

# Chatham Rock Phosphate Limited

## Independent Adviser's Report

### In Respect of the Allotment of Shares to Subsea Investments II, LLC

*September 2012*

#### Statement of Independence

Simmons Corporate Finance Limited confirms that it:

- has no conflict of interest that could affect its ability to provide an unbiased report
- has no direct or indirect pecuniary or other interest in the proposed transaction considered in this report, including any success or contingency fee or remuneration, other than to receive the cash fee for providing this report.

Simmons Corporate Finance Limited has satisfied the Takeovers Panel, on the basis of the material provided to the Takeovers Panel, that it is independent under the Takeovers Code for the purposes of preparing this Independent Adviser's Report.

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## 1. Introduction

### 1.1 Background

Chatham Rock Phosphate Limited (**Chatham Rock Phosphate** or the **Company**) holds mineral prospecting licence (**MPL**) 50270 covering an area of 4,726 km<sup>2</sup> on the central Chatham Rise some 450 km east of Christchurch that includes significant seabed deposits of rock phosphate and other potentially valuable minerals.

Chatham Rock Phosphate is listed on the alternative market (**NZAX**) operated by NZX Limited (**NZX**) with a market capitalisation of \$24 million as at 7 September 2012 and total equity of \$8 million as at 31 March 2012.

A profile of the Company is set out in section 3.

### 1.2 Subsea Investments II, LLC

#### *Overview*

Subsea Investments II, LLC (**Subsea**) currently holds 19,669,665 ordinary shares in the Company (representing 19.79% of the Company's ordinary shares) and 36,363,178 options.

Subsea is a private equity fund backed by limited partnerships and based in St Petersburg, Florida, USA. It focuses on investing in undersea mining and mineral exploration. The Subsea principals are associated with offshore mineral explorer Neptune Minerals, Inc. (a Nevada corporation) and were also involved in the establishment of NASDAQ Capital Market listed Odyssey Marine Exploration, Inc. (**Odyssey**).

We are advised that Subsea is not associated with any of Chatham Rock Phosphate's directors (the **Directors**) or major shareholders.

#### *Subsea Investment Agreement*

Subsea has been a shareholder in Chatham Rock Phosphate since 14 March 2012 when it entered into an investment agreement with the Company (the **Subsea Investment Agreement**).

Under the Subsea Investment Agreement, Subsea agreed to invest up to US\$6 million in the Company by subscribing for new ordinary shares at \$0.20 per share and through the provision of a loan that is convertible into ordinary shares (the **Convertible Loan**).

The key terms of the Convertible Loan as set out in the Convertible Loan Agreement dated 13 April 2012 are:

- the loan is for up to approximately \$4.7 million
- the loan is unsecured
- interest is payable at the rate of 2.5% per annum
- subject to meeting the provisions of the Takeovers Code (the **Code**), either party can give notice to convert the loan into ordinary shares at an issue price of \$0.20 per share

- if the Company's shareholders do not approve the conversion, the Company must repay the outstanding amount of the loan (including any accrued interest) plus an additional 25% of that amount
- the loan is otherwise repayable at the end of a 2 year term.

The Subsea Investment Agreement also provided for Subsea to be granted options for nil consideration. Each option can be exercised for one share at an exercise price of \$0.30 and the options expire on 31 March 2015.

The Convertible Loan Agreement stipulated that Subsea would be granted one option for every \$0.20 advanced under the Convertible Loan.

Subsea has invested approximately \$7.3 million in Chatham Rock Phosphate to date through subscribing for shares and providing the Convertible Loan.

#### *14 March 2012 Placement*

Chatham Rock Phosphate issued 11,442,641 ordinary shares to Subsea on 14 March 2012 at an issue price of \$0.20 per share and granted Subsea 11,442,641 options.

#### *20 April 2012 Placement*

At a special meeting of shareholders on 3 April 2012, the Company's shareholders approved:

- the issue of up to 1,853,429 ordinary shares to Subsea at an issue price of \$0.20 per share
- the grant of up to 18,319,264 options to Subsea
- the Company entering into the Convertible Loan Agreement with Subsea.

The shares were issued and the options were granted on 20 April 2012.

#### *Convertible Loan*

Subsea has advanced approximately \$4.6 million under the Convertible Loan Agreement.

The Company converted approximately \$0.5 million of the Convertible Loan into 2,411,219 ordinary shares on 20 June 2012 and approximately \$0.8 million into 3,962,376 ordinary shares on 27 July 2012. Both conversions were at an issue price of \$0.20 per share in accordance with the Convertible Loan Agreement.

Shareholder approval was not required for either conversion as Subsea's resultant shareholding level remained below 20%.

### Subsea's Current Shareholding

Subsea currently holds 19.79% of the Company's shares.

Subsea Shareholding in Chatham Rock Phosphate				
Date	Nature of Issue	No. of Shares	Issue Price (\$)	Consideration (\$000)
14 Mar 2012	Placement of shares	11,442,641	0.20	2,289
20 Apr 2012	Placement of shares	1,853,429	0.20	371
20 Jun 2012	Conversion of loan	2,411,219	0.20	482
27 Jul 2012	Conversion of loan	3,962,376	0.20	792
		<u>19,669,665</u>	<u>0.20</u>	<u>3,934</u>

It also holds 36,363,178 options and the amount outstanding on the Convertible Loan (including accrued interest) is approximately \$3.4 million at present.

### 1.3 Subsea Allotment

Chatham Rock Phosphate proposes to convert the outstanding Convertible Loan by allotting 16,867,592 shares to Subsea at an issue price of \$0.20 per share (the **Subsea Allotment**) in accordance with the Convertible Loan Agreement.

The key terms of the Subsea Allotment are:

- Subsea will convert the Convertible Loan balance of \$3,373,518.37 into 16,867,592 ordinary shares
- the shares will be issued at a price of \$0.20 per share
- the new shares will be issued on terms identical to, and will rank pari passu with, all of Chatham Rock Phosphate's existing shares
- the allotment is conditional on shareholder approval.

The Subsea Allotment will result in Subsea becoming the holder of up to 31.43% of the shares in the Company (assuming there are no other changes to the Company's share capital).

Changes in Shareholding Following the Subsea Allotment					
	Current		Subsea Allotment	Post Subsea Allotment	
	No. of Shares	%		No. of Shares	%
Subsea	19,669,665	19.79%	16,867,592	36,537,257	31.43%
Non-associated Shareholders	79,706,857	80.21%	-	79,706,857	68.57%
Total	<u>99,376,522</u>	<u>100.00%</u>	<u>16,867,592</u>	<u>116,244,114</u>	<u>100.00%</u>

## 1.4 Boskalis Offshore B.V.

### Overview

On 27 July 2012, the Company and Boskalis Offshore B.V. (**Boskalis**) entered into a contract for services and an investment agreement (the **Boskalis Investment Agreement**).

