

BRIEFING PAPER

WorkSafe's involvement at Pike River site

Date:	3 November 2017	Tracker #:	17/00713
Security:	In Confidence		

ACTION SOUGHT

Minister	Action sought	Deadline
Hon Iain Lees-Galloway Minister for Workplace Relations and Safety	<p>note the information in this briefing, including:</p> <ul style="list-style-type: none">▪ The outline of WorkSafe's role in relation to the Pike River Mine;▪ The regulatory activities which WorkSafe is currently involved with relating to the Pike River Mine; in particular (i) ensuring compliance with a current improvement notice; (ii) unmanned entry to the mine; and (iii) transfer of responsibility for the mine. <p>agree to forward a copy of this briefing to the Minister Responsible for Pike River Re-entry</p> <p>note that WorkSafe will provide appropriate support to the Government on any discussions of a plan for manned entry, consistent with its role</p> <p>agree to meet with WorkSafe officials to discuss the matters in this paper</p>	N/A

CONTACT INFORMATION

Name	Position	Telephone	Contact
Mike Hargreaves	Chief Legal Advisor	9(2)(a)	✓
Nicole Rosie	Chief Executive		-

CONSULTATION

Ministry of Business, Innovation and Employment (Saskia Patton)

Minister's Comments:

EXECUTIVE SUMMARY

The Ministry of Business, Innovation and Employment (MBIE) is the lead agency for providing advice and implementing the Government's policy on the establishment of the Pike River Re-entry Agency, through its Office of the Chief Executive.

WorkSafe, in its role as the Regulator, is already involved with a number of activities related to the Pike River Mine site, including:

- The installation of a permanent seal on the mine entrance.
- The unmanned entry project into the mine.
- The handover of responsibilities for the mine site to a new owner due to Solid Energy New Zealand going into liquidation.

In relation to Pike River, WorkSafe's role falls under three discrete headings, each of which will have a specific WorkSafe official assigned:

System leadership

With reference to the functions of promoting the sharing of information / fostering co-operative relationships, this would involve the fostering and maintenance of relationships between relevant organisations (e.g. MBIE, the Department of Conservation, Treasury, the agency responsible for re-entry) and WorkSafe, with the objective of improved health and safety outcomes in relation to any entry/recovery.

Harm prevention

WorkSafe has a role to play in helping to test and inform the new agency's view on whether a proposed method of entry into the mine would be in accordance with its legal obligations (this is WorkSafe's guidance, advice and information function). It would be a matter for the new agency as to whether it wished to seek or consider any such advice from WorkSafe in its decisions around re-entry.

Regulatory confidence

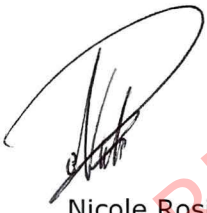
If WorkSafe believed that a proposed entry to the mine was to occur in a manner that did not meet the legal obligations of the PCBU, or seriously risked the health or safety of workers/others, then WorkSafe could resort to its suite of regulatory tools. In addition, in the event of an emergency at the mine, WorkSafe may appoint an incident controller under the Mines Rescue Act 2013.

We note the appointment of your colleague Andrew Little as Minister Responsible for Pike River Re-entry. We will work with you, Minister Little and relevant agencies to ensure the range of work required on Pike River is fully aligned across Government.

RECOMMENDATION

WorkSafe New Zealand recommends that you:

- a. **note** the information in this briefing, including:
- the outline of WorkSafe's role in relation to the Pike River Mine;
 - the regulatory activities which WorkSafe is currently involved with relating to the Pike River Mine; in particular:
 - i. ensuring compliance with a current improvement notice
 - ii. unmanned entry to the mine; and
 - iii. transfer of responsibility for the mine;
- noted*
- b. **agree** to forward a copy of this briefing to the Minister Responsible for Pike River Re-entry;
- agree/disagree*
- c. **note** that WorkSafe will provide appropriate support to the Government on any discussions of a plan for manned entry, consistent with its role;
- noted*
- d. **agree** to meet with WorkSafe officials to discuss the matters in this paper
- yes / no*



Nicole Rosie
Chief Executive
WorkSafe New Zealand

3 / 11 / 2017

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety

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PURPOSE

1. The purpose of this briefing is to give you an overview of WorkSafe's role in relation to Pike River, its relevant interactions to date, and its likely interactions into the future. This will help to ensure clarity, and also address some common public misconceptions about WorkSafe's role.

