

The Treasury

New Zealand Aluminium Smelters (NZAS) Information Release

September 2013

Release Document

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Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [2] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information, or who is the subject of the information
- [3] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [4] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [5] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [6] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [7] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [8] 9(2)(h) – to maintain professional legal privilege

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [3] appearing where information has been withheld in a release document refers to section 9(2)(f)(iv).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

File Note

This is a file note of a discussion between Meridian Energy (Chris Moller by teleconference, and Mark Binns in person) and Ministers (Hons English, Joyce and Ryall) that took place on 25 March 2013; and also of the meeting between Ministers and officials that took place immediately afterwards.

Also present at both meetings were officials from Treasury and DPMC, and Ministerial office staff.

Key Points – meeting with Meridian

Meridian briefed Ministers on: its negotiating position with Pacific Aluminium (PA); the commercial basis for that position; the proposal from PA on Friday; and discussions with PA over the weekend (via email).

The key points were that Meridian had reached its bottom line commercial position, but that there was still a very significant gap to PA's position, and that gap had not materially closed in the discussions on Friday or via the exchange of emails over the weekend.

John Crawford briefed Ministers and Meridian on the email he had received from the Rio Tinto Australia CEO a few hours earlier, responding to John's letter sent today. The Rio CEO advised he would be in a position to discuss the issues raised with him by Treasury on the following day (Tuesday 26 March). The issues raised by Treasury were the need for the Government to disclose the situation with the smelter in the MRP offer document, and the need for the Government to understand Rio's likely processes and timing for decision making on the future of the smelter, given that the negotiations between Meridian and PA appeared unlikely to reach an acceptable outcome.

Given this new information, Meridian decided that it would delay its intended market disclosure for 24 hours. Meridian's intended disclosure was to inform the market that "there remains a major gap between [Meridian and NZAS] on a number of issues, such that [Meridian] believe that it is unlikely an agreement can be reached with Pacific Aluminium". The 24 hour delay was to allow the discussions between Treasury and Rio Tinto to occur, in the hope that this might result in PA adjusting its negotiating position, or alternatively Meridian being able to negotiate directly with Rio Tinto, which may have different incentives to PA.

At that point Mark Binns left the meeting and the teleconference with Chris Moller was ended.

Key Points – meeting with Ministers

After Meridian left, Ministers then had a discussion on the issues. Ministers:

- Confirmed that given the size of the gap between Meridian and PA, Ministers were unlikely to consider direct Crown assistance to the smelter
- Discussed whether it would be appropriate or necessary to separate Ministerial responsibility for the Crown's shareholding in Meridian from Ministerial responsibility for the MRP IPO. Conclusion: it was not required, as the Crown had to disclose all material information it held regarding the smelter negotiations in the MRP offer document, therefore Ministerial separation would not achieve anything
- Confirmed their position that Meridian must continue to negotiate directly with PA (or Rio Tinto) regarding the commercial contract with the smelter, and that Ministers would hold to the position, which has been put to PA on several occasions, that Ministers would not agree to PA's request to intervene in these commercial negotiations
- Confirmed that Meridian would continue to make its own commercial decisions regarding disclosures to the market
- However Ministers agreed that, separate to the commercial negotiations between Meridian and PA/Rio, Treasury and/or Ministers should also discuss with Rio the disclosures the Crown would need to make in relation to the MRP IPO, and to understand the processes that Rio would follow if (as seemed likely) a commercial outcome could not be reached between PA and Meridian