Boskalis is part of the Royal Boskalis Westminster N.V. group, the world's largest integrated dredging company.

Boskalis is undertaking a number of projects for the Company, including design engineering, logistics studies and preliminary design work and environmental studies including turbidity assessments.

Boskalis was issued 14,759,628 shares on 27 July 2012 at an issue price of \$0.22 per share. This represents 14.85% of the Company's shares currently on issue.

### Boskalis Placement

The Company proposes to issue up to 10,595,638 ordinary shares to Boskalis under the terms of the Boskalis Investment Agreement, subject to shareholder approval (the **Boskalis Placement**). The shares will be issued at \$0.22 per share.

The Subsea Allotment and the Boskalis Placement, if both approved, will result in Subsea holding 28.81% of the Company's ordinary shares and Boskalis holding 19.99%.

Changes in Shareholding Following the Subsea Allotment and Boskalis Placement					
	Current		Issue of Shares	Post Issues	
	No. of Shares	%		No. of Shares	%
Subsea	19,669,665	19.79%	16,867,592	36,537,257	28.81%
Boskalis	14,759,628	14.85%	10,595,638	25,355,266	19.99%
Other shareholders	64,947,229	65.36%	-	64,947,229	51.20%
Total	<u>99,376,522</u>	<u>100.00%</u>	<u>27,463,230</u>	<u>126,839,752</u>	<u>100.00%</u>

## 1.5 Special Meeting of Shareholders

Chatham Rock Phosphate's shareholders other than Subsea and its associates (the **Non-associated Shareholders**) will vote on an ordinary resolution in respect of the Subsea Allotment (resolution 1, which we refer to as the **Subsea Allotment Resolution**) at the Company's special meeting on 24 September 2012.

Subsea, along with its associates are not permitted to vote on the Subsea Allotment Resolution.

Shareholders will also vote on ordinary resolutions in respect of:

- the Boskalis Placement (resolution 2)
- the ratification of the placement of 36,685,767 equity securities during the past 12 months (resolution 3).

## 1.6 Regulatory Requirements

Rule 6 of the Code prohibits:

- a person who holds or controls less than 20% of the voting rights in a code company from increasing its holding or control of voting rights beyond 20%
- a person holding or controlling 20% or more of the voting rights in a code company from increasing its holding or control of voting rights

unless the person and that person's associates comply with exceptions to this fundamental rule.

One of the exceptions, set out in Rule 7(d) of the Code, enables a person and its associates to increase their holding or control of voting rights by an allotment of shares if the allotment is approved by an ordinary resolution of the code company.

The Subsea Allotment will result in Subsea increasing its control of the voting rights in Chatham Rock Phosphate from 19.79% to either 28.81% or 31.43% (depending on whether the Boskalis Placement is approved).

Accordingly, the Non-associated Shareholders will vote at the Company's annual meeting on the Subsea Allotment Resolution in accordance with the Code.

Rule 18 of the Code requires the directors of a code company to obtain an Independent Adviser's Report on the merits of an allotment under Rule 7(d).

This Independent Adviser's Report is to be included in the notice of meeting pursuant to Rule 16(h).

## 1.7 Purpose of the Report

The Directors have engaged Simmons Corporate Finance Limited (**Simmons Corporate Finance**) to prepare an Independent Adviser's Report on the merits of the allotment of shares under the Subsea Allotment in accordance with Rule 18 of the Code.

Simmons Corporate Finance was approved by the Takeovers Panel on 12 June 2012 to prepare the Independent Adviser's Report.

Simmons Corporate Finance issues this Independent Adviser's Report to the Directors for the benefit of the Non-associated Shareholders to assist them in forming their own opinion on whether to vote for or against the Subsea Allotment Resolution.

We note that each shareholder's circumstances and objectives are unique. Accordingly, it is not possible to report on the merits of the allotment of shares for each shareholder's circumstances under the Subsea Allotment. This report on the merits of the allotment of shares under the Subsea Allotment is therefore necessarily general in nature.

This Independent Adviser's Report is not to be used for any other purpose without our prior written consent.

We note that an Independent Adviser's Report is not required in respect of the Boskalis Placement as Boskalis' resultant shareholding level will not reach or exceed 20%.

## 2. Evaluation of the Merits of the Allotment of Shares to Subsea

### 2.1 Basis of Evaluation

Rule 18 of the Code requires an evaluation of the merits of the allotment of shares to Subsea under the Subsea Allotment.

There is no legal definition of the term *merits* in New Zealand in either the Code or in any statute dealing with securities or commercial law.

In the absence of an explicit definition of *merits*, guidance can be taken from:

- the Takeovers Panel guidance note on the role of independent advisers dated August 2007
- definitions designed to address similar issues within New Zealand regulations which are relevant to the proposed transaction
- overseas precedents
- the ordinary meaning of the term *merits*.

We are of the view that an assessment of the merits of the Subsea Allotment should focus on:

- the rationale for the Subsea Allotment
- the terms and conditions of the Subsea Allotment
- the impact of the Subsea Allotment on Chatham Rock Phosphate's financial position
- the impact of the Subsea Allotment on the control of the Company
- the impact of the Subsea Allotment on Chatham Rock Phosphate's share price
- other benefits and disadvantages to Subsea of the Subsea Allotment
- the benefits and disadvantages for the Non-associated Shareholders of the Subsea Allotment
- the implications if the Subsea Allotment Resolution is not approved.

Our opinion should be considered as a whole. Selecting portions of the evaluation without considering all the factors and analyses together could create a misleading view of the process underlying the opinion.



## 2.2 Summary of the Evaluation of the Merits of the Subsea Allotment

**In our opinion, after having regard to all relevant factors, the positive aspects of the allotment of shares under the Subsea Allotment outweigh the negative aspects from the perspective of the Non-associated Shareholders.**

Our evaluation of the merits of the Subsea Allotment is set out in detail in sections 2.3 to 2.12. In summary, the key factors leading to our opinion are:

- the rationale for the Subsea Allotment is sound. It arises from the conversion of the Convertible Loan in accordance with the terms of the Convertible Loan Agreement that were approved by the Non-associated Shareholders at the 3 April 2012 special meeting
- the terms and conditions of the Subsea Allotment are reasonable. The issue price of \$0.20 per share is the same as the issue price for the 19,669,665 ordinary shares that have been issued to Subsea between 14 March 2012 and 27 July 2012 under the Subsea Investment Agreement and the Convertible Loan Agreement
- the Subsea Allotment will significantly strengthen the Company's financial position as it will convert approximately \$3.4 million of debt to equity
- the Subsea Allotment will increase Subsea's ability to influence the outcome of shareholder voting but not by any significant degree
- the Subsea Allotment will not increase Subsea's influence over the Company's board of directors and operations
- the Subsea Allotment will see the Non-associated Shareholders' voting rights diluted by approximately 15%. The combination of the Subsea Allotment and the Boskalis Placement will see the Non-associated Shareholders' voting rights diluted in total by approximately 22%
- the Subsea Allotment is unlikely to have any significant impact on the Company's share price
- the Subsea Allotment is unlikely to have any significant impact on the liquidity of Chatham Rock Phosphate's shares in the near term
- the Subsea Allotment is unlikely to reduce the attraction of Chatham Rock Phosphate as a takeover target to any significant degree
- the implications of the Subsea Allotment not being approved by the Non-associated Shareholders are severe. The Subsea Allotment will not proceed, resulting in the Company being required to repay the outstanding amount of the Convertible Loan (including any accrued interest) plus an additional 25% of that amount within 20 days of the special meeting. The Company will however have the right to convert the Convertible Loan to ordinary shares to the extent that Subsea held not more than 19.99% of the ordinary shares in the Company.