OVERVIEW

2. The Pike River Mine ('the mine') has not been in operation since the Tragedy on 19 November 2010. Solid Energy New Zealand Limited (SENZ) purchased the mine in 2012.
3. Following consideration of options to conduct a re-entry of the drift¹, SENZ decided in November 2014 not to re-enter the mine on the grounds that the risks of re-entry of the drift were too great.
4. In order for SENZ to make the mine safe for surrender to the Department of Conservation (DOC) as originally contemplated, it was necessary for SENZ to seal and abandon the Mine in accordance with the requirements of the Health and Safety at Work Act 2015 ('HSWA') and the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 ('the Regulations'). As at today's date, there are a number of outstanding matters relating to the mine. WorkSafe, in its role as the Regulator, is involved in the following three activities:
 - Sealing of the mine drift: SENZ is subject to an Improvement Notice² issued by WorkSafe requiring a permanent seal to be installed before the mine can be declared abandoned. This improvement notice was issued to ensure that the sealing of the mine occurred in a timely manner.
 - Entry to the drift: The previous Government directed and funded SENZ to consider the potential for an unmanned entry to the drift using robotic technology.
 - i. The date for compliance with WorkSafe's Improvement Notice was extended to 31 May 2018 to allow for this work to be considered.
 - ii. WorkSafe is currently considering an application from SENZ for exemption from a number of mining and electrical regulations that SENZ considers is necessary for unmanned entry to proceed.
 - Transfer of responsibility for SENZ sites: SENZ is preparing for liquidation and has advised that it intends to wind down operations on 15 December 2017. The mine will be transferred to a new entity, which will assume the relevant health and safety obligations.
5. WorkSafe's involvement in these activities, as the Regulator, is outlined in further detail below.

¹ The 'drift' is the term used to describe the 2400 metre passageway from the entrance of the mine, to its substantive workings.

² An Improvement Notice may be issued under [section 102](#) of the Health and Safety at Work Act 2015, where a health and safety inspector believes that a person is contravening a provision of HSWA or any of its regulations.

6. In addition, running parallel with these activities are two legal proceedings related to the Pike River tragedy:
- The appeal to the District Court by three Pike River families (Monk, Rockhouse, and Osborne) against the original Improvement Notices that were issued to SENZ for the sealing of the mine. The court has deferred this hearing until June 2018. Depending on the outcome of any unmanned/manned entry activities, this appeal may not need to proceed.
 - The Supreme Court has heard an appeal brought by two Pike families (Rockhouse and Osborne) against the decision by MBIE (as the then regulator) not to continue the prosecution of Peter Whittall (Chief Executive of the mine at the time of the tragedy).
 - i. The appellants have previously been unsuccessful in the High Court and Court of Appeal.
 - ii. WorkSafe is awaiting the decision of the Supreme Court. No timing has been set for this, though we anticipate it will be released before the end of the 2017. The appellants seek a declaration that the decision made was unlawful, invalid and unreasonable, but not a recommencement of the prosecution (which is now time-barred).

KEY INFORMATION AND ISSUES

WorkSafe's role

7. WorkSafe's main objective is to promote and contribute to securing the health and safety of workers and workplaces. Its functions include:
- Monitoring and enforcing compliance with relevant health and safety legislation;
 - Providing guidance, advice and information on workplace health and safety to persons who have duties under relevant health and safety legislation;
 - Engaging in, promoting, and co-ordinating the sharing of information with other agencies and interested persons that contribute to workplace health and safety;
 - Fostering a co-operative and consultative relationship between persons who have duties under relevant health and safety legislation.
8. In relation to Pike River, WorkSafe's role falls under three discrete headings, each of which will have a specific WorkSafe official assigned:

System leadership

With reference to the functions of promoting the sharing of information / fostering co-operative relationships, this would involve the fostering and maintenance of relationships between relevant organisations (e.g. MBIE, DOC, Treasury, the agency responsible for re-entry) and WorkSafe, with the objective of improved health and safety outcomes in relation to any entry/recovery.

Harm prevention

WorkSafe has a role to play in helping to test and inform the new agency's view on whether a proposed method of entry into the mine would be in accordance with its legal obligations (this is WorkSafe's guidance, advice and information function). It would be a matter for the new agency as to whether it wished to seek or consider any such advice from WorkSafe in its decisions around re-entry.

