

The Treasury

New Zealand Aluminium Smelters (NZAS) Information Release

September 2013

Release Document

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- [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
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- [6] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

Ref: 2595157

David Peever
CEO, Rio Tinto Australasia

By email to david.peever@riotinto.com

25 March 2013

Dear Mr Peever

My name is John Crawford and I am a Deputy Secretary of the New Zealand Treasury. My primary role has me responsible for large scale commercial activities involving the New Zealand Government. I am writing this letter to you on behalf of the Minister of Finance and the Minister for State Owned Enterprises who are the shareholders of both Meridian Energy Limited (Meridian) and Mighty River Power Limited (MRP).

I have been asked to arrange a telephone call between yourself and the Ministers for 8pm tonight (NZ Time which I believe is 6pm Australian EST), and would appreciate you confirming whether you can take such a call, and your contact details. I would also appreciate your early confirmation of receipt of this via email.

I am disappointed that we could not meet today as I would have preferred to discuss a number of issues directly with you face-to-face. These issues are:

1. The state of negotiations between Meridian and Pacific Aluminium and the likelihood of a disclosure by Meridian to the NZX
2. The potential for a strategic review of the smelter's long term future by the smelter's ultimate shareholders, Rio Tinto (Rio) and Sumitomo Chemical (Sumitomo)
3. The Government's IPO of Mighty River Power (MRP) and the consequential disclosures the Government will be required to make regarding the Meridian agreement with the New Zealand Aluminium Smelter (NZAS).

The primary and most pressing issue that the Government needs to address with Rio is its required disclosure in the MRP Offer documents. A secondary issue is how Rio intends to conduct any strategic review.

The state of negotiations between Meridian and Pacific Aluminium and the likelihood of a disclosure to the NZX

We are advised by Meridian that its current view is there is little prospect of a commercial outcome being reached between Pacific Aluminium and Meridian in respect of Pacific Aluminium's wish to renegotiate the existing contract between Meridian and NZAS, which came into effect on 1 January 2013.

We are also aware that Meridian believes that the state of the negotiations will shortly require it to disclose to the NZX that negotiations between the parties have ceased. We understand that Meridian intends to make such an announcement within the next 24

hours, consistent with the fact it made an earlier disclosure when negotiations commenced.

This view of both the state of negotiations and need for disclosure has been taken by the Meridian board independently of Ministers and the Treasury.

The potential for a strategic review of the smelter's long term future by the smelter's ultimate shareholders

Over the past few months, Pacific Aluminium representatives have told Ministers and officials on a number of occasions that if an acceptable solution to the smelter's current issues with profitability is not forthcoming, the NZAS smelter would remain with its current owners and not move into the Pacific Aluminium bundle of assets being readied for disposal by Rio. They have also stated to Ministers and officials that if such an acceptable solution was not found, the smelter's ultimate owners would almost immediately announce a strategic review of the smelter to determine whether it was viable in the long term.

We understand and confirm that commercial negotiations are a matter for Meridian and representatives of the smelter's owners. However, on the basis of these representations from Pacific Aluminium, we understood that the appropriate entity for Government officials to hold discussions with about any forthcoming review with was Rio, not Pacific Aluminium, especially as we were led to believe that such a review decision was imminent (and indeed to be made this week). Accordingly, last Friday, we sought to urgently meet with Rio to discuss how Rio would approach such a review including timeframes, potential involvement, if any, of Government and government bodies in the review process, and the Government's likely response to the announcement of a review.

The Government's IPO of Mighty River Power (MRP) and the consequential disclosures the Government will be required to make

As a consequence of the uncertainty introduced by the state of negotiations and the possibility of a strategic review, the New Zealand Government is reviewing what is to be contained in the offer document for the IPO of MRP (where shareholding Ministers are the vendors of the MRP shares). Initial advice indicates Ministers will need to describe in the offer document the position with regards to Tiwai including a risk of NZAS exiting operations. Our advice is that the obligation to disclose material information in the offer document for the IPO requires any terms of the contract between NZAS and Meridian that is material to the MRP offer to be disclosed, by way of a summary of the key terms associated with any exit, including the timing of the notice and the ramp-down provisions.

It is important that you know that the Government has a copy of the contract between NZAS and Meridian. It was provided to the Government by Rio as part of the electricity reforms of 2009/2010. The Shareholding Ministers have asked Treasury to seek input from Rio and NZAS on the information Ministers intend to make public in the MRP offer document. We await your advice on how best to do this but this needs to be done with extreme urgency as the Government will be required to respond publicly to any announcement by Meridian or any other party to the discussions.

We believe that the Government would only be able to revisit its disclosure position if it enjoyed complete certainty that Meridian is confident a commercial outcome can be

achieved, and that the Government is confident that discussions around the smelter will not prejudice the MRP IPO both during and after the transaction.

I am happy to discuss any aspect of the above with you today prior to 4pm NZ time should you wish to do so. I can be contacted directly on +64 [1]

Yours sincerely

John Crawford
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cc Phil Baker, Chief Financial Officer, Pacific Aluminium