### 2.3 The Rationale for the Subsea Allotment

The Subsea Allotment is a transaction arising from the Subsea Investment Agreement that the Company entered into in March 2012 to raise up to US\$6 million of capital. This capital was vital to fund the Company's work program which is estimated to be in the vicinity of \$8 million to \$10 million for the 2013 financial year.

The Subsea investment was structured as a combination of a subscription for shares and the provision of the Convertible Loan so that funds could be provided by Subsea in an expedient manner in order to finance the Company's work program. If the investment were to have been made solely through a subscription for shares, the Company would have needed to seek shareholder approval (as it now does for the Subsea Allotment) and therefore would not have received any funds from Subsea until such time as shareholder approval was received. Structuring a portion of the investment by way of the Convertible Loan enabled Subsea to provide the funds as and when they were needed by the Company, with the opportunity for Subsea to convert the advanced funds to an increased shareholding level at a later date.

The Non-associated Shareholders approved the Convertible Loan Agreement at the Company's special meeting on 3 April 2012. The terms included that the Company was required to seek shareholder approval of the conversion of the Convertible Loan in accordance with the Code within 6 months of the special meeting. The Subsea Allotment Resolution is for this purpose.

We note that since the approval of the Convertible Loan Agreement, approximately \$1.3 million of the Convertible Loan has already been converted into 6,373,595 ordinary shares at an issue price of \$0.20 per share in June and July 2012. Shareholder approvals of those conversions were not required as Subsea's resultant shareholding level did not reach 20%.

### 2.4 Terms of the Subsea Allotment

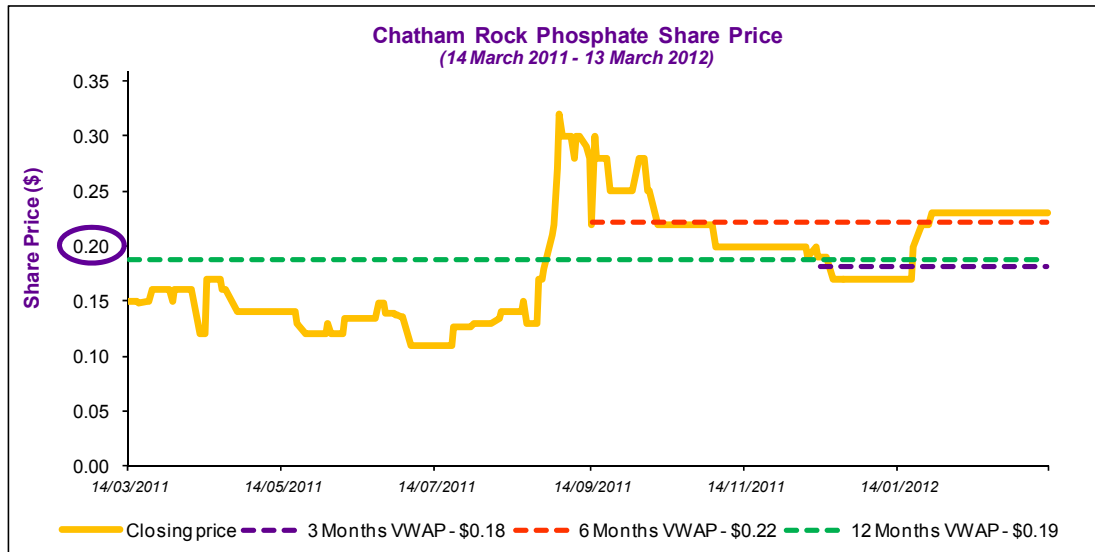
The key terms of the Subsea Allotment are:

- the allotment of 16,867,592 ordinary shares
- an issue price of \$0.20 per share
- the shares will rank equally in all respects with the existing ordinary shares.

The issue price of \$0.20 per share is the same as for the 19,669,665 ordinary shares that have been issued to Subsea between 14 March 2012 and 27 July 2012 under the Subsea Investment Agreement and the Convertible Loan Agreement.

The Convertible Loan Agreement was approved by the Non-associated Shareholders at the Company's special meeting on 3 April 2012, including the term that the Convertible Loan was convertible into ordinary shares at an issue price of \$0.20 per share.

At the time of entering into the Subsea Investment Agreement in March 2012, the Company's volume weighted average share price (**VWAP**) ranged from \$0.18 (based on the 3 months to 13 March 2012) to \$0.22 (based on 6 months). The issue price of \$0.20 was broadly in line with the traded prices of the Company's shares.



We note that since the Company entered into the Subsea Investment Agreement, the Company has made significant placements of shares to Odyssey on 18 June 2012 (9,320,348 shares at \$0.23 per share) and Boskalis on 27 July 2012 (14,759,628 shares at \$0.22 per share) and the Company's shares have traded at a VWAP of \$0.25.

## 2.5 Impact on Financial Position

A summary of Chatham Rock Phosphate's financial position is set out in section 3.8. Its total equity as at 31 March 2012 was \$8.2 million, equating to \$0.13 per share (based on the number of ordinary shares on issue at that date).

The Subsea Allotment will significantly strengthen the Company's financial position:

- approximately \$3.4 million of debt will be converted to equity
- equity per share will increase as the Subsea Allotment is at \$0.20 per share.

## 2.6 Impact on Control

Chatham Rock Phosphate currently has 99,376,522 ordinary shares on issue and 37,113,178 options.

### Shareholders

The names, number of shares and percentage holding of the Company's 10 largest shareholders as at 3 September 2012 are set out in section 3.5.

Chatham Rock Phosphate currently has 4 shareholders who each control more than 5% of the voting rights in the Company.

The shareholding levels after the Subsea Allotment and the Boskalis Placement are set out below.

