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27 December 2022

Adrian Smythe  
Manager, Listings Compliance  
20 Bridge Street  
Sydney NSW 2000

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Dear Mr Smythe,

Apologies for the time it has taken to respond to the email from Ms Angel He of 28 November 2022. We have needed the time to allow us to take legal advice on this matter as it is obviously very important for us and for our shareholders that the correct outcome is reached.

Since receiving the latest email, and as you may have read last week, the original Chairman of Doyles Creek Mining Pty Ltd, Mr John Maitland, has been found NOT GUILTY in the Supreme Court of NSW proceedings against him. Please see our draft press release regarding this matter, which is **attached** for your reference. This is a major new occurrence which will greatly assist NuCoal Resources Ltd's (**NuCoal** or **Company**) quest for compensation for the unjustified cancellation of our EL 7270 in 2014.

These latest events highlight what we already knew; that the circumstances which NuCoal has experienced have, through no fault of its own, been unique in Australian corporate history.

Despite these circumstances, NuCoal is presently well placed to continue to progress work on the newly renewed EL 6812, hopefully complete a compensation deal with the NSW Government, and look for further projects that could be suitable for our Company for the benefit of its shareholders.

Accordingly, NuCoal considers that its operations are currently sufficient to warrant continued listing. However, even if ASX remains unconvinced of this fact, given the extraordinary circumstances which have applied to NuCoal to date, and the existing and recent ramp up in its operations, it is appropriate for the ASX to defer any decision as to its suspension from quotation for a further 12 months. This is the only appropriate course to ensure that there is no further unnecessary damage caused to NuCoal shareholders' interests by any forced suspension.

Further detail as to NuCoal’s reasons for this position is set out below.

## **1. NuCoal has sufficient operations**

### **ASX’s current position**

We note the response in the last email, ie *“While ASX notes that NCR has announced its exploration program, exploration activities do not appear to commence until 2024. Until such time, ASX considers NCR’s operations to be inadequate to warrant continued quotation under Listing Rule 12.1. ASX will reconsider NCR’s compliance with Listing Rule 12.1 once we have received confirmation that exploration activities have commenced.”*

Listing Rule 12.1 provides that **the level of an entity’s operations must, in ASX’s opinion, be sufficient to warrant the continued quotation of the entity’s securities and its continued listing.**

From the information in the emails, we draw the conclusion that the ASX considers that NuCoal’s “operations” should be defined solely by “exploration activities” and “exploration activities” should not be defined to include the necessary preparations which must occur before in-field activities can commence.

We have asked ASX to provide its working definition of “exploration activities” and, to date, we have not received a response to this request. It may be that your definition of exploration activities requires that, for example, a drill rig has to be turning in the ground.

In NuCoal’s view, this interpretation of “exploration activities” is overly narrow and is at odds with the NSW Government’s characterisation of the activities which NuCoal is currently undertaking as part of the “exploration program” agreed with NSW Government.

More importantly, in exercising any discretion under Listing Rule 12.1, there is no justification for ASX to substitute the narrower term “exploration activities” for the broader term “operations”, which is used in the text of the Listing Rule.

### **Meaning of “operations”**

In this respect, we note that the term “operations” is not defined or referenced in Chapter 19 of the Listing Rules, so must be subject to interpretation according to its plain meaning. Accordingly, the definition of “operations” needs to take into account the circumstances of the company as a whole and not focus solely on one aspect. The specific definition of operations will depend on your industry and the stage your business is in. Sometimes, improving operations means thinking strategically about your systems and processes. Other times, it means being part of the on-the-ground work to bring every aspect of a project, from tiny to huge, to reality. Business operations refer to activities that businesses engage in on a daily basis to increase the value of the enterprise and earn a profit.

According to these definitions, we are certainly actively engaged in operations at NuCoal, and these operations are substantial and ongoing.

