

# **The Treasury**

## **Solid Energy Information Release**

**March 2013**

### **Release Document**

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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.

**Solid Energy: Land Sales to Wholly-Owned Subsidiary**

<b>Date</b>	29 June 2007	<b>Priority</b>	Routine
<b>Security level</b>		<b>Reference</b>	SEL-003/A63559

Minister	Action sought	Deadline
Minister of Finance	Approve recommendations.	10 July 2007
Minister for State Owned Enterprises	Approve recommendations and sign letter.	10 July 2007
Associate Minister of Finance (Hon Clayton Cosgrove)	This report is for your information.	N/A

**Report summary**

- The purpose of this report is to advise shareholding Ministers of a proposal by Solid Energy to transfer significant land holdings in the Southland, West Coast and Waikato regions to a wholly owned subsidiary company and establish clarity over Ministers' expectations as to whether the transfers should go through the interim process for the disposal of Crown-owned land.
- On the face of the transaction, it appears the value and significance of the land would mean it falls within the interim process. However, the transaction does not reduce Solid Energy's ownership and control over the land, and there is no proposed change to the nature of the land use.
- This report proposes that Ministers write to Solid Energy to confirm that, although significant land holdings are being transferred from one company to another, as they remain in Solid Energy's control and the nature of the land use is not expected to change, the transfer should not be subject to the interim process for disposal of Crown-owned land.

**Contacts**

Michael Moore	Manager - Energy, Land & Environment – CCMAU	[1]	<b>First contact</b>
Chris Hewson	Senior Advisor, Energy, Land & Environment – CCMAU	[1]	

**Ministers' comments**

29 June 2007

Minister of Finance  
Minister for State Owned Enterprises

cc: Associate Minister of Finance (Hon Clayton Cosgrove)

## **Solid Energy: Land Sales to Wholly-Owned Subsidiary**

### **Purpose**

1. The purpose of this report is to advise shareholding Ministers of a proposal by Solid Energy New Zealand Limited (Solid Energy) to transfer significant land holdings in the Southland, West Coast and Waikato regions to a wholly owned subsidiary company and establish clarity over Ministers' expectations as to whether the transfers are required to go through the interim process for the disposal of Crown-owned land.
2. This report proposes that Ministers write to Solid Energy to confirm that, although significant lands are being transferred from one company to another, as they remain in Solid Energy's ownership and control and the nature of the land use is not expected to change, the transfer should not be subject to the interim process for disposal of Crown-owned land.

### **Background**

3. Solid Energy has invested in 59 parcels of land, totalling 3,594 hectares and valued at \$69 million, within the Southland, West Coast and Waikato regions.
4. In Southland, land containing approximately 1 billion tonnes of lignite has been targeted for purchase by Solid Energy, and the company is well on the way to securing that goal. On the West Coast and around Huntly, land has been secured to provide a natural extension of existing mines when they become exhausted.
5. Although this land is currently being farmed, it is being held with a view to protect and develop the future coal mining business of Solid Energy. The timing of when each block of land may be subject to mining will depend upon a range of economic and technological factors, meaning some mining may be many years away. Accordingly, Solid Energy wishes to maximise the land's productive use for non-mining purposes by continuing to lease or farming the land.

6. Solid Energy is concerned that the transfer of this land to a subsidiary company would fall within the disposal of Crown-owned land ; interim process.
7. The majority of the land would meet the Overseas Investment Act 2005 criteria for 'sensitive land' due to its size, non-urban nature and value. A detailed report on each piece of land has been provided to officials.

## **Proposal**

8. Solid Energy plans to transfer the land to a wholly-owned subsidiary company called Solid Energy Land Holdings Limited (SELH). SELH would own the land and, where appropriate, enter into leases with competent parties for the farming of the land.
9. The risk profile of passive land holdings is very different to that of active coal mining. Transferring the non-actively mined land into a separate legal entity has a number of advantages for Solid Energy, such as:
  - Risk Management and Governance - The risk and issues associated with a large commercial land holding justify separate risk management and governance considerations; including performance reporting, and strategic planning to maximise the long-term value and optimal custodial outcomes of the land.
  - Focussed Management - A focussed approach to management of farmland as opposed to mining land, including stakeholder and environmental issues, and maximising returns from farming land.
  - Financing - The interest rate required by a lender and facility structure for a separate land owning company may provide additional benefits or financing capacity to the Solid Energy group of companies.
  - Taxation - Separation into a separate subsidiary provides some clarity regarding taxation issues.