<b>Changes in Shareholding Levels Following the Subsea Allotment and Boskalis Placement</b>						
	<b>Current</b>		<b>Post Subsea Allotment</b>		<b>Post Boskalis Placement</b>	
	<b>No. of Shares</b>	<b>%</b>	<b>No. of Shares</b>	<b>%</b>	<b>No. of Shares</b>	<b>%</b>
Subsea	19,669,665	19.79%	36,537,257	31.43%	36,537,257	28.81%
Boskalis	14,759,628	14.85%	14,759,628	12.70%	25,355,266	19.99%
Widespread	13,913,411	14.00%	13,913,411	11.97%	13,913,411	10.97%
Odyssey	9,320,348	9.38%	9,320,348	8.02%	9,320,348	7.35%
Others	41,713,470	41.98%	41,713,470	35.88%	41,713,470	32.89%
Non-associated Shareholders	79,706,857	80.21%	79,706,857	68.57%	90,302,495	71.19%
<b>Total</b>	<b>99,376,522</b>	<b>100.00%</b>	<b>116,244,114</b>	<b>100.00%</b>	<b>126,839,752</b>	<b>100.00%</b>

### **Subsea's Shareholding Level**

The allotment of shares under the Subsea Allotment will enable Subsea to increase its shareholding in Chatham Rock Phosphate from 19.79% to either 28.81% or 31.43% (depending on whether the Boskalis Placement is approved) without having to make a formal offer to all shareholders in accordance with Rules 7(a) or 7(b) of the Code. This is the principal reason why the Non-associated Shareholders have the opportunity to vote for or against the Subsea Allotment Resolution under the provisions of the Code.

### **Shareholding Voting**

Subsea's 19.79% shareholding currently gives it the ability to influence the blocking of special resolutions (which require the approval of 75% of the votes cast by shareholders).

Under the Companies Act 1993 (the **Act**), a special resolution is required to:

- adopt, alter or revoke a company's constitution
- approve a major transaction
- approve an amalgamation of a company
- place a company in liquidation.

While a 19.79% interest is technically not sufficient to block a special resolution, in reality, it most likely is in a listed company with more than 290 shareholders (as Chatham Rock Phosphate currently has). This is because a number of shareholders in listed companies tend not to vote on resolutions and hence the relative weight of the 19.79% interest increases.

The allotment of shares to Subsea will ensure that Subsea can singlehandedly block special resolutions, irrespective of whether it holds 28.81% or 31.43%.

At present no single shareholder can control the outcome of an ordinary resolution (greater than 50% of votes cast) or a special resolution. This position will not change if the shares are allotted to Subsea under the Subsea Allotment.

The ability for any shareholder to influence the outcome of voting on the Company's ordinary resolutions or special resolutions may be reduced by external factors such as the Company's constitution, the Act and the NZAX Listing Rules.

We are of the view that the allotment of shares to Subsea under the Subsea Allotment will increase Subsea's ability to exert shareholder control over Chatham Rock Phosphate but not to a significant degree.

Subsea currently holds 36,363,178 options, which have an exercise price of \$0.30 each and expire on 31 March 2015. As long as Subsea holds 20% or more of the voting rights in the Company, it will not be permitted to exercise any of the options without the approval of the Non-associated Shareholders in accordance with the provisions of the Code.

### **Board Control**

As set out in section 3.4, the Company currently has 3 directors, none of whom are deemed to be associates of Subsea.

The Directors advise that Boskalis will appoint one representative to the board of directors in the near future.

We are advised by the Directors that there are no agreements with Subsea for Subsea to have any representation on the board of directors, irrespective of whether the Subsea Allotment Resolution is approved or not.

### **Operations**

We are advised by the Directors that as a cornerstone shareholder (without director representation), Subsea is consulted from time to time on strategic issues of significance. However, outside of the Subsea Investment Agreement, there is no legal obligation for Subsea to be consulted. The Subsea Allotment will not change the Company's interaction with Subsea and therefore will not have any material impact on the level of influence that Subsea exerts over the Company's operations.

## **2.7 Dilutionary Impact**

The Subsea Allotment will result in the Non-associated Shareholders' proportionate shareholdings in the Company being diluted by approximately 15%. The combined effect of the Subsea Allotment and the Boskalis Placement is that Non-associated Shareholders' (other than Boskalis) proportionate shareholdings in the Company will be diluted by approximately 22%.

<b>Dilutionary Impact on Non-associated Shareholders</b>				
	<b>Subsea</b>	<b>Boskalis</b>	<b>Other Non-associated Shareholders</b>	<b>Total</b>
Current	19,669,665	14,759,628	64,947,229	99,376,522
Subsea Allotment	16,867,592	-	-	16,867,592
Post Subsea Allotment	<u>36,537,257</u>	<u>14,759,628</u>	<u>64,947,229</u>	<u>116,244,114</u>
<i>Dilutionary impact</i>				14.5%
Boskalis Placement	-	10,595,638	-	10,595,638
Post Boskalis Placement	<u>36,537,257</u>	<u>25,355,266</u>	<u>64,947,229</u>	<u>126,839,752</u>
<i>Dilutionary impact</i>				21.7%

By way of example, a Non-associated Shareholder holding 1,000,000 shares currently holds a 1.01% shareholding in the Company. This shareholding will be diluted by 14.5% down to 0.86% following the Subsea Allotment and diluted in total by 21.7% down to 0.79% following the Subsea Allotment and the Boskalis Placement.

## 2.8 Impact on Share Price and Liquidity

### Share Price

A summary of Chatham Rock Phosphate's daily closing share price and daily volume of shares traded from 5 January 2009 is set out in section 3.10. Trading in the Company's shares is extremely thin. The shares have traded at a VWAP of \$0.24 in both the past month and the past year.

Although the Subsea Allotment issue price of \$0.20 per share is lower than the current share price, the market has been aware of the terms of the conversion of the Convertible Loan since March 2012 and the Non-associated Shareholders approved the Convertible Loan Agreement at the Company's special meeting on 3 April 2012. Given this level of disclosure, we are of the view that the terms of the conversion of the Convertible Loan have most likely been factored into the Company's share price and accordingly, the Subsea Allotment will not have any significant impact on the Company's share price in the near term.

### Liquidity

A summary of the levels of trading in the Company's shares is set out in section 3.10. Trading in the Company's shares is extremely thin. Only 1.4% of the Company's shares have traded in the past year.

The size of the pool of shares held by the Non-associated Shareholders will not change as a result of the Subsea Allotment.

In our view, the Subsea Allotment in itself is unlikely to have a positive or negative effect on the liquidity of Chatham Rock Phosphate's shares.

## 2.9 Benefits to Subsea

The key benefit of the Subsea Allotment is that it provides Subsea with the opportunity to increase its shareholding (and level of control) in the Company at an issue price of \$0.20 per share.

The shareholding level that Subsea will hold will be either 28.81% or 31.43% depending on whether the Boskalis Placement is approved.