Critically, and as you are aware:

- NuCoal recently received a renewal (after four years of dealings with the NSW Government) of EL 6812, effective 18 October 2022, for a period ending 20 June 2028;
- NuCoal has agreed a considered and substantial exploration program with the NSW Government (the details of which were released to the market on 11 November 2022); and
- As is very important for an exploration company, we have substantial reserves of cash and no current liabilities at this time.

There is no reason to consider preparatory activities to physical exploration to fall outside the definition of “exploration activities” and they are certainly within the ordinary meaning of “operations”.

Accordingly, NuCoal considers that its agreed program, which commences in 2023 with the application for phase 3 drilling approvals, constitutes “exploration activities” and that these activities are “operations” that are sufficient to warrant the continued quotation of NuCoal’s securities on the ASX at this time.

#### **Unusual timing and inconsistency with previous ASX positions**

We must also note the unusual timing of ASX’s decision to take action in relation to this matter, which is incongruent with its stance in relation to NuCoal to date.

We have now been listed since 2010. If ASX’s definition of “exploration activities” is adopted as a substitute for the Listing Rule’s use of “operations”, NuCoal ceased “exploration activities” at the end of January 2014 when the NSW Government cancelled one of its ELs – EL 7270 Doyles Creek.

NuCoal did not undertake “exploration activities” on EL 6812 between the end of January 2014 and its expiry. With good reason, we took stock of our situation and mounted numerous legal challenges to the NSW Government’s actions in relation to EL 7270.

In relation to EL 6812, we applied for its renewal in the customary way prior to its expiry, regularly pushed for renewal and announced this in all relevant reports to shareholders and the market from that time. However, it has taken NuCoal a number of years to obtain this renewal from the NSW Government. The EL 6812 area is considered valuable to shareholders based on earlier drilling by NuCoal, especially in the light of current energy prices and the proximity of the area to infrastructure.

In this context, it appears perverse to us that, after having finally obtained the renewal of EL 6812 and after putting in place an exploration program commencing at the start of next year, that ASX has only now formed the opinion that NuCoal does not have “operations” that are sufficient to warrant the continued quotation of its securities.

## **2. Effect of suspension on NuCoal Shareholders**

It should go without saying that suspending NuCoal’s shares at this critical time would seriously harm NuCoal’s shareholders, with no apparent benefit to the ASX.

Suspension would make the value of the Company, and its securities, completely opaque for an indeterminate period. Shareholders will lose the liquidity in their shares and the ultimate result will be value destruction and shareholder ignorance.

We have also recently cleared the final hurdle remaining in our quest to obtain compensation in relation to the unjustified cancellation of our EL 7270 in 2014. A suspension and the associated reputational damage which would flow from it will undermine this important effort to further enhance shareholder value. In this respect, NuCoal considers it critical that it be trading during the period in which there will be a potential change of Government in NSW.

It is difficult to accept that a Company such as ours, and its loyal shareholders, which have collectively weathered so much pain (including Covid), should be pushed off the cliff of suspension at this juncture – just because we don’t have a drill rig turning in the ground.

## **3. Listed track record**

It is also important to emphasise that, in addition to its substantial operations, NuCoal has been and remains an excellent corporate citizen. Since listing in 2010, NuCoal has demonstrated consistent compliance with the principles on which the Listing Rules are based.

In particular, NuCoal has been fastidious in meeting its disclosure requirements. We did this when we floated the Company and have always made full disclosure of our position to investors and the market through continuous disclosure, quarterly and annual reporting.

Critically, this means that NuCoal shareholders have always, and continue, to trade on a fully informed basis, including as to the extent of the Company’s prior and existing “operations”. The ongoing confidence the market has shown in trading NuCoal securities is an ongoing validation that those operations are appropriate for continued ASX quotation.

In addition, we have also held all necessary meetings and paid our Listing Fees on time.

