (including any Crown funds) that are contributed for the purpose of Recovery; and
  - (c) distribute those funds to Solid Energy for the purposes of funding Recovery provided it is satisfied that a Recovery Plan is being implemented properly.
- 6.2 Any trustees (or Independent Reviewer) will be appointed by the Crown in its sole discretion following consultation with Solid Energy and affected families and any trust deed (or terms of reference for the Independent Reviewer) will be developed in consultation with Solid Energy.

- 6.3 If a trust is established for the purposes set out in paragraph 6.1 above (**Trust**):
- (a) there will be 5 trustees, all of whom will be independent from Solid Energy;
  - (b) at least four of the trustees will be experts in relevant fields, such as mine atmosphere, mine construction and engineering, mine safety and coal geology;
  - (c) it would report regularly to a community group to be established including representatives of the Pike River families, the local council and the community generally and will report to the group on key decisions;
  - (d) it will not have any responsibility for approving or carrying out any aspect of a Recovery Plan.
- 6.4 The Crown will meet the reasonable costs associated with the Trust (or Independent Reviewer).
- 6.5 Solid Energy will provide all information and assistance to the Trust (or Independent Reviewer) as may reasonably be requested by it in connection with its functions, and consents to it sharing that information with the Crown.
- 6.6 Solid Energy consents to the Crown sharing that information with third parties provided that:
- (a) the information is reasonably related to Recovery; and
  - (b) the Crown takes reasonable steps to ensure that any confidential information is not disclosed by the third party.
- 6.7 Solid Energy will allow (and will provide all reasonable assistance to enable) the Trust or Independent Reviewer (or any agent or expert engaged by it) to inspect the Recovery operation at times and in a manner to be agreed between the Trust or Independent Reviewer and Solid Energy.

## **7 Implementation and oversight of Recovery Plan**

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- 7.1 The Trust (or Independent Reviewer) will review any Recovery Plan notified to the Crown and will report to the Crown on whether the plan is safe and technically feasible and whether the estimated timing and costs are reasonable.
- 7.2 If, after reviewing a Recovery Plan the Trust (or Independent Reviewer) does not agree that the plan is safe and technically feasible and the estimated time and costs are reasonable, it will give written reasons and Solid Energy will address those reasons and revise the plan accordingly. The Trust or Independent Reviewer will then peer review the revised Recovery Plan and report to the Crown on it as if it were a new Recovery Plan.
- 7.3 If a revised Recovery Plan cannot be agreed with the Trust or Independent Reviewer, but Solid Energy still considers its plan is safe, technically feasible and financially credible, it may proceed with implementing the plan, subject to meeting any regulatory requirements, including health and safety requirements.
- 7.4 The Trust (or Independent Reviewer) will hold any funding contribution from the Crown or any other party towards Recovery, and will only distribute funding to Solid Energy if it is satisfied that:
- (a) the Recovery Plan is safe, technically feasible and financially credible;

- (b) the Recovery Plan is being implemented;
- (c) Solid Energy has incurred costs relating to Recovery and has made a claim for reimbursement; and
- (d) the costs to be reimbursed relate solely to Recovery and not to work that would be required for commercial mining purposes in any event (even if they also contribute to Recovery taking place).

7.5 Solid Energy will use its reasonable endeavours to implement the Recovery Plan, subject to meeting any regulatory requirements, including health and safety requirements, with oversight from the Trust (or Independent Reviewer) where the Crown has notified Solid Energy that it has required the Trust (or Independent Reviewer) to undertake that oversight role.

## **8 Notification of Recovery Plan**

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8.1 If Solid Energy proposes to implement a Recovery Plan, it must:

- (a) notify the Police in writing to allow appropriate consultation regarding the protocols and procedures relating to the recovery of any human remains and the preservation of any evidence; and
- (b) notify the government official responsible for mine safety (**Chief Mines Inspector**) in writing to allow appropriate consultation regarding the safety of any Recovery Plan

such notification to be provided no later than 30 Business Days prior to the commencement of the proposed Recovery operation.

## **9 Sale or transfer of mining permit**

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9.1 If Solid Energy sells or transfers the Mining Permit, Solid Energy must procure that this Deed is novated so that the purchaser or transferee is subject to all of the obligations set out in this Deed (subject to any necessary modifications to take account of the change of permit holder).