## 2.10 Disadvantages to Subsea

The key issues and risks that are likely to impact upon the business operations of Chatham Rock Phosphate are set out in section 3.6.

As Subsea's ownership in Chatham Rock Phosphate increases, so does its exposure to these risks.

## 2.11 Benefits and Disadvantages for the Non-associated Shareholders

### *Key Benefits*

The key benefit to the Non-associated Shareholders of the Subsea Allotment is that it converts \$3.4 million of debt into equity, thereby strengthening the Company's financial position.

The Subsea Allotment also further signals Subsea's confidence in the future prospects of Chatham Rock Phosphate.

### *Main Disadvantages*

The main disadvantage is that the Subsea Allotment will increase Subsea's shareholding in the Company from 19.79% to either 28.81% or 31.43%, thereby increasing Subsea's ability to control the outcome of shareholder voting while the Non-associated Shareholders' shareholdings will be diluted by between approximately 15% and 22% (depending on whether the Boskalis Placement is approved).

### *Unlikely to Reduce the Possibility of a Takeover Offer from Subsea*

As long as Subsea holds more than 20% and not more than 50% of the voting rights in the Company, it cannot increase the level of its shareholding unless it complies with the provisions of the Code. It will only be able to acquire more shares in the Company if:

- it makes a full or partial takeover offer or
- the acquisition is approved by way of an ordinary resolution of the Non-associated Shareholders or
- the Company makes an allotment of shares which is approved by way of an ordinary resolution of the Non-associated Shareholders.

Subsea could also increase its level of shareholding in the Company if Chatham Rock Phosphate undertook a share buyback that was approved by the Company's shareholders and Subsea did not fully participate in the buyback.



Subsea is seeking to increase its shareholding from 19.79% to either 28.81% or 31.43% by way of shareholder approval (depending on whether the Boskalis Placement is approved). Assuming the Subsea Allotment is approved, Subsea will not be able to increase its shareholding unless it complies with the provisions of the Code.

We are not aware of any intention on Subsea's part to make a takeover offer. However, if it did have such intent, we are of the view that an increase in its shareholding from 19.79% to either 28.81% or 31.43% is unlikely to reduce the likelihood of a takeover offer for the Company from Subsea.

### ***Unlikely to Reduce the Possibility of Other Takeover Offers***

Any bidder looking to fully take over the Company would need to ensure that Subsea would accept its offer, irrespective of whether it held 19.79% or either 28.81% or 31.43% of the shares in the Company.

In the event that a bidder made a partial takeover offer for (say) 50.1% of the Company, the increase in Subsea's voting rights to either 28.81% or 31.43% would technically still be insufficient to prevent a successful partial takeover at that level of control.

However, the bidder would most likely need to ensure that Subsea would accept its offer (or at least accept the offer in respect of some of its shares), irrespective of whether it held 19.79% or either 28.81% or 31.43% of the shares in the Company, so as to ensure the success of the offer.

In our view, the increase in Subsea's shareholdings from 19.79% to either 28.81% or 31.43% is unlikely to reduce the attraction of Chatham Rock Phosphate as a takeover target to other parties to any significant degree.

## **2.12 Implications of the Subsea Allotment Resolution not Being Approved**

If the Subsea Allotment Resolution is not approved then the Subsea Allotment cannot proceed.

In accordance with the Convertible Loan Agreement, Chatham Rock Phosphate must, at Subsea's discretion, pay to Subsea within 20 business days of the special meeting the outstanding amount of the Convertible Loan (including any accrued interest) plus an additional 25% of that amount. This would amount to approximately \$4.2 million.

The Company has the right to convert the Convertible Loan to ordinary shares to the extent that Subsea held not more than 19.99% of the ordinary shares in the Company. Assuming the Boskalis Placement was approved, the Company could convert approximately \$0.4 million of the Convertible Loan into ordinary shares and then would be faced with a payment of approximately \$3.7 million under the terms of the Subsea Investment Agreement.

## **2.13 Voting For or Against the Subsea Allotment Resolution**

Voting for or against the Subsea Allotment Resolution is a matter for individual shareholders based on their own views as to value and future market conditions, risk profile and other factors. Shareholders will need to consider these consequences and consult their own professional adviser if appropriate.

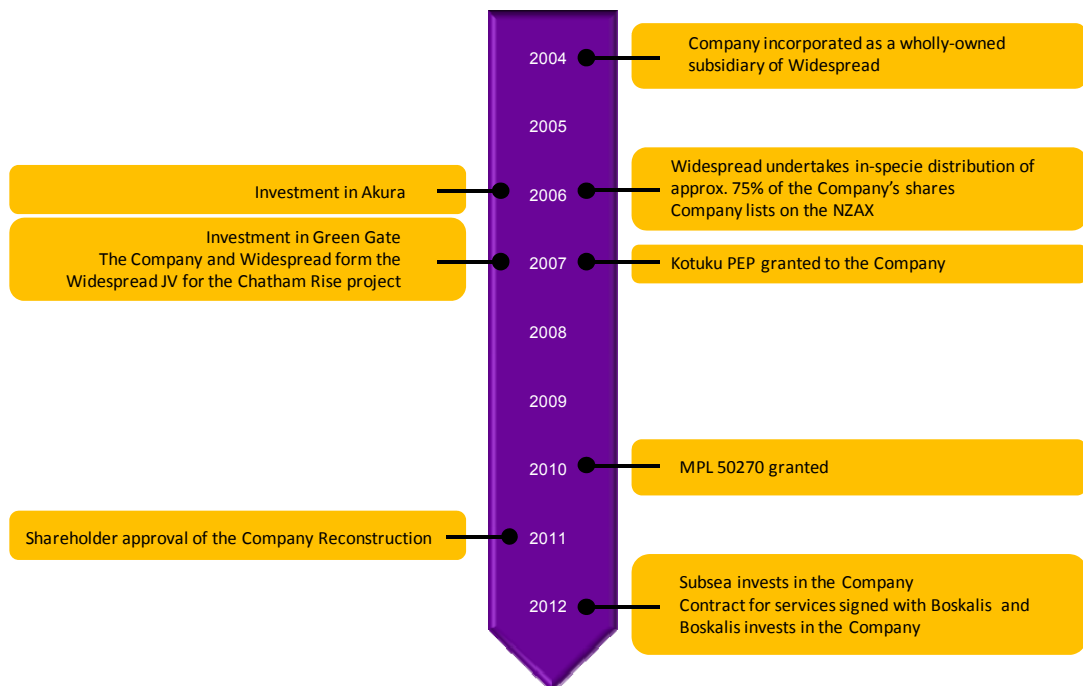


### 3. Profile of Chatham Rock Phosphate

#### 3.1 Background

Chatham Rock Phosphate was incorporated on 27 April 2004 as WPL (Newco) Limited as a wholly-owned subsidiary of Widespread. It changed its name to Widespread Energy Limited on 22 May 2006 and to Chatham Rock Phosphate Limited on 14 April 2011.

