

The Treasury

New Zealand Aluminium Smelters (NZAS) Information Release

September 2013

Release Document

www.treasury.govt.nz/publications/information-releases/nzas

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.



NEW ZEALAND ALUMINIUM SMELTERS LIMITED

Tiwai Road, No. 11 RD, Invercargill 9877, Southland, New Zealand

Private Bag 90110, Invercargill 9840

Telephone (03) 218-5999 ISD+ 64-3-218-5999

Facsimile (03) 218-9747 ISD + 64-3-218-5479

28 March 2013

Mr John Crawford (john.crawford@treasury.govt.nz)

Deputy-Secretary, Commercial Transactions

New Zealand Treasury

1 The Terrace

Wellington, 6140

Dear Sir

Electricity Agreement – New Zealand Aluminium Smelters Limited and Meridian Energy Limited

Pacific Aluminium is, as you are aware, presently in discussions with Meridian Energy Limited (**Meridian**), the New Zealand Treasury and the Government on the state of negotiations with Meridian and the future of the Tiwai Point Aluminium Smelter.

At a meeting held on Tuesday, 26 March with representatives of Pacific Aluminium and Rio Tinto, you informed the attendees that the Government has in its possession a redacted copy of the 2007 Electricity Agreement between New Zealand Aluminium Smelters Limited (**NZAS**) and Meridian and that it had obtained the document from the Ministry of Economic Development (**MED**). Further, you indicated at the 26 March meeting that you would be providing copies of any proposed disclosure of the Electricity Agreement to Mr Phil Baker for review by NZAS' legal counsel. To date, no such correspondence has been received.

Meridian, Pacific Aluminium and the Honourable Tony Ryall MP have all issued media statements today. NZAS is concerned at the Government's assertion (as reflected in the Minister's media release today and in a letter from you dated 25 March 2013) that it proposes to release details of the 2007 Electricity Agreement between NZAS and Meridian in the context of the proposed Mighty River Power float.

As has already been indicated to your officials, and as Meridian is well aware, the Electricity Agreement is a highly commercially sensitive and private document between two commercial parties. Both NZAS and Meridian are subject to a strict confidentiality obligation.

Our understanding is that the copy of the Electricity Agreement provided to you by the MED was originally provided to the MED by NZAS' part-owner, Rio Tinto Alcan (New Zealand) Limited (**RTANZ**) for the sole purpose of the 2009/2010 electricity industry restructuring (which NZAS was being asked to facilitate) and for no other purpose, and in circumstances where the Government was well aware of the sensitivity of the contract and the strict confidentiality surrounding it. Alternatively, if Meridian has provided the Government with a copy of the Electricity Agreement, that provision must or should have been accompanied by a requirement for compliance with Meridian's obligation of confidence.

Certainly the Government must be fully aware of the obligation of confidence imposed on its wholly-owned entity, Meridian. If the Government holds a copy from another source, that is either because it has been provided with a copy under an obligation of confidence and for a very different specific purpose, or because it has obtained a copy by some other means.

In any event, the Government and its officials are subject to an obligation of confidentiality and non-disclosure, and to act in derogation of this has the potential to very seriously harm the commercial interests of NZAS, its owners, and Pacific Aluminium, as well as those of Meridian.

We acknowledge that the Government has an obligation to ensure investors are appropriately informed about potential investment risks associated with the impending sales of a State Owned Enterprise. We believe this obligation can be met without the disclosure of commercially sensitive information including material extracted from the Electricity Agreement. NZAS would appreciate that you meet your commitment to provide copies of any proposed disclosure relating to the status of negotiations with Meridian or the Electricity Agreement to Mr Phil Baker for review by NZAS' legal counsel. In the absence of review by NZAS' legal counsel, none of NZAS, its owners or Pacific Aluminium authorises any disclosure of the Electricity Agreement. Any disclosure of any part of the Electricity Agreement or its content will be treated by NZAS, its owners and Pacific Aluminium as a very serious breach of the obligation of confidentiality to which Meridian, the Government and relevant officials are subject.

Whilst we expect that you will appreciate our concerns and disclosure will not become an issue, you and the Government need to be aware that NZAS reserves the right to take action to restrain unauthorised disclosure and to enforce its rights in this regard. NZAS has the full support of its shareholders.

Please acknowledge receipt, and confirm by return (to Stuart MacKenzie at stuart.mackenzie@pacificaluminium.com.au) that no details of the Electricity Agreement will be disclosed by the Government, Mighty River Power or any of its advisors and associates.

Yours sincerely

Matthew Bates

Director

New Zealand Aluminium Smelters Limited

cc: Mark Binns, Chief Executive, Meridian Energy Limited (mark.binns@meridianenergy.co.nz), Level 1, 33 Customhouse Quay, Wellington NZ 6143