## **10 General**

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### **10.1 Information requests**

- (a) The Crown may from time to time reasonably request information from Solid Energy on the progress of the preparation and implementation of the Recovery Plan or compliance with the obligation in clause 3 (**Information Request**).
- (b) Where an Information Request is made Solid Energy will provide the Crown with the requested information within 20 Business Days from the date of the request, or earlier if the Crown reasonably demonstrates that more urgent provision is warranted.

### **10.2 Priority of interpretation of agreements**

In the event of any inconsistency or difference in interpretation between this Deed and the Letter Agreement, the terms of this Deed shall prevail.

### **10.3 Severability**

If any provision of this Deed is, or becomes, unenforceable, illegal or invalid for any reason, the provision in question will be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision will be severed from this Deed without affecting the enforceability, legality or validity of any other provision of this Deed.

### **10.4 Dispute resolution**

- (a) If any dispute or difference (**Dispute**) arises between the parties in relation to this Deed the parties agree that they will endeavour in good faith to resolve the dispute through negotiation.
- (b) If the Dispute cannot be resolved through negotiation the parties agree to refer the matter to an arbitrator who will determine the Dispute in accordance with the Arbitration Act 1996. The arbitrator must be appointed by agreement between the parties or failing agreement by the President for the time being of the New Zealand Law Society.

### **10.5 Remedies**

The parties agree and accept that if Solid Energy breaches the terms of this Deed then damages are not an adequate remedy and the Crown is entitled to seek a mandatory injunction or specific performance to compel compliance with the obligations in this Deed.

### **10.6 Counterparts**

This Deed may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts delivered by facsimile transmission or by e-mail delivery shall create a valid and binding obligation of the party executing such counterpart.

### **10.7 Amendments**

This Deed may only be amended by written agreement between the parties. Any amendment must be recorded in a deed of variation of this Deed.

### **10.8 Disclosure**

The parties agreed and acknowledge that there is a significant public interest in the mutual obligations relating to the recovery of the bodies of the men in the Pike River Mine and therefore that this Deed will be made public following execution.

### **10.9 Notices**

All notices to be sent or delivered under this Deed must be in writing and delivered by email or letter to the following addressees

- (a) For the Crown to:

The Ministry of Business Innovation and Employment  
PO Box 3705  
Wellington

(b) For **Solid Energy** to:

Attention: General Counsel  
PO Box 1303  
Christchurch 8140  
Phone: 03 345 600  
Email: bill.dwyer@solidenergy.co.nz

(c) For **Police** (clause 8.1(a)) to Superintendent Read by email at [peter.read@police.govt.nz](mailto:peter.read@police.govt.nz) (or if he is unavailable, to the then District Commander Canterbury, currently Gary Knowles by email at [gary.knowles@police.govt.nz](mailto:gary.knowles@police.govt.nz));

(d) For the **Chief Mines Inspector** (clause 8.1(b)) to:

Chief Mines Inspector  
Labour Group  
Ministry of Business Innovation and Employment  
PO Box 3705  
Wellington

or in each case to a person and address as notified by the relevant organisation to the parties to this Deed from time to time.

#### 10.10 Governing Law

This deed is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Executed as a deed at Dunedin this 8<sup>th</sup> day of July 2012

by:



Hon Phil Heatley  
**Minister of Energy and Resources**

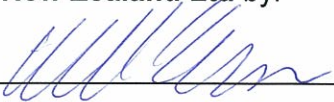
In the presence of:


Willis Ratahi  
Willis Ratahi  
Airport Dunedin

Signature  
Name and location



For and on behalf of  
**Solid Energy New Zealand Ltd** by:


  
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Dr Don Elder  
Chief Executive  
In the presence of:

  
\_\_\_\_\_  
Signature  
William John Dwyer  
\_\_\_\_\_  
Name and location  
Christchurch 17/7/2012

For and on behalf of  
**Pike River Mine (2012) Ltd** by:

  
\_\_\_\_\_  
Dr Don Elder  
Director

In the presence of:

  
\_\_\_\_\_  
Signature  
William John Dwyer  
\_\_\_\_\_  
Name and location  
Christchurch 17/7/2012