The Company's key events are set out below.



#### 3.2 Company Reconstruction

In October 2010, a decision was made to reconstruct the various assets held by the Company and Widespread in order to facilitate the raising of the significant capital required to develop the Chatham Rise project (the **Company Reconstruction**).

Prior to the Company Reconstruction, Chatham Rock Phosphate's main assets were:

- a 90% interest in the Chatham Rise project with Widespread holding the other 10% (the **Widespread JV**)
- petroleum exploration permit 38526 over oil seeps at Kotuku on the West Coast of New Zealand (the **Kotuku PEP**)
- an 11.8% interest in Green Gate Limited (**Green Gate**), a New Zealand based oil and gas exploration company
- a 13.3% interest in Akura Limited (**Akura**), a Fiji based oil and gas exploration company.

The Company Reconstruction involved:

- the Company becoming the dedicated vehicle for the Chatham Rise project prior to an offshore listing occurring
- the selling off of the other investments held by the Company as well as undertaking an issue of shares to Widespread so that the Company would then hold 100% of the Chatham Rise project.

The key benefits of the Company Reconstruction were that the operations of the Company would be singularly focused for taking to an offshore market to raise capital and Widespread would remain a significant shareholder.

The Company Reconstruction was approved on 30 March 2011 by the shareholders of both the Company and Widespread.

On 14 April 2011, the transformation of the Company from an investor in predominantly oil and gas projects into a fertiliser project development company was consummated by the name change to Chatham Rock Phosphate Limited.

### **3.3 Nature of Operations**

Chatham Rock Phosphate holds MPL 50270 covering an area of 4,726 km<sup>2</sup> on the central Chatham Rise, some 450 km east of Christchurch.

The area encompassed by the MPL includes significant seabed deposits of rock phosphate nodules that were identified by several scientific surveys in 1952 and 1967/68 and subsequently investigated by various companies and government researchers from 1975 to 1981. The rock phosphate is located in a 1 metre deep layer of sandy silt at the floor of the ocean in water depths of 375 to 425 metres. Because of the accessibility of the deposits, extraction of the resource will not require offshore drilling and instead other extraction methods such as dredging may be used.

An estimated resource of approximately 25 million tons has been identified from an intensively sampled 380 km<sup>2</sup> area. An average phosphate content of 22% P<sub>2</sub>O<sub>5</sub> has been determined from field trials.

The MPL was granted to the Company by the Crown Resources division of the Ministry of Economic Development in February 2010 for 2 two-year terms. It gives the Company the prospecting rights over the area and priority rights to apply for a mining licence after meeting exploration work program obligations. Current work includes designing an extraction method with Boskalis, environmental data collection and monitoring and financing to the stage of a commercial production decision.

### **3.4 Directors**

The directors of Chatham Rock Phosphate are:

- Chris Castle, managing director
- Jill Hatchwell
- Linda Sanders.

The Company has stated that the composition of the board of directors will change when it undertakes a secondary compliance listing on the Toronto Stock Exchange secondary (venture) board (the TSX.V).

We are advised by the Directors that Boskalis will shortly appoint one representative to the board of directors.

### 3.5 Capital Structure and Shareholders

#### Ordinary Shares

Chatham Rock Phosphate currently has 99,376,522 ordinary shares on issue held by 297 shareholders.

The names, number of shares and percentage holding of the 10 largest shareholders as at 3 September 2012 are set out below.

Chatham Rock Phosphate's 10 Largest Shareholders		
Shareholder	No. of Shares Held	%
Subsea	19,669,665	19.79%
Boskalis	14,759,628	14.85%
Odyssey	9,320,348	9.38%
Mineral Investments	8,674,518	8.73%
Widespread	5,238,893	5.27%
Tasman Portfolio Limited	3,694,850	3.72%
International Mining & Financing Corporation	3,292,005	3.31%
Tattersfield Securities Limited	2,000,000	2.01%
Stephen Ward, Julie Ward and Elizabeth Welson	1,788,054	1.80%
John Beggs, Susan Beggs and David Butler	1,723,000	1.73%
Subtotal	70,160,961	70.60%
Others (287 shareholders)	29,215,561	29.40%
<b>Total</b>	<b>99,376,522</b>	<b>100.00%</b>

Source: NZX Data

Subsea acquired 11,442,641 shares on 14 March 2012 and a further 1,853,429 shares on 20 April 2012 under the Subsea Investment Agreement.

Boskalis was issued 14,759,628 shares on 27 July 2012 under the Boskalis Investment Agreement.

Odyssey is engaged in deep-ocean exploration and is listed on the NASDAQ Capital Market. It was issued 9,320,348 shares on 18 June 2012 at an issue price of \$0.23 per share in satisfaction of payment for US\$1.68 million of services under a charter agreement. The total charter costs were US\$5.68 million.

Mineral Investments is a wholly owned subsidiary of Widespread. In total, Widespread holds 13,913,411 shares (14.00%).

Tasman Portfolio Limited is owned by Joseph van Wijk, a director of investment firm Tasman Capital Limited.

International Mining & Financing Corporation is a private US company owned by James Askew. Mr Askew is a director of several public-listed mining companies.

Tattersfield Securities Limited is ultimately owned by Allan Tattersfield.

## Options

Chatham Rock Phosphate currently has 37,113,178 options on issue, of which 36,363,178 are held by Subsea.

Chatham Rock Phosphate Options				
Grant Date	Option Holder	No. of Options	Expiry Date	Exercise Price
30 Sep 2010	Robin Falconer Associates	500,000	30 Sep 2014	\$0.50
28 Feb 2011	Kenex Limited	250,000	28 Feb 2015	\$0.50
14 Mar 2012	Subsea	11,442,641	31 Mar 2015	\$0.30
20 Apr 2012	Subsea	12,362,500	31 Mar 2015	\$0.30
11 May 2012	Subsea	8,557,302	31 Mar 2015	\$0.30
22 Aug 2012	Subsea	4,000,735	31 Mar 2015	\$0.30
		<u>37,113,178</u>		

Based on the Company's current share price, all of the options are out of the money at present.

### 3.6 Key Issues Affecting Chatham Rock Phosphate

The main industry and specific business factors and risks that the Company faces include:

- the mining trials may conclude that the project is not economic
- Chatham Rock Phosphate may not be granted a mining licence or environmental consent
- exploration results may be less favourable than expected
- a slowdown in the world economy could prompt agribusinesses to reduce demand for fertilisers, thus reducing demand for phosphate and placing downward pressure on phosphate prices
- natural disasters and / or actions by stakeholders (eg strikes) may negatively impact on production volumes
- extraction costs may escalate (eg due to worldwide political instability making the supply of oil more expensive)
- foreign currency fluctuations may adversely affect earnings
- possible changes in the mining regulatory environment may negatively impact the project
- the inability to adequately finance the Company's operations.