Regulatory confidence

If WorkSafe believed that a proposed entry to the mine was to occur in a manner that did not meet the legal obligations of any PCBU, or seriously risked the health or safety of workers/others, then WorkSafe could resort to its suite of regulatory tools. In addition, in the event of an emergency at the mine, WorkSafe may appoint an incident controller under the Mines Rescue Act 2013.

9. The decision regarding whether or not to enter the mine (manned, or unmanned) is one for the mine operator (currently SENZ). WorkSafe does not 'approve' entry to the mine.
10. Should the mine operator wish to enter the mine, then they must do so in accordance with their legal obligations under relevant health and safety legislation. This would include:
 - Ensuring, so far as is reasonably practicable, the health and safety of the workers who work for the PCBU (whether employees or contractors), while they are at work;
 - Ensuring, so far as is reasonably practicable, that the workplace, the means of entering/exiting and anything arising from the workplace are without risks to the health and safety of any person;
 - Specific requirements of the Regulations and the Electricity (Safety) Regulations 2010.

WorkSafe's regulatory involvement with the mine site to date

Compliance with improvement notice

11. SENZ made the decision to abandon the mine and return the mining permit to the Crown. The issue then became the method and timing to fully seal the mine in accordance with the requirements of both the HSWA and the Regulations. The sealing system decided upon by SENZ has two components to ensure the mine is safe to abandon and safe for visitors outside the mine:
 - A Type C seal³: A type of seal used in working mines to isolate an unused section to protect workers still working in other parts of the mine. This was installed in 2016.
 - Permanent seal: A much more substantial seal, with a design life of 100 years, to be constructed at the portal⁴ side of the Type C seal.
12. To ensure that the sealing of the mine occurred in a timely manner, WorkSafe has issued an Improvement Notice to SENZ for the completion of the permanent seal. Design work has been completed that would achieve this.
 - The date for the Improvement Notice has been extended to 31 May 2018 to allow for consideration to be given by SENZ to the unmanned entry project.

Unmanned entry project to the mine

13. SENZ was directed and funded by the previous Government to consider the potential for an unmanned entry to the drift beyond 170m (being the distance previously explored) using robotic technology.

³ Under [section 183](#) of the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016. The requirement for a Type C seal is that it be capable of withstanding an overpressure of 140 kilopascals.

⁴ The 'portal' is the term used to describe the hillside entrance to the mine.

14. SENZ has advised WorkSafe that, to proceed with the unmanned entry, exemptions relating to mining and electrical safety regulations are required. An application for exemption⁵ has been lodged with WorkSafe and is being assessed.
15. Whilst the indicative timetable given for the start of the unmanned entry project was December 2017, we understand this is now unlikely to be met.

Manned entry to the mine drift

16. WorkSafe will provide appropriate support to relevant agencies on any discussions of a plan for manned entry, consistent with the role of WorkSafe as we have set out above.
17. Consideration is currently being given by WorkSafe to how it will resource this work.

Transfer of responsibility for the mine site

18. SENZ was placed into voluntary administration in August 2015. SENZ has advised that it intends to wind down operations at the mine on 15 December 2017 (before going into liquidation in March 2018). It is important that any entity assuming responsibility for the site beyond SENZ's existence is fully aware of the liability and responsibilities associated with the site.
 - SENZ has legal obligations as a PCBU and mine operator under HSWA and the Regulations. Upon liquidation, SENZ would cease to owe these duties, and the entity that takes over responsibility for the mine will assume these. Other PCBU's who perform work in relation to the mine will also owe duties under HSWA.
 - SENZ's contractual requirement to the Crown is to leave the Pike River site "at a standard that achieves an environment that is safe, secure and stable in respect of health and safety and environmental obligations such that a Liquidator acting reasonably and responsibly would disclaim such asset"⁶. To meet this requirement the portal must be permanently sealed to the standard that meets SENZ's legal obligations (set out in the WorkSafe Improvement Notice).
19. DOC, along with the Treasury, Department of Prime Minister and Cabinet and the State Services Commission, has been negotiating the handover agreement between SENZ and the Crown. WorkSafe has been involved in the relevant discussions between agencies to date to ensure that existing health and safety obligations are understood and are able to be met by the entity that ultimately assumes responsibility for the mine.

NEXT STEPS

20. WorkSafe will continue to work with relevant agencies to provide aligned cross-agency advice to Government on the approach to current issues.
21. Communications messages are currently being developed between WorkSafe and MBIE and will be shared with your office.

⁵ Exemption from compliance with regulation under section 220 of the Health and Safety at Work Act 2015.

⁶ Quoted from Duncan Cotterill, which represents DOC.