#### **4. NuCoal Proposal**

In conclusion, given that NuCoal has a comprehensive exploration program in place in relation to EL 6812, a strong balance sheet and strong prospects of obtaining compensation in relation to EL 7270, we believe that NuCoal currently has operations which are sufficient to warrant continued quotation on the ASX.

We understand ASX's position and we hope that ASX now clearly understands our position. In the light of these understandings, we request that ASX exercises its discretion and provides NuCoal with a period of 12 months before it takes action to suspend NuCoal's securities (i.e. until 31 December 2023).

This period will allow us to progress the exploration program in relation to EL 6812 and demonstrate this progress to ASX, hopefully complete a compensation deal with the NSW Government and look for further projects that could be suitable for our Company - without doing so in isolation from the market.

Suspending NuCoal's securities from quotation at this critical time will compromise these efforts and lead to almost certain and devastating destruction in value for shareholders.

We look forward to your response and earnestly hope that you will see the logic in our proposal.

Yours faithfully,



Gordon Galt  
Chairman, NuCoal Resources Limited



## ASX Announcement

22 December 2022

### Acquittal of John Maitland further reinforces NuCoal's Claim for Just Compensation from the NSW Government for the cancellation of EL 7270, Doyles Creek, in January 2014

NuCoal Resources Ltd (ASX:NCR) (**NuCoal** or **Company**) is pleased to advise shareholders that Mr. John Maitland was acquitted of all charges against him on 20 December 2022, in the Supreme Court of NSW, by Justice Hament Dhanj.

The charges brought against Mr. Maitland by the Crown were pursuant to the original award of EL 7270, Doyles Creek, to Doyles Creek Mining Pty Ltd (**DCM**) in December 2008. DCM was subsequently purchased by NuCoal in February 2010.

Mr. Maitland and the other three Directors of DCM were named by the ICAC as being corrupt in December 2013. At the same time, the ICAC recommended cancellation of EL 7270, but also found that NuCoal was innocent of any wrongdoing and recommended that NuCoal should be considered for compensation if EL 7270 was cancelled.

The finding against the DCM directors was used by the NSW Parliament, led by the O'Farrell Government in January 2014, to cancel EL 7270; however, no compensation was ever considered, which expressly went against the ICAC recommendation. This action destroyed the vast majority of value of NuCoal, which had been independently valued at circa \$400million. No explanation for this lack of compensation has ever been made.

In subsequent years, none of the original DCM Directors has been found guilty of any wrongdoing. Two have been tried, with both being acquitted. One other director won a civil case against his D&O insurer, which affirmed his innocence, and the fourth Director has never had an action brought against him.

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**ASX:NCR • Share Information**  
Issued Shares: 768.6m

**Board of Directors**

Chairman:	G. Galt
Non Executive Director & Company Secretary:	G. Lewis
Non Executive Director:	M. Davies

Current Directors of NuCoal brought a defamation action against Mr. O'Farrell pursuant to statements made by Mr. O'Farrell, in 2015. This was settled by an unequivocal apology to the Directors from Mr. O'Farrell, that his statements were incorrect.

In the period between December 2013 and now, NuCoal's innocence has been affirmed by ICAC, in the Supreme Court of NSW and by two NSW Parliamentary Committees, with the last of these recommending (November 2021) that urgent action should be taken to compensate NuCoal for the cancellation of EL 7270.

The declared and agreed innocence of NuCoal and its shareholders, the findings of the two Parliamentary Committees, Mr. O'Farrell's apology to NuCoal Directors, and the complete failure of the State to find evidence of any wrongdoings, ever, including now the acquittal of Mr. Maitland, clearly demonstrate that

- none of the original DCM Directors was ever guilty of any wrongdoing;
- the cancellation of EL 7270 by the O'Farrell Government was completely incorrect and unjust and had no basis in fact; and
- NuCoal should be compensated urgently by the NSW Government.

The Board of NuCoal intends to continue to push for just compensation for its innocent shareholders.

For further enquiries please contact:

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