### 3.7 Financial Performance

A summary of Chatham Rock Phosphate's recent financial performance is set out below.

Summary of Chatham Rock Phosphate Financial Performance				
	Year to 31 Mar 09 (Audited) \$000	Year to 31 Mar 10 (Audited) \$000	Year to 31 Mar 11 (Audited) \$000	Year to 31 Mar 12 (Audited) \$000
Net finance income / (expense)	35	35	(18)	20
Administrative expenses	(172)	(142)	(528)	(761)
Exploration costs written off	(107)	-	(83)	-
Impairment on investments	(272)	(91)	-	-
(Loss) after income tax	<u>(516)</u>	<u>(198)</u>	<u>(629)</u>	<u>(741)</u>
Basic earnings per share (cents)	(3.2)	(1.1)	(2.5)	(1.5)

*Source: Chatham Rock Phosphate audited financial statements*

Net finance income consists mainly of interest income on bank deposits and gains / losses on the disposal of financial assets.

Administrative expenses largely relate to directors' fees, legal fees, management fees and consultancy fees. The decrease in administration expenses in the 2010 financial year was mainly due to a reduction in consultancy fees. The increases in the 2011 and 2012 financial years were due to higher levels of corporate activity and related mainly to IPO expenses, legal fees, management fees and travel expenses.

Exploration costs written off in the 2009 financial year related to the surrendering of a portion of the Offshore West Coast permit area held by Chatham Rock Phosphate covering an area of 3,269 km<sup>2</sup> off the West Coast of the South Island between Hokitika and Punakaiki. This permit was fully surrendered in August 2010, with the remaining exploration costs written off in the 6 months to September 2010.

Impairment on investments in the 2009 and 2010 financial years related to the reduction of licences held by Green Gate from 5 licences at the beginning of the 2009 financial year to one licence at the end of the 2010 financial year.

### 3.8 Financial Position

A summary of Chatham Rock Phosphate's recent financial position is set out below.

Summary of Chatham Rock Phosphate Financial Position				
	As at 31 Mar 09 (Audited) \$000	As at 31 Mar 10 (Audited) \$000	As at 31 Mar 11 (Audited) \$000	As at 31 Mar 12 (Audited) \$000
Current assets	388	553	455	477
Non current assets	352	298	115	15
Intangible assets	287	440	4,283	11,374
Total assets	<u>1,027</u>	<u>1,291</u>	<u>4,853</u>	<u>11,866</u>
Current liabilities	(63)	(132)	(250)	(3,621)
Total equity	<u>964</u>	<u>1,159</u>	<u>4,603</u>	<u>8,245</u>

*Source: Chatham Rock Phosphate audited financial statements*

The Company's main current assets are cash and cash equivalents of \$0.3 million of cash on hand and trade and other receivables of approximately \$0.2 million as at 31 March 2012.

Non current assets consist of a NZX bond.

Intangible assets consist of capitalised exploration and evaluation costs in respect of the Chatham Rise project. \$7.1 million of exploration costs were capitalised in the 2012 financial year.

The Company's liabilities consist of trade and other payables.

The \$3.6 million increase in total equity in the year to 31 March 2012 included \$4.4 million from the issue of shares and the exercise of options.

### 3.9 Cash Flows

A summary of Chatham Rock Phosphate's recent cash flows is set out below.

Summary of Chatham Rock Phosphate Cash Flows				
	Year to 31 Mar 09 (Audited) \$000	Year to 31 Mar 10 (Audited) \$000	Year to 31 Mar 11 (Audited) \$000	Year to 31 Mar 12 (Audited) \$000
Net cash flow from / (used in) operating activities	(345)	(203)	(1,292)	(4,501)
Net cash from / (used in) investing activities	(85)	(30)	(28)	144
Net cash from / (used in) financing activities	<u>274</u>	<u>396</u>	<u>1,044</u>	<u>4,396</u>
Net increase/(decrease) in cash held	(156)	163	(276)	39
Opening cash balance	500	344	507	231
Closing cash balance	<u>344</u>	<u>507</u>	<u>231</u>	<u>270</u>

*Source: Chatham Rock Phosphate audited financial statements*

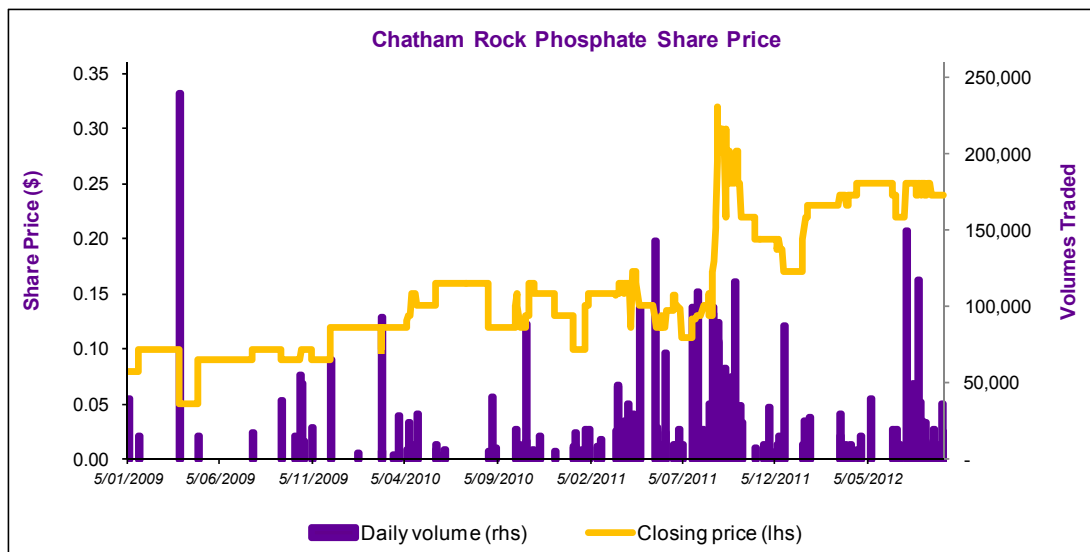
Cash used in operating activities relates mainly to exploration expenditure and payments to suppliers.

Cash used in investing activities represents the purchase of investments, the purchase and sale of shares and advances to related parties.

Cash from financing activities represents proceeds from the issue of shares and the exercise of options. The Company has issued approximately 50 million shares between 31 March 2008 and 31 March 2012, including over 30 million shares in the 2012 financial year.