## **Application of interim process for disposal of Crown-owned land**

10. The interim process for land disposals has two key application criteria;
  - the definition of 'land disposal' means any sale of land by a Crown agency or any lease of land by a Crown agency that allows for the use of land or the practical control of the land to be significantly altered
  - the land to be disposed meets the definition of 'sensitive land' under the Overseas Investment Act 2005 or has a value greater than \$1 million.
11. Solid Energy accepts that the majority, if not all, of the land to be transferred would be 'sensitive' and/or has a value greater than, or equal, to \$1 million.
12. As the land is to be transferred to a wholly-owned subsidiary of Solid Energy, the practical control of the land will not change. All of the land is being used for farming purposes and no change to this is planned.

13. The interim process also makes specific reference to land disposals between Crown agencies. We consider this transfer is not between Crown agencies, but within the Solid Energy group.
14. Solid Energy has given assurances to CCMAU that the transfer of land is not seen as a potential step to avoid application of the interim process for disposal of Crown-owned land.

## Interpretation

15. We consider that the transfer of lands by Solid Energy, to a wholly-owned subsidiary, does not fall within the interim process criteria of 'land disposal' as the use of land or the practical control of the land will not be significantly altered. The transfer is not between Crown agencies, but within the Solid Energy group.

## Consultation

16. The Treasury has been consulted in the preparation of this paper. DPMC has been informed.

## Recommendations

17. We recommend that you:
  - a **note** that Solid Energy intends to transfer land holdings to a wholly owned subsidiary
  - b **note** that Solid Energy wants to clarify whether the transfer needs to be assessed under the Disposal of Crown Land: Interim Process
  - c **agree** that the proposed transfer of lands by Solid Energy, to a wholly-owned subsidiary, does not fall within the interim process criteria for 'land disposal' as ownership remains within the Solid Energy group and the use of land or the practical control of the land will not be significantly altered.

(agree / disagree)

**Minister for State Owned Enterprises**

(agree / disagree)

**Minister of Finance**

d **agree** that the Minister for State Owned Enterprises, on behalf of shareholding Ministers, sign the attached letter to the Chair of Solid Energy.

(agree / disagree)

**Minister for State Owned Enterprises**

(agree / disagree)

**Minister of Finance**

Michael Moore

**Manager - Energy, Land & Environment**

**CCMAU**

Hon Dr Michael Cullen

**Minister of Finance**

Hon Trevor Mallard

**Minister for State Owned Enterprises**

John Palmer  
Chair  
Solid Energy New Zealand Ltd  
PO Box 1303  
Christchurch

Dear John

### **Land Sales to Wholly-Owned Subsidiary**

Thank you for submitting your report on the proposed transfer of land to Solid Energy Land Holdings Limited. Ministers' note the rationale behind the proposed land transfer and the expected benefits that the transfer may bring to the Solid Energy Group.

A key criteria for application of the interim process for the disposal of Crown-owned land is where land disposals "*allow for the use of land or the practical control of the land to be significantly altered*". As the proposed transfer is to a wholly-own subsidiary of Solid Energy, we understand that there will be no change to the control of the land and that there is no intention to change the nature of the land. Therefore, we consider that the interim process does not need to be applied to the proposed transfer.

Shareholding Ministers appreciate being advised of the proposed transaction and that clarification of our expectations on matters such as this is sought.

Yours sincerely

Hon Trevor Mallard  
**Minister for State Owned Enterprises**  
*On behalf of shareholding Ministers*

cc: Dr Don Elder, Chief Executive, Solid Energy