### 3.10 Share Price History

Set out below is a summary of Chatham Rock Phosphate’s daily closing share price and daily volumes of shares traded from 5 January 2009 to 7 September 2012.



During the period, Chatham Rock Phosphate’s shares have traded between \$0.05 and \$0.32 at a VWAP of \$0.17.

Trading in the Company’s shares is extremely thin, reflecting Chatham Rock Phosphate’s small market capitalisation and that it operates in the mining and mineral exploration sector that is scarcely researched in New Zealand and attracts relatively few local investors. Furthermore, the top 10 shareholders hold 70.60% of the shares.

An analysis of VWAP, traded volumes and liquidity (measured as traded volumes as a percentage of shares outstanding) is set out below.

Chatham Rock Phosphate Share Trading					
Period	Low <sup>1</sup> \$	High <sup>1</sup> \$	VWAP <sup>1</sup> \$	Volume Traded <sup>1</sup> (000)	Liquidity
1 month	0.24	0.25	0.24	134	0.1%
3 months	0.22	0.26	0.25	643	0.6%
6 months	0.22	0.26	0.25	771	0.8%
12 months	0.17	0.30	0.24	1,406	1.4%

<sup>1</sup> to 7 September 2012

## **4. Sources of Information, Reliance on Information, Disclaimer and Indemnity**

### **4.1 Sources of Information**

The statements and opinions expressed in this report are based on the following main sources of information:

- the draft notice of special meeting
- the Subsea Investment Agreement
- the Convertible Loan Agreement
- the Boskalis Investment Agreement
- the Chatham Rock Phosphate annual reports for the years ended 31 March 2009 to 2012
- data in respect of Chatham Rock Phosphate and Subsea from NZX Data and Capital IQ
- publicly available data on the rock phosphate and fertiliser industries.

During the course of preparing this report, we have had discussions with and / or received information from the Directors and Chatham Rock Phosphate's legal advisers.

The Directors have confirmed that we have been provided for the purpose of this Independent Adviser's Report with all information relevant to the Subsea Allotment that is known to them and that all the information is true and accurate in all material respects and is not misleading by reason of omission or otherwise.

Including this confirmation, we have obtained all the information that we believe is desirable for the purpose of preparing this Independent Adviser's Report.

In our opinion, the information to be provided by Chatham Rock Phosphate to the Non-associated Shareholders is sufficient to enable the Directors and the Non-associated Shareholders to understand all the relevant factors and to make an informed decision in respect of the Subsea Allotment.

### **4.2 Reliance on Information**

In preparing this report we have relied upon and assumed, without independent verification, the accuracy and completeness of all information that was available from public sources and all information that was furnished to us by Chatham Rock Phosphate and its advisers.

We have evaluated that information through analysis, enquiry and examination for the purposes of preparing this report but we have not verified the accuracy or completeness of any such information or conducted an appraisal of any assets. We have not carried out any form of due diligence or audit on the accounting or other records of Chatham Rock Phosphate. We do not warrant that our enquiries would reveal any matter which an audit, due diligence review or extensive examination might disclose.



### **4.3 Disclaimer**

We have prepared this report with care and diligence and the statements in the report are given in good faith and in the belief, on reasonable grounds, that such statements are not false or misleading. However, in no way do we guarantee or otherwise warrant that any forecasts of future profits, cash flows or financial position of Chatham Rock Phosphate will be achieved. Forecasts are inherently uncertain. They are predictions of future events that cannot be assured. They are based upon assumptions, many of which are beyond the control of Chatham Rock Phosphate and its directors and management. Actual results will vary from the forecasts and these variations may be significantly more or less favourable.

We assume no responsibility arising in any way whatsoever for errors or omissions (including responsibility to any person for negligence) for the preparation of the report to the extent that such errors or omissions result from our reasonable reliance on information provided by others or assumptions disclosed in the report or assumptions reasonably taken as implicit.

Our evaluation has been arrived at based on economic, exchange rate, market and other conditions prevailing at the date of this report. Such conditions may change significantly over relatively short periods of time. We have no obligation or undertaking to advise any person of any change in circumstances which comes to our attention after the date of this report or to review, revise or update our report.

We have had no involvement in the preparation of the notice of special meeting issued by Chatham Rock Phosphate and have not verified or approved the contents of the notice of special meeting. We do not accept any responsibility for the contents of the notice of special meeting except for this report.

### **4.4 Indemnity**

Chatham Rock Phosphate has agreed that, to the extent permitted by law, it will indemnify Simmons Corporate Finance and its directors and employees in respect of any liability suffered or incurred as a result of or in connection with the preparation of the report. This indemnity does not apply in respect of any negligence, wilful misconduct or breach of law. Chatham Rock Phosphate has also agreed to indemnify Simmons Corporate Finance and its directors and employees for time incurred and any costs in relation to any inquiry or proceeding initiated by any person. Where Simmons Corporate Finance or its directors and employees are found liable for or guilty of negligence, wilful misconduct or breach of law or term of reference, Simmons Corporate Finance shall reimburse such costs.

## **5. Qualifications and Expertise, Independence, Declarations and Consents**

### **5.1 Qualifications and Expertise**

Simmons Corporate Finance is a New Zealand owned specialist corporate finance advisory practice. It advises on mergers and acquisitions, prepares independent expert's reports and provides valuation advice.

The person in the company responsible for issuing this report is Peter Simmons, B.Com, DipBus (Finance), CFIP.

Simmons Corporate Finance and Mr Simmons have significant experience in the independent investigation of transactions and issuing opinions on the merits and fairness of the terms and financial conditions of the transactions.

### **5.2 Independence**

Simmons Corporate Finance does not have at the date of this report, and has not had, any shareholding in or other relationship with Chatham Rock Phosphate or Subsea or any conflicts of interest that could affect our ability to provide an unbiased opinion in relation to this transaction.

Simmons Corporate Finance has not had any part in the formulation of the Subsea Allotment or any aspects thereof. Our sole involvement has been the preparation of this report.

Simmons Corporate Finance will receive a fixed fee for the preparation of this report. This fee is not contingent on the conclusions of this report or the outcome of the voting in respect of the Subsea Allotment Resolution. We will receive no other benefit from the preparation of this report.

### **5.3 Declarations**

An advance draft of this report was provided to the Directors for their comments as to the factual accuracy of the contents of the report. Changes made to the report as a result of the circulation of the draft have not changed the methodology or our conclusions.

Our terms of reference for this engagement did not contain any term which materially restricted the scope of the report.

### **5.4 Consents**

We consent to the issuing of this report in the form and context in which it is to be included in the notice of special meeting to be sent to Chatham Rock Phosphate's shareholders. Neither the whole nor any part of this report, nor any reference thereto may be included in any other document without our prior written consent as to the form and context in which it appears.



Peter Simmons  
Director

**Simmons Corporate Finance Limited**  
*10 September 2012*